Minutes of the Meeting
Rules Committee of the Superior Court
Monday, March 15, 2021

On March 15, 2021, the Rules Committee met using Microsoft Teams from 2:01 p.m. to 2:57 p.m.

Members in attendance were:

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

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Lori Petruzzelli and Shanna O'Donnell, Assistant Counsel to the Rules Committee. Judge Anthony D. Truglia, Jr. was absent.

1. The Committee approved the minutes of the meeting held on February 8, 2021 with no revisions.

2. The Committee considered a proposal from Natasha M. Pierre, State Victim Advocate, to amend several rules and sections to advise crime victims of rights and provide for notice to victims and opportunity for victims to provide statements (RC ID # 2019-004). The Committee also reviewed subsequent efforts to address these issues using court procedures and technology rather than rules changes.

Judge Gold and Attorney Pierre were present and addressed the Committee regarding this matter.

After discussion, the Committee tabled this matter until the fall.

3. The Committee considered a proposal from Senator Looney, Senator Winfield, and Representative Stafstrom concerning pre-trial discovery procedure in criminal matters and subsequent revised proposals from the subcommittee and Judge Gold (RC ID # 2019-014).

Judge Gold and Attorney Casaubon were present and addressed the Committee regarding this proposal.

After discussion, the Committee voted unanimously to submit to public hearing the revised proposal from Judge Gold for rules changes to implement open file discovery for criminal matters, subject to certain technical changes, as set forth in Appendix A to these minutes.

4. The Committee considered a proposal from Faiz Siddiqui to amend Section 36-6 regarding cancellation of warrants (RC ID # 2020-014).

After discussion, the Committee tabled this matter until the fall and instructed Counsel to research whether the holding in Mr. Siddiqui's case suggested that the court would lack jurisdiction to hear a defendant's motion to cancel an unserved warrant even if such a motion were specifically allowed by rule.

5. The Committee considered a proposal from the Connecticut Bar Association to revise Rule 1.8 of the Rules of Professional Conduct to allow for an exception to the prohibition on attorneys providing financial assistance to clients in litigation matters in limited circumstances, on humanitarian grounds, in accordance with the American Bar Association's Model Rules of Professional Conduct (RC ID # 2021-004).

Attorney Stovall of the Connecticut Bar Association Standing Committee on

Professional Ethics was present and addressed the Committee regarding this proposal.

After discussion, the Committee voted unanimously to submit to public hearing the amendment to Rule 1.8 of the Rules of Professional Conduct regarding attorneys providing financial assistance to clients in litigation matters as set forth in Appendix B to these minutes.

6. The Committee considered a proposal from Attorney Lori Petruzzelli, Assistant Counsel to the Rules Committee, to amend the title of Section 17-45 to be consistent with amendments to that section made previously (RC ID # 2021-005).

After discussion, the Committee voted unanimously to submit to public hearing the amendment to the title of Section 17-45 of the Practice Book as set forth in Appendix C to these minutes.

7. The Committee considered a proposal from Attorney Lori Petruzzelli, Assistant Counsel to the Rules Committee, to amend references to the MPRE in Section 2-13A (7) to be consistent with amendments to Sections 2-8 and 2-13 made previously (RC ID # 2021-006).

After discussion, the Committee voted unanimously to submit to public hearing the amendment to Section 2-13A (7) of the Practice Book as set forth in Appendix D to these minutes.

8. The Committee considered a proposal from Statewide Bar Counsel Michael Bowler, on behalf of the Statewide Grievance Committee, to amend Section 2-35 (g) in support of efforts to conduct hearings remotely (RC ID # 2021-007).

Attorney Bowler was present and addressed the Committee regarding this proposal.

After discussion, the Committee voted unanimously to submit to public hearing the amendment to Section 2-35 (g) of the Practice Book as set forth in Appendix E to these minutes. The Committee recommended that the Judges consider making this amendment effective upon promulgation.

9. The Committee considered making recommendations for reappointment of members of the Legal Specialization Screening Committee and designating the chair of that committee.

After discussion, the Committee voted unanimously to recommend reappointment of Attorney Paine and Attorney Dwyer to continue serve as members of the Legal Specialization Screening Committee and, if the Chief Justice chooses to reappoint Attorney Paine, to designate Attorney Paine to continue serving as chair of that committee.

