NINTH JUDICIAL DISTRICT

PART 137: ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

LOCAL PROGRAM RULES AND PROCEDURES

SECTION 1 - POLICY

It is the policy of the Ninth Judicial District ("district") to encourage out-of-court resolution of fee disputes between attorneys and clients in a fair, impartial and efficient manner.
The Administrative Judge of the Ninth Judicial District is designated as the Administrator of the Attorney-Client Fee Dispute Resolution program under these Rules and may delegate duties to such officers, committees, and employees as he may direct.

SECTION 2 -DEFINITIONS

A. "Answer" (also referred to as "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 Administrative Judge or his/her designee to hear the evidence presented by the parties and make a final determination.

C. "Administrator" means the Administrative Judge (or designee) of the Ninth Judicial District who oversees the Program.

D. "Approval" by the Board of Governors means, where so required by Part 137, recommendation by the Board of Governors with approval of the appropriate Presiding Justice of the Appellate Division.

E. "Arbitration" means the adjudication of disputes between parties by neutral third person(s) who hear both sides and render an award.

F. "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.

G. "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.

H. "District Office" means the Administrative Judges Office of the Ninth Judicial District.

I. "Petition" means a "Request for Fee Arbitration" requested by either the client or the attorney.

J. "Petitioner" means the party requesting the fee arbitration.

K. "Program" means the Attorney-Client Fee Dispute Resolution Program established under Part 137 and administered and implemented by the Administrative Judges Office of the Ninth Judicial District pursuant to the Rules and Procedures set forth herein.

L. "Respondent" means the party responding to the petition in opposition to the claim.

M "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 UCS137-3 5/02) published by the Office of Court Administration.

SECTION 3-THE PROGRAM AND JURISDICTION

A. The jurisdiction of this program will include the counties of Westchester, Rockland, Orange, Putnam and Dutchess.

B. 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.

C. 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.

D. 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 that $1000 or more than $50,000, except that the district 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 the 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.

E. Pursuant to a written request and subsequent approval by the District Administrative Judge, the Board of Governors and the Presiding Justice of the Appellate Division, Second Judicial Department, this Program may be administered by a local bar association in accordance with all the rules and procedures set forth herein.

F. There shall be NO FEE charged to any of the parties who participate in the Attorney-Client Fee Dispute Resolution Program. This rule, however, shall not preclude the imposition of any fee for such program in the future, or where such program is administered by a local bar association or in partnership with such association.

G. In the event personal service of the Notice of Client's Right to Arbitrate becomes necessary, after having unsuccessfully attempted service by certified mail where required under these Rules and Procedures, the attorney 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), and to the extent authorized by law, these costs may be added to the arbitrator(s) award, if

previously paid by the prevailing party.

H. **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 clients consent shall be stated in a retainer agreement or other writing specifying that the client has read pursuant to Part 137, the district's approved Rules and Procedures 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 the previous subsection of this section, except that the retainer agreement or other writing shall also state that the client understands that he/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 H1 (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 Administrative Judge, together with a copy of the parties' agreement to arbitrate.

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

I. Upon notice of appointment, the Chairperson may contact both parties to make an effort to settle the dispute, however, the Chairperson is not authorized to provide legal advice to any of the parties involved.

SECTION 4 - ARBITRATORS

The district shall establish and maintain a sufficient number of arbitrators in order to meet the Program's caseload. Attorneys and non-attorneys shall serve as arbitrators. In recruiting arbitrators, the district shall recruit arbitrators representing a wide range of law practices and a diversity of non-attorney professions and occupations representing a cross-section of the communities. The District Office shall seek the assistance of local Bar Associations in the recruitment of attorney arbitrators. Non-attorney arbitrators will be recruited by contacting established Alternative Dispute Resolution programs throughout the district as well as the Unified Court System, Office of Alternative Dispute Resolution Programs.

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 criteria:

1. be admitted to the New York Bar for at least five years, and

2. been engaged in the practice of law for at least three years, and

3. be qualified as an arbitrator under the American Arbitration Association rules, by the Office of Court Administration or by the United States District Court through any of their arbitration programs; or

4. Have completed an district-approved arbitration training program or the equivalent.

B. Non-Attorney Arbitrators, approved by the Board, shall be appointed by the District Administrative Judge of the Ninth Judicial District 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 9th Judicial District or work within the district.

