

Perpetual Motions

*A NYCLA Part 137 Attorney-Client Fee Dispute
Resolution Program Mediation Roleplay Exercise*

JOINT COMMITTEE ON FEE DISPUTES & CONCILIATION PART 137 PROGRAM: FEE DISPUTE ARBITRATION TRAINING (2020)

Part 2: Focus on NYCLA Part 137 Online/Virtual ADR Operations and Mediations

December 15, 2020

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Managing Member, Mediator, and Arbitrator,
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Introduction & Background Information

It is with thanks and appreciation to G-d and my colleagues at the New York County Lawyers Association (“NYCLA”)—NYCLA General Counsel Anthe Maria Bova, Esq., Part 137 Program Administrator Arianna Diaz, NYCLA Director of Continuing Legal Education Bari R. Chase, Esq., and her entire staff, including but not limited to technical genius Daler Radjabov, Esq., and last, but certainly not least, the Co-Chair and Vice Chair of NYCLA’s Alternative Dispute Resolution (“ADR”) Committee, Chris Fladgate, Esq., and Nelson E. Timken, Esq.—that I, the other Co-Chair of the ADR Committee, present this roleplay exercise for use at the inaugural mediation training component of NYCLA’s Part 137 training for new arbitrators and mediators, usually held once every year or two.

As is the case with many roleplay exercises, Perpetual Motions is based upon a real-life NYCLA Part 137 attorney-client fee dispute that was put to bed by a Stipulation of Settlement that Client and Attorney executed on November 11, 2020. Their dispute, however, was different from all others in that it was the first ever online/virtual mediation that NYCLA’s Part 137 program staff handled on account of health and safety dangers posed by the still-raging COVID-19 pandemic.

Acting as the lead mediator, I, along with Messrs. Fladgate and Timken, who served as co-mediators, had the honor and privilege of being able to take Online

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Dispute Resolution (“ODR”) theory—which all three of us studied and practiced extensively over the spring and summer of 2020—and transform it into both practice and the optimal practical result of the dispute’s resolution.

Having now “walked the walk” and not just “talked the talk,” Messrs. Fladgate, Timken, and I are proud to report that ODR techniques and procedures are effective in resolving Part 137 cases, and irrespective of what challenges may arise from the COVID-19 pandemic, so long as humanity has the Internet and operational videoconferencing services such as Zoom®, NYCLA’s Part 137 Attorney-Client Fee Dispute Resolution Program is now poised to continue future operations indefinitely. (And for those wondering whether NYCLA will be offering both Part 137 single-arbitrator and three-arbitrator arbitration proceedings, the answer is a likely “yes” by or even before the end of January 2021).

A couple of introductory words before I send you out into the world of Perpetual Motions. The real-life version of this dispute did not involve an attorney appearing for the Attorney (i.e., this “attorney-advisor” role is an additional one created for the roleplay). The real-life dispute also involved over 125 pages of documents, notwithstanding the relatively low amount-in-controversy and the timespan of legal services provided having been only approximately 1.5 months (but keep in mind that trial preparation was involved, which leads to time compression). It is practically impossible and just downright onerous to require trainees—especially non-lawyers and those who are just beginning the adventure of mediating Part 137 cases—to assimilate this much substantive information while simultaneously studying the basics of ODR and general mediation fundamentals in one or two training sessions. As a well-known saying from the Talmud goes, “Try to catch everything, and you will catch nothing.” (“Tafasta Merubah Lo Tafasta” in transliterated Aramaic).

As such, I have made certain editorial decisions as to which documents from the real-life dispute to include and which to omit. The opening Part 137 Request and Response for Client Barbara Corcorian and Attorney Michael MacGruff, Esq. (obviously not the real names of Client and Attorney), the latter’s Retainer Agreement/Engagement Letter Agreement and his invoice, and a key e-mail chain that Corcorian and MacGruff referred to in their Part 137 submissions have been included. On the other hand, copies of MacGruff’s actual motion papers that he submitted via e-mail to Corcorian, numerous SMS/text messages exchanged between Corcorian and MacGruff related to the settlement of *Hernandez v. Corcorian Props., Inc. et al.*, No. 6A4B2C/10 (Sup. Ct. Bronx) (further described below) (“*Hernandez*”), and newspaper articles and court decisions establishing Blake Corcorian as having spent time in jail back in 2004 for building and housing code violations, Barbara Corcorian’s prior litigation history, and her familiarity with the litigation process have not been included.

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Therefore, in consideration of these exclusions, please take note of the following background informational points and assumptions:

- 1) **Background on the *Hernandez* Case** – *Hernandez* was a personal injury case involving an accident that occurred in early 2010 during construction upon a Washington Heights-located building that Barbara Corcorian and her husband, Blake, owned by and through a New York corporation, Corcorian Properties, Inc. The construction was managed and supervised by another corporation, B&C Construction Corp., that Blake Corcorian owned and controlled.

Plaintiff Juan Hernandez, a Bronx County resident and an employee of Belmont Construction Corp. (“Belmont”), a B&C Construction Corp. subcontractor, was standing on the ground when a wall/chimney portion of the building which he was striking with a sledgehammer fell upon him. The injuries he incurred were severe, and after a two-month stay in the hospital that entailed multiple surgeries to repair various broken bones, he brought suit against B&C Construction Corp., Corcorian Properties, Inc., and the Corcorians personally based upon, among other legal grounds, violations of various sections of New York’s Labor Law. Hernandez’s attorneys from the formidable law firm of Kill, Kill, and Killmore, LLP (“KKK”) demanded \$2,000,000.

If certain legal criteria are met, a violation of the Labor Law that results in injury to a worker like Mr. Hernandez can result in both his or her employer and the owner of the premises at which he or she was working being strictly liable for damages caused. Strict liability (also known as “absolute liability”) means that the injured worker does not have to prove negligence—that is, the existence of a legal duty and breach of that duty—on the part of a defendant to prevail; it is only necessary for the worker to prove that an injury occurred and that a defendant had at least some part in causing that injury. The latter cannot raise any defenses that it acted in good faith or took reasonable steps to prevent injury.

Property owners often require that contractors and subcontractors performing construction on their property obtain insurance in which the owners are named in at least their corporate capacities (and sometimes their individual/personal capacities as well) as additional insureds in the contractors’ and subcontractors’ respective insurance policies. If property owners are so named as additional insureds, then in the event of an accident, they stand to be shielded from strict liability (at least up to the limits of the relevant insurance policy or policies). But here, for whatever reasons, this did not happen. As such, there was no “insurance money” available, and Blake and Barbara Corcorian were potentially on the

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proverbial hook for \$2,000,000. As such, loss of their Washington Heights-located building as well as bankruptcy were very real possibilities.

(For the lawyers out there, Barbara Corcorian sued B&C Construction Corp. for indemnification, resulting in the rather weird scenario of a wife suing her husband's company while still being married to him and practically owning, via Corcorian Properties, Inc., a portion of the building that they both stood to lose. While tangentially intriguing, this angle of the *Hernandez* case was never explored in the real-life mediation because: (i) there was scant documentation pertaining to it; and (ii) the crux of the parties' dispute was the reasonableness of the Attorney's fee, not his strategical moves in the *Hernandez* litigation).

As is recounted in the March 13, 2019 cover letter of Mr. MacGruff to his Attorney Response, on his advice, the Corcorians settled *Hernandez*. What does not appear in that letter is the amount of that settlement: approximately \$465,000, none of which was paid by insurance and all of which Barbara Corcorian had to obtain by early January of 2019. Doing so caused both her and Blake financial hardship persisting to this day as well as mental anguish. (For those who are interested, there was a \$190,000 worker's compensation lien in this case, and the Corcorians' initial settlement offer to Hernandez/KKK was for \$152,500).

- 2) **Background on Barbara Corcorian** – Now in her late 40s and a mother of three sons and one daughter, Barbara Corcorian has been involved in real estate ventures with Blake for approximately the last twenty years. She is no stranger to litigation. In this regard, she unsuccessfully sued her own grandmother for libel and abuse of process in 2011 after having successfully defended a foreclosure action in 2007 concerning a mortgage held against a building that she and Blake owned.

Most importantly, in 2013, Barbara failed to prevail in attorney-client fee dispute litigation arising in Supreme Court, Queens County involving attorneys who successfully disposed of four federal mortgage fraud actions in the United States District Court for the Southern District of New York, wherein she was a named defendant. The Queens County Supreme Court found her testimony generally to have been “elusive and lacking credibility,” and her specific attempts “to blame memory lapses about the year 2008 on raising three children” were found to have been “completely unbelievable.” As such, Barbara was found liable to pay her former attorneys about \$30,000, plus statutory interest. Her counterclaims for attorney overbilling were dismissed with prejudice and otherwise found to be utterly void of merit.

