THE NEW YORK STATE ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM (FDRP)

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New York State Attorney-Client Fee Dispute Resolution Program
C/O UCS Office of ADR & CI Programs

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VISIT US AT WWW.NYCOURTS.GOV/FEEDISPUTE FOR FEE ARBITRATION FORMS OR ADDITIONAL INFORMATION.

INTRODUCTION

The New York State court system has established a Statewide Fee Dispute Resolution Program (FDRP) to resolve attorney-client disputes over legal fees through arbitration (and in some cases mediation). The FDRP is established by Part 137 of the Rules of the Chief Administrator of the Courts, which is reprinted in this booklet.

This booklet has been designed to educate you about the FDRP and to help you make informed choices about whether the FDRP is right for you. Use this booklet if:

- You are trying to decide whether to use the FDRP process to resolve a fee dispute with your attorney, either because your attorney has given you notice of your right to use the FDRP or because you have learned about the FDRP on your own, or
- You are trying to decide whether you and your attorney should agree ahead of time in writing that any fee disputes that may arise between you will be resolved through the FDRP instead of the courts. (If this situation applies to you, it is very important that you read page 3 and the local program brochure located inside of this booklet.)

Please note that the FDRP's jurisdiction is limited to resolving attorney-client disputes over legal fees.

- The FDRP cannot address claims of lawyer misconduct. [1]
- The FDRP cannot address claims of lawyer malpractice. If you believe that your attorney committed malpractice in your case, you should not utilize the FDRP because it is possible that an arbitration decision against you with regard to the fee dispute could adversely affect your ability to pursue malpractice in court at a later date.

WHAT IS FEE ARBITRATION AND THE FDRP?

Lawyers in New York State are generally required to provide their clients with retainer agreements or letters of engagement which discuss the fees and expenses to be charged. At the initial conference with your lawyer, you should request a retainer agreement or letter of engagement and ask any questions you may have regarding the fee to be charged.

Despite the letter of engagement and discussions about fees, sometimes disputes arise. In general, your lawyer may not sue you in court over a fee dispute unless he or she first provided you with notice of your right to utilize the FDRP. Once you have received this notice you have 30 days to decide whether to use the FDRP. If you don't choose to participate in the FDRP within 30 days, your lawyer is free to pursue the matter in court.

1. In New York State, there are special attorney disciplinary or grievance committees charged with investigating complaints of professional misconduct. They operate under the authority of the Appellate Divisions of the Supreme Court: First Judicial Department, Manhattan (212) 401-0800; Second Judicial Department, Brooklyn (718) 923-6300; Hauppauge (631) 231-3775; White Plains (914) 949-4540; Third Judicial Department, Albany (518) 474-8816; Fourth Judicial Department, Syracuse (315) 471-1835; Rochester (585) 530-3180; Buffalo (716) 845-3630.

The FDRP is made up of a network of State-approved and monitored local programs that resolve attorney-client fee disputes outside of court through arbitration. Arbitration is a hearing conducted by one or more neutral persons who have special training and experience. One arbitrator or a panel of three arbitrators (at least one of whom must be a nonlawyer) listen to the arguments on both sides and decide the outcome of the dispute. Fee arbitration is fair, inexpensive and usually faster than going to court.

In addition to arbitration, some local programs may offer mediation. This is a process by which both sides meet with the assistance of a trained mediator to clarify issues and explore options for a mutually acceptable resolution. Mediation provides the opportunity for you and your attorney to discuss your concerns and reach a satisfactory result without going to court. Unlike an arbitrator, the mediator does not issue a decision. Participation in mediation is voluntary for your attorney and you, and it does not waive your right to arbitration. If you are interested in resolving your dispute through mediation, you may indicate this on the Request for Arbitration form. However, not every local program offers mediation.

If you are interested in using the FDRP process to resolve your dispute, or just want to learn more about the FDRP, please visit the FDRP web site at WWW.NYCOURTS.GOV/FEEDISPUTE.

WHEN DOES THE FDRP APPLY?

