



Item 07-08a
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STATE OF CONNECTICUT
JUDICIAL BRANCH



COURT OPERATIONS DIVISION

OFFICE of CHIEF DISCIPLINARY COUNSEL

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March 19, 2018

The Honorable Richard A. Robinson
231 Capitol Ave.
Hartford, CT 06106

Re: Proposed amendments to P.B. Sections 2-35(g), (i) and (k), 2-36, 2-42(a),
and 2-53(a)

Dear Justice Robinson:

I am proposing the following amendments to the above referenced sections of the Connecticut Practice Book.

1. P.B. Section 2-35(g), (i) and (k):

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 both the disciplinary counsel and the respondent, or the appearing party if one party does not appear for the hearing, 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. A decision of the reviewing committee directing a presentment of the respondent may include additional allegations of misconduct to be included in the presentment based upon clear and convincing evidence in the record and/or adduced at the hearing.

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. No request for review may be submitted following a decision approving a proposed disposition filed pursuant to section 2-82. 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.

(P.B. 1978-1997, Sec. 27J.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 15, 2012, to take effect Jan. 1, 2013.)

Section 2-35(g)

This proposed amendment is intended to clarify that an appearing party has the

right to waive participation of an absent reviewing committee member if the other party is not appearing.

Section 2-35(i)

This proposed amendment is intended to expressly allow a reviewing committee to add charges of misconduct when issuing its decision directing disciplinary counsel to file a presentment against the respondent. There are times, after a contested hearing, that misconduct first comes to light. It is appropriate that the reviewing committee be able to add charges of misconduct when issuing its directive to disciplinary counsel to file a presentment against the respondent in superior court. The presentment is a de novo proceeding and there is no harm or prejudice to the Respondent.

Section 2-35(k)

This proposed amendment is intended to exempt from a request for review a decision of a reviewing committee that has approved a proposed disposition pursuant to Connecticut Practice Book Section 2-82. Currently, the statewide grievance committee issues a decision of the reviewing committee whereby it approves the proposed disposition that was agreed upon by the Disciplinary Counsel and the Respondent. The notice that is sent out provides that the Respondent may, within 30 days, file a request for review pursuant to P.B. Section 2-35(k). A 30 day stay of the decision allowing for an opportunity for review is unnecessary as it is a stipulated disposition.

2. P.B. Section 2-36:

Section 2-36. Action by Statewide Grievance Committee on Request for Review. Within sixty days of the expiration of the thirty day period for the filing of a request for review under Section 2-35 (k), or, with regard to grievance complaints filed on or after January 1, 2004, within sixty days of the expiration of the fourteen day period for the filing of a response by disciplinary counsel to a request for review under that section, the statewide grievance committee shall issue a written decision affirming the decision of the reviewing committee, dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37, directing the disciplinary counsel to file a presentment against the respondent in the superior court or referring the complaint to the same or a different reviewing committee for further investigation and a decision. Before issuing its decision, the statewide grievance committee may, in its discretion, request oral argument. The statewide grievance committee shall forward a copy of its decision to the complainant, the disciplinary counsel, the respondent, the reviewing committee and the grievance panel which investigated the complaint. A decision of the reviewing committee affirming an order of a presentment of the respondent or its decision directing the disciplinary counsel to file a presentment against the respondent shall not be appealable to the superior court. The decision shall be a matter of public record. A decision of the statewide

grievance committee shall be issued only if the respondent has timely filed a request for review under Section 2-35(k).

(P.B. 1978-1997, Sec. 27M.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

The proposed amendment is intended to preclude an interlocutory appeal to the superior court of an order of presentment before or after review by the statewide grievance committee. The question of the propriety of an appeal from an order of presentment was discussed and determined in Miniter v. Statewide Grievance Committee, 122 Conn. App. 410, (2010), cert. den. 298 Conn. 923 (2010). In Miniter the appellate court held that an appeal from an order of presentment was an impermissible interlocutory appeal, because the order of presentment did not either terminate a separate and distinct proceeding, or terminate the rights of a party such that further proceedings could not affect them, as required by State v. Curcio, 191 Conn. 27 (1983). The court subsequently upheld the Miniter decision and rationale in Zbigniew S. Rozbicki v. Statewide Grievance Committee, 157 Conn. App. 613, (2015).

