

JOINT COMMITTEE ON FEE DISPUTES AND CONCILIATION  
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Note that all hearings held under the Part 137 Program of The New York County Lawyers Association **will be held virtually through Zoom for the foreseeable future.**

All new Part 137 **filings and replies will also be processed over e-mail**, through the dedicated New York County Lawyers Association Part 137 email: [FeeDisputeAdmin@nycla.org](mailto:FeeDisputeAdmin@nycla.org).

Enclosed are the Part 137 Local Program Rules, which are amended per the above.

# JOINT COMMITTEE ON FEE DISPUTES AND CONCILIATION

*A Collaboration of the Association of the Bar of the City of New York, the Bronx County Bar Association, and the New York County Lawyers' Association*

## ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

### LOCAL PROGRAM RULES

#### Preamble

The New York County Lawyers' Association, the Bronx County Bar Association and The Association of the Bar of the City of New York (referred to throughout as the "Associations") have established a Joint Committee on Fee Disputes and Conciliation (the "Committee"). The Committee seeks to resolve Lawyer-Client Fee Disputes in a variety of ways. Whatever the means employed, whether by Conciliation, Mediation, Arbitration or otherwise, the Committee's goal is to provide a private and economical means of resolving disputes in an atmosphere of mutual understanding.

The Committee has adopted the following Rules (the "Rules") to facilitate the Mandatory Arbitration of Fee Disputes between lawyers and clients. These Rules put into effect the requirements of 22 N.Y.C.R.R. Part 137 ("Part 137"), which provides for the informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation. In accordance with the procedures for arbitration, arbitrators shall determine the reasonableness of fees for professional services, including costs, taking into account all relevant facts and circumstances. Mediation of fee disputes is strongly encouraged. The Rules should be interpreted and applied consistently with the purposes of Part 137.

Although the Rules provide for hearings to resolve contested issues, in order to expedite resolution of disputes, all parties are encouraged to submit written statements and formally agree about facts whenever possible.

#### I. Application

- a. These rules shall apply and the Committee will hear fee disputes where:
  - 1) the attorney has commenced representation of the client on or after January 1, 2002;
  - 2) the attorney is admitted to the bar of the State of New York; and
  - 3) a material part of the legal services were rendered **or** the lawyer maintains an office in Bronx and/or New York Counties.
- b. For good cause shown, the Committee may transfer the dispute to another arbitral body approved by the Board of Governors or to such other arbitral body to which the parties unanimously consent.
- c. These rules shall not apply to any of the following:
  - 1) representation in criminal matters;
  - 2) amounts in dispute involving a sum of less than \$1,000 or more than \$50,000,<sup>1</sup> except that the Committee 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 amount of the fee;
  - 5) disputes where the fee to be paid by the client has been determined by statute or rule and allowed as of right by a court,

or where the fee has been determined by 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.
- 9) disputes where the attorney and client consented to submit fee disputes for final and binding arbitration to an arbitral forum other than an arbitral body created by Part 137. The consent must be in writing and in a form prescribed by the Board of Governors that oversees the Part 137 arbitration program.

## 2. Administration

The Associations shall provide at least one staff person (the "Administrator") to administer the arbitration proceedings contemplated by these Rules and to act as liaison with the Chair of the Committee and any Arbitrator<sup>2</sup> who is appointed under these Rules. The Office of the Administrator shall be located at the House of the New York County Lawyers' Association, 14 Vesey Street, New York, New York 10007. Any communication intended for the Committee shall be addressed to the Administrator.

## 3. Interpretation

The authority to decide whether the conditions of Rule 1 have been satisfied, to interpret these Rules, and to decide whether or to what extent they apply to the alleged dispute, shall be solely with the Committee Chair or his or her designee before an Arbitrator is appointed, and shall be solely with the Arbitrator after he or she has been appointed. Any such decision by the

Chair, the Chair's designee, or the Arbitrator shall be final and binding on the parties.

## 4. Modification of Procedures

These Rules shall apply to the arbitration of all disputes by the Committee required by Part 137. The parties may, however, by written agreement made prior to the commencement of proceedings, modify the procedures. Any such written modification shall be submitted to the Committee at the time the proceedings are initiated, and attached to the Request for Arbitration form. (Form 2).<sup>3</sup> Any such procedures shall not be inconsistent with the requirements of Part 137, and shall be subject to approval by the Chair of the Committee.

