

From: Bowler, Michael
Sent: Wednesday, February 24, 2021 8:07 AM
To: Rules Committee
Cc: Del Ciampo, Joseph; O'Donnell, Shanna
Subject: Proposed Amendment to Practice Book Section 2-35(g)
Attachments: Proposed Amendment to Practice Book Section 2-35(g) (FINAL APPROVED).pdf

Joe,

Good morning. Attached is a proposed amendment to modify Practice Book Section 2-35(g). The proposal is offered to facilitate the Judicial Branch's efforts to conduct virtual hearings via a videoconferencing platform.

At a meeting on February 18, 2021, the Statewide Grievance Committee members unanimously voted to approve this proposal and to forward it to the Rules Committee of the Superior Court for the Rules Committee's consideration.

Thank you.

Mike

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Sec. 2-35. Action by Statewide Grievance Committee or Reviewing Committee

. . .

(g) At least two of the same members of a reviewing committee shall be [physically] present at all hearings held by the reviewing committee. Unless waived by the disciplinary counsel and the respondent, the remaining member of the reviewing committee shall obtain and review the transcript of each such hearing and shall participate in the committee's determination. All hearings following a determination of probable cause shall be public and on the record.

Commentary

The proposed amendment provides clarity and support for the Judicial Branch's efforts to conduct hearings remotely via a videoconferencing platform.

Sec. 2-35. Action by Statewide Grievance Committee or Reviewing Committee

(a) Upon receipt of the record from a grievance panel, the Statewide Grievance Committee may assign the case to a reviewing committee which shall consist of at least three members of the Statewide Grievance Committee, at least one third of whom are not attorneys. The Statewide Grievance Committee may, in its discretion, reassign the case to a different reviewing committee. The committee shall regularly rotate membership on reviewing committees and assignments of complaints from the various grievance panels. An attorney who maintains an office for the practice of law in the same judicial district as the respondent may not sit on the reviewing committee for that case.

(b) The Statewide Grievance Committee and the reviewing committee shall have the power to issue a subpoena to compel any person to appear before it to testify in relation to any matter deemed by the Statewide Grievance Committee or the reviewing committee to be relevant to the complaint and to produce before it for examination any books or papers which, in its judgment, may be relevant to such complaint. Any such testimony shall be on the record.

(c) If the grievance panel determined that probable cause exists that the respondent is guilty of misconduct, the Statewide Grievance Committee or the reviewing committee shall hold a hearing on the complaint. If the grievance panel determined that probable cause does not exist, but filed the matter with the Statewide Grievance Committee because the complaint alleges that a crime has been committed, the Statewide Grievance Committee or the reviewing committee shall review the determination of no probable cause, take evidence if it deems it appropriate and, if it determines that probable cause does exist, shall take the following action: (1) if the Statewide Grievance Committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or assign the matter to a reviewing committee to hold the hearing; or (2) if a reviewing committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or refer the matter to the Statewide Grievance Committee which shall assign it to another reviewing committee to hold the hearing.

(d) Disciplinary counsel may add additional allegations of misconduct to the grievance panel's determination that probable cause exists in the following circumstances:

(1) Prior to the hearing before the Statewide Grievance Committee or the reviewing committee, disciplinary counsel may add additional allegations of misconduct arising from the record of the grievance complaint or its investigation of the complaint.

(2) Following commencement of the hearing before the Statewide Grievance Committee or the reviewing committee, disciplinary counsel may only add additional allegations of misconduct for good cause shown and with the consent of the respondent and the Statewide Grievance Committee or the reviewing committee. Additional allegations of misconduct may not be added after the hearing has concluded.

(e) If disciplinary counsel determines that additional allegations of misconduct exist, it shall issue a written notice to the respondent and the Statewide Grievance Committee, which shall include, but not be limited to, the following: (1) a description of the factual allegation or allegations that were considered in rendering

the determination; and (2) for each such factual allegation, an identification of the specific provision or provisions of the applicable rules governing attorney conduct considered in rendering the determination.

(f) The respondent shall be entitled to a period of not less than thirty days before being required to appear at a hearing to defend against any additional charges of misconduct filed by the disciplinary counsel.

(g) At least two of the same members of a reviewing committee shall be [physically] present at all hearings held by the reviewing committee. Unless waived by the disciplinary counsel and the respondent, the remaining member of the reviewing committee shall obtain and review the transcript of each such hearing and shall participate in the committee's determination. All hearings following a determination of probable cause shall be public and on the record.

