

# AGENDA ITEM

**DATE:** February 27, 2015

**TO:** Members, Regulation and Discipline Committee

**FROM:** Douglass Hull, Director, Mandatory Fee Arbitration  
Kenneth E. Bacon, Presiding Arbitration

**SUBJECT:** Revisions to Sample Fee Agreement Forms. Request for Release for Public Comment

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## EXECUTIVE SUMMARY

The State Bar's Committee on Mandatory Fee Arbitration ("CMFA") has developed Sample Fee Agreement ("SFA") forms to aid attorneys in the development of their own agreements. The forms are posted on the State Bar's website (and cover (1) litigation matters on an hourly basis, (2) non-litigation matters on an hourly basis and (3) contingency matters. The committee also developed (4) Instructions and (5) Optional Clauses and Disclosure Forms that may be useful to attorneys in their representation of clients. These forms are not binding on the State Bar of California, the Board of Trustees or any persons or tribunal charged with regulatory responsibilities or any member of the State Bar of California.

The CMFA updates these forms from time to time to ensure they comport with new legislation, case law or ethical requirements. The CMFA performed a complete review of the forms and advances the attached proposed revisions, seeking RAD's authorization to release these documents for a 45-day public comment period.

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## BACKGROUND

In 1987, the State Bar Board of Governors (now Board of Trustees) approved the posting of sample fee agreement forms. These forms were developed by the State Bar's Committee on Mandatory Fee Arbitration to provide attorneys with a basic fee agreement that meets the minimum requirements as required by statute and rule. They are posted online at [http://www.calbar.ca.gov/Portals/0/documents/mfa/Sample-Fee-Agreements-rev-July2011\\_r.pdf](http://www.calbar.ca.gov/Portals/0/documents/mfa/Sample-Fee-Agreements-rev-July2011_r.pdf).

Throughout the years, these forms have been updated to incorporate updates to the various sources of authority and case law. The last update occurred in November, 2010.

In July, 2014, the CMFA requested that the RAD authorize release of the updates to the sample fee agreement forms for a 45-day public comment period. The Board returned the forms to the CMFA, desiring to provide input to the committee prior to the release for public comment. Two Board members, Joanna Mendoza and Dan Dean, provided feedback to the CMFA and that input is reflected in the attached forms.

## **ISSUE**

Whether to release the Sample Fee Agreement Forms, Instructions and Optional Clauses and Disclosure Forms attached hereto as Attachment A for a 45-day public comment period.

## **DISCUSSION**

At its May 2011 meeting, the CMFA initiated the review of the SFA forms. A subcommittee was assigned to review all of the SFA Forms (hourly litigation, hourly non-litigation and contingency) and the Instructions. The review of the materials resulted in extensive changes throughout the documents. A third document entitled "Other Clauses of Interest" was re-named "Optional Clauses and Disclosure Forms" and includes two newly developed disclosure forms: Joint (Multiple) Client Disclosure and Consent, and a Third Party Payor Disclosure and Consent.

The CMFA approved the updates in May 2014. In July 2014, the updates were presented to RAD with a request for release for public comment. At that meeting, RAD declined to authorize the release for public comment and requested to provide input. Board members Joanna Mendoza and Dan Dean volunteered to provide their comments to the CMFA.

Through several e-mail exchanges, phone calls and Ms. Mendoza's appearance at the October 2014 CMFA meeting, the comments were provided to the CMFA. The documents attached here reflect the input of the Board members.

## **CONCLUSION**

At its December 2014 meeting, the committee finalized the proposed changes and authorized staff to forward the documents to this committee for release for public comment. The documents are included as Attachments to this agenda item. The modifications proposed to the Sample Free Agreement forms compared to the existing forms are extensive, so they are presented as clean versions of the document.

The Instruction form has been modified to comport with the changes described in the Sample Fee Agreement forms. The newly titled Optional Clauses and Disclosure Forms includes clauses that an attorney may want to consider incorporating into a fee agreement, depending upon their situation. The committee updated the language to all of the pre-existing clauses, added several more and introduced new disclosure forms: Disclosure and Consent-Third Party Payor Payment of Attorney's Fees and Costs and Joint/Multiple Client Disclosure and Consent.

The revamping of the forms has been extensive and the CMFA requests authorization to release these documents for public comment.

### **FISCAL / PERSONNEL IMPACT**

None

### **RULE AMENDMENTS**

None.

### **BOARD BOOK IMPACT**

None

### **RECOMMENDATION**

The Committee and staff recommend that the attached forms be release for a period of 45 days for public comment.

### **PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Regulation and Discipline Committee agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Regulation and Discipline Committee recommends that the proposed revisions to the Sample Fee Agreement forms, Instructions and Optional Clauses and Disclosure Forms, attached hereto as Attachment A, be released for public comment for a period of 45 days; and it is

**FURTHER RESOLVED**, that this authorization for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposal.