

The Basics of Post-Pandemic Part 137 Arbitration

February 23, 2022 – NYCLA-OCA Part 137 Statewide FDRP Arbitration Training

TWLF

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PART I

WHAT YOU NEED TO KNOW TO SURVIVE AND THRIVE AS A PART 137 ARBITRATOR

Mediation vs. Arbitration

- | | |
|---------------------------------------|----------------------------------|
| ❖ No Final Decision | ❖ Final Decision |
| ❖ Lowest Cost vs. Litigation | ❖ Lower Cost vs. Litigation |
| ❖ No Set Procedure
(More Informal) | ❖ Set Procedure
(More Formal) |
| ❖ No Motion Practice | ❖ Motion Practice |
| ❖ Little to No Discovery | ❖ More Discovery |
| ❖ No Court Enforcement Role | ❖ Court Can Enforce Decision |
| ❖ Parties in Control | ❖ Arbitrator(s) in Control |
| ❖ Lawyers Optional | ❖ Lawyers Usually Required |

Sample Modern Part 137 Arbitration Agreement (1)

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

The parties to this agreement, DAFFY DUCK (collectively, "Client"), ATTORNEY FIRM, PLLC, represented by its duly authorized representative, SUPER ATTORNEY, ESQ.(collectively, "Attorney"), and ELAN E. WEINREB, ESQ., ARBITRATOR 2, ESQ., and ARBITRATOR 3 (NON-ATTORNEY) (collectively, "Arbitrator") agree as of INSERT DATE, 2021, 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 online/virtual arbitration.
2. The arbitration will be conducted online/virtually via a Part 137 Zoom Pro Account ("Zoom").
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 Arbitrator, and no one else will enter the room during the arbitration. If Arbitrator has approved additional people in a party's room, that additional person may need to be identified at the hearing.
5. That Arbitrator 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 arbitrations are confidential, and they will keep all information obtained during the arbitration confidential.
 - a. Section 137.10 (Confidentiality) states: All proceedings and hearings commenced and conducted in accordance with this Part, including all papers in the arbitration case file, shall be confidential, except to the extent necessary to take ancillary legal action with respect to a fee matter. Arbitrator should remind parties that if a recording is made of the hearing, it is not useable in a subsequent court hearing.

Sample Modern Part 137 Arbitration Agreement (2)

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

- b. No party or Arbitrator who makes a recording shall disclose the recording except as required for administration by the local program in connection with a complaint about an arbitration.
7. To have a pre-hearing Zoom call with Arbitrator 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 arbitration.
 8. To consent to the intervention of Part 137 staff at any point in the arbitration processes in the unlikely event that a complicated technological issue or obstacle arises that is beyond the skill level of Arbitrator to resolve.
 9. The Parties acknowledge that Arbitrator is impartial and cannot act as an advocate, representative, or counsel for any Party.
 10. There is no attorney-client relationship between Arbitrator 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 Arbitrator.
 11. Arbitrator shall not be liable for any act or omission in connection with the arbitration processes other than a willful disregard of his or her obligations under this agreement.
 12. Recognize that any online/virtual arbitration session hearing conducted shall be considered a traditional, in-person arbitration session for purposes of all applicable legislation, regulations, and rules concerning traditional arbitrations.

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.

Sample Modern Part 137 Arbitration Agreement (3)

PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

ARBITRATION AGREEMENT FOR ONLINE/VIRTUAL CASES

AGREED, as of the date above first written:

Attorney:

Signature: _____

Print Name: Super Attorney, Esq.

Client:

Signature: _____

Print Name: Daffy Duck

Arbitrator:

Signature: _____

Print Name: Elan E. Weinreb, Esq.

Arbitrator:

Signature: _____

Print Name: Arbitrator 2, Esq.

Arbitrator:

Signature: _____

Print Name: Arbitrator 3 (Non-Attorney)

Optional Rider to Part 137 Arbitration Agreement (1)

RIDER TO PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM ARBITRATION AGREEMENT FOR ONLINE/VIRTUAL CASES (NYCLA Part 137 FDRP Case No. INSERT NO., INSERT CASE NAME)

The parties to this Arbitration Agreement, electronically signed and accompanied by an Adobe Sign® audit trail, respectively dated April 14 and 15, 2021 (“Original Agreement”)—DAFFY DUCK (collectively, “Client”), ATTORNEY LAW FIRM, PLLC, represented by its duly authorized representative, SUPER ATTORNEY, ESQ. (collectively, “Attorney”), and ELAN E. WEINREB, ESQ., ATTORNEY ARBITRATOR, ESQ., and NON-ATTORNEY ARBITRATOR (collectively, “Arbitrator”)—as well as observer INSERT OBSERVER, ESQ. (“Additional Individual”), 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 Additional Individual accepts all terms of the Original Agreement as binding upon him as of INSERT DATE, 2021, ~~under~~ *urg pro tunc*, (a/k/a retroactively). The Additional Individual further represents that he has 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. **Private Caucus Availability.** The parties understand and agree that in the interests of settlement, they may meet in confidential “caucus” sessions in virtual “Breakout Rooms” **separate and apart from the Arbitrator and only in their absence.**

The parties will treat as strictly confidential and refrain from disclosing to the Arbitrator or anyone else any information conveyed between them during any such caucus.
 - b. **Non-Signatories (Attorneys, Advocates, Witnesses, etc.).** Any attorney, advocate, or witness for a party participating in the arbitration 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.
 - c. **Arbitrator Indemnification.** The parties and signatories herein agree on behalf of themselves and their attorneys, advocates, and/or

Optional Rider to Part 137 Arbitration Agreement (2)

**RIDER TO PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION
PROGRAM ARBITRATION AGREEMENT FOR ONLINE/VIRTUAL CASES
(NYCLA Part 137 FDRP Case No. INSERT NO., INSERT CASE NAME)**

witnesses, that none of them will call or subpoena any of the Arbitrator in any legal, arbitral, or administrative proceeding of any kind to produce any notes or documents relating to the arbitration process or to testify concerning any such notes or documents, thoughts or impressions, or any other aspect of the arbitration process. If any party attempts to compel such testimony or production, such party shall indemnify and hold the Arbitrator harmless from, and reimburse the Arbitrator 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 and per each individual arbitrator called or subpoenaed, which the Arbitrator—either individually or collectively—may suffer or incur in lawfully resisting such compulsion.

- d. **One Party Speaking at a Time.** No party shall interrupt any other party while that other party is speaking. 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.

WHEREFORE, the parties, Arbitrator, and Additional Individual have **AGREED**, as of INSERT DATE, 2021:

Client:

Signature: _____

Print Name: Daffy Duck

Attorney:

Signature: _____

Print Name: Super Attorney, Esq.

Additional Individual:

Signature: _____

Print Name: Insert Observer, Esq.

Arbitrator:

Signature: _____

Print Name: Elan E. Weinreb, Esq.

Arbitrator:

Signature: _____

Print Name: Attorney Arbitrator, Esq.

Arbitrator:

Signature: _____

Print Name: Non-Attorney Arbitrator

Performing the Tech Check (1)

IMPORTANT: All steps below apply to BOTH NYCLA Part 137 Arbitrations and Mediations!

1. Obtain Emergency Contact Information (SMS/Text Phone Numbers)
2. Establish Emergency Protocol and Conduct a ~5 Min. Practice Drill
3. Familiarize Client and Attorney with Videoconferencing Features (ShareScreen, Breakout Rooms, and Chat)
4. Discuss File Sharing / Production of Additional Documents at Session
5. Review Part 137 Arbitration or Mediation Agreement (if applicable) and Establish Understanding as to Recording and E-Signing Stipulations of Settlement and Any Other Settlement Documents
6. Address Client and/or Attorney Concerns or Questions (and explain that in arbitration, *ex parte* communications are almost never permitted).

Performing the Tech Check (2)

USE A TEMPLATE AND FILL IT IN REAL TIME

2021-10-20 - Part 137 Arbitration Tech Checklist - NYCLA Part 137 TEMPLATE.xlsx

Search (Alt+Q)

Elan Weinreb

File Home Insert Page Layout Formulas Data Review View Add-ins Help Acrobat

Comments Share

AutoSave (Off)

A1 CONFIDENTIAL NYCLA PART 137 ARBITRATION MATERIALS - INSERT CASE NAME AND NYCLA NUMBER

CONFIDENTIAL NYCLA PART 137 ARBITRATION MATERIALS - INSERT CASE NAME AND NYCLA NUMBER				
Arbitrators: Elan E. Weinreb, Esq. (Chair), INSERT ATTORNEY ARBITRATOR (Wing), INSERT NON-ATTORNEY ARBITRATOR (Wing) - Observer: INSERT OBSERVER - INSERT DATE - INSERT TIME OF HEARING				
ONLINE/VIRTUAL ARBITRATION INFORMATION				
Last Name	First Name	SMS Phone	E-mail	Role
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Client
Bova	Anthe Maria	INSERT PHONE	abova@nycla.org	FDRP Admin.
Romanelli	Federica	212-267-6646 (Voice)	FRomanelli@nycla.org	FDRP Admin.
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Observer
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Attorney
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Arbitrator
Weinreb	Elan E.	516-620-9716	eweinreb@weinreblaw.com	Arbitrator
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Arbitrator

Tech Check Objectives/Checklist

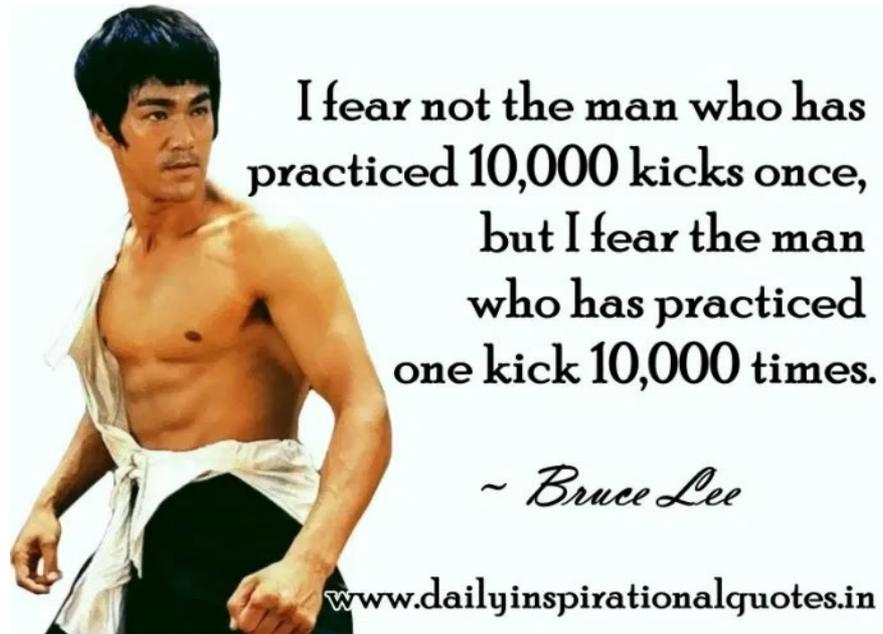
Objective	Discussed
1) Obtain Emergency / "Plan B" Contact Information	
2) Establish Emergency / Plan "B" Protocol (SMS and Freeconferencecall.com)	
3) Familiarize Client and Attorney with Zoom Features (mostly ShareScreen, Breakout Rooms, Chat, and File Sharing)	
4) Review Other Online/Virtual Arbitration Agreement Considerations Such as Recording and Use of Documents as Evidence	
5) Presence of Observers and Rider to Arbitration Agreement	
6) Address Client and/or Attorney Concerns or Questions	
Deadline for Submission of Additional Documents, Recording Decision, and Subpoena of Witnesses: INSERT DATE - 12:00 p.m.	
Date of Virtual Hearing: INSERT DATE - INSERT TIME (with INSERT DATE - INSERT TIME (Thurs. as Spillover))	

Freeconferencecall.com Information
Dial-In Number (701) 801-9654

Virtual Arbitration Info.

Ready

Preparation in Using Any Technology Is Essential for Success



Two Videos to Watch at Least **TWICE** to Prepare for the Initial Session

- I. **2020-05-07 - NYCLA ADR Committee Mock Mediation with Susan Guthrie**
(available at <https://www.youtube.com/WeinreblawPLLC/videos> and <https://vimeo.com/user27287947/review/420096804/5229c15407>)

- II. **2020-06-25 – Anatomy of a Virtual Mediation (Nassau County Bar Assoc.)**
(available at <https://vimeo.com/432986905>)

Day of the Online Hearing (1)

At your first arbitration, you will likely feel nervous, and that's good. It means you genuinely care about the parties and recognize that much is at stake. Have confidence! You will be just fine if you follow the tips set forth below.

- A. Do not stay up too late the night before engaging in last-minute preparations. Get a good night's rest, and do not rely on caffeine and/or sugar in the morning. (If you're not allergic, nuts are great for breakfast).
- B. Do not update your computer/tablet less than three hours before the hearing. If possible, try to update it the day before.
- C. Inform your office staff and/or anyone else who would otherwise contact you during the session that you will be busy throughout the day such that all calls should be sent to voice-mail to be answered later.
- D. Turn your cell phone on to vibrate and keep it that way until the initial session is over. Try to avoid as many other noise distractions as possible.
- E. Review in this order: the parties' Retainer Agreement(s) or Engagement Letter(s), Bills/Invoices, E-mails, and finally, the Arbitration Agreement.

Day of the Online Hearing (2)

- F. Send (or have the case administrator send) a test group-text/SMS message to everyone's phone number before the hearing begins to ensure that all emergency contact information is valid/operational.
- G. Arrange to be present virtually (i.e., log on) at least 15 minutes in advance of the hearing, and in the extremely unlikely event that you're hosting without a case administrator off your own account, make sure that your videoconference security settings conform to those called for and/or implicated by the Arbitration Agreement.
- H. Are you appropriately dressed for the hearing? Is your virtual background appropriate and set correctly? If not, fix these issues pronto!
- I. Under **NO CIRCUMSTANCES** should you ever enable or disable any new videoconferencing features that you have never used or have actively disabled.
- J. Now is not the time to become a power user.
- K. If you have not already been given "Host" or "Co-Host" status/privileges by the case administrator, s/he should grant you that status.

Day of the Online Hearing (3)

- L. Proceed to welcome in whomever is in the “Waiting Room” area by 5 minutes past the scheduled start time for the hearing or at least send him/her/them a welcome broadcast message.

Remember that in a Part 137 arbitration hearing—even one involving a three-arbitrator panel—there should be no “small talk.” After identifying yourself, immediately proceed to place any party and his/her/their counsel into a Breakout Room and leave him/her/them there until all parties and counsel are present. You may explain before doing so that this procedure is being adopted to avoid *ex parte* communications and appearances of impropriety.

- M. If by 10 minutes past the scheduled start time of the hearing, necessary parties or counsel are not present, assume technical failure and either have the case administrator attempt to contact absent parties/counsel or, in the absence of a case administrator, do it yourself. If possible, this should be done by group messaging to all involved for purposes of transparency and avoidance of even the appearance of *ex parte* communication.

Day of the Online Hearing (4)

- N. If one or more parties or counsel confirm having difficulty logging on to the session via group text message, then you must make a judgment call: if the problem is one that you have encountered before and can either be solved or circumvented quickly—within 60 seconds—then do so and announce this via group text message. If it cannot be quickly solved or circumvented, then group text message all to initiate the emergency technical failure protocol (a/k/a “Plan B”) set up in the Tech Check, and follow that accordingly.
- O. Once any login difficulties have been resolved and any parties or counsel who had difficulty logging into the session have logged in, close any Breakout Rooms that might be holding parties and/or counsel who arrived early (NYCLA settings provide for a 60-second warning countdown before Breakout Rooms are closed automatically).
- P. Perform a quick ODR confidentiality check. This entails: (i) having each party and counsel confirm that they are alone in a private and secure environment (with allowances made for well-behaved children and pets **briefly** “passing through” on occasion); and (ii) reviewing the sections of the Arbitration Agreement pertaining to confidentiality of the arbitration process. If anyone who is not a neutral is using a virtual background, request s/he to temporarily disable it and then pan his or her camera around in a 180-degree arc to demonstrate privacy (at least to some degree).

Day of the Online Hearing (5)

- Q. Unless arrangements have been made for recording of the hearing, it now makes sense to first quickly confirm that no recording of the session has occurred, is occurring, or will occur in the future.

IMPORTANT NOTE: Recording is one of the few areas where there is a big distinction between ODR mediation and ODR arbitration. In the latter, at the arbitrator's discretion, see *Rhinestone v. New York City Transit Auth.*, 142 A.D.2d 562 (2d Dep't 1988); *Matter of Andersen Trading Co. v. Brimberg*, 119 Misc. 784 (Sup. Ct. New York County 1922), non-stenographic recording is permissible, but it should only be done in the cloud and not local. For Part 137 arbitrations, case administrators—not arbitrators—should at least start cloud recordings such that if something goes wrong with the recording, the arbitrator(s) are not directly involved.

- R. CONGRATULATIONS! You're now ready to move to the rest of the hearing and to conduct same as if it were a normal in-person process. Doing so is fully spelled out in the official OCA-approved Part 137 Arbitration Manual (available from OCA as well as NYCLA), although some basic pointers will be presented now to get you started with the remaining procedure involved in conducting Part 137 arbitrations.

Conducting the Hearing (Prep) 1-A

**PART 137
ATTORNEY – CLIENT FEE DISPUTE RESOLUTION PROGRAM**

ARBITRATOR TRAINING MANUAL

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Conducting the Hearing (Prep) 1-B

Part Three: Conducting the Arbitration Hearing **Pre-Hearing Review**

- Before the Hearing, review:
 - Part 137.7 (Arbitration Hearing) [p. 73]
 - Rules of the Local Program, as they relate to the arbitration hearing [p 102]
 - Parties' Request for Arbitration and Response forms [pp 121 - 124]
 - Settlement and Award Templates [pp 130-131]
 - Part Two of this Manual (particularly, characteristics of an effective arbitrator)
 - Opening Statement [p 31]

27

Conducting the Hearing (Prep) 1-C

Characteristics of an Arbitrator

- Neutral
- Impartial
 - Fair
- Good listener
 - Patient
 - Attentive
- Open-minded
- Respectful
- Trustworthy
- Responsible
 - Intelligent
- Expertise in subject area?

FOLLOW & ENFORCE LOCAL RULES

Comparison of Certain Local Program Rules

Program	Online Hearing Rules	Option of Mediation	Administrator	Document Production/ Exchange of Exhibits
NYCLA (New York and Bronx Counties), 1st & 12th Judicial Districts	Yes ¹	Yes ³	Employee of NYCLA.	Yes, 5 business days before hearing.
Erie County, 8th Judicial District	No, but uses guidelines ²	Settlement services available ⁴	Executive Director of Bar Association or their delegate.	No express rule.
Suffolk County, 10th Judicial District	No, but uses guidelines	No	Person designated by Bar Association.	No express rule.
Albany/Nassau County, 3rd & 10th Judicial Districts (both DAJO Programs)	No, but uses guidelines	No	Administrative Judge of that Judicial District, or their designee.	No express rule.

