SUFFOLK ACADEMY OF LAW
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BETTER BILLING SERIES: Collections

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Better Billing Series # 6: COLLECTIONS

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Lester P. Taroff was born in Philadelphia, Pennsylvania on November 7, 1945. He has been in practice since 1972. He graduated from Long Island University in 1968, attended Brooklyn Law School and graduated in 1971. He was then admitted to the New York State Bar in 1972.

Mr. Taroff is a Partner in the Firm and concentrates his practice in the following areas: Creditors' Rights Law; Commercial Debt Collection; Commercial Litigation and Judgment Enforcement.

Mr. Taroff is a frequent lecturer on the subject of creditors' rights, and is active in several law associations and organizations. He served as chair of the Creditors Rights Law Committee of the Suffolk County Bar Association, was the Vice President of the Commercial Lawyers Conference of New York and is the immediate past chair of the Commercial Law League of America ("CLLA"). Presently, Mr. Taroff serves as a member of the CLLA's Board of Governors of the Eastern District.

Education:

- Long Island University (B.A., 1968)
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Bar Admissions:

- New York State (1972)
- United States Supreme Court
- United States Court of Appeals for the Second Circuit
- United States District Court for the Eastern, Southern, Northern and Western Districts of New York

Practice Areas:

- Creditors' Rights
- Commercial and Retail Debt Collection
- Commercial Litigation
- Judgment Enforcement

Affiliations, Achievements and Honors:

- Suffolk County Bar Association
- Commercial Law League of America ("CLLA")- immediate past Chair of the CLLA and presently member of the CLLA Board of Governors for the Eastern District
- Commercial Lawyers Conference of New York (former Vice President)
- Past Chair of the Creditors' Rights Law Committee of the Suffolk County Bar Association (1996 to 1998, 2005 to 2007)
- Co-Chair of Bank-Attorney-Government-Agency Interface Committee
- Frequent lecturer on creditors' rights matters

David Welch is an associate with Taroff & Taitz, LLP. David joined the firm in September, 2015, after having operated his own practice in Melville, New York.

Mr. Welch's practice at the firm is concentrated in Commercial Debt Collection, Commercial Litigation, foreign tax controversy, Landlord-Tenant proceedings and both residential and commercial real estate transactions.

Mr. Welch has lectured before the Nassau County Bar Association, the Nassau County chapter of the New York State Society for Certified Public Accountants as well as various other professional associations.

Mr. Welch attended the University of Richmond for his juris doctorate and graduated *summa cum laude*. For his undergraduate studies, Mr. Welch attended Hamilton College where he earned a bachelor of arts in Asian Studies, a discipline consisting primarily of Chinese (Mandarin) language and modern Chinese history.

Mr. Welch presently serves as an Officer of the Suffolk County Bar Association's Academy of Law and is admitted to practice in New York State as well as the United States District Court for the Eastern District of New York.

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Practice Areas:

- Commercial Debt Collection
- Commercial Litigation
- Foreign Tax Controversy
- Landlord-Tenant Law
- Transactional Real Estate

Affiliations, Achievements and Honors:

- *Officer*, Suffolk Academy of Law
- *Co-Author*, Foreign Bank Accounts: Opting Out of the Offshore Voluntary Disclosure Program, CPA Journal, August 2014, at 30.
- *Fellow*, American Bar Association Antitrust Law Section, Janet D. Steiger Fellowship
- *Articles and Comments Editor*, University of Richmond Law Review

"A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client."

(*In re Ferrucci*, 180 AD2d 959, 960 [3rd Dept 1992].)

Overview

I. Pre-Representation
II. During Representation
III. Bringing Suit
IV. Litigating to a Judgment
V. Collecting on a Judgment
VI. Ethical Considerations

Pre-Representation

"A lawyer should be zealous in his efforts to avoid controversies over fees with clients..."

- Retainer Agreement
  - Who is your client?
  - Account stated provision
  - Arbitration
  - Set a milestone that ends representation
    - "Rule of continuous representation"
  - Provisions for attorneys' fees and collection costs
- Set expectations
- Let them know you have a right to be paid for the work you do

During Representation

- Keep record of payment
- Periodic Billing
  - Send on a regular basis and keep copies
  - Note how sent, i.e., regular mail, email, certified mail, etc.
  - Retain client response to any bill
- Detailed Billing- *"be zealous in your efforts"*
  - Attorney "failed to make a prima facie showing of an account stated, as the invoices submitted in support of the motion did not set forth his hourly rate, the billable hours expended, or the particular services rendered" (*Ween v Dow*, 35 AD3d 58, 62 [1st Dept 2006].)
- Don't let it fester
  - A client who is not paying now is unlikely to pay later

Bringing Suit

"A lawyer should...attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client."

Considerations Prior to Bringing Suit

- Must make demands for payment
- Keep sending invoices and statements & document attempts to resolve
- Fair Debt Collection Practices Act
- Collection Agency
  - Allowed under NYSBA, Commission on Prof Ethics Op No 608 5/10/90
- Cost
  - Your time and money
  - Referring to counsel
- Malpractice
  - Insurance carrier position
  - Statute of limitations
    - "A legal malpractice claim accrues when all the facts necessary to the cause of action have occurred and an injured party can obtain relief in court."
      (*Town of Wallkill v Rosenstein*, 40 AD3d 972, 973 [2nd Dept 2007].
      - In other words, not when the client discovers the malpractice but when the act/omission occurs such that client *could* have basis to bring suit
    - BEWARE...subject to tolling from the "continuous representation" rule
      - Example: Client retains lawyer 2010, malpractice event occurs in 2011 and representation continues until 2015. Client can likely sue in 2016 on 2011 malpractice claim.
- Non-legal considerations

Bringing Suit

- Arbitration- Part 137 Fee Dispute Resolution Program
  - Mandatory for all actions "where representation has commenced on or after January 1, 2002" except for certain exceptions:
    - representation in criminal matters;
    - amounts in dispute involving a sum of less than $1,000 or more than $50,000, except that an arbitral body may hear disputes involving other amounts if the parties have consented;
    - claims involving substantial legal questions, including professional malpractice or misconduct;
    - claims against an attorney for damages or affirmative relief other than adjustment of the fee;
    - 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;
    - disputes where no attorney's services have been rendered for more than two years;
    - 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;
    - 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.
- Compliance accomplished by certified mail or personal service of "Notice of Client's Right to Arbitrate" and must also include:
  - Written instructions and procedures of the "Local Program"
  - "Request for Fee Arbitration" form