(h) The complainant and respondent shall be entitled to be present at all hearings and other proceedings on the complaint at which testimony is given and to have counsel present. At all hearings, the respondent shall have the right to be heard in the respondent's own defense and by witnesses and counsel. The disciplinary counsel shall pursue the matter before the Statewide Grievance Committee or reviewing committee. The disciplinary counsel and the respondent shall be entitled to examine or cross-examine witnesses. At the conclusion of the evidentiary phase of a hearing, the complainant, the disciplinary counsel and the respondent shall have the opportunity to make a statement, either individually or through counsel. The Statewide Grievance Committee or reviewing committee may request oral argument.

(i) Within ninety days of the date the grievance panel filed its determination with the Statewide Grievance Committee pursuant to Section 2-32 (i), the reviewing committee shall render a final written decision dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37 or directing the disciplinary counsel to file a presentment against the respondent in the Superior Court and file it with the Statewide Grievance Committee. Where there is a final decision dismissing the complaint, the reviewing committee may give notice in a written summary order to be followed by a full written decision. The reviewing committee's record in the case shall consist of a copy of all evidence it received or considered, including a transcript of any testimony heard by it, and its decision. The record shall also be sent to the Statewide Grievance Committee. The reviewing committee shall forward a copy of the final decision to the complainant, the disciplinary counsel, the respondent, and the grievance panel to which the complaint was forwarded. The decision shall be a matter of public record if there was a determination by a grievance panel, a reviewing committee or the Statewide Grievance Committee that there was probable cause that the respondent was guilty of misconduct. The reviewing committee may file a motion for extension of time not to exceed thirty days with the Statewide Grievance Committee which shall grant the motion only upon a showing of good cause. If the reviewing committee does not complete its action on a complaint within the time provided in this section, the Statewide Grievance Committee shall, on motion of the complainant or the respondent or on its own motion, inquire into the delay and determine the appropriate course of action. Enforcement of the final decision, including the publication of the notice of a reprimand pursuant to Section 2-54, shall be stayed for thirty days from the date of the issuance to the parties of the final decision. In the event the respondent timely submits to the Statewide Grievance Committee a request for review of the final decision of the reviewing committee, such stay shall remain in full force and effect pursuant to Section 2-38 (b).

(j) If the reviewing committee finds probable cause to believe the respondent has violated the criminal law of this state, it shall report its findings to the chief state's attorney.

(k) Within thirty days of the issuance to the parties of the final decision by the reviewing committee, the respondent may submit to the Statewide Grievance Committee a request for review of the decision. Any request for review submitted under this section must specify the basis for the request including, but not limited to, a claim or claims that the reviewing committee's findings, inferences, conclusions or decision is or are: (1) in violation of constitutional, rules of practice or statutory provisions; (2) in excess of the authority of the reviewing committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion and the specific basis for such claim or claims. For grievance complaints filed on or after January 1, 2004, the respondent shall serve a copy of the request for review on disciplinary counsel in accordance with Sections 10- 12 through 10-17. Within fourteen days of the respondent's submission of a request for review, disciplinary counsel may file a response. Disciplinary counsel shall serve a copy of the response on the respondent in accordance with Sections 10-12 through 10-17. No reply to the response shall be allowed.

(l) If, after its review of a complaint pursuant to this section that was forwarded to the Statewide Grievance Committee pursuant to Section 2-32 (i) (2), a reviewing committee agrees with a grievance panel's determination that probable cause does not exist that the attorney is guilty of misconduct and there has been no finding of probable cause by the Statewide Grievance Committee or a reviewing committee, the reviewing committee shall have the authority to dismiss the complaint within the time period set forth in subsection (e) of this section without review by the Statewide Grievance Committee. The reviewing committee shall file its decision dismissing the complaint with the Statewide Grievance Committee along with the record of the matter and shall send a copy of the decision to the complainant, the respondent, and the grievance panel to which the complaint was assigned.

(m) If the Statewide Grievance Committee does not assign a complaint to a reviewing committee, it shall have one hundred and twenty days from the date the panel's determination was filed with it to render a decision dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37 or directing the disciplinary counsel to file a presentment against the respondent. The decision shall be a matter of public record. The failure of a reviewing committee to complete its action on a complaint within the period of time provided in this section shall not be cause for dismissal of the complaint. If the Statewide Grievance Committee finds probable cause to believe that the respondent has violated the criminal law of this state, it shall report its findings to the chief state's attorney.

COMMENTARY: The proposed amendment provides clarity and support for the Judicial Branch's efforts to conduct hearings remotely via a videoconferencing platform.