

APPENDIX B (1-29-07 mins)

Sec. 2-16. —Attorney Appearing Pro Hac Vice

An attorney who is in good standing at the bar of another state, the District of Columbia, or the commonwealth of Puerto Rico, may, upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state, be permitted in the discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal in any court of this state; provided, however, that (1) such application shall be accompanied by the affidavit of the applicant (a) certifying whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action, (b) designating the chief clerk of the superior court for the judicial district in which the attorney will be appearing as his or her agent upon whom process and service of notice may be served, (c) [and] agreeing to register with the statewide grievance committee in accordance with the provisions of this chapter while appearing in the matter in this state and for two years after the completion of the matter in which the attorney appeared, and to notify the statewide grievance committee of the expiration of the two year period, and [(c)] (d) identifying the number of cases in which the attorney has appeared pro hac vice in the superior court of this state since the attorney first [has] appeared pro hac vice in [the state of Connecticut] this state and (2) a member of the bar of this state must be present at all proceedings and must sign all pleadings, briefs and other papers filed with the court and assume full responsibility for them and for the conduct of the cause and of the attorney to whom such privilege is accorded. Where feasible, the application shall be made to the judge before whom such cause is likely to be tried. If not feasible, the application shall be made to the administrative judge in the judicial district where the matter is to be tried. Good cause for according such privilege shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include a showing that by reason of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar, the attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the trial of the cause, or that the litigant is unable to secure the services of Connecticut counsel. Upon the granting of an application to appear pro hac vice, the clerk of the court in which the application is granted shall immediately notify the statewide grievance committee of such action.

COMMENTARY: The above changes broaden the mandatory reporting requirement of the section to include any disciplinary history; separate the provisions designating the chief clerk as agent for service of process from the registration provision; and require the attorney appearing pro hac vice to notify the statewide grievance committee of the expiration of the two year period following the

completion of the matter for which the attorney appeared, which would allow the statewide grievance committee to deactivate the attorney's juris number and thereby prevent the attorney from receiving an annual attorney registration form after the two year period.

Sec. 2-27. Clients' Funds; Lawyer Registration

(a) Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct each lawyer or law firm shall maintain, separate from the lawyer's or the firm's personal funds, one or more accounts accurately reflecting the status of funds handled by the lawyer or firm as fiduciary or attorney, and shall not use such funds for any unauthorized purpose.

(b) Each lawyer or law firm maintaining one or more trust accounts as defined in Section 2-28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the lawyer or firm in a fiduciary capacity from the time of receipt to the time of final distribution. Each lawyer or law firm shall retain the records required under this section for a period of seven years after final distribution of such funds or any portion thereof. Specifically, each lawyer or law firm shall maintain the following in connection with each such trust account:

(1) a receipt and disbursement journal identifying all deposits in and withdrawals from the account and showing the running account balance;

(2) a separate accounting page or column for each client or third person for whom funds are held showing (A) all receipts and disbursements and (B) a running account balance;

(3) at least quarterly a written reconciliation of trust account journals, client ledgers and bank statements;

(4) a list identifying all trust accounts as defined in Section 2-28 (b); and

(5) all checkbooks, bank statements, and canceled or voided checks.

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to subsection (b) of this section, shall be made available upon request of the statewide grievance committee or its counsel, or the disciplinary counsel for review, examination or audit upon receipt of notice by the statewide grievance committee of an overdraft notice as provided by Section 2-28(f). Upon the filing of a grievance complaint or a finding of probable cause, such records shall be made available upon request of the statewide grievance committee, its counsel or the disciplinary counsel for review or audit.

(d) Each lawyer shall register with the statewide grievance committee, on a form devised by the committee, the address of the lawyer's office or offices maintained for the practice of law, [and] the name and address of [the] every financial institution with which the lawyer maintains any account in which the funds of more than one client are kept and the identification number of any such account, and any other information requested on such form. Such registrations will be made on an annual basis and at such time as the lawyer changes his or her address or addresses or location or identification number of any such trust account in which the funds of