3. P.B. Section 2-42(a):

Sec. 2-42. Conduct Constituting Threat of Harm to Clients

(a) If there is a disciplinary investigation or proceeding pending against a lawyer, the lawyer is subject to an audit conducted by the statewide grievance committee, or if there has been a notice of overdraft in accordance with the provisions of Section 2-28 (f) and the grievance panel, the reviewing committee, the statewide grievance committee or the disciplinary counsel believes that the lawyer poses a substantial threat of irreparable harm to his or her clients or to prospective clients, or that there has been an unexplained overdraft in the lawyer's trust funds account, the panel or committee shall so advise the disciplinary counsel. The disciplinary counsel shall, upon being so advised or upon his or her own belief, apply to the court for an order of interim suspension. The disciplinary counsel shall provide the lawyer with notice that an application for interim suspension has been filed and that a hearing will be held on such application.

(b) The court, after hearing, pending final disposition of the disciplinary proceeding, may, if it finds that the lawyer poses a substantial threat of irreparable harm to his or her clients or to prospective clients, enter an order of interim suspension, or may order such other interim action as deemed appropriate. Thereafter, upon good cause shown, the court may, in the interest of justice, set aside or modify the interim suspension or other order entered pursuant hereto. Whenever the court enters an interim suspension order pursuant hereto, the court may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the suspended attorney's interests.

(c) No entry fee shall be required for proceedings hereunder. Any hearings necessitated by the proceedings may, in the discretion of the court, be held in chambers.

(P.B. 1978-1997, Sec. 28C.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

The proposed amendment is intended to allow disciplinary authorities to commence an application for interim suspension in a situation where there is no disciplinary proceeding pending nor has an overdraft in a lawyer's IOLTA been reported to disciplinary authorities. In some instances of misappropriation of client funds, there may be an investigation begun with a complaint to a disciplinary authority or an audit may give rise to issues involving misappropriation or some other serious misconduct that would indicate that the lawyer poses a substantial risk of irreparable harm to her clients. The ability to take immediate action and present the matter to the court will serve to protect the public, clients, future clients etc...as is the established purpose of lawyer discipline.

4. P.B. Section 2-53(a):

Sec. 2-53. Reinstatement after Suspension, Disbarment or Resignation

(a) An attorney who has been suspended from the practice of law in this state for a period of one year or more or has remained under suspension pursuant to an order of interim suspension for a period of one year or more shall be required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline expressly provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement pursuant to this section, unless otherwise ordered by the court at the time the discipline was imposed.

(b) An attorney who was disbarred or resigned shall be required to apply for reinstatement pursuant to this section, but shall not be eligible to do so until after five years from the effective date of disbarment or acceptance by the court of the resignation, unless the court that imposed the discipline expressly provided a shorter period of disbarment or resignation in its order. No attorney who has resigned from the bar and waived the privilege of applying for readmission or reinstatement to the bar at any future time shall be eligible to apply for readmission or reinstatement to the bar under this rule.

(c) In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the effective date of the disbarment. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated, including, but not limited to, restitution to the client security fund for all claims paid resulting from the attorney's dishonest misconduct.

(d) Unless otherwise ordered by the court, an application for reinstatement shall not be filed until: (1) The applicant is in compliance with Sections 2-27 (d), 2-70 and 2-80; (2) The applicant is no longer the subject of any pending disciplinary proceedings or investigations; (3) The applicant has passed the Multistate Professional Responsibility Examination (MPRE) not more than six months prior to the filing of the application; (4) The applicant has successfully completed any

criminal sentence including, but not limited to, a sentence of incarceration, probation, parole, supervised release, or period of sex offender registration and has fully complied with any orders regarding conditions, restitution, criminal penalties or fines; (5) The applicant has fully complied with all conditions imposed pursuant to the order of discipline. If an applicant asserts that a certain disciplinary condition is impossible to fulfill, he or she must apply to the court that ordered the condition for relief from that condition prior to filing an application for reinstatement; (6) The bar examining committee has received an application fee. The fee shall be established by the chief court administrator and shall be expended in the manner provided by Section 2- 22 of these rules.