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- 3) **Background on Michael MacGruff** – Mr. MacGruff is in his mid-50s, married with one son and one daughter, and has been practicing law for over thirty years. For the past ten of those thirty, he has maintained a successful solo practice of law concentrating on insurance defense, Labor Law, traffic ticket/moving violations defense, and personal injury actions at both the trial and appellate levels of state and federal courts. Prior to that time, after receiving a J.D. from the Benjamin N. Cardozo School of Law (Yeshiva University) and eager to “take a bite out of crime,” he was first an Assistant District Attorney in Queens County for four years, and then switched sides to become a Queens Law Associates criminal defense attorney for three years.

After his elderly, widowed mother who lived in Milwaukee, Wisconsin was diagnosed with terminal cancer, he and his wife moved out to Delafield, a suburb of Milwaukee, to help his mom battle through three years of intense pain and suffering. It was then that Mr. MacGruff became a staff attorney for Midwest Insurance Group at its Delafield corporate headquarters. Finally, seven years after his mother’s passing, he was offered a “Special Counsel” position at Covington & Burling LLP’s New York office, whereupon he focused upon complicated insurance defense actions for approximately six years before hanging out his own shingle.

- 4) **The Motions at Issue in Perpetual Motions** – There are four (4) motions at issue in this mediation that are described below. All were at least partially prepared for use in *Hernandez* but never served (and thus effectively used) in that litigation (ergo partially why the roleplay is entitled Perpetual Motions). Three of these motions are pre-trial motions known as *Motions in Limine* (“MILs” and also known as “threshold motions”). MILs seek to have a trial judge rule on various legal issues (often pertaining to the admissibility of evidence) prior to the commencement of trial and are akin to a “preemptive strike” in the context of a military engagement.
- a. MIL made pursuant to New York Civil Practice Law and Rules (“CPLR”) 3101(d) to exclude the testimony of plaintiff Juan Hernandez’s proposed expert, Ted Wizard, on account of Mr. Wizard not having conducted an inspection of the accident site and otherwise having personal knowledge of facts relating to the accident which caused Mr. Hernandez’s injuries.
 - b. “Missing Documents Charge MIL” to preclude the Court from instructing (a/k/a “charging”) the jury to draw an inference against Corcorian Properties, Inc. and Barbara Corcorian in their deliberations based on the absence of certain documents relevant to the operations of Corcorian Properties, Inc. The legal grounds for

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this motion were that plaintiff Juan Hernandez’s legal team failed to demonstrate that these documents ever existed in the first place, and even if they had, Barbara Corcorian undertook a diligent search for them such that a “missing document” charge would have been improper.

- c. “Bad Acts” MIL to preclude plaintiff Juan Hernandez from introducing any news reports, documents, or testimony concerning prior wrongful acts committed by Blake or Barbara Corcorian, including but not limited to Blake Corcorian’s failure to remedy certain building and housing code violations in 2004 that ultimately landed him in jail for 10 days.
- d. CPLR 4401 defense motion for a directed verdict (also known as a motion for “judgment as a matter of law”) that, as the name sounds, asks a court to render judgment on one or more issues after the close of evidence presented by the plaintiff (i.e., usually when the plaintiff rests his or her case). These motions are made routinely in all types of civil actions as a part of standard trial practice. They are also labor-intensive and rarely can they be fully prepared until after the plaintiff has rested his, her, or its case.

Assume that with respect to drafts of the motions above submitted by Mr. MacGruff to the NYCLA Part 137 Program staff, all except for the “Missing Documents Charge MIL” bear the caption of the *Hernandez* case and are about 75% of the way to being “seaworthy” (i.e., of being in the appropriate form for submission to a court and service upon an adversary). The “Missing Documents Charge MIL” contains some legal citations but is nowhere near “seaworthy” and does not bear the *Hernandez* case caption.

And that’s all, folks! Any fact that does not contradict what I have presented above or which appears in the accompanying materials may be improvised upon by those playing Ms. Corcorian, Mr. MacGruff, or Mr. MacGruff’s attorney, and, of course, anyone who plays a mediator is free to probe for and elicit such facts.

In this regard, for those playing the role of Barbara Corcorian, please note that I have tried as best as possible to emulate her often-irrational thinking and non-sequitur-rich prose. Hers is not an easy role to play, and it is easy to improvise one’s way out of the many apparent problems with her case. However, for those who wish to get a sense of what real-life clients are like in attorney-client fee disputes, I urge you **NOT** to do this. Instead, see if you can rise to the challenge of another type of perpetual motion, namely keeping two or more contradictory ideas in your mind while attempting to function. The famous author F. Scott Fitzgerald held this to be the “test of a first-rate intelligence.” (See “The Test of a First-Rate Intelligence Is the

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Ability To Hold Two Opposed Ideas in the Mind at the Same Time” (Jan. 5, 2020) (<https://quoteinvestigator.com/2020/01/05/intelligence/>)).

I hope that everyone enjoys acting in Perpetual Motions as much as I have enjoyed putting it together. And now, go forth and mediate!

All the best,

Elan E. Weinreb
Co-Chair, NYCLA ADR Committee

NOTICE OF CLIENTS RIGHT TO ARBITRATE
A DISPUTE OVER A REFUND OF ATTORNEYS FEES

You claim that you are entitled to a refund in connection with legal fees you have paid the undersigned in the matter of _____
_____. The undersigned disputes the refund that you are claiming.

You have the right to elect to resolve this fee dispute by arbitration under Part 137 of the Rules of the Chief Administrator of the Courts. To do so, you must file the attached Request for Fee Arbitration within 30 days from the receipt of this Notice, as set forth in the attached instructions.

If you do not file a Request for Fee Arbitration within 30 days from the receipt of this Notice, you waive the right to resolve this dispute by arbitration under Part 137.

Dated: _____

[Attorney's name and address]



STANDARD WRITTEN INSTRUCTIONS AND PROCEDURES
TO CLIENTS FOR THE RESOLUTION OF FEE DISPUTES PURSUANT
TO PART 137 OF THE RULES OF THE CHIEF ADMINISTRATOR

Part 137 of the Rules of the Chief Administrator of the Courts provides a procedure for the arbitration (and in some cases mediation) of fee disputes between attorneys and clients in civil matters. Your attorney can provide you with a copy of Part 137 upon request or you can download a copy at www.nycourts.gov/admin/feedispute. Fee disputes may involve both fees that you have already paid to your attorney and fees that your attorney claims are owed by you. If you elect to resolve your dispute by arbitration, your attorney is required to participate. Furthermore, the arbitration will be final and binding on both your attorney and you, unless either of you seeks a trial *de novo* within 30 days, which means either of you reject the arbitrator's decision by commencing an action on the merits of the fee dispute in a court of law within 30 days after the arbitrator's decision has been mailed. Fees disputes which may not be resolved under this procedure are described in Part 137.1 of the Rules of Chief Administrator of the Courts: representation in criminal matters; amounts in dispute involving a sum of less than \$1,000 or more than \$50,000 unless the parties consent; and claims involving substantial legal questions, including professional malpractice or misconduct. Please consult Part 137.1 for additional exclusions.

Your attorney may not bring an action in court to obtain payment of a fee unless he or she first has provided written notice to you of your right to elect to resolve the dispute by arbitration under Part 137. If your attorney provides you with this notice, he or she must provide you with a copy of the written instructions and procedures of the approved local bar association-sponsored fee dispute resolution program ("Local Program") having jurisdiction over your dispute. Your attorney must also provide you with the "Request for Fee Arbitration" form and advise that you must file the Request for Fee Arbitration with the local program within 30 days of the receipt of the notice. If you do not file the Request within those 30 days, you will not be permitted to compel your attorney to resolve the dispute by arbitration, and your attorney will be free to bring a lawsuit in court to seek to obtain payment of the fee.

In order to elect to resolve a fee dispute by arbitration, you must file the attached "Request for Fee Arbitration" with the approved local program. An updated list of local programs is available at www.nycourts.gov/admin/feedispute or by calling toll-free 1-(877)-FEES-137 (1-877-333-7137). Filing of the Request for Fee Arbitration must be made

with the appropriate local program for the county in which the majority of legal services were performed. Once you file the Request for Fee Arbitration, the local program will mail a copy of the request to your attorney, who must provide a response within 15 days of the mailing. You will receive at least 15 days' notice in writing of the time and place of the hearing and of the identity of the arbitrator(s). The arbitrator(s) decision will be issued no later than 30 days after the date of the hearing. You may represent yourself at the hearing, or you may appear with an attorney if you wish.

