APPLICATION FOR EX PARTE TEMPORARY INJUNCTION

DANIEL JACOB D'ATTILO *ppa* by his parents Domenic D'Attilo and Cathy M. D'Attilo, and as guardians and trustees of Daniel Jacob D'Attilo's Estate and Trust, and **CATHY M. D'ATTILO**, individually and **DOMENIC D'ATTILO**, individually, *Plaintiffs* -v- **CONNECTICUT STATEWIDE GRIEVANCE COMMITTEE** *AND* **MICHAEL P. BOWLER**, **ESQ.** in his official capacity as Statewide Bar Counsel for the Connecticut Statewide Grievance Committee, *AND* **EUGENE J. RICCIO, ESQ.** in his official capacity as counsel for the Stamford/Norwalk Judicial District Grievance Panel, and in his official capacity as chair of the Connecticut Statewide Grievance Committee, *AND* the **STAMFORD/NORWALK JUDICIAL DISTRICT GRIEVANCE PANEL**, *AND* **STEVEN P. KULAS, ESQ.** in his official capacity as counsel for the Fairfield Judicial District Grievance Panel *AND* the **FAIRFIELD JUDICIAL DISTRICT GRIEVANCE PANEL**, *AND* ***KARYL L. CARRASQUILLLA, ESQ.*** *in her official capacity of the Chief Disciplinary Counsel, AND* the **OFFICE OF CHIEF DISCIPLINARY COUNSEL**, *Defendants*	SUPERIOR COURT Judicial District of Hartford HHD-CV16-6065012-S **APPLICATION FOR EX PARTE TEMPORARY INJUNCTION** January 28, 2016

The PLAINTIFFS, DANIEL JACOB D'ATTILO *ppa* by his parents Domenic D'Attilo and Cathy M. D'Attilo, and as guardians and trustees of Daniel Jacob D'Attilo's Estate and Trust, and CATHY M. D'ATTILO, individually and DOMENIC D'ATTILO, individually, hereby make application, pursuant to General Statutes § 52-471 *et seq.* for an ex parte temporary injunction against the CONNECTICUT STATEWIDE GRIEVANCE COMMITTEE *AND* MICHAEL P. BOWLER, ESQ. in his official capacity as Statewide Bar Counsel for the Connecticut Statewide Grievance Committee, *AND* EUGENE J. RICCIO, ESQ. in his official capacity as counsel for the Stamford/Norwalk Judicial District Grievance Panel, *AND* the STAMFORD/NORWALK JUDICIAL DISTRICT GRIEVANCE PANEL, *AND* STEVEN P. KULAS, ESQ. in his official capacity as counsel for the Fairfield Judicial District Grievance Panel *AND* the FAIRFIELD JUDICIAL DISTRICT GRIEVANCE PANEL, *AND KARYL L. CARRASQUILLLA, ESQ.* in her official capacity of the Chief Disciplinary Counsel, *AND* the OFFICE OF CHIEF DISCIPLINARY

COUNSEL. This injunction seeks to stay certain pending grievance proceedings now currently scheduled for hearing on February 4, 2016.

1. The underlying facts are set forth in the Complaint (Docket #100.31), and as summarized in this Application. In summary, on March 21, 2003, Cathy and Domenic D'Attilo signed a medical malpractice retainer agreement with Koskoff, Koskoff, & Bieder ("KKB"). The KKB Retainer was subject to the C.G.S. §52-251c fee cap (which permits about a 10% contingency fee).
2. Danny D'Attilo was one month old at the time and significantly disabled for life. *A003-004 (see annexed exhibits).* Domenic D'Attilo had gone as far as 11th grade and worked as a bricklayer. Cathy D'Attilo had a high school diploma. *A001.* Eight years later, a jury awarded the D'Attilos $58.6 million, the largest medical malpractice award in Connecticut history. In January 2012, the D'Attilos reached an agreement to settle for $25 million. *A003.*
3. While still being represented by KKB, the D'Attilos hired Day Pitney to advise on various issues related to the settlement. *A010.* Attorney Keith Gallant of Day Pitney requested a copy of the March 21, 2003 retainer agreement. *A111.* Gallant's time records indicate that he reviewed the retainer agreement that he received on February 15, 2012. *A134.*
4. Although the retainer agreement stated it was subject to the fee cap statute limit of about 10%, KKB illegally misappropriated 28% of the $25 million settlement ($7 million), rather than the $2,660,000 permitted by the fee cap statute calculation (with no objection from the Day Pitney respondents or warning to the D'Attilos). In addition, the complaint alleges that the KKB and Days Pitney attorneys conspired to keep this fraudulent misappropriation of millions of dollars from two probate courts and a court appointed guardian ad litem. *A009-A024.*
5. Among other things, KKB also charged the D'Attilos more than $600,000 in litigation expenses for which KKB had no original invoices or proof that these expenses were valid or accurate. *A024.*

6. In December 2014, the D'Attilos filed a civil action against KKB and Day Pitney in New Haven Superior Court. *D'Attilo v. Koskoff, Koskoff & Bieder, P.C. et al*, NNH-CV14-6051836-S (December 2014). (goo.gl/w0nBWb). *See* Amended Complaint (goo.gl/8xrJr6).
7. In February 2015, the D'Attilos filed grievances against seven attorneys from those two firms. A*001-042.* The civil complaint and the grievances allege, among other things, conversion of funds (Count Two), statutory theft (Count Three), and civil conspiracy (Count Four).
8. The civil complaint and grievances also allege that the attorneys from KKB and Day Pitney conspired to keep a March 21, 2003 retainer agreement out of the hands of the Norwalk and Northern Fairfield probate courts to hide the contingency fee terms from the courts (and to remove the court-appointed guardian ad litem who had a copy of the agreement), through a series of maneuvers, machinations, and fraud on the court and the clients, that took place in or about February 2012. *A009-A024.*
9. The civil complaint and grievances also allege that as a result of the decision in *Parnoff v. Yuille*, 139 Conn.App. 147, 163, 57 A. 3d 349, 360 (2012) *cert. denied*, 307 Conn. 956, 59 A.3d 1192 (2013), the civil defendants were obligated to return not only the $4.34 million that they knowingly misappropriated but *all* of the legal fees, for total return in legal fees of $7 million. *A041, 275.*
10. In addition, the civil complaint seeks treble damages pursuant to §52-564 which states: "Any person who **steals** any property of another, or knowingly receives and conceals **stolen property**, shall pay the owner treble his damages." *A003. All emphases in quotations is added unless noted.*