Bringing Suit

- Client has 30 days to return Request for Fee Arbitration form
  - If client does, arbitration takes overs
    - Trial de Novo provision- 30 days to commence action, otherwise FINAL and BINDING
  - If client does not, can commence an action
- CRITICAL: If you commence any action for unpaid fees, pleadings must allege either of the following:
  i. Client received required notice and did not file a timely request OR
  ii. The dispute falls under one of the exceptions

Litigating to a Judgment

- Breach of contract
  - "The elements of a breach of contract claim are (1) the making of an agreement; (2) performance of the agreement by one party; (3) breach by the other party; and (4) damages (*J&L Am. Enters., Ltd. v DSA Direct, LLC*, 10 Misc 3d 1076[A], 1076A, 2006 NY Slip Op 50101[U], *6 [Sup Ct, NY County 2006].)
- Account stated
  - "To establish its prima facie entitlement to judgment as a matter of law to recover on an account stated, a plaintiff must show that the defendant received the plaintiff's account statements for payment and retained these statements for a reasonable period of time without objection." (*Cach, LLC v Aspir*, 137 AD3d 1065, 1066 [2nd Dept 2016].)
  - "It has long been established that "'where an account is made up and rendered, he who receives it is bound to examine the same, or to procure some one to examine it for him; if he admits it to be correct, it becomes a stated account and is binding on both parties -- the balance being the debt which may be sued for and recovered at law'"

    (*Rosenman Colin Freund Lewis & Cohen v Neuman*, 93 AD2d 745, 746 [1st Dept 1983].)
- Not those sounding in equity, i.e., unjust enrichment or quantum meruit
  - These are causes of action where there is NO contract or agreement
  - Prevents clerk from entering judgment as a "sum certain"

Collecting on a Judgment

What happens next?

- Typical scenario:
  - Serve notice to the judgment debtor
  - Serve restraining notices on banks, others that may have assets of judgment debtor
  - Have sheriff conduct property execution
  - Subpoena to Produce ("SubPro")
    - Directs judgment debtor to appear with books and records to testify under oath
    - If not complied with, can pursue contempt
- Ethical Considerations

Ethical Considerations

Rules of Professional Conduct- 1.6

Confidentiality of Information

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:

[...]

- *(3)* the disclosure is permitted by paragraph (b)

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

[...]

5 (ii) to establish or collect a fee

Ethical Considerations

"Courts have held that the duty of confidentiality may be waived in a collection action to the extent that it is **'necessary to establish or collect [such fees],'** and consequently such action does not constitute a breach of fiduciary duty."

(*Galpern v De Vos & Co. PLLC*, 2011 US Dist LEXIS 117095, at *24 [EDNY Sep. 30, 2011, No. 10-CV-1952 (CBA) (JMA)].)

Ethical Considerations

What can you do?

"A lawyer who in one proceeding obtains confidential information about a client's financial affairs may disclose that information in a subsequent bankruptcy proceeding if, but only to the extent that, the lawyer reasonably believes that disclosure is necessary to collect a fee that the former client owes to the lawyer and disclosure is not barred by attorney-client privilege."

NYSBA, Comm on Prof Ethics Op No 980 9/4/13

Be mindful, however, of other ethical obligations:

> "A lawyer who represents a client before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."
> NY CLS Rules Prof Conduct R 3.3

Ethical Considerations

- Alter-ego/piercing the corporate veil
  - *Sumitomo Shoji* & *Bingham v. Zolt*
- Banking institutions
- Employer
- Other sources to restrain

Ethical Considerations

"We will give you until January 15, 1998. This will be our last contact with you. We are trying to avoid you the pain and suffering of going through all of this. Mr. Ahmad, what you have done is very stupid. We are still your attorney. Your case is not over yet. Your case is still open. Your fingerprints will come to us within a few months. We have your rap sheets. We have your arrest record. We have your social security number. By the time you receive this letter, we will know where you work. We can subpoena your financial information from your credit card company. Where will you run and hide? If you honestly believe that moving to another state will keep you safe, well you are really stupid"

(*In re Chatarpaul*, 271 AD2d 76, 77 [2nd Dept 2000].)

Questions?

NEW YORK STATE BAR ASSOCIATION
Committee on Professional Ethics

Opinion #608 - 5/10/90 (17-89)

Overrules N. Y. State 400 (1975)

Topic: Attorney's use of collection agent for collection of legal fees

Digest: Only if all other reasonable efforts short of litigation have been undertaken and have been unsuccessful may an attorney employ the services of a collection agent to collect a legal fee

Code: EC 2-23; DR4-101(C)(4)

QUESTION

Are there circumstances wherein it is permissible for an attorney to use a collection agent to collect an unpaid legal fee?

OPINION

EC 2-23 of the Code of Professional Responsibility provides that a lawyer should (1) zealously avoid controversies with clients over legal fees, (2) attempt amicably to resolve differences with clients with respect to fees, and (3) not sue clients for fees unless necessary to prevent fraud or gross imposition by them. This inquiry assumes prior compliance with steps (1) and (2) and seeks a determination as to whether an attorney's employment of a collection agent to collect delinquent legal fees may properly follow them preliminary to the initiation of step (3).

In N. Y. State 400 (1975), we stated that the legal profession is a learned profession, not a mere money-getting trade, and that the use of a collection agency as a method for the recovery of attorneys' fees is inconsistent with the dignity and honor of the legal profession and, therefore, improper.

Fifteen years later, the employment of a collection agent continues to have the appearance primarily of a "money-getting" utilization of effort. It does not involve a determination of whether the indebtedness is "justly owed for professional services properly rendered." N Y State 591 (1988). It does not permit consideration of a client's ability to pay or the application of an attorney's sense of decency and propriety should the client be financially pressed. See NY State 87 (1968). And it does not normally contemplate negotiation, mediation or arbitration. See NY State 567 (1984). Clearly, therefore, the employment of a collection agent prior to the consideration and determination of such issues and the reasonable use of other means of collection short of suit would be improper.

The question remains, then, whether, after a consideration and determination of all such issues and the exhaustion of all such other reasonable efforts, an attorney may properly employ a collection agent in a final effort to collect a fee prior to suit. See N Y. State 567 (1984); NY. State 399 (1975); NY State 87 (1968).

Other jurisdictions have addressed this and related issues. Some have prohibited or severely restricted the use of third parties for the collection of legal fees. For example, W.Va. 80-1 (1981) recites that lawyers must not allow personal financial interests to dilute the zeal and loyalty owed to their clients and that the injection of collection agents, even where lawyers retain some general control over their agents, would present an unacceptably high possibility of injury to the attorney-client relationship. Me. 47 (1977) considers the use of collection agencies undesirable at best and in some circumstances potentially violative of disciplinary rules. Alaska 86-3 (1986) holds

that the referral of a client's delinquent status to a credit bureau (not a collection agent) would at best be an indirect method of collection but a direct effort publicly to impair a client's credit rating in violation of the aspirational avoidance of public conflict over legal fees. Accord, N. H. 1987-8/8 (1988).

