



**The Amended Rules for Association
Sponsored Mediation and Arbitration
Among Lawyers**

THE COMMITTEES ON ARBITRATION AND ALTERNATIVE DISPUTE
RESOLUTION

MARCH 2012

NEW YORK CITY BAR ASSOCIATION
42 WEST 44TH STREET, NEW YORK, NY 10036

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INTRODUCTION

Disputes among lawyers with regard to the business or professional aspects of their practice inevitably occur, and these disputes often affect client and public interests. Among the many services offered by the Association is providing a forum for the prompt, efficient, and private resolution of these disputes. This service is offered to the Bar as a whole, not solely to members of the Association.

Recognizing the interests of the community, clients, and the Bar, the Association has adopted these revised procedures for mediation and rules for arbitration of disputes among lawyers. The Association maintains panels of mediators and arbitrators, and it also provides help in the neutral selection process, conference facilities, and model dispute resolution clauses.

The Association first issued arbitration rules in 1987 and mediation procedures in 1991. Amendments have been made over the years based on experience. The latest amended rules and procedures follow.

Because of its success in resolving disputes rapidly, privately, informally, and at modest cost, mediation is recommended as the initial dispute resolution process after the parties have tried to resolve the dispute by themselves. The parties control the proceedings and the outcome. The role of the mediator is to assist the parties in resolving their dispute. It is hoped that many disputes will be resolved through mediation. The mediation procedures are set forth in Article II, below.

The parties may also choose arbitration, which is binding, either with or without first trying mediation. The arbitration rules provide an ad hoc framework with administrative assistance by the Association on an as needed basis. The arbitration rules are set forth in Article III, below.

The Association also provides arbitrators to hear applications for interim relief on an emergency basis before appointment of permanent arbitrator(s) under Article III. The rules for this procedure are set forth in Article I, below. Where feasible, the Association will endeavor to implement the procedure within 24 hours of receipt by the Association of a party's written request for such help. Such immediate intervention is available to protect the interests of the parties, but also – and importantly – to protect the interests of clients. A proceeding on an application for emergency interim relief may result in binding provisional relief, which is subject to revision in the subsequent arbitration proceeding if circumstances warrant.

The best time to agree on a sensible way to resolve a dispute is when the parties are negotiating their agreement before any dispute has arisen. At that juncture, agreeing on rational, fair dispute resolution procedures can be a relatively simple task. Once a dispute has arisen, it can be much more difficult for parties to agree about anything. Thus, consideration should be given to including the following three successive stages of dispute resolution in lawyers' professional agreements:

- Negotiation: A provision requiring negotiation between individuals with decision-making authority.
- Mediation: A provision requiring mediation or other form of consensual dispute resolution.
- Arbitration: A provision requiring arbitration or other form of adjudicative dispute resolution.

Model ADR clauses and agreements appear in Appendices I-VI, below.

Lawyers having questions about the Association's mediation procedures or arbitration rules should contact the Association's Senior Legal Counsel, Lauren Axelrod (laxelrod@nycbar.org or 212.382.6674), the Chair of the Arbitration Committee, or the Chair of the ADR Committee.

ARTICLE I

EMERGENCY INTERIM RELIEF RULES FOR DISPUTES AMONG LAWYERS (REVISED MARCH 15, 2012)

These “Article I Rules” apply to the resolution of disputes among lawyers with regard to business or professional aspects of their practice of law, when a party asserts a need for emergency interim relief, including a party’s need to discharge its professional responsibilities to one or more clients. These Article I Rules shall apply when the parties have agreed to use them or when the parties have agreed to arbitrate under the Association’s Arbitration Rules For Disputes Among Lawyers set forth in Article III hereof (the “Article III Rules”). These Article I Rules supersede all prior rules and procedures for Emergency Interim Relief of such disputes.

1. Invoking These Rules

Any party to an agreement to resolve disputes under these Article I Rules or under the Article III Rules may invoke these Article I Rules on written notice to the Association and to all other parties and neutrals, and thereafter all parties to such agreement shall be bound by all of the Article I Rules and by any order issued pursuant to these Article I Rules, notwithstanding that a party who has received appropriate notice has not appeared at a proceeding under these Article I Rules or has objected to or attempted to reject their applicability. Parties to a mediation under the Association’s Mediation Procedures For Disputes Among Lawyers set forth in Article II hereof (the “Mediation Procedures”) may jointly agree in writing to engage in the processes set forth in these Article I Rules, in which case all of the Article I Rules shall then be applicable.

2. Administrator

The Association, through the President of the Association, along with the Emergency Arbitrator once he or she is appointed, shall administer all proceedings on applications for interim relief under these Article I Rules. The President of the Association may delegate the performance of specific administrative functions to staff personnel, the Chair or a member of the Association’s Arbitration Committee, a member of the Association, or an outside ADR provider organization.

3. Fees and Expenses

Each written notice requesting the appointment of an Emergency Arbitrator in accordance with this Article I shall be accompanied by an initial fee of \$4500, with \$1000 of that amount to cover the Association’s administrative fee and the remaining \$3500 to compensate the Emergency Arbitrator for his or her first day of service and related preparation. For subsequent hearing and study time, the Emergency Arbitrator shall be compensated at the Emergency Arbitrator’s stated hourly or per diem rate, unless the Emergency Arbitrator agrees otherwise. If any party fails to deposit the initial fee provided for above or to provide any subsequent advance requested by the Emergency Arbitrator, the Association may ask another party to advance the deficiency on terms and conditions acceptable to the paying party and the Association. No proceedings will take place until the required initial fee is paid nor take place or continue while a subsequent requested advance is unpaid, without the consent of the Emergency Arbitrator. The

payment obligation runs from the parties to the Emergency Arbitrator, and the Association bears no responsibility for the payment of the Emergency Arbitrator.

4. Appointment of Emergency Arbitrator

Unless the parties have agreed otherwise with respect to any of the steps set out hereafter in this Rule 4, within one business day (or as soon thereafter as practicable) after receipt by the Association of an electronic copy of a written notice of a dispute within the scope of these Article I Rules, together with the appropriate fee and certification that all other parties (and any neutrals already appointed) have been notified, the Association shall appoint an Emergency Arbitrator from the Panel of Arbitrators in accordance with Rule 6(b) of Article III. (A model request for emergency interim relief under these Article I Rules appears at Appendix VI.)

5. Independence and Impartiality of Arbitrator

a. Emergency Arbitrators shall be independent and impartial. Each Emergency Arbitrator shall be obligated before proceeding, and thereafter at every stage of the proceeding, to disclose any circumstances that might give rise to justifiable doubt regarding his or her independence or impartiality. Such circumstances include bias, interest in the result of the arbitration, and past or present relationships with a party, its representative, its counsel, or witnesses.

b. The Association will administer disclosures of the Emergency Arbitrator. Any challenge to his or her independence or impartiality at any stage of the proceeding shall be resolved by the Association by summary order, and the Association's decision whether to appoint or reconfirm him or her shall be conclusive.

c. Emergency Arbitrators shall serve subject to the Code of Ethics for Arbitrators in Commercial Disputes, effective March 1, 2004, issued by the American Arbitration Association and developed in conjunction with the American Bar Association, as from time to time amended.

6. Challenges to Jurisdiction of the Emergency Arbitrator

a. All questions as to jurisdiction shall be determined by the Emergency Arbitrator, including any objections with respect to the existence, validity, or scope of the arbitration agreement or applicability of these Article I Rules.

b. The Emergency Arbitrator shall have the power to determine the existence, validity, or scope of the contract of which an arbitration clause forms a part. For purposes of challenges to the jurisdiction of the Emergency Arbitrator, the arbitration clause shall be considered as separable from any contract of which it forms a part.