more than one client are kept. The registration forms filed pursuant to this subsection and pursuant to Section 2-26 shall not be public; however, all information obtained by the statewide grievance committee from these forms shall be public, except the following: trust account identification numbers; the lawyer's home address; and the lawyer's birth date. Unless otherwise ordered by the court, all non-public information obtained from these forms shall be available only to the statewide grievance committee and its counsel, the reviewing committees, the grievance panels and their counsel, the bar examining committee, the standing committee on recommendations for admission to the bar, disciplinary counsel, the client security fund committee and its counsel, a judge of the superior court, a judge of the United States District Court for the District of Connecticut, any grievance committee or other disciplinary authority of the United States District Court for the District of Connecticut or, with the consent of the lawyer, to any other person. The registration requirements of [T]this subsection shall not apply to judges of the supreme, appellate or superior courts, judge trial referees, family support magistrates, federal judges, federal magistrate judges, federal administrative law judges or federal bankruptcy judges.

(e) The statewide grievance committee or its counsel may conduct random inspections and audits of accounts maintained pursuant to subsection (b) of this section to determine whether such accounts are in compliance with this section and Rule 1.15 of the Rules of Professional Conduct. If any random inspection or audit performed under this subsection discloses an apparent violation of this section or the Rules of Professional Conduct, the matter may be referred to a grievance panel for further investigation or to the disciplinary counsel for presentment to the superior court. Any lawyer whose accounts are selected for inspection or audit under this section shall fully cooperate with the inspection or audit, which cooperation shall not be construed to be a violation of Rule 1.6(a) of the Rules of Professional Conduct. Any records, documents or information obtained or produced pursuant to a random inspection or audit shall remain confidential unless and until a presentment is initiated by the disciplinary counsel alleging a violation of Rule 1.15 of the Rules of Professional Conduct or of this section, or discipline is imposed by the statewide grievance committee or a reviewing committee for violations of said rule or this section. Prior to the commencement of a presentment or a hearing held pursuant to Section 2-35(c), notice shall be given in writing by the statewide grievance committee to any client or third person whose identity may be publicly disclosed through the disclosure of records obtained or produced in accordance with this subsection. Thereafter, public disclosure of such records at a presentment or hearing held pursuant to Section 2-35(c) shall be subject to the client or third person having the reasonable opportunity to seek a court order restricting publication of any such records disclosing confidential information.

(f) Violation of this section shall constitute misconduct.

COMMENTARY: The above changes codify the Statewide Grievance Committee's policy regarding public and confidential information that is derived from the attorney registration process.

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. At least two of the same members of a reviewing committee shall be physically present at all hearings held by such 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. The review by the statewide grievance committee or reviewing committee of a grievance panel determination that probable cause exists shall not be limited to the grievance panel determination. The statewide grievance committee or reviewing committee may review the entire record and determine whether any allegation in the complaint, or any issue arising from the review of the record or arising during any hearing on the complaint, supports a finding of probable cause of misconduct. If either the statewide grievance committee or the reviewing committee determines that probable cause does exist, it shall issue a

written notice which shall include but not be limited to the following: (i) a description of the factual allegation or allegations that were considered in rendering the determination; and (ii) 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. [All hearings following a determination of probable cause shall be public and on the record.] The statewide grievance committee or reviewing committee shall not make a probable cause determination based, in full or in part, on a claim of misconduct not alleged in the complaint without first notifying the respondent that it is [considering] contemplating such action and affording the respondent the opportunity to be heard. All hearings following a determination of probable cause shall be public and on the record, except for contemplated probable cause hearings which shall be confidential unless the Respondent requests that such hearing be public.

(d) 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.

(e) 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 [it results in the imposition of discipline] the grievance complaint is not dismissed. 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).

(f) 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.

(g) 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.

(h) 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.

(i) 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 revision to subsection (c) distinguishes hearings held after a finding of probable cause, which are public, from those held prior to a finding of probable cause, which are not public unless the respondent requests that they be public.

The revision to subsection (e) makes the language of the subsection consistent with Section 2-50.

Sec. 2-38. Appeal from Decision of Statewide Grievance Committee or Reviewing Committee to Reprimand

(a) A respondent may appeal to the superior court a decision by the statewide grievance committee or a reviewing committee reprimanding the respondent, except that a respondent may not appeal a decision by a reviewing committee reprimanding the respondent if the respondent has not timely requested a review of the decision by the statewide grievance committee under Section 2-35 (g). Within thirty days from the issuance, pursuant to Section 2-36, of the decision of the statewide grievance committee, the respondent shall: (1) file the appeal with the clerk of the superior court for the judicial district of Hartford and (2) mail a copy of the appeal by certified mail, return receipt requested, to the office of the statewide bar counsel as agent for the statewide grievance committee and to the office of the chief disciplinary counsel.