CURRENT STATUS AND BASIS FOR STAY:

11. This Application for a temporary injunction is limited to having the Court temporarily stay the only action currently scheduled in grievance proceedings, a February 4, 2016 hearing before three committee members of the Statewide Connecticut Grievance Committee (SCGC).

A362-365. Plaintiffs also seek a stay of any re-scheduling of the Koskoff and Nastri plea bargain hearing pending the outcome of this Complaint, or any other official actions.

12. The three-person committee is going to consider a plea bargain proposed by the Office of Chief Disciplinary Counsel (OCDC) to issue a reprimand for professional misconduct against Attorney Kathleen Nastri (Grievance #15-0137) in settlement of all potential grievance claims. *A343-347*. The joint hearing to consider the identical proposed plea bargain for Michael Koskoff (#15-0140) had also been scheduled for February 4, 2016, but was temporarily postponed, with no new date yet set. *A338-342, 374.*
13. The related grievances against attorneys James Horwitz (#15-0138), William Bloss (#15-0139), Joel Lichtenstein (#15-0141), Keith Bradoc Gallant (#15-0142), and Rebecca Iannantuoni (#15-0143), were dismissed by the two local panels in July and August of 2015. *See infra*. Therefore, there are no pending actions for those grievances that need to be stayed.
14. Because all seven grievances are interrelated, the pending Writ will have a substantial effect on all the grievances, including the proposed plea bargains with Nastri and Koskoff. If the Court grants the Writ, this will require a resubmission of all seven grievances from the Fairfield and the Stamford/Norwalk local panels to the CSGC for further review and further action by the grievance defendants prior to any final grievance determinations. Therefore, the plaintiffs respectfully request that this Court temporarily stay all grievance proceedings related to the above grievances pending the outcome of this Writ. No other relief is requested in this temporary injunction.
15. The basis of the injunction is that the plaintiffs have no other adequate remedy at law and will be irreparably harmed if the defendants take any further action on the pending grievances prior to this Court's determination of the issues raised in the Complaint.

16. Specifically, the grievance defendants acted outside their authority in dismissing the KKB and Day Pitney grievances that contained allegations of criminal misconduct. Instead, the panels were required to forward all the grievances to the Connecticut Statewide Grievance Committee for further review. This ministerial procedure is mandated by Practice Book §2-32(i)(2) which states in relevant part:

> If the panel determines that no probable cause exists that the respondent is guilty of misconduct, it **shall** dismiss the complaint unless there is an allegation in the complaint that the respondent committed a crime… [in which case] the panel **shall** file with the statewide grievance committee and with disciplinary counsel its written determination that no probable cause exists ….

17. At that point, pursuant to P.B. §2-34A(b)(1), the grievance defendants are ministerially mandated as follows:

> When, after a determination of no probable cause by a grievance panel, a complaint is forwarded to the statewide grievance committee **because it contains an allegation that the respondent committed a crime**, and the **statewide grievance committee or a reviewing committee** determines that a hearing shall be held concerning the complaint pursuant to Section 2-35 (c), the **disciplinary counsel shall present the matter to such committee**.

18. Thus, a local panel is not empowered to dismiss a grievance complaint that includes allegations of criminal conduct. It is only authorized to forward its finding and record directly to the Statewide Grievance Committee along with its written determination that no probable cause exists for the allegations related to the criminal conduct. At that point, either the entire CSGC or a reviewing committee must review the grievance. The Chief Disciplinary Counsel does not have the authority to investigate or settle the grievance arising from the second review, but is required to present the matter to the CSGC as determined by the CSGC.
19. Those procedures were not followed by the defendants in this case and therefore the proceedings should be stayed so this court may reach a determination on the merits of the Complaint.

20. That this is the clear meaning of the rules, can be seen by this Court's own online pamphlet informing the public of its rights and the procedures related to grievances.

21. The online pamphlet published by the Court is entitled "**Attorney Grievance Procedures in Connecticut Your Rights as a Complainant in the Grievance Process**" (*jud.ct.gov/publications/gc008.pdf*). The Court's pamphlet confirms the Practice Book requirement by informing the public that if a grievance complaint "**alleges** that the attorney committed a crime, it **will** be reviewed by the Statewide Grievance Committee or a reviewing committee." *A381-383.*

22. All that is required is an **allegation**. There is no requirement that an allegation of criminal conduct be established even by the lower standard of probable cause.

