NOTICE TO THE PUBLIC

Public Hearing on Proposal of Commission to Study the Attorney Grievance Process

Notice is hereby given that on Monday, March 5, 2001, at 10:00 a.m. the Commission to Study the Attorney Grievance Process will conduct a public hearing at the Supreme Court for the purpose of receiving comments on the proposed revisions set forth below to the rules relating to the attorney grievance process in Connecticut. The Supreme Court is located at 231 Capitol Avenue, Hartford, Connecticut.

Also set forth below is an outline of the major changes proposed to the rules.

Robert I. Berdon, Judge Trial Referee
Chair, Commission to Study the
Attorney Grievance Process

Outline of Major Changes Proposed

To Members of the Public

The following is a summary of the major changes to the rules governing the attorney grievance process that the commission is considering. It is furnished for the convenience of the public. Nevertheless, interested persons should not rely on this outline but rather should review the amendments to the rules the commission is considering as set forth in detail below.

1. The positions of chief disciplinary counsel and disciplinary counsel, to be appointed by the judges of the Superior Court, and assigned to the office of the chief court administrator for administrative purposes, are created for the purposes of investigating and pursuing all cases before the statewide grievance committee or a reviewing committee after there is a determination of probable cause that the respondent is guilty of misconduct. Disciplinary counsel will be responsible for initiating presentment proceedings in Superior Court, and shall have such other responsibilities as set forth in the proposed rules. (Secs. 2-34A and 2-35).

2. Upon the vote of a majority of its members, a grievance panel may require disciplinary counsel to pursue the matter before it on the issue whether there is probable cause to believe that the respondent is guilty of misconduct. (Secs. 2-29 and 2-32).

3. If a grievance panel determines that there is no probable cause to believe that the respondent is guilty of misconduct, it shall dismiss the complaint unless there is an allegation in the complaint that the respondent committed a crime. Such dismissal shall be final and there shall be no review of the matter by the statewide grievance committee. In cases in which there is an allegation in the complaint that the respondent committed a crime but the grievance panel found that no probable cause exists, the panel shall file its written determination that no probable cause exists and submit to the statewide grievance committee the materials set forth in subsection (i)(1)(B), (C) and (D) of Sec. 2-32 including the transcript of the testimony heard by the grievance panel for its review. These materials shall constitute the entire record on review. (Sec. 2-32).

4. Counsel for the local grievance panels shall assume the additional duties of conferring and, if possible, meeting with complainant when the complaint is referred by the statewide grievance committee to the grievance panel for the purpose of assisting them in understanding the grievance process and to answer questions complainants may have concerning the process. If the panel has dismissed the complaint, grievance counsel shall assist the complainant in understanding the reason for the dismissal. (Sec. 2-31).

5. At least two of the same members of a reviewing committee must be physically present at all hearings on any given case. Unless waived by the disciplinary counsel and the respondent, the remaining absent member shall review the transcript of the hearing. (Sec. 2-35(c)).

6. Discipline under section 2-46 is expanded to not only include conviction of a felony, but also any larceny or any crime for which the respondent is sentenced to a term of incarceration or for which a suspended period of incarceration is imposed. This section also makes clear that the grant to the respondent of immunity from prosecution does not shield the respondent from disciplinary action under these rules unless otherwise ordered by a judge. (Sec. 2-40).

7. If a determination is made by the statewide grievance committee or a reviewing committee that a respondent is guilty of misconduct and such misconduct does not otherwise warrant a presentment to the Superior Court, but the respondent has been reprimanded pursuant to these rules three times within the five year period preceding the date of such determination of misconduct, the matter in connection with which the finding of misconduct has been made shall not be decided by the statewide grievance committee or the reviewing committee in regard to sanctions, but shall be presented by disciplinary counsel directly to the Superior Court to decide the sanctions to be imposed. This shall apply to all findings of misconduct issued from the day of enactment forward and the determination of presentment shall consider all reprimands within a five year period from the finding of misconduct even if they predate the effective date of these rules. (Sec. 2-47).

8. The court, in order to protect the public, is given the authority to issue interim orders during the pendency of any appeal by the respondent. (Sec. 2-64).

9. The proposed rules provide for the erasure of the record of the proceedings under certain circumstances. (Sec. 2-50).

10. A procedure is provided to allow disciplinary counsel to negotiate an agreement with the respondent with respect to a resolution of a complaint with the approval of the court or a reviewing committee. It also allows the respondent to admit the facts alleged in the complaint and to argue the discipline to be imposed. The foregoing is based upon Rule 21 of the American Bar Association *Model Rules for Lawyers Disciplinary Enforcement.* (Sec. 2-82).

If you have any comments with respect to the proposed changes to the rules governing the attorney grievance process, you are invited to make them in writing to the undersigned on or before March 2, 2001or attend the public hearing at 10:00 A.M. on March 5, 2001 which shall be held in Supreme Court Building, 231 Capitol Avenue, Hartford, Connecticut.

Robert I. Berdon, Judge Trial Referee
Chair, Commission to Study
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Superior Court
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PROPOSED REVISIONS TO THE SUPERIOR COURT RULES CONCERNING THE ATTORNEY GRIEVANCE PROCESS

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 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, 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 (c) identifying the number of cases in which the attorney has appeared pro hac vice in the superior court of this state since the attorney has appeared pro hac vice in the state of Connecticut 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.

(P.B. 1978-1997, Sec. 24.)

COMMENTARY: The amendments to this section make it clear that attorneys appearing pro hac vice are subject to the discipline process in this state.

Sec. 2-23. Roll of Attorneys

(a) The statewide bar counsel shall forward to the clerk for Hartford county for certification a roll of the attorneys of the state and the said clerk shall keep said roll. The clerk for any other county in which an attorney is admitted shall forthwith certify such action, with the date and the residence of the attorney, to the clerk for Hartford county, the statewide bar counsel and the administrative director of the bar examining committee.

(b) The clerk for any county in which an attorney is suspended, disbarred, resigned, placed in an inactive status, reinstated, or otherwise formally and publicly disciplined by the court shall forthwith certify such action with the date, the residence of the attorney and a certified copy of the court order to the statewide bar counsel and to the clerk for Hartford county, and shall notify them of the death of any attorney in his or her county of which such clerk knows.

(c) The clerk for Hartford county shall forthwith notify the clerks of the superior court and the clerk of the United States district court for the district of Connecticut, at New Haven, of all suspensions, disbarments, resignations, placements in inactive status, retirements, revocations of retirements, or reinstatements.

(P.B. 1978-1997, Sec. 26.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-24. Notice by Attorney of Admission in Other Jurisdictions

An attorney who is admitted to practice at the bar of another state, the District of Columbia, or the commonwealth of Puerto Rico, or of any United States court, shall send to the Connecticut statewide bar counsel written notice of all such jurisdictions in which he or she is admitted to practice within thirty days of admission to practice in such jurisdiction.

(P.B. 1978-1997, Sec. 26A.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-25. Notice by Attorney of Disciplinary Action in Other Jurisdictions

An attorney shall send to the statewide bar counsel written notice of all disciplinary actions imposed by the courts of another state, the District of Columbia, or the commonwealth of Puerto Rico, or of any United States court, within thirty days of the order directing the disciplinary action.

(P.B. 1978-1997, Sec. 26B.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-26. Notice by Attorney of Change in Address

An attorney shall send prompt written notice of a change in mailing and street address to the statewide grievance committee on a registration form approved by the statewide bar counsel and to the clerks of the courts where the attorney has entered an appearance.

(P.B. 1978-1997, Sec. 27.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-27. Clients' Funds

(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 for review and audit upon a finding by the statewide grievance committee or a grievance panel that there exists probable cause that the lawyer or law firm is guilty of misconduct.

(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 financial institution with which the lawyer maintains **[**his or her primary trust account**]** <u>any account in which the funds of more than one client are kept</u> **[**as defined in Section 2-28(c)**]** and the identification number of **[**that**]** <u>any such</u> account. 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 **[**his or her primary**]** any such trust account in which the funds of more than one client are kept. This subsection shall not apply to judges of the supreme, appellate or superior courts, to judge state referees or to family support magistrates.

(e) Violation of this section shall constitute misconduct.

(P.B. 1978-1997, Sec. 27A.)

COMMENTARY:

The amendments to this section expand the application of the section to any account in which the funds of more than one client are kept rather than designating only primary trust accounts. It is intended that expansion of the section will decrease abuse of the rule as currently adopted.

Sec. 2-28. Overdraft Notification

(a) The terms used in this section are defined as follows:

(1) "Financial institution" includes banks, savings and loan associations, credit unions, savings banks and any other business or person which accepts for deposit funds held in trust by attorneys.

(2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under law.

(3) "Insufficient funds" refers to the status of an account that does not contain sufficient funds available to pay a properly payable instrument.

(4) "Uncollected funds" refers to funds deposited in an account and available to be drawn upon but not yet deemed by the financial institution to have been collected.

(b) Attorneys shall deposit all funds held in any fiduciary capacity in accounts clearly identified as "trust," "client funds" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of such accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a

representation in Connecticut, whether as trustee, agent, guardian, executor or otherwise. Where an attorney fiduciary has the right to draw by a properly payable instrument on such trust account in which the funds of more than one client are kept, such account shall be maintained only in financial institutions approved by the statewide grievance committee. No such trust account in which the funds of more than one client are kept shall be maintained in any financial institution in Connecticut which does not file the agreement required by this section. Violation of this subsection shall constitute misconduct.

(c) Attorneys regularly maintaining funds in a fiduciary capacity shall **[**designate one account as a primary trust account and shall**]** register **[**such**]** any account in which the funds of more than one client are kept with the statewide grievance committee in accordance with Section 2-27 (d). **[**The account designated as the primary trust account shall be that account in which the attorney maintains the funds of the greatest number of his or her clients.**]**

(d) A financial institution shall be approved as a depository for attorney trust accounts only if it files with the statewide grievance committee an agreement, in a form provided by the committee, to report to the committee the fact that an instrument has been presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored. No report shall be required if funds in an amount sufficient to cover the deficiency in the trust account are deposited within one business day of the presentation of the instrument. No report shall be required in the case of an instrument presented and paid against uncollected funds.

(e) Any such agreement shall not be cancelled by a financial institution except upon thirty days written notice to the statewide grievance committee. The statewide grievance committee shall establish rules governing approval and termination of approved status for financial institutions, and shall publish annually a list of approved institutions. Any such agreement shall apply to all branches

of the financial institution in Connecticut and shall not be cancelled except upon thirty days notice in writing to the statewide grievance committee.

