TO: The Fee Arbitration Executive Committee

SUBJECT: Questionnaires returned between 10 October 2000 and 2 April 2001

DATE: 10 May, 2001

I. The Data: Since submitting its October 2000 report, the Subcommittee has received and examined 31 additional questionnaires — fifteen from clients and sixteen from attorneys. All questionnaires received to date are in the original one-part form; the recently approved two-part questionnaire was not yet in use during the months considered. Analysis of specific returns is attached as Appendix A.

II. Some Complaints from Respondents: From the questionnaires, the Subcommittee notes the following as of possible interest or concern to the Executive Committee:

- One client concluded that by taking consistent notes on the attorney’s statement but none on the client’s, the arbitrator demonstrated a lack of interest in the client’s case. The client felt he needed a non-attorney arbitrator.

- Another client complained that the attorney in the matter not only failed to submit his evidence by the deadline but also arrived late at the hearing with fifty pages of documents, which the arbitrator accepted.

- Yet another client observes that the arbitrator consistently assumed facts unsupported by evidence. It was this client who wrote, “We should have known asking for arbitration with an attorney presiding is like having a wolf watch your sheep. Justice at its best.”

- A client wrote that when the hearing was recessed in order that the client might leave the room for a few minutes, the arbitrator remained in the hearing room talking with the opposing party.

- Another respondent writes of an arbitrator as acting like a cross-examiner, not an arbitrator.

- Another respondent complains of having to wait three months for the arbitrator’s decision

III. Conclusions and Recommendations:

A. Case numbers enabled the Subcommittee to compare responses of both parties in two pairs of questionnaires. In one, both client and attorney were “extremely satisfied” with the hearing. In the other, the client was “extremely dissatisfied” and “surprised at the decision,” while the attorney was “extremely satisfied” and “not surprised at the decision.” In the latter case the attorney was awarded his fees. The Subcommittee views the latter response as once again showing that a satisfactory or unsatisfactory arbitration decision is likely to affect the parties’ assessment of the arbitration process.

B. Returns to date suggest a measure of satisfaction with the Fee Arbitration Program as currently administered. Of respondents reviewed this quarter, 48% report overall
satisfaction with the program, while 52% claim overall satisfaction with the
performance of the arbitrators.

Still, the 31 questionnaires returned between 1 October 2000 and 1 April 2001
represent only 17% percent of the 186 parties to the 93 hearings completed between
those dates. This means that between October and April 83% of the parties in
arbitration did not return their questionnaires, while of the 17% that did, many did not
supply all the information sought. The Subcommittee leaves it to the Executive
Committee, therefore, to decide whether the percentage of questionnaires returned is
sufficient to prove the success of the arbitration program.

C. From the latest returns, it appears that some practicing arbitrators, many of them
attorneys, need further instruction in how to ensure fairness to both parties in a fee
dispute, and should be reminded of the importance of forestalling all inference of bias.
The Subcommittee suggests that Fee Arbitration Advisories 95-02 (“Arbitrator
Impartiality”), 96-01 (“Active Listening”), 00-01 (“Documents at the Hearing”) and 01-01
(“Late-submitted Documentary Evidence”) should again be brought to the attention of
all arbitrators, and that a further advisory, in such form as a simple checklist of DOs
and DON'Ts, may yield results.

IV. Special Acknowledgement: The Subcommittee thanks Ms. Heather Elrick Forbes and
Ms. Irene Cortez for their willingness to provide information needed in the preparation
of this report.

Respectfully submitted
Evelyn Perl, Chair
Harve Citrin
Edward Gross
APPENDIX A: RESPONSES TO THE QUESTIONNAIRE

Clients..............15
Attorneys.............16
**TOTAL...........31**

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<th>Category</th>
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<th>SOMEWHAT DISSATISFIED</th>
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**NOTES**

1. Results obtained from original one-part questionnaire; no data available as yet from recently adopted two-part version.
2. Small numeral following categories in left column indicates number of respondents expressing no opinion.