10. Counsel advised the Committee that all matters approved for public hearing would be included in the materials for the upcoming public hearing date, and that any rules changes previously made on an interim basis would also be added to the list for public hearing. The Chair instructed Counsel to forward the list of matters for public hearing to the members of the Rules Committee for their review.

Respectfully submitted,

Joseph J. Del Ciampo
Counsel to the Rules Committee

APPENDIX A

(031521)

Sec. 40-2. –Good Faith Efforts and Subpoenas

When documents or objects are the subject of discovery orders, good faith efforts shall be made by the party to whom any such order is directed to secure their possession. If the efforts of such party are unsuccessful the judicial authority **[**shall**]** may, upon written request or upon its own motion, issue a subpoena or order directing that such documents or objects be delivered to the clerk of the court within a specified time. The clerk shall give a receipt for them and be responsible for their safekeeping. Such documents and tangible objects shall be sealed and shall be open to inspection to the parties to the action and their attorneys only upon an order of the judicial authority.

COMMENTARY: The changes to this section provide the court with the authority to issue subpoenas and orders directing documents and objects subject to discovery orders to the clerk upon its own motion, and that such documents and objects be open to inspection only to the parties and their attorneys as the court deems appropriate.

Sec. 43-40. –Excluded Time Periods in Determining Speedy Trial

The following periods of time shall be excluded in computing the time within which the trial of a defendant charged by information with a criminal offense must commence pursuant to Section 43-39:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to:

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from trial with respect to other charges against the defendant;

(C) delay resulting from any interlocutory appeal;

(D) the time between the commencement of the hearing on any pretrial motion and the issuance of a ruling on such motion;

(E) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the judicial authority;

(F) delay resulting from any proceeding under General Statutes §§ 17a-685, 17a-693, et seq., 53a-39c, 54-56e, 54-56g, 54-56i, 54-56l, 54-56m , 54-56p, or any other pretrial diversion program authorized by statute.

(2) Any period of delay resulting from the absence or unavailability of the defendant, counsel for the defendant, or any essential witness for the prosecution or defense. For purposes of this subdivision, a defendant or any essential witness shall be considered absent when such person's whereabouts are unknown and cannot be determined by due diligence. For purposes of this subdivision, a defendant or any essential witness shall be considered unavailable whenever such person's whereabouts

are known but his or her presence for trial cannot be obtained by due diligence or he or she resists appearing at or being returned for trial.

(3) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(4) A reasonable period of delay when the defendant has been joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(5) Any period of time between the date on which a defendant or counsel for the defendant and the prosecuting authority agree that the defendant will plead guilty or nolo contendere to the charge and the date the judicial authority accepts or rejects the plea agreement.

(6) Any period of time between the date on which the defendant enters a plea of guilty or nolo contendere and the date an order of the judicial authority permitting the withdrawal of the plea becomes final.

(7) Except as provided in Section 43-40A, **[**T**]**the period of delay resulting from a continuance granted by the judicial authority at the personal request of the defendant, including any period of delay resulting from a continuance requested because the prosecuting authority has failed to disclose discovery materials within any applicable time period prescribed in Chapter 40 if the prosecuting authority's failure is because of the unavailability of such discovery materials and the prosecuting authority has exercised due diligence to obtain such discovery materials.

(8) The period of delay resulting from a continuance granted by the judicial authority at the request of the prosecuting authority**[**,**]** if:

(A) the continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting authority has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at a later date; or

(B) the continuance is granted to allow the prosecuting authority additional time to prepare the state's case and additional time is justified because of the exceptional circumstances of the case.

(9) With respect to a defendant incarcerated in another jurisdiction, the period of time until the defendant's presence for trial has been obtained, provided the prosecuting authority has exercised reasonable diligence (A) in seeking to obtain the defendant's presence for trial upon receipt of a demand from the defendant for trial, and (B) if the defendant has not theretofore demanded trial, in filing a detainer with the official having custody of the defendant requesting that official to advise the defendant of the defendant's right to demand trial.

(10) Other periods of delay occasioned by exceptional circumstances.

COMMENTARY: The change to subdivision (F) of subsection (1) of this section makes that provision consistent with the current available diversionary programs. The change to subsection (7) of this section provides for an exception to the time periods excluded from the speedy trial calculation when a defendant requests a continuance as provided in new Section 43-40A. This change also makes clear that the delay from

continuances requested by the defendant because the prosecuting authority has failed to disclose discovery materials by the applicable deadline will still be excluded from the speedy trial calculation if the prosecuting authority is unable, despite the exercise of due diligence, to meet the applicable deadline because the discovery material is unavailable.