## 5. Initiating the Arbitration; Procedure and Notice

a. Arbitration is voluntary for the client unless the client has previously consented in writing to submit fee disputes to the fee dispute resolution process established by Part 137, arbitration under these Rules shall be voluntary for the client. Mediation shall be voluntary for both the attorney and the client.

### b. Attorney initiated Arbitration.

1) Procedure where client previously did not consent in writing to resolve fee disputes under Part 137

a) *attorney sends notice to client and client consents to arbitrate*

Except as set forth in paragraph (2), where the attorney and client cannot agree as to the attorney's fees or where the attorney seeks to commence an action against the client for attorney's fees, the attorney shall forward a written notice to the client, entitled Notice of Client's Right to Arbitrate, by certified mail or by personal service. The notice

i. shall be in a form approved by the board of governors;

ii. shall contain a statement of the client's right to arbitrate;

iii. shall advise that the client has 30 days from receipt of the notice in which to elect to resolve the dispute under this Part;

iv. shall be accompanied by the written instructions and procedures for the arbitral body having jurisdiction over the fee dispute, which explain how to commence a fee arbitration proceeding, and;

v. shall be accompanied by a copy of the "request for arbitration" form necessary to commence the arbitration proceeding.

If the client elects to arbitrate, the client should follow the procedure outlined below in Rule 5.d.2).

b) *attorney sends notice and client does not consent to arbitrate*

If the attorney forwards to the client by certified mail or personal service a notice of the client's right to arbitrate, and the client does not file a Request for Arbitration within thirty (30) calendar 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. An attorney who institutes an action to recover a fee must allege in the complaint (i) that the client was served or 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.

2) Procedure where client previously consented in writing to resolve fee disputes under Part 137

Where the client has consented in advance to submit fee disputes to arbitration under subdivisions (b) and (c) of Part 137 section 137.2, and where the attorney and client cannot agree as to the attorney's fee, the attorney shall forward

to the client, by certified mail or by personal service,

- a) a copy of the "Request for Arbitration" (Form 2)
- b) a copy of the parties' arbitration agreement,
- c) these rules; and
- d) such other instructions that explain how to commence a fee arbitration proceeding (available from the Administrator).

Simultaneously the attorney shall file with the Administrator items a) and b) above and a certification that items a), b), c) and d) have been served by certified mail or personal service on the client.

c. Client initiated Arbitration

- 1) In the event the client decides he or she wants to use arbitration to resolve the dispute, and the Committee has jurisdiction, the client may directly contact the Administrator. Alternatively, the client may contact the attorney, who shall be under an obligation to refer the client to the Administrator. The Administrator then shall forward to the client the appropriate papers necessary to begin the arbitration process, including a copy of Part 137 and these rules.
- 2) If the client elects to submit the dispute to arbitration, the client shall file the "Request for Arbitration" form (Form 2) with the Administrator, and the Administrator shall mail a copy of the filed "Request for Arbitration" to the named attorney together with an "Attorney Response" (Form 3). The attorney is required to complete and return Form 3 to the Administrator within fifteen (15) calendar days of mailing. The attorney shall include with the "Attorney Fee Response" a certification that a copy of the response was served upon the client.

d. Receipt of the Request for Arbitration by the Committee

Upon receipt of a Request for Arbitration, the Committee shall determine whether a dispute exists within the jurisdiction of the Committee. If so, the Administrator will acknowledge in writing receipt of the Request for Arbitration and forward it to the opposing party with a response form.

With both the acknowledgment of the Request for Arbitration and its submission to the opposing party, the Administrator will ask both parties in writing whether they are willing to mediate the dispute. The following notice from the Committee will also be included:

The Joint Committee on Fee Disputes and Conciliation of the Association of the Bar of the City of New York, the Bronx County Bar Association, and the New York County Lawyers' Association is set up to assist in the resolution of fee disputes between lawyers and clients by mediation and arbitration.

