



ONONDAGA COUNTY BAR ASSOCIATION ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

RULES AND PROCEDURES

SECTION 1 POLICY

It is the policy of the Onondaga County Bar Association (“Association”) to encourage out-of-court resolution of fee disputes between attorneys and clients in a fair, impartial and efficient manner. The Executive Director of the Onondaga County Bar Association is designated as the Administrator of the Attorney-Client Fee Dispute Resolution Program under these Rules and may delegate duties to such officers, committees, employees and members of the Association as he/she may direct.

SECTION 2 DEFINITIONS

- A. “Answer” (also referred to as a “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 Administrator or his/her designee to hear the evidence presented by the parties and make a final determination.
- C. “Administrator” means the Executive Director of the Onondaga County Bar Association who supervises or oversees the Program;
- D. "Approval" by the Board of Governors means, where so required by Part 137, recommendation by the Board of Governors with the 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. “Association” means the Onondaga County Bar Association.
- 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. "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.
- I. "Office" means the Administrative Office of the 5th Judicial District's Administrative Judge "Office.
- J. "Petition" means a "Request for Fee Arbitration" requested by either the client or the attorney .
- K. "Petitioner" means the party requesting the fee arbitration.
- L. "Program" means the Attorney-Client Fee Dispute Resolution Program established under Part 137 and administrated and implemented by the Onondaga County Bar Association pursuant to the Rules and Procedures set forth herein.
- M. "Respondent" means the party responding to the Petition in opposition to the claim.
- N. "Service" means any lawful method of service pursuant to the laws of the State of New York including, but not limited to, personal service pursuant to Article 3 of New York Civil Practice Law and Rules.
- O. "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 11/01)] published by the Office of Court Administration.

SECTION 3 THE PROGRAM and JURISDICTION

- A. 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.
- B. 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.
- C. 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 Association 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.

D. Pursuant to a written letter of Agreement by and between the Association and other bar associations within New York's 5th Judicial District, the Association may provide this Program to other such bar associations.

E. The Association shall charge an administrative fee to be paid by the Petitioner. Such fees are to be paid by check or money order made payable to the "Onondaga County Bar Association" at the time of filing the Petition according to the following schedule:

<u>Amount in Dispute</u>	<u>Administrative fee</u>
\$ 1,000 to \$ 5,999	\$ 75.00
\$ 6,000 to \$ 50,000	\$ 225.00

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), these costs (the administrative fee and personal service of process) may be added to the arbitrator(s)' award, if previously paid by the prevailing party.

F. The Association's fee waiver policy shall be consistent with the waiver of costs and fees contained in New York Civil Practice Law and Rules § 1101(d) requiring that the party requesting a fee waiver submit an affidavit explaining their financial condition and inability to pay. The decision to waive the administrative fee will be left within the sound discretion of the Administrator.

- G. 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 been given and has read the Association's Board-approved Rules and Procedures and the Written Instructions 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 subsection G1(a) of this Section, except that the retainer agreement or other writing shall also state that the client understands that he or 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 G1(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 Association, together with a copy of the parties' agreement to arbitrate and a check or money order as set forth in subsection E of this Section.

3. The attorney and client may consent in advance to final and binding arbitration in an arbitral forum other than 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 Association 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 situations, the Association, through the Office, shall provide the client with information about the Program.

SECTION 4 ARBITRATORS

The Association shall establish and maintain a sufficient number of arbitrators in order to meet the Program's caseload. Attorneys and non-attorneys may serve as arbitrators. In recruiting arbitrators, the Association shall recruit arbitrators representing a wide range of law practices and firm sizes and a diversity of non-attorney professions and occupations representing a cross-section of the community.

- 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 requirements:
 1. be an active member of the Association or a county bar association within the 5th Judicial District; and
 2. be admitted to the New York Bar for at least five years; and
 3. been engaged in the practice of law for at least three years; and
 4. (a) be qualified as an arbitrator under American Arbitration Association rules, by the Office of Court Administration or by the United States District Court through any of their arbitration programs;

- OR-

- (b) have completed an Association-approved arbitration training program or the equivalent.

B. Non-Attorney Arbitrators, approved by the Board, shall be appointed by the President of the Association 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 5th Judicial district; and
2. be fluent in speaking, reading and writing English; and
3. have completed an Association-approved arbitration training program or the equivalent.

C. After receipt of the "Response to Request For Fee Arbitration," or after expiration of the 15-day response period, the Office shall forward the matter to the Administrator, for scheduling and the appointment of arbitrator(s) to hear the dispute.