23. That the plaintiffs' grievances allege serious criminal conduct can be seen in the Koskoff firm's grievance reply where the Koskoff attorneys complained to the Fairfield Panel:

> the highly publicized civil lawsuit and now **this grievance complaint is [sic] based on the Complainants' false premise that the KKB lawyers are criminals**. … **Attorney Altschuler claims** that Kathleen Nastri, James Horwitz, Michael Koskoff, William Bloss, and Joel Lichtenstein **stole five million from the D'Attilo family and then formed a conspiracy with Attorney Gallant to hide their criminal acts**. *A074.*

24. Similarly, the Day Pitney respondents complained to the Stamford/Norwalk Panel:

> the D'Attilos appear to allege that Mr. Gallant and Ms. Iannantuoni violated their ethical obligations by… **allegedly conspiring** to protect KK&B's allegedly unlawful contingency fee by inducing the D'Attilos to change their residence so as to remove the guardianship proceedings from the Norwalk Probate Court . . . **allegedly misappropriating funds, converting funds, engaging in statutory theft, fraud and misrepresentatio**n and failing to safeguard money or property . . . allege that Mr. Gallant and Ms. Iannantuoni **misappropriated funds, converted funds and engaged in certain other types of insidious financial behavior**… *(A102)*.

25. Paragraphs 290 to 293 of the Grievance Complaint specifically cite criminal statutes alleged to have been violated. *A032*.

26. The local panels have absolute initial power over any grievance to determine probable cause. Currently, the local panels least are not subject to any review of their actions, no matter how egregious, for grievances involving garden variety attorney misconduct.
27. Except, this Court determined through its promulgation of P.B. §2-32(i)(2) that there "**shall**" be a second look by the Statewide Grievance Committee if there are **allegations** of criminal conduct.
28. Any grievance committee rule or procedure to the contrary is void. The local panel has no authority to issue a dismissal in a case involving allegations of criminal malfeasance by attorneys. The other defendants have no power to accept such a dismissal.
29. For grievances alleging criminal misconduct, the panel is only empowered to issue an opinion stating that the panel believes there is no probable cause for the conduct related to the criminal conduct, and then it **must** forward the entire file and record to the Statewide Grievance Committee, where it must be reviewed again by the CSGC, not the OCDC.
30. This is the one (and only) mandatory safeguard minimally protecting the public against the possibility of arbitrary and capricious panel decisions, bias, incompetence, undisclosed conflicts, negligence, collusion, favoritism, plain error, derelictions of duty, or worse, at the local panel level, at least in a grievance where there are allegations an attorney has committed a crime.
31. If a panel does dismiss a complaint, according to the committee's internal Rule 6D, it must also issue a finding that the complaint does not contain any allegations of criminal misconduct. On information and belief, all local panels have failed to do this as part of their regular practice.
32. Practice Book §2-40 broadly defines serious crime involving attorneys, in part, as "any felony, any larceny … or any other crime that reflects adversely on the lawyer's honesty,

trustworthiness, or fitness as a lawyer in other respects, or … involves … misrepresentation, fraud, deceit, … misappropriation, theft…."

33. The defendants had no authority to dismiss or settle any of the complaints once the local panels violated the Practice Book. The defendants herein must be compelled to uphold the Practice Book mandates requiring the forwarding of such grievances to the Statewide Grievance Committee for further review. However, until this issue is determined by the Court, the plaintiffs respectfully request that the Court stay any further grievance proceedings related to the above enumerated grievances.

34. That these were serious allegations of criminal activity against these well-known, well-respected, and well-connected attorneys meriting a competent investigation by the Statewide Grievance Defendants can be seen by what has happened to other attorneys who have engaged in similar kinds of activities. For example, the Office of Chief Disciplinary Counsel filed a criminal complaint for larceny against Attorney Laurence Parnoff for, among other things, failing to place approximately $313,000 of disputed legal fees into escrow. *stratfordstar.com/27228/stratford-attorney-charged-with-theft/*. Those criminal charges are still pending. The Office of Chief Disciplinary Counsel is also seeking the disbarment or suspension of Mr. Parnoff in an appeal now pending before the Connecticut Supreme Court. *SC 19535. appellateinquiry.jud.ct.gov/CaseDetail.aspx?CRN=52374&Type=PartyName*.

35. The grievances against KKB and Day Pitney allege similar or worse criminal misconduct resulting in the misappropriation of millions of dollars. *A001-042.* Moreover, neither the KKB defendants nor the Day Pitney defendants have placed a penny of the D'Attilos' funds in escrow, though the firms claim that the criminal allegations were false, and that the civil case is nothing more than a fee dispute. If KKB and Day Pitney actually believe that there is a fee dispute, then they needed to (and still need to) place the funds in escrow. *See Rule 1.15(f).*

36. In its *Parnoff* appellate brief to the Connecticut Supreme Court, defendant Office of Chief Disciplinary Counsel states that:

> Misappropriation is the umbrella term under which the different ways of misusing client funds are grouped. Black's defines it as "[t]he unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended including not only stealing but also unauthorized temporary use for [the] lawyer's own purpose, whether or not he derives any gain or benefit therefrom." Black's Law Dictionary (8th ed. 2004). It thus includes defalcation, defined in Black's as "misappropriation of trust funds or money held in any fiduciary capacity, and failure to properly account for such funds," and conversion, which is '[a]ny unauthorized act which deprives an owner of his property permanently or for an indefinite time.'

37. Other attorneys who have taken more than they were entitled to from client settlements have been charged and/or convicted with larceny, a crime. *See, e.g.*, *State v. Ankerman*, 81 Conn. App. 503, 840 A.2d 1182, *cert. denied*, 270 Conn. 901 (2004) (upholding attorney's conviction of first-degree larceny for the embezzlement of $35,000 in the guise of legal fees from funds held in trust for a minor client's settlement of personal injury action). *See also Gezelman vs. Monaghan*, *Grievance Complaint #14-0722* (the Statewide Grievance Committee found an attorney who failed to turn over $100,000 in settlement funds to have committed conversion "and that this conduct constitutes a criminal act that reflects adversely on the Respondent's honesty, trustworthiness and fitness as a lawyer, in violation of Rule 8.4(2) of the Rules of Professional Conduct and constitutes dishonesty, fraud, deceit and misrepresentation, in violation of Rule 8.4(3) of the Rules of Professional Conduct."). *jud.ct.gov/sgc/decisions/14-0722.pdf. See also* Disciplinary *Counsel vs. Monaghan*, MMX-CV15-6013603-S.

