BAR ASSOCIATION
OF ERIE COUNTY

Dispute Settlement Tribunal
438 Main Street, 6th Floor
Buffalo, New York 14202

ATTORNEY FEE DISPUTE ARBITRATION DOCUMENTS

Enclosed are the documents needed for an attorney to participate in a fee dispute proceeding pursuant to Part 137 of the Rules of the Chief Administrator. The documents that the attorney must provide to the client by certified mail or by personal service consist of the following:

1. Notice of Right to Arbitrate an Unpaid-Fee Dispute
   -OR-
   Notice of Right to Arbitrate a Prepaid-Fee Dispute.

2. Standard Instructions to Clients pursuant to Part 137 with a copy of Part 137 attached.

3. Petition.

4. Bar Association of Erie County (BAEC) Dispute Settlement Rules.

Also enclosed for the attorney to keep and review are copies of Part 137 and the BAEC Dispute Settlement Rules.

The New York State Unified Court System website has a section dealing with fee arbitration. The website is nycourts.gov/feedispute.

If you have any questions regarding the enclosed documents, please feel free to call the Tribunal Administrator, Katherine S. Bifaro or the Tribunal administrative assistant, Leslie Housh at 716-852-8687.

BAR ASSOCIATION
OF ERIE COUNTY

NOTICE OF RIGHT TO ARBITRATE
A PREPAID-FEE DISPUTE

You claim that you are entitled to a refund in connection with legal fees you have paid the undersigned in the matter of:

The undersigned disputes the refund that you are claiming. You have the right to elect to resolve this fee dispute by arbitration. To do so, you must file a Petition with the Bar Association of Erie County within 30 days from the receipt of this Notice, as set forth in the attached instructions.

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

Dated:_____ _____

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

Mail the Petition to:
Katherine S. Bifaro
Tribunal Administrator
Bar Association of Erie County
438 Main Street, 6th Floor
Buffalo, NY 14202

Please note that the enclosed Petition form is the same as the
Request for Fee Arbitration referred to herein.

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).

New York State
Fee Dispute Resolution Program

Part 137 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York

Website: www.nycourts.gov/feedispute • E-mail: feedispute@courts.state.ny.us

Toll-free phone: 1-877-FEES-137 (1-877-333-7137)

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§137.0 Scope of Program

This Part establishes the New York State Fee Dispute Resolution Program, 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, where available, is strongly encouraged.

§137.1 Application

(a) This Part shall 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 any civil matter.

(b) This Part 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 an arbitral body 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 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.

§137.2 General

(a) In the event of a fee dispute between attorney and client, 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 under this Part. Arbitration under this Part 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 provided in section 137.8.

(b) The client may consent in advance to submit fee disputes to arbitration under this Part. Such consent shall be stated in a retainer agreement or other writing that specifies that the client has read the official written instructions and procedures for Part 137, and that the client agrees to resolve fee disputes under this Part.

(c) The attorney and client may consent in advance to arbitration pursuant to this Part that is final and binding upon the parties and not subject to de novo review. Such consent shall be in writing in a form prescribed by the Board of Governors.

(d) The attorney and client may consent in advance to submit fee disputes for final and binding arbitration to an arbitral forum other than an arbitral body created by this Part. Such consent shall be in writing in a form prescribed by the Board of Governors. Arbitration in that arbitral forum shall be governed by the rules and procedures of that forum and shall not be subject to this Part.

§137.3 Board of Governors

(a) There shall be a Board of Governors of the New York State Fee Dispute Resolution Program.

(b) The Board of Governors shall consist of 18 members, to be designated from the following: 12 members of the bar of the State of New York and six members of the public who are not lawyers. Members of the bar may include judges and justices of the New York State Unified Court System.

(1) The members from the bar shall be appointed as follows: four by the Chief Judge from the

membership of statewide bar associations and two each by the Presiding Justices of the Appellate Divisions.

(2) The public members shall be appointed as follows: two by the Chief Judge and one each by the Presiding Justices of the Appellate Divisions.

Appointing officials shall give consideration to appointees who have some background in alternative dispute resolution.

(c) The Chief Judge shall designate the chairperson.