(b) Enforcement of a final decision by the statewide grievance committee reprimanding the respondent pursuant to Section 2-35 (i), including the publication of the notice of reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of such decision. Enforcement of a decision by a reviewing committee reprimanding the respondent, including the publication of the notice of reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of the final decision of the reviewing committee pursuant to Section 2-35 (g). If within that period the respondent files with the statewide grievance committee a request for review of the reviewing committee's decision, the stay shall remain in effect for thirty days from the issuance by the statewide grievance committee of its final decision pursuant to Section 2-36. If the respondent timely commences an appeal pursuant to subsection (a) of this section, such stay shall remain in full force and effect until the conclusion of all proceedings, including all appeals, relating to the decision reprimanding the respondent. If at the conclusion of all proceedings, the decision reprimanding the respondent is rescinded, the complaint shall be deemed dismissed as of the date of the reprimand decision for all purposes, including the application of Section 2-50 (b). An application to terminate the stay may be made to the court and shall be granted if the court is of the opinion that the appeal is taken only for delay or that the due administration of justice requires that the stay be terminated.

(c) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the statewide bar counsel shall transmit to the reviewing court a certified copy of the entire record of the proceeding appealed from, which shall include the grievance panel's record in the case, as defined in Section 2-32 (i), and a copy of the statewide grievance committee's record or the reviewing committee's record in the case, which shall include a transcript of any testimony heard by it or by a reviewing committee which is required by rule to be on the record, any decision by the reviewing committee in the case, any requests filed pursuant to Section 2-35 (g) of this section, and a copy of the statewide grievance committee's decision on the request for review. By stipulation of all parties to such appeal proceedings, the record may be shortened. The court may require or permit subsequent corrections or additions to the record.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the statewide grievance committee or reviewing committee are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument.

(e) The respondent shall file a brief within thirty days after the filing of the record by the statewide bar counsel. The disciplinary counsel shall file his or her brief within thirty days of the filing of the respondent's brief. Unless permission is given by the court for good cause shown, briefs shall not exceed thirty-five pages.

(f) Upon appeal, the court shall not substitute its judgment for that of the statewide grievance committee or reviewing committee as to the weight of the evidence on questions of fact. The court shall affirm the decision of the committee unless the court finds that substantial rights of the respondent have been prejudiced because the committee's findings, inferences, conclusions, or decisions are: (1) in violation of constitutional, rules of practice or statutory provisions; (2) in excess of the authority of the 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. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, rescind the action of the statewide grievance committee or take such other action as may be necessary. For purposes of further appeal, the action taken by the superior court hereunder is a final judgment.

(g) In all appeals taken under this section, costs may be taxed in favor of the statewide grievance committee in the same manner, and to the same extent, that costs are allowed in judgments rendered by the superior court. No costs shall be taxed against the statewide grievance committee, except that the court may, in its discretion, award to the respondent reasonable fees and expenses if the court determines that the action of the committee was undertaken without any substantial justification. "Reasonable fees and expenses" means any expenses not in excess of \$7500 which the court finds were reasonably incurred in opposing the committee's

action, including court costs, expenses incurred in administrative proceedings, attorney's fees, witness fees of all necessary witnesses, and such other expenses as were reasonably incurred.

COMMENTARY: The above change is proposed because the Disciplinary Counsel's Office defends appeals from decisions of the Statewide Grievance Committee or Reviewing Committees to reprimand a respondent.

Sec. 2-50. Records of Statewide Grievance Committee, Reviewing Committee and Grievance Panel

(a) The statewide grievance committee shall maintain the record of each grievance proceeding. The record in a grievance proceeding shall consist of the following:

- (1) The grievance panel's record as set forth in Section 2-32 (i);
- (2) The reviewing committee's record as set forth in Section 2-35 (e);
- (3) The statewide grievance committee's record;
- (4) Any probable cause determinations issued by the statewide grievance committee or a reviewing committee;
- (5) Transcripts of hearings held before the statewide grievance committee or a reviewing committee;
- (6) The reviewing committee's proposed decision;
- (7) Any statement submitted to the statewide grievance committee concerning a proposed decision;
- (8) The statewide grievance committee's final decision;
- (9) The reviewing committee's final decision;
- (10) Any request for review submitted to the statewide grievance committee concerning a reviewing committee's decision; and
- (11) The statewide grievance committee's decision on the request for review.