38. This Court has the power to oversee or preside over any grievance. "[T]he statewide grievance committee is not the exclusive tribunal in which attorney misconduct claims may be investigated." *Burton v. Mottolese*, 267 Conn. 1, 28 (2003). *Compare Somers v. Chan*, 110 Conn. App. 511, 536 (2008) ("The integrity of the judicial system serves as a unifying principle behind the seemingly disparate use of our supervisory powers.... [O]ur supervisory

powers are invoked only in the rare circumstance where [the] traditional protections are inadequate to ensure the fair and just administration of the courts....") (Citations omitted).

39. However, the Statewide Grievance Defendants act by and through authority granted by Conn. Gen. Stat. §51-90 et seq., to resolve most attorney misconduct complaints. *See also* P.B. §2-29 et seq.

40. The defendants collectively are considered to be "an arm of the court…" *Sobocinski v. Statewide Grievance Comm.*, 215 Conn. 517, 526 (1990).

41. The Office of Chief Disciplinary Counsel was created by the Judges of the Superior Court, effective January 1, 2004. P.B. §2-34A.

42. The Statewide Grievance Committee and the Office of Chief Disciplinary Counsel are separately administered (though there appears to be an overlap of functions between the two).

43. The Statewide Grievance Committee primarily investigates grievances; the Office of Chief Disciplinary Counsel primarily prosecutes grievances usually before the Statewide Grievance Committee (or before the Superior Court for grievances that are referred to the Court via presentment). The Office of Chief Disciplinary Counsel also has the authority to investigate and add additional charges against an attorney.

44. Local panels are under the supervision of the Statewide Bar Counsel, in this case, defendant Attorney Bowler. P.B. §2-30. Each panel is made up of two attorneys, one alternate, and one non-attorney. On information and belief, the panel members are non-paid, part-time volunteers who do not receive any special training to be on a panel. Panel members serve three-year terms.

45. The failures of the Stamford and Fairfield panels and the grievance defendants to follow the mandates of P.B. §2-32(i)(2) and P.B. §2-34A(b)(1) have harmed the plaintiffs.

46. They have also harmed the public by either setting a dangerous precedent or continuing a dangerous precedent if this has happened in other cases.

47. There is no other apparent remedy at law or through appeal since there is no direct appeal of a dismissal of probable cause by a grievant. As the Preamble of the Rules of Professional Conduct states:

> The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts. . . . **The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. … Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves**.

48. The defendants herein must be compelled to uphold the Practice Book mandates, designed to provide minimal protection to the public in cases where there are allegations attorneys have engaged in criminal misconduct. Because of the impact on the plaintiffs and the public, this Court should stay any further proceedings until the Court decides the issues raised in the Complaint.

SUMMARY OF THE KKB AND DAY PITNEY GRIEVANCE EVENTS TO DATE:

49. For further context and partial background, the detailed grievances filed in February 2015 (42 pages, with 156 pages of exhibits) were referred to local panels in or about March 2015. *A043-048*.

50. The Day Grievances were originally assigned to the panel where William Bloss, one of the attorneys being grieved by the D'Attilosm sits as a member. Though the panel declined to hear the grievance, the D'Attilos would have had no right to protest that or any other conflict of interest. As noted, the only right conferred upon those who file complaints, is the right to

have the Connecticut Statewide Grievance Committee review complaints that are not forwarded to local panels, or complaints forwarded to local panels that include allegations of criminal misconduct.

51. On June 3, 2015, the KKB respondents filed their grievance reply. *A048-079*, exhibit excerpts *A080-085.*

52. On June 15, 2015, the plaintiffs requested that the Fairfield local panel permit them to reply to "multiple *significant* misrepresentations of fact" in the KKB reply, and new documents turned over for the first time by KKB that raised additional questions of their malfeasance. *A086-097*. *Emphasis in original*. The plaintiffs also requested that the panel obtain documents not turned over by KKB.

53. On June 18, 2015, counsel for the Fairfield panel, Steven Kulas, wrote: "the Grievance Panel has no authority to order the Respondents to turn over documents to them." *A143.*

54. In fact, that was a misstatement of the law. Connecticut Gen. Statute §51-91 specifically provides subpoena power to the grievance panel. *A144.* Despite the critical nature of the documents requested, the Fairfield panel declined to take any action. *A150.* The plaintiffs have no rights to challenge the grievance panels, even when they misinterpret the law.

55. On June 8, 2015, the Day Pitney defendants filed their reply. *A099-123*, Exhibit Excerpts *A124-134*.

56. The Day Pitney respondents were represented by Mark Dubois, the former Chief Disciplinary Counsel, who had worked with the Statewide Grievance Committee for about six years as the chief professional misconduct prosecutor for Connecticut. Dubois's successor as the Chief Disciplinary Counsel, Patricia King, went to work for Mr. Dubois's firm in February 2015.

57. On June 12, 2015, the plaintiffs ask the Stamford/Norwalk panel for the right to reply to address "multiple *significant* misrepresentations of fact" (*Emphasis in original):*

> As you undoubtedly know, this is a high-profile case. Attorneys and clients throughout the state will be aware of its outcome and be guided accordingly. Given the gravity of these grievances, I [am] surprised that, and object to, the decision that a reply on behalf of my clients will not be considered. I hereby request permission to file a formal reply in a reasonable amount of time to do so. *A135*.