7. Schedule for Hearing Application for Interim Relief; Provisional Orders and Awards

a. The Emergency Arbitrator shall promptly, but in any event within two business days of appointment, establish a schedule for consideration of the application for interim relief. The schedule shall provide a reasonable opportunity for all parties to be heard, but may provide

for proceeding by telephonic conference or on written submissions as alternatives to a formal hearing.

b. The parties irrevocably consent to the entry of provisional or interim awards or orders issued by the Emergency Arbitrator by any court having jurisdiction thereof pursuant to applicable law, and they hereby irrevocably waive any objection, jurisdictional, procedural, or substantive, to judicial confirmation and enforcement of such provisional or interim awards and orders, except upon a ground available under applicable law for vacating an arbitral award. Any award or order issued pursuant to these Article I Rules may be revised or revoked during subsequent proceedings under this Article I or by the arbitrator(s) in subsequent proceedings conducted under Article III.

8. Subsequent Role of Emergency Arbitrator

a. In arbitration proceedings under the Article III Rules subsequent to the proceedings under these Article I Rules, the Emergency Arbitrator shall not serve as an Article III arbitrator, unless the parties and the Emergency Arbitrator agree otherwise.

b. It is the intention of these Article I Rules and of the Article III Rules that an Emergency Arbitrator under this Article I and arbitrator(s) under Article III shall have the same powers to grant interim relief; provided, however, that once the arbitrator(s) under Article III are appointed: (i) an Emergency Arbitrator will not thereafter be appointed or continue to serve as such, and (ii) the arbitrator(s) under Article III shall have the sole authority to grant interim relief or to revise or revoke any interim relief previously granted.

9. Confidentiality and Immunity

a. Unless confidentiality is waived by all parties, all proceedings on applications for interim relief shall be confidential, shall be immune from discovery or production in any other forum, and shall not be used for any purpose other than in connection with the application for interim relief and any related arbitration under Article III, or in connection with judicial proceedings ancillary to such Article I or III proceedings, or as otherwise required by law.

b. Emergency Arbitrators and the Association and its representatives and employees shall have the same immunity from civil suit or claim in connection with any conduct, act, or omission under these Article I Rules or relating to an application for interim relief that a judicial officer or body would have in a court proceeding. Neither the Emergency Arbitrator nor the Association or any representative or employee thereof shall be liable for any conduct, act, or omission with respect to or in any way concerning, relating to, or arising out of these Article I Rules or any application for interim relief. The parties shall not bring suit against or subpoena (i) an Emergency Arbitrator, (ii) the Association, or (iii) any representative or employee of the Association with respect to or in any way concerning, relating to, or arising out of these Article I Rules or any application for interim relief. If, nonetheless, a party takes such action against any such person, the party shall be liable to the Emergency Arbitrator at his or her stated hourly rate for time spent on the suit or subpoena plus attorneys' fees and costs and to the Association and

its representative or employee for the reasonable value of time spent on the suit or subpoena plus attorneys' fees and costs.

10. Allocation of Fees and Expenses

The parties shall bear their own attorneys' fees and expenses and shall bear equally the Emergency Arbitrator's fees and expenses and the administrative fees of the Association, unless the parties have agreed otherwise or the Emergency Arbitrator has ruled otherwise.

ARTICLE II

MEDIATION PROCEDURES FOR DISPUTES AMONG LAWYERS (REVISED MARCH 15, 2012)

These “Mediation Procedures” apply to the resolution of disputes among lawyers with regard to business or professional aspects of their practice of law when the parties have agreed to use them. These Mediation Procedures supersede all prior rules and procedures for mediation of such disputes.

1. Purpose

The mediation process, as established by these Mediation Procedures, provides a prompt, confidential, and cost-effective mechanism prior to or in conjunction with arbitration or litigation for resolving disputes among lawyers.

2. Scope of Procedures

a. These Mediation Procedures may be used for the resolution of any dispute between or among lawyers with regard to the business or professional aspects of the practice of law.

b. Whenever the parties have agreed to mediation by the Association or under these Mediation Procedures, they shall be deemed to have (i) incorporated in their agreement the Mediation Procedures in effect at the time of commencement of the mediation and (ii) agreed to be bound by all of the Mediation Procedures.

3. Administrator

The Association, through the President of the Association, along with the mediator once he or she is appointed, shall administer all mediation proceedings under these Mediation Procedures. The President of the Association may delegate the performance of specific administrative functions to staff personnel, the Chair or a member of the Association’s ADR Committee, a member of the Association, or an outside ADR provider organization.

4. Fees and Expenses

The parties shall pay the Association an administrative fee of \$1000 upon initiation of a mediation. The mediator shall be compensated at the mediator’s stated hourly rate plus expenses, unless the parties and the mediator agree otherwise. The Association or mediator may require the parties to deposit an advance against the anticipated fees and expenses of the mediator and may from time to time require additional advances or deposits. If any party fails to pay an advance when requested by the Association or the mediator, the Association may ask another party to advance the deficiency on terms and conditions acceptable to the paying party and the Association. No proceedings will take place or continue while a requested advance is unpaid without the consent of the mediator. The payment obligation runs from the parties to the mediator, and the Association bears no responsibility for the payment of the mediator.

5. Commencement of Mediation

a. When parties have executed a pre-dispute agreement to mediate under these Mediation Procedures, the claimant commences the mediation process by electronically filing a copy of a request for mediation with the Association, including an electronic copy of the pre-dispute agreement to mediate, sending a copy set to each other party, and paying the required administrative fee of \$1000. When parties have executed a post-dispute agreement to mediate under these Mediation Procedures, the parties commence the mediation process by electronically filing a copy of the agreement to mediate with the Association and paying the required administrative fee of \$1000. (A model request for mediation (when there is a pre-dispute agreement to mediate) appears at Appendix II, and a model post-dispute agreement to mediate appears at Appendix IV.)

b. The Association will forthwith send notice to each party of the filing of the foregoing documents.

6. Selection of the Mediator

a. Unless the parties agree otherwise, there shall be one mediator.

b. The parties may by agreement:

- (i) provide that the Association will appoint the mediator from the Panel of Mediators described in subparagraph (c) below or otherwise in its discretion,
- (ii) appoint the mediator (who need not be on the Panel of Mediators), or
- (iii) provide for any other method of appointment of the mediator (who need not be on the Panel of Mediators).

c. The Association will maintain a Panel of Mediators. All persons on the Panel will:

- (i) have been admitted to the practice of law ten years or more,
- (ii) be experienced in the mediation of civil disputes, and
- (iii) have such other and further qualifications as the Association deems appropriate.

d. If the parties are unable to select a mediator or if they are unable to agree on a method for selecting a mediator, the mediator will be appointed by the Association. If requested by the parties, the Association will provide a list of no more than five individuals from which the parties may select the mediator, following which, if the parties have not agreed on a mediator, the Association shall appoint the mediator.

