

AS A CLIENT, 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. Remember the program is voluntary for the client and therefore you do not have to agree to use the program. 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. If you or the attorney are not satisfied with the arbitration award, it can be rejected by filing an action in court (a "trial de novo" – see the section titled, "Rejection of the Award (Trial de Novo)" for a description).

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 other 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 arbitration, and you 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 arbitration in advance. You may also want to waive your right to a trial de novo.

WHAT IS NEEDED TO ENTER INTO AN AGREEMENT TO GO TO ARBITRATION AND TO WAIVE THE RIGHT TO A TRIAL DE NOVO?

To enter into a valid agreement ahead of any actual fee dispute, the agreement must be in writing and specify that the client has read the written materials describing the rules and procedures of the FDRP and the appropriate local program. If you have also decided to waive the right under the FDRP to a trial de novo, the written agreement must specify that you understand that you are doing so. The FDRP's model form "Consent to Submit Fee Dispute to Arbitration Pursuant to Part 137-2(c) of Rules of the Chief Administrator and to Waive the Right to Trial De Novo" (UCS 137-14) contains language that satisfies the FDRP requirements and can be incorporated into a retainer agreement or engagement letter.

THE CLIENT FILED A REQUEST FOR FEE ARBITRATION. WHAT HAPPENS NOW?

Upon receiving the 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 along with a certification that the client was served with the attorney response and it must indicate the manner of service.

If there is a pre-existing agreement to arbitrate and the attorney files for fee arbitration, the local program administrator will forward the request to the client, who then has 15 days to complete the Client Response form (UCS 137-5b).

Unless the fee dispute is rejected by the local program for jurisdictional reasons, the parties 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 the parties in an effort to settle the dispute. In addition, some local programs may offer mediation services and may ask the parties whether they 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. Because the burden is on the attorney, the attorney goes first and 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 clients do not necessarily need attorneys to help prepare for and/or provide representation at the hearing. However, parties may, of course, appear with an attorney at their own expense.

THE ARBITRATION AWARD

The 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 sides, unless either party seeks a trial de novo within 30 days.

In most instances, the party against whom the award has been rendered will pay as the arbitration award becomes binding on the parties if de novo review is not sought. However, if payment does not occur, the arbitration award must be confirmed and entered as a judgment of the court to be enforceable. Parties have one year after the date of delivery of the award to confirm the award by commencing a proceeding in the appropriate court. Confirmation of arbitration awards is governed by CPLR 7510.

REJECTION OF THE AWARD (TRIAL DE NOVO)

A trial de novo means that either party 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 the fee dispute, the client and 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.

FDRP

THE NEW YORK STATE ATTORNEY-CLIENT FEE DISPUTE RESOLUTION PROGRAM

PART 137

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

This brochure provides an overview of the FDRP. To see the complete rules, forms and additional information, visit us at www.nycourts.gov/feedispute. Please check our website for the most current information.

Providing this brochure to a client does not satisfy the attorney's notice requirement under the rule.

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FEE DISPUTE RESOLUTION PROGRAM

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.

This brochure has been designed to educate clients and attorneys about the FDRP, to help clients make informed choices about whether the FDRP is right for them and to help attorneys satisfy their requirements under Part 137.

Please keep in mind that the FDRP does not apply to all disputes involving legal fees. For example, the FDRP cannot address claims of attorney misconduct or attorney malpractice.

WHAT IS FEE ARBITRATION AND THE FDRP?

Attorneys in New York State are in most cases required to provide their clients with retainer agreements or letters of engagement that set forth the fees and expenses to be charged. At the initial conference with the attorney, the client may request a retainer agreement or letter of engagement and may ask questions regarding the fees to be charged.

Despite the letter of engagement and discussions about fees, disputes may arise. In general, an attorney may not sue a client in court over a fee dispute unless he or she first provided the client with notice of the right to utilize the FDRP. Once the client has received this notice he or she has 30 days to initiate a proceeding under the FDRP by filing the "Client Request for Arbitration" form (UCS 137-4a) that is included with the notice. If the request for arbitration under the FDRP is not filed within the 30 day period, the attorney is free to pursue the matter in court.

The FDRP is 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 non-attorney) hear the evidence and arguments presented by client and attorney and decide the outcome of the dispute. Fee arbitration is inexpensive and usually faster than going to 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. For more information on the grievance committees, including contact information, please see: <http://www.judiciary.state.ny.us/attorneys/grievance/complaints.shtml>

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 both parties to discuss their 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 both parties, and it does not waive the 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?