(f) The financial institution shall report to the statewide grievance committee within seven business days from the date of such presentation, any instrument presented against insufficient funds unless funds in an amount sufficient to cover the deficiency in the trust account are deposited within one business day of the presentation of the instrument. The report shall be accompanied by a copy of the instrument.

(g) The statewide grievance committee may delegate to the statewide bar counsel the authority to investigate overdraft notifications and determine that no misconduct has occurred or that no further action is warranted. Any determination that misconduct may have occurred and a grievance complaint should be initiated, unless such complaint is premised upon the failure of an attorney to file an explanation of an overdraft, shall be made by the statewide grievance committee.

(h) Every attorney practicing or admitted to practice in Connecticut shall, as a condition thereof, be conclusively presumed to have authorized the reporting and production requirements of this section. Where an attorney qualifies as executor of a will or as trustee or successor fiduciary, the attorney-fiduciary shall have a reasonable time after qualification to bring preexisting trust accounts into compliance with the provisions of this section.

(P.B. 1978-1997, Sec. 27A.1.)

COMMENTARY:

The amendments to this section are consistent with the amendments to Section 2-27.

Sec. 2-29. Grievance Panels

(a) The judges of the superior court shall appoint one or more grievance panels in each judicial district, each consisting of two members of the bar who do not maintain an office for the

practice of law in such judicial district and one nonattorney who resides in such judicial district, and shall designate as an alternate member a member of the bar who does not maintain an office for the practice of law in such judicial district. Terms shall commence on July 1. Appointments shall be for terms of three years. No person may serve as a member and/or as an alternate member for more than two consecutive three year terms, but may be reappointed after a lapse of one year. The appointment of any member or alternate member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the balance of the term or for any other appropriate period. In the event that a vacancy arises on a panel before the end of a term by reasons other than revocation or suspension, the executive committee of the superior court shall appoint an attorney or nonattorney, depending on the position vacated, who meets the appropriate condition set forth above to fill the vacancy for the balance of the term.

(b) Consideration for appointment to these positions shall be given to those candidates recommended to the appointing authority by the administrative judges.

(c) In the event that more than one panel has been appointed to serve a particular judicial district, the executive committee of the superior court shall establish the jurisdiction of each such panel.

(d) An attorney who maintains an office for the practice of law in the same judicial district as a respondent may not participate as a member of a grievance panel concerning a complaint against that respondent.

(e) In addition to any other powers and duties set forth in this chapter, each panel shall:

(1) On its own motion or on complaint of any person, inquire into and investigate offenses whether or not occurring in the actual presence of the court involving the character, integrity, professional standing and conduct of members of the bar in this state.

(2) Compel any person by subpoena to appear before it to testify in relation to any matter deemed by the panel to be relevant to any inquiry or investigation it is conducting and to produce before it for examination any books or papers which, in its judgment, may be relevant to such inquiry or investigation.

(3) Utilize a court reporter or court recording monitor employed by the judicial branch to record any testimony taken before it.

(f) The grievance panel may, upon the vote of a majority of its members, require that a disciplinary counsel pursue the matter before the grievance panel on the issue of probable cause.

(P.B. 1978-1997, Sec.27B.)

COMMENTARY:

The amendment to this section allows the grievance panel, upon majority vote, to require that a disciplinary counsel pursue the matter before the panel.

Sec. 2-30. Grievance Counsel for Panels and Investigators

(a) The judges of the superior court shall appoint, as set forth below, attorneys to serve either on a part-time or full-time basis as grievance counsel for grievance panels, and shall appoint one or more investigators either on full-time or part-time basis. The investigators so appointed shall serve the statewide grievance committee, the reviewing committees and the grievance panels and shall be under the supervision of the statewide bar counsel. These appointments shall be for a term of one year commencing July 1. In the event that a vacancy arises in any of these positions before the end of a term, the executive committee of the superior court shall appoint a qualified individual to fill the vacancy for the balance of the term. Compensation for these positions shall be paid by the

judicial branch. Such appointees may be placed on the judicial branch payroll or be paid on a contractual basis.

(b) Consideration for appointment to the position of grievance counsel for a grievance panel shall be given to those candidates recommended to the appointing authority by the resident judges in the judicial district or districts to which the appointment is to be made.

(c) The executive committee of the superior court shall determine the number of grievance counsel to serve one or more grievance panels.

(P.B. 1978-1997, Sec. 27D.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-31. Powers and Duties of Grievance Counsel

Grievance counsel shall have the following powers and duties:

(1) Upon referral of the complaint to the grievance panel, to confer with and, if possible, meet with the complainants and assist them in understanding the grievance process set forth in these rules and to answer questions complainants may have concerning that process.

[(1)](2) To investigate all complaints received by the grievance panel from the statewide bar counsel involving alleged misconduct of an attorney subject to the jurisdiction of the superior court.

[(2)](3) To assist the grievance panels in carrying out their duties under this chapter.

[(3)](4) When determined to be necessary by the statewide grievance committee, to assist reviewing committees of the statewide grievance committee in conducting hearings before said reviewing committees.

(5) If the grievance panel has dismissed the complaint, to assist the complainant in understanding the reasons for the dismissal.

(P.B. 1978-1997, Sec. 27E.)

COMMENTARY:

The above rules expand the role of grievance counsel in assisting complainants in understanding the grievance process and the reasons for a dismissal of their complaint. It is not intended that grievance counsel will provide legal advice to complainants or prosecute the complaint.

Sec. 2-32. Filing Complaints against Attorneys; Action; Time Limitation

(a) Any person, including disciplinary counsel, or a grievance panel on its own motion, may file a written complaint, executed under penalties of false statement, alleging attorney misconduct whether or not such alleged misconduct occurred in the actual presence of the court. Complaints against attorneys shall be filed with the statewide bar counsel. Within seven days of the receipt of a complaint the statewide bar counsel shall review the complaint and process it in accordance with subdivisions (1), (2) or (3) of this subsection as follows:

(1) forward the complaint to a grievance panel in the judicial district in which the respondent maintains his or her principal office or residence, provided that, if the respondent does not maintain such an address in this state, the statewide bar counsel shall forward the complaint to any grievance panel; and notify the complainant and the respondent, by certified mail with return receipt, of the panel to which the complaint was sent. The notification to the respondent shall be accompanied by a copy of the complaint. The respondent shall respond within thirty days of the date notification is mailed to the respondent unless for good cause shown such time is extended by the grievance panel. The response shall be sent to the grievance panel to which the complaint has been referred. The failure to file a timely response shall constitute misconduct unless the respondent establishes that the failure to respond timely was for good cause shown;

(2) refer the complaint to the chair of the statewide grievance committee or an attorney designee of the chair and to a nonattorney member of the committee, and the statewide bar counsel in conjunction with the chair or attorney designee and the nonattorney member, shall if deemed appropriate, dismiss the complaint on one or more of the following grounds:

(A) the complaint only alleges a fee dispute and not a clearly excessive or improper fee;

(B) the complaint does not allege facts which, if true, would constitute a violation of any provision of the applicable rules governing attorney conduct;

(C) the complaint does not contain sufficient specific allegations on which to conduct an investigation;

(D) the complaint is duplicative of a previously dismissed complaint;

(E) the complaint alleges that the last act or omission constituting the alleged misconduct occurred more than six years prior to the date on which the complaint was filed;

(i) Notwithstanding the period of limitation set forth in this subparagraph, an allegation of misconduct that would constitute a violation of Rule 1.15, 8.1 or 8.4(2) through (6) of the Rules of Professional Conduct may still be considered as long as a written complaint is filed within one year of the discovery of such alleged misconduct.

(ii) Each period of limitation in this subparagraph is tolled during any period in which: (1) the alleged misconduct remains undiscovered due to active concealment; (2) the alleged misconduct would constitute a violation of Rule 1.8(c) and the conditions precedent of the instrument have not been satisfied; (3) the alleged misconduct is part of a continuing course of misconduct; or (4) the aggrieved party is under the age of majority, insane, or otherwise unable to file a complaint due to mental or physical incapacitation.

(F) the complaint alleges misconduct occurring in a superior court, appellate court or supreme court action and the court has been made aware of the allegations of misconduct and has rendered a decision finding misconduct or finding that either no misconduct has occurred or that the allegations should not be referred to the statewide grievance committee;

(G) the complaint alleges personal behavior outside the practice of law which does not constitute a violation of the Rules of Professional Conduct;

(H) the complaint alleges the nonpayment of incurred indebtedness;

(I) the complaint names only a law firm or other entity and not any individual attorney, unless dismissal would result in gross injustice. If the complaint names a law firm or other entity as well as an individual attorney or attorneys, the complaint shall be dismissed only as against the law firm or entity**[**.**]**;

(J) the complaint alleges misconduct occurring in another jurisdiction in which the attorney is also admitted and in which the attorney maintains an office to practice law, and it would be more practicable for the matter to be determined in the other jurisdiction. If a complaint is dismissed pursuant to this subdivision, it shall be without prejudice and the matter shall be referred by the statewide bar counsel to the jurisdiction in which the conduct is alleged to have occurred.

(3) If a complaint alleges only a fee dispute within the meaning of subsection (a)(2)(A) of this section, the statewide bar counsel in conjunction with the chairperson or attorney designee and the non-attorney member may stay further proceedings on the complaint on such terms and conditions deemed appropriate, including referring the parties to fee arbitration. The record and result of any such fee arbitration **[**may be considered in determining the disposition**]** shall be filed with the statewide bar counsel and shall be dispositive of the complaint. A party who refuses to

utilize the no cost fee arbitration service provided by the Connecticut Bar Association shall pay the cost of the arbitration.

(b) The statewide bar counsel, chair or attorney designee and nonattorney member shall have fourteen days from the date the complaint was filed to determine whether to dismiss the complaint. If after review by the statewide bar counsel, chair or attorney designee and non-attorney member it is determined that the complaint should be forwarded to a grievance panel for investigation in accordance with subsections (f) through (j) of this section, the complaint shall be so forwarded in accordance with subsection (a) (1) of this section within seven days of the determination to forward the complaint.

