Minutes of the Meeting
Rules Committee of the Superior Court
Monday, September 14, 2020

On September 14, 2020, the Rules Committee met using Microsoft Teams from 2:02 p.m. to 3:11 p.m. The meeting was streamed live on YouTube.

Members in attendance were:

HON. ANDREW J. McDONALD, CHAIR
HON. HOLLY ABERY-WETSTONE
HON. BARBARA N. BELLIS
HON. SUSAN QUINN COBB
HON. JOHN B. FARLEY
HON. ALEX V. HERNANDEZ
HON. TAMMY T. NGUYEN-O'DOWD
HON. SHEILA M. PRATS
HON. ANTHONY D. TRUGLIA JR.

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee; Lori Petruzzelli, Counsel, Legal Services; and Shanna O'Donnell, Research Attorney, Legal Services.

1. The Committee approved the minutes of the meetings held on June 5, 2020 and August 28, 2020 with the no revisions.

2. The Committee considered a proposal from former Chief Disciplinary Counsel Karyl Carrasquilla to amend Sections 2-35, 2-36, 2-42 and 2-53 and a subsequent revised proposal from the Statewide Grievance Committee and the Office of the Chief Disciplinary Counsel (RC # 2018-001).

Bill Chapman and Marcy Stovall of the Connecticut Bar Association were present and addressed the Committee regarding this proposal.

After discussion, the Committee voted unanimously to submit to public hearing the revised proposal from the Statewide Grievance Committee and the Office of the Chief Disciplinary Counsel to amend certain sections of Chapter 2 of the Connecticut Practice Book, as set forth in Appendix A to these minutes.

3. The Committee considered a proposal from Judge Adelman to amend Section 3-8 regarding hybrid appearances; a subsequent proposal from Judge Albis's working group for a new Section 25-6A, and a redrafted proposal from counsel concerning "dual representation" in family matters (RC # 2018-003).

Judge Heller; Judge Adelman; and Bill Chapman, of the Connecticut Bar Association, were present and addressed the Committee regarding this proposal.

After discussion, the Committee tabled this proposal for one month for further discussion.

4. The Committee considered a proposal from Judge Alexander to amend Section 37-1 to allow for waiver of the presence of the defendant at arraignment (RC # 2019-001).

Attorney Katharine Casaubon, Counsel, Legal Services, was present and addressed the Committee regarding this proposal.

After discussion, the Committee tabled this matter to allow Attorney Casaubon additional time to consider the comments from the Office of the Chief Public Defender; to allow the new Chief Administrative Judge for Criminal Matters, Judge Gold, to be briefed and to offer his comments; and to allow Judge Alexander the opportunity to be present.

5. The Committee considered a proposal concerning standard written discovery for medical malpractice cases (RC # 2019-003).

Judge Bellis and Judge Cobb addressed the Committee concerning the subcommittee's progress towards the creation of a new draft of the proposal.

After discussion, the Committee tabled this proposal until the December meeting to allow the subcommittee to continue drafting the new proposal.

6. The Committee considered a proposal from Natasha M. Pierre, the State Victim Advocate, to amend several rules and sections to advise crime victims of their rights and to provide for notice to victims and opportunities for victims to provide statements, and a subsequent redrafted version of this proposal (RC # 2019-004).

Christine Rapillo, Chief Public Defender; Brian Staines, Chief Disciplinary Counsel; Morgan Rueckert, of the Connecticut Criminal Defense Lawyers Association; and Marcy Stovall of the Connecticut Bar Association were present and addressed the Committee concerning this proposal.

After discussion, the Committee tabled this proposal for one month to gather information concerning the notification capabilities of the new case management system and to allow Natasha Pierre the opportunity to attend.

7. The Committee considered a proposal from Senator Looney, Senator Winfield, and Representative Stafstrom concerning pre-trial discovery procedures in criminal matters and a subsequent proposal from the subcommittee tasked with reviewing the issue of open file discovery in criminal matters (RC # 2019-014).

Attorney Katharine Casaubon, Counsel, Legal Services, was present and addressed the Committee regarding this proposal.