Some local programs may offer mediation services in addition to arbitration. Mediation is a process by which those who have a fee dispute meet with the assistance of a trained mediator to clarify issues and explore options for a mutually acceptable resolution. Mediation provides the opportunity for your attorney and you to discuss your concerns without relinquishing control over the outcome and of achieving a result satisfactory to both of you. Participation in mediation is voluntary for your attorney and you, and it does not waive any of your rights to arbitration under these rules. If you wish to attempt to resolve your dispute through mediation, you may indicate your wish on the Request for Fee Arbitration form.

More information, including an updated list of local programs, is available at

<http://www.nycourts.gov/admin/feedispute>

or by calling 1-(877)-FEES-137 (1-877-333-7137).

(Office Use Only)

Date Received:.....

Case Number: _____

CLIENT REQUEST FOR FEE ARBITRATION

1. Your name, address and telephone number:

Name: Barbara Corcorian

Address: 5678 Anonymous Street - Nowhere, NY 98765

Telephone Number: (555) 123-4567

Email Address: notreal@notreal.com

2. Name, address and office telephone number of the law firm and/or attorney who handled your matter:

Name: Michael MacGruff, Esq.

Address: 100 Main Street - Somewhere, NY 54321

Telephone Number: (555) 765-4321

Email Address (if known): crimedoesntpay@bitecrime.com

3. If your attorney represented you in a lawsuit, in which court and county was the lawsuit filed?

Court: _____ County: _____

4. a. On what date did your attorney first agree to handle your case?

_____, 20__

- b. On what date did your attorney last perform services on your case?

_____, 20__

5. Briefly describe the type of legal matter involved and what your attorney agreed to do in the course of representing you (attach a copy of the written retainer agreement, letter of engagement, or other papers describing the fee arrangement, if any):

This was a civil liability case pertaining to someone who claimed they were injured at a property I own. The attorney was supposed to represent me at the trial.

6. In the space below, indicate the date, amount and purpose of each payment you made to your attorney. Attach additional sheets if necessary.

Date	Amount	Purpose (e.g., attorney's time, out-of-pocket expenses, filing fees, etc.)
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

7. How much of your attorney's fee is in dispute (attach a copy of your attorney's bill, if available):\$ _____

8. Have you received a "Notice of Client's Right to Arbitrate" from your attorney? _____ . If yes, please attach a copy.

9. Briefly describe why you believe your attorney is not entitled to the amount set forth in question 7 (use additional sheets if necessary):

A lump sum amount was paid to the attorney upfront. A retainer refund check was issued back, but after reviewing the first bill since being retained, it had inaccuracies. Time spent was not true, as well as after the trial he was billing for drafting of unnecessary motions and motions that had nothing to do with me and my case. When I questioned him by email, he stated I was "lucky to get any money back." That is attached as well as to this document.

10. Indicate whether you wish to attempt to resolve this fee dispute through mediation (Participation in mediation is voluntary for your attorney and you, and it does not waive your rights to arbitration under these rules in the event that mediation is unsuccessful or the attorney refuses to participate in mediation.)

Yes, I wish to attempt to resolve this fee dispute first through mediation. My election of arbitration pursuant to paragraph 11 below will apply if the mediation is unsuccessful.

No, I do not wish to attempt to resolve this fee dispute through mediation

11. I elect to resolve this fee dispute by arbitration, to be conducted pursuant to Part 137 of the Rules of the Chief Administrator [22 NYCRR] and the procedures of the Joint Committee on Fee Disputes and Conciliation housed at the New York County Lawyers' Association, copies of which I have received. I understand that the determination of the arbitrator(s) is binding upon both the lawyer and myself, unless either party rejects the arbitrator's award by commencing an action on the merits of the fee dispute (trial de novo) in a court of law within 30 days after the arbitrator's decision has been mailed.

Dated: _____

Signed: Barbara Corcorian

IMPORTANT: You must file this Request for Fee Arbitration, along with a check for the filing fee in the amount of \$ _____, to:

Joint Committee on Fee Disputes and Conciliation
New York County Lawyers' Association
14 Vesey Street
New York, New York 10007

Filing Fees	<u>Amount in Dispute:</u>	<u>Fees to each party:</u>
	\$1,000.00 - 4,999.99	\$25
	5,000.00 - 5,999.99	\$50
	6,000.00 - 9,999.99	\$75
	10,000.00 - 19,999.99	\$100
	20,000.00 - 34,999	\$200
	35,000.00 - 50,000.00	\$350

Michael MacGruff, Esq.
Attorney-at-Law
100 Main Street
Somewhere, NY 54321
Tel.: (555) 765-4321
E-mail: crimedoesntpay@bitecrime.com

September 18, 2018

RETAINER AGREEMENT

The undersigned (hereinafter "Client") hereby retains **Michael MacGruff, Esq.** (hereinafter "Attorney") to represent the interests of Corcorian Properties, Inc. and Barbara Corcorian in connection with the lawsuit styled *Hernandez v. Corcorian Props., Inc. et al.*, No. 6A4B2C/10 (Sup. Ct. Bronx).

In consideration of the services rendered and to be rendered to the Client, the Client hereby agrees to pay Attorney **the sum of \$250.00 per hour in court/trial time, \$150.00 per hour out of court time, and \$100.00 a day for travel time, including parking and tolls.**

The Client further agrees to deposit a retainer in the sum of **\$25,000.00** with Attorney, which shall be applied toward the hourly rate as billed. If the matter shall settle or be disposed prior to the extinguishment of said retainer, any amounts remaining shall be returned to Client. Client shall make additional deposits towards the retainer as billed to ensure a minimum retainer balance of **\$1,000.00**.

It is further agreed that the Client shall reimburse Attorney all sums disbursed by Attorney on behalf of the Client in connection with the prosecution of this action. Out-of-Pocket disbursements include, but are not limited to, costs of filing papers, court fees, process servers, witness fees, court reporters and long-distance telephone calls.

Costs, Expenses, and Other Expenditures.

There may be additional costs and expenses in this matter, for example, filing fees; the costs of transcribing testimony taken at a hearing or trial; subpoena costs; an expert's fees (if appropriate for the matter); the costs of an investigator or of other methods to discover and obtain factual information; document-reproduction expenses; discovery costs (including those of depositions); out-of-jurisdiction travel, lodging, meal, and related expenses; the costs of long-distance phone calls, facsimile transmissions; other forms of communication; and the costs required to reasonably conduct on-line legal research (if necessary). Client, not Attorney, is responsible for these costs.

Obligations of Client.

To help Attorney represent Client effectively, and to reduce the costs of the representation, Client agrees:

- A. At Attorney's request, to provide and to help Attorney obtain all information (in whatever form it may appear) that Client or someone to whom Client may make an appropriate request possesses;
- B. To make himself or herself available for any meetings, interviews, or other events that Attorney requires, including at Attorney's office if requested;
- C. To carefully consider Attorney's advice before making any major decisions;
- D. To make himself/herself available to provide sworn testimony, e.g., in a deposition, affidavit, trial or other proceedings, when Attorney requests this;
- E. To immediately tell Attorney if and when Client moves (changes residences), changes jobs, changes a phone number or other electronic means of communication, or otherwise makes it difficult for Attorney to communicate with Client;
- F. To inform Attorney about any new developments or information in the matter, e.g., court notices, letters from the opposing party, new factual developments, or other similar developments;
- G. To respond to Attorney's communications (letters, telephone calls, or other forms of electronic forms of communication) as soon as reasonably possible;
- H. To otherwise, as indicated by Attorney, help Attorney provide the services identified and to effectively represent Client; and
- I. To perform, or have another person or entity perform, the following additional tasks:

Possible Conflicts of Interest.

If Attorney determines that he represents another client whose interests conflict, or are likely to conflict, with Client's interests, Attorney reserves the right to terminate this Agreement, while protecting the confidentiality of any privileged information that Client has provided to Attorney.

Ground To Terminate This Agreement.

- A. Client may terminate this Agreement for any or no reason, although Client still will be legally obligated under this Agreement to meet Client's obligations to Attorney, including the obligation to pay to Attorney the agreed-upon attorney's fee to the extent it has been earned.
- B. Attorney may terminate this Agreement if, in Attorney's sole judgment, Client has failed to fulfill one of Client's material obligations under this Agreement, or for other good cause, or for any other reason authorized by law (including the ethical rules that govern lawyers).