(NEW) Sec. 43-40A. —Included Time Period in Determining Speedy Trial; Failure to Comply with Disclosure by Prosecuting Authority

The time for trial set forth in Section 43-39 shall continue to run during any period of delay resulting from a continuance granted by the judicial authority at the request of the defendant on the basis of the prosecuting authority's willful failure to disclose discovery materials within any applicable time period prescribed in Chapter 40. During any such continuance, the judicial authority may issue subpoenas, pursuant to Sections 40-2 and 40-20, to assist in the timely completion of discovery.

COMMENTARY: This new section allows the speedy trial calculation to run during any continuance granted on the basis of the prosecuting authority's willful failure to disclose discovery materials, as required by Chapter 40, consistent with Open File Criminal Discovery. The willful failure described in this new section, which allows the speedy trial calculation to continue to run, contrasts with the prosecuting authority's inability to disclose discovery materials despite the exercise of due diligence described in Section 43-40 (7), which does not allow the speedy trial calculation to continue to run. This section also authorizes the judicial authority to exercise its existing subpoena power to assist in the timely completion of discovery.

Sec. 39-7. –Notice of Plea Agreement

If a plea agreement has been reached by the parties, which contemplates the entry of a plea of guilty or nolo contendere, the judicial authority shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera at the time the plea is offered. Thereupon, the judicial authority may accept the plea agreement in accordance with Section 39-18, or reject the plea agreement, or may defer his or her decision on acceptance or rejection until there has been an opportunity to consider the presentence report, or may defer it for other reasons.

COMMENTARY: The change to this section clarifies that the judicial authority may only accept a plea agreement in accordance with Section 39-18.

Sec. 39-18. Plea of Guilty or Nolo Contendere; Entering

(a) In the discretion of the judicial authority, the defendant may enter a plea of guilty or nolo contendere to the information or complaint at arraignment**[**. At**]** or any later time **[**the defendant also may enter any such plea.**]**, provided that the judicial authority confirms in open court that the defendant has received all discovery materials that he or she requested in writing pursuant to Chapter 40 that are within the possession of the prosecuting authority. If the defendant has not received all requested discovery, the judicial authority shall confirm that the defendant and his or her counsel agree to waive any right to receive further disclosure, before allowing the defendant to enter the plea. Any such waiver shall not apply to the prosecuting authority's continuing obligation to disclose exculpatory information or materials pursuant to Sections 40-3 and 40-11.

(b) A plea of nolo contendere shall be in writing, shall be signed by the defendant, and, when accepted by the judicial authority, shall be followed by a finding of guilty.

COMMENTARY: The changes to this section require the judicial authority to confirm that a criminal defendant has either received all requested discovery or waives the right to receive further disclosure of requested discovery, except for exculpatory evidence, before allowing the defendant to enter a plea of guilty or nolo contendere, consistent with Open File Criminal Discovery.

Sec. 39-17. –Effect of Disposition Conference

If a case is not resolved at the disposition conference or if the judicial authority rejects the plea agreement, the case shall be assigned to a trial list in accordance with Section 44-15. If an agreement is reached, a judicial authority shall be available to accept guilty pleas and other dispositions.

COMMENTARY: The change to this section clarifies that the judicial authority may only assign a case to the trial list in accordance with Section 44-15.

Sec. 44-15. –Scheduling at Entry of Plea

(a) Upon entry of a not guilty plea, the judicial authority shall, whenever feasible, assign a date certain for the trial of such case, and in jury cases, for a disposition conference pursuant to Sections 39-11 through 39-13, and it shall advise all parties that they are to be prepared to proceed to trial or to a disposition conference on that date.

(b) Prior to assigning any date certain for trial, the judicial authority shall inquire of the parties whether discovery pursuant to Chapter 40 is complete.

If discovery is not complete, the judicial authority shall continue the case for the timely completion of discovery. During any such continuance, the judicial authority may issue subpoenas, pursuant to Sections 40-2 and 40-20, to assist in the timely completion of discovery.

If discovery is complete, the judicial authority may assign a date certain for trial no earlier than 45 days after the completion of discovery unless the defendant moves for a speedy trial pursuant to Section 43-41.