As part of the voluntary settlement of a fee dispute claim, the client may be asked to sign a release which, as a matter of law in light of the language it contains, might be interpreted as a release of all claims against the lawyer, including but not limited to, claims for professional malpractice. Should a client be asked to sign any such release, the Joint Committee suggests that the client consider consulting independent counsel.

If both parties agree to mediate the dispute, the Committee's mediation rules shall apply.

**6. Withdrawal and Failure to Respond; Decision To Be Made On the Basis Of the Evidence Presented**

- a. The client may not withdraw from the process after the Administrator has received

the "Attorney Fee Response." If the client seeks to withdraw at any time after the Administrator receives the "Attorney Fee Response," the withdrawal will have no effect and arbitration will proceed as scheduled whether or not the client appears. A decision will then be made on the basis of the evidence presented.

- b. If the attorney, without good cause, fails to respond to a request for arbitration 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.

**7. Arbitrators**

- a. Designation and removal

1) The Committee shall maintain a list of attorney arbitrators and a list of non-attorney arbitrators. When selecting an arbitrator, the Administrator shall select the next available arbitrator on the appropriate list.

2) After receipt of the "Attorney's Fee Response," or after expiration of the 15-day response period, the Administrator shall designate the Arbitrator who will hear the dispute. The parties must receive at least fifteen (15) calendar days notice in writing of the identity of the Arbitrator.

a) Disputes involving a sum of less than \$10,000 shall be submitted to one attorney Arbitrator.

b) Disputes involving a sum of \$10,000 or more shall be submitted to a panel of three Arbitrators, which shall include one Arbitrator who is not a lawyer.

c) Instead of a three-Arbitrator panel, the parties may agree to submit the arbitration to one Arbitrator for disputes involving the sum of \$10,000 or more. Such agreement shall be in

writing, signed by all parties, and provided to the Administrator before the three-Arbitrator panel is selected. If such an agreement is submitted to the Administrator after the Administrator has selected a three-person panel, 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. Vacancies shall be filled in the normal manner provided under these Rules.

- 3) Either party may request the removal of an Arbitrator based upon the Arbitrator's personal or professional relationship to a party, counsel, witness or other participant, or based upon matters that the Arbitrator disclosed or should have disclosed pursuant to Rule 7.c.6). A request for removal must be made to the Administrator no later than five (5) business days prior to the scheduled date of the hearing. The Administrator shall forward the request to the Committee Chair or his or her designee, who shall have the final decision concerning the removal of an Arbitrator.

b. Vacancies

- 1) If an Arbitrator cannot perform his or her duties, the Administrator shall declare the position vacant and shall fill the vacancy in accordance with these Rules.
- 2) If, after the hearings begin, one or more vacancies occurs in a panel of arbitrators, the Administrator shall appoint another Arbitrator of the same category (attorney or non-attorney) as

the one vacating the post, unless the parties agree that the remaining Arbitrators continue to hear and decide the controversy without filling the vacancy.

- 3) If a substitute Arbitrator is appointed, all or part of the prior proceedings may be repeated at the sole discretion of the arbitration panel.

c. Qualifications and duties

- 1) Both lawyers and non-lawyers may serve as an Arbitrator.<sup>5</sup>

- 2) In recruiting Arbitrators, the Committee should make every effort to ensure 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.

- 3) Prospective Arbitrators shall submit a summary of credentials to the Committee, which the Committee shall keep on record.

- 4) Arbitrators shall be appointed by the Administrator pursuant to the Committee's rules and procedures.

- 5) All Arbitrators must sign a written oath or affirmation to faithfully and fairly arbitrate all disputes that come before them. These written oaths or affirmations shall be kept on file by the Committee.

- 6) All Arbitrators must conduct a conflict of interest check 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.

- 7) Arbitrators shall serve as volunteers.
- 8) Arbitrators shall not be permitted to testify in a subsequent proceeding or trial "de novo."<sup>6</sup>

d. Jurisdiction

- 1) The Arbitrator is authorized to rule on his or her own jurisdiction under Part 137 and these Rules, including rulings as to an arbitration agreement's existence, scope or validity.
- 2) The Arbitrator is authorized to decide whether the contract that includes the arbitration agreement exists or is valid. The arbitration agreement in such contract shall be treated independently from the other provisions of the contract. If the Arbitrator finds the contract has no legal effect, such finding alone shall not make the arbitration clause invalid.
- 3) **If** a party objects to the Arbitrator's jurisdiction or to using arbitration to resolve a claim or counterclaim, he or she must raise the objection before or when filing the response to the Request for Arbitration. The Arbitrator may rule on such objections at any time, including in the final award.
- 4) The Arbitrator shall have the authority to enforce his or her orders through any reasonable means, including imposing monetary sanctions to the extent otherwise authorized by law, striking claims or defenses, and precluding the introduction of evidence. Upon application of a party, the Chair of the Committee may, in his or her discretion, vacate, in whole or in part, monetary sanctions totaling more than \$100.