Client's Informed Consent.

Client has carefully read this Agreement and considered the additional information and advice that Attorney has provided to Client. Client understands the possible risks and benefits of the limited-service representation described in this Agreement.

Understanding those possible risks and benefits, Client voluntarily, knowingly, and intentionally enters into this Agreement with Attorney. Furthermore, Attorney has made no guarantees concerning the outcome of this litigation.

Obligations of Attorney.

- A. To vigorously represent the interest of the Client.
- B. At Client's request, Attorney agrees to provide a full accounting of the expenses charged against the retainer.
- C. Attorney will provide Client with justification for any amounts billed beyond the retainer and provide 30-day-notice of the need for funds in excess of the retainer.

Arbitration of Fee Disputes.

Part 137 of the Rules of the Chief Administrator of New York provides that certain fee disputes are subject to arbitration at the Client's option. Upon request, Attorney will provide a copy of these Rules.

Barbara Corcorian

*Corcorian Properties, Inc., by Barbara Corcorian, and
Barbara Corcorian individually ("Client")*

Michael MacGruff

Michael MacGruff, Esq. ("Attorney")

Michael MacGruff, Esq.

INVOICE

100 Main Street
Somewhere, NY 54321
Tel.: (555) 765-4321
E-mail: crimedoesntpay@bitecrime.com

Invoice # 3085
Date: 11/20/2018
Due On: 12/20/2018

Barbara Corcorian
5678 Anonymous Street
Nowhere, NY 98765

00813 - Hernandez

Services

Date	Timekeeper	Description	Hours	Rate	Total
09/17/2018	MacGruff	Appearance/Attendance at: initial meeting	1.00	\$150.00	\$150.00
09/20/2018	MacGruff	Draft/revise/serve: consent to change attorney	0.20	\$150.00	\$30.00
09/20/2018	MacGruff	Telephone discussion with external source: call to plaintiff counsel	0.20	\$150.00	\$30.00
09/20/2018	MacGruff	Telephone discussion with external source: Belmont (subcontractor) attorney	0.20	\$150.00	\$30.00
09/20/2018	MacGruff	Receipt/review/process: pleadings	1.00	\$150.00	\$150.00
09/20/2018	MacGruff	Receipt/review/process: three deposition transcripts of plaintiff	2.38	\$150.00	\$357.00
09/20/2018	MacGruff	Receipt/review/process: deposition of Belmont	1.20	\$150.00	\$180.00
09/20/2018	MacGruff	Research: labor law PJI	1.50	\$150.00	\$225.00
09/21/2018	MacGruff	Receipt/review/process: review of <u>Lopez</u> decision and research cited cases	1.20	\$150.00	\$180.00
09/24/2018	MacGruff	trial assignment part, Bronx County	3.80	\$250.00	\$950.00
09/25/2018	MacGruff	Plan/Prepare for : jury charge	0.90	\$150.00	\$135.00
09/25/2018	MacGruff	Plan/Prepare for: verdict sheet	1.50	\$150.00	\$225.00
09/26/2018	MacGruff	Receipt/review/process: review of contracts/exhibits and bill of particulars	1.60	\$150.00	\$240.00
09/27/2018	MacGruff	Appearance/Attendance at: site inspection	1.30	\$150.00	\$195.00
10/02/2018	MacGruff	Telephone discussion with Client: multiple calls with client-no charge	0.50	\$0.00	\$0.00

10/02/2018	MacGruff	Research: research indemnification directed verdict	1.00	\$150.00	\$150.00
10/02/2018	MacGruff	Research: research Labor Law 200/240/241 directed verdict	1.70	\$150.00	\$255.00
10/04/2018	MacGruff	Draft/revise/serve: draft directed verdict & research	6.20	\$150.00	\$930.00
10/05/2018	MacGruff	Attorney: client meeting	2.00	\$150.00	\$300.00
10/10/2018	MacGruff	Receipt/review/process: plaintiff 3101 d	0.80	\$150.00	\$120.00
10/10/2018	MacGruff	Draft/revise/serve: MIL to preclude plaintiff 3101 d	3.80	\$150.00	\$570.00
10/16/2018	MacGruff	Appearance/Attendance at: trial	4.20	\$250.00	\$1,050.00
10/24/2018	MacGruff	Manage Data/Files: review of plaintiff medical recs.	1.60	\$250.00	\$400.00
10/25/2018	MacGruff	Manage Data/Files: review of case file	1.60	\$150.00	\$240.00
10/30/2018	MacGruff	Plan/Prepare for : trial prep	2.00	\$150.00	\$300.00
10/30/2018	MacGruff	Plan/Prepare for : preparation of jury selection	1.10	\$150.00	\$165.00
10/31/2018	MacGruff	Draft/revise/serve: directed verdict motion	3.30	\$150.00	\$495.00
10/31/2018	MacGruff	Receipt/review/process: plaintiff expert exchange (engineer)	0.80	\$250.00	\$200.00
10/31/2018	MacGruff	Plan/Prepare for : motion in limine to preclude plaintiff expert exchange (engineer)	1.80	\$150.00	\$270.00
11/01/2018	MacGruff	Appearance/Attendance at: jury selection Supreme Bronx	6.20	\$250.00	\$1,550.00
11/01/2018	MacGruff	Plan/Prepare for: review of three IME doctor reports; call to expert consultant to discuss same	1.70	\$150.00	\$255.00
11/02/2018	MacGruff	Appearance/Attendance at: jury selection	5.90	\$250.00	\$1,475.00
11/03/2018	MacGruff	Plan/Prepare for : direct of Blake Corcorian	1.30	\$150.00	\$195.00
11/03/2018	MacGruff	Plan/Prepare for : preparation of cross examination of plaintiff doctor; conference call with Belmont attorney re same	2.00	\$150.00	\$300.00
11/04/2018	MacGruff	Plan/Prepare for: direct of Barbara Corcorian	1.80	\$150.00	\$270.00
11/05/2018	MacGruff	jury selection	5.60	\$250.00	\$1,400.00
11/05/2018	MacGruff	Plan/Prepare for : cross examination of Belmont	1.20	\$150.00	\$180.00
11/06/2018	MacGruff	Plan/Prepare for : preparation opening statement	1.50	\$150.00	\$225.00
11/06/2018	MacGruff	Plan/Prepare for : cross examination of plaintiff	2.20	\$150.00	\$330.00
11/07/2018	MacGruff	Appearance/Attendance at: trial	7.00	\$250.00	\$1,750.00

11/08/2018	MacGruff	Appearance/Attendance at: trial	6.50	\$250.00	\$1,625.00
11/13/2018	MacGruff	Appearance/Attendance at: allocution	1.30	\$250.00	\$325.00
11/20/2018	MacGruff	Receipt/review/process: release and slip of discontinuance	0.20	\$150.00	\$30.00
11/21/2018	MacGruff	Draft/revise/serve: motion in limine to preclude prior bad acts/criminal convictions	2.80	\$150.00	\$420.00
				Services Subtotal	\$18,852.00

Expenses

Date	Description	Quantity	Rate	Total	
09/24/2018	travel	1.00	\$100.00	\$100.00	
10/16/2018	travel	1.00	\$100.00	\$100.00	
11/01/2018	travel	1.00	\$100.00	\$100.00	
11/02/2018	travel	1.00	\$100.00	\$100.00	
11/05/2018	travel	1.00	\$100.00	\$100.00	
11/07/2018	travel	1.00	\$100.00	\$100.00	
11/08/2018	travel	1.00	\$100.00	\$100.00	
11/13/2018	travel	1.00	\$100.00	\$100.00	
				Expenses Subtotal	\$800.00

Time Keeper	Position	Hours	Rate	Total	
Michael MacGruff	Attorney	42.9	\$250.00	\$10,725.00	
Michael MacGruff	Attorney	54.18	\$150.00	\$8,127.00	
Michael MacGruff	Attorney	0.5	\$0.00	\$0.00	
				Subtotal	\$19,652.00
				Total	\$19,652.00
				Payment (11/21/2018)	-\$19,652.00
				Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
3085	12/20/2018	\$19,652.00	\$19,652.00	\$0.00

Please make all amounts payable to: Michael MacGruff, Esq.

Please pay within 30 days.