On the other hand, Arizona, Florida, Illinois, Maryland, Missouri, North Carolina, Oregon, Utah, Virginia and the District of Columbia all permit the use of collection agents for the collection of attorneys' fees under specified conditions. For example, Mo. 47 (1977) states that collection agents must operate within legal limits and not attempt to engage in the unlawful practice of law in the collection of such accounts. Fla. 81-3 (1981) recites that as long as attorneys, themselves, make reasonable attempts to collect their fees and, having failed in that effort, are careful not to divulge details regarding the representation of their clients except to the extent necessary for the collection of the debts owed, the use of collection agencies is permissible. Va. 946 (1987) requires that attorneys carefully preserve their clients' confidences and avoid both fee controversies with them and the "splitting" of fees (without defining the term). Fla. 81-3 (1981) also imposes a duty upon attorneys to assure that collection agents, as "non-lawyer personnel," conform their services in all respects to the applicable provisions of that state's Code of Professional Responsibility. Iowa 83-21 (1983) requires that its attorneys' use of collection agents must first be disclosed to their former clients.

Ala. 86-126 (1987) permits attorneys to assign their claims for legal fees to third parties, including collection agents, provided the assignments are bona fide and attorneys retain no title to their claims, whether legal or equitable. Accord, Colo. 20-1961.

N. C. 7 (1986) recites that attorneys may utilize the services of collection agents to assist in collecting delinquent accounts as long as, (1) The fee arrangements out of which such accounts arise are lawful and permitted by the rules of professional conduct; (2) the attorneys, at the time of making such fee arrangements, did not believe and had no reason to believe that they were undertaking to represent clients who were unable to afford their services; (3) the legal services that give rise to the delinquencies have been completed; (4) there are no disputes about the existence, amount or delinquent status of such indebtednesses; and (5) attorneys do not believe, and have no reason to believe, that the agencies employed will utilize illegal means to collect their accounts. The payment of compensation to collection agents is even permitted on the basis of a percentage of amounts collected. This opinion reversed prior North Carolina rulings.

D.C. 60 (1979) permits the referral of delinquent legal fee accounts to collection agents provided that, among other things, in collecting accounts, the collection agents (1) do not furnish legal advice, (2) do not perform legal services or represent that they are competent to do so, (3) do not communicate with debtors in the name of attorneys or upon attorneys' stationery, (4) do not otherwise engage in the unlawful practice of law, (5) do not solicit or receive assignments of accounts for the purpose of suit, (6) do not utilize instruments resembling forms of judicial process or of notice pertaining to judicial proceedings or threaten the commencement of such proceedings, (7) do not intervene between creditors and attorneys in any manner that would control or exploit the services of attorneys, and (8) do not demand or obtain a share of the proper compensation for services performed by attorneys. Collection agents' compensation may be contingent upon their success and may be measured by a percentage of amounts collected.

Ill 632 (1978) permits the use of collection agencies after all amicable efforts to collect have failed, but warns that collection agencies occasionally resort to tactics that might create adverse impressions about lawyers in the community and, therefore, adjures termination of their services if their activities might erode the public's confidence in the legal profession.

Ga. 49 (1985) also permits the use of collection agencies for the collection of legal fees as a measure

of last resort after all other reasonable means have been attempted, including offers to arbitrate. The opinion recites that fees sought should be reasonable and that attorneys should consider each case individually. Where refusal to pay constitutes willful indifference, rather than inability or circumstances beyond the clients' control, and nonpayment constitutes fraud or gross imposition by clients, referral to reputable collection agencies is proper. Client confidences and secrets must be protected beyond what is necessary to effect collection, and so long as the fees sought to be collected have been earned without participation by agencies, no prohibited splitting of fees is involved.

See also Ariz. 120 (1963) and 82-2 (1982); Md. 82-24 (1981); Ore. 225 (1972); Utah 8 (1972)

The conditions involving the use of collection agents have changed substantially since the publication of NY State 400 (1975). The collection process has been subjected to increasing public scrutiny and government regulation over the years (e. g. the Fair Debt Collection Act, 15 U.S.C. §1692 et seq.) and the use of collection agents no longer appears to us to be inconsistent with the dignity and honor of legal professionals, provided that all other reasonable efforts short of litigation have first been exhausted, and provided also that appropriate measures to assure the collection agents' strict adherence to law and regulations and to the highest ethical standards in the process of collection are taken by the attorneys retaining them. We stress that referrals should be limited to responsible collection agents only, that attorneys are legally and ethically responsible at all times for the conduct of their agents in the collection process, and that their agents must adhere strictly to both the spirit and the letter of the law and the Code of Professional Responsibility and should not engage in the unlawful practice flaw. Fees referred to agents for collection should already be fully earned so as to avoid the pitfalls of fee splitting, and attorneys must at all times seek to avoid conditions that would tend to erode public confidence in the profession and must terminate the collection process should such a result appear likely to occur.

DR4-101(C)(4) permits lawyers to reveal client confidences and secrets that are necessary to establish or collect fees. The revelation of client confidences and secrets should be strictly limited to those necessary for such purposes and attorneys should make every reasonable effort to assure that their collection agents will also preserve those confidences and secrets that have been revealed except to the extent necessary to establish or collect such indebtednesses.

To the extent that this opinion is inconsistent with N.Y. State 400 (1975), it is overruled.

CONCLUSION

If all reasonable efforts short of litigation to collect a fee fully earned have been undertaken without success, and adherence to appropriate standards of professionalism is enforced, an attorney may utilize the services of a collection agent to collect a legal fee.

New York State Bar Association
Committee on Professional Ethics

Opinion 980 (9/4/13)

Topic: Disclosure of confidential information to collect a fee; candor toward a tribunal

Digest: A lawyer, having learned in a prior proceeding that a then-client imparted material and false information about the client's finances to the tribunal, has a duty to take reasonable remedial measures that may still be available, including, if necessary, disclosure to that tribunal. Even if the correct information about the former client's finances is confidential, the lawyer may disclose it in the former client's bankruptcy proceeding if, but only to the extent that, the lawyer reasonably believes that disclosure is necessary to collect a fee that the former client owes to the lawyer.

Rules: 1.6; 3.3(a)-(c)

FACTS

1. While the inquiring attorney was representing a client in a contested judicial proceeding in which the client's finances were at issue, the client disclosed confidential information to the attorney about the client's finances (including that the client was working "off the books"). The information was inconsistent with what the client was providing to the court. The attorney, according to the inquiry, did not "promote" this information in the judicial proceeding.