58. On July 6, 2015, the Day Pitney panel (Stamford/Norwalk) permitted a five-page reply. *A151.*

59. The Fairfield (KKB) Panel issued its decisions regarding the Koskoff Koskoff & Bieder attorneys on July 17, 2015. *A152-172.* It found probable cause of professional misconduct against Michael Koskoff and Kathleen Nastri, but dismissed the claims against Lichtenstein, Horwitz, and Bloss.

60. Though the panel should have referred all of the complaints (including the ones improperly dismissed in their entirety), to the Statewide Grievance Committee for further review, it or the CSGC also improperly forwarded the Nastri and Koskoff grievances only to the Office of Chief Disciplinary Counsel on or about July 20, 2015. *A173-174.*

61. On July 21, 2015, the plaintiffs wrote to Michael Bowler objecting to the failure of the grievance panel to comply with Practice Book §2-32(i)(2). *A175-177.* Plaintiffs also objected to the denial of permission to reply, the failure of the panel to obtain documents withheld by the KKB respondents, the failure to require that the KKB respondents provide sworn statements under penalty of perjury, and the failure of the Fairfield panel to find probable cause that the KKB respondents had misstated the facts in their grievance reply. *Id.*

62. On July 23, 2015, Attorney Bowler cited internal Rule 6D, and claimed that "since the panel did not find a crime was alleged and dismissed the complaint, the complaint is not subject to review by the Committee." *A180.*

63. On July 24, 2015, plaintiffs filed a reply to the Day Pitney respondents. The plaintiffs requested that the local panel hold a hearing and that the Day Pitney defendants be required to submit their reply under penalty of perjury just as those who file complaints are required. *A183.*

64. On August 18, 2015, plaintiffs' counsel met with Attorney Karyl Carrasquilla, who had recently been appointed the Chief Disciplinary Counsel, to take over the position that had been vacated by Patricia King (who now works for Mark Dubois, also former Chief Disciplinary Counsel). *A197.*

65. On August 24, 2015, plaintiffs' counsel wrote a letter to Attorney Carrasquilla (*A197-202)*, along with some additional documents. *A203-235.*

66. One of the issues raised in the letter related to the more than $600,000 in legal expenses KKB had deducted from the D'Attilos' settlement fund, but without any underlying proof as to the accuracy or legitimacy of those expenses. For example, the letter provided documentary evidence to Attorney Carrasquilla that one of KKB's experts testified in May 2011 at the D'Attilo medical malpractice trial that his total fees were going to be between $23-$25,000. *A199.* Instead, more than a year later, KKB entered a handwritten notation on a computer printout that this particular expert was going to be paid $68,712.92.

67. There was no explanation for this discrepancy from KKB. Moreover, the letter pointed out that in 2011, KKB had entered into a stipulation with the Office of Chief Disciplinary Counsel regarding KKB's accounting problems that had allegedly been resolved as part of a deal for KKB to avoid any disciplinary action and, therefore, there was a continuing pattern of accounting malfeasance on the part of KKB that potentially could impact all KKB clients. *A201, 220-222.* On information and belief, the grievance defendants have taken no action or conducted any investigation regarding KKB's ongoing accounting failures.

68. The letter also confirmed that Attorney Carrasquilla had told plaintiffs' counsel she would be requesting internal emails from KKB. In addition, the letter pointed out there were questions regarding the authenticity or accuracy of KKB documents. *A202.*

69. The Stamford/Norwalk local panel issued its decisions regarding the Day Pitney respondents on August 26, 2015, dismissing all claims. *A238-241*.

70. On September 18, 2015, plaintiffs inquired about the status of internal email documents that Karyl Carrasquilla stated that she was going to request from KKB. *A246.* She did not respond.

71. On September 30, 2015, plaintiffs sent additional information to Attorney Carrasquilla. *A247-258.* For example, plaintiffs asked if she had obtained any response from KKB to the nearly $70,000 charge for an expert who had testified under oath his fees were going to be $23-$25,000. *A247. Exhibits A*259-284. She did not respond.

72. On October 17, 2015, plaintiffs' counsel wrote to Attorney Carrasquilla regarding the status of the case. *A285-A288. Exhibits A289-296.*

73. On October 17 and October 19, 2015, Attorney Carrasquilla sent two additional allegations of professional misconduct by Nastri and Koskoff to the plaintiffs along with a representation that she intended to file those additional allegations on Monday, October 20, 2015. *A296-A302.*

74. The additional allegations against Nastri and Koskoff drafted by the Chief Disciplinary Counsel after her approximately two-month investigation, stated in part as follows (*A297, A301*):

> 1. **Respondent** committed professional misconduct, including but not limited to, violations of Rule 1.5(b)(c) of the Rules of Professional Conduct in that [she/he] **failed to honor the terms of the March 21, 2003 fee agreement with the Complainants. Connecticut General Statute 52-251c was in effect at the time of a verdict and subsequent settlement of this matter**.

> 2. Respondent committed professional misconduct, including but not limited to, violations of Rule 1.15(e) of the Rules of Professional Conduct in that [she/he] failed to render a full accounting explaining and providing proof/invoices/billing of the costs/expenses charged to the Complainants. *A297, 301*

75. Thus, Attorney Carrasquilla agreed that KKB had not been entitled to take $7 million in legal fees, but only $2.66 million.

76. On October 20, 2015, instead of filing the additional allegations, Attorney Carrasquilla wrote that she was "still investigating and discussing this matter with Respondent's counsel." *A304*.

