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SCHALLER, J., dissenting. I respectfully disagree with the majority, which affirms the trial court's reversal of the decision of the defendant, the statewide grievance committee (committee), to reprimand the plaintiff attorney, Adam J. Shelton.

My disagreement stems from my reading of the court's decision, which differs from the majority's interpretation. The majority determines that the court correctly reversed the committee's decision because the evidence in the record did not constitute clear and convincing proof that the plaintiff had misled the complainant, Barbara A. Dougherty-Shore. I believe that a close reading of the court's ruling and its subsequent articulation reveals that the court did not reverse the decision on the ground of a lack of substantial evidence at all. Rather, the court reversed the decision because the committee failed to produce the complainant at the hearing as a live witness whom the plaintiff could cross-examine. That understanding of the court's ruling, in fact, is the only one that explains the meaning of the court's articulation and order of remand.

In its original decision, the court stated that "the decision is not supported by substantial evidence . . . ." In its articulation, however, the court conceded that its "order regarding substantial evidence was perhaps not artfully chosen . . . ." The court went on to explain that "my thought was that *without evidence from the complainant, there was not sufficient evidence. In the circumstances*, I believed that a remand for further proceedings was appropriate." (Emphasis added.) The court also adopted what it termed "[o]ption one" of the defendant's motion for articulation. That option states: "Is the Court providing the Defendant the opportunity to cure the *procedural due process defect found by this Court* by remanding the matter to a reviewing committee of the [defendant] to conduct another hearing *wherein the Plaintiff would be afforded the opportunity to cross-examine Ms. Dougherty-Shore . . . ?*" (Emphasis added.)

The court's ruling and later clarification may have confused the parties as to the basis of the decision. I believe it is clear, however, that the court did not rule on whether substantial evidence existed, but rather determined that without the complainant being produced as a live witness who could be cross-examined, the substantial evidence standard could not be met. In my view, the court is incorrect for several reasons. First, no statute or rule of practice specifically requires the committee to call the complainant or any other person as a witness at a committee hearing. I am unaware of any Connecticut decisions determining that the committee is so obligated. The right of cross-exami-

nation is provided, of course, whenever a witness is called. Practice Book § 2-35 (d). The committee makes its decision on the basis of the *record*, which consists of all documentary evidence, including submissions by the complainant and the respondent, together with all testimony and evidence submitted at the hearing. Practice Book § 2-35 (e).

Contrary to the court's conclusion, there was "evidence from the complainant," that is, documentary evidence in the form of a complaint and correspondence. The majority's reliance on the fact that "the complaining witness failed to appear and testify at the hearing" is not relevant to a decision in this case. Although the majority takes note of the written statements from Dougherty-Shore, it does not explain why that evidence does not rise to the level of clear and convincing evidence. Although the committee's third claim on appeal purports to raise that issue, it cannot properly do so, however, because the court did not rule on that issue. The court did rule on what it perceived as a procedural deficiency—one, in fact, that has not been determined to exist. Even if the right of cross-examination provided in Practice Book § 2-35 (d) could be read to encompass a demand that the committee produce the complainant as a witness, the plaintiff in this case waived that right by proceeding to a hearing without objecting on that ground. The plaintiff's casual references to the lack of cross-examination opportunities hardly rise to the level of raising the issue adequately. The plaintiff did not raise the issue until the unfavorable outcome had occurred. Waiting for the outcome before raising a procedural issue is not condoned in our practice. See generally *State v. Camera*, 81 Conn. App. 175, 188, 839 A.2d 613, cert. denied, 268 Conn. 910, 845 A.2d 412 (2004).

Although under existing precedent, the committee is not required to produce the complainant at a hearing, whether the committee *should* do so is a different story. Ordinarily, when the respondent attorney appears and offers an explanation for his conduct, meeting the clear and convincing standard by relying solely on the complainant's original written complaint and submissions is difficult indeed. See, e.g., *Somers v. Statewide Grievance Committee*, 245 Conn. 277, 290–91, 715 A.2d 712 (1998) (burden higher than preponderance of evidence, lower than beyond reasonable doubt). Whether it is appropriate and responsible for the committee to decline to produce a complainant in a matter of this gravity is another question. It may be wise to adopt a rule of practice to address that issue in the future. The lack of procedural rules or conventions in matters involving the judiciary's disciplinary authority over lawyers is troubling.

Whether it is proper for the committee to *interrogate* the attorney-respondent, prior to offering him the opportunity to *testify*, is another compelling question

that we need not address. Although that issue could not be raised on appeal, as it was not preserved, the committee's conduct in that regard is disturbing. At the hearing, the committee proceeded to question the plaintiff immediately, before allowing him to testify. Indeed, when the plaintiff pleaded his case in between questions, the committee dismissed the plaintiff's explanation as being "beside the point." Later in the hearing, the committee members continually interrupted the plaintiff with additional questions before he could answer their initial questions. A review of the transcript lends credence to the plaintiff's argument that members of the committee were biased against the plaintiff because his law practice involved collections and because he had not provided Dougherty-Shore with a release, even though he had stated that he had no intention of pursuing the debt further.

Because I conclude that the court did not rule on the basis of a lack of substantial evidence, I disagree with the majority's affirmance on that basis. Moreover, because I agree with the committee that the court improperly reversed the committee's decision on the basis of claimed due process violations that are not supported by our existing law, the judgment sustaining the plaintiff's appeal should be reversed and the committee's reprimand reinstated.<sup>1</sup>

Accordingly, I respectfully dissent.

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<sup>1</sup> Although not germane to my reasons for dissenting, I am compelled to note my disagreement with the majority's statement: "We find no reason to distinguish statewide grievance committee cases from such civil cases." That broad statement, I believe, could be misleading to future litigants because, surely, numerous grounds for distinguishing those cases do exist.