2. Subsequently, the client filed for protection from creditors, including the inquiring lawyer, who is owed a legal fee from the prior representation. The lawyer wishes to reveal the confidential information from the first proceeding in the bankruptcy proceeding so as to aid the lawyer's effort to be paid the legal fee.

QUESTION

3. Having received confidential information from the client in one proceeding, may the inquiring lawyer disclose that information in a subsequent bankruptcy proceeding in an effort to collect an unpaid legal fee?

OPINION

4. Ordinarily, under Rule 1.6(a) of the New York Rules of Professional Conduct (the Rules), a lawyer shall not "knowingly reveal confidential information" or "use such information to the disadvantage of a client or for the advantage of the lawyer." One of the exceptions to this proscription is Rule 1.6(a)(3), which says that a lawyer may do so if "the disclosure is permitted by paragraph (b)" of Rule 1.6. That paragraph, among other things, permits a lawyer to "reveal or use confidential information to the extent that the lawyer reasonably believes necessary ... to establish or collect a fee." Rule 1.6(b)(5)(ii).

5. We caution that Rule 1.6(b)(5)(ii) is no license for counsel to reveal any confidential information beyond what is "reasonably believe[d] necessary" to collect the fee. The Rules do not shed much light on these terms.[1] Nonetheless, these terms provide significant limits beyond which a lawyer may not go in seeking to collect a fee. We have previously discussed those limits, and while some of the opinions were decided under the prior Code of Professional Responsibility, we believe they generally remain sound guides under the Rules.

6. First, a lawyer should not resort to disclosure to collect a fee except in appropriate circumstances.[2] Second, the lawyer should try to avoid the need for disclosure.[3] Third, disclosure must be truly necessary as part of some appropriate and not abusive process to collect the

fee.[4] Fourth, disclosure may not be broader in scope or manner than the need that justifies it, and the lawyer should consider possible means to limit damage to the client.[5]

7. Bearing in mind these limits on the fee-collection exception, we now turn to its applicability. The exception, as set forth in Rule 1.6(b)(5)(ii) and quoted above, is not reserved for any particular kinds of proceedings. In particular, the fee-collection exception "has been applied to bankruptcy proceedings." D.C. Opinion 236 (1993) (citing examples and concluding that a "well-established but narrow exception to the general rule against revealing client confidences and secrets ... permits the disclosure of such information in connection with actions to establish or collect fees in bankruptcy proceedings in limited circumstances").

8. Of course the limits on the exception also apply in bankruptcy proceedings.[6] Indeed, there is some authority as to how those limits may apply to particular uses of confidential information in the bankruptcy context.[7] However, because the inquiry does not specify the particular planned uses of confidential information, we leave to the inquiring attorney a careful consideration of whether disclosure is appropriate under the above principles, and if so, how to limit it to the minimum necessary.

9. The inquiring attorney should also consider whether the information from the client is not only confidential under the rules of ethics, but also subject to attorney-client privilege, and whether such privilege might affect the permissibility of the proposed disclosure.[8] However, questions of privilege are legal matters on which we do not opine.

10. We turn to a second question that was not part of the inquiry but is raised by its facts. The inquiring attorney says that the attorney did not "promote" the client's apparently false evidence about the client's finances during the first proceeding. Depending on when that first proceeding occurred, however, the lawyer may have had a greater duty to the tribunal than forbearing from relying on the false evidence. Specifically, the applicable rule may have obliged the attorney to disclose the confidential information to the first tribunal if the client declined to do so and lesser remedial measures were insufficient to cleanse the record of the untrue evidence.

11. The Rules of Professional Conduct became effective, replacing the former Code of Professional Responsibility, on April 1, 2009. On that day, a lawyer's duty in appearing before a tribunal materially changed. The relevant provision of the Code had required that a lawyer who learned that the lawyer's client had clearly perpetrated a fraud upon a tribunal "shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected ... tribunal, *except when the information is protected as a confidence or secret.*" DR 7-102(B)(1) (emphasis added).

12. In contrast, one of the new rules that took effect on April 1, 2009, sweeps more broadly. The duty to take remedial steps is triggered when "a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity." Rule 3.3(a)(3). The duty is also triggered whenever the lawyer knows of "fraudulent conduct related to the proceeding." [9] In either case, "the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal." Rule 3.3(a)(3), (b). There is no longer any exception for confidences or secrets. *See* Rule 3.3(c) (duty applies "even if compliance requires disclosure of information otherwise protected by Rule 1.6"); N.Y. State 837 ¶¶ 6-7 (2010).

13. The application of the new standards of Rule 3.3 depends on when the first proceeding occurred. In N.Y. State 831 (2009), we concluded that, notwithstanding the adoption of Rule 3.3, DR 2-107(a) remained in force as to a fraud committed by the client prior to April 1, 2009, regardless of when the lawyer came to know the falsity of the information. Here, the lawyer's duty to disclose the information to the tribunal depends on whether the client imparted the false

information to the tribunal before or after April 1, 2009.

14. If the false information was imparted before that date, the lawyer had a duty to call upon the client to rectify the fraud. However, if the client declined to do so, the lawyer had no further duty to disclose the information to the tribunal if that information was protected as a confidence or secret. And the information was undoubtedly so protected, given its nature and the way the lawyer learned it. On the other hand, if the false information was material and was imparted to the tribunal on or after April 1, 2009, then the lawyer had a duty to take reasonable remedial measures, and if measures short of disclosure were insufficient, then the lawyer would have a duty of disclosure to the tribunal.

15. This leaves us with two remaining matters, each on the assumption that Rule 3.3, not DR 7-102(B), governs the lawyer's obligations. One is the issue of whether, even if the Rules of Professional Conduct would seem to require disclosure of the false information, such information might nevertheless be shielded from disclosure in the first proceeding by the attorney-client privilege.[10] As noted above, however, privilege issues are questions of law beyond our purview.

16. The other remaining issue is the duration of the lawyer's obligation to make a Rule 3.3(a) disclosure to a tribunal. Although the State Bar proposed that the duty continue only to the conclusion of the proceeding, the courts did not adopt that proposal. N.Y. State 837 ¶16 (2010). Thus it appears that the obligation to disclose "may continue even after the conclusion of the proceeding in which the false material was used." We nevertheless opined that the endpoint of the obligation "cannot sensibly or logically be viewed as extending beyond the point at which remedial measures are available, since a disclosure which exposes the client to jeopardy without serving any remedial purpose is not authorized under Rule 3.3." *Id.* (citations omitted); *accord* N.Y. City 2013-2 (opining that "for a measure to be remedial, it must have a reasonable prospect of protecting the integrity of the adjudicative process," and discussing how application of that standard requires consideration of law and court procedures applicable to correction of the false evidence in question).

