



COMMERCIAL AND FEDERAL LITIGATION SECTION

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MEMORANDUM

To: Office of Court Administration

From: The Commercial & Federal Litigation Section of the New York State Bar Association

Date: August 6, 2025

Re: Request for Public Comment on a proposal to amend 22 NYCRR Part 137 to:
(1) amend the time period during which attorney fee disputes may be submitted to the Attorney-Client Fee Dispute Resolution Program; and
(2) allow certain Unified Court System employees to be paid for time spent mediating fee disputes

SUMMARY

The New York State Office of Court Administration (“OCA”) released for public comment the Board of Governors for the Attorney-Client Fee Dispute Resolution Program (“Board of Governors”) recommendation to amend Part 137 of the Rules of the Chief Administrative Judge (22 NYCRR Part 137). The first proposed amendment would amend 22 NYCRR § 137.1(b)(6) to permit the filing of attorney fee dispute claims where an attorney has not received payment for more than 12 months, even if the attorney has not rendered legal services to the client for more than two years. The second proposed amendment would amend Section 11(j) of the Standards and Guidelines for the Attorney-Fee Dispute Resolution Program to permit court attorney referees to mediate fee disputes as part of their salaried duties. The NYSBA Commercial & Federal Litigation Section (“ComFed”) concurs with the Proposals.

COMMENT

THE PROPOSED AMENDMENTS

Paragraph 6 of subdivision (b) of Section 137.1 of the Rules of the Chief Administrator is hereby amended to read as follows (deletions in ~~strikethrough~~ and additions underscored):

(b) This Part shall not apply to any of the following:

* * * * *

(6) disputes where no attorney's services have been rendered for more than two years or where more than twelve (12) months have passed since the client's last payment, whichever is later;

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Subdivision (J) of Section 11 of Appendix A to Part 127 of the Rules of the Chief Administrator is hereby amended to read as follows (deletions in ~~strike~~through, and additions underscored):

Section 11. Mediation

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J. ~~Mediators~~ Except as set forth below, mediators shall serve as volunteers; provided, however, that and local programs may provide for reimbursement of volunteer mediators' expenses.

1. Court Attorney-Referees of the Unified Court System may be assigned to serve as mediators and may not be reimbursed for mediator's expenses by local programs.
2. Court Attorney-Referees shall not serve as mediators if they assisted the assigned court in any manner with any aspect of the case, including, but not limited to, if they previously heard the case on either a "hear and determine" or "hear and report" basis. Court Attorney-Referees who mediate a fee dispute shall not be assigned to hear a trial de novo where the fee dispute proceeds to arbitration and a party aggrieved by the arbitration award requests such a trial de novo.

BOARD OF GOVERNORS' RATIONALE FOR PROPOSED AMENDMENTS

Proposed Amendment 1 (Time Period for Seeking Arbitration): The existing exclusion of "disputes where no attorney's services have been rendered for more than two years," 22 NYCRR 137.1(b)(6), creates a disincentive for attorneys to allow clients to pay outstanding fees in installments. If the client stops paying the installments more than two years after the last date of service, the client and attorney are precluded from seeking to have the dispute resolved through the Attorney-Fee Dispute Resolution Program (the "Program"). The proposed amendment to Section 137.1(b)(6) would allow arbitration of disputes where the two-year period has passed, but the attorney has received a payment from the client within the prior 12 months. This amendment would presumably provide an incentive for attorneys to offer installment payments while assuring that attorneys who offer such a payment plan would still be eligible for arbitration for non-payment of a fee for services under Section 137.1(b)(6).

Proposed Amendment 2 (Payments to Mediators): The Program currently requires that mediators serve as volunteers, although local programs may provide reimbursement of mediators' expenses. *See* Part 137, Appendix A, Section 11(J). There is interest in expanding the pool of available fee dispute mediators by permitting court attorney-referees (CARs) to mediate fee disputes, but because CARs are salaried Unified Court System employees, it is not clear if CARs could receive their regular salaries for that work, or if they would have to serve as unpaid volunteers. The Board therefore recommends amending Section 11(J) to clarify that

a CAR may serve as a paid mediator, while also prohibiting the CAR from serving as a mediator in a particular case if the CAR has previously been assigned to any aspect of the case.

CONCLUSION

ComFed supports the proposal to amend Part 137 of the Rules of the Chief Administrative Judge (22 NYCRR Part 137).

Respectfully Submitted,

*New York State Bar Association
Commercial and Federal Litigation Section*