1. NYCLA expressly provides for online hearings. All programs are permitted to conduct online hearings.
2. Guidelines for online hearings (in the absence of published rules governing online hearings) are located at: <https://www.nycourts.gov/LegacyPDFS/admin/feedispute/Part137-Online-Arbitration-Guidelines.pdf>.
3. NYCLA is the only program that has adopted and maintains a mediation program.
4. Both the Erie County and the Monroe County Bar Association (7th Judicial District) offer pre-arbitration settlement services.

REMEMBER: ALWAYS CHECK-IN WITH LOCAL PROGRAM ADMINISTRATORS ABOUT HOW THE LOCAL PROGRAM OPERATES

Conducting the Hearing (2)



Part 137 Arbitrator's Information Sheet

Dear Arbitrator: Thank you for volunteering your time to arbitrate this fee dispute. Here are some tips to help you during the hearing. Remember, the Local Program Administrator can help you with questions during the hearing. Please contact _____ at _____-_____-_____ if you have questions or concerns.

SEQUENCE OF ARBITRATION HEARING

- Open the Session
 - Avoid ex-parte small-talk, introduce yourself, and confirm parties' names and their spellings on forms.
 - Discuss the Purpose of the Program

To encourage out-of-court resolution of fee disputes between attorneys and clients in fair, impartial and efficient programs established and administered by bar associations and local offices of the Office of Court Administration.

- Frame the Issue for the Arbitration:

The burden is on the attorney to prove the reasonableness of the fee by a preponderance of the evidence and to present documentation of the work performed and the billing history.

Remind parties that the program does not resolve issues of professional malpractice or misconduct.

Conducting the Hearing (3)

- Offer Parties an Opportunity to Settle:

The arbitrator(s) should not be present during any settlement discussions. If the parties reach a settlement, you may help the parties incorporate the terms of their settlement into a Stipulation of Settlement form. Only those terms of settlement that relate to the attorney's fee should be included in the Stipulation of Settlement form.

- Remind Parties of Their Rights.

The parties would have been already notified through the local program of their rights. Parties should have made arrangements ahead of time.

- Counsel

- Call witnesses

- Stenographic record

- Subpoena documents and compel attendance of witnesses

May 1, 2012

Resolving a Part 137 Dispute by Stipulation of Settlement (2)

-OR-

(b) The AMOUNT TO BE
REFUNDED by the attorney is: \$.....

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

ATTORNEY

CLIENT

(Please print names below signatures)

Dated: _____ [Give copy to each party]

Resolving a Part 137 Dispute by Stipulation of Settlement (3)

① = parties and exchanged at the time of payment of the \$7,000.00 settlement amount ("Settlement Amount"); ② parties agree that this settlement shall remain confidential

UCS 137-11 (11/01)

and In the Matter of Fee Dispute shall not be disclosed unless required by law; ③ parties agree that immediately and simultaneously upon receipt of the Settlement Amount, Client's file in its entirety shall likewise be given to Client

Arbitration between
Client
and
Attorney's
Attorney

STIPULATION OF SETTLEMENT

(Office Use Only)
Case Number: REDACTED FOR CONFIDENTIALITY
Custom Case Number: REDACTED FOR CONFIDENTIALITY

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:

④ Facsimile/PDF signatures on all settlement documents shall be deemed the equivalent of original signatures.

1. The AMOUNT IN DISPUTE \$8,751.37
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): \$7,000.00
3. The AMOUNT of this total PREVIOUSLY PAID by the client is: \$0.00
4. (a) The BALANCE DUE by the client to the attorney is: \$7,000.00
(b) The AMOUNT TO BE REFUNDED by the attorney is: \$0.00

This Settlement Agreement may be executed in one (1) or more counterparts, each of which shall constitute an original document, and when taken together shall constitute a complete document.

Other terms: ① Mutual General Releases - Standard Blumbers form to be prepared by Attorney, executed by the ② / by cash or certified / bank check

It is further agreed that the payment of the amount shall be made within 14 days of the date of this stipulation.

REDACTED FOR CONFIDENTIALITY

REDACTED FOR CONFIDENTIALITY

⑤ Attorney shall not be obligated to keep and will not so keep a copy of the Client's file upon Attorney's tender of same to Client.

Dated: 06/14/18 [Give copy to each party]

Resolving a Part 137 Dispute by Stipulation of Settlement (4)

UCS 137-11 (1/01)

.....

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

REDACTED FOR CONFIDENTIALITY, Client

and

REDACTED FOR CONFIDENTIALITY, Attorney

.....

(Office Use Only)

Case Number: **REDACTED FOR CONFIDENTIALITY** 48

Custom Case Number: **REDACTED FOR CONFIDENTIALITY** 4

STIPULATION OF SETTLEMENT

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:

- The AMOUNT IN DISPUTE \$ 2,865
- 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): \$ 1,065
- The AMOUNT of this total PREVIOUSLY PAID by the client is: \$ 1,065
- (a) The BALANCE DUE by the client to the attorney is: \$ _____

-OR-

- (b) The AMOUNT TO BE REFUNDED by the attorney is: \$ 1,800

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** Nov 11, 2020 14:38 EST

REDACTED FOR CONFIDENTIALITY Esq. **REDACTED FOR CONFIDENTIALITY**

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

2020-11-11 - Stipulation of Settlement - **REDACTED FOR CONFIDENTIALITY**

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** D94wN

"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 - 7:38:44 PM GMT - Time Source: server - IP address: **REDACTED FOR CONFIDENTIALITY**
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2020-11-11 - 7:39:02 PM GMT - IP address: **REDACTED FOR CONFIDENTIALITY**
- 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

Adobe Sign

Resolving a Part 137 Dispute by Stipulation of Settlement (5)

Head over to <https://helpx.adobe.com/sign/using/get-started-guide.html> to learn how to use Adobe Sign to create and sign PDF documents electronically.

The screenshot shows a web browser window displaying the Adobe Sign Get Started guide. The browser's address bar shows the URL <https://helpx.adobe.com/sign/using/get-started-guide.html>. The page features the Adobe logo and navigation menus for various Adobe services. The main heading is "Adobe Sign Get Started guide". Below the heading, there is a search bar and a "Welcome to Adobe Sign!" section. The "Welcome to Adobe Sign!" section contains two paragraphs of introductory text. A "Note" box is present, providing information about license levels and support. On the right side, there is a "ON THIS PAGE" section with a list of links to various topics. At the bottom right, there is a "Was this page helpful?" button and a "Last Published: September 22, 2020" date. The Windows taskbar is visible at the bottom of the screenshot.

File Edit View History Bookmarks Tools Help

Adobe Sign Get Started guide x +

https://helpx.adobe.com/sign/using/get-started-guide.html

Adobe Creativity & Design Marketing & Commerce PDF & E-signatures Business Solutions Support Sign In

ADOBE SIGN Learn & Support Get Started User Guide Tutorials Free Trial Buy Now

Adobe Sign Get Started guide

Search Adobe Support

Welcome to Adobe Sign!

Before you begin using Adobe Sign, we've got some basics to run through. The purpose of this guide is to get you familiar with Adobe Sign and the functionality available to you as a user.

This guide covers all the important processes in Adobe Sign and familiarizes you with the user interface. The Adobe Sign Help system provides more in depth information where needed. If you are connected to the Internet, you can click on the links in the grey boxes that begin with the text "Additional information ..." to view the related help topics.

Note:

Where applicable, features and functions specific to business and/or enterprise levels of service are noted. This guide documents the features and functions available at the highest level of license agreement, Adobe Sign for enterprise. To determine your license type, go to *My Profile*. If you have questions about the features available for your license, please contact your Client Success Manager or [Adobe Sign Support](#).

Adobe Sign is a highly customizable application with a wide range of features that may or may not apply to how you do business. Your account administrator or group administrator may have disabled some of the options described. If you have

ON THIS PAGE

- Welcome to Adobe Sign!
- Page by Page Overview
- Sending Agreements
- Signing Environment
- Managing Agreements
- Reports (business and enterprise service levels only)
- Preview and Authoring Experience
- Library Templates
- Alternate Workflows for Signatures
- Mobile Devices

Applies to: Adobe Sign

Last Published: September 22, 2020

Was this page helpful?

Encrypting ...8349JXVXS

Conducting the Hearing (4)



Part 137 Arbitrator's Information Sheet

Right to de novo review (unless waived)

- Discuss Evidence

Formal rules of evidence do not apply

Explain “preponderance of the evidence”

The trier of fact must believe that it is more probable that the fact is true or exists than it is that it is false or does not exist.

- Discuss Timelines for Issuing the Award

Award must be issued within 30 days after the date of the hearing.

- Administer Oaths
- Main Presentation by Attorney to Justify Bill.

Burden is on Attorney to prove that the fee is reasonable. There is no burden on Client to prove that fee was unreasonable.

More on Administering Oaths

Administering Oaths

- All witnesses—including the attorney and client—must swear or affirm that the evidence and testimony they present at the arbitration hearing is truthful.
- CPLR § 2309(b): An oath or affirmation shall be administered in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs.
- “Do you swear or affirm that the evidence and testimony you present in this hearing shall be the truth, the whole truth, and nothing but the truth?”
- What about the witness who refuses to swear or affirm?
 - If the witness refuses to swear or affirm because to do so would violate the tenets of his or her religion, the arbitration may proceed and the witness may offer testimony without taking an oath. A decision on this ground should not affect the arbitrator’s assessment of the witness’s credibility.
 - The arbitrator might want to advise the reluctant witness that the failure to offer evidence under oath could affect the arbitrator’s assessment of the credibility of the evidence.

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Conducting the Hearing (5)

- Client Questions Attorney on Attorney's Presentation

Arbitrator should avoid questioning parties. Your questions may interrupt the flow of the presentations. Write down your questions and wait until after closing remarks; your question may have been answered by then. If it wasn't and you feel you must ask your question in order to render your award, then ask.

- Main Presentation by Client

- Attorney Questions Client on Client's Presentation

- Attorney's Closing Remarks

- Client's Closing Remarks

- Conclude the Hearing & Thank Parties

- Draft & Submit Award

- Indicate whether Attorney met the burden based on the preponderance of the evidence and identify the reasons that support this conclusion; the arbitrator(s) should not indicate that Client failed to establish that the fee was unreasonable.
- State that you have reviewed the parties' testimony and documentary evidence.
- Keep it concise; write the statement of reasons on the award itself in the space provided on the form. Write legibly.
- Sign the award and confirm that the award has the correct date.

CHECK THE RETAINER

- WAIVER OF DE NOVO?
- WAIVER OF LIMITATIONS ON THE AMOUNT IN CONTROVERSY?
- NOTICE TO THE CLIENT - *RETAINER MAY REQUIRE NOTICE TO BE SENT BEFORE ARBITRATION COMMENCED*
- WHO MAY COMMENCE ARBITRATION?
- Check the "Arbitration Clause" before you begin. At the end, you may wish to ask the attorney why he is bringing the claim in the Part 137 forum.

Sample Retainer Provision - Amount and De Novo Waivers

IV. **Arbitration** While we seek to avoid any fee disputes with you, in the event such a fee dispute does arise as to our fee for legal services, **regardless of the amount in dispute**, we both agree that we will resolve the feet dispute by arbitration conducted pursuant to Part 137 of the Rules of Chief Administrator of the Courts (22 NYCRR), **except that we both agree to be bound by the decision of the arbitrator(s) and to waive our rights to commence an action on the merits (a trial *de novo*) to reject the award of the arbitrator(s) in a court of law within thirty days after the decision of the arbitrators has been mailed.**

In signing this agreement, you would knowledge that you have reviewed the online information for the locality which your matter is pending found at

http://www.nycourts.gov/admin/feedispute/local_programs.shtml.

You further knowledge that you understand that you are not required to agree to arbitration nor, having agreed to arbitration, to agree to waive your right to seek a trial *de novo* under Part 137, **but have nonetheless agreed to do so.**

CHECK FOR ARBITRABILITY

SUBJECT MATTER OF DISPUTE MAY NOT BE FOR:

- representation in criminal matters;
- amounts in dispute involving a sum of less than \$1,000 or more than \$50,000, except on consent
- substantial legal questions, including professional malpractice or misconduct
- claims against an attorney for damages or affirmative relief other than the amount of the fee
- disputes where the fee to be paid by the client has been determined by statute or rule
- disputes where no attorney's services have been rendered for more than two years
- disputes where the attorney is admitted to practice in another jurisdiction and maintains no office or no material services performed in the State of New York
- disputes where the request for arbitration is made by a person who is not the client of the attorney or the legal representative of the client
- disputes where the attorney and client consented to submit fee disputes for final and binding arbitration to an arbitral forum other than an arbitral body created by Part 137

COMPETENCE-COMPETENCE – WAS CONTRACT VALID?

WAS THERE A WAIVER OF ANY OF THE ABOVE? TIMELY OBJECTION TO ARBITRABILITY?

NON-APPEARANCE BY A PARTY

TESTIMONY BY DECLARATION UNDER PENALTY OF PERJURY

ADJOURNMENTS: IF PARTIES AGREE, FOR GOOD CAUSE, OR
ARBITRATOR DISCRETION

- Grant an adjournment the first time liberally! (IMHO)
- Are there extenuating circumstances (ILLNESS)? BE KIND!
- Is a party going to retain counsel? Give him/her/them the chance to do so!

NON-COMPLIANCE OR LATE COMPLIANCE WITH PRODUCTION OF
DOCUMENTS - THE "5-DAY RULE"

- Is what is in controversy something the parties already have?
- Would any REAL prejudice result?

LET THE PARTIES TELL THE STORY

- BE QUIET AND LISTEN! YOU ARE NOT A JUDGE!!!
- W.A.I.T. = Why Am I Talking? Ask yourself, “MUST I speak?”
 - DON'T INTERRUPT WHILE THE PARTIES ARE MID-PRESENTATION!
 - ❖ Take notes on something you want to ask or clarify.
 - You are not there to cross-examine or show how smart you are!
 - ❖ Leave your EGO outside the hearing.
 - MAINTAIN EYE CONTACT WITH THE PARTY SPEAKING! ON ZOOM, LOOK UP AND STRAIGHT AHEAD AT ALL TIMES! Prove to those present that you are paying attention (especially when Chair)!
 - TELL THOSE PRESENT YOU WILL TAKE NOTES BUT ARE STILL LISTENING TO THEM!
 - ASK THE PARTIES IF THEY HAVE ANY MORE EVIDENCE TO OFFER AND GET THEM TO ACKNOWLEDGE THEY DO NOT.

DELIBERATION ON A PANEL

- WORK TOGETHER AS A GROUP. DISCUSS THE BILLING ENTRIES AND WHAT SEEMS REASONABLE TO YOU. TAKE NOTE OF PATTERNS - REPEAT BILLING, DUPLICATIVE ITEMS
- WHAT DOES THE NON-LAWYER ON THE PANEL THINK?
 - OPTICS - THERE SHOULD NEVER BE THE APPEARANCE OF A "PRO-LAWYER PANEL"!
- EVERYONE GETS THEIR OPINION – NO ONE PERSON'S OPINION CARRIES MORE WEIGHT (but respect the Chair)!
- DON'T BULLY OTHER PANELISTS (and be extra-careful here if you serve as Chair)!
- DON'T MAKE YOUR OPINION THEIR OPINION. HEAR THEM OUT!

PART II

**AWARD DRAFTING AND
OTHER
POST-HEARING
RESPONSIBILITIES**

POST-HEARING OPTIONS

- Post-Hearing Briefs and/or Post-Hearing Evidence (Manual Pages 43-44) – Two Options (either of which involve notice to local Part 137 Case Admin.)
 1. Adjourn the hearing and reconvene to receive more evidence.
 - Major Advantage: Essentially eliminates claim that arbitrator(s) did not provide a full and fair opportunity to parties to offer evidence.
 - Major Disadvantage: The “additional evidence” may turn out to be cumulative evidence → a waste of time.
 2. Allow parties to submit post-hearing briefs and related evidence based on procedures and timeline set by arbitrator(s). (NB: Copies of all briefs and supporting evidence should be served on both the arbitrator(s) and other party).
 - Major Advantage: Parties and arbitrator(s) do not have to convene again in this asynchronous process, thereby saving time.
 - Major Disadvantage: Eliminates cost and time savings associated with Part 137 arbitration.

THE AWARD: WHAT TO AND NOT TO WRITE

- EVERY AWARD SHOULD SUBSTANTIALLY INCLUDE THE FOLLOWING – "The panel, having observed the credibility of the parties, considered the testimony of the parties and the documents produced at the hearing, finds by a preponderance of the evidence that the attorney is entitled to retain/must return \$____, and the client must pay a balance of \$____. "
- WHY CREDIBILITY IS KING!

REASONED AWARDS

- IF BASED ON FAULTY REASONING OR NOT IN COMPLIANCE WITH RULES, REASONED AWARDS MAY RESULT IN VACATUR. PROTECT THE AWARD!
- IN UNUSUAL SITUATIONS SUCH AS WHERE JURISDICTIONAL OR ARBITRABILITY ISSUES ARISE, REASONED AWARDS MAY ASSIST THE NEXT FINDER OF FACT, IF ANY, IN ADDRESSING VACATUR.
- REASONED AWARDS MAY BE BASED UPON THE ARBITRATOR(S) MAKING FINDINGS AS TO THE CREDIBILITY OF THE PARTIES. CREDIBILITY IS KING!
- NEVER FEAR WRITING A REASONED AWARD IF YOU NEED TO, BUT MAKE SURE YOU FOLLOW THE RULES IN ALL RESPECTS!

Sample Simple Redacted Award (1)

UCS 137-12 (11/16)

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

REDACTED FOR CONFIDENTIALITY

, **Client**

and

REDACTED FOR CONFIDENTIALITY

, **Attorney**

(Office Use Only)

Case Number:

REDACTED FOR CO

Custom Case Number:

REDACTED FO

029

**ARBITRATION
AWARD**

1. The AMOUNT IN DISPUTE

\$ 4,060

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):

\$ 1,375

3. The AMOUNT of this total PREVIOUSLY PAID by the client is:

\$ 1,375

4. (a) The BALANCE DUE by the client to the attorney is:

\$ N/A

-OR-

(b) The AMOUNT TO BE REFUNDED by the attorney is:

\$ 1,625

Sample Simple Redacted Award (2)

Statement of Reasons: Based on the testimony and evidence presented, the Arbitrator finds: (1) the Attorney received funds from the Client totaling \$3,000; and (2) the Attorney has proven by a preponderance of the evidence that she is entitled to \$1,375 of the amount in dispute. The Attorney must therefore refund to the Client the sum of \$1,625, which constitutes the difference between \$3,000 and \$1,375, forthwith.