(c) If the complaint is dismissed by the statewide bar counsel in conjunction with the chair or attorney designee and nonattorney member, the complainant and respondent shall be notified of the dismissal in writing. The respondent shall be provided with a copy of the complaint with the notice of dismissal. The notice of dismissal shall set forth the reason or reasons for the dismissal. The complainant shall have fourteen days from the date notice of the dismissal is mailed to the complainant to file an appeal of the dismissal. The appeal shall be in writing setting forth the basis of the appeal and shall be filed with the statewide bar counsel who shall forward it to a reviewing committee for decision on the appeal. The reviewing committee shall review the appeal and render a decision thereon within sixty days of the filing of the appeal. The reviewing committee shall either affirm the dismissal of the complaint or order the complaint forwarded to a grievance panel for investigation in accordance with subsections (f) through (j) of this section. The decision of the reviewing committee shall be in writing and mailed to the complainant. The decision of the reviewing committee shall be final.

(d) The statewide bar counsel shall keep a record of all complaints filed. The complainant and the respondent shall notify the statewide bar counsel of any change of address or telephone number during the pendency of the proceedings on the complaint.

(e) If for good cause a grievance panel declines, or is unable pursuant to Section 2-29 (d), to investigate a complaint, it shall forthwith return the complaint to the statewide bar counsel to be referred by him or her immediately to another panel. Notification of such referral shall be given by the statewide bar counsel to the complainant and the respondent by certified mail with return receipt.

(f) The grievance panel, with the assistance of the grievance counsel assigned to it, shall investigate each complaint to determine whether probable cause exists that the attorney is guilty of misconduct. The grievance panel may, upon the vote of a majority of its members, require that a disciplinary counsel pursue the matter before the grievance panel on the issue of probable cause.

(g) Investigations and proceedings of the grievance panel shall be confidential unless the attorney under investigation requests that such investigation and proceedings be public.

(h) On the request of the respondent and for good cause shown, or on its own motion, the grievance panel may conduct a hearing on the complaint. The complainant and respondent shall be entitled to be present at any proceedings on the complaint at which testimony is given and to have counsel present, provided, however, that they shall not be entitled to examine or cross-examine witnesses unless requested by the grievance panel.

(i) The panel shall, within one hundred and ten days from the date the complaint was referred to it, unless such time is extended pursuant to subsection (j), do one of the following: (1) If the panel determines that probable cause exists that the respondent is guilty of misconduct, it shall file the following with the statewide grievance committee: (A) its written determination

[concerning whether] that probable cause exists that the respondent is guilty of misconduct, (B) a copy of the complaint and response, (C) a transcript of any testimony heard by the panel, (D) a copy of any investigatory file and copies of any documents, transcripts or other written materials which were available to the panel. These materials shall constitute the panel's record in the case. (2) If the panel determines that no probable cause exists that the respondent is guilty of misconduct, it shall dismiss the complaint unless there is an allegation in the complaint that the respondent committed a crime. Such dismissal shall be final and there shall be no review of the matter by the statewide grievance committee. In cases in which there is an allegation in the complaint that the respondent committed a crime, the panel shall file with the statewide grievance committee its written determination that no probable cause exists and the materials set forth in subsection (i)(1)(B), (C) and (D). These materials shall constitute the panel's record in the case. **[**The panel may file a motion for extension of time not to exceed thirty days with the statewide grievance committee which may grant the motion only upon a finding of good cause. If the panel does not complete its action on a complaint within the time provided in this section, the statewide committee shall inquire into the delay and shall order that the panel take action on the complaint forthwith, or order that the complaint be forwarded to and heard by another panel or a reviewing committee designated by the statewide grievance committee. The panel 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 such action and affording the respondent the opportunity to be heard.**]**

(j) The panel may file a motion for extension of time not to exceed thirty days with the statewide grievance committee which may grant the motion only upon a finding of good cause. If the panel does not complete its action on a complaint within the time provided in this section, the

statewide committee shall inquire into the delay and shall order that the panel take action on the complaint forthwith, or order that the complaint be forwarded to and heard by another panel or a reviewing committee designated by the statewide grievance committee. The panel 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 such action and affording the respondent the opportunity to be heard.

[(j)**]**(k) The panel shall notify the complainant and the respondent of its determination. The determination shall be a matter of public record.

(P.B. 1978-1997, Sec. 27F.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000.)

COMMENTARY:

The amendments to this section authorize the grievance panels to dismiss a complaint if a finding of no probable cause is made by the panel. That dismissal will be final unless criminal conduct is alleged in the complaint. The last three sentences of subsection (i) have been moved, verbatim, to new subsection (j).

Sec. 2-33. Statewide Grievance Committee

(a) The judges of the superior court shall appoint twenty-one persons to a committee to be known as the "statewide grievance committee." At least seven shall not be attorneys and the remainder shall be members of the bar of this state. The judges shall designate one member as chair and another as vice-chair to act in the absence or disability of the chair.

(b) All members shall serve for a term of three years commencing on July 1. Except as otherwise provided herein, no person shall serve as a member for more than two consecutive three year terms, excluding any appointments for less than a full term; a member may be reappointed after a lapse of one year. If the term of a member who is on a reviewing committee expires while a complaint is pending before that committee, the judges or the executive committee may extend the

term of such member to such time as the reviewing committee has completed its action on that complaint. In the event of such an extension the total number of statewide grievance committee members may exceed twenty-one. The appointment of any member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the remainder of the term or for any other appropriate period. In the event that a vacancy arises in this position before the end of a term by reasons other than revocation or suspension, the executive committee of the superior court shall fill the vacancy for the balance of the term or for any other appropriate period. Unless otherwise provided in this chapter, the committee must have at least a quorum present to act, and a quorum shall be eleven. The committee shall act by a vote of a majority of those present and voting, provided that a minimum of six votes for a particular action is necessary for the committee to act. Members present but not voting due to disqualification, abstention, silence or a refusal to vote, shall be counted for purposes of establishing a quorum, but not counted in calculating a majority of those present and voting.

(c) In addition to any other powers and duties set forth in this chapter, the statewide grievance committee shall:

(1) Institute complaints involving violations of General Statutes § 51-88.

(2) Adopt rules to carry out its duties under this chapter which are not inconsistent with these rules.

(3) Adopt rules for grievance panels to carry out their duties under this chapter which are not inconsistent with these rules.

(4) In its discretion, disclose that it or the statewide bar counsel has referred a complaint to a panel for investigation when such disclosure is deemed by the committee to be in the public interest.

(P.B. 1978-1997, Sec. 27G.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-34. Statewide Bar Counsel

(a) The judges of the superior court shall appoint an attorney to act as statewide bar counsel, and such additional attorneys to act as assistant bar counsel as are necessary, for a term of one year commencing July 1. In the event that a vacancy arises in any such position before the end of a term, the executive committee of the superior court shall appoint an attorney to fill the vacancy for the balance of the term. Compensation for these positions shall be paid by the judicial branch. Such individuals shall be in the legal services division of the office of the chief court administrator and shall perform such other duties as may be assigned to them in that capacity.

(b) In addition to any other powers and duties set forth in this chapter, the statewide bar counsel or an assistant bar counsel shall:

(1) **[**Investigate and prosecute complaints involving the violation by any person of General Statutes § 51-88.

(2)**]** Report to the national disciplinary data bank such requested information as is officially reported to the statewide bar counsel concerning attorneys who have resigned pursuant to Section 2-52, or whose unethical conduct has resulted in disciplinary action by the court or by the statewide grievance committee, or who have been placed on inactive status pursuant to Sections 2-56 through 2-62.

[(3)**]**(2) Receive and maintain information forwarded to the statewide bar counsel by the national disciplinary data bank.

[(4)**]**(3) Receive and maintain records forwarded to the statewide bar counsel by the clerks of court pursuant to Sections 2-23 and 2-52 and by complainants pursuant to Section 2-32.

[(5)**]**(4) Certify to the status of individuals who are or were members of the bar of this state at the request of bar admission authorities of other jurisdictions or at the request of a member of the bar of this state with respect to such member's status. In certifying to the status of an individual, no information shall be provided to the requesting entity, other than public information, without a waiver from that individual.

[(6)**]**(5) Assist the statewide grievance committee and the reviewing committees in carrying out their duties under this chapter.

[(7) At the request of the statewide grievance committee or a reviewing committee, prepare and file complaints initiating presentment proceedings in the superior court, whether or not the alleged misconduct occurred in the actual presence of the court, and prosecute same.**]**

(P.B. 1978-1997, Sec. 27H.)

(New) Section 2-34A. Disciplinary Counsel

(a) There shall be a chief disciplinary counsel and such disciplinary counsel and staff as are necessary. The chief disciplinary counsel and the disciplinary counsel shall be appointed by the judges of the superior court for a term of one year commencing July 1. In the event that a vacancy arises in any of these positions before the end of a term, the executive committee of the superior court may appoint a qualified individual to fill the vacancy for the balance of the term. The chief disciplinary counsel and disciplinary counsel shall be assigned to the office of the chief court administrator for administrative purposes and shall not engage in the private practice of law. The

term “disciplinary counsel” as used in the rules for the superior court shall mean the chief disciplinary counsel or any disciplinary counsel.

(b) In addition to any other powers and duties set forth in this chapter, disciplinary counsel shall:

(1) Investigate each complaint which has been forwarded by a grievance panel to the statewide grievance committee for review pursuant to Section 2-32(i) and pursue such matter before the statewide grievance committee or reviewing committee.

(2) Pursuant to Section 2-82, discuss and may negotiate a disposition of the complaint with the respondent or, if represented by an attorney, the respondent’s attorney, subject to the approval of the statewide grievance committee or a reviewing committee or the court.

(3) Remove irrelevant information from the complaint file and thereafter permit discovery of information in the file.

(4) Have the power to subpoena witnesses for any hearing convened to enforce grievance rules.

(5) In his or her discretion, recommend dispositions to the statewide grievance committee or the reviewing committee after the hearing on a complaint is concluded.

(6) At the request of the statewide grievance committee or a reviewing committee, prepare and file complaints initiating presentment proceedings in the superior court, whether or not the alleged misconduct occurred in the actual presence of the court, and prosecute same.

(7) At the request of a grievance panel made pursuant to Section 2-29, pursue the matter before the grievance panel on the issue of probable cause.

(8) Investigate and prosecute complaints involving the violation by any person of General Statutes § 51-88.

COMMENTARY:

It is recommended that the position of disciplinary counsel be created within the office of the chief court administrator. The disciplinary counsel will investigate and pursue all cases before the statewide grievance committee or the reviewing committee. The disciplinary counsel will also have the other powers indicated. Unless requested by a grievance panel under Section 2-29 to pursue a matter before the grievance panel, the disciplinary counsel would become involved only after a determination that there is probable cause that the respondent is guilty of misconduct, or a determination that a crime is alleged in the complaint. The disciplinary counsel will initiate presentment proceedings and assume all prosecutorial functions of the office of statewide bar counsel.

