



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

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

Date: June 11, 2025

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The Administrative Board of the Courts is seeking public comment on two proposals recommended by the Board of Governors for the Attorney-Client Fee Dispute Resolution Program ("Board of Governors") to amend Part 137 of the Rules of the Chief Administrative Judge (22 NYCRR Part 137). The first proposal 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 proposal 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.

Part 137 of the Rules of the Chief Administrator establishes the New York State Fee Dispute Resolution Program (the "Program"), which seeks to provide an informal and expeditious process for resolving fee disputes between attorneys and clients utilizing arbitration and mediation. The program only applies to disputes in civil matters involving fees between \$1,000 and \$50,000 (absent the consent of both parties), and excludes certain types of claims from being adjudicated (e.g., professional malpractice, claims for damages or affirmative relief, etc.) See 22 NYCRR §§ 137.0 & 137.1. In addition, the Program does not apply to fee disputes where the attorney has not rendered any services for more than two years. *Id.* § 137.1(b)(6).

The Board of Governors, with the approval of the Presiding Justices of the Appellate Division, is empowered to adopt standards and guidelines regarding the operation of the Program, including: (1) accrediting arbitral bodies to provide fee dispute services; (2) setting standards for the qualifications and training of arbitrators; and (3) monitoring the performance of the arbitration programs. *Id.* § 137.3. The approved Standards and Guidelines, which are set forth as Appendix A to Part 137, specify that mediators serve as volunteers, although local programs may provide for reimbursement of the mediators' expenses. See Part 137, Appendix A, Section 11(J).

1. Time Period for Seeking Arbitration

The Board of Governors states that the existing exclusion of “disputes where no attorney’s services have been rendered for more than two years,” *see* 22 NYCRR 137.1(b)(6), creates a disincentive for attorneys to allow clients to pay outstanding fees in installments, because if the client stops paying the installments more than two years after the last date of service, the attorney is precluded from seeking to have the dispute resolved through the Program. As a result, the Board recommends amending Section 137.1(b)(6) to 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. According to the Board, this would provide incentive for attorneys to offer installment payments to their clients, while simultaneously assuring an attorney that offering such a payment plan would still be eligible for arbitration for non-payment of a fee for services under Section 137.1(b)(6).

2. Payments to Mediators

As noted above, 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). According to the Board of Governors, 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.

The proposed amendments are attached as Exhibit 1. Attached as Exhibit 2 and Exhibit 3 are two memoranda from the Board of Governors, both dated May 6, 2025, providing background on these issues and the reasons for the proposed amendments.

Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than Friday, August 8, 2025.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT 1

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;

* * * * *

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 ~~strikethrough~~, and additions underscored):

Section 11. Mediation

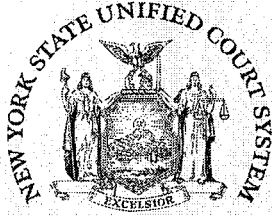
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J. ~~Mediators~~ Except as set forth below, mediators shall serve as volunteers; ~~provided, however,~~ ~~that~~ and local programs may provide for reimbursement of volunteer mediators' expenses.

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.

EXHIBIT 2



Board of Governors, Attorney-Client Fee Dispute Resolution Program

Co-Chairs: Robin S. Abramowitz, Esq. • Gene A. Johnson, Jr.

To: David Nocenti, Esq., Counsel

From: Robin S. Abramowitz, Esq. *RS Abramowitz*
Gene A. Johnson, Jr. *Gene A. Johnson, Jr.*

Date: May 6, 2025

Re: Proposed amendment to Subdivision 137.1(b) of the Rules of the Chief Administrative Judge

The Board of Governors for the Attorney-Client Fee Dispute Resolution Program ("Program") asks the Administrative Board of the Courts to amend paragraph 137.1(b)(6) of the Rules of the Chief Administrative Judge ("Rules") to accept disputes for resolution when the request for arbitration or mediation is filed within two (2) years of when legal services were last rendered or within twelve (12) months of the client's last payment, whichever is later.

At a vote held during an ad hoc meeting on May 6, 2025, the Board of Governors voted to approve the proposed amendment to paragraph 137.1(b)(6) of the Rules, which is attached as Exhibit 1 to this memorandum.

Background

Paragraph 137.1(b)(6) of the Rules currently provides that Part 137 does not apply to disputes where no attorney's services have been rendered for more than two years.

The Board of Governors is concerned that the current provision disincentivizes attorneys from offering installment payment plans to clients. By allowing the Program to arbitrate fee disputes that arise more than two years after legal services were last rendered but within one year of when a client stops paying down an outstanding fee, the Administrative Board of the Courts can reassure attorneys and clients alike that they have ready access to an efficient alternative dispute resolution process through the Program if installment payments end before a bill for legal services is paid in full.

The proposed amendment would benefit clients by paving the way for more attorneys to offer clients installment payment plans. Attorneys would have up to 12 months after the client's last payment to notify the client of the client's right to arbitrate and, if the client does not exercise that right, the attorney could seek recovery in a court of competent jurisdiction.

The proposed amendment would benefit attorneys by ensuring that they have access to the Program's arbitrators and mediators if a client prematurely stops paying an outstanding fee in situations where legal services were last rendered more than two years before such payments stopped.

The proposed change would have a modest impact on the Program. In 2023, the Program closed 528 cases. Of those, 93 were dismissed for lack of jurisdiction, and 15 of those 93 dismissals occurred because the request for arbitration was filed more than two years after legal services were last rendered.