AFFIRMATION

The undersigned arbitrator(s), having been duly appointed pursuant to the Rules of Joint Committee on Fee Dispute Resolutions (NYCLA, ABCNY and Bronx Bar Association) and pursuant to any applicable Rule of the Chief Administrator, Title 22, of the Official Compilation of Codes, Rules and Regulations, or the agreement of the parties to the dispute resolved by this award, and having duly taken the oath according to law and having duly heard the proofs and allegations of the parties hereto, hereby affirm(s), pursuant to CPLR 7507, under the penalties of perjury, that the above award is a true, correct and complete statement of the award rendered in the above-captioned arbitration, duly executed by the undersigned. This award may be executed in any number of counterparts and may be executed by way of facsimile or electronic signature, and if so, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Mr. Elan E. Weinreb, Esq.

Dated: **March 19, 2021**

[Mail copy to each party]

Sample Complex Redacted Award (1)

UCS 137-12 (11/16)

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

XXXXXXXXXXXXXXXXXXXX, **Client**

and

XXXXXXXXXXXXXXXXXXXX
Mr. XXXXXXXXXXXXX Esq., **Attorney**

(Office Use Only)

Case Number: XXXXXXXX

Custom Case Number: XXXXXXXX

ARBITRATION AWARD

1. The AMOUNT IN DISPUTE \$0

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):
There was no amount IN DISPUTE.

3. The AMOUNT of this total PREVIOUSLY PAID by the client is: \$ 0

4. (a) The BALANCE DUE by the client to the attorney is: \$ \$58,000

Statement of Reasons:

This matter was scheduled for September 21, 2021 at 9:30am. When the Respondent failed to appear, he was given another opportunity and the matter adjourned to November 3, 2021 at 1:30 pm, and he was so advised by the Administrator and the Claimant. He nonetheless failed to appear. The custody case retainer dated 4/30/18 (pg 4, para. B) did not include a provision binding the parties to resolve their dispute at a Part 137 arbitration. It required permission by the Respondent for the Claimant to initiate an arbitration, which was not obtained. Based upon the foregoing, the Tribunal is without jurisdiction to make an award with respect to the custody case retainer.

Sample Complex Redacted Award (2)

The support case retainer dated 10/1/18 (pg. 4, para. IV[A]) provided "in the event such a fee dispute does arise, as to our fee for legal services, *regardless of the amount in dispute*, you and we agree that we will resolve the fee dispute by arbitration conducted pursuant to Part 137 of the Rules of Chief Administrator of the Courts (22 NYCRR), except that we and you agree to be bound by the decision of the arbitrator(s) and we and you agree to waive our rights to commence an action on the merits (a trial de novo) to reject the award of the arbitrator(s)" (*emphasis supplied*). Based upon the foregoing grant of jurisdiction to the Tribunal, and the testimony and documentary evidence presented before the Panel, the attorney has proven by a preponderance of the evidence the reasonableness of his fee, namely \$58,000 as to the support case retainer. The panel finds that the attorney billed \$58,000 and the Respondent did not appear, provide any documentation, or testimony to demonstrate by a preponderance of the evidence that ANY of that amount was "in dispute" as defined by NYCLA Local Program Rule 1c and Footnote 1 thereto. Accordingly, the attorney/Claimant is entitled to \$58,000 on this support case retainer and \$58,000 total award.

AFFIRMATION

The undersigned arbitrator(s), having been duly appointed pursuant to the Rules of **Joint Committee on Fee Dispute Resolutions (NYCLA, ABCNY and Bronx Bar Association)**

and pursuant to any applicable Rule of the Chief Administrator, Title 22, of the Official Compilation of Codes, Rules and Regulations, or the agreement of the parties to the dispute resolved by this award, and having duly taken the oath according to law and ,000having duly heard the proofs and allegations of the parties hereto, hereby affirm(s), pursuant to CPLR 7507, under the penalties of perjury, that the above award is a true, correct and complete statement of the award rendered in the above-captioned arbitration, duly executed by the undersigned. This award may be executed in any number of counterparts and may be executed by way of facsimile or electronic signature, and if so, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Mr. XXXXXXXXXXX, Esq.

Nelson Timken, Esq.

Ms. XXXXXXXXXXXXXXX

Dated:

[Mail copy to each party]

Questions or Comments?



THE WEINREB LAW FIRM, PLLC
<http://www.weinreblaw.com>

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

The parties to this agreement, DAFFY DUCK (collectively, “Client”), ATTORNEY FIRM, PLLC, represented by its duly authorized representative, SUPER ATTORNEY, ESQ.(collectively, “Attorney”), and ELAN E. WEINREB, ESQ., ARBITRATOR 2, ESQ., and ARBITRATOR 3 (NON-ATTORNEY) (collectively, “Arbitrator”) agree as of INSERT DATE, 2021, 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 online/virtual arbitration.
2. The arbitration will be conducted online/virtually via a Part 137 Zoom Pro Account (“Zoom”).
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 Arbitrator, and no one else will enter the room during the arbitration. If Arbitrator has approved additional people in a party’s room, that additional person may need to be identified at the hearing.
5. That Arbitrator 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 arbitrations are confidential, and they will keep all information obtained during the arbitration confidential.
 - a. Section 137.10 (Confidentiality) states: All proceedings and hearings commenced and conducted in accordance with this Part, including all papers in the arbitration case file, shall be confidential, except to the extent necessary to take ancillary legal action with respect to a fee matter.
Arbitrator should remind parties that if a recording is made of the hearing, it is not useable in a subsequent court hearing.

PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

ARBITRATION AGREEMENT FOR ONLINE/VIRTUAL CASES

- b. No party or Arbitrator who makes a recording shall disclose the recording except as required for administration by the local program in connection with a complaint about an arbitration.
7. To have a pre-hearing Zoom call with Arbitrator 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 arbitration.
8. To consent to the intervention of Part 137 staff at any point in the arbitration processes in the unlikely event that a complicated technological issue or obstacle arises that is beyond the skill level of Arbitrator to resolve.
9. The Parties acknowledge that Arbitrator is impartial and cannot act as an advocate, representative, or counsel for any Party.
10. There is no attorney-client relationship between Arbitrator 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 Arbitrator.
11. Arbitrator shall not be liable for any act or omission in connection with the arbitration processes other than a willful disregard of his or her obligations under this agreement.
12. Recognize that any online/virtual arbitration session hearing conducted shall be considered a traditional, in-person arbitration session for purposes of all applicable legislation, regulations, and rules concerning traditional arbitrations.

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.

PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

ARBITRATION AGREEMENT FOR ONLINE/VIRTUAL CASES

AGREED, as of the date above first written:

Attorney:

Signature: _____

Print Name: Super Attorney, Esq.

Client:

Signature: _____

Print Name: Daffy Duck

Arbitrator:

Signature: _____

Print Name: Elan E. Weinreb, Esq.

Arbitrator:

Signature: _____

Print Name: Arbitrator 2, Esq.

Arbitrator:

Signature: _____

Print Name: Arbitrator 3 (Non-Attorney)

**RIDER TO PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION
PROGRAM ARBITRATION AGREEMENT FOR ONLINE/VIRTUAL CASES
(NYCLA Part 137 FDRP Case No. INSERT NO., INSERT CASE NAME)**

The parties to this Arbitration Agreement, electronically signed and accompanied by an Adobe Sign® audit trail, respectively dated April 14 and 15, 2021 (“Original Agreement”)—DAFFY DUCK (collectively, “Client”), ATTORNEY LAW FIRM, PLLC, represented by its duly authorized representative, SUPER ATTORNEY, ESQ. (collectively, “Attorney”), and ELAN E. WEINREB, ESQ., ATTORNEY ARBITRATOR, ESQ., and NON-ATTORNEY ARBITRATOR (collectively, “Arbitrator”)—as well as observer INSERT OBSERVER, ESQ. (“Additional Individual”), 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 Additional Individual accepts all terms of the Original Agreement as binding upon him as of INSERT DATE, 2021, *nunc pro tunc* (a/k/a retroactively). The Additional Individual further represents that he has 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. **Private Caucus Availability.** The parties understand and agree that in the interests of settlement, they may meet in confidential “caucus” sessions in virtual “Breakout Rooms” **separate and apart from the Arbitrator and only in their absence.**

The parties will treat as strictly confidential and refrain from disclosing to the Arbitrator or anyone else any information conveyed between them during any such caucus.
 - b. **Non-Signatories (Attorneys, Advocates, Witnesses, etc.).** Any attorney, advocate, or witness for a party participating in the arbitration 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.
 - c. **Arbitrator Indemnification.** The parties and signatories herein agree on behalf of themselves and their attorneys, advocates, and/or

**RIDER TO PART 137 ATTORNEY-CLIENT FEE DISPUTE RESOLUTION
PROGRAM ARBITRATION AGREEMENT FOR ONLINE/VIRTUAL CASES
(NYCLA Part 137 FDRP Case No. INSERT NO., INSERT CASE NAME)**

witnesses, that none of them will call or subpoena any of the Arbitrator in any legal, arbitral, or administrative proceeding of any kind to produce any notes or documents relating to the arbitration process or to testify concerning any such notes or documents, thoughts or impressions, or any other aspect of the arbitration process. If any party attempts to compel such testimony or production, such party shall indemnify and hold the Arbitrator harmless from, and reimburse the Arbitrator 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 and per each individual arbitrator called or subpoenaed, which the Arbitrator—either individually or collectively—may suffer or incur in lawfully resisting such compulsion.

- d. **One Party Speaking at a Time.** No party shall interrupt any other party while that other party is speaking. 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.

WHEREFORE, the parties, Arbitrator, and Additional Individual have **AGREED**, as of INSERT DATE, 2021:

Client:

Signature: _____

Print Name: Daffy Duck

Attorney:

Signature: _____

Print Name: Super Attorney, Esq.

Additional Individual:

Signature: _____

Print Name: Insert Observer, Esq.

Arbitrator:

Signature: _____

Print Name: Elan E. Weinreb, Esq.

Arbitrator:

Signature: _____

Print Name: Attorney Arbitrator, Esq.

Arbitrator:

Signature: _____

Print Name: Non-Attorney Arbitrator

CONFIDENTIAL NYCLA PART 137 ARBITRATION MATERIALS - INSERT CASE NAME AND NYCLA NUMBER

Arbitrators: Elan E. Weinreb, Esq. (Chair), INSERT ATTORNEY ARBITRATOR (Wing), INSERT NON-ATTORNEY ARBITRATOR (Wing) - Observer: INSERT OBSERVER - INSERT DATE - INSERT TIME OF HEARING

ONLINE/VIRTUAL ARBITRATION INFORMATION

Last Name	First Name	SMS Phone	E-mail	Role
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Client
Bova	Anthe Maria	INSERT PHONE	abova@nycla.org	FDRP Admin.
Romanelli	Federica	212-267-6646 (Voice)	FRomanelli@nycla.org	FDRP Admin.
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Observer
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Attorney
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Arbitrator
Weinreb	Elan E.	516-620-9716	eweinreb@weinreblaw.com	Arbitrator
INSERT NAME	INSERT NAME	INSERT PHONE	INSERT E-MAIL	Arbitrator

Tech Check Objectives/Checklist

Objective	Discussed
1) Obtain Emergency / "Plan B" Contact Information	
2) Establish Emergency / Plan "B" Protocol (SMS and Freeconferencecall.com)	
3) Familiarize Client and Attorney with Zoom Features (mostly ShareScreen, Breakout Rooms, Chat, and File Sharing)	
4) Review Other Online/Virtual Arbitration Agreement Considerations Such as Recording and Use of Documents as Evidence	
5) Presence of Observers and Rider to Arbitration Agreement	
6) Address Client and/or Attorney Concerns or Questions	
Deadline for Submission of Additional Documents, Recording Decision, and Subpoena of Witnesses: INSERT DATE - 12:00 p.m.	
Date of Virtual Hearing: INSERT DATE - INSERT TIME (with INSERT DATE - INSERT TIME (Thurs. as Spillover))	

Freeconferencecall.com Information
Dial-In Number (701) 801-9654

Note that all hearings held under the Attorney-Client Fee Dispute Resolution Part 137 Program (“Part 137”) of The New York County Lawyers Association **will be held virtually through Zoom for the foreseeable future.**

All new Part 137 **filings and replies will also be processed over e-mail**, through the dedicated New York County Lawyers Association Part 137 email: FeeDisputeAdmin@nycla.org.

Parties presently involved in a dispute that has been submitted to Part 137 and wish to attempt to resolve their dispute via virtual mediation/arbitration recognize that any online/virtual hearing conducted shall be considered a traditional, in-person session for purposes of all applicable legislation, regulations, and rules concerning traditional hearings.

Technology:

- Parties participating in a virtual hearing must have access to a computer, laptop, tablet, or smartphone with a camera, microphone and speakers or headset.
- Participants should use a secure password protected internet connection, not a public Wi-Fi connection.
- The technology-check and hearing will be conducted online through the Part 137 Zoom Pro Account (“Zoom”), where the arbitrator/mediator (“Neutral”) will serve as the “host” of the mediation.

Pre-Hearing Technology-Check:

- There will be a pre-hearing call, using Zoom, to familiarize the parties with the online platform.
- The Neutral will work through any technical issues using the online platform with the parties, so everyone is comfortable with the technology.
- The Neutral will discuss document exchange, and other non-substantive matters relating to the session.

Confidentiality:

- All participants should be in a private, quiet place and should try to limit visual distractions, including no use of virtual backgrounds without a clear need and approved by the Neutral.
- Pursuant to Local Program Rules Section 137.10 (Confidentiality): All proceedings and hearings commenced and conducted in accordance with this Part, including all papers in the hearing case file, shall be confidential, except to the extent necessary to take ancillary legal action with respect to a fee matter. Neutral should remind parties that if a recording is made of the hearing, it is not useable in a subsequent court hearing.
- The hearing may not be recorded other than by a stenographer unless permitted by the Neutral. Unanimous consent by the parties is preferred but not necessary.
- If a non-stenographic recording is permitted, the Neutral shall control the recording, using the recording mechanism of the online platform, and will ensure the entire hearing is recorded.

Neutral Immunity

- The Neutral is impartial and cannot act as advocate, representative, or counsel for any Party.
- There is no attorney-client relationship between Neutral and the participants of a hearing.
- A Neutral shall not be liable for any act or omission in connection with the hearing processes other than a willful disregard of his or her obligations under this agreement.

JOINT COMMITTEE ON FEE DISPUTES AND CONCILIATION

A Collaboration of the Association of the Bar of the City of New York, the Bronx County Bar Association, and the New York County Lawyers' Association

ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

LOCAL PROGRAM RULES

Preamble

The New York County Lawyers' Association, the Bronx County Bar Association and The Association of the Bar of the City of New York (referred to throughout as the "Associations") have established a Joint Committee on Fee Disputes and Conciliation (the "Committee"). The Committee seeks to resolve Lawyer-Client Fee Disputes in a variety of ways. Whatever the means employed, whether by Conciliation, Mediation, Arbitration or otherwise, the Committee's goal is to provide a private and economical means of resolving disputes in an atmosphere of mutual understanding.

The Committee has adopted the following Rules (the "Rules") to facilitate the Mandatory Arbitration of Fee Disputes between lawyers and clients. These Rules put into effect the requirements of 22 N.Y.C.R.R. Part 137 ("Part 137"), which provides for the informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation. In accordance with the procedures for arbitration, arbitrators shall determine the reasonableness of fees for professional services, including costs, taking into account all relevant facts and circumstances. Mediation of fee disputes is strongly encouraged. The Rules should be interpreted and applied consistently with the purposes of Part 137.

Although the Rules provide for hearings to resolve contested issues, in order to expedite resolution of disputes, all parties are encouraged to submit written statements and formally agree about facts whenever possible.

I. Application

- a. These rules shall apply and the Committee will hear fee disputes where:
 - 1) the attorney has commenced representation of the client on or after January 1, 2002;
 - 2) the attorney is admitted to the bar of the State of New York; and
 - 3) a material part of the legal services were rendered **or** the lawyer maintains an office in Bronx and/or New York Counties.
- b. For good cause shown, the Committee may transfer the dispute to another arbitral body approved by the Board of Governors or to such other arbitral body to which the parties unanimously consent.
- c. These rules shall not apply to any of the following:
 - 1) representation in criminal matters;
 - 2) amounts in dispute involving a sum of less than \$1,000 or more than \$50,000,¹ except that the Committee may hear disputes involving other amounts if the parties have consented;
 - 3) claims involving substantial legal questions, including professional malpractice or misconduct;
 - 4) claims against an attorney for damages or affirmative relief other than the amount of the fee;
 - 5) disputes where the fee to be paid by the client has been determined by statute or rule and allowed as of right by a court,

or where the fee has been determined by a court order;

- 6) disputes where no attorney's services have been rendered for more than two years;
- 7) disputes where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New York, or where no material portion of the services was rendered in New York;
- 8) disputes where the request for arbitration is made by a person who is not the client of the attorney or the legal representative of the client.
- 9) disputes where the attorney and client consented to submit fee disputes for final and binding arbitration to an arbitral forum other than an arbitral body created by Part 137. The consent must be in writing and in a form prescribed by the Board of Governors that oversees the Part 137 arbitration program.

2. Administration

The Associations shall provide at least one staff person (the "Administrator") to administer the arbitration proceedings contemplated by these Rules and to act as liaison with the Chair of the Committee and any Arbitrator² who is appointed under these Rules. The Office of the Administrator shall be located at the House of the New York County Lawyers' Association, 14 Vesey Street, New York, New York 10007. Any communication intended for the Committee shall be addressed to the Administrator.

3. Interpretation

The authority to decide whether the conditions of Rule 1 have been satisfied, to interpret these Rules, and to decide whether or to what extent they apply to the alleged dispute, shall be solely with the Committee Chair or his or her designee before an Arbitrator is appointed, and shall be solely with the Arbitrator after he or she has been appointed. Any such decision by the

Chair, the Chair's designee, or the Arbitrator shall be final and binding on the parties.

4. Modification of Procedures

These Rules shall apply to the arbitration of all disputes by the Committee required by Part 137. The parties may, however, by written agreement made prior to the commencement of proceedings, modify the procedures. Any such written modification shall be submitted to the Committee at the time the proceedings are initiated, and attached to the Request for Arbitration form. (Form 2).³ Any such procedures shall not be inconsistent with the requirements of Part 137, and shall be subject to approval by the Chair of the Committee.

5. Initiating the Arbitration; Procedure and Notice

a. Arbitration is voluntary for the client unless the client has previously consented in writing to submit fee disputes to the fee dispute resolution process established by Part 137, arbitration under these Rules shall be voluntary for the client. Mediation shall be voluntary for both the attorney and the client.

b. Attorney initiated Arbitration.

