

**Rules Of Arbitration Of The Alternative Dispute Resolution Tribunal Of The Bar
Association Of Nassau County, N.Y., Inc.**

Part 137.Fee Dispute Resolution Program

Attorney-Client Fee Dispute Resolution Program

1. Alternative Dispute Resolution Tribunal

(a) The Bar Association of Nassau County, N.Y., Inc. (Association) has established an Alternative Dispute Resolution Tribunal composed of members of the Association who are available to: the Courts; litigants; parties to contracts and to the general public. The Tribunal will, on request, supply Arbitrators for the resolution of disputes.

(b) The Tribunal will maintain a list of attorneys who have been in active practice of law ten (10) years or more and who have been selected as qualified to act by the Judiciary Committee of the Association. Applications for membership in said Tribunal shall be on a form supplied by the Association.

(c) The Arbitration Program will be supervised by a Tribunal Administrator. "Tribunal Administrator" means the person who serves to manage and direct all matters brought before the Tribunal and who shall maintain a current list of Arbitrators; notify parties and/or respective counsel as to the time and place of scheduled proceedings; and, shall perform such other duties and functions as may be necessary in the execution of administrative duties

(d) Parties electing to utilize the Program shall be required to pay such administrative charges as may be established by the Association from time to time.

2. Panel Composition.

Upon receiving a request for arbitration, the parties shall be offered the opportunity to choose an Arbitrator or Arbitrators from among a list of five (5) names submitted to the parties by the Administrator. Arbitrators shall be proposed in rotation from a list prepared by the Administrator.

The parties shall each return to the Administrator, within seven (7) days, the list submitted with the numerical choice of persons on the list indicated. The Administrator shall compare the list of the parties and select the Arbitrator(s). If the Administrator shall be unable to select the Arbitrator(s) from the first list, a second list shall be submitted to the parties. If the Administrator shall be unable to select an Arbitrator(s) from the second list, the Administrator shall select the Arbitrator(s).

3. Jurisdiction.

Matters which may be submitted for determination by arbitration are as follows:

(a) matters in litigation in any court;

- (b) matters required by statute to be determined by arbitration;
- (c) matters required by contract to be determined by arbitration;
- (d) matters not in litigation which may have been voluntarily submitted to it by the parties.

4. Challenge to Arbitrators.

Any request for disqualification of an Arbitrator assigned by the Administrator shall be in writing addressed to the Administrator with notice to the other party and served within five (5) days of receipt of the Notice of Appointment. Such challenge shall be for cause and the Administrator's determination thereon shall be final.

5. Waiver.

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 in writing within (10) days, shall have waived the right to object.

6. Arbitration Hearing.

(a) The arbitration proceeding shall be held in Nassau County at a place designated by the Arbitrator(s).

(b) The Arbitrator(s) shall fix a hearing date and time not less than fifteen (15) days or more than thirty (30) days after the Arbitrators have received notice of the case assigned and the Arbitrator(s) shall give written notice to the parties at least ten (10) days prior to the scheduled hearing date. The Arbitrator(s) may extend the time when such hearing shall be held on good cause shown.

(c) Evidence. The Arbitrator(s) shall not be bound by the Rules of Evidence, unless otherwise agreed by the parties.

(d) The Arbitrator(s) shall have the power to:

- (i) subpoena witnesses, books, papers, documents and other items;
- (ii) administer oaths or affirmations;
- (iii) determine admissibility of offers in evidence;
- (iv) require the submission of briefs;
- (v) determine questions of law and fact;
- (vi) take such other action as may be necessary to bring the proceedings to an expeditious and just conclusion.

(e) Stenographic Records. No such record shall be required. A party ordering a record shall assume the cost thereof and provide a copy to the Arbitrator(s) (and other party).

7. Reopened Hearing.

At any time before an Award is issued, a Hearing may be reconvened by the Arbitrator(s) on the Arbitrator(s) own motion, or upon the application of a party, and the decision of the Arbitrator(s) shall be final.