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 determine**[**s**]**d 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 determine**[**s**]**d 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. 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 such action and affording the respondent the opportunity to be heard.

(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 complainant] 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 [of probable cause or no probable cause] 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 [statewide bar] 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 [and which rendered a probable cause determination]. The decision shall be a matter of public record if it results in the imposition of discipline. 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 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.

(h) If, after its review of a complaint pursuant to this section <u>that was forwarded to the statewide grievance committee pursuant to Sec. 2-32(i)(2)</u>, 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 **[**and which rendered a probable cause determination. Such decision shall be a matter of public record**]**.

(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 **[**concerning probable cause**]** was filed with it to render a decision dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37 or directing the **[**statewide bar**]** 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.)

COMMENTARY:

The amendments to this section make this section consistent with the Section 2-32 which, as amended, gives grievance panels the authority to dismiss complaints. The amendments also recognize the responsibilities of disciplinary counsel to pursue all matters before the statewide grievance committee, and require that at least two of the three reviewing committee members be physically present at all hearings held by such committee.

Sec. 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 (g), 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 **[**statewide bar**]** 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 (g).

(P.B. 1978-1997, Sec. 27M.)

COMMENTARY:

This amendments to this section recognize the responsibilities of disciplinary counsel.

Sec. 2-37. Sanctions and Conditions Which May Be Imposed by Committees

(a) A reviewing committee or the statewide grievance committee may impose one or more of the following sanctions and conditions in accordance with the provisions of Sections 2-35 and 2-36:

(1) reprimand;

(2) restitution;

(3) assessment of costs;

(4) an order that the respondent return a client's file to the client;

(5) a requirement that the respondent attend continuing legal education courses, at his or her own expense, regarding one or more areas of substantive law or law office management;

(6) an order to submit to fee arbitration;

(7) with the respondent's consent, an order to submit to periodic audits and supervision of the attorney's trust accounts to insure compliance with the provisions of Section 2-27 and the related Rules of Professional Conduct;

(8) with the respondent's consent, a requirement that the respondent undertake treatment, at his or her own expense, for medical, psychological or psychiatric conditions or for problems of alcohol or substance abuse.

(b) In connection with subsection (a)(6), a party who refuses to utilize the no cost fee arbitration service provided by the Connecticut Bar Association shall pay the cost of the arbitration.

(c) Failure of the respondent to comply with any sanction or condition imposed by the statewide grievance committee or a reviewing committee may be grounds for presentment before the superior court.

(P.B. 1978-1997, Sec. 27M.1.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

COMMENTARY:

No changes are proposed to this section.

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). The appeal shall be filed with the clerk of the superior court for the judicial district of Hartford at Hartford within thirty days from the issuance, pursuant to Section 2-36, of the decision of the statewide grievance committee. A copy of the appeal shall be served on the statewide bar counsel as agent for the statewide grievance committee in the same manner as in civil actions.

(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 **[**statewide grievance committee**]** disciplinary counsel shall file **[**its**]** 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 seven thousand five hundred dollars 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.

(P.B. 1978-1997, Sec. 27N.) (Amended June 29, 1998, to take effect Sept. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000.)

COMMENTARY:

The amendments to this section recognize the responsibilities of the disciplinary counsel in regard to this section.

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 **[**statewide

bar**]** 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 **[**lawyer**]** disciplinary counsel shall file **[**it**]** 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 **[**statewide bar**]** 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 has been established by clear and convincing evidence.

(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.

(P.B. 1978-1997, Sec. 28A.) (Amended June 29, 1998, to take effect Sept. 1, 1998.)

COMMENTARY:

A judge hearing the matter may want to consider the following criteria:

(1) The procedure was 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 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 imposition of the same discipline by the court would result in grave injustice; or

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

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

See ABA, *Model Rules for Lawyer Disciplinary Enforcement*, Rule 22 D.

Sec. 2-40. Discipline of Attorneys Convicted of a Felony and other matters in Connecticut

(a) The clerk of the superior court location in this state in which a lawyer is convicted of a felony, any larceny or any crime for which the lawyer is sentenced to a term of incarceration or for which a suspended period of incarceration is imposed, shall transmit, immediately upon the imposition of sentence, a certificate of the conviction to the **[**statewide bar**]** disciplinary counsel and to the statewide grievance committee. The lawyer shall also notify the disciplinary counsel in writing of his or her conviction. The **[**statewide bar**]** disciplinary counsel or designee shall, pursuant to Section 2-47, file a presentment against the lawyer predicated upon the conviction. No entry fee shall be required for proceedings hereunder.

(b) The provisions of subsection (c) of this section notwithstanding, after sentencing an attorney who has been convicted of a felony, any larceny or any crime for which the lawyer is sentenced to a term of incarceration or for which a suspended period of incarceration is imposed, the judge who presided at the trial may in his or her discretion enter an order immediately suspending the attorney pending final disposition of a disciplinary proceeding predicated upon the conviction. Thereafter, upon good cause shown, the judge before whom the presentment is pending may, in the interest of justice, set aside or modify the interim suspension.

(c) A presentment filed pursuant to this section shall be heard by the judge who presided at the trial which resulted in the **[**felony**]** conviction. A hearing on the presentment complaint addressing the issue of the eligibility of such attorney to continue the practice of law in this state

shall be held within thirty days of sentencing or the filing of the presentment, whichever is later. Such hearing shall be prosecuted by the **[**statewide bar**]** disciplinary counsel**[**, an assistant bar counsel**]** or an attorney designated pursuant to Section 2-48. At such hearing the attorney shall have the right to counsel, to be heard in his or her own defense and to present evidence and witnesses in his or her behalf. After such hearing, the judge shall enter an order dismissing the matter or imposing discipline upon such attorney in the form of suspension for a period of time, disbarment or such other discipline as the judge deems appropriate.

(d) Whenever the judge enters an order suspending or disbarring an attorney pursuant to subsections (b) or (c) of this section, it may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the attorney's interests.

(e) If an attorney suspended solely under the provisions of this section demonstrates to the court that the underlying judgment of conviction has been vacated or reversed, the court shall vacate the order of interim suspension and place the attorney on active status. The vacating of the interim suspension shall not automatically terminate any other disciplinary proceeding then pending against the attorney.

(f) Immunity from prosecution granted to an attorney is not a bar to disciplinary proceedings, unless otherwise ordered by a judge of the superior court. The granting of a pretrial diversion program to an attorney charged with a crime is not a bar to disciplinary proceedings, unless otherwise ordered by the judge who granted the program to the attorney.

(g) When an attorney has been found guilty of a crime, and if the matter is not final and is subject to appeal, the disciplinary counsel may seek an interim suspension.

(P.B. 1978-1997, Sec. 28B.)

COMMENTARY:

The amendments to this section broaden the application of this section to matters other than felonies, provide a procedure by which an order of interim suspension can be vacated based upon the underlying conviction having been vacated or reversed, provide that immunity from prosecution and the granting of a pretrial diversion program to an attorney will not bar disciplinary proceedings and allow disciplinary counsel to seek an interim suspension against an attorney who has been found guilty of a crime but whose criminal matter is not final and is subject to appeal.

Sec. 2-41. Discipline of Attorneys Convicted of a Felony in Another Jurisdiction

(a) An attorney shall send to the **[**statewide bar**]** disciplinary counsel written notice of his or her conviction in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined within ten days of the entry of the judgment of conviction. That written notice shall be sent by certified mail, return receipt requested.

(b) The term "conviction" as used herein refers to the disposition of any charge of a serious crime as hereinafter defined resulting from either a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal.

(c) The term "serious crime" as used herein shall mean any felony as defined in the jurisdiction in which the attorney was convicted.

(d) The written notice required by subsection (a) of this section shall include the name and address of the court in which the judgment of conviction was entered, the date of the judgment of conviction, and the specific section of the applicable criminal or penal code upon which the conviction is predicated.

(e) Upon receipt of the written notice of conviction the **[**statewide bar**]** disciplinary counsel shall obtain a certified copy of the attorney's judgment of conviction, which certified copy shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney on the basis of the conviction. Upon receipt of the certified copy of the judgment of conviction, the **[**statewide bar**]** disciplinary counsel shall file a presentment against the

attorney with the superior court for the judicial district wherein the attorney maintains an office for the practice of law in this state, except that, if the attorney has no such office, the **[**statewide bar**]** disciplinary counsel shall file it with the superior court for the judicial district of Hartford. The filing of a presentment shall be discretionary with the disciplinary counsel where the offense for which the attorney has been convicted carries a period of incarceration of one year or less. The sole issue to be determined in the presentment proceeding shall be the extent of the final discipline to be imposed, provided that the presentment proceeding instituted will not be brought to hearing until all appeals from the conviction are concluded unless the attorney requests that the matter not be deferred. The **[**statewide bar**]** disciplinary counsel shall also apply to the court for an order of immediate interim suspension, which application shall contain the certified copy of the judgment of conviction. The court may in its discretion enter an order immediately suspending the attorney pending final disposition of a disciplinary proceeding predicated upon the judgment of conviction. Thereafter, upon good cause shown, the court may, in the interest of justice, set aside or modify the interim suspension. Whenever the court enters an order suspending or disbarring an attorney pursuant to this section, the court may appoint a trustee, pursuant to Section 2-64, to protect the client's and the attorney's interests.

(f) If an attorney suspended solely under the provisions of this section demonstrates to the court that the underlying judgment of conviction has been vacated or reversed, the court shall vacate the order of interim suspension and place the attorney on active status. The vacating of the interim suspension shall not automatically terminate any other disciplinary proceeding then pending against the attorney.

(g) An attorney's failure to send the written notice required by this section shall constitute misconduct.

(h) No entry fee shall be required for proceedings hereunder.

(P.B. 1978-1997, Sec. 28B.1.) (Amended June 29, 1998, to take effect Sept. 1, 1998.)

COMMENTARY:

The amendments to this section substitute disciplinary counsel for statewide bar counsel, and provide disciplinary counsel with discretion concerning whether to bring a presentment where the offense for which the attorney has been convicted carries a period of incarceration of one year or less.

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

(a) If there is a disciplinary proceeding pending against a lawyer and the grievance panel, the reviewing committee, **[**or**]** 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, the panel or committee shall so advise the **[**statewide bar**]** disciplinary counsel. The **[**statewide bar**]** disciplinary counsel**[**, an assistant bar counsel or an attorney appointed pursuant to Section 2-48**]** 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.)