1) Procedure where client previously did not consent in writing to resolve fee disputes under Part 137

a) *attorney sends notice to client and client consents to arbitrate*

Except as set forth in paragraph (2), where the attorney and client cannot agree as to the attorney's fees or where the attorney seeks to commence an action against the client for attorney's fees, the attorney shall forward a written notice to the client, entitled Notice of Client's Right to Arbitrate, by certified mail or by personal service. The notice

i. shall be in a form approved by the board of governors;

ii. shall contain a statement of the client's right to arbitrate;

iii. shall advise that the client has 30 days from receipt of the notice in which to elect to resolve the dispute under this Part;

iv. shall be accompanied by the written instructions and procedures for the arbitral body having jurisdiction over the fee dispute, which explain how to commence a fee arbitration proceeding, and;

v. shall be accompanied by a copy of the "request for arbitration" form necessary to commence the arbitration proceeding.

If the client elects to arbitrate, the client should follow the procedure outlined below in Rule 5.d.2).

b) *attorney sends notice and client does not consent to arbitrate*

If the attorney forwards to the client by certified mail or personal service a notice of the client's right to arbitrate, and the client does not file a Request for Arbitration within thirty (30) calendar days after the notice was received, the attorney may commence an action in a court of competent jurisdiction to recover the fee and the client no longer shall have the right to request arbitration pursuant to Part 137 with respect to the fee dispute at issue. An attorney who institutes an action to recover a fee must allege in the complaint (i) that the client was served or received notice under Part 137 of the client's right to pursue arbitration and did not file a timely request for arbitration or (ii) that the dispute is not otherwise covered by Part 137.

2) Procedure where client previously consented in writing to resolve fee disputes under Part 137

Where the client has consented in advance to submit fee disputes to arbitration under subdivisions (b) and (c) of Part 137 section 137.2, and where the attorney and client cannot agree as to the attorney's fee, the attorney shall forward

to the client, by certified mail or by personal service,

- a) a copy of the "Request for Arbitration" (Form 2)
- b) a copy of the parties' arbitration agreement,
- c) these rules; and
- d) such other instructions that explain how to commence a fee arbitration proceeding (available from the Administrator).

Simultaneously the attorney shall file with the Administrator items a) and b) above and a certification that items a), b), c) and d) have been served by certified mail or personal service on the client.

c. Client initiated Arbitration

- 1) In the event the client decides he or she wants to use arbitration to resolve the dispute, and the Committee has jurisdiction, the client may directly contact the Administrator. Alternatively, the client may contact the attorney, who shall be under an obligation to refer the client to the Administrator. The Administrator then shall forward to the client the appropriate papers necessary to begin the arbitration process, including a copy of Part 137 and these rules.
- 2) If the client elects to submit the dispute to arbitration, the client shall file the "Request for Arbitration" form (Form 2) with the Administrator, and the Administrator shall mail a copy of the filed "Request for Arbitration" to the named attorney together with an "Attorney Response" (Form 3). The attorney is required to complete and return Form 3 to the Administrator within fifteen (15) calendar days of mailing. The attorney shall include with the "Attorney Fee Response" a certification that a copy of the response was served upon the client.

d. Receipt of the Request for Arbitration by the Committee

Upon receipt of a Request for Arbitration, the Committee shall determine whether a dispute exists within the jurisdiction of the Committee. If so, the Administrator will acknowledge in writing receipt of the Request for Arbitration and forward it to the opposing party with a response form.

With both the acknowledgment of the Request for Arbitration and its submission to the opposing party, the Administrator will ask both parties in writing whether they are willing to mediate the dispute. The following notice from the Committee will also be included:

The Joint Committee on Fee Disputes and Conciliation of the Association of the Bar of the City of New York, the Bronx County Bar Association, and the New York County Lawyers' Association is set up to assist in the resolution of fee disputes between lawyers and clients by mediation and arbitration.

As part of the voluntary settlement of a fee dispute claim, the client may be asked to sign a release which, as a matter of law in light of the language it contains, might be interpreted as a release of all claims against the lawyer, including but not limited to, claims for professional malpractice. Should a client be asked to sign any such release, the Joint Committee suggests that the client consider consulting independent counsel.

If both parties agree to mediate the dispute, the Committee's mediation rules shall apply.

6. Withdrawal and Failure to Respond; Decision To Be Made On the Basis Of the Evidence Presented

- a. The client may not withdraw from the process after the Administrator has received

the "Attorney Fee Response." If the client seeks to withdraw at any time after the Administrator receives the "Attorney Fee Response," the withdrawal will have no effect and arbitration will proceed as scheduled whether or not the client appears. A decision will then be made on the basis of the evidence presented.

- b. If the attorney, without good cause, fails to respond to a request for arbitration or otherwise does not participate in the arbitration, the arbitration will proceed as scheduled and a decision will be made on the basis of the evidence presented.

7. Arbitrators

- a. Designation and removal

1) The Committee shall maintain a list of attorney arbitrators and a list of non-attorney arbitrators. When selecting an arbitrator, the Administrator shall select the next available arbitrator on the appropriate list.

2) After receipt of the "Attorney's Fee Response," or after expiration of the 15-day response period, the Administrator shall designate the Arbitrator who will hear the dispute. The parties must receive at least fifteen (15) calendar days notice in writing of the identity of the Arbitrator.

a) Disputes involving a sum of less than \$10,000 shall be submitted to one attorney Arbitrator.

b) Disputes involving a sum of \$10,000 or more shall be submitted to a panel of three Arbitrators, which shall include one Arbitrator who is not a lawyer.

c) Instead of a three-Arbitrator panel, the parties may agree to submit the arbitration to one Arbitrator for disputes involving the sum of \$10,000 or more. Such agreement shall be in

writing, signed by all parties, and provided to the Administrator before the three-Arbitrator panel is selected. If such an agreement is submitted to the Administrator after the Administrator has selected a three-person panel, the parties must agree on one person from the selected panel to be the Arbitrator. If they cannot agree on one of the three persons on the panel, the arbitration will proceed with the three-person panel originally selected by the Administrator. In all cases where only one Arbitrator presides, such Arbitrator must be an attorney. Vacancies shall be filled in the normal manner provided under these Rules.

- 3) Either party may request the removal of an Arbitrator based upon the Arbitrator's personal or professional relationship to a party, counsel, witness or other participant, or based upon matters that the Arbitrator disclosed or should have disclosed pursuant to Rule 7.c.6). A request for removal must be made to the Administrator no later than five (5) business days prior to the scheduled date of the hearing. The Administrator shall forward the request to the Committee Chair or his or her designee, who shall have the final decision concerning the removal of an Arbitrator.

b. Vacancies

- 1) If an Arbitrator cannot perform his or her duties, the Administrator shall declare the position vacant and shall fill the vacancy in accordance with these Rules.
- 2) If, after the hearings begin, one or more vacancies occurs in a panel of arbitrators, the Administrator shall appoint another Arbitrator of the same category (attorney or non-attorney) as

the one vacating the post, unless the parties agree that the remaining Arbitrators continue to hear and decide the controversy without filling the vacancy.

- 3) If a substitute Arbitrator is appointed, all or part of the prior proceedings may be repeated at the sole discretion of the arbitration panel.

c. Qualifications and duties

- 1) Both lawyers and non-lawyers may serve as an Arbitrator.⁵
- 2) In recruiting Arbitrators, the Committee should make every effort to ensure that Arbitrators represent a wide range of law practices and firm sizes, a diversity of non-lawyer professions within the community, and a cross-section of the community.
- 3) Prospective Arbitrators shall submit a summary of credentials to the Committee, which the Committee shall keep on record.
- 4) Arbitrators shall be appointed by the Administrator pursuant to the Committee's rules and procedures.
- 5) All Arbitrators must sign a written oath or affirmation to faithfully and fairly arbitrate all disputes that come before them. These written oaths or affirmations shall be kept on file by the Committee.
- 6) All Arbitrators must conduct a conflict of interest check prior to accepting a case. A person who has any personal bias regarding a party or the subject matter of the dispute, a financial interest in the subject matter of the dispute, or a close personal relationship or financial relationship with a party to the dispute shall not serve as an Arbitrator. An Arbitrator shall disclose any information

that he or she has reason to believe may provide a basis for recusal.

- 7) Arbitrators shall serve as volunteers.
- 8) Arbitrators shall not be permitted to testify in a subsequent proceeding or trial "de novo."⁶

d. Jurisdiction

- 1) The Arbitrator is authorized to rule on his or her own jurisdiction under Part 137 and these Rules, including rulings as to an arbitration agreement's existence, scope or validity.
- 2) The Arbitrator is authorized to decide whether the contract that includes the arbitration agreement exists or is valid. The arbitration agreement in such contract shall be treated independently from the other provisions of the contract. If the Arbitrator finds the contract has no legal effect, such finding alone shall not make the arbitration clause invalid.
- 3) If a party objects to the Arbitrator's jurisdiction or to using arbitration to resolve a claim or counterclaim, he or she must raise the objection before or when filing the response to the Request for Arbitration. The Arbitrator may rule on such objections at any time, including in the final award.
- 4) The Arbitrator shall have the authority to enforce his or her orders through any reasonable means, including imposing monetary sanctions to the extent otherwise authorized by law, striking claims or defenses, and precluding the introduction of evidence. Upon application of a party, the Chair of the Committee may, in his or her discretion, vacate, in whole or in part, monetary sanctions totaling more than \$100.

8. Communications with the Arbitrator

- a. Except in the presence of all parties, neither a party nor a party's agent shall

communicate directly with an Arbitrator about the arbitration.

- b. Except in the presence of all parties, any communication from any party to an Arbitrator about the arbitration shall be made through the Administrator for transmittal to the Arbitrator. At the same time a party sends documents or other materials to the Administrator for transmittal to the Arbitrator, such party shall serve all other parties with copies of the same documents or other materials.
- c. The parties and the Arbitrator may agree, or the Arbitrator may direct, that parties communicate directly with the Arbitrator.

9. Preliminary Hearing

- a. A preliminary hearing may be held:
 - 1) at the request of a party;
 - 2) at the discretion of the Arbitrator, or
 - 3) at the discretion of the Committee.
- b. The Arbitrator should schedule the preliminary hearing within a reasonable time.
- c. The Arbitrator may conduct the preliminary hearing by phone at his or her discretion.
- d. The parties and/or their representatives may participate in the preliminary hearing.
- e. The preliminary hearing may be used to discuss all preliminary matters such as procedures to apply in the case, issue clarification, and scheduling.

10. Exchange of Documents and Other Information

- a. At any party's request or in the Arbitrator's discretion, the Arbitrator may order a party to produce documents and other information and to identify any witnesses the party intends to call to testify at the hearing.
- b. The parties shall exchange copies of all exhibits they plan to introduce at the hearing at least five (5) business days before the

hearing. Exhibits comprised solely of documents previously produced to all parties need not be exchanged.

- c. The Arbitrator may resolve any dispute about the exchange of documents and other information.

11. Date, Time, and Location of Proceedings

- a. Location

Fee dispute arbitration proceedings shall typically be conducted at the New York County Lawyers' Association, 14 Vesey Street, New York, NY 10007. Otherwise, they shall be conducted at other neutral sites. They shall not take place in the office of any interested party unless all parties consent in writing.

- b. Scheduling hearings

The Administrator shall arrange for the date, time, and location of each hearing subject to the availability of the Arbitrator and the parties. The parties shall cooperate with each other and the Administrator to schedule an early hearing date and shall abide by the schedule. The parties must receive at least fifteen (15) days written notice of the date, time, and location of the hearing.

12. Interpreters

A party who wants an interpreter shall arrange with the interpreter for his or her services and shall pay for such services.

13. Postponements

The Arbitrator may postpone a hearing:

- a. if the parties agree;
- b. if at least one party demonstrates good cause; or
- c. at the Arbitrator's discretion.

14. Absence From the Hearing

Any party may participate in the arbitration hearing without a personal appearance by submitting to the arbitrator testimony and exhibits by written declaration under penalty of

perjury. If, however, without making the requisite submission, one or more of the parties or their representatives is absent from the hearing without good cause, the hearing shall proceed as scheduled, as long as the absent person received notice of the hearing or waived the right to attend. A decision on the fee dispute will be made on the basis of the evidence presented.

15. Recording of Proceedings

Any party may arrange for a stenographic or other record of the proceedings at the party's expense and shall provide a copy to the Arbitrator of any transcript that is produced. Any other party to the arbitration shall be entitled to a copy of the transcript upon written request and will be responsible for the cost of obtaining it.

16. Arbitration Hearing

- a. Arbitrator's powers. The Arbitrator shall have the power to:
 - 1) take and hear evidence pertaining to the proceeding;
 - 2) administer oaths and affirmations; and
 - 3) compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the proceeding.
- b. Privacy of hearings; who may attend hearings
 - 1) The hearing shall be private unless the law provides otherwise.
 - 2) A person with a direct interest in the arbitration is allowed to attend the hearing.
 - 3) The Arbitrator is authorized to decide whether any person other than a party and its representatives should attend an arbitration hearing or part of an arbitration hearing.

c. Representation by counsel. Any party, at his or her own expense, may be represented by counsel.

d. Evidence

- 1) The rules of evidence need not be observed at the hearing.
- 2) The Arbitrator shall decide what evidence will be admitted.
- 3) The Arbitrator may order that additional evidence be provided to facilitate his or her decision in the case.
- 4) All parties and the Arbitrator must be present when evidence is taken. If a party is absent, the hearing shall continue if the absent party received notice of the hearing and is absent without good cause shown, or waived the right to attend
- 5) The Arbitrator shall apply applicable legal principles of privilege, including the attorney-client privilege to the extent it has not been waived as a result of the filing of the arbitration or the raising of issues in the arbitration.
- 6) Evidence by Affidavit and Post hearing Filing of Documents or Other Evidence
 - a) Any party may participate in the arbitration hearing without a personal appearance by submitting to the Arbitrator testimony and exhibits by written declaration under penalty of perjury.
 - b) The parties and the Arbitrator may agree, or the Arbitrator may direct, that additional evidence be provided to the Arbitrator after the hearing. Each party must be given a chance to examine the additional submissions and to respond to them.

e. Burden of proof

The burden shall be on the attorney to prove the reasonableness of the fee he or she

charged the client by a preponderance of the evidence, and to present documentation of the work performed and the billing history.

f. Order of proceedings

- 1) The attorney shall present evidence to support his or her fees. The client shall then present evidence to support his or her claims. Witnesses for each party shall also submit to questions from the Arbitrator and the adverse party.
- 2) The client shall have the right of final reply.
- 3) The Arbitrator may conduct the hearings in a manner designed to resolve the dispute expeditiously yet fairly.

17. Interim Measures

By agreeing to Arbitration under these Rules, the parties shall be deemed to have conferred upon the Arbitrator the authority to issue such provisional or interim orders or awards as the Arbitrator may deem necessary, desirable, just or equitable, to the extent otherwise authorized by law. Consistent with the authority recognized by this Rule, and subject to the provisions of Part 137 relating to de novo review, the parties shall be deemed to have irrevocably consented to the entry of an order in the appropriate Court embodying such provisional or interim order or award, pursuant to CPLR 7502(a) and 7510 and/or any other applicable law, and to have waived any objection, jurisdiction or otherwise, to judicial confirmation and enforcement of such provisional or interim order or award.

18. Closing the Hearing

- a. The Arbitrator shall close the hearing, where one or more parties have appeared, after expressly asking the parties who appeared whether they have additional evidence to offer, and
 - 1) the parties acknowledge they have no more evidence to offer; or
 - 2) the Arbitrator thinks the record is complete.

- b. If the parties who have appeared at a hearing are to file written submissions subsequent to the hearing, the hearing shall be closed as of the last date on which the submissions are due to be filed with the Administrator.

19. Reopening of the Hearing

- a. The arbitrator may reopen the hearing before issuing the award
 - 1) on the Arbitrator's own initiative; or
 - 2) if at least one of the parties requests it.
- b. The arbitrator may not reopen the hearing if reopening the hearing will prevent the Arbitrator from issuing the award within the time required by the parties' arbitration agreement. The parties may, however, agree to extend the time, in which case the Arbitrator may reopen the hearing.
- c. The time to issue the award if a hearing is reopened shall be thirty (30) days after the reopened hearing is closed.

20. Expenses

- a. Each party shall be responsible for the party's own expenses.
- b. Each party shall be responsible for the expenses of witnesses the party produces.
- c. The parties shall share equally all other arbitration expenses unless
 - 1) they agree otherwise; or
 - 2) the Arbitrator rules otherwise, whether in an interim order or in the final award.

21. The Award

- a. Time and form of award

The arbitration award shall be issued no later than thirty (30) calendar days after the close of the hearing. Arbitration awards shall be written, executed and approved by a majority of the Arbitrators in the manner required by law, and shall specify in a concise statement the bases for the determination. Except as set forth in Part

137 section 137.8 (relating to trials de novo), all arbitration awards shall be final and binding.

- b. Delivery of award to parties

The award may be delivered to the parties or their counsel at their last known addresses by mail, personal service, facsimile, e-mail, or any other method permitted by law.

22. Waiver of Rules

- a. Any party who continues to participate in the arbitration after learning that there has not been compliance with any provision or requirement of these Rules, but fails to object in writing, shall have waived the right to object.
- b. Except for the time requirements of Rule 5, the Arbitrator has the discretion to extend any time requirements imposed on any of the parties by these Rules.

23. Filing Fees

- a. The following schedule of filing fees shall be paid by each party upon filing the party's initial document (Request for Arbitration or the response) with the Committee and shall apply to all arbitrations eligible for arbitration under Part 137:

Amount in Dispute	Fee to each Party
\$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
20,000.00-34,999.99	200
35,000.00- 50,000.00	350

- b. In cases where the parties agree to use one arbitrator, the filing fee for each party will be \$75 or the amount on the above schedule, whichever is less.
- c. The Chair of the Committee may waive, defer, or reduce filing fees in cases of extreme hardship.

24. Confidentiality

All proceedings and hearings commenced and conducted in accordance with Part 137, including all papers submitted in connection with the arbitration, shall be kept confidential, except to the extent necessary to take related legal action with respect to a fee matter. After a decision is rendered, Arbitrators should refer all requests for information concerning the fee dispute at issue in the arbitration to the Administrator.

25. Release of Documents for Ancillary Legal Action

If a party requests it in writing, the Committee shall provide to the party certified copies of any papers it has that may be needed to take ancillary legal action with respect to the fee matter. The party who requests the certified copies shall pay the cost of providing them.

26. Trial De Novo

If a party files an action for de novo review under Part 137, section 137.8, the party shall so advise the Committee.

27. Referral of Attorney to the Grievance Committee

a. Failure to participate in the arbitration

All attorneys are required to participate in the arbitration program established by Part 137 if a client files a request for arbitration under 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.

b. Professional misconduct

If, as a result of the fee dispute arbitration process, the Arbitrator or Committee becomes aware of evidence of professional misconduct, the Arbitrator or Committee shall refer such evidence to the appropriate grievance committee of the Appellate Division.