(c) If the setting of a definite date at the time of the not guilty plea is not feasible, the case shall be placed on a trial list of pending cases which shall be maintained by the clerk. Cases shall be placed on the trial list in the order in which the not guilty pleas were entered, but in no event shall a trial commence earlier than 45 days after the completion of discovery in the case unless the defendant moves for a speedy trial pursuant to Section 43-41.

(d) If, after the judicial authority has assigned a date certain for trial or has assigned the case to the trial list pursuant to this section, either party identifies and produces any evidence or witness that is required to be disclosed pursuant to Chapter 40, the opposing party may move the judicial authority for an order in accordance with Section 40-5, including, but not limited to, moving for a continuance or an order prohibiting the producing party from introducing the delayed discovery at trial.

COMMENTARY: The changes to this section require the judicial authority to confirm that discovery is complete before scheduling a date certain for trial or placing the case on the trial list and authorizes the judicial authority to exercise its subpoena power to assist in the timely completion of discovery, consistent with Open File Criminal Discovery. The changes also authorize the judicial authority to exercise its existing authority to, upon motion, make any order it deems appropriate to address delayed discovery disclosure.

Sec. 40-6 —Discovery Performance

(a) Unless otherwise specified by agreement of the parties or judicial order, the parties shall perform their obligations under Sections 40-1 through 40-10 by making available at reasonable times specified information or materials for inspecting, testing, copying and photographing.

(b) Unless otherwise specified by agreement of the parties or judicial order, the parties shall provide any information or materials ordered to be disclosed or that the parties are otherwise obligated to disclose pursuant to this chapter that are within the possession, custody, or control of such parties in an electronic format via electronic means to the other party. In the event that the file size of such electronic information or materials exceeds the file size limitations for e-mailing such information or materials, the party entitled to receive such information or materials shall provide the party obligated to disclose such information or materials an electronic storage medium or electronic storage

media with sufficient storage capacity to accommodate the electronic transfer of such information or materials.

COMMENTARY: The changes to this section acknowledge the prevalence of discovery information and materials generated and stored in electronic formats, and provide procedures for transferring and receiving such electronic information.

APPENDIX B

(031521)

Rule 1.8. Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction, including investment services, with a client or former client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client or former client unless:

(1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client or former client and are fully disclosed and transmitted in writing to the client or former client in a manner that can be reasonably understood by the client or former client;

(2) The client or former client is advised in writing that the client or former client should consider the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction;

(3) The client or former client gives informed consent in writing signed by the client or former client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction;

(4) With regard to a business transaction, the lawyer advises the client or former client in writing either (A) that the lawyer will provide legal services to the client or former client concerning the transaction, or (B) that the lawyer will not provide legal services to the client or former client and that the lawyer is involved as a business person only and

not as a lawyer representing the client or former client and that the lawyer is not one to whom the client or former client can turn for legal advice concerning the transaction; and

(5) With regard to the providing of investment services, the lawyer advises the client or former client in writing (A) whether such services are covered by legal liability insurance or other insurance, and either (B) that the lawyer will provide legal services to the client or former client concerning the transaction, or (C) that the lawyer will not provide legal services to the client or former client and that the lawyer is involved as a business person only and not as a lawyer representing the client or former client and that the lawyer is not one to whom the client or former client can turn to for legal services concerning the transaction. Investment services shall only apply where the lawyer has either a direct or indirect control over the invested funds and a direct or indirect interest in the underlying investment.

For purposes of subsection (a)(1) through (a)(5), the phrase “former client” shall mean a client for whom the two-year period starting from the conclusion of representation has not expired.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a

spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) A lawyer may pay court costs and expenses of litigation on behalf of a client, the repayment of which may be contingent on the outcome of the matter;

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client**[**.**]**;and

(3) a lawyer representing an indigent client pro bono; a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization, a law school clinical or pro bono program, or a state or local bar association program; and a lawyer representing an indigent client through a public defender's office may provide modest gifts to the client to pay for food, shelter, transportation, medicine and other basic living expenses. A lawyer may not:

(i) promise, assure or imply the availability of such gifts prior to retention, or as an inducement to continue the client-lawyer relationship after retention, or as an inducement to take, or forgo taking, any action in the matter;

(ii) seek or accept reimbursement from the client, a relative of the client, or anyone affiliated with the client; or

(iii) publicize or advertise a willingness to provide such gifts to prospective clients.