Dismissal of counsel

2 messages

Barbara Corcorian <notreal@notreal.com>
To: Michael MacGruff <crimeedoesntpay@bitecrime.com>
Cc: gkill@killkillkillmore.com

Fri, Dec 7, 2018 at 12:33 PM

Can you please provide me with a written response via email stating that you are no longer acting as counselor for Corcorian Properties, Inc. and me and that I have now opted to speak with the plaintiff's counselor without representation. I would appreciate a rapid response so I can move forward. Thank you

Barbara Corcorian
Corcorian Properties, Inc.

Sent from my iPhone

Michael MacGruff <crimeedoesntpay@bitecrime.com>
To: Barbara Corcorian <notreal@notreal.com>
Cc: gkill@killkillkillmore.com

Fri, Dec 7, 2018 at 1:19 PM

Barbara

This will confirm I was hired as trial counsel and as such my involvement with the case is completed.

Best

Michael

[Quoted text hidden]



Retainer balance check received8 messages

Barbara Corcorian <notreal@notreal.com>

Mon, Nov 26, 2018 at 6:02 PM

To: Michael MacGruff <crimeedoesntpay@bitecrime.com>

Thank you for getting out to me in a timely manner. There are a lot of the motions that I was charged for on the bill and since I paid for them would like them to be sent over to me via mail. I appreciate all that was done however was hoping the balance retainer check would be closer to the 8500 mark but I know the deal. Either way please send me over the motions that were submitted as described in your detailed billing so I can add them to the Hernandez collection.

Thank you
Barbara Corcorian

Sent from my iPhone

Michael MacGruff <crimeedoesntpay@bitecrime.com>

Mon, Nov 26, 2018 at 6:47 PM

To: Barbara Corcorian <notreal@notreal.com>

Ha! The collection

Will email to you tomorrow

[Quoted text hidden]

Barbara Corcorian <notreal@notreal.com>

Mon, Nov 26, 2018 at 6:50 PM

To: Michael MacGruff <crimeedoesntpay@bitecrime.com>

Sounds good thank you

Sent from my iPhone

(Quoted text hidden)

Michael MacGruff <crimeedoesntpay@bitecrime.com>

Tue, Nov 27, 2018 at 8:27 AM

To: Barbara Corcorian <notreal@notreal.com>

[Quoted text hidden]

--

Michael MacGruff

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4 attachments

 **dv motion.docx**
32K

 **miL MISSING DOC.docx**
28K

 **mil EXPERT.docx**
19K

 **MIL.docx**
16K

Barbara Corcorian <notreal@notreal.com>
To: Michael MacGruff <crimeedoesntpay@bitecrime.com>>

Tue, Nov 27, 2018 at 12:51 PM

Thank you for sending. I will review and if I have any questions I will reach out to you via email. You may want to reevaluate the time spent on the bill as after reviewing yesterday evening thoroughly some of the hours spent seem over stretched but I will outline my concerns and send.

Thank you
Barbara Corcorian

Sent from my iPhone
[Quoted text hidden]

<dv motion.docx>

<mil MISSING DOC.docx>

<mil PAYNE.docx>

<MIL.docx>

Michael MacGruff <crimeedoesntpay@bitecrime.com>
To: Barbara Corcorian <notreal@notreal.com>

Tue, Nov 27, 2018 at 12:55 PM

It will not be "reevaluated"....As to over stretched, i know you have a lot of litigation experience, but I bill for what I do....i take pride in that

98% of other attorneys would have given you nothing back

I stand behind it
[Quoted text hidden]

Barbara Corcorian <notreal@notreal.com>
To: Michael MacGruff <crimeedoesntpay@bitecrime.com>

Tue, Nov 27, 2018 at 1:32 PM

Thank you for pointing it out and I appreciate your confidence in your work. Although due to the back and fourth I find it difficult to understand how you were preparing questions for different parties (Belmont and others) when you yourself stated you were going to have this settled and it would not be tried with the jurisdiction we were forced to litigate. You also urged me to file bankruptcy to halt the proceeding which I stated I would not do. This is why I say the words" stretched". I understand that many attorneys may not have given back anything and they might have ended up in a fee dispute in front of their peers. I will go over my concerns and if you have no intention of addressing them that's ok. That is why we have a court system. Thanking you in advance for the rapid response.

3/11/2019

Mail - Retainer balance check received

Sent from my iPhone
(Quoted text hidden)

Michael MacGruff <crimeedoesntpay@bitecrime.com>
To: Barbara Corcorian <notreal@notreal.com>

Tue, Nov 27, 2018 at 1:44 PM

I did not say I would not address them , just that I bill for what I do. As for the trial, I was urging you to settle from the beginning. We picked a jury and got assigned and yet no settlement was being discussed.

The file had to be prepared for trial...do you think I gather my thoughts and reviews transcripts the night before? Settlements flow from being prepared.

If you have an issue, you are free to avail yourself to the court system.

Best

Michael



Closing papers

1 message

Michael MacGruff <crimeedoesntpay@bitecrime.com>
To: Barbara Corcorian <notreal@notreal.com>

Tue, Nov 20, 2018 at 7:55 AM

Barbara

Attached are the closing papers which were received yesterday. As discussed, payment must be made within 21 days pursuant to CPLR 5003-a in order to avoid entry of judgment with interests and costs from yesterdays date

Also, let me know what address I should mail the final bill and excess check; I should have it out by tomorrow

I wish you, Blake, and your family a Happy Thanksgiving.

Best

Michael

--

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 **doc04300.pdf**
636K

Michael MacGruff, Esq.
Attorney-at-Law
100 Main Street
Somewhere, NY 54321
Tel.: (555) 765-4321
E-mail: crimedoesntpay@bitecrime.com

March 13, 2019

Joint Committee on Fee
Disputes 14 Vesey Street
NY, NY 10007
Attn: Arianna Diaz

Re: *Corcorian v. MacGruff*
Case No. REDACTED

NYCLA Part 137 Fee Dispute
Resolution Program (Mediation)

RECEIVED
MARCH 13 2019

Dear Ms. Diaz:

Kindly allow this correspondence to serve as an expanded response to the complaint filed by Ms. Corcorian and to expand upon the attached "Attorney Response to Request for Fee Arbitration." The matter involved a personal injury case venued in the Bronx where the plaintiff had sustained severe injuries while working at a building jointly owned by Ms. Corcorian and her husband, Blake, via their jointly-controlled corporation, Corcorian Properties, Inc. Various causes of action were plead under the Labor Law. The building had no insurance, and as such, there was significant exposure for my clients (demand of 2 million dollars). When I was retained in the end of September, the matter was slotted for trial, and I believe I was the third or perhaps fourth attorney retained by the Corcorians.

In the interests of brevity, I offer this short synopsis of what transpired. The first appearance was adjourned given the fact that I did not receive the file from the outgoing attorney (I believe he and the Corcorians were engaged in a fee dispute. Simple Google searches reveal that Ms. Corcorian is no neophyte when it comes to the issue of fee disputes and litigation). In any case, shortly after I obtained the file in October 2018, jury selection commenced on November 1, 2018.

I had to bring myself up to speed in reviewing an extensive file essentially on the eve of trial, and this included reviewing and analyzing numerous deposition transcripts, pleadings, and voluminous medical records.

In addition to actually preparing for the examination of every witness and plaintiff's treating doctors, my office had to prepare a number of *motions in limine* and a motion for a directed verdict on this Labor Law case, for to not do so would have been malpractice. The drafts for these MILs were prepared but never served. As any litigator will do, specifics (in terms of the motion for a directed verdict) will be inserted consistent with the trial testimony as it develops.

It turns out that although prepared, the MIL motions were never served given the matter was settled prior to opening statements. As I explained to Ms. Corcorian, these exercises are not done the night before the trial; rather, they are done before, during, and after jury selection and after being assigned to the trial judge. While always looking to settle this action, ultimately the preparation and willingness to go to trial enabled us to successfully resolve this matter and allow the Corcorians to keep their building. This was not insurance money I was dealing with. I was dealing with a family's lifetime investment, an obligation I did not take lightly

After numerous days of jury selection, we were assigned to Judge Iris Carnot. She actively engaged in settlement negotiations over the course of several days in an effort to avoid the Corcorians being hit with a verdict and possibly losing the building. The matter was finally settled with Blake Corcorian present in the courtroom.