COMMENTARY:

The amendments to this section substitute disciplinary counsel for statewide bar counsel and allows the disciplinary counsel to pursue, in his or her discretion, an order of interim suspension.

Sec. 2-43. Notice by Attorney of Alleged Misuse of Clients' Funds and Garnishments of Lawyers' Trust Accounts

(a) When any complaint, counterclaim, cross complaint, special defense or other pleading in a judicial or administrative proceeding alleges a lawyer's misuse of funds handled by the lawyer in his or her capacity as a lawyer or a fiduciary, the person signing the pleading shall mail a copy thereof to the statewide bar counsel.

(b) In any case where a lawyer's trust account, as defined in Section 2-28 (b), is garnisheed, or otherwise liened, the party who sought the garnishment or lien shall mail a copy of the garnishee process or writ of attachment to the statewide bar counsel.

(P.B. 1978-1997, Sec. 28D.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-44. Power of Superior Court to Discipline Attorneys and to Restrain Unauthorized Practice

The superior court may, for just cause, suspend or disbar attorneys and may, for just cause, punish or restrain any person engaged in the unauthorized practice of law.

(P.B. 1978-1997, Sec. 29.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-45. --Cause Occurring in Presence of Court

If such cause occurs in the actual presence of the court, the order may be summary, and without complaint or hearing; but a record shall be made of such order, reciting the ground thereof. Without limiting the inherent powers of the court, if attorney misconduct occurs in the actual presence of the court, the statewide grievance committee and the grievance panels shall defer to the court if the court chooses to exercise its jurisdiction.

(P.B. 1978-1997, Sec. 30.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-46. Suspension of Attorneys Who Violate Support Orders

(a) Except as otherwise provided in this section, the procedures of General Statutes §§ 46b-220 through 46b-223 shall be followed with regard to the suspension from the practice of law of attorneys who are found to be delinquent child support obligors.

(b) A judge, upon finding that an attorney admitted to the bar in this state is a delinquent child support obligor as defined in General Statutes § 46b-220(a), may, pursuant to General Statutes § 46b-220(b), issue a suspension order concerning that attorney.

(c) If the attorney obligor fails to comply with the conditions of the suspension order within thirty days of its issuance, the department of social services, a support enforcement officer, the attorney for the obligee or the obligee, as provided in the suspension order, shall file with the clerk of the superior court which issued the suspension order an affidavit stating that the conditions of the suspension order have not been met, and shall serve the attorney obligor with a copy of such affidavit in accordance with Sections 10-12 through 10-17. The affidavit shall be filed within forty-five days of the expiration of the thirty day period.

(d) Upon receipt of the affidavit, the clerk shall forthwith bring the suspension order and the affidavit to a judge of the superior court for review. If the judge determines that pursuant to the provisions of General Statutes § 46b-220 the attorney obligor should be suspended, the judge shall suspend the attorney obligor from the practice of law, effective immediately.

(e) A suspended attorney who has complied with the conditions of the suspension order concerning reinstatement, shall file a motion with the court to vacate the suspension. Upon proof of such compliance, the court shall vacate the order of suspension and reinstate the attorney. The provisions of Section 2-53 shall not apply to suspensions under this section.

(f) The clerk shall notify the statewide bar counsel of any suspensions and reinstatements ordered pursuant to this section.

(P.B. 1978-1997, Sec. 30A.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-47. Presentments and Unauthorized Practice of Law Petitions

(a) Presentment of attorneys for misconduct, whether or not the misconduct occurred in the actual presence of the court, shall be made by written complaint of the statewide grievance committee or a reviewing committee. Service of the complaint shall be made as in civil actions. Any interim proceedings to the contrary notwithstanding, a hearing on the merits of the complaint shall be held within sixty days of the date the complaint was filed with the court. At such hearing, the respondent shall have the right to be heard in his or her own defense and by witnesses and counsel. After such hearing the court shall render a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. <u>This may include conditions to be fulfilled by the attorney</u>

before he or she may apply for readmission or reinstatement. Unless otherwise ordered by the court, such complaints shall be prosecuted by the **[**statewide bar**]** disciplinary counsel**[**, an assistant bar counsel**]** or an attorney appointed pursuant to Section 2-48.

(b) The sole issue to be determined in a disciplinary proceeding predicated upon conviction of a felony, any larceny or crime for which the lawyer is sentenced to a term of incarceration or for which a suspended period of incarceration is imposed shall be the extent of the final discipline to be imposed.

(c) A petition to restrain any person from engaging in the unauthorized practice of law not occurring in the actual presence of the court may be made by written complaint to the superior court in the judicial district where such violation occurs. When offenses have been committed by the same person in more than one judicial district, presentment for all offenses may be made in any one of such judicial districts. Such complaint may be prosecuted by the state's attorney, by the **[**statewide bar**]** disciplinary counsel, or by any member of the bar by direction of the court. Upon the filing of such complaint, a rule to show cause shall issue to the defendant, who may make any proper answer within twenty days from the return of the rule and who shall have the right to be heard as soon as practicable, and upon such hearing the court shall make such lawful orders as it may deem just. Such complaints shall be proceeded with as civil actions.

(d) If a determination is made by the statewide grievance committee or a reviewing committee that a respondent is guilty of misconduct and such misconduct does not otherwise warrant a presentment to the superior court, but the respondent has been reprimanded pursuant to these rules at least three times within the five year period preceding the date of such determination, the statewide grievance committee or the reviewing committee shall direct the disciplinary counsel to file a presentment against the respondent in the superior court. Service of

the matter shall be made as in civil actions. The statewide grievance committee or the reviewing committee shall file with the court the record in the matter and a copy of the prior reprimands issued against the respondent within such five year period. The sole issue to be determined by the court upon the presentment shall be the appropriate discipline to be imposed as a result of the nature of the misconduct in the instant case and the cumulative reprimands issued concerning the respondent within such five year period. Such discipline may include reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This suspension or disbarment may include conditions to be fulfilled by the respondent before he or she may apply for readmission or reinstatement.

(e) If the respondent has appealed the issuance of a finding of misconduct made by the statewide grievance committee or the reviewing committee, the court shall first adjudicate and decide that appeal in accordance with the procedures set forth in subsections (d) through (f) of Section 2-38. In the event the court denies the respondent's appeal of the finding of misconduct, the court shall then adjudicate the presentment brought under this section. In no event shall the court review the merits of the matters for which the prior reprimands were issued against the respondent. This subsection shall apply to all findings of misconduct issued from the day of enactment forward and the determination of presentment shall consider all reprimands within a five year period from the finding of misconduct even if they predate the effective date of these rules.

[(d)**]**(f) No entry fee shall be required for the filing of any complaint pursuant to this section.

(P.B. 1978-1997, Sec. 31.)

COMMENTARY:

The court may consider the nature of the rule violations giving rise to the reprimands, the attorney's service to the community, the length of the time the attorney has practiced, the amount of

time between events resulting in the imposition of discipline, and the attorney's own efforts to improve the quality of his lawyering. Not every instance of repeated reprimands will require further discipline, however, such repeated occurrences warrant further scrutiny regarding the attorney's continued fitness to practice law without harm to the public.

Sec. 2-48. Designee to Prosecute Presentments

The executive committee of the superior court may choose one or more members of the bar of this state to prosecute presentments. The chief court administrator may also contract with members of the bar of this state to prosecute presentments, actions for reciprocal discipline, actions for interim suspension and disciplinary proceedings predicated on the conviction of an attorney of a felony or other crime set out in Section 2-40.

(P.B. 1978-1997, Sec. 31A.)

COMMENTARY:

The amendment to this section makes the section consistent with Section 2-40.

Sec. 2-49. Restitution

Whenever restitution has been made the panel or committee investigating the attorney's conduct shall nevertheless determine if further proceedings are necessary. If it is found that further proceedings are deemed unnecessary, such decision shall be reviewed by the statewide grievance committee in accordance with the provisions of this chapter.

(P.B. 1978-1997, Sec. 31B.)

COMMENTARY:

No changes are proposed to this section.

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

(a) The records and transcripts, if any, of hearings conducted by the state bar examining committee or the several standing committees on recommendations for admission to the bar shall be

available only to such committee or to a judge of the superior court or to the statewide grievance committee or, with the consent of the applicant, to any other person, unless otherwise ordered by the court.

(b) For purposes of this section, the record in a grievance proceeding shall consist of the following: (1) the grievance panel's record, (2) the reviewing committee's record, (3) any statement submitted to the statewide grievance committee concerning a proposed decision, (4) any request submitted to the statewide grievance committee concerning a reviewing committee decision, and (5) the decision and record, if any, of the statewide grievance committee or reviewing committee. The statewide grievance committee shall maintain the record of each grievance proceeding, including presentments. All such records pertaining to grievance complaints that have been filed on or after July 1, 1986, and that have not been dismissed by a grievance panel, by the statewide grievance committee or by a reviewing committee, shall be public. All such 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 shall be available only to such committee or its counsel, to reviewing committees, to grievance panels, to a judge of the superior court, to the standing committee on recommendations for admission to the bar, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court. **[**Notwithstanding the above, f**]**For all complaints filed on or after July 1, 1986, the following shall be public records: (1) the grievance panel's probable cause determination, (2) the reviewing committee's proposed or final decision, (3) the statewide grievance committee's decision and (4) transcripts of hearings held following a determination that probable cause exists except that records of complaints dismissed pursuant to Section 2-32(a)(2) shall not be public. For purposes of this section, all grievance complaints that are pending before a grievance panel on July 1, 1986, shall be

deemed to have been filed on that date. Notwithstanding the above, all records of the statewide grievance committee, a grievance panel and any disciplinary counsel shall be erased, and shall not be made public, in any proceeding which has been concluded by: (a) a final decision of the statewide grievance committee or a reviewing committee thereof or a grievance panel dismissing the complaint; or (b) a final judgment of the superior court in a proceeding under Sec. 2-38 rescinding a reprimand, including a judgment directed on an appeal from the superior court; or (c) a final judgment of the superior court in favor of a respondent in a proceeding commenced pursuant to Sections 2-36, 2-39 through 2-46, and Sections 2-47 or 2-52, including a judgment directed on an appeal from the superior court. Nothing in this rule shall prohibit the use or consideration of such erased records in any subsequent disciplinary or client security fund proceeding pertaining to the respondent and such records shall be available to a judge of the superior court, to the standing committee on recommendations for admission to the bar, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

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

[(c)**]**(d) The records and decisions pertaining to grievance complaints that have been decided by a local grievance committee prior to July 1, 1986, shall be available only to the statewide grievance committee or its counsel, to reviewing committees, to grievance panels, to a judge of the superior court, to the standing committee on recommendations for admission to the bar, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

(P.B. 1978-1997, Sec. 32.)