7. Independence, Impartiality, and Role of the Mediator; Conduct of Proceedings

a. The mediator shall be independent and impartial. Each mediator shall be obligated before proceeding, and thereafter at every stage of the proceeding, to disclose any circumstances that might give rise to justifiable doubt regarding his or her independence or impartiality. Such circumstances include bias, interest in the result of the mediation, and past or present relationships with any party, its representative, or its counsel. Mediators shall serve subject to the Model Standards for Conduct of Mediators promulgated by the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution, revised August 2005, as from time to time amended.

b. The Association will administer disclosures of potential mediators until the mediator is appointed, after which the mediator will administer additional disclosures, if any. Any challenge to his or her independence or impartiality at any stage of the proceeding shall be resolved by the Association by summary order, and the Association's decision whether to appoint or reconfirm him or her shall be conclusive.

c. The mediator's function is to assist the parties' efforts in trying to resolve their disputes or in trying to agree on methods for resolving them, including, but not limited to, submitting their disputes to arbitration pursuant to the Association's Arbitration Rules For Disputes Among Lawyers set forth in Article III hereof (the "Article III Rules"). Accordingly, the mediator may take such steps consistent with these Mediation Procedures (or the parties' agreed modifications of these Mediation Procedures) as the mediator deems appropriate. Unless otherwise agreed by the parties and the mediator in writing, the mediator shall not act as an Emergency Arbitrator under the Association's Emergency Interim Relief Rules For Disputes Among Lawyers set forth in Article I hereof (the "Article I Rules") or as an arbitrator under the Article III Rules. Unless the parties agree otherwise, the mediator and the Association and its representatives and employees shall have no power to impose any outcome upon the parties or in any way change or affect the parties' rights and obligations. The parties acknowledge that the mediation may not result in a settlement.

d. Unless otherwise excused by the mediator, for each party a representative having full negotiation and settlement authority must attend each mediation session in person. Each such session shall be held at the Association (subject to room availability) or at another place agreed upon by the parties and the mediator.

8. Confidentiality and Immunity

a. The entire mediation process is confidential and is subject to all applicable law relating to confidentiality of communications, information, and materials concerning compromise, settlement, and the like. Unless agreed among all the parties or permitted to do so by law, the parties and the mediator shall not disclose to any person who is not associated with participants in the process any information regarding the process (including pre-process exchanges and agreements), substance or contents (including written and oral information), settlement terms, or outcome of the proceeding; provided, however, that any written settlement agreement resulting from mediation may be disclosed for purposes of enforcement.

b. Mediators and the Association and its representatives and employees shall have the same immunity from civil suit or claim in connection with any conduct, act, or omission under these Mediation Procedures or relating to a mediation that a judicial officer or body would have in a court proceeding. Neither the mediator nor the Association or any representative or employee thereof shall be liable for any conduct, act, or omission with respect to or in any way concerning, relating to, or arising out of these Mediation Procedures or any mediation. The parties shall not bring suit against or subpoena (i) a mediator, (ii) the Association, or (iii) any representative or employee of the Association with respect to or in any way concerning, relating to, or arising out of these Mediation Procedures or any mediation. If, nonetheless, a party takes such action against any such person, the party shall be liable to the mediator at his or her stated hourly rate for time spent on the suit or subpoena plus attorneys' fees and costs and to the Association and its representative or employee for the reasonable value of time spent on the suit or subpoena plus attorneys' fees and costs.

9. No Stay of Pending Litigation or Arbitration

Absent agreement otherwise between or among the parties to the mediation, submission of any dispute to or participation in the mediation by itself shall not stay any other proceeding between or among the parties.

10. Allocation of Fees and Expenses

The parties shall bear their own attorneys' fees and expenses and shall bear equally the mediator's fees and expenses, unless the parties have agreed otherwise.

ARTICLE III
ARBITRATION RULES FOR DISPUTES AMONG LAWYERS
(REVISED MARCH 15, 2012)

These “Article III Rules” apply to the resolution of disputes among lawyers with regard to business or professional aspects of their practice of law when the parties have agreed to use them. These Article III Rules supersede all prior rules and procedures for arbitration of such disputes.

1. Purpose

The arbitration procedures established by these Article III Rules provide a binding mechanism for resolving disputes among lawyers.

2. Scope of Application

a. These Article III Rules may be used for the binding resolution of any arbitrable dispute between or among lawyers with regard to business or professional aspects of their practice of law.

b. Whenever the parties have agreed to arbitration by the Association or under these Article III Rules, they shall be deemed to have (i) incorporated in their agreement the Article III Rules in effect at the time of commencement of the arbitration, (ii) agreed to be bound by all of the Article III Rules, and (iii) agreed to be bound by all of the Association’s Emergency Interim Relief Rules For Disputes Among Lawyers set forth in Article I hereof (the “Article I Rules”), if utilized.

3. Administrator

The Association, through the President of the Association, along with the arbitrator(s) once they are appointed, shall administer all arbitration proceedings under these Article III Rules. The President may delegate the performance of specific administrative functions to staff personnel, the Chair or a member of the Association’s Arbitration Committee, a member of the Association, or an outside ADR provider organization.

4. Commencement of Arbitration

a. The party initiating arbitration when there is a pre-dispute agreement to arbitrate shall address to and serve on each other party a Demand For Arbitration and electronically file with the Association a copy of the Demand For Arbitration. The Demand For Arbitration shall include an electronic statement of the party’s claim and an electronic copy of the pre-dispute agreement to arbitrate. (A model demand for arbitration appears at Appendix III.)

b. A dispute may be submitted to arbitration by the parties pursuant to a submission agreement (a Submission To Arbitration Agreement). The Submission To Arbitration

Agreement shall set forth the claim(s) and any counterclaim(s), and it shall be electronically filed with the Association. (A model submission to arbitration agreement appears at Appendix V.)

c. The Association charges one administrative fee of \$1500 to claimant(s) (regardless of the number of claimants), and it charges one administrative fee of \$1500 to respondent(s) (regardless of the number of respondents) if any of the respondents presents a counterclaim (thus, the total administrative fee for an arbitration under these Article III Rules will be either \$1500 or \$3000). The Demand For Arbitration and the first paper presenting a counterclaim shall each be accompanied by the respective administrative fee. When the parties commence an arbitration by submission, the Submission To Arbitration Agreement shall be accompanied by the appropriate administrative fee (\$1500 if there is no counterclaim and \$3000 if there is any counterclaim). No side shall be required to pay more than one administrative fee per arbitration. The fees paid are subject to reapportionment by the arbitrator(s) in the award, in accordance with Rule 11(c) of these Article III Rules.

d. The Association will forthwith send to each party notice of the filing of the Demand For Arbitration or Submission To Arbitration Agreement.

e. The arbitration is commenced as soon as (i) claimant has electronically filed a copy of a Demand For Arbitration with the Association, including an electronic copy of the pre-dispute agreement to arbitrate, sent a copy set to each other party, and paid the required administrative fee, or (ii) the parties have electronically filed a copy of a Submission To Arbitration Agreement with the Association and paid the required administrative fee.

5. Answers and Counterclaims

a. Within 20 days after receipt by a respondent of a Demand For Arbitration, the respondent shall deliver to the claimant a notice of defense and electronically file with the Association a copy of the notice of defense. Failure to deliver a notice of defense shall not delay the arbitration; in the event of such failure, all claims set forth in the demand shall be deemed denied.

b. In its notice of defense, the respondent may include any counterclaim within the scope of the arbitration agreement under these Article III Rules. If a counterclaim is asserted, within 20 days after receipt of the notice of defense, the claimant shall deliver to the respondent a reply to the counterclaim. Failure to deliver a reply to a counterclaim shall not delay the arbitration; in the event of such failure, that counterclaim shall be deemed denied. No counterclaim will be subject to arbitration until respondent has paid to the Association the required administrative fee for presentation of a counterclaim as provided in Rule 4(c) of these Article III Rules.

