

Rules Mandating Arbitration Of Fee Disputes Now In Effect

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[Editor's Note: See, Roy Simon, Page 1, NYPRR, April 2001, for the major features of the new fee dispute resolution program in easy-to-read Q&A form.]

Part 137 of the Rules of the Chief Administrator of the Courts, mandating arbitration of fee disputes in most civil matters, is now in effect (as of January 1, 2002). With several exceptions, whenever a fee dispute arises between client and lawyer involving more than \$1,000 but less than \$50,000, the lawyer is obligated to forward a written notice to the client by certified mail or personal service stating that the client may elect to arbitrate the dispute. The client has thirty days from receipt of the notice to elect arbitration. If the client elects arbitration, the lawyer is required to participate in the arbitration. If the lawyer fails to do so, the arbitration proceeds as scheduled and the lawyer "shall be referred to the appropriate grievance committee of the Appellate Division for appropriate action." The lawyer may sue for the disputed fee only after the client fails or neglects to elect arbitration.

The exceptions to mandatory arbitration (in addition to disputes involving less than \$1,000 and more than \$50,000) include all criminal matters; claims involving substantial legal questions, including lawyer malpractice and misconduct; and disputes in which no legal services have been rendered for more than two years.

Fee disputes in matrimonial matters in which the attorney/client relationship was formed prior to December 31, 2001 will continue to be governed by the mandatory arbitration provisions of Part 136 of the Rules. Part 137 will apply to fee disputes in matrimonial matters in which the lawyer is retained after January 1, 2002.

Under Part 137, the decision of the arbitrator is final and binding by operation of law unless either party to the arbitration seeks de novo review within thirty days.