A lawyer may provide financial assistance permitted by this Rule even if the representation is eligible for fees under a fee-shifting statute.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) The client gives informed consent; subject to revocation by the client, such informed consent shall be implied where the lawyer is retained to represent a client by a third party obligated under the terms of a contract to provide the client with a defense;

(2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) Information relating to representation of a client is protected as required by Rule 16.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement. Subject to revocation by the client and to the terms of the contract, such informed consent shall be implied and need not be in writing where the

lawyer is retained to represent a client by a third party obligated under the terms of a contract to provide the client with a defense and indemnity for the loss and the third party elects to settle a matter without contribution by the client.

(h) A lawyer shall not:

(1) Make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) Settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) Acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) Contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing subsection (a) through (i) that applies to any one of them shall apply to all of them.

COMMENTARY: **Business Transactions between Client and Lawyer.** Subsection (a) expressly applies to former clients as well as existing clients. A lawyer's

legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of subsection (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in subsection (a) are unnecessary and impracticable.

Subsection (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subsection (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Subsection (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role.

When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(f) (definition of informed consent).

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here, the lawyer's role requires that the lawyer must comply, not only with the requirements of subsection (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

If the client is independently represented in the transaction, subsection (a)(2) of this Rule is inapplicable, and the subsection (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subsection (a)(1) further requires.

Use of Information Related to Representation. Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Subsection (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Subsection (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers. A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subsection (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

This Rules does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights. An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Subsection (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and subsections (a) and (i).

Financial Assistance. Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue

lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Paragraph (e)(3) provides another exception. A lawyer representing an indigent client who does not pay a fee may give the client gifts in the form of modest contributions toward basic necessities of life such as food, shelter, transportation, clothing, and medicine. If the gift may have consequences for the client, including, e.g., for receipt of government benefits, social services, or tax liability, the lawyer should consult with the client about such consequences. See Rule 1.4.

The paragraph (e)(3) exception is narrow. Modest contributions towards basic necessities are allowed only in circumstances where it is unlikely to create conflicts of interest or invite abuse.

Financial assistance, including modest gifts pursuant to paragraph (e)(3), may be provided even if the representation is eligible for fees under a fee-shifting statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such

as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

Person Paying for a Lawyer's Services. Subsection (f) requires disclosure of the fact that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of Rule 1.6 concerning confidentiality and Rule 1.7 concerning conflict of interest. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure.

Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning

confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that subsection. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements. Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(f) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims. Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This subsection does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this subsection limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation. Subsection (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like subsection (e), the general rule, which has its basis in common-law champerty and maintenance, is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in subsection (e). In addition, subsection (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of subsection (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships. The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because

of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interest and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

Imputation of Prohibitions. Under subsection (k), a prohibition on conduct by an individual lawyer in subsections (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. The prohibition set forth in subsection (j) is personal and is not applied to associated lawyers.

AMENDMENT NOTE: The changes to this rule and its commentary permit, in limited circumstances, a lawyer representing an indigent client on a pro bono basis and

a lawyer representing a client through the public defender’s office to provide modest gifts to the client to pay for basic living expenses.

APPENDIX C

(031521)

Sec. 17-45 Proceedings upon Motion for Summary Judgment[; Request for Extension of Time To Respond]

(a) A motion for summary judgment shall be supported by appropriate documents, including but not limited to affidavits, certified transcripts of testimony under oath, disclosures, written admissions and other supporting documents.

(b) Unless otherwise ordered by the judicial authority, any adverse party shall file and serve a response to the motion for summary judgment within forty-five days of the filing of the motion, including opposing affidavits and other available documentary evidence.

(c) Unless otherwise ordered by the judicial authority, the moving party shall not claim the motion for summary judgment to the short calendar less than forty-five days after the filing of the motion for summary judgment.

COMMENTARY: The change to the title of this section is to make it consistent with the amendments of January 1, 2017, which, among other things, eliminated the provision for filing a request for extension of time to respond to a motion for summary judgment.