Ms. Corcorian states that I was billing for "unnecessary motions that had nothing to do with her case"; this is untrue. The Corcorians had previously been all over the news for various wrongful acts, some of which landed Mr. Corcorian in jail back in 2004, and there was no doubt in my mind that the plaintiff intended to introduce these "prior bad acts" of both Blake and Barbara Corcorian. I had to prepare motions to thwart this attempt. The motion for a directed verdict and its accompanying research had to be done after we were assigned for trial. As to the *motion in limine* to preclude missing documents (which would have occurred), as I stated to Ms. Corcorian, *she was never billed for that motion.*

The initial agreed upon retainer amount was \$25,000. The hourly billing rate was \$250 an hour in court, \$100 an hour out of court, and \$100 a day travel time/parking.

At the conclusion of the case, \$5,348 was returned as unused monies to Ms. Corcorian. There was no overbilling; perhaps underbilling, but no overage. As I stated to Ms. Corcorian, "I bill for what I do and that I take pride in that - 98% of other attorneys would have given you nothing back." I continue to stand by that statement.

If you should have any further questions or concerns, please do not hesitate to contact the undersigned.

Very truly yours,

Michael MacGruff

Michael MacGruff

.....
**In the Matter of Fee Dispute
Arbitration between**

Case Number: _____

, Client

**ATTORNEY RESPONSE
TO REQUEST
FOR FEE ARBITRATION**

and

, Attorney
.....

INSTRUCTIONS

Attached is a copy of a "Request for Fee Arbitration" by the above Client. Please complete this attorney response and return it to the local program listed below within 15 days of this mailing along with a certification that you have served the Client with the attorney response and indicating the manner of service.

1. Name, address, telephone number, email address:
Michael MacGruff, Esq.
100 Main Street - Somewhere, NY 54321
(555) 765-4321 - crimedoesntpay@bitecrime.com
2. Set forth in narrative fashion your response to the request for fee arbitration, indicating those items in the request with which you disagree and providing a brief explanation of why you believe you are entitled to the amount of the fee that is in dispute (use additional pages if necessary):
3. (A) Type of Matter: _____
(B) Amount Received: _____
(C) Amount in Dispute: _____
(D) Amount Client Owes (if different from (C)): _____
4. Attach a copy of the written retainer agreement or letter of engagement with the client and copies of all itemized bills submitted to the client.
5. X - I agree to resolve this fee dispute first through mediation (applicable only if Client has agreed in Item 10 of the Client's request)

Dated: _____

Signed: *Arianna Diaz*

Arianna Diaz, Coordinator
14 Vesey Street
New York, NY 10007

Reminder: 22 NYCRR § 137.11 Failure to Participate in Arbitration: All attorneys are required to participate in the arbitration program established by this Part upon the filing of a request for fee arbitration by a client in conformance with these rules. An attorney who without good cause fails to participate in the arbitration process shall be referred to the appropriate grievance committee of the Appellate Division for appropriate action.



mil MISSING DOC.docx

3 messages

Barbara Corcorian <notreal@notreal.com>
To: Michael MacGruff <crimeedoesntpay@bitecrime.com>

Fri, Jan 11, 2019 at 4:14 PM

I am requesting that you explain why this document was submitted as part of work you did which has nothing to do with my case and I was charged money for this? Please advise prior to me bringing an action against you for billing me for items and work that does not pertain to my case. I am requesting a response and if a response is not received then I will commence an action with the Bar association. This is very serious as billing a client on work that was said to be performed that has nothing to do with their case is a serious situation.

Thank you
Barbara Corcorian

Sent from my iPhone

 **miL MISSING DOC.docx**
28K

Michael MacGruff <crimeedoesntpay@bitecrime.com>
To: Barbara Corcorian <notreal@notreal.com>

Fri, Jan 11, 2019 at 4:29 PM

It was prepared in anticipation to the plaintiff seeking a missing document charge in relation to missing records vis a vis the building. i will have my paralegal send the correct caption

[Quoted text hidden]
[Quoted text hidden]
Sent from my
iPhone

--
Michael MacGruff, Esq.

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Michael MacGruff <crimeedoesntpay@bitecrime.com>
To: Barbara Corcorian <notreal@notreal.com>

Fri, Jan 11, 2019 at 5:11 PM

as an aside, now I know why this one was sent to you and not the one in file.

it was never done or billed for; we started gearing up to make it but would have waited until trial to start to see if they were going to request the charge

Hope this clarifies

Best

Michael

[Quoted text hidden]



MIL.docx

9 messages

Barbara Corcorian <notreal@notreal.com>
To: Michael MacGruff <crimeedoesntpay@bitecrime.com>

Fri, Jan 11, 2019 at 4:18 PM

Please advise as to why you had billed me to prepare this document? I was never convicted and or had a criminal record ? Blake & B&C Construction had counsel and if any paperwork needed to be prepared then the attorney representing the party that had a legal issue should have been the one to be billed for the work. I am requesting you review your bill and refund me for the time you spent on preparing a document that did not pertain to me since I was never convicted of being a slumlord. Blake & myself were represented by separate counsel. This is a conflict of Interest because you sought to bill me for things in which neither I nor Corcorian Properties, Inc. had no involvement. Please advise at your soonest!

Thank you
Barbara Corcorian

Sent from my iPhone

 **MIL.docx**
16K

Michael MacGruff <crimeedoesntpay@bitecrime.com>
To: Barbara Corcorian <notreal@notreal.com>

Fri, Jan 11, 2019 at 4:34 PM

here you go...you are mentioned numerous limes

also, there was conflicting deposition testimony as to what your percentage was in Corcorian Properties, Inc.

[Quoted text hidden]

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 **doc0455.pdf**
832K

Barbara Corcorian <notreal@notreal.com>
To: Michael MacGruff <crimeedoesntpay@bitecrime.com>

Fri, Jan 11, 2019 at 4:40 PM

So.... it states wife of convicted slumlord? I was not convicted? Also your paralegal should not change the caption of the other document.... if you actually took the time out which you did not, you would see that the case pertaining to that document has nothing to do with my case. It is unfortunate how careless you were in your work when it came time to try and overcharge with your billing. It's too late to correct the entire document now after the case is over and you billed me for work that you never performed. You did not actually think I was ever going to read the documents. I am requesting a refund for the time supposedly spent on documents that had zero affiliation with my case. Please advise as this is not a joke to say the least. I thought my best interest was your concern but obviously not. Read the documents you sent over and charged me for. I am requesting a refund of 1500 dollars.

Barbara Corcorian

Sent from my iPhone
[Quoted text hidden]

<doc0455.pdf>

Michael MacGruff <crimeedoesntpay@bitecrime.com>
To: Barbara Corcorian <notreal@notreal.com>

Fri, Jan 11, 2019 at 4:43 PM

i already underbilled you and gave you money back unlike most attorneys you have dealt with.

you can call me Monday if you like

enjoy the weekend

Michael
[Quoted text hidden]

Michael MacGruff <crimeedoesntpay@bitecrime.com>
To: Barbara Corcorian <notreal@notreal.com>

Fri, Jan 11, 2019 at 4:45 PM

As an aside, none of these motions were "submitted". They were prepared prior to jury selection and would have been further crafted and edited when plaintiff would have moved for a missing witness charge etc

[Quoted text hidden]

Barbara Corcorian <notreal@notreal.com>
To: Michael MacGruff <crimeedoesntpay@bitecrime.com>

Fri, Jan 11, 2019 at 4:51 PM

It is a document you tried to have your office pass off to me as if additional work had been performed. I am not asking what any other attorney would do because they have a billing statement. If the billing statement was *off* then I would have seen it and went to the Barr association if an attachment was not kept. There were items in your bill like a 2 hour meeting with me and you which never took place. The second meeting that took place when we met the B&C attorney was less than 30 minutes and a check was issued and we left. You charged me for 2 hours. I am requesting a refund of 1500 for work stated that was performed on your bill and as per documents handed over. If you feel that you don't want to send out a check then I will commence an action with the Suffolk county bar association. My time is limited

3/11/2019

Mail: MILdocx

but when ii comes lo fraudulently billing someone and providing them with documents that don't pertain to their case I will waste the time. A phone conversation is not what I am requesting.

Barbara Corcorian

Sent from my iPhone

{Quoted text hidden}

Michael MacGruff <crimeedoesntpay@bitecrime.com>

Fri, Jan 11, 2019 at 4:55 PM

To: Barbara Corcorian <notreal@notreal.com>

did I fly to the meeting? I drove there, met with the attorney then you and Blake. It was not a court appearance where the travel time 100 bucks applied.

I will stand by my billing. Do what you feel you have to do.

