

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

October 2011

F O R E W O R D

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.

**The \$10,000 threshold is part of a NYS Unified Court System Office of Court Administration Pilot Program. The threshold is effective for cases filed on or after 10/1/11 through 9/30/12.*

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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