Proposed Effective Date

The Board of Governors recommends that the proposed amendment take effect immediately upon issuance of the Administrative Order of the Chief Administrative Judge promulgating the change to paragraph 137.1(b)(6) of the Rules.

Implementing the Proposed Change

The Board of Governors is aware that the proposed change to paragraph 137.1(b)(6) of the Rules will alter a landscape that has been in place for nearly a quarter century.

In March 2025 and April 2025, the Board consulted local program administrators to assess the operational impact of the proposed change. The administrators did not express concern that the proposed change would yield a significant increase in their caseload. They were concerned, however, about identifying parties in recent cases filed more than two years after legal services had last been rendered to inform them of the changed parameters for the Program.

The Board of Governors recognizes that a public comment period could help publicize the contemplated change. Additionally, the Board would appreciate feedback from members of the bar and the public at large to ensure that the proposed change would be welcome.

If the Administrative Board of the Courts adopts the proposed change, the Board of Governors will work with local program administrators to ensure that local rules, forms, and promotional materials are updated as needed.

With assistance from OCA's Division of Alternative Dispute Resolution, the Board of Governors will notify the New York State Bar Association, local and affinity bar associations, and community dispute resolution centers of the proposed change. The Board of Governors will also update the Program's website to announce the change.

Thank you very much for your assistance with this matter.

Cc: Lisa Courtney, Esq.
Desirée Kim, Esq.
Jeremy Zeliger, Esq.

Exhibit 1

Proposed Amendment

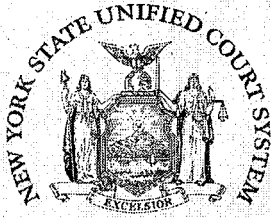
Subdivision (b) of Section 137.1 of the Rules of the Chief Administrative Judge is hereby amended to read as follows (deletions are in ~~striketrough~~ and additions are underscored):

(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.

The Board of Governors recommends that the amendment take effect immediately upon publication of the Administrative Order promulgating this change.

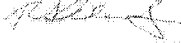
EXHIBIT 3



Board of Governors, Attorney-Client Fee Dispute Resolution Program

Co-Chairs: Robin S. Abramowitz, Esq. • Gene A. Johnson, Jr.

To: David Nocenti, Esq., Counsel

From: Robin S. Abramowitz, Esq. 
Gene A. Johnson, Jr. *Gene A. Johnson, Jr.*

Date: May 6, 2025

Re: Proposed amendment to the Standards and Guidelines for the Attorney-Client Fee Dispute Resolution Program (Part 137 of the Rules of the Chief Administrative Judge)

The Board of Governors for the Attorney-Client Fee Dispute Resolution Program ("Program") asks the Administrative Board of the Courts to amend the Program's Standards and Guidelines so that court attorney-referees may mediate fee disputes between attorneys and clients as part of their customary salaried duties.

Background

The Office of the Administrative Judge for the Third Judicial District ("local program") is the arbitral body for fee disputes arising throughout the Third District.¹ Pursuant to local rules approved by the Board of Governors, a local program administrator assigns mediators and arbitrators to resolve attorney-client fee disputes. Those local rules required mediators to serve as volunteers consistent with Section 11(J) of the Program's Standards and Guidelines.

To expand the pool of available mediators, the local program administrator proposed changing the local rules so that otherwise qualified court attorney-referees could mediate for the program as part of their customary salaried duties.

At the behest of the Board of Governors, OCA's Division of Alternative Dispute Resolution submitted that proposal to your office for review. Your office concluded that otherwise qualified court attorney-referees could serve as mediators for the Program without having to do so as uncompensated volunteers. Your office also recommended pursuing an amendment to the Standards and Guidelines to allow court attorney-referees as well as volunteers to mediate for the Program.

Thereafter, the Board of Governors approved the local program's request to modify its local rules.

The Board of Governors asks the Administrative Board of the Courts to update the Program's Standards and Guidelines to allow court attorney-referees to mediate fee disputes while receiving their regular salary.

Any court attorney-referee assigned to mediate a fee dispute would need to satisfy other requirements found elsewhere in the Standards and Guidelines, including successful completion of approved mediation training. Also, the proposed amendment would prevent court attorney-referees from serving as mediators if they assisted the court in any manner with the client's underlying case, and they would be prohibited

¹ See § 137.4(a) of the Rules of the Chief Administrative Judge.

from being assigned to hear a trial de novo if the fee dispute proceeds to arbitration and a party aggrieved by the arbitration award requests a trial de novo.²

At a vote held during an ad hoc meeting on May 6, 2025, the Board of Governors approved the proposed amendment to the Standards and Guidelines attached as Exhibit 1 to this memorandum. Accordingly, the Board of Governors asks the Administrative Board of the Courts to amend the Program's Standards and Guidelines as set forth in Exhibit 1 to this memorandum.

Cc: Lisa Courtney, Esq.
Desirée Kim, Esq.
Jeremy Zeliger, Esq.

² See § 137.8 of the Rules of the Chief Administrative Judge.

Exhibit 1

Proposed Amendment

Subdivision 11(J) of the Standards and Guidelines for the Attorney-Client Fee Dispute Resolution Program is amended to read as follows (deletions in ~~striketthrough~~, and additions underscored):

- J. Except as set forth below, Mmediators 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.