(d) Board members shall serve for terms of three years and shall be eligible for reappointment. The initial terms of service shall be designated by the Chief Judge such that six members serve one-year terms, six members serve two-year terms, and six members serve three-year terms. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he or she succeeds.

(e) Eleven members of the Board of Governors shall constitute a quorum. Decisions shall be made by a majority of the quorum.

(f) Members of the Board of Governors shall serve without compensation but shall be reimbursed for their reasonable, actual and direct expenses incurred in furtherance of their official duties.

(g) The Board of Governors, with the approval of the four Presiding Justices of the Appellate Divisions, shall adopt such guidelines and standards as may be necessary and appropriate for the operation of programs under this Part, including, but not limited to: accrediting arbitral bodies to provide fee dispute resolution services under this Part; prescribing standards regarding the training and qualifications of arbitrators; monitoring the operation and performance of arbitration programs to insure their conformance with the guidelines and standards established by this Part and by the Board of Governors; and submission by arbitral bodies of annual reports in writing to the Board of Governors.

(h) The Board of Governors shall submit to the Administrative Board of the Courts an annual report in such form as the Administrative Board shall require.

§137.4 Arbitral Bodies

(a) A fee dispute resolution program recommended by the Board of Governors, and approved by the Presiding Justice of the Appellate Division in the judicial department where the program is established, shall be established and administered in each county or in a combination of counties. Each program shall be established and administered by a local bar association (the "arbitral body") to the extent practicable. The New York State Bar Association, the Unified Court System through the District Administrative Judges, or such other entity as the Board of Governors may recommend also may be designated as an arbitral body in a fee dispute resolution program approved pursuant to this Part.

(b) Each arbitral body shall:

(1) establish written instructions and procedures for administering the program, subject to the approval of the Board of Governors and consistent with this Part. The procedures shall include a process for selecting and assigning arbitrators to hear and determine the fee disputes covered by this Part. Arbitral bodies are strongly encouraged to include nonlawyer members of the public in any pool of arbitrators that will be used for the designation of multi-member arbitrator panels.

(2) require that arbitrators file a written oath or affirmation to faithfully and fairly arbitrate all disputes that come before them.

(3) be responsible for the daily administration of the arbitration program and maintain all necessary files, records, information and documentation required for purposes of the operation of the program, in accordance with directives and procedures established by the Board of Governors.

(4) prepare an annual report for the Board of Governors containing a statistical synopsis of fee dispute resolution activity and such other data as the Board shall prescribe.

(5) designate one or more persons to administer the program and serve as a liaison to the public, the bar, the Board of Governors and the grievance committees of the Appellate Division.

§137.5 Venue

A fee dispute shall be heard by the arbitral body handling disputes in the county in which the majority of the legal services were performed. For good cause shown, a dispute may be transferred from one arbitral body to another. The Board of Governors shall resolve any disputes between arbitral bodies over venue.

§137.6 Arbitration Procedure

(a) (1) Except as set forth in paragraph (2), where the attorney and client cannot agree as to the attorney's fee, 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.

(2) Where the client has consented in advance to submit fee disputes to arbitration as set forth in subdivisions (b) and (c) of section 137.2 of this Part, 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 copy of the "request for arbitration" form necessary to commence the arbitration proceeding along with such notice and instructions as shall be required by the rules and guidelines of the Board of Governors, and the provisions of subdivision (b) of this section shall not apply.

(b) 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 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 this Part 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 received notice under this Part 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 this Part.

(c) In the event the client determines to pursue arbitration on the client's own initiative, the client may directly contact the arbitral body having jurisdiction over the fee dispute. Alternatively, the client may contact the attorney, who shall be under an obligation to refer the client to the arbitral body having jurisdiction over the dispute. The arbitral body then shall forward to the client the appropriate papers set forth in subdivision (a) necessary for commencement of the arbitration.

(d) If the client elects to submit the dispute to arbitration, the client shall file the "request for arbitration form" with the appropriate arbitral body, and the arbitral body shall 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 arbitral body within 15 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.

(e) Upon receipt of the attorney's response, the arbitral body shall designate the arbitrator or arbitrators who will hear the dispute and shall expeditiously schedule a hearing. The parties must receive at least 15 days notice in writing of the time and place of the hearing and of the identity of the arbitrator or arbitrators.

