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From: Patrick W. Foley <pwflawyer@aol.com>
Sent: Wednesday, March 29, 2017 8:53 AM
To: Comments Mailbox
Subject: Proposed Rule amendment to R. 1:40-4(b)

As an attorney who spends a considerable amount of time acting as a Rule 1:40 mediator, this is a terrible rule. It is simply economically unfeasible for a mediator who has not been paid to seek relief in the Special Civil Part. In my case, the fees I am owed are generally less than \$1,000. To have to go to the time and expense of filing a small claims complaint and sitting in Court for the better part of a morning to hopefully get paid or, more likely, to get an uncollected small judgment, just does not make economic sense. This is especially so since, in virtually every case, there is no viable defense to non-payment since the parties are advised of the fee structure before and at the time of mediation.

I feel that I do a true service to the litigants and the Court system and, in each and every case, I donate a minimum of two hours at no cost per Rule. There have been many low income cases in which I have waived a fee for an extra half hour or hour voluntarily. When I became a mediator, we were able to contact the Judge who signed the order of appointment and he or she would *sua sponte* issue an OTSC requiring appearance by the offending party and litigant to show cause why a judgment should not be entered for the fee. The real world result of this action was almost immediate payment. Any fear that the Judiciary would grow to be considered a mediator's "collection agent" is an overblown concern. As stated above, I believe that Judges view mediators as allies in the fight to resolve cases and clear the system. The minimal time they need to issue the OTSC pales in comparison to the amount of judicial time saved by the mediation program. In addition, if a litigant has a true issue with a mediator's bill, they are free to appear at the time of the OTSC and have their concerns addressed by the Judge.

I truly hope that this ill-conceived rule will be reconsidered before it is implemented. Thank you for the time to consider this response.

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