- Your attorney practices in New York and your case involved a civil matter (personal injury and criminal cases are not covered)
- The amount in dispute is between $1,000 and $50,000 (fee disputes can involve fees that you have already paid your attorney and for which you seek a refund, or fees that your attorney claims are owed by you)
- The legal representation began on or after January 1, 2002
- Your attorney has rendered services to you within two years prior to the filing of the request for fee arbitration

ALTERNATIVES TO FEE ARBITRATION

Fee arbitration provides clients and attorneys with an out-of-court option for resolving fee disputes, but that doesn't mean it's necessary or a good idea in your case. If you have a problem with your lawyer's bill, you should say so. Sometimes much unpleasantness can be prevented if you and your lawyer simply talk things over. Ask your lawyer to explain why the bill is higher than you expected. You may find out that your case was more complicated than you expected and took more time than you realized. Or your lawyer may agree that it is appropriate to adjust the bill. If discussion does not solve the problem, you can take the dispute to arbitration under the FDRP or choose to resolve it in court.

WHO ADMINISTERS THE PROGRAM AND HOW MUCH DOES IT COST?

The FDRP's Board of Governors has approved a number of local programs which administer the FDRP on a region by region basis. These local programs are run by bar associations or by the court system's regional Administrative Judges. All local programs have been carefully reviewed to ensure that they will resolve fee disputes in a fair, impartial and efficient manner. To find out which local program has jurisdiction over your fee dispute you need to identify the county in which the majority of the legal services in your case were performed. This is usually (but not always) the county where your lawyer's office is located. If you have a question about which local program will handle your dispute, please visit the FDRP's web site, WWW.NYCOURTS.GOV/FEEDISPUTE for an updated list of local programs.

The cost of utilizing the FDRP varies from program to program. You can find out about local program fees by checking the local programs section of the FDRP web site. Local programs charge about the same or less than it costs to file a case in court.

HOW DOES THE FEE ARBITRATION PROCESS START?

There are three ways in which you can enter the FDRP. In all three situations, the filing of a Request for Fee Arbitration form, available at WWW.NYCOURTS.GOV/FEEDISPUTE, officially starts the process.

A. YOUR LAWYER HAS MAILED YOU A NOTICE OF CLIENT'S RIGHT TO ARBITRATE.

A dispute over fees exists between you and your lawyer and he or she has provided you with a form entitled "Notice of Client's Right to Arbitrate" (UCS 137-1). If you are reading this booklet, chances are that you have received this form. You now have 30 days to decide whether to utilize the FDRP by filing a form entitled "Client Request for Fee Arbitration" (UCS 137-4a) with the appropriate local program. (See page 4). Once you file the Client Request for Fee Arbitration your attorney will be required to participate in the FDRP unless your dispute is one that the FDRP is not designed to handle. (See page 4 to find out how the rest of the process works.)

If you do not file the Request for Fee Arbitration within 30 days, you lose your right to utilize the FDRP and your lawyer will be free to take legal action.

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HOW DOES THE FEE ARBITRATION PROCESS START?
(CONTINUED FROM INSIDE)

B. YOU HAVE NOT RECEIVED THE NOTICE OF CLIENT'S RIGHT TO ARBITRATE.

You have not received the Notice of Client's Right to Arbitrate from your lawyer but decided to look into the FDRP on your own. You may have obtained this booklet directly from the FDRP web site, by contacting a local program directly or by asking your attorney to provide you with information about the FDRP. If you believe you have a fee dispute you should read this booklet carefully. If you then want to use the FDRP, complete the Client Request for Arbitration form (UCS 137-4a) and file it with the appropriate local program. Once you file this form, your attorney will be required to participate in the FDRP unless your dispute is one the FDRP is not designed to handle. (See page 4 to find out how the rest of the process works.)

C. YOU AND YOUR LAWYER HAVE AGREED AHEAD OF TIME TO USE THE FDRP.

You and your attorney previously agreed in writing to resolve fee disputes through the FDRP rather than in court. You probably agreed to this option when your attorney first began representing you and after you had the opportunity to read about the FDRP and how it works. If you believe that you have a fee dispute, you may simply file the Client Request for Arbitration form (UCS 137 - 4a) with the local program, together with a copy of the agreement to arbitrate. Filing the request form with the local program will start the process and your attorney will be required to participate. (See page 4 to find out how the rest of the process works.)