77. On October 22, 2015, plaintiff's counsel wrote to Attorney Carrasquilla confirming an October 20, 2015 conversation and objecting to the OCDC offering a settlement, especially one that did not include restitution of the $4.34 million that the OCDC agreed had been improperly taken from the D'Attilos. *A305-307.* In part, plaintiffs' counsel wrote (*A306)*:

> By the end of our conversation you did say that you would take my views under consideration but made no commitment. You did acknowledge that you had full authority to demand restitution as part of any settlement of the grievance.
>
> I remain concerned and perplexed by your willingness to consider offering a reprimand, with or without restitution. There is documentary evidence in your hand that these respondents deliberately defrauded the D'Attilos (plus two probate courts and a guardian ad litem) and are lying to the grievance panel.

78. On October 22, 2015, Attorney Carrasquilla wrote that the December calendar did not have a hearing scheduled on the allegations of misconduct, as she had expected. *A308.*

79. On or about October 30, 2015, the Office of Chief Disciplinary Counsel filed its appellate brief before the Connecticut Supreme Court in *OCDC v. Parnoff*, where the OCDC took the position that a lawyer's subjective intent is irrelevant in determining the appropriate discipline for misappropriation. A lawyer merely has to know that the money belongs to the client and that the client has not authorized the transfer to commit professional misconduct meriting suspension or disbarment. See ¶36, *supra.*

80. At the time, plaintiffs were unaware the OCDC had taken this position, which was contrary to what plaintiffs' counsel had been told the OCDC needed to prove intent in the KKB grievance.

81. On November 12, 2015 plaintiffs' counsel wrote to Attorney Carrasquilla to inquire about documents not yet received. *A310.*

82. On November 12, 2015, plaintiffs' counsel was informed for the first time in a phone conversation with Attorney Carrasquilla that she had offered Kathleen Nastri and Michael Koskoff a reprimand only for failure to "render a full accounting explaining and providing proof/invoices/billing of the costs/expenses charged to the Complainants." *A312.*

83. Plaintiffs' counsel wrote to Attorney Carrasquilla on November 17, 2015 (*A312-317*) regarding that conversation (endnotes in original omitted):

> I was surprised (shocked actually) by what you told me on Thursday. When we discussed this matter on October 16 and 19, you did not even hint that you intended to offer a reprimand only for a failure to account for expenses. You assured me when we met in August that you would let me know in advance what your plans were so that I would have a chance to provide you with my clients' perspective on your proposed course of action. See my August 18, September 30, October 17, and October 22 emails.
>
> The last I heard from you on October 22 is that you were "still investigating and discussing this matter with Respondent's counsel." I had left a phone message for you on October 27, and emailed you, but did not hear from you until November 11 when you wrote: "I know that I had told both of you that I expected that the hearings would be scheduled for December. We just received December calendar and cases are not on it." I thought that meant there was at least going to be a hearing on the panel's findings. I emailed you on November 11 and we spoke on November 12 but you had a deadline and we made an appointment to speak at 10 AM yesterday. I have not yet been told what your further investigation has turned up.
>
> On October 17 I requested an opportunity to meet with you when I thought you were considering offering a reprimand for the two allegations. Now, I learn you offered a reprimand for only one allegation. I am asking you to reconsider and to withdraw your offer to the respondents and then to immediately file the two allegations you sent me on October 17 and to proceed with a full hearing on the matter.
>
> As your office wrote recently in the brief filed with the Connecticut Supreme Court in the Parnoff case "One of the ways a court may accomplish the goal of protecting the public and the judicial system is by imposing a sanction that deters other attorneys from engaging in similar misconduct."
>
> Even if there were no other issues other than KKB's failure to document $600,000+ in alleged expenses, as you are aware, KKB previously entered into a

stipulation with the Disciplinary Counsel for unspecified accounting practices that were in violation of Section 2-27(b).1 This is at least KKB's second time before the grievance committee on accounting issues. Yet, if they accept your offer, they will not face a hearing where they will have to explain their actions, provide actual documentation, or even explain their apparent misrepresentation to the then Disciplinary Counsel Patricia King in 2011 that KKB had taken "immediate steps to ensure its conformity with each of the requirements of Section 2-27(b)".

If your offer is accepted and approved, the respondents will receive a slap on the wrist for this one narrow issue despite significant unexplained conduct regarding their current accounting procedures. For just one example, I gave you documentary evidence in the form of sworn testimony from Mr. Forman in May 2011 that his fee for his work as a KKB expert was going to be $23,000 to $25,000. The KKB respondents ended up deducting more than $82,000 for Forman's fees a year later with only a suspicious handwritten notation on a computer print-out. Yet, you are not requiring that the respondents explain a penny of the $82,000 they took from the D'Attilos to pay a bill that should not have been more than $25,000, let alone the other $520,000 or so for which they also have no documentation, and their admitted (plus non-admitted) double billing charges of $3,727.99.4 Given the fact that KKB has a previous grievance stipulation with your office for accounting issues, how does this protect KKB's other clients let alone the public?

Similarly, you indicated to me when we spoke in October, as well as in your October 17 allegation, that the respondents "**failed to honor the terms of the March 21, 2003 fee agreement** with the Complainants…"

You told me when we spoke that you agreed that the respondents were not entitled to deduct $7 million in legal fees but were only entitled to deduct the statutory tier ($2,660,000). Yet, if your offer is accepted, you are permitting the respondents to avoid any and all responsibility for taking $4.34 million that belongs to Danny, Cathy, and Domenic.

I urge you to reconsider. Other attorneys have been suspended or disbarred for far less. What is of particular concern here is that there seems to be significant unequal application of ethical standards. For example, as you know, Attorney Ankerman ended up losing his license and going to jail for taking $35,000 more than he was entitled to from settlement funds. Attorney Parnoff is accused of taking about $313,000 plus accrued interest from settlement funds that he held in escrow for about six years. Those two attorneys together took less than 1/10 of the amount that the respondents took from the D'Attilos. Ankerman was disbarred and you are, in effect, asking the Connecticut Supreme Court to disbar Parnoff.