COMMENTARY: The amendments to this section allow certain records to be erased.

Sec. 2-51. Costs and Expenses

Costs may be taxed against the respondent in favor of the state, if the respondent be found guilty of the offense charged in whole or in part, at the discretion of the court. The court may also, upon any such complaint by the state's attorney or by the statewide grievance committee, as the case may be, audit and allow (whatever may be the result of the proceeding) reasonable expenses to be taxed as part of the expenses of the court.

(P.B. 1978-1997, Sec. 34.)

COMMENTARY:

No changes are proposed to this section.

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 quintuplicate with the clerk of the superior court in the judicial district in which the attorney resides. The clerk shall forthwith send one copy to the grievance panel, one copy to the statewide bar 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 hearing following a report by the statewide grievance committee that the investigation has been completed, **[**unless**]** <u>whether or not</u> the attorney seeking to resign shall, in the resignation, waive the privilege of applying for readmission to the bar at any future time.

(P.B. 1978-1997, Sec. 35.)

COMMENTARY:

The amendment to this section requires the court to consider each resignation before such resignation will become effective regardless of whether the attorney seeking to resign has waived the privilege of applying for readmission to the bar.

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

(a) No application for reinstatement or readmission shall be considered by the court unless the applicant, inter alia, states under oath in the application that he or she has successfully fulfilled all conditions imposed on him or her as a part of the applicant's discipline. However, if an applicant asserts that a certain condition is impossible to fulfill, he or she may apply, stating that assertion and the basis therefor. It is the applicant's burden to prove at the hearing on reinstatement or readmission the impossibility of the certain condition. Any application for reinstatement or readmission to the bar shall contain a statement by the applicant indicating whether such applicant has previously applied for reinstatement or readmission and if so, when. The application shall be referred, by the court to which it is brought, to the standing committee on recommendations for admission to the bar that has jurisdiction over the judicial district court location in which the applicant was suspended or disbarred or resigned, and notice of the pendency of such application shall be given to the state's attorney of that judicial district, the chair of the grievance panel whose jurisdiction includes that judicial district court location, **[**all other attorneys in active practice in it,**]** the statewide grievance committee, **[**and**]** 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, and it shall also be published in the Connecticut Law Journal. The standing committee on recommendations shall investigate the application, hold hearings pertaining thereto and render a report with its

recommendations to the court. The court shall thereupon inform the chief justice of the supreme court of the pending application and report, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session. Such three judges, or a majority of them, shall determine whether the application should be granted.

(b) The standing committee shall notify the presiding judge, no later than fourteen days prior to the court hearing, if the committee will not be represented by counsel at the hearing and, upon such notification, the presiding judge may appoint, in his or her discretion, an attorney to review the issue of reinstatement and report his or her findings to the court. The attorney so appointed shall be compensated in accordance with a fee schedule approved by the Executive Committee of the superior court.

(c) The applicant shall pay to the clerk of the superior court $200 at the time his or her application is filed. This sum shall be expended in the manner provided by Section 2-22 of these rules. <u>If the petition for readmission or reinstatement is denied, the reasons therefore shall be stated on the record or put in writing. The attorney may not reapply for six months following the denial.</u>

(P.B. 1978-1997, Sec. 36.) (Amended June 26, 2000, to take effect Jan. 1, 2001).

COMMENTARY:

The three judge panel considering an attorney's petition for reinstatement may want to consider the following criteria:

(1) The lawyer has fully complied with the terms and conditions of all prior disciplinary orders.

(2) The lawyer has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or disbarment.

(3) If the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been removed. Where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer shall not be reinstated or readmitted unless:

(a) the lawyer has pursued appropriate rehabilitative treatment;

(b) the lawyer has abstained from the use of alcohol or other drugs for an appropriate period of time; and

(c) the lawyer is likely to continue to abstain from alcohol or other drugs.

(4) The lawyer recognizes the wrongfulness and seriousness of the misconduct for which the lawyer was suspended or disbarred.

See ABA, *Model Rules for Lawyer Disciplinary Enforcement,* Rule 25 E.

Sec. 2-54. Publication of Notice of Reprimand, Suspension, Disbarment, Resignation, Placement on Inactive Status or Reinstatement

(a) Notice of the final action transferring an attorney to inactive status or reprimanding, suspending, or disbarring an attorney from practice in this state shall be published once in the Connecticut Law Journal by the authority accepting or approving such action. Notice of a reprimand by the statewide grievance committee or by a reviewing committee shall not be published until the expiration of any stay pursuant to Sections 2-35(e) and 2-38.

(b) Notice of the resignation or reinstatement after suspension, disbarment, resignation or placement on inactive status of an attorney shall be published once in the Connecticut Law Journal by the authority accepting or approving such action.

(P.B. 1978-1997, Sec. 36A.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-55. Retirement of Attorney

Written notice of retirement from the practice of law, pursuant to the provisions of General Statutes § 51-81b, shall not constitute removal from the bar or the roll of attorneys, but it shall be noted on the roll of attorneys kept by the clerk in Hartford county who shall notify the statewide bar counsel of such retirement. The notice shall include the attorney's jurist number and be filed in triplicate with such clerk. Upon the filing of such notice, the attorney shall no longer be eligible to practice law as an attorney admitted in the state of Connecticut. Retirement may be revoked at any time upon written notice to the clerk for Hartford county and the statewide bar counsel. Disciplinary

proceedings against an attorney shall not be stayed or terminated on account of the attorney's retirement from the practice of law.

(P.B. 1978-1997, Sec. 37.) (Amended Nov. 17, 1999, on an interim basis pursuant to Section 1-9(c), to take effect Jan. 1, 2000 and amendment adopted June 26, 2000, to take effect Jan. 1, 2001.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-56. Inactive Status of Attorney

During the time an order placing an attorney on inactive status is in effect, such attorney shall be precluded from practicing law. No entry fee shall be required for proceedings pursuant to this section and Sections 2-57 through 2-62. Any hearings necessitated by the proceedings may, in the discretion of the court, be held in chambers, and records and papers filed in connection therewith shall be open for inspection only to persons having a proper interest therein and upon order of the court. The court shall, in exercising discretion, weigh the public policy in favor of open proceedings, as well as the duty to protect the public, against the attorney's right to medical and mental health privacy and ability to pursue a livelihood.

(P.B. 1978-1997, Sec. 39.)

COMMENTARY:

The amendment to this section is intended to provide the court with a standard by which its discretion to hold hearings in chambers shall be exercised.

Sec. 2-57. --Prior Judicial Determination of Incompetency or Involuntary Commitment

In the event an attorney is by a court of competent jurisdiction (1) declared to be incapable of managing his or her affairs or (2) committed involuntarily to a mental hospital for drug dependency, mental illness, or the addictive, intemperate, or excessive use of alcohol, the superior court, upon notice from a grievance panel, a reviewing committee, the statewide grievance

committee or a state's attorney and upon proof of the fact of incapacity to engage in the practice of law, shall enter an order placing such attorney upon inactive status, effective immediately, for an indefinite period and until further order of the court. A copy of such order shall be served, in such manner as the court shall direct, upon such attorney, the attorney's conservator if any, and the director of any mental hospital in which the attorney may reside.

(P.B. 1978-1997, Sec. 40.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-58. --No Prior Determination of Incompetency or Involuntary Commitment

(a) Whenever a grievance panel, a reviewing committee, **[**or**]** the statewide grievance committee or the disciplinary counsel shall have reason to believe that an attorney is incapacitated from continuing to practice law by reason of mental infirmity or illness or because of drug dependency or addiction to alcohol, **[**it**]** such committee or counsel shall petition the court to determine whether the attorney is so incapacitated and the court may take or direct such action as it deems necessary or proper for such determination, including examination of the attorney by such qualified medical expert or experts as the court shall designate, at the expense of the judicial branch. If, upon due consideration of the matter, the court is satisfied and concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order placing the attorney in an inactive status on the ground of such disability for an indefinite period and until the further order of the court, and any pending disciplinary proceedings against the attorney shall be held in abeyance.

(b) The court may provide for such notice to the respondent attorney of proceedings in the matter as is deemed proper and advisable and shall appoint an attorney, at the expense of the judicial branch, to represent any respondent who is without adequate representation.

(P.B. 1978-1997, Sec. 41.)

COMMENTARY:

The amendment to this section authorizes the disciplinary attorney to petition the court to determine whether an attorney is incapacitated as defined with this section.

Sec. 2-59. --Disability Claimed during Course of Disciplinary Proceeding

If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering, by reason of mental infirmity or illness, or because of drug dependency or addiction to alcohol, from a disability which makes it impossible for the respondent adequately to defend himself or herself, the court thereupon shall, in a proceeding instituted in substantial accordance with the provisions of Section 2-58, enter an order placing the respondent on inactive status until a determination is made of the respondent's capacity to **[**continue the practice of law**]** defend himself or herself. Notice of the institution of inactive status proceedings shall be provided to the Statewide Bar Counsel. If the court determines that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of the disciplinary proceeding against the respondent.

(P.B. 1978-1997, Sec. 42.)

COMMENTARY:

The amendment to this section is intended for clarity.

Sec. 2-60. --Reinstatement upon Termination of Disability

(a) Any attorney placed upon inactive status under the provisions of these rules shall be entitled to apply for reinstatement, without the payment of an entry fee, at such intervals as the court may direct in the order placing the attorney on inactive status or any modification thereof. Such application shall be granted by the court upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon

such application, the court may take or direct such action as it deems necessary or proper, including the determination whether the attorney's disability has been removed, and including direction of an examination of the attorney by such qualified medical expert or experts as the court shall designate. The court shall direct that the expense of such an examination be paid either by the attorney or by the judicial branch.

(b) Where an attorney has been placed on inactive status by an order in accordance with the provisions of Section 2-57 and thereafter, in proceedings duly taken, has been judicially declared to be competent, the court may dispense with further evidence that his or her disability has been removed and may direct his or her return to active status upon such terms as are deemed proper and advisable.

