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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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BISHOP, J., dissenting. My colleagues in the majority reverse the judgment of the trial court on the basis that the matter presented by the plaintiff, the statewide grievance committee (committee), is justiciable. Because I agree with the trial court that it lacked subject matter jurisdiction, I would affirm the judgment dismissing the presentment. I believe the committee's presentment is not capable of adjudication for three reasons: (1) because the relief it seeks has already been granted, there is no practical relief the court can grant; (2) because the underlying behaviors that are set forth in the committee's presentment have already been considered in the aggregate by the trial court and the Supreme Court as aggravating factors warranting disbarment, the matter is moot; and (3) because the committee has no jurisdiction over a disbarred attorney for predisbarment misconduct, the court is powerless to adjudicate the claims set forth in the presentment.

That the defendant, Nancy Burton, had been disbarred and the order of disbarment had been affirmed by the Supreme Court before the filing of this presentment can not be disputed. See *Burton* v. *Mottolese*, 267 Conn. 1, 835 A.2d 998 (2003), cert. denied, U.S. , 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004).[1]

When the committee presents an attorney for misconduct, the court is authorized by Practice Book § 2-47 to ''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.'' Because the court in *Mottolese* already had taken into consideration each and every act of misconduct alleged in the presentment at hand in its disbarment of the defendant, there was no relief the court could have issued that would not have been duplicative. In dealing with this issue, the majority appears to equate the concept of relief with the notion of benefit.

In apparent recognition that the court could not suspend or disbar an already disbarred attorney, the majority nevertheless concludes that the matter is justiciable because a judicial response to the presentment could be beneficial to the committee should the defendant ever seek readmission to the bar. I do not share the majority's belief that the terms ''relief'' and ''benefit'' are interchangeable in this instance, nor do I believe that the presentment is justiciable merely because the committee might one day benefit from the court's second condemnation of the defendant's past acts of misconduct.

To the contrary, our decisional law instructs us that justiciability requires ''(1) that there be an actual contro-

versy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant.'' (Internal quotation marks omitted.) *Mayer* v. *Biafore, Florek & O'Neill*, 245 Conn. 88, 91, 713 A.2d 1267 (1998). Additionally, the contingent nature of the benefit that a present adjudication could confer on the committee belies its present justiciability.

Our Supreme Court confronted a legally analogous circumstance in *Milford Power Co., LLC* v. *Alstom Power, Inc.*, 263 Conn. 616, 822 A.2d 196 (2003), a case in which the plaintiff had sought a judicial declaration of the legal efficacy of a notice sent by one party to the other. Approving of the trial court's dismissal of the matter as not justiciable, the court opined: ''Our resolution of this appeal begins and ends with the defendants' claim that the action is not yet ripe for adjudication. In light of the rationale of the ripeness requirement, to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements . . . we must be satisfied that the case before the court does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire. . . .

''Without a claim of entitlement by the defendants, there is no dispute and the trial court cannot conclude definitively that its decision will have any effect on the adversaries before it. In other words, because the plaintiff's claims were contingent on the outcome of a dispute that had not yet transpired, and indeed might never transpire, the injury was hypothetical and, therefore, the claim was not justiciable.'' (Citations omitted; internal quotation marks omitted.) Id., 626–27. Here, as in *Milford Power Co., LLC*, the plaintiff seeks an adjudication not for the purpose of any present discipline, but solely for the benefit such an adjudication might provide in the event the defendant seeks readmission to the bar at some future time.

Finally, on this point, the issue is not justiciable because an adjudication by the court would offer no guidance to the present conduct of the parties. As our Supreme Court observed in *Esposito* v. *Specyalski*, 268 Conn. 336, 844 A.2d 211 (2004), in finding that a trial court's ruling on a motion for summary judgment was merely advisory: ''We are not compelled to decide claims of right which are purely hypothetical or are not of consequence as guides to the present conduct of the parties. The second of the limitations upon the exercise of the power . . . provides that there must be an actual, bona fide and substantial question or issue in dispute, or a substantial uncertainty of legal relations which requires settlement. . . . On the basis of the underlying principle behind the ripeness requirement,

we must be confident that the court is not faced with a hypothetical injury or a claim dependent upon some event that has not and, in point of fact, may never occur.'' (Citation omitted; internal quotation marks omitted.) Id., 350.