You have not even found ethical violations in KKB's failure to place the $4.34 million in escrow despite the fact that you are basing your case against Attorney Parnoff in large part on his fiduciary obligation to hold disputed funds in escrow.

***

Your office is taking the position with Attorney Parnoff that it is irrelevant whether he knew about the consequences of his actions, whether he did this with or without integrity, or even whether he had any intention to deceive: "the only question is whether he knew that he was taking funds without approval **or agreement**." Your own October 17 allegation of misconduct states: "The KKB respondents failed to honor the terms of the March 21, 2003 fee **agreement** with the Complainants.

If the *Parnoff* brief reflects your office's standard meriting the potential disbarment of Attorney Parnoff, it is inexplicable that you are not proceeding full speed ahead with allegations of misappropriation meriting disbarment against the KKB respondents.

Your predecessor filed a criminal complaint with the chief state's attorney in August 2014, alleging that Attorney Parnoff had misappropriated Ms. Yuille's funds. You agree that the KKB respondents were not entitled to take the $7 million legal fee, and you agree that they have not properly accounted for more than $600,000 in legal costs. Why is KKB's conduct not considered by you to be misappropriation meriting a hearing for suspension or disbarment based on your office's endorsement of the above definition of misappropriation?

While I objected to offering a reprimand, if a reprimand is what is offered, surely the respondents should be reprimanded for all of their unethical conduct, not just a narrow subset, and then, only after a hearing where these attorneys have to defend against the evidence that my clients presented to the local panel and to you regarding their intentionality related to legal fees and legal expenses. You previously told me that you were going to be open to considering harsher penalties if there was a hearing. By avoiding a hearing, by failing to demand that the respondents turn over the internal documents they have withheld, and by not notifying me in advance of your intention to offer a reprimand for only one issue, you offered KKB a settlement without having all the relevant facts.

In *Parnoff*, the client "was a minor at the time of the acts in question and so was extremely vulnerable. Since [Parnoff] had been practicing law since 1975, there is no question that he had substantial experience at the time of the misappropriation and, as a longstanding member of the legal profession, **must be held fully accountable for his ethical violations**." *Statewide Grievance Comm. v. Ankerman*, No. CV000802379, 2001 WL 34039473, at *6 aff'd, 74 Conn. App. 464 (2003).

In the D'Attilo case, Danny was eight years old at the time of settlement, and significantly disabled for life. Domenic went as far as 11th grade, and Cathy got as far as a high school diploma. Michael Koskoff was admitted to practice in 1966 and Kathleen Nastri was admitted in 1986. The respondents walked away from the case with $4,340,000 that did not belong to them, and then charged the D'Attilos more than $600,000 in undocumented legal expenses (including more than $82,000 for Mr. Foreman), among other things. For all of that and more, you are permitting them to resolve all issues by accepting a reprimand for their second violation of accounting practices. How does that hold them accountable

for their ethical violations? What standard does that set for other attorneys in Connecticut?

When we spoke in October you noted correctly that if the respondents actually believed that the 2005 amendment permitted them to take 28%, they were under an ethical obligation to notify the D'Attilos in 2005 of this change in the law. Despite the evidence that the Koskoff respondents knew they were not entitled to take $7 million at the time that they took it, and that they did everything they could to keep this information from two probate courts and the guardian ad litem, you decided that they do not have to take any responsibility for their "transfer" of $4,340,000 in client funds, not even the most basic admission of responsibility via a reprimand, or placing that money in escrow. You also decided that despite KKB's past history of accounting violations, nothing more than a limited reprimand is merited.

I urge you to withdraw the offer and pursue the allegations that you told me (and wrote to me) were going to be filed on October 20. There should be a hearing on the merits. While I understand we will have an opportunity to make some kind of presentation to the Grievance Committee should the respondents accept your offer, that will be too little and too late.

***

In the meantime, I am deeply troubled that you, the new Chief Disciplinary Counsel for the State of Connecticut, are choosing to send the wrong message to the Connecticut bar and the Connecticut public with an offer made before getting all the relevant facts (and despite the overwhelming evidence already in your possession), and your failure to have KKB respondents answer these allegations at a full hearing under oath. What reassurances do Connecticut parents of significantly disabled children have that they will be protected from unethical conduct by lawyers if you, the Chief Disciplinary Counsel, effectively condone what you agree that the KKB respondents did: taking millions in unearned fees and failing to document $600,000+ in expenses? Please call to discuss these and other important issues.

84. On November 17, 2015 plaintiff's counsel wrote to Paul Pollock, Parnoff's attorney. *A318*. He never responded.

85. On November 22, 2015, plaintiffs were notified that a grievance hearing was scheduled for January 7, 2016. *A320.*

86. On or about December 8, 2015 plaintiffs received proposed dispositions for a plea bargain with Michael Koskoff and Kathleen Nastri. *A338-A347.*

87. On or about December 8, 20015, plaintiffs filed a motion for leave to file an amicus brief with the Connecticut Supreme Court. *A326-A337.*

88. On December 18, 2015, KKB filed a motion for permission to object to the plaintiff's motion in the Connecticut Supreme Court. *A348-361.*

89. On or about January 4, 2016, the plaintiffs filed the instant complaint.

90. On or about January 6, 2016, plaintiffs were notified of a February 4, 2016 hearing regarding the Nastri and Koskoff plea bargain. *A362-A365.*

91. On January 5, 2016, plaintiffs' counsel wrote to the CSGC requesting a stay pending the outcome of the writ of mandamus. A366-367.