6. Selection of Arbitrator(s)

- a. The parties may by agreement:
 - (i) provide that the Association will appoint the arbitrator(s) from the Panel of Arbitrators described in subparagraph (b), below, or otherwise in its discretion,
 - (ii) jointly appoint the arbitrator(s) (none of whom need be on the Panel of Arbitrators),
 - (iii) provide that each party will appoint one arbitrator and that these two arbitrators will appoint the third arbitrator, who shall be chair (none of the three need be on the Panel of Arbitrators), or
 - (iv) provide for any other method of appointment of such arbitrator(s).
- b. The Association will maintain a Panel of Arbitrators. All persons on that Panel will:
 - (i) have been admitted to the practice of law ten years or more,
 - (ii) be experienced in the arbitration of civil disputes, and
 - (iii) have such other and further qualifications as the Association may from time to time prescribe.
- c. The parties may by agreement elect to have either one or three arbitrators. Absent agreement on the number of arbitrators, the Association will in its discretion determine whether there shall be one or three arbitrators.
- d. If there are to be three arbitrators and each side is to appoint an arbitrator:
 - (i) when there are two or more claimant parties, the claimant parties shall together appoint a single arbitrator, and
 - (ii) when there are two or more respondent parties, the respondent parties shall together appoint a single arbitrator.
- e. Upon request, the Association will provide to the parties a list of no more than five arbitrators from which the parties may pick the arbitrator(s).
- f. If all of the arbitrator(s) have not been appointed within 45 days after either:
 - (i) the filing of the Submission To Arbitration Agreement under Rule 4(b) of these Article III Rules or
 - (ii) the date the last notice of defense is due under Rule 5(a) of these Article III Rules,whichever of the two is applicable, the Association shall have the power to appoint the unappointed arbitrator(s) from the Association's Panel of Arbitrators or otherwise in its discretion.

g. If the chair of a multi-person arbitral panel has not been designated within 2 business days after all arbitrators have been appointed, the Association shall have the power to designate the chair.

7. Independence and Impartiality of Arbitrators

a. All arbitrators shall be independent and impartial. Each arbitrator shall be obligated before proceeding, and thereafter at every stage of the proceeding, to disclose any circumstances that might give rise to justifiable doubt regarding his or her independence or impartiality. Such circumstances include bias, interest in the result of the arbitration, and past or present relationships with a party, its representative, its counsel, or witnesses.

b. The Association will administer disclosures of potential arbitrators until the arbitrator(s) are appointed, after which the arbitrator(s) will administer additional disclosures, if any. Any challenge to the independence or impartiality of any such individual at any stage of the proceeding shall be resolved by the Association by summary order, and the Association's decision whether to appoint or reconfirm him or her shall be conclusive.

c. Arbitrators shall serve subject to the Code of Ethics for Arbitrators in Commercial Disputes, effective March 1, 2004, issued by the American Arbitration Association and developed in conjunction with the American Bar Association, as from time to time amended ("Arbitrator's Code of Ethics").

8. Challenges to Jurisdiction of the Tribunal

a. All questions as to jurisdiction shall be determined by the arbitrator(s), including any objections with respect to the existence, validity, or scope of the arbitration agreement or applicability of these Article III Rules.

b. The arbitrator(s) shall have the power to determine the existence, validity, or scope of the contract of which an arbitration clause forms a part. For purposes of challenges to the jurisdiction of the arbitrator(s), the arbitration clause shall be considered as separable from any contract of which it forms a part.

c. Any challenges to the jurisdiction of the arbitrator(s), except challenges based on the award itself, shall be made not later than the date the last notice of defense is due under Rule 5(a) of these Article III Rules or, with respect to a counterclaim, the date the last reply to a counterclaim is due under Rule 5(b) of these Article III Rules.

9. Conduct of Arbitration Proceedings

a. Subject to these Article III Rules, the arbitrator(s) shall have the power to conduct the arbitration in such manner as they shall deem appropriate. The chair of a multi-person arbitral panel shall be responsible for organizing the proceedings, including the arbitral conferences and hearings.

b. The proceedings shall be conducted in an expeditious manner. The arbitrator(s) are empowered to impose time limits they consider reasonable on each phase of the proceeding, including without limitation the time allotted to each party for presentation of its case and for rebuttal.

c. No party or anyone acting on a party's behalf shall have any ex parte communication with any arbitrator with respect to any matter relating to the proceeding except as permitted by the Arbitrator's Code of Ethics.

d. As promptly as possible after the selection of the arbitrator(s), the arbitrator(s) shall hold (in person or by telephone) an initial pre-hearing conference, the objective of which shall be to discuss all stages of the arbitration with a view to planning the proceedings. Matters to be considered in the initial pre-hearing conference may include, but are not limited to, the following:

- (i) procedural matters, discovery, motions, bifurcation, scheduling of conferences and hearings, the scope of prehearing memoranda, exhibits and witness lists, expert witnesses, record of conferences and hearings (including the need, if any, for transcripts), time allotted to each party for presentation of its case and for rebuttal, sequestration of witnesses, manner and order for presenting proof, and how any expert testimony should be presented,
- (ii) the early identification and narrowing of the issues,
- (iii) stipulations of fact and admissions solely for purposes of the arbitration, and
- (iv) the possibility of settlement negotiations, with or without the assistance of a mediator, as provided below.

e. The arbitrator(s) may hold further pre-hearing conferences and schedule meetings, including telephonic conferences, whenever and wherever they deem appropriate.

f. The arbitrator(s) shall permit only such discovery as they shall deem appropriate, taking into account the demonstrated needs of the parties and the desirability of making discovery expeditious and cost-effective.

g. The arbitrator(s) may issue orders to protect the confidentiality of privileged material and other sensitive information disclosed or to be disclosed in the arbitration.

h. Evidence and Hearings

- (i) The arbitrator(s) shall determine the order and manner in which the parties shall present or defend the case.

- (ii) If any party so requests or the arbitrator(s) so direct, a hearing shall be held for the presentation of evidence and oral argument. The arbitrator(s) shall have the discretion to receive evidence in written form or in oral form, or both. The arbitrator(s) are not required to apply the rules of evidence; provided, however, that lawyer-client privilege and work product immunity shall apply. The arbitrator(s) shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality, and weight of the evidence offered.
- (iii) The arbitrator(s), in their discretion, may require the parties to produce evidence in addition to that initially offered. They may also appoint, when they deem it necessary and at the expense of the parties, one or more experts, whose testimony and reports shall be subject to cross-examination and rebuttal.
- (iv) The arbitrator(s) shall have the right to exclude witnesses from hearings during the testimony of other witnesses; provided, however, that it shall be presumed that parties and expert witnesses may be present throughout the evidentiary hearing.

i. Settlement And Mediation

- (i) Either side may propose settlement negotiations to the other side at any time. The arbitrator(s) may suggest that the parties explore settlement, including through mediation, at such times as the arbitrator(s) may deem appropriate.
- (ii) With the consent of the parties, the arbitrator(s) at any stage of the proceeding may arrange for mediation of the claims asserted in the arbitration by a mediator acceptable to the parties. The mediator shall be a person other than the arbitrator(s), unless the parties agree otherwise in writing. Any such mediation shall be conducted pursuant to the Mediation Procedures For Disputes Among Lawyers set forth in Article II hereof, unless the parties agree otherwise.
- (iii) The arbitrator(s) shall not be informed of any settlement offers or other statements made during settlement negotiations or a mediation between the parties, unless all parties consent.
- (iv) If the parties settle the dispute before an award is made, the arbitrator(s) shall terminate the arbitration and, if requested by all parties and accepted by the arbitrator(s), may record the settlement in the form of an award made by consent of the parties. The arbitrator(s) are not obliged to give reasons for such an award.