CONCLUSION

17. A lawyer who in one proceeding obtains confidential information about a client's financial affairs may disclose that information in a subsequent bankruptcy proceeding if, but only to the extent that, the lawyer reasonably believes that disclosure is necessary to collect a fee that the former client owes to the lawyer and disclosure is not barred by attorney-client privilege.

18. If a lawyer learns that a client has imparted false and material information to a tribunal since Rule 3.3 has been in effect, then the lawyer has a duty to take reasonable remedial measures that are still available, including, if necessary, disclosure to that tribunal, unless disclosure is barred by attorney-client privilege.

(48-12)

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[1] A lawyer "reasonably believes" something when "the lawyer believes the matter in question and ... the circumstances are such that the belief is reasonable." Rule 1.0(r). The Rules do not define "necessary," but *Webster's Unabridged Dictionary* at 1200 (2nd ed. 1983) says that the word means "unavoidable, essential, indispensable, needful."

[2] *See* N.Y. State 684 (1996) (analogizing to rule allowing withdrawal when client "deliberately disregards" a fee obligation, which occurs when "'the failure is conscious rather than inadvertent, and is not *de minimis* in either amount or duration'"); Restatement (Third) of the Law Governing Lawyers §41 cmt. c (2000) [hereinafter Restatement] ("The lawyer's fee claim must be advanced in good faith and with a reasonable basis.").

[3] *See* Rule 1.6, Cmt. [14] ("Before making a disclosure, the lawyer should, where practicable, first seek to persuade the client to take suitable action to obviate the need for disclosure."); N.Y. State 608 (1990) (noting Code principle that a lawyer should "zealously avoid," and "attempt amicably to resolve," fee controversies with clients, and concluding that lawyer may use a collection agent to collect a fee but only after all other reasonable efforts short of litigation have been exhausted).

[4] *See* N.Y. State 684 (1996) (disclosure to a credit bureau would appear to aid collection process if at all "only by virtue of its *in terrorem* effect on the client," and where "the client's potential injury arising from the disclosure of the client secret is the very vehicle of collection, such disclosure cannot be viewed as the type that is 'necessary' for the collection"); Restatement §41 cmt. c (lawyer "may not disclose or threaten to disclose information to nonclients not involved in the suit in order to coerce the client into settling").

[5] *See* Rule 1.6, Cmt. [14] ("a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose," and disclosure in adjudicative proceeding "should be made in a manner that limits access to the information to the tribunal or other persons having a need to know the information, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable"); Restatement §65, cmt. d (describing requirements that use or disclosure of confidential information in compensation dispute be proportionate and restrained); *id.* §41, cmt. c ("lawyer should not disclose the information until after exploring whether the harm can be limited by partial disclosure, stipulation with the client, or a protective order").

[6] "[T]he inquirer must have a good faith expectation of recovering more than a *de minimis* amount of the outstanding fee." D.C. Opinion 236 (1993). "[T]he proposed disclosure to the bankruptcy court must be as narrow as possible, providing only the minimal information necessary to establish or collect a fee. In addition, if possible, the inquirer should use protective orders, in camera proceedings, John Doe pleadings, and/or other appropriate mechanisms to protect the identity and interests of the client. *Id.*; *accord* Los Angeles County Opinion 452 (1988) (attorney may prosecute adversary proceeding to have a debt declared non-dischargeable but "as in any fee collection action, the attorney should avoid the disclosure of confidences and secrets to the extent feasible, and should obtain appropriate confidentiality orders for this purpose").

[7] One ethics committee, while opining that an "attorney may make a claim in the bankruptcy case, and may prosecute a dischargeability proceeding as to the claim," also opined that the attorney may not participate in the "collective collection effort of the bankruptcy process." In other words, "the attorney may not use confidential or secret information to challenge the right of his former client to a discharge, and may not disclose such information to the trustee or other creditors," or otherwise "assist [the] trustee or other creditors in recovering assets." Los Angeles County Opinion 452 (1988).

[8] We have previously noted a question whether the court-adopted rules of legal ethics "can override the statutory protection to the attorney-client privilege afforded by CPLR § 4503(a)." N.Y. State 831 (2009). Even if they cannot, however, it is not clear that privilege would bar disclosure in the case at hand. We note that in certain proceedings seeking relief from creditors, the privilege typically belongs to the Trustee and not to the person seeking relief. Thus, the person with capacity to waive the privilege may reside in someone other than the lawyer's onetime client. Moreover, an exception to the privilege could apply. *See, e.g.*, Alexander, CPLR §4503 Practice Commentaries, C4503:5(b) (McKinney) (discussing, as an exception to the privilege, "the rule that permits a lawyer to reveal confidences in order to collect a fee from the client"); Restatement §83(1) ("attorney-client privilege does not apply to a communication that is relevant and reasonably necessary for a lawyer to employ in a proceeding ... to resolve a dispute with a client concerning compensation or reimbursement that the lawyer reasonably claims the client owes the lawyer"); Restatement §82(a)

(exception to privilege when client "consults a lawyer for the purpose, later accomplished, of obtaining assistance to engage in a crime or fraud").

[9] Rule 3.3(b). Under the new rules, "fraudulent" conduct includes not only conduct that is fraudulent under applicable law, but also conduct that "has a purpose to deceive." Rule 1.0(i). This new definition apparently broadened the category of conduct constituting client frauds that could require remedial steps. *See* N.Y. State 831 (2009).

[10] We have already noted issues as to whether privilege might bar disclosure otherwise permitted for the purpose of collecting a fee, see footnote 8 *supra*, and some of the same considerations (including possible applicability of the crime-fraud exception) apply to whether privilege might bar disclosure otherwise mandated by Rule 3.3. In any event, even if the privilege applied to the client communications in question, it may not extend to the context of disclosure under Rule 3.3. *See* Rule 1.6, Cmt. [3] (attorney-client privilege is part of evidence law and applies "when compulsory process by a judicial or other governmental body seeks to compel a lawyer to testify or produce information or evidence concerning a client"); N.Y. State 837 ¶¶ 12-13 (2010) (noting that CPLR §4503's limit on remedial measures "extends only to the introduction of protected information into evidence"); Restatement §86(1) (privilege may be invoked "[w]hen an attempt is made to introduce in evidence or obtain discovery" of a privileged communication).