28. Mediation

- a. The parties may avail themselves of mediation provided by the Committee. The mediation program permits arbitration pursuant to Part 137 in the event the mediation does not resolve the fee dispute.
- b. All mediation proceedings and all settlement discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration.
- c. The mediator who mediated the parties' fee dispute may not serve as arbitrator of that same dispute.
- d. No filing fees in addition to those charged for arbitration shall be charged for the mediation of a fee dispute.

29. Immunity

Neither the Associations, nor the Committee, its Chair or members, Administrator, Arbitrator and staff person acting under these Rules, shall be a necessary party in any judicial proceedings relating to any arbitration conducted in accordance with these Rules. None of the parties listed in the preceding sentence shall be liable for any act or omission relating to any dispute in connection with any arbitration conducted under these Rules. Without limiting the scope of the preceding two sentences, it is intended that the Committee, its Chair and its members, and any Arbitrator acting under these Rules have the same immunity as a judicial officer or body would have in a court proceeding. The parties to any arbitration held under these Rules will be deemed to have conferred the immunity described above.

30. Standards of Common Sense

The parties will be deemed to have conferred upon the Arbitrator the authority to decide their dispute in consideration of equity, justice and common sense. The Arbitrator shall not be bound to apply rules of substantive law, procedure or evidence.

1. The disputed sum is the portion of the fee upon which the attorney and client disagree, and not the total amount of the fees charged by the attorney.

2. Throughout these Rules, the term "Arbitrator" will refer to both a single arbitrator or a panel of three arbitrators.

3. All Forms required under these Rules are contained in the Appendix to these Rules.

5. Non-lawyers may only serve as an Arbitrator on a panel of Arbitrators.

6. Trial "de novo" means a trial in court about the same fee dispute. It does not mean an appeal of the Arbitrator's decision.

BAR ASSOCIATION
OF ERIE COUNTY

Dispute Settlement Rules

Approved by the New York State
Fee Dispute Resolution Program Board of Governors

In accordance with Part 137 of the Rules
of the Chief Administrator

September 2012

F O R E W O R D

The Bar Association of Erie County is pleased to sponsor a community forum for the resolution of fee disputes arising between clients and lawyers.

The Forum operates as a dispute settlement tribunal in civil fee disputes and is empowered to determine, on a selective basis, disputes not involving fees. This flexibility is intended to meet, at least in part, a growing need in society for more simplified mechanisms for the resolution of conflicts.

The proceedings of the tribunal are consistent with Part 137 of the Rules of the Chief Administrator “Fee Dispute Resolution Program” with the Association acting as impartial administrator.

This rules booklet specifically details the processing of fee disputes through the Bar Association of Erie County forum. Parties to a fee dispute may also find the New York State Unified Court System website helpful. The website is www.courts.state.ny.us/admin/feedispute

In promoting the speedy resolution of fee disputes it is hoped that the tribunal will foster a more just society, strengthen the integrity of professional relationships between individual clients and members of the bar and advance community confidence in the legal profession as a whole.

SECTION 1

DEFINITIONS

- A.** Administrator – The Executive Director of the Bar Association of Erie County.
- B.** Arbitration – The settlement of disputes between parties by neutral third persons (Arbitrators) who are designated by the Administrator to hear the evidence presented by the parties and render an Award.
- C.** Association – The Bar Association of Erie County.
- D.** Award – The decision of the arbitrator(s).
- E.** Claimant – The person making a claim by filing a petition under these rules.
- F.** Dispute Settlement Tribunal – A neutral forum sponsored by the Association for the resolution of disputes.
- G.** Eighth Judicial District – the eight counties of western New York: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming.
- H.** Panel Member – An experienced attorney or layperson appointed by the President of the Association and found qualified to act as an arbitrator under these rules.
- I.** Part 137 – Rules of the Chief Administrator “Fee Dispute Resolution Program.”
- J.** Party – A person on one side of a dispute.
- K.** Person – An individual, partnership, corporation or other entity.
- L.** Respondent – The party against whom a complaint is made.
- M.** Rules – The Dispute Settlement Rules of the Bar Association of Erie County.

SECTION 2

DESIGNATION

The Executive Director of the Association is designated Administrator of dispute settlement procedures under these rules and may delegate duties to such officers, members and employees of the Association as he or she may direct.

SECTION 3

ARBITRATION PANELS

The Association shall establish and maintain a sufficient number of arbitrators to meet the caseload of the tribunal. In disputes involving amounts less than \$10,000 the panel shall consist of a single attorney arbitrator. In all other cases the panel shall consist of three arbitrators which shall include at least one layperson.

A. Attorney members – The President shall appoint attorney arbitrators. The attorney shall serve as chair of a three member panel. Attorney members shall be appointed to provide representation from as broad a spectrum of the Bar as possible. Attorney panel members as a whole shall constitute and function as the Attorney/Client Relations Committee and serve as a resource for the operation of the arbitration program. No attorney shall be appointed to a panel unless he or she is qualified to serve by reason of experience or practice.

B. Lay Members – Lay member arbitrators shall be appointed by the President from as broad a spectrum of the general public as possible, i.e., business, labor, commerce, industry, education, religion, homemakers, etc.

C. The Association will make every effort to insure that arbitrators represent a wide range of law practices and firm sizes, a diversity of non-lawyer professions within the community and a cross-section of the community.

SECTION 4

JURISDICTION

Effective January 1, 2002, the Tribunal shall have jurisdiction over every disagreement concerning a fee paid, charged or claimed for legal services in civil matters rendered to a resident of the Eighth Judicial District or to be rendered in the District by an attorney who maintains an office or resides in the District where there exists an express or implied attorney-client relationship. Excluded from tribunal jurisdiction are disputes over which the court has jurisdiction to fix fees; matters involving substantial legal questions, including professional malpractice or misconduct; amounts in disputes involving a sum less than \$1,000 or more than \$50,000, except in cases where the parties have consented; and criminal matters and matters where no services have been rendered within two years of the date on which the Petition is filed. By mutual consent disputes between attorneys, fee or otherwise, may be heard by three attorney panel members appointed by the Administrator.

SECTION 5

PROCEDURE

Every person alleging a fee complaint shall be referred to the Administrator. If there is a prior written agreement to arbitrate the claimant shall submit a copy to the Association.

A. If, after a summary investigation, the Administrator determines that a complaint exists, which is within the jurisdiction of the tribunal, the Administrator shall furnish the Claimant with a copy of the Rules and a Petition form. Complaints rejected by the Administrator shall be logged with the Association, together with a brief reason for rejection and maintained with the records of the Association for further reference if necessary.

B. Upon filing the Petition the Administrator shall mail a copy together with a copy of the Rules and an Answer form to the Respondent to be completed by the Respondent and returned to the Association within 15 days of mailing.

C. The Respondent shall provide the Claimant with a copy of the Answer. A certification that the copy was duly provided to the Claimant shall be submitted to the Association by the Respondent with the Answer.

D. The Administrator shall designate a panel to hear the controversy.

SECTION 6

EFFECT OF CONSENT TO ARBITRATE

By filing a Petition, on forms prescribed by the Association, a person is deemed to have adopted these rules and to have authorized the Association to act hereunder. An agreement shall be deemed to exist between the parties to submit the controversy to arbitration pursuant to these Rules with jurisdiction in the courts of the

state to enforce the agreement and to enter judgment on an award. A party may not withdraw from the process after receipt of an Answer. If the client seeks to withdraw at any time thereafter, the arbitration will proceed as scheduled and the matter will be decided upon the evidence presented.

SECTION 7

DISQUALIFICATION OF ARBITRATORS

An arbitrator shall disclose any circumstances likely to create a presumption of bias which might disqualify him or her and as an impartial arbitrator or whenever an arbitrator cannot in his or her opinion ethically or conscientiously serve. No person shall serve as an arbitrator if he or she has any financial or personal interest in the case. Either party may request the removal of an arbitrator based upon the arbitrator's personal or professional relationship to a party or counsel. Such request must be made no later than five (5) days prior to the hearing. The Association shall have the final decision on the removal of an arbitrator. The Administrator shall appoint arbitrators to fill panel vacancies.

SECTION 8

SETTLEMENT

Upon notice of appointment, the chair may contact both parties to determine if the dispute can be settled on an amicable basis. The Association encourages the settlement of disputes in advance of the hearings whenever possible. The chair, in attempting to settle disputes is not authorized to give legal advice. If the dispute cannot be settled in this way, the Administrator will promptly schedule a hearing date.

SECTION 9

HEARING

The Administrator shall fix a time and place for the hearing and notify the parties in writing personally or by regular mail not less than fifteen (15) days before the hearing. The Administrator may adjourn or postpone hearings.

A. Before hearing any testimony, the arbitrator(s) shall be sworn to hear and decide the controversy faithfully by an officer(s) authorized to administer an oath.

B. Each party is entitled to be heard, to present evidence and to cross examine witnesses. Notwithstanding the failure of a party duly notified to appear, the arbitrator(s) may hear and determine the controversy upon the evidence produced.

C. Each party has a right to be represented by an attorney and may claim such right at any time as to any part of the arbitration or hearings which have not taken place. This right may not be waived. If a party is represented by an attorney, papers to be served upon that party shall be served upon his or her attorney.

D. Whenever there is more than one arbitrator, the hearing shall be conducted by all the arbitrator(s) but a majority may determine any question and render an award.

E. The Chair of the panel shall preside at the hearing, rule on the admission and exclusion of evidence, questions of procedure and exercise all powers relating to the conduct of the hearing. The arbitrator(s) shall have power to issue subpoenas and administer oaths as provided by Article 75 of the CPLR.

F. To the extent otherwise authorized by law, the arbitrator(s) may issue such intermediate orders as they deem necessary or appropriate to facilitate the immediate delivery of papers or to safeguard the property of a party, including the escrowing of funds with the Association and make such inspections and/or investigations in connection with the case as may be necessary without prejudice to the rights of the parties or to the final determination of the dispute.

G. The arbitrator(s) may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. The arbitrator(s) shall require the party present to submit such evidence as may be required for the making of an award and will ordinarily offer the absent party an opportunity to appear at a subsequent hearing.

H. The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator(s) may deem necessary to an understanding of the dispute. The arbitrator(s) shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the arbitrator(s) and all the parties except parties absent in default and parties who have waived the right to be present. The arbitrator(s) may receive and consider the evidence of witnesses by affidavit but shall give it only such weight as they may deem it entitled to after considering any objections made to its admission.

I. Any party may participate in the arbitration hearing without a personal appearance by submitting to the arbitrator testimony and exhibits by written declaration under penalty of perjury.

J. The arbitrator(s) may grant adjournments upon the request of a party or upon their own motion and shall grant such adjournments where all parties agree thereto.

K. If, during the course of the fee dispute resolution process, the arbitrator or Association shall become aware of evidence of professional misconduct, that evidence shall be reported to the Office of Attorney Grievance Committees for the Eighth Judicial District.

SECTION 10

AWARD

The award shall be in writing, signed and acknowledged by the arbitrator(s) making it within thirty (30) days after the hearing is closed. The parties may, in writing, extend the time either before or after its expiration. A party waives the objection that an award was not made within the time required unless he or she notifies the Administrator in writing of such objection prior to the mailing of the award to him or her. The arbitrator(s) shall deliver the award in triplicate to the Administrator who shall cause a copy to be mailed to each party. The award shall be binding on both parties thirty (30) days after mailing of the award by the Association to the parties.

SECTION 11

DE NOVO REVIEW

Unless the parties have agreed in writing to waive the right to *de novo* review, a party aggrieved by the arbitration award may commence an action on the merits of the fee dispute in a court of competent jurisdiction within thirty (30) days after the arbitration award has been mailed. Notice of commencement of such action shall be provided to the Association. If no action is commenced within 30 days of the mailing of the arbitration award, the award shall become final and binding. Any party who fails to participate in the hearing shall not be entitled to seek *de novo* review absent good cause for such failure to participate. Arbitrators shall not be called as witnesses nor shall the arbitration award be admitted in evidence at the trial *de novo*.

SECTION 12

INTERPRETATION OF RULES

Where there is more than one arbitrator, differences arising among them concerning the meaning or application of these rules shall be decided by majority vote. If that is unobtainable, either an arbitrator(s) or party may refer the question to the Administrator for final decision.

SECTION 13

EXPENSES

The expenses of witnesses shall be paid by the party calling such witnesses. The administrator will make arrangements for a stenographic record at the request of a party who shall pay the cost of such record directly to the recording agency.

Any other party to the arbitration shall be entitled to a copy of the said record upon written request and payment of the expense thereof. The Administrator will also arrange for an interpreter upon the request of a party who shall pay the cost of such service directly to the interpreter. All other administrative costs under these rules shall be paid by the Association.

SECTION 14

CONFIDENTIALITY

With the exception of the award itself, all records, documents, files, proceedings and hearings pertaining to arbitration of disputes under these rules, in which both the Claimant and Respondent have consented to be bound by the result, may not be open to the public or any person not involved in the dispute, except to the extent necessary in connection with ancillary legal action with respect to a fee matter.

SECTION 15

PERIODIC REVIEW

The functioning of the tribunal shall be reviewed periodically from reports submitted by the Administrator to the President. The President shall then report any recommendations for change to the Board of Directors.

SECTION 16

EFFECTIVE DATE

These rules shall take effect immediately upon approval by the Board of Directors of the Association, the New York State Attorney-Client Fee Dispute Resolution Program Board of Governors and the Presiding Justice of the Fourth Department. These rules and any amendments shall apply in the form in effect at the time an arbitration is initiated.

NOTES



BAR ASSOCIATION
OF ERIE COUNTY

438 MAIN STREET, 6TH FLOOR
BUFFALO, NY 14202

716.852.8687

Suffolk County Bar Association

Dispute Resolution Program Rules

Suffolk County Bar Association
560 Wheeler Road
Hauppauge, New York 11788-4357
(631) 234-5511

Section 1 Establishment of Program

This program is established pursuant to part 137 of the Rules of the Chief Administrator, Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York and the Standards and Guidelines approved as of October 3rd, 2001.

Section 2 Definitions

The following definitions will apply throughout these rules, except as otherwise provided:

- "Program" means the Suffolk County Bar Association Dispute Resolution Program established pursuant to Part 137 of the Rules of the Chief Administrator
- A. "Client" means a person or entity receiving legal services or advice from a lawyer on a fee basis in the lawyer's professional capacity
- B. "Administrator" means the person primarily responsible for administration of the Program as designated by the Suffolk County Bar Association
- C. "SCBA" means the Suffolk County Bar Association
- D. "Arbitrator" means a person who serves as an arbitrator under the Program
- E. "Case" means any case or controversy cognizable under the Program where the amount in dispute is at least in the sum of \$1,000.00
- F. "Board" means the Board of Governors of the Attorney-Client Fee Dispute Resolution Program established under Part 137 of the Rules of the Chief Administrator
- G. "Fee Dispute" means the committee appointed by the Suffolk County Bar Association Board of Directors which oversees the Dispute Resolution Program and make decisions concerning administration of the Program.
- H.

Section 3 Application

These rules apply where representation has commenced on or after January 1, 2002, to all attorneys admitted to the Bar of the State of New York who undertake to represent a client in a civil matter, where the majority of legal services are performed in Suffolk County or where the attorney maintains an office for the practice of law in Suffolk County.

These rules shall not apply to any of the following:

1. representation in criminal matters;
2. amounts in dispute involving a sum of less than \$1,000.00 or more than \$50,000.00, except that an arbitral body may hear disputes involving other amounts if the parties have consented in writing;
3. claims involving substantial legal questions, including professional malpractice or misconduct;
4. claims against an attorney for damages or affirmative relief other than adjustment of the fee;
5. disputes where the fee to be paid by the client has been determined pursuant to statute or rule and allowed as of right by a court; or where the fee has been determined pursuant to a court order;
6. disputes where no attorney's services have been rendered for more than two years;
7. disputes where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New York, or where no material portion of the services was rendered in New York; and
8. disputes where the request for arbitration is made by a person who is not the client of the attorney or the legal representative of the client.

Section 4 Arbitrators

Applicants for membership as an Attorney Arbitrator must meet or exceed the following requirements:

- A. Minimum of five (5) years of admission to the Bar
- B. Member in good standing of the Suffolk County Bar Association or other recognized bar groups
- C. Ability to evaluate and apply legal principles
- D. Ability to manage the hearing process
- E. Minimum of six (6) hours of fee dispute resolution training or comparable training and experience in arbitration and/or other forms of dispute resolution
- F. Other relevant experience or accomplishments
- G. Freedom from bias and prejudice
- H. Thorough and impartial evaluation of testimony and other evidence
- I. Willingness to devote time and effort when selected to serve
- J. Willingness to successfully complete training under the guidelines of the Program

Applicants for membership as a Non-Attorney Arbitrator must meet or exceed requirements E through J above.

All training of arbitrators will be provided by the New York State Office of Court Administration at its sole cost and expense, or by the Suffolk County

Bar Association, or other recognized dispute resolution programs approved by the board.

Arbitrators will serve on a voluntary basis, without financial compensation.

Section 5 Initiating the Arbitration

The Submission Process

Client:

A client with a fee dispute starts the process by filing a request for dispute resolution with the Administrator of the Program together with the required filing fee of \$150.00 *see Financial Hardship Policy. Forms can be obtained by calling the Administrator at 631/234-5511, extension 222, by obtaining the form in person at the Suffolk County Bar Association, located at 560 Wheeler Road, Hauppauge, New York 11788-4357 or by requesting said form by facsimile transmission to the administrator (631/234-5899) or by e-mail to the administrator at fee@scba.org between the hours of 9:00 a.m. and 5:00 p.m., Monday to Friday, or you may download forms on the SCBA website at [www.scba.org/fee dispute/fee overview.html](http://www.scba.org/fee%20dispute/fee%20overview.html)

Attorney:

An attorney starts the process by sending a Notice of Right to Arbitrate and required forms to the client. If there is a prior written agreement to arbitrate, the initiating party shall submit a copy to the Administrator with their request to arbitrate. If the client fails to then file a request to arbitrate within 30 days, the attorney who's written agreement provides for such dispute resolution may file the request to arbitrate. An attorney is required to send by certified mail or by personal service, the notice of right to arbitrate with appropriate forms upon initiation of any dispute involving fees between client and attorney, and/or prior to commencement of any civil action for collection of fees.

A party may make application to the Administrator to have the filing fee waived, based upon limited financial resources which make the filing fee a financial burden or would prevent said client from utilizing this resolution program. The request must be made in writing to the Administrator who will have the discretion to grant or deny the request. Should the arbitration result in a finding in favor of the client for whom the fee was waived, the waived filing fee will be deducted from such award, and paid directly by the attorney to the Association, after deduction from said award.

The request for arbitration must contain the name and address of the parties along with the telephone numbers of the parties to be contacted, and a brief description of the claim and the amount involved.

Upon receipt of the request for arbitration, the Administrator will mail a copy of the request for arbitration to the named attorney, together with an attorney fee response, to be completed by the attorney and returned

to the Administrator within 15 days of mailing. The attorney will include with the attorney fee response, a copy of retainer or letter of engagement, if any, and an affidavit that a copy of the response was served on the client.