**8. Communications with the Arbitrator**

- a. Except in the presence of all parties, neither a party nor a party's agent shall

communicate directly with an Arbitrator about the arbitration.

- b. Except in the presence of all parties, any communication from any party to an Arbitrator about the arbitration shall be made through the Administrator for transmittal to the Arbitrator. At the same time a party sends documents or other materials to the Administrator for transmittal to the Arbitrator, such party shall serve all other parties with copies of the same documents or other materials.
- c. The parties and the Arbitrator may agree, or the Arbitrator may direct, that parties communicate directly with the Arbitrator.

**9. Preliminary Hearing**

- a. A preliminary hearing may be held:
  - 1) at the request of a party;
  - 2) at the discretion of the Arbitrator, or
  - 3) at the discretion of the Committee.
- b. The Arbitrator should schedule the preliminary hearing within a reasonable time.
- c. The Arbitrator may conduct the preliminary hearing by phone at his or her discretion.
- d. The parties and/or their representatives may participate in the preliminary hearing.
- e. The preliminary hearing may be used to discuss all preliminary matters such as procedures to apply in the case, issue clarification, and scheduling.

**10. Exchange of Documents and Other Information**

- a. At any party's request or in the Arbitrator's discretion, the Arbitrator may order a party to produce documents and other information and to identify any witnesses the party intends to call to testify at the hearing.
- b. The parties shall exchange copies of all exhibits they plan to introduce at the hearing at least five (5) business days before the

hearing. Exhibits comprised solely of documents previously produced to all parties need not be exchanged.

- c. The Arbitrator may resolve any dispute about the exchange of documents and other information.

### **11. Date, Time, and Location of Proceedings**

- a. Location

Fee dispute arbitration proceedings shall typically be conducted at the New York County Lawyers' Association, 14 Vesey Street, New York, NY 10007. Otherwise, they shall be conducted at other neutral sites. They shall not take place in the office of any interested party unless all parties consent in writing.

- b. Scheduling hearings

The Administrator shall arrange for the date, time, and location of each hearing subject to the availability of the Arbitrator and the parties. The parties shall cooperate with each other and the Administrator to schedule an early hearing date and shall abide by the schedule. The parties must receive at least fifteen (15) days written notice of the date, time, and location of the hearing.

### **12. Interpreters**

A party who wants an interpreter shall arrange with the interpreter for his or her services and shall pay for such services.

### **13. Postponements**

The Arbitrator may postpone a hearing:

- a. if the parties agree;
- b. if at least one party demonstrates good cause; or
- c. at the Arbitrator's discretion.

### **14. Absence From the Hearing**

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. If, however, without making the requisite submission, one or more of the parties or their representatives is absent from the hearing without good cause, the hearing shall proceed as scheduled, as long as the absent person received notice of the hearing or waived the right to attend. A decision on the fee dispute will be made on the basis of the evidence presented.

### **15. Recording of Proceedings**

Any party may arrange for a stenographic or other record of the proceedings at the party's expense and shall provide a copy to the Arbitrator of any transcript that is produced. Any other party to the arbitration shall be entitled to a copy of the transcript upon written request and will be responsible for the cost of obtaining it.

### **16. Arbitration Hearing**

- a. Arbitrator's powers. The Arbitrator shall have the power to:

- 1) take and hear evidence pertaining to the proceeding;
- 2) administer oaths and affirmations; and
- 3) compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the proceeding.