(f) Either party may request the removal of an arbitrator based upon the arbitrator's personal or professional relationship to a party or counsel. A request for removal must be made to the arbitral body no later than five days prior to the scheduled date of the hearing. The arbitral body shall have the final decision concerning the removal of an arbitrator.

(g) The client may not withdraw from the process after the arbitral body has received the "attorney fee response." If the client seeks to withdraw at any time thereafter, the arbitration will proceed as scheduled whether or not the client appears, and a decision will be made on the basis of the evidence presented.

(h) 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.

(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.

§137.7 Arbitration Hearing

(a) Arbitrators 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) The rules of evidence need not be observed at the hearing.

(c) Either party, at his or her own expense, may be represented by counsel.

(d) 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 client shall have the right of final reply.

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

(f) The arbitration award shall be issued no later than 30 days after the date of the hearing. Arbitration awards shall be in writing and shall specify the bases for the determination. Except as set forth in section 137.8, all arbitration awards shall be final and binding.

(g) Should the arbitrator or arbitral body become aware of evidence of professional misconduct as a result of the fee dispute resolution process, that arbitrator or body shall refer such evidence to the appropriate grievance committee of the Appellate Division for appropriate action.

(h) In any arbitration conducted under this Part, an arbitrator shall have the same immunity that attaches in judicial proceedings.

§137.8 De Novo Review

(a) 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 30 days after the arbitration award has been mailed. If no action is commenced within 30 days of the mailing of the arbitration award, the award shall become final and binding.

(b) 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.

(c) Arbitrators shall not be called as witnesses nor shall the arbitration award be admitted in evidence at the trial de novo.

§137.9 Filing Fees

Upon application to the Board of Governors, and approval by the Presiding Justice of the Appellate Division in the judicial department where the arbitral program is established, an arbitral body may require payment by the parties of a filing fee. The filing fee shall be reasonably related to the cost of providing the service and shall not be in such an amount as to discourage use of the program.

§137.10 Confidentiality

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.

§137.11 Failure to Participate in Arbitration

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

§137.12 Mediation

(a) Arbitral bodies are strongly encouraged to offer mediation services as part of a mediation program approved by the Board of Governors. The mediation program shall permit arbitration pursuant to this Part 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.

BAR ASSOCIATION
OF ERIE COUNTY

Office Use Only
Date Received: _____
Case Number: _____

PETITION

1. Your name, address and telephone number:

   Name:

   Address:

   Telephone Number:

   Email Address:

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

   Name:

   Address:

   Telephone Number:

   Email Address:

3. If a lawsuit was filed, in which county and court was it filed?

   Court:_____ County: _____

4. If the fee you are disputing involves a domestic relations case, indicate what type of domestic relations case it was (check all that apply)

__Divorce	__Separation	__Annulment
__Maintenance	__Alimony	__Child Support
__Visitation	__Custody	

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

_____, 20___

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

_____, 20___

6. Briefly describe the services contemplated in the representation and attach a copy of the written retainer agreement, letter of engagement, or other papers describing the fee arrangement, if any:

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

Date	Amount	Purpose
_____	$_____	_____
_____	$_____	_____
_____	$_____	_____
_____	$_____	_____

8. How much of the attorney's fee is in dispute (attach a copy of the attorney's bill, if available):

$_____

9. Briefly describe why you believe your attorney is not entitled to the amount set forth in question 8 (use additional sheets if necessary):

10. 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 Dispute Settlement Rules of the Bar Association of Erie County, copies of which I have received. I understand that the determination of the arbitrator(s) is binding upon both parties, except that either party may reject the award of the arbitrator(s) and commence 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: _____

IMPORTANT**:** You must file this Petition along with a check for the filing fee. The filing fee is based on the amount in dispute. The filing fee is based on the following scale:

Amount in dispute	Filing fee
$1000 - $1999	$50
$2000 - $2999	$70
$3000 - $3999	$90
$4000 +	$100

Make checks payable to the Bar Association of Erie County. Send this Petition and your check to the Dispute Settlement Tribunal, Bar Association of Erie County, 438 Main Street – 6th Floor, Buffalo, New York, 14202.

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

FOREWORD

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

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