UCS 137-1 (11/01)

NOTICE OF CLIENT'S RIGHT TO ARBITRATE

A DISPUTE OVER ATTORNEYS FEES

The amount of $_____ is due and owing for the provision of legal services with respect to:

If you dispute that you owe this amount, you have the right to elect to resolve this dispute by arbitration under Part 137 of the Rules of the Chief Administrator of the Courts. To do so, you must file the attached Request for Fee Arbitration within 30 days from the receipt of this Notice, as set forth in the attached instructions. If you do not file a Request for Fee Arbitration within 30 days from the receipt of this Notice, you waive the right to resolve this dispute by arbitration under Part 137, and your attorney will be free to bring a lawsuit in court to seek payment of the fee.

Dated:_____

_____
(Attorney's Signature)
[print Attorney's name, address and telephone number below]

UCS 137-3 (9/05)

STANDARD WRITTEN INSTRUCTIONS AND PROCEDURES TO CLIENTS FOR THE RESOLUTION OF FEE DISPUTES PURSUANT TO PART 137 OF THE RULES OF THE CHIEF ADMINISTRATOR

Part 137 of the Rules of the Chief Administrator of the Courts provides a procedure for the arbitration (and in some cases mediation) of fee disputes between attorneys and clients in civil matters. Your attorney can provide you with a copy of Part 137 upon request or you can download a copy at www.nycourts.gov/admin/feedispute. Fee disputes may involve both fees that you have already paid to your attorney and fees that your attorney claims are owed by you. If you elect to resolve your dispute by arbitration, your attorney is required to participate. Furthermore, the arbitration will be final and binding on both your attorney and you, unless either of you seeks a trial *de novo* within 30 days, which means either of you reject the arbitrator's decision by commencing an action on the merits of the fee dispute in a court of law within 30 days after the arbitrator's decision has been mailed. Fees disputes which may not be resolved under this procedure are described in Part 137.1 of the Rules of Chief Administrator of the Courts: representation in criminal matters; amounts in dispute involving a sum of less than $1,000 or more than $50,000 unless the parties consent; and claims involving substantial legal questions, including professional malpractice or misconduct. Please consult Part 137.1 for additional exclusions.

Your attorney may not bring an action in court to obtain payment of a fee unless he or she first has provided written notice to you of your right to elect to resolve the dispute by arbitration under Part 137. If your attorney provides you with this notice, he or she must provide you with a copy of the written instructions and procedures of the approved local bar association-sponsored fee dispute resolution program ("Local Program") having jurisdiction over your dispute. Your attorney must also provide you with the "Request for Fee Arbitration" form and advise that you must file the Request for Fee Arbitration with the local program within 30 days of the receipt of the notice. If you do not file the Request within those 30 days, you will not be permitted to compel your attorney to resolve the dispute by arbitration, and your attorney will be free to bring a lawsuit in court to seek to obtain payment of the fee.

In order to elect to resolve a fee dispute by arbitration, you must file the attached "Request for Fee Arbitration" with the approved local program. An updated list of local programs is available at www.nycourts.gov/admin/feedispute or by calling toll-free 1-(877)-FEES-137 (1-877-333-7137). Filing of the Request for Fee Arbitration must be made

with the appropriate local program for the county in which the majority of legal services were performed. Once you file the Request for Fee Arbitration, the local program will mail a copy of the request to your attorney, who must provide a response within 15 days of the mailing. You will receive at least 15 days' notice in writing of the time and place of the hearing and of the identity of the arbitrator(s). The arbitrator(s) decision will be issued no later than 30 days after the date of the hearing. You may represent yourself at the hearing, or you may appear with an attorney if you wish.

Some local programs may offer mediation services in addition to arbitration. Mediation is a process by which those who have a fee dispute meet with the assistance of a trained mediator to clarify issues and explore options for a mutually acceptable resolution. Mediation provides the opportunity for your attorney and you to discuss your concerns without relinquishing control over the outcome and of achieving a result satisfactory to both of you. Participation in mediation is voluntary for your attorney and you, and it does not waive any of your rights to arbitration under these rules. If you wish to attempt to resolve your dispute through mediation, you may indicate your wish on the Request for Fee Arbitration form.

More information, including an updated list of local programs, is available at

http://www.nycourts.gov/admin/feedispute

or by calling 1-(877)-FEES-137 (1-877-333-7137).

Suffolk County Bar Association

Dispute Resolution Program Rules

Suffolk County Bar Association
560 Wheeler Road
Hauppauge, New York 11788-4357
(631) 234-5511

Section 1 Establishment of Program

This program is established pursuant to part 137 of the Rules of the Chief Administrator, Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York and the Standards and Guidelines approved as of October 3rd, 2001.

Section 2 Definitions

The following definitions will apply throughout these rules, except as otherwise provided:

A. "Program" means the Suffolk County Bar Association Dispute Resolution Program established pursuant to Part 137 of the Rules of the Chief Administrator

B. "Client" means a person or entity receiving legal services or advice from a lawyer on a fee basis in the lawyer's professional capacity

C. "Administrator" means the person primarily responsible for administration of the Program as designated by the Suffolk County Bar Association

D. "SCBA" means the Suffolk County Bar Association

E. "Arbitrator" means a person who serves as an arbitrator under the Program

F. "Case" means any case or controversy cognizable under the Program where the amount in dispute is at least in the sum of $1,000.00

G. "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

H. "Fee Dispute" means the committee appointed by the Suffolk County Bar Association Board of Directors which oversees the Dispute Resolution Program and make decisions concerning administration of the Program.

Section 3 Application

These rules apply where representation has commenced on or after January 1, 2002, to all attorneys admitted to the Bar of the State of New York who undertake to represent a client in a civil matter, where the majority of legal services are performed in Suffolk County or where the attorney maintains an office for the practice of law in Suffolk County.

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 $1,000.00 or more than $50,000.00, except that an arbitral body may hear disputes involving other amounts if the parties have consented in writing;
3. claims involving substantial legal questions, including professional malpractice or misconduct;
4. claims against an attorney for damages or affirmative relief other than 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; and
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.

Section 4 Arbitrators

Applicants for membership as an Attorney Arbitrator must meet or exceed the following requirements:

A. Minimum of five (5) years of admission to the Bar

B. Member in good standing of the Suffolk County Bar Association or other recognized bar groups

C. Ability to evaluate and apply legal principles

D. Ability to manage the hearing process

E. Minimum of six (6) hours of fee dispute resolution training or comparable training and experience in arbitration and/or other forms of dispute resolution

F. Other relevant experience or accomplishments

G. Freedom from bias and prejudice

H. Thorough and impartial evaluation of testimony and other evidence

I. Willingness to devote time and effort when selected to serve

J. Willingness to successfully complete training under the guidelines of the Program

Applicants for membership as a Non-Attorney Arbitrator must meet or exceed requirements E through J above.