10. Provisional and Interim Orders, Awards, and Remedies

a. The arbitrator(s) may grant any remedy or relief that the arbitrator(s) deem just and equitable and within the scope of the agreement of the parties.

b. The arbitrator(s) may make final, interim, interlocutory, and partial awards and orders. The parties irrevocably consent to the entry of final, interim, interlocutory, and partial awards and orders issued by the arbitrator(s) by any court having jurisdiction thereof pursuant to applicable law, and the parties hereby irrevocably waive any objection, jurisdictional, procedural, or substantive, to judicial confirmation and enforcement of such final, interim, interlocutory, and partial awards and orders, except upon a ground available under applicable law for vacating an arbitral award.

c. Unless the parties have otherwise agreed, any party to an agreement to resolve disputes under these Article III Rules may invoke the Article I Rules before commencement of, or prior to appointment of all arbitrators after commencement of, the arbitration under these Article III Rules, by providing written notice to the Association and to all other parties and neutrals as provided for in Rule 1 of the Article I Rules, and thereafter all parties to such agreement shall be bound by all of the Article I Rules and by any order issued pursuant to the Article I Rules, notwithstanding that a party who has received appropriate notice has not appeared at a proceeding under the Article I Rules or has objected to or attempted to reject their applicability. As provided in Rule 8(b) of the Article I Rules, once all the arbitrator(s) under these Article III Rules for a dispute are appointed: (i) an Emergency Arbitrator under the Article I Rules will not thereafter be appointed or continue to serve as such, and (ii) the arbitrator(s) under these Article III Rules shall have the sole authority to grant interim relief or to revise or revoke any interim relief previously granted. Any award or order issued pursuant to the Article I Rules may be revised or revoked during subsequent proceedings under the Article I Rules or by the arbitrator(s) in subsequent proceedings conducted under these Article III Rules.

11. Award

a. All awards shall be in writing, signed by a majority of the arbitrator(s), and executed in the manner required by applicable law.

b. Subject to any agreement by the parties to the contrary, the arbitrator(s) need not render a reasoned award unless the arbitrator(s) determine that a reasoned award is appropriate.

c. In its award, the arbitrator(s) shall assess the administrative fees of the Association and the fees and expenses of the arbitrator(s) among the parties in such amounts as the arbitrator(s) deem reasonable, taking into account the circumstances of the case, the conduct of the parties and their counsel during the proceeding, and the result of the arbitration.

d. The award of the arbitrator(s) may include:

- (i) interest at such rate and from such date as the arbitrator(s) may deem appropriate, and

- (ii) an award of attorneys' fees if all parties have requested such an award or it is authorized by applicable law or their arbitration agreement.

12. Amendment of Award

a. Within 15 days after receipt of the award, any party, with notice to the other parties, may request the arbitrator(s): (i) to correct any clerical, typographical, or computational errors or any errors of a similar nature in the award, and/or (ii) to make an additional award as to claims or counterclaims presented in the arbitration but not determined in the award. The arbitrator(s) shall make any correction or additional award requested by any party that the arbitrator(s) deem justified within 30 days after receipt of such request. Within 15 days after delivery of the award to the parties or, if a party requests a correction or additional award, within 30 days after receipt of such request, the arbitrator(s) may make any corrections and additional awards on the arbitrator(s)' own initiative that the arbitrator(s) deem appropriate. All corrections and additional awards shall be in writing.

b. The award shall be final and binding on the parties, and the parties will undertake to carry out the award without delay. If as provided in Rule 12(a) of these Article III Rules a correction or additional award is requested by a party, or a correction or additional award is made by the arbitrator(s) on the arbitrator(s)' own initiative, the award shall be final and binding on the parties the earlier of: (i) when such correction or additional award is made by the arbitrator(s), or (ii) upon the expiration of the applicable time period provided in Rule 12(a) for such correction or additional award to be made.

13. Other Rules and Procedures; Statute of Limitations

a. In all cases, the arbitrator(s) shall have the power, upon notice to the parties and after giving them an opportunity to be heard, to formulate and implement rules and procedures for the arbitration, so long as they are consistent with these Rules.

b. All questions as to the application or effect of any statute of limitations to or on any claim or counterclaim shall be determined by the arbitrator(s).

14. Fairness and Efficiency

The Association will expedite selection of the arbitrator(s) and seek to have the arbitration proceed as expeditiously, economically, and fairly as possible. The arbitrator(s) and the parties shall endeavor to promote the expeditious, economical, and fair conduct of the arbitration.

15. Failure To Comply With Rules

Whenever a party fails to comply with these Article III Rules, or with any order of the arbitrator(s) pursuant to these Article III Rules, in a manner deemed material by the arbitrator(s), the arbitrator(s), if appropriate, shall fix a reasonable period of time for compliance and, if the party does not comply within said period, the arbitrator(s) may impose a remedy the arbitrator(s) deem just, including an award on default. Prior to entering an award on default, the arbitrator(s)

shall require each non-defaulting party to produce evidence and legal argument in support of its contentions as the arbitrator(s) may deem appropriate. The arbitrator(s) may receive such evidence and argument without the defaulting party's presence or participation.

16. Fees and Expenses

As provided in Rule 4(c) of this Article III, each side (regardless of the number of claimants or respondents on the respective side) presenting a claim or counterclaim shall pay the Association an administrative fee of \$1500, and such fees shall be allocated pursuant to Rule 11(c) of this Article III. Each arbitrator shall be compensated at his or her stated hourly rate for all work relating to the arbitration, plus expenses, unless the parties and the arbitrator agree otherwise. The Association or arbitrator(s) may require the parties to deposit an advance against the anticipated fees and expenses of the arbitrator(s) and may from time to time require additional advances or deposits. If any party fails to pay an advance when requested by the Association or the arbitrator(s), the Association may ask another party to advance the deficiency on terms and conditions acceptable to the paying party and the Association. No proceedings will take place or continue while a requested advance is unpaid unless the arbitrator(s) agree to continue to serve. The payment obligation runs from the parties to the arbitrator(s), and the Association bears no responsibility for the payment of the arbitrator(s).

17. Confidentiality and Immunity

a. Unless confidentiality is waived by all parties, all arbitration proceedings and decisions shall be confidential, shall be immune from discovery or production in any other forum, and shall not be used for any purpose other than the arbitration, judicial proceedings ancillary to the arbitration, or as otherwise required by law.

b. Arbitrators and the Association and its representatives and employees shall have the same immunity from civil suit or claim in connection with any conduct, act, or omission under these Article III Rules or relating to an arbitration that a judicial officer or body would have in a court proceeding. Neither the arbitrator(s) nor the Association nor any representative or employee thereof shall be liable for any conduct, act, or omission with respect to or in any way concerning, relating to, or arising out of these Article III Rules or any arbitration. The parties shall not bring suit against or subpoena (i) any arbitrator, (ii) the Association, or (iii) any representative or employee of the Association with respect to or in any way concerning, relating to, or arising out of these Article III Rules or any arbitration. If, nonetheless, a party takes such action against any such person, the party shall be liable to the arbitrator at his or her stated hourly rate for time spent on the suit or subpoena plus attorneys' fees and costs and to the Association and its representative or employee for the reasonable value of time spent on the suit or subpoena plus attorneys' fees and costs.

18. Allocation of Attorneys' Fees and Expenses

The parties shall bear their own attorneys' fees and expenses and shall bear equally the administrative fees of the Association and the arbitrator(s)' fees and expenses, unless the parties

have agreed otherwise or the arbitrator(s) have awarded otherwise pursuant to Rule 11 of these Article III Rules.

APPENDIX I

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mediation And Arbitration Of Disputes Among Lawyers: Model ADR Clauses

The following clauses may be used in a stand-alone dispute resolution agreement or modified and incorporated into a larger agreement (e.g., a partnership agreement) to reflect the parties' agreed-upon dispute resolution sequence, such as:

- Negotiation, Mediation, and Arbitration
- Mediation and Arbitration
- Negotiation and Mediation
- Negotiation and Arbitration
- Mediation only
- Arbitration only

Litigation is always available to the parties, but the Association hopes they will instead utilize the ADR processes provided under these rules.