(P.B. 1978-1997, Sec. 44.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-61. --Burden of Proof in Inactive Status Proceedings

In a proceeding seeking an order to place an attorney on inactive status, the burden of proof shall rest with the petitioner. In a proceeding seeking an order terminating inactive status, the burden of proof shall rest with the inactive attorney.

(P.B. 1978-1997, Sec. 45.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-62. --Waiver of Doctor-Patient Privilege upon Application for Reinstatement

The filing of an application for reinstatement by an attorney on inactive status shall be deemed to constitute a waiver of any doctor-patient privilege existing between the attorney and any

psychiatrist, psychologist, physician or hospital who or which has examined or treated the attorney during the period of disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or at which the attorney has been examined or treated since being placed on inactive status and shall furnish to the court written consent to each to divulge such information and records as are requested by court-appointed medical experts or by the clerk of the court.

(P.B. 1978-1997, Sec. 46.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-63. Definition of Respondent

When used in Sections 2-29 through 2-62 the word "respondent" shall mean the attorney against whom a grievance complaint or presentment has been filed or a person who is alleged to have been engaged in the unauthorized practice of law pursuant to General Statutes § 51-88.

(P.B. 1978-1997, Sec. 46A.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-64. Appointment of Attorney to Protect Clients' and Attorney's Interests

(a) Whenever an attorney is placed upon inactive status, suspended, disbarred, or resigns, the court, upon such notice to him or her as the court may direct, shall appoint an attorney or attorneys to inventory the files of the inactive, suspended, disbarred or resigned attorney and to take such action as seems indicated to protect the interests of the attorney's clients. The court may also appoint an attorney to protect the interests of the attorney placed on inactive status, suspended, disbarred or resigned with respect to such files, when the attorney is not otherwise represented and

the court deems that such representation is necessary. If the discipline imposed is not effective immediately as a result of an appeal or stay, the court, after the hearing and consideration of the merits of the appeal or reason for the stay, may issue interim orders to protect the public during the pendency of the appeal period or stay, until the discipline order becomes effective. In case of an attorney's death, the court may appoint an attorney where no partner, executor or other responsible party capable of conducting the deceased's attorney's affairs is known to exist or willing to assume the responsibility.

(b) Any attorney so appointed by the court shall not be permitted to disclose any information contained in any file so inventoried without the consent of the client to whom such file relates except as is necessary to carry out the order of the court which appointed the attorney to make such inventory.

(c) Not less frequently than once each year and at such time as the attorney may be returned to active status, reinstated or readmitted to the practice of law or when the attorney appointed to protect clients' interests has finished rendering services to those clients, the appointed attorney shall file with the court, for its examination and approval, a report showing fees earned from the clients of the attorney, necessary disbursements, and the amount requested by the appointed attorney as a fee for services rendered, to be paid out of the funds received. Any attorney so appointed by the court for the inactive, suspended, disbarred**,** **[**or**]** resigned or deceased attorney may also be reimbursed for his or her services from any amount found to be due to the inactive, suspended, disbarred**,** **[**or**]** resigned or deceased attorney for services rendered to such clients. All attorney's fees paid to any attorney appointed hereunder shall be subject to court approval.

(d) Unless the attorney appointed to protect clients' interests is a partner or associate of the attorney, if the attorney is returned to active status, reinstated or readmitted, the appointed attorney

shall immediately cease representing the clients of the attorney and shall return to the reinstated or readmitted attorney, or to the attorney returned to active status, such files as the appointed attorney may have received, and the appointed attorney and partners and associates shall not represent any person who was a client of the reinstated or readmitted attorney, or who was a client of an attorney returned to active status, on or before the date when he or she was placed upon inactive status, suspended, disbarred or resigned, unless the court which entered the order directing reinstatement, readmission, or return to active status shall order otherwise after written request to the court by the client whose interest is involved.

(P.B. 1978-1997, Sec. 46B.)

COMMENTARY:

The amendment to this section addresses the concern of the committee that the public should be protected during the period between an order of discipline being imposed and becoming effective. The amendment also addresses situations in which an attorney has died.

Sec. 2-65. Good Standing of Attorney

An attorney is in good standing in this state if the attorney has been admitted to the bar of this state, has registered with the statewide grievance committee in compliance with Section 2-27 (d), and is not under suspension, on inactive status, disbarred, or resigned from the bar.

(P.B. 1978-1997, Sec. 46C.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-66. Practice by Court Officials

(a) No lawyer who is a judge of the supreme court, appellate court or superior court shall practice law in any state or federal court.

(b) The chief public defender, the deputy chief public defender, public defenders, assistant public defenders, deputy assistant public defenders, the chief state's attorney, the deputy chief state's attorney, state's attorneys, assistant state's attorneys and deputy assistant state's attorneys who have been appointed on a full-time basis will devote their full time to the duties of their offices, will not engage in the private practice of law, either civil or criminal, and will not be connected in any way with any attorney or law firm engaged in the private practice of law.

(c) No state's attorney or assistant state's attorney, no partner or associate of a law firm of which any of the aforementioned court officials is a partner or associate, shall appear as counsel in any criminal case in behalf of any accused in any state or federal court.

(d) No chief clerk, deputy chief clerk, clerk, deputy clerk or assistant clerk who has been appointed on a full-time basis shall appear as counsel in any civil or criminal case in any state or federal court. Such persons may otherwise engage in the practice of law as permitted by established judicial branch policy.

(e) No chief public defender, deputy chief public defender, public defender, assistant public defender or deputy assistant public defender shall appear in behalf of the state in any criminal case.

(P.B. 1978-1997, Sec. 47.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-67. Payment of Attorneys by Bank and Trust Companies

(a) No attorney shall directly or indirectly receive payment from any bank or trust company for legal services rendered to others in the preparation of wills, codicils or drafts of such instruments or for advising others as to legal rights under existing or proposed instruments of that character.

(b) The violation of this section by an attorney may be cause for grievance proceedings.

(P.B. 1978-1997, Sec. 48.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-68. Client Security Fund Established

(a) A client security fund is hereby established to promote public confidence in the judicial system and the integrity of the legal profession by reimbursing clients, to the extent provided for by these rules, for losses resulting from the dishonest conduct of attorneys practicing law in this state in the course of the attorney-client relationship.

(b) It is the obligation of all attorneys admitted to the practice of law in this state to participate in the collective effort to reimburse clients who have lost money or property as the result of the unethical and dishonest conduct of other attorneys.

(c) The client security fund is provided as a public service to persons using the legal services of attorneys practicing in this state. All monies and assets of the fund shall constitute a trust.

(d) The establishment, administration and operation of the fund shall not impose or create any obligation, expectation of recovery from or liability of the fund to any claimant, and all reimbursements therefrom shall be a matter of grace and not of right.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-69. --Definition of Dishonest Conduct

(a) As used in Sections 2-68 through 2-81, inclusive, "dishonest conduct" means wrongful acts committed by an attorney, in an attorney-client relationship or in a fiduciary capacity arising out of an attorney-client relationship, in the nature of theft or embezzlement of money or the

wrongful taking or conversion of money, property, or other things of value, including, but not limited to refusal to refund unearned fees received in advance as required by Rule 1.16(d) of the Rules of Professional Conduct.

(b) "Dishonest conduct" does not include such wrongful acts committed in connection with the provision of investment services to the claimant by the attorney.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-70. --Client Security Fund Fee

(a) The judges of the superior court shall assess an annual fee in an amount adequate for the proper payment of claims under these rules and the costs of administering the client security fund. Such fee shall be paid by each attorney admitted to the practice of law in this state and each judge, judge trial referee, state referee, family support magistrate, family support referee and workers' compensation commissioner in this state. Notwithstanding the above, an attorney who is disbarred, retired or resigned shall be exempt from payment of the fee, provided, however, that no attorney shall be reinstated pursuant to Sections 2-53 or 2-55 until such time as the attorney has paid the fee due for the year in which the attorney retired, resigned or was disbarred.

(b) An attorney or family support referee who fails to pay the client security fund fee in accordance with this section shall be suspended from the practice of law in this state until such payment has been made. An attorney or family support referee who is under suspension for another reason at the time he or she fails to pay the fee, shall be the subject of an additional suspension which shall continue until the fee is paid.

(c) A judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner who fails to pay the client security fund fee in accordance with this section shall be referred to the judicial review council.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan.1, 2000; amended Nov. 17, 1999 on an interim basis pursuant to Section 1-9(c), to take effect Jan.1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-71. --Eligible Claims

(a) A claim for reimbursement of a loss must be based upon the dishonest conduct of an attorney who, in connection with the defalcation upon which the claim is based, was a member of the Connecticut bar and engaged in the practice of law in this state.

(b) The claim shall not be eligible for reimbursement unless:

(1) the attorney was acting as an attorney or fiduciary in the matter in which the loss arose;

(2) the attorney has died, been adjudged incapable, not competent or insane, been disbarred or suspended from the practice of law in Connecticut, been placed on probation or inactive status by a Connecticut court, resigned from the Connecticut bar, or become the judgment debtor of the claimant with respect to such claim; and

(3) the claim is presented within four years of the time when the claimant discovered or first reasonably should have discovered the dishonest acts and the resulting losses or the claim was pending before the Connecticut Bar Association's client security fund committee as of the effective date of this rule.

(c) Except as provided by subsection (d) of this section, the following losses shall not be eligible for reimbursement:

(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of the attorney causing the losses;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the attorney, any person or entity described in subdivisions (c) (1), (2), or (3) herein;

(5) Losses incurred by any governmental entity or agency.

(d) In cases of extreme hardship or special and unusual circumstances, the client security fund committee may, in its discretion, consider a claim eligible for reimbursement which would otherwise be excluded under these rules.

(e) In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the client security fund committee may, in its discretion, deny the claim.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-72. --Client Security Fund Committee

(a) There is hereby established a client security fund committee which shall consist of fifteen members who shall be appointed by the chief justice. Nine of the members shall be attorneys, three shall not be attorneys and three shall be individuals who serve in one of the

following capacities: superior court judge, judge trial referee, appellate court judge, supreme court justice, family support magistrate, family support referee or workers' compensation commissioner. Members shall be appointed for terms of three years, provided, however, that of the members first appointed, five shall serve for one year, five for two years and five for three years. No person shall serve as a member for more than two consecutive three year terms, excluding any appointments for less than a full term, but a member may be reappointed after a lapse of one year. The appointment of any member may be revoked or suspended by the chief justice. In connection with such revocation or suspension, the chief justice shall appoint a qualified individual to fill the vacancy for the remainder of the term or for any other appropriate period. In the event that a vacancy arises in this position before the end of a term by reason other than revocation or suspension, the chief justice shall fill the vacancy for the balance of the term or for any other appropriate period.