(e) An application for reinstatement shall be filed with the clerk of the superior court in the jurisdiction that issued the discipline. The application shall be filed under oath and on a form approved by the office of the chief court administrator. The application shall be accompanied by proof of payment of the application fee to the bar examining committee.

(f) The application shall be referred by the clerk of the superior court where it is filed to the chief justice or designee, who shall refer the matter to a standing committee on recommendations for admission to the bar whose members do not maintain their primary office in the same judicial district as the applicant.

(g) The clerk of the superior court shall give notice of the pendency of the application to the state's attorney of that court's judicial district, the grievance counsel to the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the office of the chief disciplinary counsel, the client security fund committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned. The clerk shall also promptly publish notice on the Judicial Branch website, in the Connecticut Law Journal, and in a newspaper with substantial distribution in the judicial district where the application was filed.

(h) Within sixty days of the referral from the chief justice to a standing committee, the statewide grievance committee and the office of the chief disciplinary counsel shall file a report with the standing committee, which report may include additional relevant information, commentary in the information provided in the application and recommendations on whether the applicant should be reinstated. Both the statewide grievance committee and the office of the chief disciplinary counsel may file an appearance and participate in any investigation into the application and at any hearing before the standing committee, and at any court proceeding thereon. All filings by the statewide grievance committee and the office of the chief disciplinary counsel and any other party shall be served and certified to all other parties pursuant to Section 10-12.

(i) The standing committee shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. The standing committee shall give written notice of all hearings to the applicant, the state's attorney of the court's judicial district, the grievance counsel to the grievance panel whose jurisdiction includes that judicial district location where the application was filed, the statewide grievance committee, the office of the chief disciplinary counsel,

the client security fund committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned. The standing committee shall also publish all hearing notices on the Judicial Branch website, in the Connecticut Law Journal and in a newspaper with substantial distribution in the county where the application was filed.

(j) The standing committee shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement, any reports filed by the statewide grievance committee and office of the chief disciplinary counsel, a copy of the record of the applicant's disciplinary history, a transcript of its hearings thereon, any exhibits received by the standing committee, any other documents considered by the standing committee in making its recommendations, and copies of all notices provided by the standing committee in accordance with this section. Record materials containing personal identifying information or medical information may, in the discretion of the standing committee, be redacted, or open for inspection only to the applicant and other persons having a proper interest therein and upon order of the court. The standing committee shall complete work on the application within 180 days of referral from the chief justice. It is the applicant's burden to demonstrate by clear and convincing evidence that he or she possesses good moral character and fitness to practice law as defined by Section 2-5A.

(k) Upon completion of its investigation, the standing committee shall file its recommendation in writing together with a copy of the record with the clerk of the superior court. The report shall recommend that the application be granted, granted with conditions, or denied. The standing committee's report shall be served and certified to all other parties pursuant to Section 10-12.

(l) The court shall thereupon inform the chief justice of the pending application and recommendation, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session. The applicant, the statewide grievance committee, the office of the chief disciplinary counsel and the standing committee shall have an opportunity to appear and be heard at any hearing. The three judge panel, or a majority of them, shall determine whether the application should be granted.

(m) If the application for reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. Unless otherwise ordered by the court, the attorney may not reapply for reinstatement for a period of at least one year following the denial.

(P.B. 1978-1997, Sec. 36.) (Amended Nov. 17, 1999, on an interim basis, to take effect Jan. 1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 21, 2010, to take effect Jan. 1, 2011; amended June 15, 2012, to take effect Jan. 1, 2013; amended June 14, 2013, to take effect Jan. 1, 2014.)

The proposed amendment is intended to include and require attorneys that have remained suspended under an order of interim suspension for a period of one year or more to comply with the requirements of Practice Book Section 2-53. This inquiry into present fitness is equally important, regardless of if the suspension that exceeds a year is interim in nature or not.

Thank you for your attention. As always, I am available to the Rules Committee to discuss further and answer any questions or concerns you may have.

Very Truly Yours,



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