Article 00: Dispute Resolution

1. Scope

This Article 00 shall apply to any dispute, controversy, or claim whatsoever with regard to business or professional aspects of their practice of law [hereafter arising] [or] [already existing] between or among members of this firm or between or among one or more members or former members and the firm, including but not limited to claims [concerning, arising out of, or related to] this agreement [or its existence, validity, construction, interpretation, termination, enforcement, or alleged breach] [, whether or not such claims are based on contract, tort, federal, state, or local statute, regulation, or common law or otherwise] [, excepting only ____]. All proceedings conducted pursuant to this Article 00 shall be confidential.

2. Negotiation Clause

To be used if the parties have agreed to negotiate as a first step.

The parties shall attempt [in good faith] to resolve any dispute covered by this Article 00 promptly by negotiation between persons who have authority to settle the controversy. All such negotiations shall be confidential and treated as compromise and settlement negotiations for purposes of the relevant rules of evidence. Any party may give the other parties written notice requesting negotiation. Within 10 days after delivery of the notice, each receiving party shall submit a written response to the other parties. The notice and the response shall be dated and include (a) a statement of the sending party's position and a summary of arguments supporting

that position. Within 20 days after delivery of the notice requesting negotiation, the parties and their representatives shall meet to negotiate at a mutually acceptable time and place or at the Association of the Bar of the City of New York (subject to room availability) if the parties cannot otherwise agree.

3. Mediation Clause

Strike the bracketed text if parties have not agreed to negotiate as a first step.

Any dispute covered by this Article 00 [that has not been resolved by negotiation within [45] days of the notice requesting negotiation] [where the parties have failed to meet within [30] days of the notice requesting negotiation and that has not been resolved within [30] days following such meeting] shall be submitted to mediation under the then-current **Mediation Procedures For Disputes Among Lawyers** (“Mediation Procedures”) promulgated by The Association of the Bar of the City of New York (“Association”). Pursuant to those Mediation Procedures, any party may file a request for mediation with the Association as provided in said Mediation Procedures. If the parties fail to agree on the mediator or a method to appoint a mediator within [10] days of the request for mediation, the mediator will be selected by the Association in accordance with those Mediation Procedures.

4. Binding Dispute Resolution Clause

Strike the bracketed text concerning negotiation if parties have not agreed to negotiate.

Strike the bracketed text concerning mediation if the parties have not agreed to mediate.

Any dispute covered by this Article 00 [that has not been resolved by negotiation within [45] days of the notice requesting negotiation] [where the parties have failed to meet within [30] days of the notice requesting negotiation and that has not been resolved within [30] days following such meeting] [or other period agreed by the parties after commencement of mediation under the **Mediation Procedures For Disputes Among Lawyers** (“Mediation Procedures”) promulgated by The Association of the Bar of the City of New York (“Association”), or where any party who had agreed to mediate fails to participate in the mediation,] shall be resolved by binding arbitration in accordance with the then-current **Arbitration Rules For Disputes Among Lawyers** (“Article III Rules”) promulgated by the Association by [a sole impartial arbitrator] [three independent and impartial arbitrators, of whom claimant(s) shall appoint one and respondent(s) shall appoint one], [three independent and impartial arbitrators,] [all of whom shall be appointed by the Association][named or selected as follows:

_____].

Pursuant to the Article III Rules of the Association, any party may file a Demand For Arbitration with the Association as provided in said Article III Rules. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be in the County of New York, State of New York.

5. Litigation

Any dispute covered by this Article 00 shall be subject to litigation [only] in the _____ [specify courts/jurisdiction], the parties hereby irrevocably agree to the jurisdiction of such court(s) over them and that venue is proper in those court(s), and they hereby irrevocably waive any objection to such jurisdiction and venue.

6. No Tolling of Statute of Limitations

Unless otherwise agreed by the Parties, all applicable statute of limitations and defenses based upon the passage of time shall not be tolled while any negotiation or mediation procedures specified in this Article 00 are pending.

APPENDIX II

**THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK**

Mediation And Arbitration Of Disputes Among Lawyers: Model Request For Mediation

Case No. _____

REQUEST FOR MEDIATION

(when there is a pre-dispute agreement to mediate)

I. Parties:

(a) Claimant(s) (names, addresses, phone and fax numbers, email addresses):

Attorney(s) for Claimant(s) in this matter, specifying an attorney in charge of this matter (names, addresses, phone and fax numbers, email addresses):

(b) Respondent(s) (names, addresses, phone and fax numbers, email addresses):

Attorney(s) for Respondent(s) in this matter, if known, specifying an attorney in charge of this matter (names, addresses, phone and fax numbers, email addresses):

II. Jurisdiction:

Is this dispute between or among lawyers with regard to business or professional aspects of their practice of law?

III. Specify the parties' mediation clause:

(a) Set forth, or annex, the full text of the parties' mediation clause relied on:

(b) Identify by date, parties, and description, or annex, the agreement containing the mediation clause relied on:

IV. Nature of dispute and relief sought:

(a) Describe the nature of the dispute and the relief sought, including the amount of any monetary claim:

(b) Is equitable relief sought? _____
If so, specify the relief sought _____

Dated: _____

_____, Claimant (or Attorney(s) for Claimant(s))
Address, Phone, Fax, and Email Address [if not already set forth in Item I(a)]

Note to claimant(s): To commence the mediation, you must do all of the following:
(a) electronically file a copy of this Request For Mediation with the Association, including an electronic copy of the pre-dispute agreement to mediate, (b) send a copy set to each other party, and (c) pay the required administrative fee of \$1000 (per mediation, not per party).

Notes to all parties:

(A) The Association’s Mediation Procedures For Disputes Among Lawyers (the “Mediation Procedures”) provide that whenever the parties have agreed to mediation by the Association or under the Mediation Procedures, they shall be deemed to have (i) incorporated in their agreement the Mediation Procedures in effect at the time of commencement of the mediation and (ii) agreed to be bound by all of the Mediation Procedures (Rule 2(b) of the Mediation Procedures).

(B) For further information or assistance, please contact the Association’s Senior Legal Counsel, Lauren Axelrod (laxelrod@nycbar.org or 212.382.6674), or the Chair of the ADR

Committee. The Association's policy is to assist the parties and their counsel to the fullest extent possible in facilitating the smooth, speedy, and efficient conduct of this proceeding.

APPENDIX III

**THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK**

Mediation And Arbitration Of Disputes Among Lawyers: Model Demand For Arbitration

Case No. _____

DEMAND FOR ARBITRATION

(when there is a pre-dispute agreement to arbitrate)

I. Parties:

(a) Claimant(s) (names, addresses, phone and fax numbers, email addresses):

Attorney(s) for Claimant(s) in this matter, specifying an attorney in charge of this matter (names, addresses, phone and fax numbers, email addresses):

(b) Respondent(s) (names, addresses, phone and fax numbers, email addresses):

Attorney(s) for Respondent(s) in this matter, if known, specifying an attorney in charge of this matter (names, addresses, phone and fax numbers, email addresses):

II. Jurisdiction:

Is this dispute between or among lawyers with regard to business or professional aspects of their practice of law?

III. Specify the parties' arbitration clause:

(a) Set forth, or annex, the full text of the parties' arbitration clause relied on:

(b) Identify by date, parties, and description, or annex, the agreement containing the arbitration clause relied on:

IV. Nature of dispute and relief sought:

(a) Describe the nature of the dispute, the claim asserted, and the relief sought, including the amount of any monetary claim (a separate statement of claim may be attached):

(b) Is the total amount in dispute (exclusive of interest, costs, and attorneys' fees) more than \$1,000,000?

