NEW YORK
CITY BAR

COMMITTEE ON PROFESSIONAL DISCIPLINE

RICHARD SUPPLE
CHAIR
780 THIRD AVENUE
FLOOR 4
NEW YORK, NY 10017-2024
Phone: (212) 471-6210
Fax: (212) 935-1166
rsupple@hinshawlaw.com

ELIZABETH DEVINE
SECRETARY
780 THIRD AVENUE
FLOOR 4
NEW YORK, NY 10017-2024
Phone: (212) 471-6238
Fax: (212) 935-1166
edevine@hinshawlaw.com

May 18, 2012

John W. McConnell, Esq.
Counsel
State of New York
Unified Court System
25 Beaver Street
New York, New York 10004

Re: *Proposed Amendments to 22 NYCRR § 137 Fee Dispute Resolution Program*

Dear Mr. McConnell:

As chair of the New York City Bar Association's Professional Discipline Committee, I offer herein the City Bar's comments on the proposed amendment to 22 NYCRR § 137.1(b) outlined in your memorandum of March 28, 2012. In effect, the amendment would exclude from the Fee Dispute Resolution Program ("Program") any matters involving disbarred, resigned or suspended attorneys, or attorneys being investigated by grievance committees.

The City Bar disagrees with the proposed amendment. The purpose of the Program is to provide an expeditious and inexpensive way of resolving fee disputes. Almost every Program matter is initiated by a client, not an attorney. Disputes involving allegations of substantive misconduct are already excluded under the current version of Part 137; therefore, the proposed amendment would only appear to reach circumstances where the attorney's found misconduct occurred in a different case than that at issue in the proposed arbitration. We do not see any compelling reason why a client should be required to forego participation in the Program merely because his/her attorney acted wrongfully in an unrelated matter.

As for attorneys currently under investigation, we have several additional concerns. First, the vast majority of disciplinary complaints are dismissed. Thus, the mere fact of a complaint is hardly compelling evidence that the lawyer actually engaged in misconduct. Second, we perceive a practical problem in carrying this aspect of the proposed amendment insofar as it would be difficult, if not impossible, to know, absent a voluntary disclosure, that the attorney is the subject of a pending disciplinary complaint. Disciplinary complaints are treated as strictly confidential under Judiciary Law § 90. We do not believe that an attorney who participates in a Program matter should be required to "out" him or herself in response to a client's fee arbitration demand. Finally, we note that the proposed amendment calls for disputes to be "held in abeyance" while an attorney's disciplinary complaint is resolved. The practical effect of this requirement would mean that, in many instances, the client initiating a Program matter would wait years before his or her dispute could be heard. Such delay would, of course, undermine the Program's core goal of providing a speedy means of resolving fee disputes.

In short, therefore, we believe the proposed amendment would do more harm than good, particularly since Program arbitrators are, in our view, fully capable of factoring or weighing whatever relevance prior discipline or a pending grievance might have in a given matter.

Very truly yours,

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

By: _____
Richard Supple, Chair
Professional Discipline Committee