All training of arbitrators will be provided by the New York State Office of Court Administration at its sole cost and expense, or by the Suffolk County

Bar Association, or other recognized dispute resolution programs approved by the board.

Arbitrators will serve on a voluntary basis, without financial compensation.

Section 5 Initiating the Arbitration

The Submission Process

Client:

A client with a fee dispute starts the process by filing a request for dispute resolution with the Administrator of the Program together with the required filing fee of $150.00 *see Financial Hardship Policy. Forms can be obtained by calling the Administrator at 631/234-5511, extension 222, by obtaining the form in person at the Suffolk County Bar Association, located at 560 Wheeler Road, Hauppauge, New York 11788-4357 or by requesting said form by facsimile transmission to the administrator (631/234-5899) or by e-mail to the administrator at fee@scba.org between the hours of 9:00 a.m. and 5:00 p.m., Monday to Friday, or you may download forms on the SCBA wesbsite at www.scba.org/fee dispute/fee overview.html

Attorney:

An attorney starts the process by sending a Notice of Right to Arbitrate and required forms to the client. If there is a prior written agreement to arbitrate, the initiating party shall submit a copy to the Administrator with their request to arbitrate. If the client fails to then file a request to arbitrate within 30 days, the attorney who's written agreement provides for such dispute resolution may file the request to arbitrate. An attorney is required to send by certified mail or by personal service, the notice of right to arbitrate with appropriate forms upon initiation of any dispute involving fees between client and attorney, and/or prior to commencement of any civil action for collection of fees.

A party may make application to the Administrator to have the filing fee waived, based upon limited financial resources which make the filing fee a financial burden or would prevent said client from utilizing this resolution program. The request must be made in writing to the Administrator who will have the discretion to grant or deny the request. Should the arbitration result in a finding in favor of the client for whom the fee was waived, the waived filing fee will be deducted from such award, and paid directly by the attorney to the Association, after deduction from said award.

The request for arbitration must contain the name and address of the

parties along with the telephone numbers of the parties to be contacted, and a brief description of the claim and the amount involved.

Upon receipt of the request for arbitration, the Administrator will mail a copy of the request for arbitration to the named attorney, together with an attorney fee response, to be completed by the attorney and returned

to the Administrator within 15 days of mailing. The attorney will include with the attorney fee response, a copy of retainer or letter of engagement, if any, and an affidavit that a copy of the response was served on the client.

Upon receipt of the attorney fee response, or if no response is received within 15 days of mailing of the attorney fee response form to the attorney, the Administrator will endeavor to appoint an arbitrator or arbitrators to the case with experience in the subject matter of the representation. Arbitrators will be assigned from a panel of neutrals who have qualified to act as arbitrators in fee dispute matters. Disputes involving a sum of less than $10,000.00, but more than $1,000.00, will be submitted to one attorney arbitrator. Disputes involving a sum of $10,000.00 or more, but less than $50,000.00 (unless by agreement of the parties), will be submitted to a panel of three arbitrators, which will include one non-lawyer, unless otherwise provided for in writing.

When a party and attorney are notified of the appointment of the arbitrator(s), any conflict of interest shall promptly be disclosed in writing but not less than five (5) days prior to the scheduled hearing.

Upon receipt of a case, the Administrator will notify the parties of a date, time, and place for the hearing, which notice will be at least fifteen (15) days prior to the scheduled date, with the identity of the arbitrator or arbitrators. All arbitrations will be held at the offices of one of the arbitrators or at the Suffolk County Bar Association.

Section 6 Powers of arbitrator and conduct of the hearing

An arbitrator has the following powers:

A. Issue subpoenas and administer oaths

B. Take and hear evidence pertaining to the proceeding

C. Rules of Evidence need not be observed at the hearing and either party, at his or her expense, may be represented by counsel. Representation by counsel must be disclosed on filing form or response

D. Arbitrator(s) may adjourn or postpone the hearing

The burden will 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 must present his or her account of the service rendered and time expended. Witnesses may be called by the parties. Participation may be by written statement sworn to under penalties of perjury. The client will have the right of final reply.

Any party may provide for stenographic or other record at the party's expense, providing that the panel is given duplicate copy at time of hearing upon request by the panel. Any other party to the arbitration will be entitled to a copy of said record, upon written request and payment of the expense for such record.

The arbitration awards will be issued to the parties no later than thirty (30) days after the completion of the hearing. Arbitration awards will be in writing and specify the basis for the determination. Except as set forth herein, all arbitration awards will be final and binding, unless a *trial de* novo is commenced under the Rules within the time set forth therein.

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 proceeding 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 of 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.

The hearing will be conducted by either the sole or all of the arbitrators in case of a controversy in excess of $10,000.00, but a majority may determine any question and render an award.

Section 7 <u>Trial de novo</u>

A party aggrieved by the arbitration award may, unless there is a written agreement to the contrary, commence an action on the merits of its fee dispute (a *trial de* novo) in a court with jurisdiction over the amount in dispute, within thirty (30) days after the arbitration award has been mailed. If no action is commenced within thirty (30) days of the mailing of the arbitration award, the award shall become final and binding. Upon filing of a demand for *trial de novo,* the aggrieved party shall also mail a copy of the demands to the Administrator and other side.

Any party who does not participate in the arbitration hearing will not be entitled to a *trial de* novo absent good cause for such failure to participate.

Arbitrators shall not be called as witnesses nor shall the arbitration award or record of the proceedings be admitted in evidence at the *trial de* novo.

Section 8 Communication with arbitrators

No party and no one acting on behalf of any party will communicate unilaterally concerning the arbitration with an arbitrator or a candidate for an arbitrator. Unless the parties agree otherwise or the arbitrator so directs, any communication from the parties to an arbitrator will be sent to the other party.

Section 9 Enforcement of arbitration awards

Any award that has become final and binding may be entered as a judgment upon moving to confirm said decision in a court of competent jurisdiction, by appropriate notice, pursuant to the CPLR Article 75.

Section 10 Vacancies

If, after an arbitrator is assigned to the case, the arbitrator is unable to perform his or her duties, they will promptly notify the Administrator, who will appoint a substitute arbitrator.

In the event that one arbitrator on a panel of arbitrators is unable to attend the hearing or continue, the remaining arbitrators may continue with the hearing to the determination of the controversy, unless one party objects. Upon receipt of an objection, the arbitration will be deemed terminated and the matter will be reassigned by the Administrator, who will appoint a substitute arbitrator to take the place of the arbitrator who was unable to begin or conclude the arbitration hearing.