_____ Yes

_____ No

(c) Is equitable relief sought? _____
If so, specify the relief sought _____

Dated: _____

_____, Claimant (or Attorney(s) for Claimant(s))
Address, Phone, Fax, and Email Address [if not already set forth in Item I(a)]

Note to claimant(s): To commence the arbitration, you must do all of the following:

(a) electronically file a copy of this Demand For Arbitration with the Association, including an electronic copy of the pre-dispute agreement to arbitrate, (b) send a copy set to each other party, and (c) pay the required administrative fee of \$1500 (regardless of the number of claimants and regardless of the number of claims that are ultimately presented).

Note to respondent(s): Upon your first presentation of a counterclaim in any paper, you must pay the Association the required administrative fee of \$1500 (regardless of the number of

respondents and regardless of the number of counterclaims that are ultimately presented). No counterclaim will be subject to arbitration until respondent has paid to the Association the required administrative fee for presentation of a counterclaim.

Notes to all parties:

(A) Not all issues involved in the dispute may be arbitrable, e.g., issues requiring adjudication under New York's Rules of Professional Conduct.

(B) The Association's Arbitration Rules For Disputes Among Lawyers (the "Article III Rules") provide that whenever the parties have agreed to arbitration by the Association or under the Article III Rules, they shall be deemed to have (i) incorporated in their agreement the Article III Rules in effect at the time of commencement of the arbitration, (ii) agreed to be bound by all of the Article III Rules, and (iii) agreed to be bound by all of the Association's Emergency Interim Relief Rules For Disputes Among Lawyers set forth in Article I (the "Article I Rules"), if utilized (Rule 2(b) of the Article III Rules).

(C) For further information or assistance, please contact the Association's Senior Legal Counsel, Lauren Axelrod (laxelrod@nycbar.org or 212.382.6674), or the Chair of the Arbitration Committee. The Association's policy is to assist the parties and their counsel to the fullest extent possible in facilitating the smooth, speedy, and efficient conduct of this proceeding.

APPENDIX IV

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

Mediation And Arbitration Of Disputes Among Lawyers: Model Agreement To Mediate

Case No. _____

AGREEMENT TO MEDIATE

(when there is no pre-dispute agreement to mediate)

1. The parties to this agreement, _____ (“_____”) and _____ (“_____”), intending to legally bind themselves and anyone acting on their behalf, hereby agree as follows.

2. The effective date of this agreement is _____.

3. The parties are parties to a dispute described in Paragraph 7, below, and represent that the dispute is between or among lawyers with regard to business or professional aspects of their practice of law.

4. The parties are submitting their dispute to mediation pursuant to the Mediation Procedures For Disputes Among Lawyers (“Mediation Procedures”) of The Association of the Bar of the City of New York (“Association”) in effect on the effective date of this agreement.

5. The parties understand that the Mediation Procedures provide that whenever parties have agreed to mediation by the Association or under the Mediation Procedures, they shall be deemed to have (i) incorporated in their agreement the Mediation Procedures in effect at the time of commencement of the mediation and (ii) agreed to be bound by all of the Mediation Procedures (Rule 2(b) of the Mediation Procedures).

6. The mediator shall be selected by the following method (*choose (a) or (b), if applicable*):

(a) The following named individual shall be the mediator:

Name _____

Address _____

Telephone _____

Fax _____

Email _____

(b) [] The following method shall be used to select the mediator:

Absent clear agreement of the parties in accordance with either (a) or (b), above, the mediator shall be appointed by the Association from the panel of mediators maintained by it or otherwise in its discretion.

7. The following joint statement describes the dispute being submitted to mediation, including claimant's claim, the amount of money involved, if any, and the remedy being sought (including equitable relief, if any); however, to the extent the parties cannot agree to a joint description of their dispute, each party has entered its own description:

8. The following conditions are acceptable and agreed to because they will enable the parties to discuss all aspects of their dispute freely and enable the mediator to effectively assist them:

(a) The entire mediation process is confidential and is subject to all applicable law relating to confidentiality of communications, information, and materials concerning compromise, settlement, and the like. Unless agreed among all the parties or permitted to do so by law, the parties and the mediator shall not disclose to any person who is not associated with participants in the process any information regarding the process (including pre-process exchanges and agreements), substance or contents (including written and oral information), settlement terms, or outcome of the proceeding; provided, however, that any written settlement agreement resulting from mediation may be disclosed for purposes of enforcement.

(b) Mediators and the Association and its representatives and employees shall have the same immunity from civil suit or claim in connection with any conduct, act, or omission under these Mediation Procedures or relating to a mediation that a judicial officer or body would have in a court proceeding. Neither the mediator nor the Association or any representative or employee thereof shall be liable for any conduct, act, or omission with respect to or in any way concerning, relating to, or arising out of these Mediation Procedures or any mediation. The

parties shall not bring suit against or subpoena (i) a mediator, (ii) the Association, or (iii) any representative or employee of the Association with respect to or in any way concerning, relating to, or arising out of these Mediation Procedures or any mediation. If, nonetheless, a party takes such action against any such person, the party shall be liable to the mediator at his or her stated hourly rate for time spent on the suit or subpoena plus attorneys' fees and costs and to the Association and its representative or employee for the reasonable value of time spent on the suit or subpoena plus attorneys' fees and costs.

9. The parties acknowledge that the mediator and the Association and its representatives and employees have no power to impose any outcome upon the parties or in any way change or affect the parties' rights and obligations and that the mediation may not result in a settlement.

Dated: _____

Claimant: _____ or by _____
(signature) (signature)

Dated: _____

Respondent: _____ or by _____
(signature) (signature)

Name of Claimant

Address

Phone and Fax Numbers

Email

Name of Attorney(s) for Claimant (specifying the attorney in charge)

Address

Phone and Fax Numbers

Email

Name of Respondent

Address

Phone and Fax Numbers

Email

Name of Attorney(s) for Respondent (specifying the attorney in charge)

Address

Phone and Fax Numbers

Email

Notes to all parties:

(A) To commence the mediation, you must do both of the following: (a) electronically file a copy of this Agreement To Mediate with the Association, and (b) pay the required administrative fee of \$1000 (per mediation, not per party).

(B) For further information or assistance, please contact the Association's Senior Legal Counsel, Lauren Axelrod (laxelrod@nycbar.org or 212.382.6674), or the Chair of the ADR Committee. The Association's policy is to assist the parties and their counsel to the fullest extent possible in facilitating the smooth, speedy, and efficient conduct of this proceeding.

APPENDIX V

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

Mediation And Arbitration Of Disputes Among Lawyers: Model Agreement To Arbitrate

Case No. _____

SUBMISSION TO ARBITRATION AGREEMENT

(when there is no pre-dispute agreement to arbitrate)

1. The parties to this agreement, _____ (“_____”) and _____ (“_____”), intending to legally bind themselves and anyone acting on their behalf, hereby agree as follows.
2. The effective date of this agreement is _____.
3. The parties are parties to a dispute described in Paragraph 7, below, and represent that the dispute is between or among lawyers with regard to business or professional aspects of their practice of law.
4. The parties are submitting their dispute to arbitration pursuant to the Arbitration Rules For Disputes Among Lawyers (the “Article III Rules”) of The Association of the Bar of the City of New York (“Association”) in effect on the effective date of this agreement.
5. The parties understand that the Article III Rules provide that whenever parties have agreed to arbitration by the Association or under the Article III Rules, they shall be deemed to have (i) incorporated in their agreement the Article III Rules in effect at the time of commencement of the arbitration, (ii) agreed to be bound by all of the Article III Rules, and (iii) agreed to be bound by all of the Association’s Emergency Interim Relief Rules For Disputes Among Lawyers set forth in Article I (the “Article I Rules”), if utilized (Rule 2(b) of the Article III Rules).
6. The parties agree that such controversy be submitted as follows (*choose one of (a), (b), or (c), if applicable*):

(a) The following named arbitrator(s) have been selected by the parties:

(1) _____

Name

Address

Phone and Fax Numbers

Email

(2) _____

Name

Address

Phone and Fax Numbers

Email

(3) _____

Name

Address

Phone and Fax Numbers

Email

(b) Claimant(s) have appointed as arbitrator:

Name

Address

Phone and Fax Numbers

Email

Respondent(s) have appointed as arbitrator:

Name

Address

Phone and Fax Numbers

Email

and those two arbitrators shall appoint the chair of the tribunal.