Michael

[Quoted text hidden]

Barbara Corcorian <notreal@notreal.com>

Fri, Jan 11, 2019 at 4:56 PM

To: Michael MacGruff <crimeedoesntpay@bitecrime.com>

Either way I was billed for these motions which had nothing to do with my case. Which is why it makes it look so much worse for you. These were not submitted and were fabricated at the 23rd hour and sent over to appease me so you can charge me from the retainer. Let me know what you want to do about this situation? It was a very unprofessional move on your end but am requesting a small fee back as of now. Once the bar association reviews the billing, they may feel I am entitled to more based upon the documents and emails I plan to submit on my behalf detailing how the billing was done to defraud the client for work that was not performed and for work that was billed to me which had nothing to do with me.

Barbara Corcorian

Sent from my iPhone

[Quoted text hidden]

Barbara Corcorian <notreal@notreal.com>

Fri, Jan 11, 2019 at 4:56 PM

To: Michael MacGruff <crimeedoesntpay@bitecrime.com>

Ok I will. Thank you

Barbara Corcorian

Sent from my iPhone

[Quoted text hidden]

**Additional Information from Client Barbara Corcorian's Nov. 9, 2020
Pre-Mediation Statement Concerning Attorney MacGruff's 03-13-2019 Response**

Attorney MacGruff's response is hogwash, and I should prevail here. MacGruff had no intention of taking Hernandez to trial and therefore never prepared as if a trial was going to take place. Motions that were unnecessary were put down on his billing statement, and he fabricated additional hours to take as much out of the 25k retainer as possible. Remember that I sent him a demand email for the documents in his billing statement that he said he prepared on my behalf, and he failed to provide them at first. When he did provide the requested documents, they had multiple errors, and it was clear they were from another case with a different caption.

*The fairy tale story in his response of there being a family-owned building involved here is false. I hired him to prevail in a trial and/or try to get the best result based on the jurisdiction of the court. I was suing my husband's company and brought them in as a third party for failure to provide valid insurance, therefore leaving me exposed because I only had a builder's risk policy that excluded personal liability. This is why I had a coverage issue, and **NOT BECAUSE**, as MacGruff claims, that there was no coverage in place.*

*Again, if he reviewed the case, he would have known these things. As such, I am now seeking **\$4500** (and not \$2865, as I originally claimed) back from MacGruff based on his substandard representation. His bills did not represent actual work performed.*

I also want to point out that the worker that claimed to have been injured at my premises, Juan Hernandez, was not one of our workers. To date, we still don't know where he came from, as an ambulance never even picked him up from the premises. Hernandez also said that he did not know me, and it was my regular practice to physically pay workers via check.

Regardless, we settled the case for \$465,000 based on the judge and MacGruff, my substandard counsel, telling me that I had no chance at hell in trial. This was told to me even though no witnesses or photos existed then or now of the area in which Hernandez got hurt based upon the collapse of the non-existent wall, which, again, was never there.

*And so, I want to get back \$4500 beyond the \$5,348 that I received from MacGruff. Let me also mention that I only met with him once to give him a check, and then I **NEVER** saw him again. Additional in-person meetings and phone conversations did not take place, but we did exchange emails. I am truly disgusted and spent a countless amount of money, and again the effort was not there, and my funds were used up unnecessarily based on **FAKE BILLABLE HOURS**. I work with many attorneys, and they laugh when I show them his bill and the work he claimed to have performed to substantiate his outrageous billable hours.*

Yours truly, Barbara Corcorian

PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM
MEDIATION AGREEMENT FOR ONLINE/VIRTUAL CASES

The parties to this agreement, Barbara Corcorian (collectively, “Client”), and Michael MacGruff, Esq. (collectively, “Attorney”), and Pierre de Ravel d’Esclapon (“Mediator”) agree as follows:

1. The Parties are presently involved in a dispute that has been submitted to The New York County Lawyers Association’s Part 137 Attorney-Client Fee Dispute Resolution Program (“Part 137”) and wish to attempt to resolve their dispute via non-binding online/virtual mediation.
2. The mediation will be conducted online through the Part 137 Zoom Pro Account (“Zoom”), where Mediator will serve as the “host” of the mediation.
3. To use a secure internet connection that is password protected and not to use public Wi-Fi.
4. That there will be no one else in the room with them, unless advance notice is given to Mediator, and no one else will enter the room during the mediation; if Mediator has approved additional people in a party’s room, that additional person may need to be identified at the hearing;
5. That Mediator may ask the parties to scan the room to ensure they are alone and to arrange the video equipment to show as much of the room as possible;
6. That they understand Part 137 mediations are confidential and they will keep all information obtained during the mediation confidential.
 - a. Section 137.10 Confidentiality states: All proceedings and hearings commenced and conducted in accordance with this Part, including all papers in the case file, shall be confidential, except to the extent necessary to take ancillary legal action with respect to a fee matter. The mediator should remind parties that if a recording is made of the hearing, it is not useable in a subsequent court hearing.
7. To have a pre-hearing Zoom call with Mediator to work through the technology, discuss document exchange, and other matters relating to the session. A staff representative from Part 137 may attend this call and can assist with the set-up of the official mediation.

8. To consent to the intervention of Part 137 staff at any point in the mediation processes in the unlikely event that a complicated technological issue or obstacle arises that is beyond the skill level of Mediator to resolve.
9. The Parties acknowledge that Mediator is impartial and cannot act as advocate, representative, or counsel for any Party. Mediator has no authority to make binding decisions, but can help to facilitate discussions between the parties which may lead to settlement.
10. In mediation, the Mediator may use evaluative and facilitative techniques in conducting the mediation. Thus, at any given time, the Mediator may play an activist role and express opinions as to alternative outcomes if they believe that such Party is not being realistic in making an objective cost/benefit or risk/reward analysis between a particular settlement proposal and the costs and uncertainties of a litigation or arbitration alternative.
11. There no attorney-client relationship between the Mediator and any signatory to this agreement, and each Party acknowledges that it will seek and rely on legal advice solely from its own counsel and not on any opinions that may be expressed by the Mediator.
12. Mediator shall not be liable for any act or omission in connection with the mediation processes other than a willful disregard of his or her obligations under this agreement.
13. Recognize that any online/virtual mediation session hearing conducted shall be considered a traditional, in-person mediation session for purposes of all applicable legislation, regulations, and rules concerning traditional mediations.

This Agreement shall be governed by New York law and may be executed in one or more counterparts, each of which shall constitute an original document, and when taken together, shall constitute a complete document. Digital/electronic signatures shall be deemed the equivalent of original signatures.

AGREED, as of the date above first written:

Attorney:

Signature: *Michael MacGruff*

Print Name: Michael MacGruff

Client:

Signature: *Barbara Corcorian*

Print Name: Barbara Corcorian

Mediator:

Signature: *Pierre de Ravel d'Esclapon*

Print Name: Pierre de Ravel d'Esclapon

Part 137 Agreement to Mediate Online - NYCLA

Final Audit Report

2020-10-21

Created:	2020-10-19
By:	Arianna Diaz (adiaz@nycla.org)
Status:	Signed
Transaction ID:	[REDACTED]TqOBmzX[REDACTED]-Plw[REDACTED]

"Part 137 Agreement to Mediate Online - NYCLA" History

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2020-10-19 - 6:18:34 PM GMT- IP address: REDACTED
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2020-10-19 - 6:19:30 PM GMT
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2020-10-21 - 2:00:44 PM GMT
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 Agreement completed.

2020-10-21 - 2:02:36 PM GMT

RIDER TO PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM MEDIATION AGREEMENT FOR ONLINE/VIRTUAL CASES (NYCLA PART 137 FDRP Case No. REDACTED, *Corcorian v. MacGruff*)

The parties to this Mediation Agreement (electronically signed and accompanied by an Adobe Sign® audit trail dated October 21, 2020) (“Original Agreement”)—Barbara Corcorian (collectively, “Client”), Michael MacGruff, Esq. (collectively, “Attorney”), Pierre de Ravel d’Esclapon (“Mediator”)—as well as new parties Christopher Fladgate and Nelson E. Timken (individually, “Co-Mediator” and collectively, “Co-Mediators”), further agree to this Rider to the Original Agreement (“Rider”) as follows:

1. **Rider Not a Superseding Agreement.** This Rider shall be construed as supplementing and **NOT** superseding, overriding, or otherwise replacing in any way or manner the terms of the Original Agreement.
2. **Retroactive Acceptance.** The Co-Mediators accept any and all terms of the Original Agreement as binding upon them as of October 21, 2020 *nunc pro tunc* (a/k/a retroactively) and represent that they have not breached the Original Agreement in any way or manner, including but not limited to the confidentiality terms contained therein, at any time.
3. **Ground Rules.** The following additional conditions (“Ground Rules”) are agreed to, accepted, and understood by the parties as binding:
 - a. **CPLR 4547/Fed. R. Evid. 408 Applicable.** All statements or any other communications made in connection with the mediation process conducted pursuant to this Agreement shall be confidential and, unless otherwise independently admissible or discoverable, shall be inadmissible and/or privileged as settlement discussions to the extent provided by Civil Practice Law and Rules (“CPLR”) 4547, Federal Rule of Evidence (“Fed. R. Evid.”) 408, and any other applicable law.
 - b. **Private Conferences/Caucuses and Disclosure Policy.** The parties understand and agree that in connection with the mediation process, the Mediator or Co-Mediators may meet in confidential “caucus” sessions separately with each party. The Mediator or Co-Mediators may, at the request of either party or on his or their own initiative, conduct any private conference or caucus by telephone, e-mail, fax, videoconference, or other means of communication.