- b. Privacy of hearings; who may attend hearings

- 1) The hearing shall be private unless the law provides otherwise.
- 2) A person with a direct interest in the arbitration is allowed to attend the hearing.
- 3) The Arbitrator is authorized to decide whether any person other than a party and its representatives should attend an arbitration hearing or part of an arbitration hearing.



c. Representation by counsel. Any party, at his or her own expense, may be represented by counsel.

d. Evidence

- 1) The rules of evidence need not be observed at the hearing.
- 2) The Arbitrator shall decide what evidence will be admitted.
- 3) The Arbitrator may order that additional evidence be provided to facilitate his or her decision in the case.
- 4) All parties and the Arbitrator must be present when evidence is taken. If a party is absent, the hearing shall continue if the absent party received notice of the hearing and is absent without good cause shown, or waived the right to attend
- 5) The Arbitrator shall apply applicable legal principles of privilege, including the attorney-client privilege to the extent it has not been waived as a result of the filing of the arbitration or the raising of issues in the arbitration.
- 6) Evidence by Affidavit and Post hearing Filing of Documents or Other Evidence
  - a) 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.
  - b) The parties and the Arbitrator may agree, or the Arbitrator may direct, that additional evidence be provided to the Arbitrator after the hearing. Each party must be given a chance to examine the additional submissions and to respond to them.

e. Burden of proof

The burden shall be on the attorney to prove the reasonableness of the fee he or she

charged the client by a preponderance of the evidence, and to present documentation of the work performed and the billing history.

f. Order of proceedings

- 1) The attorney shall present evidence to support his or her fees. The client shall then present evidence to support his or her claims. Witnesses for each party shall also submit to questions from the Arbitrator and the adverse party.
- 2) The client shall have the right of final reply.
- 3) The Arbitrator may conduct the hearings in a manner designed to resolve the dispute expeditiously yet fairly.

## 17. Interim Measures

By agreeing to Arbitration under these Rules, the parties shall be deemed to have conferred upon the Arbitrator the authority to issue such provisional or interim orders or awards as the Arbitrator may deem necessary, desirable, just or equitable, to the extent otherwise authorized by law. Consistent with the authority recognized by this Rule, and subject to the provisions of Part 137 relating to de novo review, the parties shall be deemed to have irrevocably consented to the entry of an order in the appropriate Court embodying such provisional or interim order or award, pursuant to CPLR 7502(a) and 7510 and/or any other applicable law, and to have waived any objection, jurisdiction or otherwise, to judicial confirmation and enforcement of such provisional or interim order or award.

## 18. Closing the Hearing

- a. The Arbitrator shall close the hearing, where one or more parties have appeared, after expressly asking the parties who appeared whether they have additional evidence to offer, and
  - 1) the parties acknowledge they have no more evidence to offer; or
  - 2) the Arbitrator thinks the record is complete.

- b. If the parties who have appeared at a hearing are to file written submissions subsequent to the hearing, the hearing shall be closed as of the last date on which the submissions are due to be filed with the Administrator.

**19. Reopening of the Hearing**

- a. The arbitrator may reopen the hearing before issuing the award
  - 1) on the Arbitrator's own initiative; or
  - 2) if at least one of the parties requests it.
- b. The arbitrator may not reopen the hearing if reopening the hearing will prevent the Arbitrator from issuing the award within the time required by the parties' arbitration agreement. The parties may, however, agree to extend the time, in which case the Arbitrator may reopen the hearing.
- c. The time to issue the award if a hearing is reopened shall be thirty (30) days after the reopened hearing is closed.

**20. Expenses**

- a. Each party shall be responsible for the party's own expenses.
- b. Each party shall be responsible for the expenses of witnesses the party produces.
- c. The parties shall share equally all other arbitration expenses unless
  - 1) they agree otherwise; or
  - 2) the Arbitrator rules otherwise, whether in an interim order or in the final award.

**21. The Award**

- a. Time and form of award
 

The arbitration award shall be issued no later than thirty (30) calendar days after the close of the hearing. Arbitration awards shall be written, executed and approved by a majority of the Arbitrators in the manner required by law, and shall specify in a concise statement the bases for the determination. Except as set forth in Part

137 section 137.8 (relating to trials de novo), all arbitration awards shall be final and binding.

- b. Delivery of award to parties

The award may be delivered to the parties or their counsel at their last known addresses by mail, personal service, facsimile, e-mail, or any other method permitted by law.