8. Award.

The determination of the Arbitrators shall be final and binding and may be confirmed as provided by law. The Award shall be signed by the Arbitrator(s) and may, where appropriate, contain a dissent. The Award may include a provision awarding costs, arbitrator's fees and/or expenses to a party or parties. The parties are responsible for enforcing the award, not the Association. The Award shall be filed with the Administrator and copies served upon the parties within thirty (30) days after the close of the Arbitration Hearing.

The Administrator shall file the original of said Award with the Clerk of the Court in which an action in the matter had been commenced, or from which the action was transferred, and the Administrator shall give notice to the parties of such filing. Where no action was commenced, the original Award shall remain on file in the Office of the Administrator.

9. Inquest.

Upon default of a party, an inquest may be taken and an Award shall be issued as may be deemed by the Arbitrator(s) to be just and proper in the matter. Should all parties fail to appear at the Hearing, the Arbitrator(s) may issue an Award dismissing the matter.

10. Arbitrator(s) Charges.

The Arbitrator(s) shall arrange for the collection of its charges and reimbursement of its expenses from the parties. Such charges and expenses shall be borne equally by the parties or as otherwise directed by the Arbitrator(s).

The per diem fee for an Arbitrator is \$300.00. An Arbitrator may charge the per diem fee for: each day in which a hearing is held; each day, or part thereof spent in writing of the Decision and Award; each day, or part thereof spent in the study of the case. If less than ½ days charge is to be made for study or writing a Decision and Award, it shall be at the rate of \$50.00 per hour. Arbitrator(s) may submit bills for any time for which a charge may be made.

11. Voluntary Submission.

(a) An initiating party, or the parties jointly, shall serve a Notice of Intention to Arbitrate on the Administrator and, if not a joint notice, then on the other party involved, which Notice shall contain a statement setting forth the nature of the dispute, the amount

involved and the remedy sought. The Notice shall be in triplicate with copies of the provisions of any governing agreement. Where litigation is involved, a complete set of the pleadings, any Bill of Particulars and any Interrogatories and Answers thereto, shall be provided.

(b) Where there is no joint submission, the responding party shall file an Answer within ten (10) days and any failure to file such Answer shall be deemed a denial of the claim in the Notice. A reply to an Answer, or an answer containing a counter-claim, may be filed after service on the other party within ten (10) days from receipt thereof with a copy filed with the Administrator.

12. Arbitrators.

(a) A person appointed as an Arbitrator shall promptly disclose to the Administrator any financial or personal interest in the matter in arbitration as well as any past or present relationship with the parties, their attorneys or known witnesses.

(b) After appointment to act, should an Arbitrator be unable to perform, the Administrator shall declare the office vacant and appoint another Arbitrator. Where a vacancy occurs on a three person panel, the parties may stipulate that the remaining Arbitrators shall continue with the hearing and reach a determination of the dispute or the vacancy shall be filled by the Administrator.

(c) Each Arbitrator shall take an oath to faithfully perform the duties of the Office of Arbitrator and render an Award based upon the evidence presented at the hearing.

13. Settlement.

If the parties resolve their dispute during the course of the arbitration, the Arbitrator(s) may set forth the terms of such settlement in an Award.

14. Rules.

Any questions regarding the interpretation of these Rules, and any amendment thereto shall be resolved by the Arbitrator(s) whose decision shall be final.

15. Mediation

(a) Wherever the parties to a dispute wish to engage in "mediation" as distinguished from "arbitration" they may do so pursuant to the mediation rules of the Alternative Dispute Resolution Tribunal of the Association, where applicable.

(b) Such desire to engage in mediation shall be by written, unanimous consent of all parties, which consent shall be filed with the Tribunal Arbitrator.

(c) One who acts as a "mediator" shall not act as an "arbitrator" in a subsequent arbitration involving the same parties and the same issue, unless the parties thereto request that he or she do so and sign a written waiver of any objection thereto which shall be filed with the Tribunal Administrator prior to the commencement of any subsequent hearing.

16. Non-Liability.

Neither the Association, the Tribunal Administrator nor any Arbitrator(s) shall be liable to any party or parties for any act, omissions or conduct, in connection with any arbitration conducted under these Rules.

17. Administrative Costs.

The Association's charge for administering a case is \$150.00; except if the case is a Grievance under a collective bargaining agreement, when the charge is \$75.00.