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

A lawyer and client may agree in their retainer or letter of engagement to submit any future fee disputes to the FDRP even if the amount in dispute exceeds \$50,000. To see the rule and more information about when the FDRP applies and does not apply, see our website www.nycourts.gov/feedispute

ALTERNATIVES TO FEE ARBITRATION

Fee arbitration provides clients and attorneys with an out-of-court option for resolving fee disputes, but that does not mean it is necessary or appropriate in every case. Sometimes, fee disputes can be easily resolved through direct communication about the issues. For example, if the amount of the fee is in question, the client should ask the attorney to explain why the bill is higher than expected. It may be that the case was more complicated than the client expected and took more time than he or she realized. Or the attorney may agree that it is appropriate to adjust the bill. If discussion does not solve the problem, the client has the option to take the dispute to arbitration under the FDRP or 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, otherwise known as judicial districts. These programs are run by local bar associations or by the court system's regional District Administrative Judges. The rules and procedures of all the local programs have been carefully reviewed by the Board so that they comply with the FDRP goal of resolving 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 were performed. This is usually (but not always) the county where the attorney'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. Some programs charge no fees; others 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, discussed below, to initiate a proceeding under the FDRP. The filing of a Request for Fee Arbitration form, available on the fee dispute website www.nycourts.gov/feedispute, officially starts the process.

A. A DISPUTE OVER FEES EXISTS BETWEEN THE CLIENT AND THE ATTORNEY. THE ATTORNEY SERVES THE CLIENT WITH THE NOTICE OF CLIENT'S RIGHT TO ARBITRATE (UCS 137-1) BY CERTIFIED MAIL OR PERSONAL SERVICE.

The client now has 30 days to decide whether to utilize the FDRP and to file the form entitled "Client Request for Fee Arbitration" (UCS 137-4a) with the appropriate local program. The attorney is required to include this form, along with a copy of the local program rules and the "Standard Written Instructions and Procedures" (UCS 137-3), with the notice sent to the client. Clients are not obligated to participate in arbitration unless they have agreed ahead of time to resolve disputes through arbitration pursuant to a written agreement with the attorney. If the client decides to participate, he or she should file the Client Request for Fee Arbitration and pay the filing fee if one is charged. The attorney will be required to participate in the FDRP unless the

local program determines the dispute is one that is not eligible for the FDRP such as disputes that involve claims of attorney malpractice. (See the section titled, "The client filed a request for fee arbitration, what happens now?" to find out how the rest of the process works.)

If the client does not file the Request for Fee Arbitration within 30 days, the attorney will be free to file a case in court.

In order to satisfy the notice requirements, attorneys may download packets located on the local program's page on www.nycourts.gov/feedispute. Each packet contains the notice form, the standard written instructions and procedures, the client request form, and the local program rules.

B. THE CLIENT INDEPENDENTLY INITIATES A PROCEEDING UNDER THE FDRP.

In some cases, the client may not have received the Notice of Client's Right to Arbitrate from the attorney but decided to initiate the FDRP on his or her own. The client may have obtained this brochure directly from the FDRP web site, from a Court Help Center, by contacting a local program directly, or by asking the attorney for information about the FDRP.

A client seeking to initiate the FDRP should read this brochure carefully to determine if an eligible fee dispute exists. To initiate the FDRP proceeding, complete the Client Request for Arbitration form (UCS 137-4a) and file it with the appropriate local program, with payment of any filing fee. The attorney will be required to participate in the FDRP if the dispute is eligible for arbitration. (See the section titled, "The client filed a request for fee arbitration, what happens now?" to find out how the rest of the process works.)

C. THE CLIENT AND THE ATTORNEY HAVE AGREED AHEAD OF TIME TO USE THE FDRP IN A WRITTEN AGREEMENT.

Both parties previously agreed in writing to resolve fee disputes through the FDRP rather than in court. If there is a fee dispute, either party may begin the proceeding by simply filing the appropriate Request for Arbitration form (Client Request UCS 137-4a or Attorney Request 137-4b) with the local program, together with a copy of the agreement to arbitrate through the FDRP and payment of any filing fee. (See the section titled, "The client filed a request for fee arbitration, what happens now?" to find out how the rest of the process works.)