After discussion, the Committee tabled this matter to allow time for the new Chief Administrative Judge for Criminal Matters, Judge Gold, to be briefed and to offer his comments.

8. The Committee considered a proposal from Judicial Branch Administration to amend Sections 2-27, 2-27A, and 2-65 and to adopt new Section 2-27B regarding administrative suspension of attorneys who fail to register or comply with Connecticut's MCLE requirements, and a subsequent revised proposal (RC # 2019-016).

Michael Bowler, Statewide Bar Counsel; Marcy Stovall, Bill Chapman, and Amy Lin Meyerson of the Connecticut Bar Association; and Christine Rapillo, Chief Public Defender, were present and addressed the Committee concerning this proposal.

After discussion, the Committee tabled this proposal and instructed counsel to circulate the revised proposal to all county bar associations to request their comments.

9. The Committee considered a proposal from the Connecticut Bar Association Pro Bono Committee and Standing Committee on Professional Ethics to amend Rule 5.5 of the Rules of Professional Conduct to permit pro bono practice in Connecticut by attorneys licensed and in good standing in other jurisdictions, and a subsequent revised proposal (RC # 2020-008).

Craig Coloumbe, from the Connecticut Bar Association, and Michael Bowler, Statewide Bar Counsel, were present and addressed the Committee concerning this proposal.

After discussion, the Committee tabled this proposal until November to allow Attorney Bowler to bring the revised proposal to the Statewide Grievance Committee for consideration at their October meeting.

10. The Committee considered a proposal from Judge Heller to amend Section 25-60A to conform to the requirements of Section 46b-6a of the General Statutes regarding the procedure for court ordered evaluations in family matters (RC # 2020-009).

Judge Heller was present and addressed the Committee regarding this proposal.

After discussion, the Committee voted unanimously to submit to public hearing the proposal from Judge Heller to amend Section 25-60A, as set forth in Appendix B to these minutes.

11. The Committee considered a proposal from Judge Stevens to amend Section 13-14 regarding the issuance of orders for non-suit or default for discovery violations (RC # 2020-010).

After discussion, the Committee tabled this matter in order to seek comments from Judge Abrams, the Connecticut Bar Association, the Connecticut Trial Lawyers Association, and the Connecticut Defense Lawyers Association.

12. The Committee considered a request from Lori Petruzzelli, Counsel, Legal Services, to permit a technical change to Section 14-9 to reflect the current name of the "Public Utilities Regulatory Authority", as provided in Section 16-2 of the General Statutes (RC # 2020-011).

Attorney Petruzzelli was present and addressed the Committee regarding this request.

After discussion, there was no objection to this technical change to the 2021 Practice Book.

13. The Committee considered a request from Lori Petruzzelli, Counsel, Legal Services, to permit a technical change to Section 25a-1 to resolve potential ambiguity in how references to certain subsections are listed (RC # 2020-016).

Attorney Petruzzelli was present and addressed the Committee regarding this request.

After discussion, there was no objection to this technical change to the 2021 Practice Book.

14. The Committee considered a proposal from Attorney Megan Wade to adopt American Bar Association Rule of Professional Conduct 8.4, subsection g, and a subsequent substitute proposal from the Connecticut Bar Association to adopt proposed Rule of Professional Conduct 8.4 (7) (RC # 2020-012).

Cecil Thomas of the Connecticut Bar Association and Attorney Zenas Zelotes were present and addressed the Committee concerning this proposal.

After discussion, the Committee tabled this matter to allow the substitute proposal to be sent to the affinity bar associations and county bar associations to allow them the opportunity to comment. The Chair instructed counsel to work with Bill Chapman of the Connecticut Bar Association to create a list of affinity bar associations.