APPENDIX D

(031521)

Sec. 2-13A. Military Spouse Temporary Licensing

(a) **Qualifications.** An applicant who meets all of the following requirements listed in subdivisions (1) through (11) of this subsection may be temporarily licensed and admitted to the practice of law in Connecticut, upon approval of the bar examining committee. The applicant:

(1) is the spouse of an active duty service member of the United States Army, Navy, Air Force, Marine Corps or Coast Guard and that service member is or will be stationed in Connecticut due to military orders;

(2) is licensed to practice law before the highest court in at least one state or territory of the United States or in the District of Columbia;

(3) is currently an active member in good standing in every jurisdiction to which the applicant has been admitted to practice, or has resigned or become inactive or had a license administratively suspended or revoked while in good standing from every jurisdiction without any pending disciplinary actions;

(4) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(5) meets the educational qualifications required to take the examination in Connecticut;

(6) possesses the good moral character and fitness to practice law required of all applicants for admission in Connecticut;

(7) has passed an examination in professional responsibility **[**administered under the auspices of the bar examining committee**]** or has completed a course in professional responsibility in accordance with the regulation of the bar examining committee;

(8) is or will be physically residing in Connecticut due to the service member's military orders;

(9) has not failed the Connecticut bar examination within the past five years;

(10) has not had an application for admission to the Connecticut bar or the bar of any state, the District of Columbia or United States territory denied on character and fitness grounds; and

(11) has not failed to achieve the Connecticut scaled score on the uniform bar examination administered within any jurisdiction within the past five years.

(b) **Application Requirements.** Any applicant seeking a temporary license to practice law in Connecticut under this section shall file a written application and payment of such fee as the bar examining committee shall from time to time determine. Such application, duly verified, shall be filed with the administrative director of the committee and shall set forth the applicant's qualifications as hereinbefore provided. In addition, the applicant shall file with the committee the following:

(1) a copy of the applicant's military spouse dependent identification and documentation evidencing a spousal relationship with the service member;

(2) a copy of the service member's military orders to a military installation in Connecticut or a letter from the service member's command verifying that the requirement in subsection (a) (8) of this section is met;

(3) certificate(s) of good standing from the highest court of each state, the District of Columbia or United States territory to which the applicant has been admitted, or proof that the applicant has resigned, or become inactive or had a license administratively suspended or revoked while in good standing;

(4) an affidavit from the applicant, certifying whether such applicant has a grievance pending against him or her, 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; and

(5) affidavits from two attorneys who personally know the applicant certifying to his or her good moral character and fitness to practice law.

(c) **Duration and Renewal.**

(1) A temporary license to practice law issued under this rule will be valid for three years provided that the temporarily licensed attorney remains a spouse of the service member and resides in Connecticut due to military orders or continues to reside in Connecticut due to the service member's immediately subsequent assignment specifying that dependents are not authorized to accompany the service member. The temporary license may be renewed for one additional two year period.

(2) A renewal application must be submitted with the appropriate fee as established by the bar examining committee and all other documentation required by the bar examining committee, including a copy of the service member's military orders. Such renewal application shall be filed not less than thirty days before the expiration of the original three year period.

(3) A temporarily licensed attorney who wishes to become a permanent member of the bar of Connecticut may apply for admission by examination or for admission without examination for the standard application fee minus the application fee paid to the committee for the application for temporary license, not including any fees for renewal.

(d) **Termination.**

(1) Termination of Temporary License. A temporary license shall terminate, and a temporarily licensed attorney shall cease the practice of law in Connecticut pursuant to that admission, unless otherwise authorized by these rules, thirty days after any of the following events:

(A) the service member's separation or retirement from military service;

(B) the service member's permanent relocation to another jurisdiction, unless the service member's immediately subsequent assignment specifies that the dependents are not authorized to accompany the service member, in which case the attorney may continue to practice law in Connecticut as provided in this rule until the service member departs Connecticut for a permanent change of station where the presence of dependents is authorized;

(C) the attorney's permanent relocation outside of the state of Connecticut for reasons other than the service member's relocation;

(D) upon the termination of the attorney's spousal relationship to the service member;

(E) the attorney's failure to meet the annual licensing requirements for an active member of the bar of Connecticut;

(F) the attorney's request;

(G) the attorney's admission to practice law in Connecticut by examination or without examination;

(H) the attorney's denial of admission to the practice of law in Connecticut; or

(I) the death of the service member.

Notice of one of the events set forth in subsection (d) (1) must be filed with the bar examining committee by the temporarily licensed attorney within thirty days of such event. Notice of the event set forth in subsection (d) (1) (I) must be filed with the committee by the temporarily licensed attorney within thirty days of the event, and the attorney shall cease the practice of law within one year of the event. Failure to provide such notice by the temporarily licensed attorney shall be a basis for discipline pursuant to the Rules of Professional Conduct for attorneys.