The second basis on which I would affirm the court's dismissal of the presentment is mootness. Each act of attorney misconduct recited in the committee's current presentment was utilized by the trial court, and on appeal, to support the sanction of disbarment already imposed on the defendant.[2] The committee's presentment referred to six discrete acts of misconduct, each of which the trial court utilized as an aggravating factor justifying the defendant's disbarment.[3]

The presentment alleged that on December 11, 1989, the defendant was reprimanded ''in connection with CV88-0295948, *Michael* v. *Burton*.'' Similarly, the Supreme Court in *Burton* v. *Mottolese*, supra, 267 Conn. 1, referred to ''*Michael* v. *Burton*, Superior Court, judicial district of Danbury, Docket No. CV88 295948 (1989), (*Motolese, J.*) Reprimand. Unfounded, outrageous allegations of misconduct by Judge Howard Moraghan and other court personnel.'' (Internal quotation marks omitted.) *Burton* v. *Mottolese*, supra, 267 Conn. 56 n.51.

The presentment next referenced a reprimand issued by the committee in the matter of *Voog* v. *Burton*, Grievance Complaint No. 90-0113. The court, in *Mottolese*, also referred to ''*Voog* v. *Burton*, Docket No. CV90 0113 (1991), Reprimand. Violation of rule 3.4 (a), (c) and (f) of the Rules of Professional Conduct.'' (Internal quotation marks omitted.) *Burton* v. *Mottolese*, supra, 267 Conn. 56 n.51.

The presentment next alleged that on September 21, 2000, the committee had issued a reprimand in *Moraghan* v. *Burton*, Grievance Complaint No. 97-0338, and that the defendant's ''subsequent appeal of [the] reprimand was dismissed by both the trial court and the Appellate Court. The defendant's petition for certification to the Supreme Court was denied.'' In *Mottolese*, the court referred to ''*Moraghan* v. *Burton*, Docket No. CV97-0338 (2000), Reprimand. Violation of rule 8.2 (a), appeal to the Superior Court pending.'' (Internal quotation marks omitted.) *Burton* v. *Mottolese*, supra, 267 Conn. 57 n.51.[4]

The presentment next alleged that on November 16, 2000, the committee had issued a reprimand in *Fairfield Judicial District Grievance Panel* v. *Burton*, Grievance Complaint No. 98-0368, and that the defendant's appeal from this reprimand was subsequently dismissed by both the trial court and this court. Again, the *Mottolese* court noted this reprimand as an aggravating factor. The court noted, ''*Fairfield Judicial District Grievance Panel* v. *Burton*, Docket No. CV98-0368, Reprimand. Violation of rule 3.1, appeal to Superior Court pending.''

(Internal quotation marks omitted.) *Burton* v. *Mottolese*, supra, 267 Conn. 57 n.51. Next, the presentment alleged that the defendant had been disbarred by Judge Mottolese on November 2, 2001, and that his order had been affirmed by the Supreme Court on December 16, 2003.

Finally, the presentment contained several allegations relating to a December 12, 1995 letter written by the defendant to then Chief Justice Peters in which she claimed that several judges had displayed the ''stark appearance of judicial corruption.'' The committee claimed that these allegations were unfounded and that by making them the defendant had violated rules 8.2 (a) and 8.4 (4) of the Rules of Professional Conduct. In conjunction with this presentment, the committee failed to note that the defendant already had been reprimanded by the committee for this misconduct, but that its reprimand had been overturned on appeal on procedural grounds.[5]

Notwithstanding the committee's failure to detail the procedural path of its prior response to the defendant's December 12, 1995 letter, it is clear that the *Mottolese* court took this incident into consideration in determining the existence of aggravating factors warranting the defendant's disbarment. The court noted: ''*Fairfield Grievance Panel* v. *Burton*, CV96 0024 (1997) Reprimand. Violation of rules 8.2 (a) and 8.4 (d). This reprimand was affirmed by Judge McWeeny. *Burton* v. *Statewide Grievance Committee*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV97-057337 (September 24, 1998), reversed on procedural grounds in *Burton* v. *Statewide Grievance Committee*, 60 Conn. App. 698, 760 A.2d 1027 (2000). The complaint is currently being reheard by the statewide grievance committee.'' (Internal quotation marks omitted.) *Burton* v. *Mottolese*, supra, 267 Conn. 56–57 n.51.

