

RESOLUTION 08-07-2018

DIGEST

Attorney’s Fees Arbitration: Statute of Limitations For All Proceedings

Amends Business and Professions Code section 6206 to make it consistent with Business and Professions Code section 6201, subdivision (b).

STATEMENT OF REASONS

The Problem: Business and Professions Code section 6206 creates an exception to the statute of limitations and allows a client to request mandatory fee arbitration pursuant to Section 6201(b) following the filing of a civil action by the attorney. However, limiting this exception to an attorney’s filing of a “civil action” is inconsistent with Section 6201(b), which addresses an attorney’s commencement of “any action in any court or any other proceeding.” Furthermore, there is no reasoned basis for allowing an exception to the statute of limitations if a client demands mandatory fee arbitration only following an attorney’s commencement of a “civil action,” but disallowing the exception following the attorney’s commencement of arbitration. Given that clients are often constrained by a one-year statute of limitations under Code of Civil Procedure section 340.6 for an attorneys’ wrongful act or omission, and attorneys’ claims against a client for failure to pay are covered by longer statute of limitations, it is not reasonable to disallow a client to seek mandatory fee arbitration if an attorney brings an action in any court or any other proceeding against the client.

The Solution: This resolution addresses this problem by revising 6206 to track the language of Section 6201(b), which is expressly referenced in section 6206.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 6206 to read as follows:

- 1 § 6206
- 2 The time for filing a civil action seeking judicial resolution of a dispute subject to
- 3 arbitration under this article shall be tolled from the time an arbitration is initiated in accordance
- 4 with the rules adopted by the board of trustees until (a) 30 days after receipt of notice of the
- 5 award of the arbitrators, or (b) receipt of notice that the arbitration is otherwise terminated,
- 6 whichever comes first. Arbitration may not be commenced under this article if a civil action
- 7 requesting the same relief would be barred by any provision of Title 2 (commencing with
- 8 Section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not
- 9 apply to a request for arbitration by a client, pursuant to the provisions of subdivision (b) of
- 10 Section 6201, following the commencement of an action in any court or any other proceeding
- 11 ~~filing of a civil action~~ by the attorney.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE: Cathleen S. Yonahara

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Business and Professions Code section 6206 to make it consistent with Business and Professions Code section 6201, subdivision (b). This resolution should be approved in principle because it would bring the section into conformity with the language employed in other parts of the legislative scheme.

Business and Professions Code section 6201, subdivisions (b) and (c) specify that if an attorney commences a “court action,” “or any other proceeding,” when the client would be entitled to maintain a mandatory arbitration of fees charged by the attorney, then the client may file a request for arbitration and automatically stay “the action or other proceeding” until the arbitration is terminated. While section 6206 allows a client to demand mandatory fee arbitration when the attorney files a “civil action” against the client, it does not provide a similar right where the attorney brings “any other proceeding,” such as an arbitration. The resolution would remedy that discrepancy and apparent omission. It would bring the language of section 6206 in consonance with section 6201 by tracking the more inclusive references in section 6201. It would allow a client to demand arbitration any time the attorney commences a “court action” “or any other proceeding,” bringing the language of section 6206 in line with section 6201. There is no good reason why the language and construct of these two provisions should not be parallel in meaning and intent.

This resolution is related to Resolution 08-08-2018.