(b) The client security fund committee shall elect from among its members a chair and a vice-chair who shall serve for a period of one year.

(c) Seven members of the client security fund committee shall constitute a quorum at its meetings. The chair may assign individual members of the committee to investigate and report on claims to the committee.

(d) Members shall serve without compensation, but shall be reimbursed for their necessary and reasonable expenses incurred in the discharge of their duties.

(e) The client security fund committee shall operate under the supervision of the superior court judges and report on its activities to the executive committee of the superior court on at least a quarterly basis.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-73. --Powers and Duties of Client Security Fund Committee

In addition to any other powers and duties set forth in Sections 2-68 through 2-81, the client security fund committee shall:

(a) Publicize its activities to the public and bar, including filing with the chief justice and the executive committee of the superior court an annual report on the claims made and processed and the amounts disbursed.

(b) Receive, investigate and evaluate claims for reimbursement.

(c) Determine in its judgment whether reimbursement should be made and the amount of such reimbursement.

(d) Prosecute claims for restitution against attorneys whose conduct has resulted in disbursements.

(e) Employ such persons and contract with any public or private entity as may be reasonably necessary to provide for its efficient and effective operations, which shall include, but not be limited to, the investigation of claims and the prosecution of claims for restitution against attorneys.

(f) Perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the fund.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-74. --Regulations of Client Security Fund Committee

The client security fund committee shall have the power and authority to implement these rules by regulations relevant to and not inconsistent with these rules. Such regulations may be adopted at any regular meeting of the client security fund committee or at any special meeting called for that purpose. The regulations shall be effective sixty days after publication in one issue of the Connecticut Law Journal and shall at all times be subject to amendment or revision by the committee. A copy shall be mailed to the chief justice, the chief court administrator, and the executive committee of the superior court.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-75. --Processing Claims

(a) Upon receipt of a claim the client security fund committee shall cause an appropriate investigation to be conducted and shall cause the attorney who is the subject of the claim or the attorney's representative to be notified by certified mail within ten days of the filing of such claim. The attorney or his or her representative shall have twenty days from the date the notice was mailed to file a response with the client security fund committee. Before processing a claim, the client security fund committee may require the claimant to pursue other remedies he or she may have.

(b) The client security fund committee shall promptly notify the statewide grievance committee of each claim and shall request the grievance committee to furnish it with a report of its investigation, if any, on the matter. The statewide grievance committee shall allow the client security fund committee access to its records during an investigation of a claim. The client security fund committee shall evaluate whether the investigation is complete and determine whether it

should conduct additional investigation or await the pendency of any disciplinary investigation or proceeding involving the same act or conduct as is alleged in the claim.

(c) The client security fund committee may, to the extent permitted by law, request and receive from the state's attorneys and from the superior court information relative to the client security fund committee's investigation, processing and determination of claims.

(d) A certified copy of an order disciplining an attorney for the same dishonest act or conduct alleged in a claim, or a final trial court judgment imposing civil or criminal liability therefor, shall be evidence that the attorney committed such dishonest act or conduct.

(e) The client security fund committee may require that a claimant, the subject attorney or any other person give testimony relative to a claim and may designate one or more members to receive the testimony and render a report thereon to the committee.

(f) The client security fund committee shall, on the basis of the record, make its determination in its sole and absolute discretion as to the validity of claims. A determination shall require an affirmative vote of at least seven members.

(g) Based upon the claims approved for reimbursement, the claims being processed and the amounts available in the client security fund, the client security fund committee shall determine in its sole and absolute discretion the amount, the order and the manner of the payment to be made on the approved claim.

(h) Reimbursements shall not include interest, expenses, or attorneys' fees in processing the claim, and may be paid in a lump sum or in installments.

(i) The client security fund committee shall notify the claimant and the subject attorney of its determination, which shall be final and not be subject to review by any court.

(j) The approval or disapproval of a claim shall not be pertinent in any disciplinary proceeding.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-76. --Confidentiality

Claims, proceedings and reports involving claims for reimbursement are confidential until the client security fund committee authorizes a disbursement to the claimant, at which time the committee may disclose the name of the claimant, the attorney whose conduct produced the claim and the amount of the reimbursement. However, the client security fund committee may provide access to relevant information to the statewide grievance committee, grievance panels and to law enforcement agencies. The client security fund committee may also provide statistical information which does not disclose the names of claimants and attorneys until a disbursement is authorized.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-77. --Review of Status of Fund

The client security fund committee shall periodically analyze the status of the fund, the approved claims and the pending claims to ensure the integrity of the fund for its intended purposes. Based upon the analysis and recommendation of the client security fund committee, the judges of the superior court may increase or decrease the amount of the client security fund fee and the superior court executive committee may fix a maximum amount on reimbursements payable from the fund.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-78. --Attorney's Fee for Prosecuting Claim

No attorney shall accept any fee for prosecuting a claim on behalf of a claimant, except where specifically approved by the client security fund committee for payment out of the award.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-79. --Enforcement of Payment of Fee

(a) The statewide grievance committee shall send a notice to each attorney who has not paid the client security fund fee pursuant to Section 2-70 of these rules that a presentment will be filed in the superior court against such attorney unless within sixty days from the date of such notice the statewide grievance committee receives from such attorney proof that he or she has either paid the fee or is exempt from such payment. If the statewide grievance committee does not receive such proof within the time required, it shall cause a presentment to be filed against the attorney in the superior court for the judicial district of Hartford.

(b) A presentment proceeding against an attorney under this section shall be terminated prior to hearing upon proof of payment of the fee to the Department of Revenue Services being provided to the statewide grievance committee.

(c) If a judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner has not paid the client security fund fee, the office of the chief court administrator shall send a notice to such person that he or she will be referred to the judicial review

council unless within sixty days from the date of such notice the office of the chief court administrator receives from such person proof that he or she has either paid the fee or is exempt from such payment. If the office of the chief court administrator does not receive such proof within the time required, it shall refer such person to the judicial review council.

(d) Family support referees shall be subject to the provisions of subsections (a) and (b) herein until such time as they come within the jurisdiction of the judicial review council, when they will be subject to the provisions of subsection (c).

(e) The notices required by this section shall be sent by certified mail, return receipt requested to the last address registered by the attorney pursuant to Section 2-27 (d), and to the home address of the judge, judge trial referee, state referee, family support magistrate, family support referee or workers' compensation commissioner. Presentments filed under this section may be served by certified mail, return receipt requested, sent to the last address registered by the attorney pursuant to Section 2-27 (d).

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-80. --Restitution by Attorney

An attorney whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the fund including interest and the expense incurred by the fund in processing the claim. An attorney's failure to make satisfactory arrangements for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

Sec. 2-81. --Restitution and Subrogation

(a) An attorney whose dishonest conduct results in reimbursement to a claimant shall be liable to the fund for restitution; and the client security fund committee may bring such action as it deems advisable to enforce such obligation.

(b) As a condition of reimbursement, a claimant shall be required to provide the fund with a pro tanto transfer of the claimant's rights against the attorney, the attorney's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.

(c) Upon commencement of an action by the client security fund committee as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

(d) In the event that the claimant commences an action to recover unreimbursed losses against the attorney or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the client security fund committee of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the client security fund committee undertakes to achieve restitution for the fund.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY:

No changes are proposed to this section.

(New) Sec. 2-82. Admission of Misconduct; Discipline by Consent

(a) A respondent against whom a complaint has been filed and in connection with which probable cause has been found that the respondent is guilty of misconduct may tender a conditional

admission to the complaint, or a portion thereof, to the disciplinary counsel to whom the case has been referred. The disciplinary counsel shall review the complaint and the conditional admission, shall determine the sanctions to which the respondent may be subject, and shall discuss and may negotiate a disposition of the complaint with the respondent or, if the respondent is represented by an attorney, with the respondent's attorney. The complaint, the record in the matter and the conditional admission shall be submitted to the court for approval in matters involving suspension or disbarment and to a reviewing committee of the statewide grievance committee in all other matters. If, after a hearing, the conditional admission is accepted by the court or the reviewing committee, the discipline to be imposed shall be determined by the court or reviewing committee and shall be as prescribed by these rules. If the conditional admission is not accepted by the court or the reviewing committee, it shall be withdrawn, shall not be made public and shall not be used against the respondent in any subsequent proceedings.

(b) If a respondent has tendered to the disciplinary counsel a conditional admission to the complaint, or a portion thereof, and if the disciplinary counsel and the respondent agree to the form of discipline to be imposed, the complaint, the record in the matter, the conditional admission and the agreement concerning the form of discipline to be imposed shall be submitted to the court for approval in matters involving suspension or disbarment and to a reviewing committee of the statewide grievance committee in all other matters. If, after a hearing, the form of discipline agreed to is approved by the court or the reviewing committee, the imposition of discipline shall be made public in the manner prescribed by these rules. If the form of discipline agreed to is rejected by the court or the reviewing committee, the conditional admission and the agreement shall be withdrawn, shall not be made public and shall not be used against the respondent in any subsequent proceedings.

(c) A respondent who tenders a conditional admission to the complaint and, if applicable, his or her consent to the form of discipline, shall present to the court or the reviewing committee an affidavit stating the following:

(1) The conditional admission and, if applicable, the consent to the form of discipline are freely and voluntarily submitted; the respondent is not being subjected to coercion or duress; the respondent is fully aware of the implications of such submissions;

(2) The respondent is aware that there is presently pending a complaint or an investigation into, or proceeding involving, allegations that there exist grounds for discipline, the nature of which shall be specifically set forth, and;

(3) The respondent acknowledges that the material facts so alleged are true.

(d) Prior to acceptance by the court or the reviewing committee of the conditional admission and the imposition of any discipline, the complainant will be given the right to comment thereon.

(e) The conditional admission and, if applicable, the consent to the form of discipline shall not be submitted to the judicial authority or reviewing committee before which the underlying complaint is pending.

COMMENTARY: This new section is based on Rule 21 of the ABA's *Model Rules for Lawyer Disciplinary Enforcement* and is proposed to give the disciplinary counsel the discretion to determine that an agreed upon resolution to the complaint may be appropriate. It is anticipated that such resolution will be reached more quickly than if the complaint was required to proceed through the entire grievance process, and that such resolutions will allow the statewide grievance committee to focus its time on contested matters.