Alternatively, your attorney can start the process by filing a Request for Arbitration with the appropriate local program. If your attorney starts the process, you will be required to participate under the terms of your agreement.

See page 4 for more information on how you and your attorney can agree to use the FDRP ahead of time.

I FILED A REQUEST FOR FEE ARBITRATION. WHAT HAPPENS NOW?

The process officially starts once you file the Client Request for Arbitration form with the local program (and pay the administrative fee, if there is one). Upon receiving your Request for Arbitration, the local program administrator will forward it to the attorney, who then has 15 days to complete an Attorney Response form (UCS 137-5a) and return it to the local program, with a copy to you.

Unless the fee dispute is rejected by the local program for jurisdictional reasons, you will then be given 15 days advance notice of the time and place of the arbitration hearing and the identity of the arbitrator(s).

Prior to the arbitration hearing someone from the local program may contact you in an effort to settle the dispute. In addition, some local programs may offer mediation services and you may be asked whether you wish to participate in mediation. Mediation is voluntary for both sides. If one side does not wish to mediate, or the attempt at mediation proves unsuccessful, the next step in the process is the arbitration hearing.

WHAT IS THE PROCEDURE AT THE ARBITRATION HEARING?

Both parties have the right to present evidence and call witnesses. The burden of proof is on the attorney to prove the reasonableness of the disputed fee by a preponderance of the evidence. The attorney must present documentation of the work performed and the billing history. If witnesses are called, both parties have the right to question the witnesses at the hearing. Arbitration is less formal than court, so you do not necessarily need a lawyer to help you prepare for and/or represent you at the hearing. However, you may, of course, appear with an attorney at your own expense.

THE ARBITRATION AWARD

Your arbitration hearing will result in a decision (arbitration award) issued by the arbitrator(s) within 30 days of the hearing. The arbitration award will be final and binding on both you and your attorney, unless either of you seeks a trial de novo within 30 days.

REJECTION OF THE AWARD (TRIAL DE NOVO)

A trial de novo means that either you or your attorney can reject the arbitration award by filing a court action within 30 days after the award has been mailed. The arbitration award is not used as evidence in the court case. Since a trial de novo obviously will add significantly to the time and expense of resolving your fee dispute, you and your attorney may wish to waive this right ahead of time in writing. However, keep in mind that if you do so and agree to final and binding arbitration, the arbitrators' decision can be appealed only on very limited grounds.

SHOULD I AGREE AHEAD OF TIME WITH MY ATTORNEY TO RESOLVE FEE DISPUTES THROUGH THE FDRP RATHER THAN THE COURTS?

It's up to you. Your attorney cannot force you to enter into such an agreement. The FDRP offers a quick, inexpensive and informal means of resolving fee disputes. Litigation in the courts can take longer and cost more. Unlike litigation in the courts, arbitration is confidential and closed to the public. The speed, informality and less confrontational nature of arbitration allows the parties to quickly get on with their lives.

On the other hand, you may prefer the formality of a lawsuit, and to have your dispute resolved by a judge or jury rather than by arbitrators. In a lawsuit, you have the right to conduct depositions and engage in pretrial fact finding, which are generally not permitted in arbitration, and to appeal a judgment that you think is contrary to law.

So think it over carefully. If you want to preserve your right to go to court to resolve disputes over fees, then you may wish to avoid binding and final arbitration and should not waive your right to a trial de novo. On the other hand, if you are interested in achieving closure quickly and inexpensively and want to avoid litigation in the courts, then you may wish to choose final and binding arbitration by waiving your right to a trial de novo.

To enter into a valid agreement ahead of time, the agreement must be in writing and specify that you read the written materials describing the rules and procedures of the FDRP and the appropriate local program. In addition, if you are agreeing to final and binding arbitration, the written agreement must specify that you understand that you are waiving your right to a trial de novo.