(2) Notice of Termination of Temporary License. Upon receipt of the notice required by subsection (d) (1), the bar examining committee shall forward a request to the statewide bar counsel that the license under this chapter be revoked. Notice of the

revocation shall be mailed by the statewide bar counsel to the temporarily licensed attorney.

(3) Notices Required. At least sixty days before termination of the temporary admission, or as soon as possible under the circumstances, the attorney shall:

(A) file in each matter pending before any court, tribunal, agency or commission a notice that the attorney will no longer be involved in the case; and

(B) provide written notice to all clients receiving representation from the attorney that the attorney will no longer represent them.

(e) **Responsibilities and Obligations.**

An attorney temporarily licensed under this section shall be subject to all responsibilities and obligations of active members of the Connecticut bar, and shall be subject to the jurisdiction of the courts and agencies of Connecticut, and shall be subject to the laws and rules of Connecticut governing the conduct and discipline of attorneys to the same extent as an active member of the Connecticut bar. The attorney shall maintain participation in a mentoring program provided by a state or local bar association in the state of Connecticut.

COMMENTARY: The change in subsection (a) (7) clarifies that while there is an ethics requirement for temporary licensing and bar admission under this section, the bar examining committee does not administer the Multistate Professional Responsibility Examination (MPRE). This change is consistent with amendments made in 2021 to Secs. 2-8 and 2-13, which were effective January 1, 2021.

APPENDIX E

(031521)

Sec. 2-35. Action by Statewide Grievance Committee or Reviewing Committee

(a) Upon receipt of the record from a grievance panel, the Statewide Grievance Committee may assign the case to a reviewing committee which shall consist of at least three members of the Statewide Grievance Committee, at least one third of whom are not attorneys. The Statewide Grievance Committee may, in its discretion, reassign the case to a different reviewing committee. The committee shall regularly rotate membership on reviewing committees and assignments of complaints from the various grievance panels. An attorney who maintains an office for the practice of law in the same judicial district as the respondent may not sit on the reviewing committee for that case.

(b) The Statewide Grievance Committee and the reviewing committee shall have the power to issue a subpoena to compel any person to appear before it to testify in relation to any matter deemed by the Statewide Grievance Committee or the reviewing committee to be relevant to the complaint and to produce before it for examination any books or papers which, in its judgment, may be relevant to such complaint. Any such testimony shall be on the record.

(c) If the grievance panel determined that probable cause exists that the respondent is guilty of misconduct, the Statewide Grievance Committee or the reviewing committee shall hold a hearing on the complaint. If the grievance panel determined that probable cause does not exist, but filed the matter with the Statewide Grievance

Committee because the complaint alleges that a crime has been committed, the Statewide Grievance Committee or the reviewing committee shall review the determination of no probable cause, take evidence if it deems it appropriate and, if it determines that probable cause does exist, shall take the following action: (1) if the Statewide Grievance Committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or assign the matter to a reviewing committee to hold the hearing; or (2) if a reviewing committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or refer the matter to the Statewide Grievance Committee which shall assign it to another reviewing committee to hold the hearing.

(d) Disciplinary counsel may add additional allegations of misconduct to the grievance panel's determination that probable cause exists in the following circumstances:

(1) Prior to the hearing before the Statewide Grievance Committee or the reviewing committee, disciplinary counsel may add additional allegations of misconduct arising from the record of the grievance complaint or its investigation of the complaint.

(2) Following commencement of the hearing before the Statewide Grievance Committee or the reviewing committee, disciplinary counsel may only add additional allegations of misconduct for good cause shown and with the consent of the respondent and the Statewide Grievance Committee or the reviewing committee. Additional allegations of misconduct may not be added after the hearing has concluded.

(e) If disciplinary counsel determines that additional allegations of misconduct exist, it shall issue a written notice to the respondent and the Statewide Grievance Committee, which shall include, but not be limited to, the following: (1) a description of the factual allegation or allegations that were considered in rendering the determination; and (2) for each such factual allegation, an identification of the specific provision or provisions of the applicable rules governing attorney conduct considered in rendering the determination.

(f) The respondent shall be entitled to a period of not less than thirty days before being required to appear at a hearing to defend against any additional charges of misconduct filed by the disciplinary counsel.

(g) At least two of the same members of a reviewing committee shall be **[**physically**]** present at all hearings held by the reviewing committee. Unless waived by the disciplinary counsel and the respondent, the remaining member of the reviewing committee shall obtain and review the transcript of each such hearing and shall participate in the committee's determination. All hearings following a determination of probable cause shall be public and on the record.