Thus, it is apparent that each instance of misconduct alleged by the committee in its presentment was considered by the trial court as an aggravating factor and noted with approval for the same purpose by the Supreme Court in affirming the defendant's disbarment. Finally, contrary to the committee's claim that a present adjudication is necessary, a final disposition of the claims against the defendant was not found by the trial court to be a necessary antecedent to her disbarment. Rather, as noted by the Supreme Court in *Mottolese*, in determining an appropriate judicial response to the defendant's misconduct, Judge Mottolese made reference to the American Bar Association's Standards for Imposing Lawyer Sanctions, which list ''prior disciplinary offenses'' as an aggravating factor and ''absence of a prior disciplinary record'' as a mitigating factor. (Internal quotation marks omitted.) Id., 55. I conclude, therefore, that the underlying behaviors that were set

forth in the committee's presentment have already been considered by the trial court and the Supreme Court as aggravating factors warranting disbarment, and, thus, the matter is moot.

The third reason I would affirm the court's dismissal of the presentment is that I do not believe that the committee retains jurisdiction over a disbarred attorney to discipline or to make presentment against the attorney for predisbarment acts of misconduct. In reaching this conclusion, I recognize that there is scant decisional guidance on this point, and that the issue has not been faced yet in Connecticut. Nevertheless, this court is not entirely without a reasonable basis for assessing this question.

In Connecticut, the committee is a creature both of statute and of rule. See generally General Statutes § 51-90 et seq.; Practice Book § 2-33 et seq.[6] Thus, pursuant to its rule-making authority, the court created the committee and set forth, by rule, its authority and manner of proceeding. In this way, the committee acts as an arm of the court in fulfilling its unique responsibility to regulate the conduct of attorneys. Pursuant to this authority, however, the committee has the authority to act in response to a violation of the Rules of Professional Conduct only in regard to attorneys who are admitted to practice before the state's courts. General Statutes § 51-84 (a) provides in pertinent part: ''Attorneys admitted by the Superior Court shall be attorneys of all courts and shall be subject to the rules and orders of the courts before which they act.'' This statute is consistent with the court's inherent authority to regulate the conduct of attorneys who are officers of the court. See *State* v. *Jones*, 180 Conn. 443, 448, 429 A.2d 936 (1980), overruled in part on other grounds, *State* v. *Powell*, 186 Conn. 547, 442 A.2d 939, cert. denied sub nom. *Moeller* v. *Connecticut*, 459 U.S. 838, 103 S. Ct. 85, 74 L. Ed. 2d 80 (1982). Because the defendant is no longer an officer of the court, however, I believe the court no longer has jurisdiction over her to seek discipline against her for acts of misconduct that purportedly occurred while she was still admitted to practice in absence of a statute conferring such authority on the court.[7]

Recognizing that there is no Connecticut decisional law regarding whether the committee retains jurisdiction over a disbarred attorney, the committee has cited decisions in other jurisdictions to support its assertion of jurisdiction. In its brief, the committee argues that the Supreme Court of North Dakota concluded in *In re Application of Kraemer*, 411 N.W.2d 71 (N.D. 1987), that its state trial courts have subject matter jurisdiction to discipline disbarred attorneys. While a cursory reading of *In re Application of Kraemer* may appear to support the committee's position, I note that the case involved a consolidated hearing during which Kraemer

sought readmission while the bar board sought further sanctions against him for predisbarment acts of misconduct that had been the subject of a formal disciplinary hearing at the time Kraemer was disbarred for unrelated criminal misconduct. Id., 72. Additionally, the opinion in *In re Application of Kraemer* does not disclose the existence of a statute similar to Connecticut's statute, limiting the court's rule-making authority to regulate the conduct of attorneys only to those who are admitted to practice in our courts. See General Statutes § 51-84.[8]