2. be fluent in speaking, reading and writing English; and

3. have completed a district-approved arbitration training program or the equivalent.

C. The number of arbitrators assigned to hear a fee dispute matter under this Program shall depend upon the amount in dispute as follows:

1. disputes involving a sum of less than $10,000.00 shall be submitted to one attorney Arbitrator; and

2. disputes involving a sum of $10,000.00 or greater shall be submitted to a panel of three Arbitrators, which shall include at least one attorney and one non-attorney member of the public; the chairperson of all the panels shall be an attorney and all decisions on the merits shall be decided by majority rule.

D. Lists of attorney Arbitrators may be maintained under the following headings: matrimonials, litigation, real estate, business and other. Attorney Arbitrators will self-identify themselves as being within one or more of these areas and where practical, matters will be assigned to Arbitrators in 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 District Administrative Judge which shall be kept 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 district.

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 a 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 District Office. 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 3H above, the attorney shall serve a written notice to the client, entitled "Notice of Clients Right to Arbitrate", by certified mail or personal service. The notice shall:

1. be in a form approved by the Board of Governors;

2. contain a statement of the clients right to arbitrate;

3. advise that the client has 30 days from receipt of the notice in which to elect to resolve the fee 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 serves a Notice of the Clients Right to Arbitrate as described in subsection A of this section and the client does not file a Petition with the district within 30 days after the Notice was received, 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 his own initiative, the client may contact the Administrative Judges Office ("District Office") at (914) 824-5100 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 District Office. Upon request, the District Office shall forward the Petition to the client by mail.

D. The Petitioner shall then file the Petition with the District Office.

1. Upon receipt of the Petition, the District Office shall assign a filing number to the matter.

2. The District Office shall review the facts and circumstances supporting the Petition to insure that this is a matter within the jurisdiction of the Program. If it is determined that this is a matter not within the jurisdiction of the Program, the District Office shall inform the Petitioner.

3. If it is determined that this matter is a matter within the jurisdiction of the Program, the District Office shall mail a copy of the Petition to the Respondent together with an answer form to be completed by the Respondent and returned to the District Office within 15 business days of mailing of the Petition.

4. The Respondent shall return its Answer to the District 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 District Office shall designate the Arbitrator(s) who will hear the dispute and shall expeditiously schedule a hearing.

6. At least 15 days prior to the date of the hearing, the District Office shall notify the parties in writing of the date, time and place of the hearing and of the identity of the Arbitrator(s). Any subsequent rescheduling will be a matter between the

parties and the Arbitrator(s) at the discretion of the 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 District Office no later than 5 days prior to the scheduled date of the hearing. The District Office 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 anytime 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 the right of reply. The client shall have the right of final reply.

15. Where there is more than one Arbitrator, any disputes arising among them shall be decided by the Chairperson, consistent with Part 137 of the Rules of the Chief Administrator and the minimum Standards and Guidelines of the Board of Governors.

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 District 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 3H1(b) of these Rules and Procedures, then the

arbitration award shall be final and binding.

E. Either party may make an application to extend the time within which a petition or answer must be filed. Such application shall be in writing to the Administrative Judge with notice to the other party.

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 District Office. If no action is commenced within thirty (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 shown 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, correspondence and papers necessary and proper for the arbitration proceeding under this Program and for the entry of judgement of any arbitration award may be served upon any party by regular mail addressed to that party at that party's last known addresses or to the party's counsel of record.

SECTION 8 - CORRESPONDENCE

Requests for further information and correspondence relating to this Program may be sent to the Office of the Administrative Judge of the 9th Judicial District at the following address:

Hon. Alan D. Scheinkman
Administrative Judge
Ninth Judicial District
111 Martin Luther King Blvd.
White Plains, New York 10601
(914) 824-5100

SECTION 9 - PERIODIC REVIEW

The functioning of this Program shall be reviewed periodically from the reports submitted by the District Office to the Board of Governors including any recommendations or suggested changes of the Program.

SECTION 10 - EFFECTIVE DATE

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