(b) The following records of the statewide grievance committee shall be non-public:

(1) All records pertaining to grievance complaints that have been decided by a local grievance committee prior to July 1, 1986.

(2) All records pertaining to grievance complaints that have been filed on or after July 1, 1986, and that have been dismissed by a grievance panel, by the statewide grievance committee or by a reviewing committee. For purposes of this section, all grievance complaints that were pending before a grievance panel on July 1, 1986 shall be deemed to have been filed on that date.

(3) All records of complaints dismissed pursuant to Section 2-32 (a) (2).

(4) All records of the statewide grievance committee and grievance panels pertaining to grievance proceedings that have been concluded by: (A) a final judgment of the superior court, after all appeals are exhausted, in a proceeding under Section 2-38 rescinding a reprimand, including a judgment directed on an appeal from the superior court; (B) a final judgment of the superior court, after all appeals are exhausted, in a proceeding commenced pursuant to Section 2-47, dismissing a

presentment, including a judgment directed on an appeal from the superior court; or (C) a final judgment of the superior court, after all appeals are exhausted, dismissing a proceeding commenced pursuant to Sections 2-39 through 2-46 or Section 2-52, including a judgment directed on an appeal from the superior court.

(5) All records of pending grievance complaints in which probable cause has not yet been determined.

(c) Unless otherwise ordered by the court, all non-public records shall be available only to the statewide grievance committee [or] and its counsel, the reviewing committees, the grievance panels [or] and their counsel, the bar examining committee, the standing committee on recommendations for admission to the bar, disciplinary counsel, the client security fund committee [or] and its counsel, a judge of the superior court, a judge of the United States District Court for the District of Connecticut, any grievance committee or other disciplinary authority of the United States District Court for the District of Connecticut or, with the consent of the respondent, to any other person. Such records may be used or considered in any subsequent disciplinary or client security fund proceeding pertaining to the respondent.

(d) The following records of the statewide grievance committee shall be public:

(1) Prior to a final decision being issued by the statewide grievance committee or a reviewing committee, the following portions of the record: (A) the grievance panel's probable cause determination(s); (B) any probable cause determination(s) issued by the statewide grievance committee or a reviewing committee and, (C) transcripts of any public hearings held following a determination that probable cause exists.

(2) After a final decision has been issued by the statewide grievance committee or a reviewing committee, all records pertaining to grievance complaints that have been filed on or after July 1, 1986, and that have not been dismissed or are not otherwise classified by this rule as non-public.

(e) Any respondent who was the subject of a complaint in which the respondent was misidentified and the complaint was dismissed shall be deemed to have never been subject to disciplinary proceedings with respect to that complaint and may so swear under oath.

COMMENTARY: The above changes make clear that when non-public disciplinary records are available to a specified entity, those records are also available to that entity's counsel and vice versa. The changes also add the Connecticut Bar Examining Committee as an entity to which non-public disciplinary records are available.

Sec. 2-52. Resignation of Attorney

(a) The superior court may, under the procedure provided herein, permit the resignation of an attorney whose conduct is the subject of investigation by a grievance panel, a reviewing committee or the statewide grievance committee or against whom a presentment for misconduct under Section 2-47 is pending.

(b) Such resignation shall be in writing, signed by the attorney, and filed in sextuplicate with the clerk of the superior court in the judicial district in which the attorney resides, or if the attorney is not a resident of this state, to the superior court in Hartford. The clerk shall forthwith send one copy to the grievance panel, one copy to the statewide bar counsel, one copy to disciplinary counsel, one copy to the state's attorney, and one copy to the standing committee on recommendations for admission to the bar. Such resignation shall not become effective until accepted by the court after a hearing following a report by the statewide grievance committee [that the investigation has been completed], whether or not the attorney seeking to resign shall, in the resignation, waive the privilege of applying for readmission to the bar at any future time.

COMMENTARY: The above change is made for clarity