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December 2, 2008

By Overnight Mail

Ms. Deborah A. Holmes
Deputy Clerk
United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *Bernstein v. Appellate Division, First Department Departmental
Disciplinary Committee, et al.*, Index No. 08-4873-cv

Dear Ms. Holmes:

We represent Appellees Proskauer Rose LLP, Kenneth Rubenstein, Steven C. Krane, and the Estate of Stephen R. Kaye in this appeal. On August 19, 2008 the District Court granted our motion and the motions of our co-defendants to dismiss the *pro se* plaintiffs' amended complaint. Each of the two *pro se* plaintiffs has since filed a notice to appeal that decision.

On October 15, 2008, this Court filed a scheduling order for the appeal. Pursuant to that Order, Appellants' briefs were to be served and filed on or before November 17, 2008, Appellees' briefs are to be served and filed on or before December 17, 2008 and argument was scheduled for as early as February 2, 2009. One of the Appellants, P. Stephen Lamont, appears to have timely filed his brief (although he appears not to have served at least one of the Appellees). The other Appellant, Eliot I. Bernstein, filed a request for additional time, which this Court granted on November 24, 2008. As a result, Mr. Bernstein's brief is due February 17, 2008, Appellees' briefs due March 19, 2009 and the date upon which the Court may hear the appeal April 4, 2009.

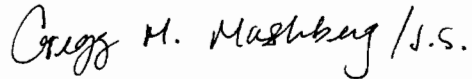
Because both of the Appellants are appealing from the same decision, we request that this Court apply the schedule for Mr. Bernstein's appeal to Mr. Lamont's appeal as well, so that Appellees' briefs in response to Mr. Lamont's brief would be due on March 19, 2009, the same date on which Appellants' responses Mr. Bernstein's brief are due. Appellees would thereby each file a single brief addressing both Appellants' arguments. Additionally, we request that the Court hear both Mr. Lamont's and Mr. Bernstein's appeals together, pursuant to the schedule set for the

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argument of Mr. Bernstein's appeal (week of April 4, 2009). My office has spoken with counsel for the other Appellees and they join in this request.

Respectfully submitted,

 Gregg M. Mashberg /s.s.

Gregg M. Mashberg

Cc (by Overnight Mail):

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