The Mediator and Co-Mediator will treat as confidential and refrain from disclosing any information conveyed to the Mediator or Co-Mediator during any private conference or caucus unless the party

RIDER TO PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM MEDIATION AGREEMENT FOR ONLINE/VIRTUAL CASES (NYCLA PART 137 FDRP Case No. REDACTED, *Corcorian v. MacGruff*)

conveying such information authorizes the Mediator or Co-Mediator to disclose such information to the other party.

- c. **Non-Signatories (Attorneys, Advocates, Witnesses, etc.)**. Any attorney, advocate, or witness for a party participating in the mediation process contemplated by the Original Agreement and this Rider shall agree to be bound by all terms and restrictions contained therein and herein by signing this Rider below.
- d. **Mediator and Co-Mediator Indemnification**. The parties agree, on behalf of themselves and their attorneys, advocates, and/or witnesses, that none of them will call or subpoena any Mediator or Co-Mediator in any legal, arbitral, or administrative proceeding of any kind to produce any notes or documents relating to the mediation process or to testify concerning any such notes or documents or thoughts or impressions. If any party attempts to compel such testimony or production, such party shall indemnify and hold the Mediator or Co-Mediator harmless from, and reimburse the Mediator or Co-Mediator for, any reasonable losses, liabilities, costs, and expenses, including attorneys' fees and lost professional time calculated at a rate of six-hundred dollars (\$600) per hour, which the Mediator or Co-Mediator may suffer or incur in lawfully resisting such compulsion.
- e. **Authority of Parties to Negotiate**. At all times, each party or representative of each party to the mediation process shall have full power and authority to negotiate and conclude a binding settlement of the dispute.
- f. **One Party Speaking at a Time**. No party shall interrupt any other party while that other party is speaking but may interrupt the Mediator or Co-Mediators while he is or they are speaking (and especially should interrupt if it is thought that prior statements have been misunderstood, misconstrued, or misinterpreted). Provided the parties find it helpful, they are encouraged to take notes for later use and otherwise record their thoughts in writing while anyone is speaking.
- g. **Mediator/Co-Mediator's Privilege**. The Mediator and Co-Mediators shall have the privilege of interrupting any party who is speaking or otherwise interrupting the mediation process but shall endeavor to utilize this privilege only: (i) where they need to confirm understanding of what a party has stated; (ii) do not understand what a party has stated; (iii) need to attend to "housekeeping" matters (such as declaring

RIDER TO PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM MEDIATION AGREEMENT FOR ONLINE/VIRTUAL CASES (NYCLA PART 137 FDRP Case No. REDACTED, *Corcorian v. MacGruff*)

a lunch break, other short break, or to notify the parties of a certain time); or (iv) need to otherwise maintain the order, efficiency, and integrity of the mediation process.

- h. **Dignity, Respect, and Tolerance for All.** No party shall insult, belittle, embarrass, denigrate, or otherwise personally attack another party, as such conduct is rarely—if ever—productive. This rule does not prevent a party, the Mediator, or Co-Mediator from commenting upon: (i) how the statements, actions, or other conduct of any person has made one feel; or (ii) the impact, consequence, or damage flowing from such statements, actions, or other conduct.
- i. **Abuse or Misuse of Mediation Process.** No party shall attempt to utilize the mediation process as a means for gaining any form of leverage or personal advantage—be it in litigation or otherwise—over or against any other party.

WHEREFORE, the parties, Mediator, and Co-Mediators have **AGREED** as of **October 27, 2020:**

Attorney:

Signature: Michael MacGruff

Print Name: Michael MacGruff

Client:

Signature: Barbara Corcorian

Print Name: Barbara Corcorian

Mediator:

Signature: Pierre de Ravel d'Esclapon

Print Name: Pierre de Ravel d'Esclapon

Co-Mediator:

Signature: Chris Fladgate
Chris Fladgate (Oct 27, 2020 23:26 EDT)

Print Name: Christopher Fladgate

Co-Mediator:

Signature: Nelson E. Timken

Print Name: Nelson E. Timken

2020-10-27 - NYCLA Part 137 Agreement to Mediate Online WITH RIDER - Part 137 Mediation

Final Audit Report

2020-11-05

Created:	2020-10-28
By:	Elan Weinreb (eweinreb@weinreblaw.com)
Status:	Signed
Transaction ID:	[REDACTED]pumuK4Sy-[REDACTED]

"2020-10-27 - NYCLA Part 137 Agreement to Mediate Online WITH RIDER - Part 137 Mediation" History

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-  Document emailed to Michael MacGruff (crimedoesntpay@bitecrime.com) for signature
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-  Document emailed to Chris Fladgate (cf@gs2law.com) for signature
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-  Document emailed to Nelson Timken (nelson.timken@verizon.net) for signature
2020-10-28 - 2:29:51 AM GMT
-  Document e-signed by Pierre de Ravel d'Esclapon (pierre.deraveldesclapon@gmail.com))
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2020-10-28 - 6:00:26 AM GMT- IP address: REDACTED

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2020-11-05 - 9:06:19 PM GMT- IP address: REDACTED

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 Agreement completed.
2020-11-05 - 10:02:02 PM GMT

(Office Use Only)	
Case Number:	REDACTED FOR CONFIDENTIALITY <u>48</u>
Custom Case Number:	REDACTED FOR CONFIDENTIALITY <u>4</u>

.....

**In the Matter of Fee Dispute
Arbitration between**

REDACTED FOR CONFIDENTIALITY, Client

and

**STIPULATION OF
SETTLEMENT**

REDACTED FOR CONFIDENTIALITY, Attorney

.....

A request for fee arbitration having been made and the parties having come to an agreement as to the reasonable amount of the fee due in this matter, it is hereby stipulated and agreed:

- | | |
|---|-----------------|
| 1. The AMOUNT IN DISPUTE | \$ <u>2,865</u> |
| 2. The TOTAL of the AMOUNT IN DISPUTE to which the attorney is entitled is (including all costs and disbursements and amounts previously paid by the client): | \$ <u>1,065</u> |
| 3. The AMOUNT of this total PREVIOUSLY PAID by the client is: | \$ <u>1,065</u> |
| 4. (a) The BALANCE DUE by the client to the attorney is: | \$ _____ |
| -OR- | |
| (b) The AMOUNT TO BE REFUNDED by the attorney is: | \$ <u>1,800</u> |

It is further agreed that the payment of the amount shall be made within 3 days of the date of this stipulation.

REDACTED FOR CONFIDENTIALITY **REDACTED FOR CONFIDENTIALITY**

REDACTED FOR CONFIDENTIALITY Nov 11, 2020 14:39 EST
REDACTED FOR CONFIDENTIALITY Esq.

REDACTED FOR CONFIDENTIALITY Nov 11, 2020 14:38 EST
REDACTED FOR CONFIDENTIALITY

Dated: 11/11/2020 [Give copy to each party]

2020-11-11 - Stipulation of Settlement -

REDACTED FOR CONFIDENTIALITY

Final Audit Report

2020-11-11

Created:	2020-11-11
By:	Elan Weinreb (eweinreb@weinreblaw.com)
Status:	Signed
Transaction ID:	REDACTED FOR CONFIDENTIALITY 094wN

"2020-11-11 - Stipulation of Settlement - REDACTED FOR CONFIDENTIALITY" History

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-  Document e-signed by REDACTED FOR CONFIDENTIALITY
Signature Date: 2020-11-11 - 7:39:26 PM GMT - Time Source: server- IP address: REDACTED FOR CONFIDENTIALITY
-  Agreement completed.
2020-11-11 - 7:39:26 PM GMT