(c) (One) (Three) (if neither "one" nor "three" is struck or if both are struck, the Association will in its discretion determine the number of arbitrators) arbitrator(s) shall be appointed in the following manner (describe):

Absent clear agreement of the parties in accordance with one of (a), (b), or (c), above, the arbitrator(s) shall be appointed by the Association in accordance with the Article III Rules.

7. (a) The following joint statement describes the dispute being submitted to arbitration, including claimant's claim(s), any counterclaim(s), the amount of money involved, if any, and the remedy being sought (including equitable relief, if any); however, to the extent the parties cannot agree to a joint description of their dispute, each party has entered its own description:

(b) Is the total amount in dispute (exclusive of interest, costs, and attorneys' fees) more than \$1,000,000?

Yes

No

8. The parties irrevocably consent to the entry of final, interim, interlocutory, and partial awards and orders issued by the arbitrator(s) by any court having jurisdiction thereof pursuant to applicable law, and the parties hereby irrevocably waive any objection, jurisdictional, procedural, or substantive, to judicial confirmation and enforcement of such final, interim, interlocutory, and partial awards and orders, except upon a ground available under applicable law for vacating an arbitral award.

(Indicate below any special requests to the Association or instructions to arbitrator(s) regarding such matters as the urgency of the arbitration and the law under which the arbitrator(s) are to

decide the dispute (e.g., New York law):

Dated: _____

Claimant: _____ or by _____
(signature) Authorized representative (signature)

Dated: _____

Respondent: _____ or by _____
(signature) Authorized representative (signature)

Name of Claimant

Address

Phone and Fax Numbers

Email

Name(s) of Attorney(s) for Claimant (specifying the attorney in charge)

Address

Phone and Fax Numbers

Email

Name of Respondent

Address

Phone and Fax Numbers

Email

Name(s) of Attorney(s) for Respondent (specifying the attorney in charge)

Address

Phone and Fax Numbers

Email

Notes to all parties:

(A) To institute proceedings, you must do both of the following: (a) electronically file a copy of this Agreement To Arbitrate with the Association, and (b) pay the required administrative fee of \$1500 (regardless of the number of Claimants) plus another \$1500 if there is any counterclaim (regardless of the number of Respondents or counterclaims).

(B) Not all issues involved in the dispute may be arbitrable, e.g., issues requiring adjudication under New York's Rules of Professional Conduct.

(C) For further information or assistance, please contact the Association's Senior Legal Counsel, Lauren Axelrod (laxelrod@nycbar.org or 212.382.6674), or the Chair of the Arbitration Committee. The Association's policy is to assist the parties and their counsel to the fullest extent possible in facilitating the smooth, speedy, and efficient conduct of this proceeding.

APPENDIX VI

**THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK**

**Mediation And Arbitration Of Disputes Among Lawyers: Model Request For
Emergency Interim Relief**

Case No. _____

REQUEST FOR EMERGENCY INTERIM RELIEF

1. The undersigned is a party to a dispute among lawyers with regard to business or professional aspects of their practice of law.

2. The undersigned entered into an agreement to use the [Emergency Interim Relief Rules For Disputes Among Lawyers (the “Article I Rules”)] [Arbitration Rules For Disputes Among Lawyers (the “Article III Rules”), which make applicable the Emergency Interim Relief Rules For Disputes Among Lawyers (the “Article I Rules”),] of The Association of the Bar of the City of New York (the “Association”).

3. [On _____, 20____, the undersigned or another party to the dispute commenced] [Neither the undersigned nor any other party to the dispute has commenced] [an arbitration procedure under the Article III Rules] [a mediation procedure under the Mediation Procedures For Disputes Among Lawyers of the Association (“Mediation Procedures”)].

4. The undersigned requests emergency interim relief under the Article I Rules because of an immediate need (*indicate which is/are applicable*):

- (a) [] to protect the interests of a client;
- (b) [] for other provisional or interim relief.

5. The circumstances giving rise to this request are:

6. The relief the undersigned seeks is:

7. The undersigned certifies that on _____, 20__, the undersigned hand-delivered/faxed/mailed a copy of this Request For Emergency Interim Relief to every other party to this dispute and to every neutral previously appointed in this dispute, all of whom are named below:

(party and contact information)

(party and contact information)

(party and contact information)

(party and contact information)

(Neutral and contact information)

(Neutral and contact information)

(Neutral and contact information)

8. The undersigned agrees to be jointly and severally liable for the Association's administrative fees and for the fees and expenses of any Emergency Arbitrator appointed pursuant to the Article I Rules and to promptly pay all such fees and expenses.

9. The undersigned understands that once the arbitrator(s) under the Article III Rules are appointed: (i) an Emergency Arbitrator will not thereafter be appointed, and (ii) the arbitrator(s) under the Article III Rules shall have sole authority to grant interim relief or to revise or revoke any interim relief previously granted.

10. Unless the parties and any Emergency Arbitrator appointed agree otherwise in writing, the undersigned understands that the Emergency Arbitrator shall not serve as a mediator under the Mediation Procedures or as an arbitrator under the Article III Rules.

Party Requesting Emergency Interim Relief

Dated: _____

Note for party requesting emergency interim relief: To institute proceedings, you must do both of the following: (a) electronically file a copy of this Request For Emergency Interim Relief with the Association, including an electronic copy of the agreement to utilize the Article I Rules or of an agreement to arbitrate under the Article III Rules, and (b) pay the required fee of \$4500,

comprising \$1000 for the Association's administrative fee and \$3500 to compensate the Emergency Arbitrator for his or her first day of service and related preparation (for subsequent hearing and study time, the Emergency Arbitrator shall be compensated at his or her stated hourly or per diem rate, unless the Emergency Arbitrator agrees otherwise).

Notes for all parties:

(A) Not all issues involved in the dispute may be arbitrable, e.g., issues requiring adjudication under New York's Rules of Professional Conduct.

(B) The Article I Rules provide that: (i) any party to an agreement to resolve disputes under the Article I Rules or under the Article III Rules may invoke the Article I Rules on written notice to the Association and to all other parties and neutrals, and that thereafter all parties to such agreement shall be bound by all of the Article I Rules and by any order issued pursuant to the Article I Rules, notwithstanding that a party who has received appropriate notice has not appeared at a proceeding under the Article I Rules or has objected to or attempted to reject their applicability, and (ii) parties to a mediation under the Mediation Procedures may jointly agree in writing to engage in the processes set forth in the Article I Rules, in which case all of the Article I Rules shall then be applicable.

(C) For further information or assistance, please contact the Association's Senior Legal Counsel, Lauren Axelrod (laxelrod@nycbar.org or 212.382.6674), or the Chair of the Arbitration Committee. The Association's policy is to assist the parties and their counsel to the fullest extent possible in facilitating the smooth, speedy, and efficient conduct of this proceeding.