Upon receipt of the attorney fee response, or if no response is received within 15 days of mailing of the attorney fee response form to the attorney, the Administrator will endeavor to appoint an arbitrator or arbitrators to the case with experience in the subject matter of the representation. Arbitrators will be assigned from a panel of neutrals who have qualified to act as arbitrators in fee dispute matters. Disputes involving a sum of less than \$10,000.00, but more than \$1,000.00, will be submitted to one attorney arbitrator. Disputes involving a sum of \$10,000.00 or more, but less than \$50,000.00 (unless by agreement of the parties), will be submitted to a panel of three arbitrators, which will include one non-lawyer, unless otherwise provided for in writing.

When a party and attorney are notified of the appointment of the arbitrator(s), any conflict of interest shall promptly be disclosed in writing but not less than five (5) days prior to the scheduled hearing.

Upon receipt of a case, the Administrator will notify the parties of a date, time, and place for the hearing, which notice will be at least fifteen (15) days prior to the scheduled date, with the identity of the arbitrator or arbitrators. All arbitrations will be held at the offices of one of the arbitrators or at the Suffolk County Bar Association.

Section 6 Powers of arbitrator and conduct of the hearing

An arbitrator has the following powers:

- A. Issue subpoenas and administer oaths
- B. Take and hear evidence pertaining to the proceeding
- C. Rules of Evidence need not be observed at the hearing and either party, at his or her expense, may be represented by counsel. Representation by counsel must be disclosed on filing form or response
Arbitrator(s) may adjourn or postpone the hearing
- D.

The burden will be on the attorney to prove the reasonableness of the fee by a preponderance of the evidence and to present documentation of the work performed and the billing history. The client must present his or her account of the service rendered and time expended. Witnesses may be called by the parties. Participation may be by written statement sworn to under penalties of perjury. The client will have the right of final reply.

Any party may provide for stenographic or other record at the party's expense, providing that the panel is given duplicate copy at time of hearing upon request by the panel. Any other party to the arbitration will be entitled to a copy of said record, upon written request and payment of the expense for such record.

The arbitration awards will be issued to the parties no later than thirty (30) days after the completion of the hearing. Arbitration awards will be in writing and specify the basis for the determination. Except as set forth herein, all arbitration awards will be final and binding, unless a *trial de novo* is commenced under the Rules within the time set forth therein.

Neither the Associations, nor the Committee, its Chair or members, Administrator, Arbitrator and staff person acting under these Rules, shall be a necessary party in any judicial proceeding relating to any arbitration conducted in accordance with these Rules. None of the parties listed in the preceding sentence shall be liable for any act or omission relating to any dispute in connection with any arbitration conducted under these Rules. Without limiting the scope of the preceding two sentences, it is intended that the Committee, its Chair and its members, and any Arbitrator acting under these Rules have the same immunity as a judicial officer of body would have in a court proceeding. The parties to any arbitration held under these Rules will be deemed to have conferred the immunity described above.

The hearing will be conducted by either the sole or all of the arbitrators in case of a controversy in excess of \$10,000.00, but a majority may determine any question and render an award.

Section 7 Trial de novo

A party aggrieved by the arbitration award may, unless there is a written agreement to the contrary, commence an action on the merits of its fee dispute (a *trial de novo*) in a court with jurisdiction over the amount in dispute, within thirty (30) days after the arbitration award has been mailed. If no action is commenced within thirty (30) days of the mailing of the arbitration award, the award shall become final and binding. Upon filing of a demand for *trial de novo*, the aggrieved party shall also mail a copy of the demands to the Administrator and other side.

Any party who does not participate in the arbitration hearing will not be entitled to a *trial de novo* absent good cause for such failure to participate.

Arbitrators shall not be called as witnesses nor shall the arbitration award or record of the proceedings be admitted in evidence at the *trial de novo*.

Section 8 Communication with arbitrators

No party and no one acting on behalf of any party will communicate unilaterally concerning the arbitration with an arbitrator or a candidate for an arbitrator. Unless the parties agree otherwise or the arbitrator so directs, any communication from the parties to an arbitrator will be sent to the other party.

Section 9 Enforcement of arbitration awards

Any award that has become final and binding may be entered as a judgment upon moving to confirm said decision in a court of competent jurisdiction, by appropriate notice, pursuant to the CPLR Article 75.

Section 10 Vacancies

If, after an arbitrator is assigned to the case, the arbitrator is unable to perform his or her duties, they will promptly notify the Administrator, who will appoint a substitute arbitrator.

In the event that one arbitrator on a panel of arbitrators is unable to attend the hearing or continue, the remaining arbitrators may continue with the hearing to the determination of the controversy, unless one party objects. Upon receipt of an objection, the arbitration will be deemed terminated and the matter will be reassigned by the Administrator, who will appoint a substitute arbitrator to take the place of the arbitrator who was unable to begin or conclude the arbitration hearing.

Section 11 Attendance at hearings

The arbitrators will maintain the privacy of the hearings unless the rules or the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend the hearing. All attorneys are required to participate in the arbitration program. The arbitrators shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It will be discretionary with the arbitrators to determine the propriety of the attendance of any other person, other than a party and its legal representatives.

Section 12 Arbitration in the absence of a party or representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to participate or fails to obtain a postponement. An award will not be made solely on the default of a party. The arbitrator will require the party who is present to submit such evidence as the arbitrator may require to support the participant's position.

Section 13 Waiver of rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state an objection at the time of said arbitration or prior thereto, will be deemed to have waived the right to object.

Section 14 Majority decision

When the panel consists of more than one arbitrator, unless required by law or by these rules, the majority of the arbitrators (or the remaining arbitrators in the case of a vacancy under Section 10) must make all decisions.

Section 15 Interpretation and application of rules

The arbitrators will interpret and apply these rules in so far as they relate to the arbitrator's powers and duties. When there is more than one arbitrator, and a difference arises among them concerning the meaning or application of these rules, it will be decided by a majority vote. In the event that the Administrator or an arbitrator(s) is unable to resolve any issue concerning the arbitrator(s) duties or administration of this Program, said question will be referred to the Fee Dispute Resolution Committee for a final decision.

Section 16 Time of award

Unless otherwise agreed by the parties, the award shall be issued not later than thirty (30) days from the date of the completion of the hearing. The Administrator will, upon receipt of the award from the arbitrator or chair of the panel, mail the same to the parties at the address given by the parties for that purpose. The decision will be accompanied by a letter advising the parties of their rights regarding the decision.

Section 17 Record Keeping

- A. The Administrator will maintain a separate folder for each "Request for Arbitration" form received. The records are to be kept at the Suffolk County Bar Association for two **(2)** years. At the end of the two years, they may be disposed of as the Administrator sees fit.

- B. With the exception of the award itself, all records, documents, files, proceedings, and hearing pertaining to the arbitration of a dispute under these rules, in which both parties have consented to be bound by the results, may not be open to the public or any person not involved in the dispute, and shall be confidential except to the extent necessary to take ancillary legal action with respect to this fee matter.
- C. The Association will maintain the names, addresses, telephone numbers, and summary of credentials of the arbitrators and will update the same from time to time.

Section 18 Financial Hardship Policy

The program's standard policy is to make the program accessible to all who choose to use it. Toward that end, the program maintains a reasonable fee schedule that considers the financial exigencies of the non-lawyer participants, provides extended payment plans, and/or grants full or partial fee waivers under circumstances of extreme financial hardship. Every attempt will be made to keep the names of the individuals who seek hardship assistance and the information disclosed confidential.

Section 19 Amendment of Rules

These rules may be amended from time to time, upon majority vote of the Board of Directors of the Suffolk County Bar Association, the Board of Governors, and the Presiding Justice of the Appellate Division, 2nd Department.



THIRD JUDICIAL DISTRICT

PART 137: ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

LOCAL PROGRAM RULES AND PROCEDURES

SECTION 1 - POLICY

It is the policy of the Third Judicial District (“district”) to encourage out-of-court resolution of fee disputes between attorneys and clients in a fair, impartial and efficient manner. The Administrative Judge of the Third Judicial District is designated as the Administrator of the Attorney-Client Fee Dispute Resolution program under these Rules and may delegate duties to such officers, committees, and employees as he/she may direct.

SECTION 2 - DEFINITIONS

- A. “Answer” (also referred to as “Response to Request for Fee Arbitration”) means the response to the “Request for Fee Arbitration” or “Petition”.
- B. “Arbitrator” means the person(s) designated by the Administrative Judge or his/her designee to hear the evidence presented by the parties and make a final determination.
- C. “Administrator” means the Administrative Judge (or designee) of the Third Judicial District who oversees the Program.
- D. “Approval” by the Board of Governors means, where so required by Part 137, recommendation by the Board of Governors with approval of the appropriate Presiding Justice of the Appellate Division.
- E. “Arbitration” means the settlement of disputes between parties by neutral third person(s) who hear both sides and render an award.
- F. “Board” means the Board of Governors of the Attorney-Client Fee Dispute Resolution Program established under Part 137 of the Rules of the Chief Administrator.

- G. “Client” means a person or entity who receives legal services or advice from an attorney on a fee basis in the attorney’s professional capacity.
- H. “District Office” means the Administrative Judges Office of the Third Judicial District.
- I. “Petition” means a “Request for Fee Arbitration” requested by either the client or the attorney.
- J. “Petitioner” means the party requesting the fee arbitration.
- K. “Program” means the Attorney-Client Fee Dispute Resolution Program established under Part 137 and administered and implemented by the Administrative Judges Office of the Third Judicial District pursuant to the Rules and Procedures set forth herein.
- L. “Respondent” means the party responding to the petition in opposition to the claim.
- M. “Service” means personal service or service by certified mail.
- N. “Written Instructions” means the Standard Instructions to Clients For the Resolution Of Fee Disputes Pursuant to Part 137 Of the Rules Of the Chief Administrator (Form UCS137-3 5/02) published by the Office of Court Administration.

SECTION 3 - THE PROGRAM AND JURISDICTION

- A. The jurisdiction of this program will include the counties of Albany, Columbia, Greene, Rensselaer, Schoharie, Sullivan and Ulster.
- B. In the event of a fee dispute between an attorney and client, where the representation has commenced on or after January 1, 2002, whether or not the attorney already has received some or all of the fee in dispute, the client may seek to resolve the dispute by arbitration pursuant to the Program.
- C. Arbitration under this Program shall be mandatory for an attorney if requested by a client, and the arbitration award shall be final and binding unless de novo review is sought as further described herein.
- D. Arbitration of fee disputes between attorneys and clients, shall take place through this Program. However, this Program shall not apply to any of the following:
 - 1. Representation in criminal matters;
 - 2. Amounts in dispute involving a sum of less than \$1000 or more than \$50,000, except that the district may hear disputes involving other amounts

if the parties have consented;

3. Claims involving substantial legal questions, including professional malpractice or misconduct;
4. Claims against an attorney for damages or affirmative relief other than the adjustment of the fee;
5. Disputes where the fee to be paid by the client has been determined pursuant to statute or rule and allowed as of right by a court; or where the fee has been determined pursuant to a court order;
6. Disputes where no attorney's services have been rendered for more than two years;
7. Disputes where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New York, or where no material portion of the services was rendered in New York;
8. Disputes where the request for arbitration is made by a person who is not the client of the attorney or the legal representative of the client.

E. Pursuant to a written request and subsequent approval by the District Administrative Judge, the Board of Governors and the Presiding Justice of the Appellate Division, Third Judicial Department, this Program may be administered by a local bar association in accordance with all the rules and procedures set forth herein.

F. There shall be NO FEE charged to any of the parties who participate in the Attorney-Client Fee Dispute Resolution Program.

G. In the event Service becomes necessary, after having unsuccessfully attempted service by certified mail where required under these Rules and Procedures, the Petitioner must pay, in advance by check or money order made payable to the entity delegated to make such personal service the cost of such service. At the discretion of the arbitrator(s), and to the extent authorized by law, these costs may be added to the arbitrator(s) award, if previously paid by the prevailing party

- H. 1. Arbitration under this Program shall be voluntary for the client unless:
- (a) The client has previously consented in writing to submit fee disputes to the fee dispute resolution process by prior written agreement between the attorney and client wherein the client consented in advance to submit fee disputes to arbitration. To be valid on the part of the client, such consent must be knowing and informed. The clients consent shall be stated in a retainer agreement or other writing specifying that the client has read pursuant to Part 137, the district's approved Rules and Procedures and that the client consents to resolve fee disputes pursuant to the Program; or

- (b) The attorney and client have consented in advance to submit fee disputes to arbitration that is final and binding and not subject to a trial *de novo*. To be valid on the part of the client, such consent must be knowing and informed and obtained in the same manner as set forth in the previous subsection of this section, except that the retainer agreement or other writing shall also state that the client understands that he/she is waiving the right to reject an arbitration award and subsequently commence a trial *de novo* in a court of competent jurisdiction.

2. Where an agreement to arbitrate exists between the attorney and client under either subsections H1 (a) or (b) of this section, those provisions of Section 137.6(a) (1) and (b) of Part 137 relating to the notice of client's right to arbitrate shall not apply and no further notice of the right to arbitrate shall be required. In such circumstance, Section 137.6 (a)(2) of Part 137 shall apply and either party may commence the dispute resolution process by filing a Petition with the Administrative Judge, together with a copy of the parties' agreement to arbitrate.

3. The attorney and client may consent in advance to final and binding arbitration in an arbitral forum other than the one created under Part 137. To be valid on the part of the client, such consent must be knowing and informed and must be obtained in a retainer agreement or other writing. Arbitration in an arbitral forum outside Part 137 shall be governed by the rules and procedures of that forum. The Board may maintain information concerning other established arbitral programs and shall provide contact information for such programs upon request.

4. Fee disputes may be referred to the District Administrative Judge by means not specifically described in Part 137, including but not limited to, attorney disciplinary authorities, bar associations, and employees, officers or judges of the courts. In those instances, the Administrative Office shall provide the client with information about the Program.

I. Upon notice of appointment, the Chairperson may contact both parties to make an effort to settle the dispute, however, the Chairperson is not authorized to provide legal advice to any of the parties involved.

SECTION 4 - ARBITRATORS

The district shall establish and maintain a sufficient number of arbitrators in order to meet the Program's caseload. Attorneys and non-attorneys shall serve as arbitrators. In recruiting arbitrators, the district shall recruit arbitrators representing a wide range of law practices and a diversity of non-attorney professions and occupations representing a cross-section of the communities. The District Office shall seek the assistance of local Bar Associations in the recruitment of attorney arbitrators. Non-attorney arbitrators will be recruited by contacting established Alternative Dispute Resolution programs throughout the district as well as the Unified Court System, Office of Alternative Dispute Resolution Programs.

A. Attorney arbitrators, approved by the Board, shall be appointed to provide as broad a spectrum of the Bar as possible. For an attorney to qualify for appointment as an arbitrator, the attorney must meet the following criteria:

1. be admitted to the New York Bar for at least five years, and
2. been engaged in the practice of law for at least three years, and
3. be qualified as an arbitrator under the American Arbitration Association rules, by the Office of Court Administration or by the United States District Court through any of their arbitration programs; or
4. Have completed an district-approved arbitration training program or the equivalent.

B. Non-Attorney Arbitrators, approved by the Board, shall be appointed by the District Administrative Judge of the Third Judicial District from as broad a spectrum of the general public as possible. For a non-attorney to qualify for appointment as an arbitrator, the non-attorney must meet the following requirements:

1. be a resident of the 3rd Judicial District or work within the district.
2. be fluent in speaking, reading and writing English; and
3. have completed a district-approved arbitration training program or the equivalent.

C. The number of arbitrators assigned to hear a fee dispute matter under this Program shall depend upon the amount in dispute as follows:

1. disputes involving a sum of less than \$10,000.00 shall be submitted to one attorney Arbitrator; and
2. disputes involving a sum of \$10,000.00 or greater shall be submitted to a panel of three Arbitrators, which shall include at least one attorney and one non-attorney member of the public; the chairperson of all the panels shall be an attorney and all decisions on the merits shall be decided by majority rule.

D. Lists of attorney Arbitrators may be maintained under the following headings: matrimonials, litigation, real estate, business and other. Attorney Arbitrators will self-identify themselves as being within one or more of these areas and where practical, matters will be assigned to Arbitrators in order of placement on the respective lists; should there be a conflict of interest pursuant to subsection G of this section requiring the Arbitrator to be recused, the Arbitrator will remain at the top of the list for appointment in the next matter to be assigned.

E. Prospective arbitrators shall submit a summary of credentials to the District Administrative Judge which shall be kept on record.

F. All arbitrators must sign a written oath or affirmation to faithfully and fairly arbitrate all disputes that come before them, which written oath or affirmation shall be kept on file by the district.

G. All arbitrators must conduct a conflict of interest check within 3 business days of initial contact by the administrator prior to accepting a case. A person who has any personal bias regarding a party or the subject matter of a dispute, a financial interest in the subject matter of the dispute, or a close personal relationship or financial relationship with a party to the dispute shall not serve as an arbitrator. An arbitrator shall disclose any information that he or she has reason to believe may provide a basis for recusal.

H. Arbitrators shall serve as volunteers. However, Continuing Legal Education (“CLE”) credits may be awarded for training and/or service as an arbitrator, subject to the rules and standards of the New York State Continuing Legal Education Board.

I. In making an award, arbitrators shall specify in a concise statement, the amount of and basis for the award.

J. Arbitrators have a duty to maintain the confidentiality of all proceedings, hearings and communications, including all papers pertaining to the arbitration conducted in accordance with Part 137 and these Rules and Procedures, except to the extent necessary in connection with ancillary legal action with respect to a fee matter. Arbitrators should refer all requests for information concerning a fee dispute to the District Office. Arbitrators shall not be competent to testify in a subsequent proceeding or trial *de novo*.

K. Arbitrators shall complete a minimum of six hours of fee dispute arbitration training approved by the Board. However, the Board may take previous arbitration training and experience under consideration in determining whether the foregoing training requirement has been met. In any case, all Arbitrators must complete a short orientation program designed to introduce them to Part 137 and these Rules and Procedures. Arbitrators may be required to undergo periodic refresher courses.

SECTION 5 - THE FEE DISPUTE RESOLUTION PROCESS

A. Where an attorney and client cannot agree as to the attorney’s fee and there has been no prior written consent to arbitration as described in Section 3H above, the attorney shall serve a written notice to the client, entitled “Notice of Clients Right to Arbitrate”, by certified mail or personal service. The notice shall:

1. be in a form approved by the Board of Governors;
2. contain a statement of the clients right to arbitrate;
3. advise that the client has 30 days from receipt of the notice in which to elect to resolve the fee dispute;
4. be accompanied by a copy of these Rules and Procedures;

5. be accompanied by a copy of Written Instructions and

6. Be accompanied by a copy of the petition form necessary to commence the arbitration proceeding.

B. If the attorney serves a Notice of the Clients Right to Arbitrate as described in subsection A of this section and the client does not file a Petition with the district within 30 days after the Notice was received or served, the attorney may commence an action in a court of competent jurisdiction to recover the fee and the client no longer shall have the right to request arbitration pursuant to Part 137 with respect to the fee dispute at issue.