1. The number of Arbitrators assigned to hear a fee dispute matter under this Program shall depend upon the amount in dispute as follows:
 - (i) Disputes involving a sum of less than \$6,000 shall be submitted to one attorney Arbitrator.
 - (ii) Disputes involving a sum of \$6,000 or more shall be submitted to a panel of three Arbitrators, which shall include one Arbitrator who is not a lawyer.
 - (iii) Instead of a three-Arbitrator panel, the parties may agree to submit the arbitration to one Arbitrator for disputes involving a sum of \$6,000 or above. Such agreement shall be in writing, signed by all parties, and provided to the Administrator before the three-Arbitrator panel is selected, in which case, the administrative fee shall be \$ 75 instead of the \$225 administrative fee charged for a three-Arbitrator panel.

If such an agreement is submitted to the Administrator after the Administrator has selected a three-person panel, the \$225

administrative fee still applies and 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.

2. The parties must receive at least fifteen (15) calendar days notice in writing of the identity of the Arbitrator.
- D. Lists of attorney Arbitrators shall be maintained under the following headings: matrimonial, litigation, real estate, business and other. Attorney Arbitrators will self-identify themselves as being within one or more of these area and where practical, matters will be assigned to Arbitrators in the 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 Association, which the Association shall keep 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 Association.
- 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 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.
- 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 Administrator. 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 3G above, the attorney shall forward a written notice to the client, entitled "Notice of Clients Right to Arbitrate," by certified mail or 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 after the notice is received or served

in which to elect to resolve the 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 forwards to the client by certified mail or Service 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 Association 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 its own initiative, the client may contact the Association, in which case the client shall be instructed to contact the Administrative Office of the 5th Judicial District's Administrative Judge ("Office") at (315) 671-2111, the Office directly 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 Association or the Office. Upon request, the Office shall forward the Petition to the client by mail.

D. The Petitioner shall file the Petition with the Association accompanied by the applicable administrative fee (cashier's check or money order made payable to the Association) as set forth in Section 3E of these Rules and Procedures.

1. Upon receipt of the Petition and applicable administrative fee and after the filing of the Petition, the Association shall assign a filing number to the matter and forward a conformed copy of the Petition to the Office.
2. Upon receipt of the conformed copy, the 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 this Program. If it is determined that this is a matter not within the jurisdiction of the Program, the Office shall so inform

the Petitioner and the Association.

3. If it is determined that this is a matter within the jurisdiction of the Program, the 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 Office within 15 business days of receipt 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 cashier's check or money order, made payable to the entity making such service, as designated by the Office. 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 Arbitrator(s).
4. The Respondent shall return its Answer to the 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 Office shall forward the complete file to the Association. The Association shall designate the Arbitrator(s) who will hear the dispute and shall expeditiously schedule a hearing.
6. The Association shall promptly notify the Office as to the names of the designated Arbitrator(s) and the date, time and place of the hearing. At least 15 business days prior to the date of the hearing, the Office shall notify the parties in writing of the date, time and place of the hearing and of the identity of the Arbitrator or Arbitrator(s). Any subsequent rescheduling will be a matter between the parties and the Arbitrator(s) at the discretion of 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 Association no later than five days prior to the scheduled date of the hearing. The Association 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 any time 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 a right of reply. The client shall have the right of final reply.
15. Where there is more than one Arbitrator, any differences arising among them concerning the meaning or application of these Rules and Procedures shall be decided by the chairperson.
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 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 Association and Office. If no action is commenced within 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 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, correspondences 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 the party's last known address or to the party's counsel of record.

SECTION 8 CORRESPONDENCE

Requests for further information and correspondence relating to the Program may be sent to the Administrative Office of the 5th Judicial District's Administrative Judge or the Onondaga County Bar Association addressed as follows:

Attorney-Client Fee Dispute Resolution Program
Administrative Office of the 5th Judicial District
Onondaga County Office Building Room 105
600 South State Street
Syracuse, New York 13202-1860
Telephone Inquiries: 315-671-2111

-or-

Attorney-Client Fee Dispute Resolution Program
Onondaga County Bar Association
1000 State Tower Building
Syracuse, New York 13202
Telephone Inquiries: 315-471-2667

SECTION 9 PERIODIC REVIEW

The functioning of this Program shall be reviewed periodically from the reports submitted by the Administrator to the President of the Association and/or Association's Attorney-Client Fee Dispute Resolution Committee. The President of the Association or the

Association's Attorney-Client Fee Dispute Resolution Committee shall then report any recommendations for change to the Association's Board.

SECTION 10 EFFECTIVE DATE

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