(h) The complainant and respondent shall be entitled to be present at all hearings and other proceedings on the complaint at which testimony is given and to have counsel present. At all hearings, the respondent shall have the right to be heard in the respondent's own defense and by witnesses and counsel. The disciplinary counsel shall pursue the matter before the Statewide Grievance Committee or reviewing committee. The disciplinary counsel and the respondent shall be entitled to examine or 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.

(i) Within ninety days of the date the grievance panel filed its determination with the Statewide Grievance Committee pursuant to Section 2-32 (i), the reviewing committee shall render a final written decision dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37 or directing the disciplinary counsel to file a presentment against the respondent in the Superior Court and file it with the Statewide Grievance Committee. Where there is a final decision dismissing the complaint, the reviewing committee may give notice in a written summary order to be followed by a full written decision. The reviewing committee's record in the case shall consist of a copy of all evidence it received or considered, including a transcript of any testimony heard by it, and its decision. The record shall also be sent to the Statewide Grievance Committee. The reviewing committee shall forward a copy of the final decision to the complainant, the disciplinary counsel, the respondent, and the grievance panel to which the complaint was forwarded. The decision shall be a matter of public record if there was a determination by a grievance panel, a reviewing committee or the Statewide Grievance Committee that there was probable cause that the respondent was guilty of misconduct. The reviewing committee may file a motion for extension of time not to exceed thirty days with the Statewide Grievance Committee which shall grant the motion only upon a showing of good cause. If the reviewing committee does not complete its action on a complaint within the time provided in this section, the Statewide

Grievance Committee shall, on motion of the complainant or the respondent or on its own motion, inquire into the delay and determine the appropriate course of action. Enforcement of the final decision, including the publication of the notice of a reprimand pursuant to Section 2-54, shall be stayed for thirty days from the date of the issuance to the parties of the final decision. In the event the respondent timely submits to the Statewide Grievance Committee a request for review of the final decision of the reviewing committee, such stay shall remain in full force and effect pursuant to Section 2-38 (b).

(j) If the reviewing committee finds probable cause to believe the respondent has violated the criminal law of this state, it shall report its findings to the chief state's attorney.

(k) Within thirty days of the issuance to the parties of the final decision by the reviewing committee, the respondent may submit to the Statewide Grievance Committee a request for review of the decision. Any request for review submitted under this section must specify the basis for the request including, but not limited to, a claim or claims that the reviewing committee's findings, inferences, conclusions or decision is or are: (1) in violation of constitutional, rules of practice or statutory provisions; (2) in excess of the authority of the reviewing committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion and the specific basis for such claim or claims. For grievance complaints filed on or after January 1, 2004, the respondent shall serve a copy of the request for review on

disciplinary counsel in accordance with Sections 10- 12 through 10-17. Within fourteen days of the respondent's submission of a request for review, disciplinary counsel may file a response. Disciplinary counsel shall serve a copy of the response on the respondent in accordance with Sections 10-12 through 10-17. No reply to the response shall be allowed.

(*l*) If, after its review of a complaint pursuant to this section that was forwarded to the Statewide Grievance Committee pursuant to Section 2-32 (i) (2), a reviewing committee agrees with a grievance panel's determination that probable cause does not exist that the attorney is guilty of misconduct and there has been no finding of probable cause by the Statewide Grievance Committee or a reviewing committee, the reviewing committee shall have the authority to dismiss the complaint within the time period set forth in subsection (e) of this section without review by the Statewide Grievance Committee. The reviewing committee shall file its decision dismissing the complaint with the Statewide Grievance Committee along with the record of the matter and shall send a copy of the decision to the complainant, the respondent, and the grievance panel to which the complaint was assigned.

(m) If the Statewide Grievance Committee does not assign a complaint to a reviewing committee, it shall have one hundred and twenty days from the date the panel's determination was filed with it to render a decision dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37 or directing the disciplinary counsel to file a presentment against the respondent. The decision shall be a matter of public record. The failure of a reviewing committee to complete its action on a complaint within the period of time provided in this section shall not be cause for

dismissal of the complaint. If the Statewide Grievance Committee finds probable cause to believe that the respondent has violated the criminal law of this state, it shall report its findings to the chief state's attorney.

COMMENTARY: The proposed amendment provides clarity and support for the Judicial Branch's efforts to conduct hearings remotely via a videoconferencing platform.