Respectfully submitted,

Joseph J. Del Ciampo
Counsel to the Rules Committee

APPENDIX A (091420)

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.] <u>If a member of the reviewing committee is absent for the hearing, the member's participation in the determination of the matter shall be waived unless the disciplinary counsel or the respondent object at the commencement of the hearing. If an objection is raised, then the absent member of the reviewing committee shall obtain and review the transcript of each such hearing and shall participate in the committee's determination.</u> 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 crossexamine 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. In a decision of the reviewing committee directing the disciplinary counsel to file a presentment against the respondent, the reviewing committee may direct that the presentment include additional findings of misconduct beyond those set forth in the probable cause finding and the additional allegations of misconduct if the findings are supported by the record. 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(b) or (g). 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. In a decision of the statewide grievance committee directing the disciplinary counsel to file a presentment against the respondent, the statewide grievance committee may direct that the presentment include additional findings of misconduct beyond those set forth in the probable cause finding and the additional allegations of misconduct if the findings are supported by the record. 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 amendment to subsection (g) provides that an objection regarding an absent reviewing committee member must be raised at the time of the hearing, or it will be waived. If the respondent fails to appear at the hearing, the respondent cannot later claim that the waiver was invalid.

The amendments to subsections (i) and (m) codify longstanding practice permitting either the reviewing committee or the Statewide Grievance Committee to add findings of misconduct to a decision directing disciplinary counsel to file a presentment. Because the presentment directive is an interim order, the respondent has notice of the charges and the right to a de novo hearing before the court prior to final discipline being

imposed, which protects any due process concerns.

The amendment to subsection (k) prohibits the right to request review or take an appeal of a disciplinary order that was consented to by the respondent. The amendment expedites agreed upon discipline and ends unnecessary delay in issuing discipline ordered by the reviewing committee or Statewide Grievance Committee and in pursuing 2-82(g) presentments before the Superior Court.

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. 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). A respondent may not appeal to the superior court a decision of the statewide grievance committee affirming the reviewing committee's decision directing the disciplinary counsel to file a presentment against the respondent.

Commentary

The amendment codifies existing appellate law. A decision directing the disciplinary counsel to file a presentment against the respondent is an interim order of discipline that is presented to the court in a de novo hearing. In Miniter v. Statewide Grievance Committee, 122 Conn. App. 410, (2010), cert. denied 298 Conn. 923 (2010) the appellate court held that an appeal from an order of presentment was an impermissible interlocutory appeal, because the decision directing that a presentment be filed does 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). See also Rozbicki v. Statewide Grievance Committee, 157 Conn. App. 613 (2015). The amendment expedites the most serious disciplinary cases to a hearing and final decision and prohibits unnecessary delay in pursuing presentments before the Superior Court.

Sec. 2-39. Reciprocal Discipline

(a) Upon being informed that a lawyer admitted to the Connecticut bar has resigned, been disbarred, suspended or otherwise disciplined, or placed on inactive disability status in another jurisdiction, and that said discipline or inactive disability status has not been stayed, the disciplinary counsel shall obtain a certified copy of the order and file it with the superior court for the judicial district wherein the lawyer maintains an office for the practice of law in this state, except that, if the lawyer has no such office, the disciplinary counsel shall file the certified copy of the order from the other jurisdiction with the superior court for the judicial district of Hartford at Hartford. No entry fee shall be required for proceedings hereunder.

(b) Upon receipt of a certified copy of the order, the court shall forthwith cause to be served upon the lawyer a copy of the order from the other jurisdiction and an order directing the lawyer to file within thirty days of service, with proof of service upon the disciplinary counsel, an answer admitting or denying the action in the other jurisdiction and setting forth, if any, reasons why commensurate action in this state would be unwarranted. Such certified copy will constitute prima facie evidence that the order of the other jurisdiction entered and that the findings contained therein are true.

(c) Upon the expiration of the thirty day period the court shall assign the matter for a hearing. After hearing, the court shall take commensurate action unless it is found that [any defense set forth in the answer] the respondent has [been] established by clear and convincing evidence that:

(1) The procedure in the predicate matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct in the predicate matter as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) The discipline imposed would result in grave injustice; or

(4) The misconduct established in the predicate matter warrants substantially different discipline in this state; or

(5) The reason for the original transfer to inactive disability status no longer exists.

