

RICHMOND COUNTY BAR ASSOCIATION

FEE DISPUTE ARBITRATION PROGRAM RULES

Richmond County Bar Association
152 Stuyvesant Place
Staten Island, New York 10301

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, incorporated herein and made a part hereof.

Section 2

DEFINITIONS

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

- A. **"Program"** means the Richmond County Bar Association Fee Dispute Arbitration 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 and shall be appointed by the President of the Richmond County Bar Association.
- D. **"RCBA"** means the Richmond 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.
- 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.

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.

These rules shall not apply to any of the following:

- A. representation in criminal matters;
- B. 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;
- C. claims involving substantial legal questions, including professional malpractice or misconduct;
- D. claims against an attorney for damages or affirmative relief other than adjustment of fee;

- E. 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;
- F. disputes where no attorney's services have been rendered for more than two years;
- G. 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;
- H. 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;
- I. disputes where the majority of legal services were not performed in Richmond County.

Section 4

GENERAL

- A. Except as set forth above, 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 program. Arbitration 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.
- B. The client may consent in advance to submit fee disputes to arbitration hereunder. 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, and that the client agrees to resolve fee disputes under this program.
- C. The attorney and client may consent in advance to arbitration pursuant to this program 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 program. 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 program.

Section 5

ARBITRATORS

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

- a. minimum of 5 years of admission to the Bar;
- b. minimum of 5 hours of fee dispute arbitration training or comparable training and experience in arbitration;

together with a response form, to be completed by the other party and returned to the Administrator within 15 days of mailing. The other party will include with the response, a certification that a copy of the response was served on the claiming party.

Upon receipt of the response, or, if no response is received within 15 days of mailing of the response form to the other party, the Administrator will appoint an arbitrator or arbitrators to hear and decide the case. 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 \$6,000. will be submitted to one attorney arbitrator. Disputes involving a sum of \$6,000. or more will be submitted to a panel of three arbitrators, which will include one non-lawyer.

When a party is notified of the appointment of the arbitrator(s), a brief biographical sketch will be included. Parties are to review the information and any requests for arbitrator removal must be made to the Administrator no later than five (5) days prior to the hearing date. Any personal, professional, or business contacts must be disclosed by the parties and the arbitrator(s). If there is a disclosure of a disqualifying nature, the Administrator will replace that arbitrator and notify the parties of the replacement.

Upon receipt of a case, the arbitrator or the chairperson (who must be an attorney arbitrator) of a panel of three arbitrators, as determined by the Administrator, will notify the parties of a date, time and place for the hearing which will take place on at least 20 days notice. All arbitrations will be held at the office of one of the arbitrators in Richmond County or at the RCBA.

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.

Section 7

POWERS OF ARBITRATOR AND CONDUCT OF HEARING

An arbitrator has the following powers:

- a. Issue subpoenas and administer oaths;
- b. Take and hear evidence pertaining to the proceeding;
- c. Rules of Evidence need not be observed at the hearing and either party, at his or her expense, may be represented by counsel.
- 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 may then present his or her account

of the services rendered and time expended. Witnesses may be called by the parties. The client will have the right of final reply.

Any party may provide for stenographic or other record at the party's expense. 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 no later than thirty (30) days from the date of 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.

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

To the extent otherwise provided by law in any arbitration conducted under this part, an arbitrator, the Bar Association and Program Administrator will have the same immunity that attach in judicial proceedings.

The hearing will be conducted by either the sole arbitrator, or all the arbitrators in case of a controversy in excess of \$6,000, but a majority may determine any question and render an award.

All proceedings and hearings commenced and conducted in accordance with this program, 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.

Section 8

TRIAL DE NOVO

A party aggrieved by the arbitration award may commence an action on the merits of its fee dispute 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 will become final and binding. A party commencing such an action shall notify the Administrator. 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 will not be called as witnesses nor will the arbitration award or record of the proceedings be admitted in evidence at the trial de novo. The parties may waive the right to de novo review provided such waiver is in writing.

Section 9

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 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. The arbitrators will 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 representatives.

Section 12

INTERPRETERS

Any party wishing an interpreter will make all arrangements directly with the interpreter and will assume the costs of the service.

Section 13

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 be present 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.

Section 14**EVIDENCE BY AFFIDAVIT**

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, however, the arbitrator(s) may at the arbitrator's discretion, receive and consider the evidence of witnesses by declaration or affidavit, but will give it only such weight as the arbitrator(s) deems it entitled to, after consideration of any objection made to its admission.

Section 15**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, will be deemed to have waived the right to object.

Section 16**MAJORITY DECISION**

When the panel consists of more than one arbitrator, unless required by law or by these rules, the majority of the arbitrators must make all decisions.

Section 17**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.

Section 18**TIME OF AWARD**

Unless otherwise agreed by the parties, the award will be rendered not later than thirty (30) days from the date of the completion of the hearing.

Section 19**AMENDMENT OF RULES**

These rules may be amended from time to time by a majority vote of the Board of Directors of the RCBA and approval by the Board of Governors and Presiding Justice of the Second Department.

Section 20**FEE DISPUTE RESOLUTION FORMS**

The following forms are intended to assist in the timely processing of fee arbitration matters:

1. Notice of Client's Right to Arbitrate.
2. Request for Arbitration.
3. Attorney Response.

4. Client Response.
5. Written Instructions and Procedures for Part 137.
6. Client Consent to Resolve Fee Disputes Under Part 137.2(b).
7. Consent to Waive De Novo under Part 137.2(c).
8. Consent to Final and Binding Arbitration in an Arbitral Forum Outside Part 137 under Part 137.2(d).
9. Arbitration Award..
10. Neutral's Oath.