



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2150
FAX: (212) 428-2155

A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. MCCONNELL
Counsel

MEMORANDUM

March 28, 2012

TO: All interested persons

FROM: John W. McConnell, Esq.

SUBJECT: Proposed amendment to 22 NYCRR Part 137 (Fee Dispute Resolution Program)

The Administrative Board of the Courts seeks public comment on a proposed amendment of 22 NYCRR § 137.1(b), excluding from the Fee Dispute Resolution Program disputes involving attorneys who have been disbarred, suspended or resigned from the practice of law, or who are under investigation (Exhibit A). This amendment, proposed by the program's Board of Governors, establishes a bright-line rule excluding these matters from Part 137 and prevents the potential for disparate treatment of similar cases around the state and resulting harm to the program's reputation.

The exercise of jurisdiction over disciplined attorneys may be inconsistent with §137.1(b)(3) (excluding "claims involving substantial legal questions, including professional malpractice or misconduct") (Exhibit B), as well as the rules of the Appellate Division setting forth the process and extent to which disbarred, suspended or resigned attorneys may be compensated for legal services rendered (See § 603.13[b] [First Dept.]; § 691.10[b] [Second Dept.]; § 806.9[b] [Third Dept.] ; § 1022.27[e] [Fourth Dept.]). The proposed amendment would establish that, in cases where an attorney is concurrently involved in a disciplinary investigation and a request for fee arbitration, the fee dispute should be held in abeyance until the disciplinary matter is concluded.

Persons wishing to comment on this proposal should send their submissions by email to OCAPart137comment@nycourts.gov or by regular mail to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004.

Comments must be received no later than May 14, 2012.

EXHIBIT A

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, section 137.1(b) of the Rules of the Chief Administrator, relating to the Fee Dispute Resolution Program, to read as follows:

137.1 Application

* * *

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

* * *

(9) disputes where the attorney has been disbarred or suspended from the practice of law or has resigned from the practice of law while under investigation for professional misconduct;

(10) disputes where the attorney is the subject of an investigation or prosecution for professional misconduct.

Chief Administrative Judge of the Courts

Dated:

AO/ /12

EXHIBIT B



New York State Unified Court System

← Rules

Part & Title:

100
Judicial Conduct

101
Advisory Committee
on Judicial Ethics

102
Reimb. of Travel in
Connection with
Judicial Duties

103
Admin. Rules and
Orders Effective
4/1/78

104
Retention &
Disposition of Court
Records

105
Expedited Crim.
Appeal of an Order
Reducing & Indict. or
Dismissing & Indict.
& Direct. the Filing
of...

106
Elect. Court
Appearances

107
Salary Sched. for
Nonjudicial Officers &
Emp. of UCS

108
Format of Transcripts
& Rates of Pay...

109
Attendance at
Hearings to
Determine Mental
Condition...

110
Procedure Under CPL
330.20

111
Procedure Under CPL
Article 730

112
Rules of Chief Admin.
Pursuant to CPLR
Rules 5529 & 9703

113
Procedure to Eval.
Fitness of Judges or
Justices Who Become
Ill

114
[Repealed]

115
Caseload Activity

Rules of the Chief Administrative Judge

PART 137. FEE DISPUTE RESOLUTION PROGRAM

137.0 [Scope of program](#)
137.1 [Application](#)
137.2 [General](#)
137.3 [Board of governors](#)
137.4 [Arbitral bodies](#)
137.5 [Venue](#)
137.6 [Arbitration procedure](#)
137.7 [Arbitration hearing](#)
137.8 [De novoreview](#)
137.9 [Filing fees](#)
137.10 [Confidentiality](#)
137.11 [Failure to participate in arbitration](#)
137.12 [Mediation](#)

Section 137.0 Scope of program.

This Part establishes the New York State Fee Dispute Resolution Program, which provides for the informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation. In accordance with the procedures for arbitration, arbitrators shall determine the reasonableness of fees for professional services, including costs, taking into account all relevant facts and circumstances. Mediation of fee disputes, where available, is strongly encouraged.

Historical Note
Sec. filed: Jan. 12, 2001; March 26, 2001 eff. June 1, 2001; June 14, 2001 eff. Jan. 1, 2002.

Section 137.1 Application.

(a) This Part shall 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 any civil matter.

(b) This Part 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 or more than \$50,000, except that an arbitral body may hear disputes involving other amounts if the parties have consented;
- (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;

COURTS

LITIGANTS

ATTORNEYS

JURORS

JUDGES

CAREERS

SEARCH



Reporting

116

Community Dispute
Res. Ctr. Program

(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;

117

Court Appointed
Special Advocate
Programs

(6) disputes where no attorney's services have been rendered for more than two years;

118

Registration of
Attorneys
Registration of
In-House Counsel

(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;

119

[Reserved]

(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.

120

[Repealed]

121

Temp. Assign. of
Judges to the
Supreme Court

Historical Note

Sec. filed: Jan. 12, 2001; March 26, 2001 eff. June 1, 2001; June 14, 2001 eff. Jan. 1, 2002.

122

Judicial Hearing
Officers

123

Requirements of
Material Submitted to
Supreme Ct. Law
Libraries**Section 137.2 General.**

(a) In the event of a fee dispute between attorney and client, whether or not the attorney already has received some or all of the fee in dispute, the client may seek to resolve the dispute by arbitration under this Part. Arbitration under this Part shall be mandatory for an attorney if requested by a client, and the arbitration award shall be final and binding unless de novo review is sought as provided in section 137.8.

124

Public Access to
Records

125

Rules for
Engagement of
Counsel

126

Compensation & Exp.
of Judges Assign. to
City Court

(b) The client may consent in advance to submit fee disputes to arbitration under this Part. Such consent shall be stated in a retainer agreement or other writing that specifies that the client has read the official written instructions and procedures for Part 137, and that the client agrees to resolve fee disputes under this Part.

127

Assign. and
Compensation of
Counsel,
Psychiatrists, etc.

(c) The attorney and client may consent in advance to arbitration pursuant to this Part that is final and binding upon the parties and not subject to de novo review. Such consent shall be in writing in a form prescribed by the board of governors.

128

Rules for the Jury
Sys.

(d) The attorney and client may consent in advance to submit fee disputes for final and binding arbitration to an arbitral forum other than an arbitral body created by this Part. Such consent shall be in writing in a form prescribed by the board of governors. Arbitration in that arbitral forum shall be governed by the rules and procedures of that forum and shall not be subject to this Part.

129

Fair Treatment
Standards for Crime
Victims

130

Cost Sanctions

131

AV Coverage of
Judicial Proceedings

132

UCS Employee
Suggestion Incentive
Program

Historical Note

Sec. filed: Jan. 12, 2001; March 26, 2001 eff. June 1, 2001; June 14, 2001 eff. Jan. 1, 2002.

133

UCS Merit Perf.
Award Program

134