(d) Notwithstanding the above, a reciprocal discipline action need not be filed if the conduct giving rise to discipline in another jurisdiction has already been the subject of a formal review by the court or statewide grievance committee.

Commentary

The amendment to subsection (c) is based on the criteria set forth in ABA Model Rules for Lawyer Disciplinary Enforcement Rule 22. A judicial determination of misconduct or disability by the respondent in another jurisdiction is conclusive, and not subject to relitigation in the forum state. The court should impose commensurate discipline or disability inactive status unless it determines, after review limited to the record of the proceedings in the foreign jurisdiction, that one of the grounds specified in subsection (c) exists. These criteria were first listed as optional factors to be considered in the 2004 commentary to this section and are now codified.

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

(a) **[**If there is a disciplinary proceeding pending against a lawyer, 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.**]** <u>If a grievance panel, a reviewing committee, the statewide grievance committee or the disciplinary counsel believes that a lawyer poses a substantial threat of irreparable harm to his or her clients or to prospective clients, the disciplinary counsel shall apply to the court for an order of interim suspension.</u> 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.

Commentary

The amendment allows disciplinary authorities to commence an application for interim

suspension in situations where there is no disciplinary proceeding or overdraft investigation pending, but it is believed that the lawyer poses a substantial threat of irreparable harm to clients. This rule change allows disciplinary authorities to file an interim suspension action if they are aware that a lawyer is missing, has been incarcerated prior to a finding of guilt, or that a credible allegation exists that the lawyer has misappropriated client's funds, or that the lawyer's conduct has been referred to a grievance panel for an investigation. This change allows for expedited review by the court of these serious matters, while the disciplinary investigation is still occurring and protects the public without undue delay. The burden of proof still remains on the disciplinary counsel to prove irreparable harm by clear and convincing evidence before an independent judicial authority and allows for the court to set aside such a suspension if good cause can be shown by the attorney.

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.

Commentary

The amendment clarifies that attorneys who have been suspended under an interim order of suspension for a period of one year or more must comply with the reinstatement requirements under this section.

APPENDIX B (091420)

Sec. 25-60A. Court-Ordered Private Evaluations

(a) If the court orders a private evaluation of any party or any child in a family proceeding where custody, visitation or parental access is at issue, a qualified, licensed health care provider [state licensed mental health professional] shall conduct such evaluation.

(b) If the court has determined that an evaluation can be undertaken and a qualified, licensed healthcare provider has been selected to perform the evaluation, the court's order for an evaluation shall contain the name of the provider who is to undertake the evaluation, the estimated cost of the evaluation, each party's responsibility for the cost of the evaluation, the professional credentials of the provider, the estimated deadline by which the evaluation shall be completed and submitted to the court, and the estimated fee of the provider for testifying in court. The estimated cost of the evaluation shall include, separately stated, the estimated fee of the provider for testifying in court.

(c) Not later than thirty days after the date of the completion of the evaluation, the provider shall file a report containing the results of the evaluation with the clerk of the court, who shall seal such report.

(d)[(b)] Notice of any orders relating to the evaluation ordered shall be communicated to the evaluator by the guardian ad litem or, where there is no guardian ad litem, by court personnel.

(e)[(c)] Until a court-ordered evaluation is filed with the clerk pursuant to Section 25-60 (b), counsel for the parties shall not initiate contact with the evaluator, unless otherwise ordered by the judicial authority.

(f)[(d)] The provisions of subsections (a) and (b) of Section 25-60 shall apply to completed private court-ordered evaluations.

Commentary: The proposed amendment to subsection (a) substitutes the language used in General Statutes Section 46b-6a, "qualified, licensed health care provider", for the existing language, "state licensed mental health professional". The new proposed subsection (b) and (c) include the specific requirements in section 46b-6a as well as an additional provision that the estimated fee of the provider for testifying in court be separately stated. Although section 46b-6a does not require that the estimated fee for testifying in court be included in the court's order, that information is essential. The evaluation report is not admissible in evidence under Practice Book Section 25-60 (c) unless the provider is available for cross-examination. The parties should know in advance what they will be expected to pay for the provider's testimony in court.