Section 11 Attendance at hearings

The arbitrators will maintain the privacy of the hearings unless the rules or the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend the hearing. All attorneys are required to participate in the arbitration program. The arbitrators shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It will be discretionary with the arbitrators to determine the propriety of the attendance of any other person, other than a party and its legal representatives.

Section 12 Arbitration in the absence of a party or representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to participate or fails to obtain a postponement. An award will not be made solely on the default of a party. The arbitrator will require the party who is present to submit such evidence as the arbitrator may require to support the participant's position.

Section 13 Waiver of rules

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 at the time of said arbitration or prior thereto, will be deemed to have waived the right to object.

Section 14 Majority decision

When the panel consists of more than one arbitrator, unless required by law or by these rules, the majority of the arbitrators (or the remaining arbitrators in the case of a vacancy under Section 10) must make all decisions.

Section 15 Interpretation and application of rules

The arbitrators will interpret and apply these rules in so far as they relate to the arbitrator's powers and duties. When there is more than one arbitrator, and a difference arises among them concerning the meaning or application of these rules, it will be decided by a majority vote. In the event that the Administrator or an arbitrator(s) is unable to resolve any issue concerning the arbitrator(s) duties or administration of this Program, said question will be referred to the Fee Dispute Resolution Committee for a final decision.

Section 16 Time of award

Unless otherwise agreed by the parties, the award shall be issued not later than thirty (30) days from the date of the completion of the hearing. The Administrator will, upon receipt of the award from the arbitrator or chair of the panel, mail the same to the parties at the address given by the parties for that purpose. The decision will be accompanied by a letter advising the parties of their rights regarding the decision.

Section 17 Record Keeping

A. The Administrator will maintain a separate folder for each "Request for Arbitration" form received. The records are to be kept at the Suffolk County Bar Association for two **(2)** years. At the end of the two years, they may be disposed of as the Administrator sees fit.

B. With the exception of the award itself, all records, documents, files, proceedings, and hearing pertaining to the arbitration of a dispute under these rules, in which both parties have consented to be bound by the results, may not be open to the public or any person not involved in the dispute, and shall be confidential except to the extent necessary to take ancillary legal action with respect to this fee matter.

C. The Association will maintain the names, addresses, telephone numbers, and summary of credentials of the arbitrators and will update the same from time to time.

Section 18 Financial Hardship Policy

The program's standard policy is to make the program accessible to all who choose to use it. Toward that end, the program maintains a reasonable fee schedule that considers the financial exigencies of the non-lawyer participants, provides extended payment plans, and/or grants full or partial fee waivers under circumstances of extreme financial hardship. Every attempt will be made to keep the names of the individuals who seek hardship assistance and the information disclosed confidential.

Section 19 Amendment of Rules

These rules may be amended from time to time, upon majority vote of the Board of Directors of the Suffolk County Bar Association, the Board of Governors, and the Presiding Justice of the Appellate Division, 2' Department.

(For Office Use Only)
Case No. _____
Date Received:

REQUEST FOR FEE DISPUTE RESOLUTION
(Civil Cases)

1. Name, address and telephone number of client is:
Name:_____
Address:_____
_____
Telephone No.:_____

2. The name, address and telephone number of the lawyer or law firm is:
Name:_____
Address:_____
_____
Telephone No.:_____

3. Type of case involved (check all that are applicable):

☐Landlord-Tenant	☐Negligence/PI	☐Real Estate
☐General Civil Litigation	☐Corporate	☐Traffic
☐Malpractice/Medical	☐Family Court/Custody	☐Other_____
☐Family Court/Support	☐Judicial Appointment/FC	_____
☐Wills/Trusts/Estates	☐Appellate	_____
☐Commercial	☐Matrimonial	_____

4. Court in which the civil action was commenced, if applicable (include county): _____Court _____County

5. Set forth the date when the lawyer first agreed to handle case:
_____

6. Attach a copy of the written retainer agreement or letter of engagement between lawyer and client. Attach copies of any other letters or papers that discuss the fee agreement.

7. Describe briefly what was the fee arrangement:

_____

_____

_____

_____

_____

_____

8. State all amounts paid to the lawyer; provide dates of payment and what the payment was to cover, if applicable:

9. State the total amount of moneys in dispute, including any amount the lawyer says you still owe and any amount you already paid but believe should be refunded (attach a copy of the lawyer's bill, if available):

10. Have you received a "Notice of Client's Right to Arbitrate" from your attorney: _____ (enter "yes" or "no" in space). If yes, please attach a copy.

11. Briefly explain why you disagree with the amount of money for legal services billed, paid, or demanded (use additional sheets, if necessary):

_____

_____

_____

_____

_____

_____

I elect to resolve this fee dispute by arbitration, to be conducted pursuant to Part 137 of the Rules of the Chief Administrator [22 NYCRR] and the procedures of the Suffolk County Bar Association, copies of which I have received. I understand that the determination of the arbitrator(s) is binding upon both the lawyer and client, unless either party rejects the arbitrator's award by commencing an action on the merits of the fee dispute (trial *de novo*) in a court of law within 30 days after the arbitrator's decision has been mailed.

Dated:_____ Signed:_____

(Print name below signature)

☐ Will be represented by legal counsel
Name_____
Telephone Number_____

Important: Request for Fee Arbitration must be filed with the Suffolk County Bar Association, if the attorney is physically present in Suffolk County (has office in Suffolk) or if the majority of the legal services have been performed in Suffolk County. The Request must be filed within 30 days of the receipt from the lawyer of notice of the client's right to request arbitration. If the client does not file the Request for Fee Arbitration within those 30 days, the client will not be permitted to elect to resolve the fee dispute by arbitration pursuant to Part 137, unless the attorney elects to resolve this matter by arbitration and the written agreement provides for the same. The lawyer is required to provide the client with the address of the Suffolk County Bar Association upon request. A filing fee of $150.00 is required.

Method of Payment:

☐ Filing Fee of $150.00 paid by check is enclosed.*
I Elect to make payment by credit card.
☐ Visa ☐ Master Card ☐American Express ☐Discover

Name on Credit Card: _____
Account #: _____
Expiration:____ / ____
I hereby authorize the Suffolk County Bar Association in assessing a $150.00 charge to the above credit card account.

X_____

☐ Request payment plan.

☐ I request a waiver of fee due to hardship (I understand that I must supply written verification of same).

* the filing fee of $150.00 should be remitted with this form unless a waiver is requested. Please Make check payable to "Suffolk County Bar Association".

Please remit this form with payment to: Suffolk County Bar Association, 560 Wheeler Road, Hauppauge, NY 11788-4357, Attention: Fee Dispute Resolution Coordinator.