**22. Waiver of Rules**

- a. Any party who continues to participate in the arbitration after learning that there has not been compliance with any provision or requirement of these Rules, but fails to object in writing, shall have waived the right to object.
- b. Except for the time requirements of Rule 5, the Arbitrator has the discretion to extend any time requirements imposed on any of the parties by these Rules.

**23. Filing Fees**

- a. The following schedule of filing fees shall be paid by each party upon filing the party's initial document (Request for Arbitration or the response) with the Committee and shall apply to all arbitrations eligible for arbitration under Part 137:

Amount in Dispute	Fee to each Party
\$1,000.00-4,999.99	\$25
5,000.00-5,999.99	50
6,000.00- 9,999.99	75
10,000.00-19,999.99	100
20,000.00-34,999.99	200
35,000.00- 50,000.00	350

- b. In cases where the parties agree to use one arbitrator, the filing fee for each party will be \$75 or the amount on the above schedule, whichever is less.
- c. The Chair of the Committee may waive, defer, or reduce filing fees in cases of extreme hardship.

## **24. Confidentiality**

All proceedings and hearings commenced and conducted in accordance with Part 137, including all papers submitted in connection with the arbitration, shall be kept confidential, except to the extent necessary to take related legal action with respect to a fee matter. After a decision is rendered, Arbitrators should refer all requests for information concerning the fee dispute at issue in the arbitration to the Administrator.

## **25. Release of Documents for Ancillary Legal Action**

If a party requests it in writing, the Committee shall provide to the party certified copies of any papers it has that may be needed to take ancillary legal action with respect to the fee matter. The party who requests the certified copies shall pay the cost of providing them.

## **26. Trial De Novo**

If a party files an action for de novo review under Part 137, section 137.8, the party shall so advise the Committee.

## **27. Referral of Attorney to the Grievance Committee**

### **a. Failure to participate in the arbitration**

All attorneys are required to participate in the arbitration program established by Part 137 if a client files a request for arbitration under these Rules. An attorney who, without good cause, fails to participate in the arbitration process shall be referred to the appropriate grievance committee of the Appellate Division for appropriate action.

### **b. Professional misconduct**

If, as a result of the fee dispute arbitration process, the Arbitrator or Committee becomes aware of evidence of professional misconduct, the Arbitrator or Committee shall refer such evidence to the appropriate grievance committee of the Appellate Division.

## **28. Mediation**

- a. The parties may avail themselves of mediation provided by the Committee. The mediation program permits arbitration pursuant to Part 137 in the event the mediation does not resolve the fee dispute.
- b. All mediation proceedings and all settlement discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration.
- c. The mediator who mediated the parties' fee dispute may not serve as arbitrator of that same dispute.
- d. No filing fees in addition to those charged for arbitration shall be charged for the mediation of a fee dispute.

## **29. Immunity**

Neither the Associations, nor the Committee, its Chair or members, Administrator, Arbitrator and staff person acting under these Rules, shall be a necessary party in any judicial proceedings relating to any arbitration conducted in accordance with these Rules. None of the parties listed in the preceding sentence shall be liable for any act or omission relating to any dispute in connection with any arbitration conducted under these Rules. Without limiting the scope of the preceding two sentences, it is intended that the Committee, its Chair and its members, and any Arbitrator acting under these Rules have the same immunity as a judicial officer or body would have in a court proceeding. The parties to any arbitration held under these Rules will be deemed to have conferred the immunity described above.

## **30. Standards of Common Sense**

The parties will be deemed to have conferred upon the Arbitrator the authority to decide their dispute in consideration of equity, justice and common sense. The Arbitrator shall not be bound to apply rules of substantive law, procedure or evidence.

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1. The disputed sum is the portion of the fee upon which the attorney and client disagree, and not the total amount of the fees charged by the attorney.

2. Throughout these Rules, the term "Arbitrator" will refer to both a single arbitrator or a panel of three arbitrators.

3. All Forms required under these Rules are contained in the Appendix to these Rules.

5. Non-lawyers may only serve as an Arbitrator on a panel of Arbitrators.

6. Trial "de novo" means a trial in court about the same fee dispute. It does not mean an appeal of the Arbitrator's decision.