The Florida Supreme Court, in *Florida Bar* v. *Ross*, 732 So. 2d 1037 (Fla. 1998), found that its jurisdiction over a disbarred attorney was limited to questions regarding whether the disbarred attorney was in compliance with orders relating to his or her disbarment and to allegations that the disbarred attorney was engaged in the unauthorized practice of law after his disbarment. Id., 1040-41. In reaching its conclusion, the Florida Supreme Court distinguished between suspended and disbarred lawyers. Id., 1040. It found that it had continuing jurisdiction over the postdisciplinary behavior of the former group because they remained members of the Florida bar, but that it had no postdisbarment jurisdiction over the latter group, except to enforce its disbarment orders, because disbarred lawyers are, by definition, no longer members of the Florida bar. Id., 1040-42.

As in Florida, a Connecticut court's authority to regulate the conduct of attorneys is limited to those who are admitted to practice in our courts. Because the defendant no longer enjoys that status, I believe she is not subject to the jurisdiction of the court for misconduct that took place before her disbarment even though she remains subject to the contempt power of the court for any postdisbarment acts that violate the court's disbarment order.

For the reasons stated, I respectfully dissent.

[1] The record reveals that the defendant was disbarred by action of the Superior Court on November 2, 2001, and that the decision of our Supreme Court affirming the defendant's disbarment was issued on December 16, 2003. See *Burton* v. *Mottolese*, supra, 267 Conn. 2.

[2] I do not believe generally that the committee is prevented, by mootness, from listing as allegations in a presentment, acts of attorney misconduct for which the attorney already has been disciplined. To the contrary, an attorney's disciplinary history may be a significant factor in the committee's determination to seek disbarment or suspension. Rather, I believe when an attorney's disciplinary history already has been utilized as part of the justification for disbarment, the committee may not bring a subsequent presentment based on that same history. In my view, that is precisely what occurred in this instance.

[3] In *Burton* v. *Mottolese*, supra, 267 Conn. 1, the Supreme Court made specific reference to the trial court's finding that each of these incidents of misconduct constituted an aggravating factor in justification of its ultimate sanction. See id., 56 n.51.

[4] For our purposes, I think the status of an appeal from the committee's reprimand is not pertinent because the court expressly referred to the reprimand as an aggravating factor warranting disbarment. It is likely, however, that in repeating the trial court's finding of aggravating factors, our Supreme Court did not track the ultimate disposition of the defendant's appeals from those reprimands because the court treated the committee's

reprimands as adequate disciplinary history for purposes of finding aggravating factors.

[5] See *Burton* v. *Statewide Grievance Committee*, 60 Conn. App. 698, 760 A.2d 1027 (2000).

[6] Because no branch of government has the unique authority to regulate the conduct of members of the bar, it may be argued that legislation to the same effect may run afoul of the separation of powers doctrine. Not every instance, however, in which both the legislative body and the judiciary have acted presents an inevitable interbranch conflict because the mere fact of an overlap between legislation and judicial rules does not, by itself, require a protective response. See, e.g., *In re Samantha C.*, 268 Conn. 614, 639, 847 A.2d 883 (2004). Also, the rules of practice ''exist within the broader framework of the relationship between attorneys and the judiciary. . . . This unique position as officers and commissioners of the court . . . casts attorneys in a special relationship with the judiciary and subjects them to its discipline.'' (Internal quotation marks omitted.) *Massameno* v. *Statewide Grievance Committee*, 234 Conn. 539, 554, 663 A.2d 317 (1995); see also *Statewide Grievance Committee* v. *Spirer*, 247 Conn. 762, 771–72 725 A.2d 948 (1999).

[7] I believe this view is consistent with the court's statutory authority to enjoin and otherwise sanction individuals for the unauthorized practice of law. See General Statutes § 51-88. Pursuant to § 51-88, the court has jurisdiction to enjoin and to exercise its contempt powers over any individual who is found guilty of the unauthorized practice of law, regardless of whether that individual is a disbarred attorney or one who has never been admitted to practice in Connecticut.

[8] The committee's jurisdiction argument, however, does appear to find support in two decisions of the Supreme Court of Colorado not cited by the committee. See *People* v. *Koransky*, 830 P.2d 490 (Colo. 1992); *People* v. *Vigil*, 945 P.2d 1385 (Colo. 1997).