UCS 137-1 (11/01)

NOTICE OF CLIENT'S RIGHT TO ARBITRATE

A DISPUTE OVER ATTORNEYS FEES

The amount of $_____ is due and owing for the provision of legal services with respect to:

If you dispute that you owe this amount, you have the right to elect to resolve this dispute by arbitration under Part 137 of the Rules of the Chief Administrator of the Courts. To do so, you must file the attached Request for Fee Arbitration within 30 days from the receipt of this Notice, as set forth in the attached instructions. If you do not file a Request for Fee Arbitration within 30 days from the receipt of this Notice, you waive the right to resolve this dispute by arbitration under Part 137, and your attorney will be free to bring a lawsuit in court to seek payment of the fee.

Dated:_____

_____
(Attorney's Signature)
[print Attorney's name, address and telephone number below]

UCS 137-3 (9/05)

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

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

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

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

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

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

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

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

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

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:

A. "Program" means the Suffolk County Bar Association Dispute Resolution Program established pursuant to Part 137 of the Rules of the Chief Administrator

B. "Client" means a person or entity receiving legal services or advice from a lawyer on a fee basis in the lawyer's professional capacity

C. "Administrator" means the person primarily responsible for administration of the Program as designated by the Suffolk County Bar Association

D. "SCBA" means the Suffolk County Bar Association

E. "Arbitrator" means a person who serves as an arbitrator under the Program

F. "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

G. "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

H. "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.

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 wesbsite at www.scba.orq/fee dispute/fee overview.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 <u>Powers of arbitrator and conduct of the hearing</u>

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

D. Arbitrator(s) may adjourn or postpone the hearing

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 <u>Trial de novo</u>

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 <u>Financial Hardship Policy</u>

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 <u>Amendment of Rules</u>

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, 2' Department.

(For Office Use Only)
Case No. _____
Date Received:

REQUEST FOR FEE DISPUTE RESOLUTION
(Civil Cases)

1. Name, address and telephone number of client is:
   Name:_____
   Address:_____
   _____
   Telephone No.:_____

2. The name, address and telephone number of the lawyer or law firm is:
   Name:_____
   Address:_____
   _____
   Telephone No.:_____

3. Type of case involved (check all that are applicable):

☐Landlord-Tenant	☐Negligence/PI	☐Real Estate
☐General Civil Litigation	☐Corporate	☐Traffic
☐Malpractice/Medical	☐Family Court/Custody	☐Other_____
☐Family Court/Support	☐Judicial Appointment/FC	_____
☐Wills/Trusts/Estates	☐Appellate	_____
☐Commercial	☐Matrimonial _____	

4. Court in which the civil action was commenced, if applicable (include county): _____Court _____County

5. Set forth the date when the lawyer first agreed to handle case:
   _____

6. Attach a copy of the written retainer agreement or letter of engagement between lawyer and client. Attach copies of any other letters or papers that discuss the fee agreement.

7. Describe briefly what was the fee arrangement:

   _____

   _____

   _____

   _____

   _____

   _____

_____

_____

_____

_____

_____

_____

8. State all amounts paid to the lawyer; provide dates of payment and what the payment was to cover, if applicable:

_____

_____

_____

9. State the total amount of moneys in dispute, including any amount the lawyer says you still owe and any amount you already paid but believe should be refunded (attach a copy of the lawyer's bill, if available):

_____

_____

10. Have you received a "Notice of Client's Right to Arbitrate" from your attorney: _____ (enter "yes" or "no" in space). If yes, please attach a copy.

11. Briefly explain why you disagree with the amount of money for legal services billed, paid, or demanded (use additional sheets, if necessary):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

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

Dated:_____ Signed:_____

(Print name below signature)

☐ Will be represented by legal counsel
Name_____
Telephone Number_____

Important: Request for Fee Arbitration must be filed with the Suffolk County Bar Association, if the attorney is physically present in Suffolk County (has office in Suffolk) or if the majority of the legal services have been performed in Suffolk County. The Request must be filed within 30 days of the receipt from the lawyer of notice of the client's right to request arbitration. If the client does not file the Request for Fee Arbitration within those 30 days, the client will not be permitted to elect to resolve the fee dispute by arbitration pursuant to Part 137, unless the attorney elects to resolve this matter by arbitration and the written agreement provides for the same. The lawyer is required to provide the client with the address of the Suffolk County Bar Association upon request. A filing fee of $150.00 is required.

Method of Payment:

☐ Filing Fee of $150.00 paid by check is enclosed.*

I Elect to make payment by credit card.

☐ Visa ☐ Master Card ☐American Express ☐Discover

Name on Credit Card: _____
Account #: _____
Expiration:____ / ____
I hereby authorize the Suffolk County Bar Association in assessing a $150.00 charge to the above credit card account.

X_____

☐ Request payment plan.

☐ I request a waiver of fee due to hardship (I understand that I must supply written verification of same).

* the filing fee of $150.00 should be remitted with this form unless a waiver is requested. Please Make check payable to "Suffolk County Bar Association".

Please remit this form with payment to: Suffolk County Bar Association, 560 Wheeler Road, Hauppauge, NY 11788-4357, Attention: Fee Dispute Resolution Coordinator.