92. On January 11, 2016, the stay was denied on grounds that the plaintiffs lacked standing. A368.

93. On January 12, 2016, plaintiffs were informed that Michael Koskoff had requested a continuance but that the Nastri matter would go forward. *A369.*

94. On January 12, 2016, plaintiffs' counsel wrote that having to appear at two different hearings on the same issues would be a hardship for his clients. A370, 372-373.

95. On January 13, 2016, Michael Koskoff's request for an adjournment was granted. *A374*

96. On January 14, 2016, KKB objected to the plaintiffs' request for an adjournment based on the writ. *A375-A377*.

97. On January 15, 2016, plaintiffs' counsel wrote to Attorney Carrasquilla regarding his request for an adjournment based on there now being two hearings scheduled instead of one. *A378.*

98. On January 19, 2016 Attorney Carrasquilla filed a motion for an adjournment. *A379*

99. On January 21, 2016, the CSGC denied the motion. *A380.*

100. On January 27, 2016, the Connecticut Supreme Court denied plaintiffs' motion to file an amicus brief in the Parnoff case.

101. Upon information and belief, the Defendants and/or their employees, agents, subordinates or others under their supervision and control are about to conduct a hearing on February 4, 2016 (or as otherwise scheduled) to consider proposed dispositions for the

grievances involving Kathleen Nastri and Michael Koskoff, in determining whether to accept the proposed dispositions, or move forward with a hearing on the actual allegations of misconduct.

102. The Plaintiffs have no adequate remedy at law and will suffer irreparable harm to their rights as set forth in the Practice Book. Their five grievances, which contain allegations of criminal misconduct on the part of attorneys, should never have been dismissed in their entirety, and should have been forwarded directly to the Statewide Grievance Committee.

103. The two grievances for which probable cause was found also contained allegations of criminal misconduct and should have been forwarded directly to the Statewide Grievance Committee for review, and not to the Office of Chief Disciplinary Counsel.

104. The Plaintiffs have no adequate remedy at law and will suffer irreparable harm to their rights if the defendants take any further action on any of the grievances, including but not limited to consideration of the proposed disposition of Kathleen Nastri's professional misconduct on February 4, 2016, or on some other date yet to be scheduled for Michael Koskoff.

105. Without an immediate Ex Parte Temporary Injunction against the Defendants staying all further grievance proceedings until further notice of the Court, the defendants will have the ability to act on the proposed dispositions of Kathleen Nastri and Michael Koskoff as early as February 4, 2016.

106. Notice of this Application for Ex Parte Temporary Injunction has been given to the Defendants by providing a copy of said Application, Exhibits, Affidavits, Waiver of Bond, and accompanying papers filed with this Court on January 28, 2016, to defendants' attorney, Assistant Attorney General Jane R. Rosenberg (085141) AG Special Lit 2nd Fl., 55 Elm St. PO Box 120 Hartford, CT 06141 via the email address set forth on her appearance form (Jane.Rosenberg@ct.gov).

107. In support of the Relief sought herein, the Plaintiffs rely on the Complaint filed on January 4, 2016, this Application for Temporary Injunction, annexed Exhibits, supporting Affidavits, Proposed Order, and accompanying papers, as filed on January 28, 2016.

108. Pursuant to the provisions of §4-5(a)(1) of the Connecticut Practice Book, which states; "(a) No temporary injunction shall be granted without notice to each opposing party unless the applicant certifies one of the following to the court in writing (1) facts showing that within a reasonable time prior to presenting the application the applicant gave notice to each opposing party of the time when and the place where the application would be presented and provided a copy of the application", the Plaintiffs, on January 28, 2016, provided notice to the Defendants, by presenting a copy of the foregoing Application, Exhibits, Proposed Order, and Papers, to Assistant Attorney General Jane R. Rosenberg, attorney for the defendants.

WHEREFORE, the Plaintiffs move for the following Order:

A. A temporary, ex parte injunction, without bond, enjoining the defendant acting in their official capacities, either by their own acts or the actions of the person so designated by the defendants, from undertaking any further grievance action on any of the following grievances, and further, not considering any settlement offers or proposed dispositions for the following grievances, and that the defendants maintain the status quo of the following grievances until such time as this Court issues a decision on the complaint in this matter, and that the hearing currently scheduled for February 4, 2016 be and hereby is temporarily stayed and that no further hearing be scheduled until further notice of this court:

(1) Kathleen Nastri, (Grievance #15-0137),
(2) Michael Koskoff, (Grievance #15-0140),
(3) James Horwitz, (Grievance #15-0138),
(4) William Bloss, (Grievance #15-0139),
(5) Joel Lichtenstein (Grievance #15-0141),
(6) Keith Bradoc Gallant (Grievance #15-0142), and
(7) Rebecca Iannatuoni (Grievance #15-0143)

B. Any other relief the Court may deem fair, just and proper in equity.

C. This order does not limit the defendants in any way in terms of participating in this current action or any subsequent appeal of this current action.

Dated at Bethany, Connecticut, this 28th day of January, 2016.

RESPECTFULLY SUBMITTED BY THE PLAINTIFFS,

LAW OFFICES OF HOWARD ALTSCHULER
Howard Altschuler, Esq.
21 Perkins Rd.
Bethany CT 06524
1-234-567-9897
Juris Number: 409226
Email: legalmalpractice@gmail.com

CERTIFICATION The undersign hereby certifies that the foregoing Application for Ex Parte Temporary Injunction, together with the attached exhibits, affidavit and other papers filed on January 28, 2016, was delivered to defendants' attorney, Assistant Attorney General Jane R. Rosenberg (085141) AG Special Lit 2nd Fl., 55 Elm St. PO Box 120 Hartford, CT 06141 via the email address set forth on her appearance form (Jane.Rosenberg@ct.gov).

Howard Altschuler, Esq.

Howard Altschuler, Esq.
Juris Number: 409226