NOTE: An attorney who institutes an action to recover a fee must allege in the complaint (i) that the client received notice under Part 137 of the client's right to pursue arbitration and did not file a timely Request for Arbitration or (ii) that the dispute is not otherwise covered by Part 137.

C. If, in the alternative event the client elects to pursue arbitration on his own initiative, the client may contact the Administrative Judges Office ("District Office") at (518) 285-8300 or the attorney with whom the client has the dispute. In the case of the latter, the attorney shall be under an obligation to refer the client to the District Office. Upon request, the District Office shall forward the Petition to the client by mail.

D. The Petitioner shall then file the Petition with the District Office.

1. Upon receipt of the Petition, the District Office shall assign a filing number to the matter.

2. The District Office shall contact the Petitioner to review the facts and circumstances supporting the Petition to insure that this is a matter within the jurisdiction of the Program. If it is determined that this is a matter not within the jurisdiction of the Program, the District Office shall inform the Petitioner.

3. If it is determined that this matter is a matter within the jurisdiction of the Program, the District Office shall mail, by certified mail, a copy of the Petition to the Respondent together with an answer form to be completed by the Respondent and returned to the District Office within 15 business days of mailing of the Petition. If service cannot be made by certified mail and personal service becomes necessary, the Petitioner will be so informed and the Petitioner will be required to pay the expense of such service in advance by cashiers check or money order, made payable to the entity making such service, as designated by the district. The cost for such personal service may be added to the Arbitrator(s) award, if previously paid by the prevailing party, at the discretion of the Arbitrators, to the extent authorized by law.

4. The Respondent shall return its Answer to the District Office, together with a signed, written statement (certification) stating that a copy of the Answer was served upon the Petitioner.

5. Once the Answer and certification have been received or, if 15 business days

have elapsed since the service of the Petition and answer form without any response from the Respondent, the District Office shall designate the Arbitrator(s) who will hear the dispute and shall expeditiously schedule a hearing.

6. At least 15 days prior to the date of the hearing, the District Office shall notify the parties in writing of the date, time and place of the hearing and of the identity of the Arbitrator(s). Any subsequent rescheduling will be a matter between the parties and the Arbitrator(s) at the discretion of the Arbitrator(s).

7. Either party may request the removal of an Arbitrator based upon the Arbitrator's personal or professional relationship to a party or party's counsel. A request for removal must be made to the District Office no later than 5 days prior to the scheduled date of the hearing. The District Office shall have the final decision concerning the removal of an Arbitrator.

8. The Petitioner may not withdraw from the process once an Answer has been submitted. If the Petitioner seeks to withdraw at anytime thereafter, the arbitration will proceed as scheduled whether or not the Petitioner appears, and a decision will be made on the basis of the evidence presented.

9. If the Respondent, without good cause, fails to respond to a petition or otherwise does not participate in the arbitration, the arbitration will proceed as scheduled and a decision will be made on the basis of the evidence presented.

10. Any party may participate in the arbitration hearing without a personal appearance by submitting to the Arbitrator(s) testimony and exhibits by written declaration under penalty of perjury.

11. Arbitrators shall have the power to:

- a. compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding;
- b. administer oaths and affirmations; and
- c. take and hear evidence pertaining to the proceeding.

12. The rules of evidence need not be observed at the hearing.

13. Either party, at its own expense, may be represented by counsel.

14. The burden shall be on the attorney to prove the reasonableness of the fee by a preponderance of the evidence and to present documentation of the work performed and the billing history. The client may then present his or her account of the services rendered and time expended. Witnesses may be called by the parties. The attorney shall have the right of reply. The client shall have the right of final reply.

15. Where there is more than one Arbitrator, any disputes arising among them shall be decided by the Chairperson, consistent with Part 137 of the Rules of the Chief Administrator and the minimum Standards and Guidelines of the Board of Governors.

16. Any party may provide for a stenographic or other record at the party's expense. The other party to the arbitration shall be entitled to a copy of said record upon written request and payment of the expense of duplication.

17. The arbitration award shall be issued by mail with a copy forwarded to the District Office no later than 30 days after the date of the hearing. Arbitration awards shall be in writing and shall state the amount and basis for the award. If *de novo* review has been waived pursuant to Section 3G1(b) of these Rules and Procedures, then the arbitration award shall be final and binding.

SECTION 6 - DE NOVO REVIEW

If *de novo* review has not been previously waived in writing, either party may seek *de novo* review of the arbitration award by commencing an action on the merits in any court of competent jurisdiction within thirty (30) days after the Notice of Arbitration Award has been mailed. Notice of commencement of such an action shall be provided to the District Office. If no action is commenced within thirty (30) days of the mailing of the Notice of Arbitration Award, the award shall become final and binding. Any party who fails to participate in the hearing shall not be entitled to seek *de novo* review absent good cause shown for such failure to participate. Arbitrators may not be called as witnesses nor shall the arbitration award be admitted in evidence at the trial *de novo*.

SECTION 7 - NOTICES

Except as otherwise stated herein, all notices, correspondence and papers necessary and proper for the arbitration proceeding under this Program and for the entry of judgement of any arbitration award may be served upon any party by regular mail addressed to that party at that party's last known addresses or to the party's counsel of record.

SECTION 8 - CORRESPONDENCE

Requests for further information and correspondence relating to this Program may be sent to the Office of the Administrative Judge of the 3rd Judicial District at the following address:

District Administrative Judge's Office
Third Judicial District
2500 Pond View, Suite 210
Castleton-On-Hudson, NY 12033
(518) 285-8300

SECTION 9 - PERIODIC REVIEW

The functioning of this Program shall be reviewed periodically from the reports submitted by the District Office to the Board of Governors including any recommendations or suggested changes of the Program.

SECTION 11 - EFFECTIVE DATE

These Rules and Procedures shall take effect immediately upon approval of the Board of Governors. These Rules and Procedures and any amendments thereto shall apply in the form in effect at the time an arbitration is initiated.

TENTH JUDICIAL DISTRICT

NASSAU COUNTY

PART 137: ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

LOCAL PROGRAM RULES AND PROCEDURES

SECTION 1 - **POLICY**

It is the policy of the Courts of the County of Nassau, Tenth Judicial District (“Courts of Nassau County”), to encourage out-of-court resolution of fee disputes between attorneys and clients in a fair, impartial and efficient manner. The Administrative Judge of the County of Nassau, Tenth Judicial District, is designated as the Administrator of the Attorney-Client Fee Dispute Resolution program for the Courts of the County of Nassau under these Rules and may delegate duties to such officers, committees, and employees as he/she may direct.

SECTION 2 - **DEFINITIONS**

- A. “Answer” (also referred to as “Response to Request for Fee Arbitration”) means the response to the “Request for Fee Arbitration” or “Petition”.
- B. “Arbitrator” means the person(s) designated by the Administrative Judge or his/her designee to hear the evidence presented by the parties and make a final determination.
- C. “Administrator” means the Administrative Judge (or designee) of the County of Nassau, Tenth Judicial District, who oversees the Program.
- D. “Approval” by the Board of Governors means, where so required by 22 NYCRR Part 137, recommendation by the Board of Governors with approval of the Presiding Justice of the Appellate Division, Second Department.
- E. “Arbitration” means the settlement of disputes between parties by neutral third person(s) who hear both sides and render an award.
- F. “Board” means the Board of Governors of the Attorney-Client Fee Dispute Resolution Program established under Part 137 of the Rules of the Chief Administrator.
- G. “Client” means a person or entity who receives legal services or advice from an attorney on a fee basis in the attorney’s professional capacity.

- H. “The Office of the Courts of Nassau County” means the Administrative Judge’s Office of the County of Nassau, Tenth Judicial District.
- I. “Petition” means a “Request for Fee Arbitration” requested by either the client or the attorney.
- J. “Petitioner” means the party requesting the fee arbitration.
- K. “Program” means the Attorney-Client Fee Dispute Resolution Program established under 22 NYCRR Part 137 as administered and implemented by the Administrative Judge’s Office of the County of Nassau, Tenth Judicial District, pursuant to the Rules and Procedures set forth herein.
- L. “Respondent” means the party responding to the petition in opposition to the claim.
- M. “Service” means personal service or service by certified mail.
- N. “Written Instructions” means the Standard Instructions to Clients For the Resolution of Fee Disputes Pursuant to Part 137 Of the Rules Of the Chief Administrator (Form UCS 137-3 5/02) published by the Office of Court Administration.

SECTION 3 - THE PROGRAM AND JURISDICTION

- A. The jurisdiction of this program, for disputes in which the majority of the legal services were performed in the County of Nassau, will be the County of Nassau.
- B. In the event of a fee dispute between an attorney and client, where the representation has commenced on or after January 1, 2002, whether or not the attorney already has received some or all of the fee in dispute, the client may seek to resolve the dispute by arbitration pursuant to the Program.

Historical Note: Administrative Order 177/01 states that the provisions of Part 136 shall continue to apply to fee disputes in all domestic relations matters subject to that Part in which representation began prior to June 1, 2001. Administrative Order 260/01, filed June 14, 2001, which supercedes Order 177/01, states that the provisions of Part 136 shall continue to apply to fee disputes in all domestic relations matters subject to that Part in which representation began prior to January 1, 2002.

- C. Arbitration under this Program shall be mandated for an attorney if requested by a client, and the arbitration award shall be final and binding unless *de novo* review is sought as further described herein.
- D. Arbitration of fee disputes between attorneys and clients in Nassau County, shall take place through this Program. However, this Program shall not apply to any of the following:
 - 1. Representation in criminal matters;
 - 2. Amounts in dispute involving a sum of less than \$1,000 or more than \$50,000, except that the Office of the Courts of Nassau County may hear disputes involving other amounts if the parties have consented;
 - 3. Claims involving substantial legal questions, including professional malpractice or misconduct;
 - 4. Claims against an attorney for damages or affirmative relief other than the adjustment of the fee;
 - 5. Disputes where the fee to be paid by the client has been determined pursuant to statute or rule and allowed as of right by a court; or where the fee has been determined pursuant to a court order.
 - 6. Disputes where no attorney's services have been rendered for more than two years;
 - 7. Disputes where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New York, or where no material portion of the services was rendered in New York;
 - 8. Disputes where the request for arbitration is made by a person who is not the client of the attorney or the legal representative of the client.
- E. Pursuant to a written request and subsequent approval by the Administrative Judge of the County of Nassau, Tenth Judicial District, the Board of Governors and the Presiding Justice of the Appellate Division, Second Judicial Department, this Program may be administered by the Nassau County Bar Association in accordance with all the rules and procedures set forth herein.
- F. There shall be **NO FEE CHARGED** to any of the parties who participate in the Attorney-Client Fee Dispute Resolution Program.

- G. In the event Service becomes necessary, after having unsuccessfully attempted service by certified mail where required under these Rules and Procedures, the Petitioner must pay, in advance by check or money order made payable to the entity delegated to make such personal service the cost of such service. At the discretion of the arbitrator(s), and to the extent authorized by law, these costs may be added to the arbitrator(s) award, if previously paid by the prevailing party.
- H. 1. Arbitration under this Program shall be voluntary for the client unless:
- (a) The client has previously consented in writing to submit fee disputes to the fee dispute resolution process by prior written agreement between the attorney and client wherein the client consented in advance to submit fee disputes to arbitration. To be valid on the part of the client, such consent must be knowing and informed. The client's consent shall be stated in a retainer agreement or other writing specifying that the client has read, pursuant to 22 NYCRR Part 137, the approved Rules and Procedures of the Office of the Courts of Nassau County and that the client consents to resolve fee disputes pursuant to the Program; or
 - (b) The attorney and client have consented in advance to submit fee disputes to arbitration that is final and binding and not subject to a trial *de novo*. To be valid on the part of the client, such consent must be knowing and informed and obtained in the same manner as set forth in the previous subsection of this section, except that the retainer agreement or other writing shall also state that the client understands that he/she is waiving the right to reject an arbitration award and subsequently commence a trial *de novo* in a court of competent jurisdiction.
2. Where an agreement to arbitrate exists between the attorney and client under either subsection H.1 (a) or (b) of this section, those provisions of Section 137.6(a) and (b) of 22 NYCRR Part 137 relating to the notice of client's right to arbitrate shall not apply and no further notice of the right to arbitrate shall be required. In such circumstance, Section 137.6(a)(2) of 22 NYCRR Part 137 shall apply and either party may commence the dispute resolution process by filing a Petition with the Administrative Judge, together with a copy of the parties' agreement to arbitrate.
3. The attorney and client may consent in advance to final and binding arbitration in an arbitral forum other than the one created under 22 NYCRR Part 137. To be valid on the part of the client, such consent must be knowing and informed and must be obtained in a retainer agreement or other writing. Such writing shall clearly state that the client understands

that he or she is agreeing to waive his or her rights with regard to Arbitration pursuant to Part 137, which includes the right to reject the arbitrator(s)' award by commencing an action on the merits (trial de novo) in a Court of Law. Arbitration in an arbitral forum outside Part 137 shall be governed by the rules and procedures of that forum. The Board may maintain information concerning other established arbitral programs and shall provide contact information for such programs upon request.

4. Fee disputes may be referred to the Administrative Judge of the County of Nassau by means not specifically described in 22 NYCRR Part 137, including but not limited to, attorney disciplinary authorities, bar associations, and employees, officers or judges of the courts. In those instances, the Administrative Office shall provide the client with information about the Program.
 - I. Upon notice of appointment, the arbitrator or the arbitration chairperson designated by the Administrator may contact the parties to see if they are amenable to attempting to settle the matter themselves before proceeding with the Arbitration. However, the designee is not authorized to provide legal advice to any of the parties involved.

SECTION 4 - **ARBITRATORS**

The Office of the Courts of Nassau County shall establish and maintain a sufficient number of arbitrators in order to meet the Program's caseload. Attorneys and non-attorneys shall serve as arbitrators. In recruiting arbitrators, the Office of the Courts of Nassau County shall recruit arbitrators representing a wide range of law practices and a diversity of non-attorney professions and occupations representing a cross-section of the communities. The Office of the Courts of Nassau County shall seek the assistance of local Bar Associations in the recruitment of attorney arbitrators. Non-attorney arbitrators will be recruited by contacting established Alternative Dispute Resolution programs throughout the district as well as the Unified Court System, Office of Alternative Dispute Resolution Programs.

- A. Attorney arbitrators, approved by the Board of Governors of the New York State Fee Dispute Resolution Program, shall be appointed to provide as broad a spectrum of the Bar as possible. For any attorney to qualify for appointment as an arbitrator, the attorney must meet the following criteria:
 1. be admitted to the New York Bar for at least five years, and
 2. been engaged in the practice of law for at least three years, and
 3. be qualified as an arbitrator under the American Arbitration Association

rules, by the Office of Court Administration or by the United States District Court through any of their arbitration programs; or

4. have completed a district-approved arbitration training program or the equivalent which program must be approved by the Board of Governors of the New York State Fee Dispute Resolution Program .

B. Non-Attorney Arbitrators, approved by the Board, shall be appointed by the Administrative Judge of the County of Nassau, Tenth Judicial District, from as broad a spectrum of the general public as possible. For a non-attorney to qualify for appointment as an arbitrator, the non-attorney must meet the following requirements:

1. be a resident of the 10th Judicial District or work within the district;
2. be fluent in speaking, reading and writing English; and
3. have completed a district-approved arbitration training program or the equivalent which program must be approved by the Board of Governors of the New York State Fee Dispute Resolution Program .

C. The number of arbitrators assigned to hear a fee dispute matter under this Program shall depend upon the amount in dispute as follows:

1. disputes involving a sum of less than \$10,000.00 shall be submitted to one attorney Arbitrator; and
2. disputes involving a sum of \$10,000,00 or greater shall be submitted to a panel of three Arbitrators, which shall include at least one attorney and one non-attorney member of the public; the chairperson of all the panels shall be an attorney and all decisions on the merits shall be decided by majority rule.

D. Lists of attorney Arbitrators may be maintained under the following headlines: matrimonials, litigation, real estate, business and other. Attorney Arbitrators will self-identify themselves as being within one or more of these areas and where practical, matters will be assigned to Arbitrators in order of placement on the respective lists; should there be a conflict of interest pursuant to subsection G of this section requiring the Arbitrator to be recused, the Arbitrator will remain at the top of the list for appointment in the next matter to be assigned.

E. Prospective arbitrators shall submit a summary of credentials to the Administrative Judge of the County of Nassau, Tenth Judicial District, which

shall be kept on record.

- F. All arbitrators must sign a written oath or affirmation to faithfully and fairly arbitrate all disputes that come before them, which written oath or affirmation shall be kept on file by the Office of the Courts of Nassau County.
- G. All arbitrators must conduct a conflict of interest check within 3 business days of initial contact by the administrator prior to accepting a case. A person who has any personal bias regarding a party or the subject matter of a dispute, a financial interest in the subject matter of the dispute, or a close personal relationship or financial relationship with a party to the dispute shall not serve as an arbitrator. An arbitrator shall disclose any information that he or she has reason to believe may provide a basis for recusal.
- H. Arbitrators shall serve as volunteers. However, Continuing Legal Education (“CLE”) credits may be awarded for training and/or service as an arbitrator, subject to the rules and standards of the New York State Continuing Legal Education board.
- I. In making an award, arbitrators shall specify in a concise statement, the amount of and basis for the award.
- J. Arbitrators have a duty to maintain the confidentiality of all proceedings, hearings and communications, including all papers pertaining to the arbitration conducted in accordance with Part 137 and these Rules and Procedures, except to the extent necessary in connection with ancillary legal action with respect to a fee matter. Arbitrators should refer all requests for information concerning a fee dispute to the Office of the Courts of Nassau County. Arbitrators shall not be competent to testify in a subsequent proceeding or trial *de novo*.
- K. Arbitrators shall complete a minimum of six hours of fee dispute arbitration training approved by the Board of Governors of the New York State Fee Dispute Resolution Program. However, the Board may take previous arbitration training and experience under consideration in determining whether the foregoing training requirement has been met. In any case, all Arbitrators must complete a short orientation program designed to introduce them to 22 NYCRR Part 137 and these Rules and Procedures. Arbitrators may be required to undergo periodic refresher courses.

