

Notice of Your Rights After Fee Arbitration (Revised June 2018)

Your arbitration of attorney's fees has been decided and the arbitrator's decision ("Findings and Award") is enclosed. Please read the award carefully.

Now that arbitration is completed, the rights you have will depend on whether the award is binding or non-binding. This will be stated in the award.

IF YOU ARE SATISFIED WITH THE AWARD:

A non-binding fee arbitration award automatically becomes final and binding unless within thirty (30) days of service of the award a party requests a trial. (See below: "IF YOU ARE NOT SATISFIED WITH A NON-BINDING AWARD".) A binding award is final at the time of the award, though a party can petition a court to have it corrected or vacated under very limited circumstances (See below: "IF YOU ARE NOT SATISFIED WITH A BINDING AWARD".) Note: If you are satisfied with the non-binding award, but the other party requests a trial, you must respond to the other party's request for trial to avoid losing your right to participate in a trial about the fees. If the request for trial is filed in Superior Court, you may need a lawyer's help to respond.

If a lawsuit about the fees was previously filed and the proceedings were stayed, pending arbitration, then the party that filed the original lawsuit must notify the court that the award is accepted. Note that this is different from petitioning the court to have an award confirmed. See below "I AM OWED MONEY" to learn more about when you should consider petitioning the court to confirm the award.

I AM OWED MONEY

If the arbitration award grants you a refund, you should write the other party a letter and demand payment. If you are not paid after sending written request for payment, and you are the client, you can ask the State Bar to assist you in enforcing the award. The State Bar can assist you if more than 100 days and less than four (4) years have passed from the date of service of the final award. [Click here for a Client's Request for Enforcement of an Arbitration Award form](#) or call the State Bar at 415-538-2020. The attorney will be given an opportunity to respond to your request and agree to a payment plan (which may be accepted or rejected by the client), establish inability to pay, or establish lack of responsibility to pay because of changed circumstances subsequent to arbitration. The State Bar may place the opposing attorney on involuntary inactive status for failure to refund fees (as required by a final and binding arbitration award), comply with payment plan, prove inability to pay, or prove lack of personal responsibility for compliance with the terms. An attorney on inactive status is not entitled to practice law.

Any party who is owed money also has the right to request court orders allowing that party to take property or money from the other party's paycheck, and/or bank accounts. (For To get those court orders, you must first petition for confirmation within four (4) years of the date you were served with the arbitration award. The petition is a legal document that tells the court what you want and why you are entitled to it. The bar association does not have forms for these petitions. You may need a lawyer's help to prepare your petition. You will file your petition with Small Claims Court if the amount you are owed is \$5000 or less or with Superior Court if the amount exceeds \$5000. The court will issue a judgment confirming the award.

Once you have a judgment confirming the award, you have a right to "execute" the judgment as a "judgment creditor". That means you may be entitled to court orders allowing you to collect your money by garnishing the other party's paycheck or bank accounts, and/or placing a lien on his or her property. The court has forms to use to execute these orders.

I OWE MONEY

If you owe money, pay it. If you do not pay the award, the other party has a right to obtain a judgment confirming the award and collect the judgment (see above).

Attached are excerpts from the [California Business and Professions Code](#) and the [California Code of Civil Procedure](#). The first excerpt, from the Business and Professions Code, is the law that governs fee arbitrations between attorneys and their clients, as well as the authority to request a trial following nonbinding arbitration. The second excerpt, from the Code of Civil Procedure, sets forth the law on confirming, vacating or correcting arbitration awards.

IF YOU ARE NOT SATISFIED WITH A NON-BINDING AWARD:

If the arbitration award is non-binding, you may have a right to a trial in court. At the trial, you will have the opportunity to present evidence to a judge who will issue a new decision about the fee dispute, without regard to the arbitration award. However, if you did not appear at your fee arbitration hearing, you will have to prove to the court that you had a good reason for not being there. If the court determines that your failure to appear was willful, you may not be entitled to a trial after arbitration.

In lieu of a trial, you may prefer to petition to correct the award or vacate the award. Another option is to request the arbitrator correct the award. The arbitrator may correct the award only if the award contains a miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award or if the award is imperfect in a matter of form not affecting the merits of the controversy. You may request a correction of the award with the SDCBA as long as you file your request with SDCBA within 10 days of the date of service of the award and serve a copy on the other party. The arbitrator(s) must correct or deny correction of the award within 30 days of the date of service of the award. If you believe

the arbitrator(s) failed to include a finding or issue raised in the hearing, you may request an amendment of the award. You must file your request with the SDCBA within 10 days of service of the award and serve a copy on the other party. Remember, however, that seeking a correction or amendment of the award by the arbitrator is not a tool to challenge or appeal the findings or conclusions. Challenges to the findings or conclusions must be done in court.

If you and the attorney previously agreed to resolve disputes over fees and costs through private arbitration and either party acts to reject the award in court within the required 30 days, either party may be entitled to resolve the dispute through the agreed upon private arbitration instead of a new trial in court.

If you want a trial in court, you must file a complaint with the court within 30 days after the date the arbitration award was served on you. (See the date on the Proof of Service attached to the award.) The Small Claims Court is the proper court if the amount in dispute is \$5,000 or less, otherwise, the Superior Court is the proper court. The court will charge a filing fee, though you can request a waiver of fees and costs. (You can find forms at www.courts.ca.gov/forms.htm.) You may need a lawyer's help to file your complaint if you are filing in the Superior Court. Be aware that if you lose in court, you may be ordered to pay the prevailing party's attorney's fees and costs and you may get a decision that is less favorable to you than the arbitration award.

Note: If a lawsuit about the fees was previously filed and the proceedings were stayed, pending arbitration, then you must file a "Rejection of Arbitration Award and Request for Trial" with the same court. The bar association does not provide this document. If the lawsuit was filed in Superior Court, you may need a lawyer's help to file your "Rejection of Arbitration Award and Request for Trial." If the lawsuit was filed in Small Claims Court, you may discuss this with a Small Claims Court Advisor. The Small Claims Court has Judicial Counsel forms to use, (forms SC-100 and SC-101) for this purpose.

IF YOU ARE NOT SATISFIED WITH A BINDING AWARD:

If the arbitration award is binding, you must abide by it. There is no appeal from a binding award. However, a binding award can be corrected or "vacated" (overturned) by a court, but only on limited grounds such as the award was procured by corruption, fraud or other undue means or the rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

If you want to correct or vacate the award, you must file a petition in the proper court within 100 days after the date the arbitration award was served. (See the date on the Proof of Service attached to the award.) **IMPORTANT:** If you wish to petition to vacate or correct the award but receive notice that the other side has filed a petition to confirm the award, you no longer have 100 days to file your petition. You must respond by filing, within the requisite days

prior to the confirmation hearing, your opposition to the petition to confirm the award and your petition to vacate/correct the award.

The Small Claims Court is the proper court if the amount in dispute is \$5,000 or less, otherwise, the Superior Court is the proper court. You may need a lawyer's help to file your complaint if you are filing in the Superior Court. Be aware that if you lose in court, you may be ordered to pay the prevailing party's attorney's fees and costs and you could end up with a worse outcome than you received in arbitration.

You can find further information at the county law library or online at www.calbar.org.