SECTION 5 - THE FEE DISPUTE RESOLUTION PROCESS

- A. Where an attorney and client cannot agree as to the attorney’s fee and there has been no prior written consent to arbitration as described in Section 3.H above, the

attorney shall serve a written notice to the client, entitled “Notice of Clients Rights to Arbitrate”, by certified mail or personal service. The notice shall:

1. be in a form approved by the Board of Governors;
 2. contain a statement of the client’s right to arbitrate;
 3. advise that the client has 30 days from receipt of the notice in which to elect to resolve the fee dispute;
 4. be accompanied by a copy of these Rules and Procedures;
 5. be accompanied by a copy of Written Instructions; and
 6. be accompanied by a copy of the petition form necessary to commence the arbitration proceeding.
- B. If the attorney serves a Notice of the Client’s Right to Arbitrate as described in subsection A of this section and the client does not file a Petition with the district within 30 days after the Notice was received or served, the attorney may commence an action in a court of competent jurisdiction to recover the fee and the client no longer shall have the right to request arbitration pursuant to 22 NYCRR Part 137 with respect to the fee dispute at issue.

NOTE: An attorney who institutes an action to recover a fee must allege in the complaint (i) that the client received notice under 22 NYCRR Part 137 of the client’s right to pursue arbitration and did not file a timely Request for Arbitration or (ii) that the dispute is not otherwise covered by Part 137.

- C. If, in the alternative event the client elects to pursue arbitration on his own initiative, the client may contact the Administrative Judge’s Office (“The Office of the Courts of Nassau County”) at (516) 493-3321 or the attorney with whom the client has the dispute. In the case of the latter, the attorney shall be under an obligation to refer the client to the Office of the Courts of Nassau County. Upon receipt, the Office of the Courts of Nassau County shall forward the Petition to the client by mail.
- D. The Petitioner shall then file the Petition with the Office of the Courts of Nassau County.
1. Upon receipt of the Petition, the Office of the Courts of Nassau County shall assign a filing number to the matter.

2. The Office of the Courts of Nassau County shall contact the Petitioner to review the facts and circumstances supporting the Petition to insure that this is a matter within the jurisdiction of the Program. If it is determined that this is a matter not within the jurisdiction of the Program, the Office of the Courts of Nassau County shall inform the Petitioner.
3. If it is determined that this matter is a matter within the jurisdiction of the Program, the Office of the Courts of Nassau County shall mail, by certified mail, a copy of the Petition to the Respondent together with an answer form to be **completed by the Respondent and returned to the Office of the Courts of Nassau County within 15 days of the aforesaid mailing of the Petition to the Respondent.** If service cannot be made by certified mail and personal service becomes necessary, the Petitioner will be so informed and the Petitioner will be required to pay the expense of such service in advance by cashiers check or money order, made payable to the entity making such service, as designated by the Office of the Courts of Nassau County. The cost for such personal service may be added to the Arbitrator(s) award, if previously paid by the prevailing party, at the discretion of the Arbitrators, to the extent authorized by law.
4. The Respondent shall return its Answer to the Office of the Courts of Nassau County, together with a signed, written statement (certification) stating that a copy of the Answer was served upon the Petitioner.
5. Once the Answer and certification have been received or, if 15 business days have elapsed since the service of the Petition and answer form without any response from the Respondent, the Office of the Courts of Nassau County shall designate the Arbitrator(s) who will hear the dispute and shall expeditiously schedule a hearing.
6. At least 15 days prior to the date of the hearing, the Office of the Courts of Nassau County shall notify the parties in writing of the date, time and place of the hearing and of the identify of the Arbitrator(s). Any subsequent rescheduling will be a matter between the parties and the Arbitrator(s) at the discretion of the Arbitrator(s).
7. Either party may request the removal of an Arbitrator based upon the Arbitrator's personal or professional relationship to a party or party's counsel. A request for removal must be made to the Office of the Courts of Nassau County no later than 5 days prior to the scheduled date of the hearing. The Office of the Courts of Nassau County shall have the final decision concerning the removal of an Arbitrator.

8. The Petitioner may not withdraw from the process once an Answer has been submitted. If the Petitioner seeks to withdraw at anytime thereafter, the arbitration will proceed as scheduled whether or not the Petitioner appears, and a decision will be made on the basis of the evidence presented.
9. If the Respondent, without good cause, fails to respond to a petition or otherwise does not participate in the arbitration, the arbitration will proceed as scheduled and a decision will be made on the basis of the evidence presented.
10. Any party may participate in the arbitration hearing without a personal appearance by submitting to the Arbitrator(s) testimony and exhibits by written declaration under penalty of perjury.
11. **Arbitrators shall have the power to:**
 - a. compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding;
 - b. administer oaths and affirmations; and
 - c. take and hear evidence pertaining to the proceeding.
12. The Rules of Evidence need not be observed at the hearing.
13. Either party, at its own expense, may be represented by counsel.
14. The burden shall be on the attorney to prove the reasonableness of the fee by a preponderance of the evidence and to present documentation of the work performed and the billing history. The client may then present his or her account of the services rendered and time expended. Witnesses may be called by the parties. The attorney shall have the right to reply. The client shall have the right of final reply.
15. Where there is more than one (1) Arbitrator, any disputes arising among them shall be decided by the Chairperson, consistent with 22 NYCRR Part 137 of the Rules of the Chief Administrator and the minimum Standards and Guidelines of the Board of Governors of the New York State Fee Dispute Resolution Program.
16. Any party may provide for a stenographic or other record at the party's expense. The other party to the arbitration shall be entitled to a copy of

said record upon written request and payment of the expense of duplication. **The parties to the arbitration must stipulate at least five (5) days prior to the hearing as to what kind of record will constitute a true and authentic record of the proceeding.**

17. The arbitration award shall be issued by mail with a copy forwarded to the Office of the Courts of the County of Nassau no later than 30 days after the date of the hearing. Arbitration awards shall be in writing and shall state the amount and basis for the award. If *de novo* review has been waived pursuant to Section 3.H(b) of these Rules and Procedures, then the arbitration award shall be final and binding.

SECTION 6 - **DE NOVO REVIEW**

If *de novo* review has not been previously waived in writing, either party may seek *de novo* review of the arbitration award by commencing an action on the merits in any court of competent jurisdiction within thirty (30) days after the Notice of Arbitration Award has been mailed. Notice of commencement of such an action shall be provided to the Office of the Courts of Nassau County. If no action is commenced within thirty (30) days of the mailing of the Notice of Arbitration Award, the award shall become final and binding. Any party who fails to participate in the hearing shall not be entitled to seek *de novo* review absent good cause shown for such failure to participate. Arbitrators may not be called as witnesses nor shall the arbitration award be admitted in evidence at the trial *de novo*.

SECTION 7 - **NOTICES**

Except as otherwise stated herein, all notices, correspondence and papers necessary and proper for the arbitration proceeding under this Program and for the entry of judgment of any arbitration award may be served upon any party by regular mail addressed to that party at that party's last known address or the party's counsel of record.

SECTION 8 - **CORRESPONDENCE**

Requests for further information and correspondence relating to this Program may be sent to the Office of Administrative Judge of the County of Nassau, Tenth Judicial District, at the following address:

Office of the Administrative Judge
Alternative Dispute Resolution Office
Supreme Court, Room 186
100 Supreme Court Drive
Mineola, NY 11501
(516) 493-3321

SECTION 9 - PERIODIC REVIEW

The functioning of this Program shall be reviewed periodically from the reports submitted by the Office of the Courts of Nassau County to the Board of Governors including any recommendations or suggested changes of the Program.

SECTION 10 - EFFECTIVE DATE

These Rules and Procedures shall take effect immediately upon Approval of the Board of Governors of the New York State Fee Dispute Resolution Program and the Presiding Justice of the Appellate Division Second Department. These Rules and Procedures and any amendments thereto shall apply in the form in effect at the time an arbitration is initiated.



THE NEW YORK STATE ATTORNEY-CLIENT
FEE DISPUTE RESOLUTION PROGRAM

Starting up

Program administrators should poll their arbitrators to determine who is prepared to arbitrate remotely.

Technology

Note: The NYS UCS Division of Technology currently supports the Microsoft online platform Teams. Court employees may not initiate or schedule cases using Zoom, Webex, or any other online platform at this time. However, individual arbitrators, with secure professional versions of online platforms may offer these platforms to parties. Similarly, if Bar run programs have licenses for secure professional versions of online platforms, they may administer and schedule online hearings.

- Arbitrator, parties, witnesses, and counsel (All participants) must have a computer, laptop, tablet, or smartphone with a camera, microphone and speakers or headset.
- All security measures should be taken, including enabling a meeting password where applicable.
- All participants should use a secure password protected internet connection, not a public Wi-Fi connection.
- All participants should be in a private, quiet place and should try to limit visual distractions, including no use of virtual backgrounds without a clear need and approved by the arbitrator.

Pre-hearing considerations

Pre-hearing call. A pre-hearing call is not required, however, the arbitrator may hold one, to address use of the intended online platform and familiarize the parties with the online platform. Both parties must be on the call to avoid *ex parte* communication with the arbitrator.

Although a pre-hearing call is not required, the arbitrators should consider addressing the following in advance of the hearing:

- The timing and method of providing exhibits in advance to the parties, the arbitrator and, if applicable, the stenographer.
- Whether the parties plan to use a stenographer or if they plan to call witnesses. If so, the parties should provide contact information for each of such witnesses or stenographer to the arbitrator.

Many of the recommendations below can be addressed either on a pre-hearing call or when all participants join the scheduled online hearing:

- The arbitrator, or program administrator, and all parties and counsel may exchange back-up contact information prior to the call and include information on how to reconnect, in case the online hearing is disconnected, or other technical issues arise. This can be cell phone numbers or email addresses, and if appropriate, contact information for technology support should also be shared.
- The arbitrator may address document exchange and use of exhibits during the hearing with the parties, including the method of exchanging documents, e.g., email.
- The parties should discuss their plans for private discussions with counsel during the arbitration.
- The arbitrator should discuss with the parties the preferred method of receiving the award. The award may be emailed if the parties agree to having it emailed.
- The arbitrator may work through any technical issues using the online platform with the parties so that all participants can become familiar with the platform being used for the arbitration.
- The arbitrator, or the technical support person, should sign on prior to the scheduled time, should control the ability of the participants to enter the meeting, and when the parties and counsel, if any, are signed in, should allow them to enter the meeting.

The Remote Arbitration Hearing

Procedure

- Just as with in-person arbitrations, any issues concerning the remote arbitration process are within the sole discretion of the arbitrator and may not be appealed through the Part 137 program.
- The arbitrator should follow the same procedure as the arbitrator would if the hearing were in-person. The burden shall be on the attorney to prove the reasonableness of the fee by a preponderance of the evidence to present documentation of the work performed and the billing history. The client may then present his or her account of the services rendered and time expended. Witnesses may be called by the parties. The client shall have the right of final reply. See [Rule 137.7\(d\)](#)
- The arbitrator should administer oaths or affirmations to all parties present. If a witness will be added to the session, the arbitrator should administer the witness's oath when the witness is added to the session.
- At the end of the hearing, the arbitrator should explain how and when the award will be sent.
- When the proceeding is complete, the arbitrator should end the hearing and terminate the online call immediately as to all parties.

Recording the Hearing

- The arbitration may not be recorded other than by a stenographer unless permitted by the arbitrator. Unanimous consent by the parties is preferred but not necessary. For

example, if a party makes the request to record the hearing as an ADA accommodation, and the arbitrator grants the request, then the opposing party's consent is not necessary. Any personal or medical information presented by a party in making an ADA accommodation request may not be shared with other side and must be kept separate from the case file.

- If a non-stenographic recording is permitted, the arbitrator shall control the recording, using the recording mechanism of the online platform, and will ensure the entire hearing is recorded.
- [Section 137.10](#) Confidentiality states: All proceedings and hearings commenced and conducted in accordance with this Part, including all papers in the arbitration case file, shall be confidential, except to the extent necessary to take ancillary legal action with respect to a fee matter.
 - The arbitrator should remind parties that if a recording is made of the hearing, it is not useable in a subsequent court hearing.
 - No party or arbitrator who makes a recording shall disclose the recording except as required for administration by the local program in connection with a complaint about an arbitration.

Deliberating and Issuing the Award

- Deliberation by a panel of arbitrators should be held in a confidential online environment which cannot be viewed or heard by anyone other than the arbitrators.
- If a panel is issuing the award, the award may be signed 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.

① = parties and exchanged at the time of payment of the \$7,000.00 settlement amount ("Settlement Amount"); ② parties agree that this settlement shall remain confidential

UCS 137-11 (11/01)

(Office Use Only)
Case Number: REDACTED FOR CONFIDENTIALITY
Custom Case Number: REDACTED FOR CONFIDENTIALITY

In the Matter of Fee Dispute shall not be disclosed unless required

Arbitration between REDACTED FOR CONFIDENTIALITY

by law; ③ parties agree that immediately and simultaneously upon Attorney's receipt of the Settlement Amount, Client's file in its entirety shall likewise be given to Client

STIPULATION OF SETTLEMENT

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:

Attorney immediately and simultaneously;

- 1. The AMOUNT IN DISPUTE \$ 8,751.37
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) shall \$ 7,000.00 be deemed the equivalent of original signatures.
3. The AMOUNT of this total PREVIOUSLY PAID by the client is: \$ 0.00
4. (a) The BALANCE DUE by the client to the attorney is: \$ 7,000.00

This Settlement Agreement may be executed in one (1) or more counterparts, each of which shall constitute an original document, and when taken together shall constitute a complete document

Other terms: ① Mutual General Releases - Standard Blumberg form to be prepared by Attorney, executed by the parties by cash or certified / bank check

It is further agreed that the payment of the amount shall be made within 14 days of the date of this stipulation. REDACTED FOR CONFIDENTIALITY

REDACTED FOR CONFIDENTIALITY

⑤ Attorney shall not be obligated to keep and will not so keep a copy of the Client's file upon Attorney's tender of same to Client.

Dated: 06/14/18 [Give copy to each party]

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

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

REDACTED FOR CONFIDENTIALITY, Client

and

REDACTED FOR CONFIDENTIALITY, Attorney

.....

**STIPULATION OF
SETTLEMENT**

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
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-  Agreement completed.
2020-11-11 - 7:39:26 PM GMT

(Office Use Only)	
Case Number:	REDACTED FOR CO
Custom Case Number:	REDACTED FO <u>029</u>

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

REDACTED FOR CONFIDENTIALITY

, Client

and

REDACTED FOR CONFIDENTIALITY

, Attorney

**ARBITRATION
AWARD**

1. The AMOUNT IN DISPUTE \$ 4,060

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): \$ 1,375

3. The AMOUNT of this total PREVIOUSLY PAID by the client is: \$ 1,375

4. (a) The BALANCE DUE by the client to the attorney is: \$ N/A

-OR-

(b) The AMOUNT TO BE REFUNDED by the attorney is: \$ 1,625

Statement of Reasons: Based on the testimony and evidence presented, the Arbitrator finds: (1) the Attorney received funds from the Client totaling \$3,000; and (2) the Attorney has proven by a preponderance of the evidence that she is entitled to \$1,375 of the amount in dispute. The Attorney must therefore refund to the Client the sum of \$1,625, which constitutes the difference between \$3,000 and \$1,375, forthwith.

AFFIRMATION

The undersigned arbitrator(s), having been duly appointed pursuant to the Rules of Joint Committee on Fee Dispute Resolutions (NYCLA, ABCNY and Bronx Bar Association) and pursuant to any applicable Rule of the Chief Administrator, Title 22, of the Official Compilation of Codes, Rules and Regulations, or the agreement of the parties to the dispute resolved by this award, and having duly taken the oath according to law and having duly heard the proofs and allegations of the parties hereto, hereby affirm(s), pursuant to CPLR 7507, under the penalties of perjury, that the above award is a true, correct and complete statement of the award rendered in the above-captioned arbitration, duly executed by the undersigned. This award may be executed in any number of counterparts and may be executed by way of facsimile or electronic signature, and if so, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Mr. Elan E. Weinreb, Esq.

Dated: **March 19, 2021**

[Mail copy to each party]

(Office Use Only)	
Case Number:	<u>xxxxxxx</u>
Custom Case Number:	<u>xxxxxxx</u>

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

xxxxxxxxxxxxxxxxxxxxx, Client

and

xxxxxxxxxxxxxxxxxxxxx

Mr. xxxxxxxxxxxxxx Esq., Attorney

**ARBITRATION
AWARD**

1. The AMOUNT IN DISPUTE \$0

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): There was no amount IN DISPUTE.

3. The AMOUNT of this total PREVIOUSLY PAID by the client is: \$ 0

4. (a) The BALANCE DUE by the client to the attorney is: \$ \$58,000

Statement of Reasons:

This matter was scheduled for September 21, 2021 at 9:30am. When the Respondent failed to appear, he was given another opportunity and the matter adjourned to November 3, 2021 at 1:30 pm, and he was so advised by the Administrator and the Claimant. He nonetheless failed to appear. The custody case retainer dated 4/30/18 (pg 4, para. B) did not include a provision binding the parties to resolve their dispute at a Part 137 arbitration. It required permission by the Respondent for the Claimant to initiate an arbitration, which was not obtained. Based upon the foregoing, the Tribunal is without jurisdiction to make an award with respect to the custody case retainer.

The support case retainer dated 10/1/18 (pg. 4, para. IV[A]) provided "in the event such a fee dispute does arise, as to our fee for legal services, *regardless of the amount in dispute*, you and we agree that we will resolve the fee dispute by arbitration conducted pursuant to Part 137 of the Rules of Chief Administrator of the Courts (22 NYCRR), except that we and you agree to be bound by the decision of the arbitrator(s) and we and you agree to waive our rights to commence an action on the merits (a trial de novo) to reject the award of the arbitrator(s)" (*emphasis supplied*). Based upon the foregoing grant of jurisdiction to the Tribunal, and the testimony and documentary evidence presented before the Panel, the attorney has proven by a preponderance of the evidence the reasonableness of his fee, namely \$58,000 as to the support case retainer. The panel finds that the attorney billed \$58,000 and the Respondent did not appear, provide any documentation, or testimony to demonstrate by a preponderance of the evidence that ANY of that amount was "in dispute" as defined by NYCLA Local Program Rule 1c and Footnote 1 thereto. Accordingly, the attorney/Claimant is entitled to \$58,000 on this support case retainer and \$58,000 total award.

AFFIRMATION

The undersigned arbitrator(s), having been duly appointed pursuant to the Rules of Joint Committee on Fee Dispute Resolutions (NYCLA, ABCNY and Bronx Bar Association) and pursuant to any applicable Rule of the Chief Administrator, Title 22, of the Official Compilation of Codes, Rules and Regulations, or the agreement of the parties to the dispute resolved by this award, and having duly taken the oath according to law and ,000having duly heard the proofs and allegations of the parties hereto, hereby affirm(s), pursuant to CPLR 7507, under the penalties of perjury, that the above award is a true, correct and complete statement of the award rendered in the above-captioned arbitration, duly executed by the undersigned. This award may be executed in any number of counterparts and may be executed by way of facsimile or electronic signature, and if so, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Mr. xxxxxxxxxxx, Esq.

Nelson Timken, Esq.

Ms. xxxxxxxxxxxxxxxx

Dated:

[Mail copy to each party]