CONNECTICUT SUPERIOR COURT

JANE DOE,
PLAINTIFF

NO. 18-0768

vs.
STATEWIDE GRIEVANCE COMMITTEE

Jan. 12, 2024

Respondent

AFFIRMATION AND MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S APPLICATION FOR EMERGENCY INJUNCTIVE AND DECLARATORY RELIEF

I, Jeffrey Bagnell, counsel for the Plaintiff, JANE DOE (hereafter "Plaintiff") respectfully submits this Affirmation in Support for Emergency Injunctive and Declaratory Relief from the Disciplinary Counsel's and the Grievance Committee's prejudicial violations of the requirements and directives set forth in (1) General Statutes §51-90g (c), and (2) Practice Book § 2-35, as well as (3) its violations of the jurisdictional prerequisites set forth in Prac. Bk sec. 2-32(a) (4) Rule 1.F and (5) Rule 1A of the Statewide Grievance Committee Rules. In support hereof, Plaintiff states as follows:

I. BRIEF SUMMARY OF FACTS

This action for Declaratory and Injunctive relief involves two separate matters against Plaintiff. With respect to the first one, the DC has been prosecuting Plaintiff for nearly six years in a case involving claims that the grievant has since admitted were false, and in which the DC herself had filed a motion to dismiss on the grounds that there was no clear and convincing evidence to support the charges. In order to settle the charges, the DC asked Plaintiff to sign an affidavit containing a statement that the DC herself admitted she knew to be untrue. When Plaintiff stated she could not lie under oath consistent with her ethical obligations, the DC immediately responded with retaliatory actions and new charges, and

then skirted the jurisdictional prerequisites in a separate matter.

Since then, in a second matter, Practice Book § 2-32(a) and Statewide Grievance Committee Rules 1A and 1.F –which are jurisdictional prerequisites -- were violated. Statewide Grievance Committee rules requires that all complaints be filed on form JD-GC-6 in order to be considered. Practice Book § 2-32(a) requires that any grievance complaint must first be filed with Statewide Bar Counsel, before being assigned to a panel or elsewhere, as determined by the Statewide Bar Counsel. Yet Disciplinary Counsel is charging Plaintiff with a new separate charge concerning a charge that has never gone through those jurisdictional prerequisites.

Plaintiff has found no published case with this below-described combination of disturbing facts. Even each fact standing alone, would warrant dismissal; cumulatively, this matter demands emergency declaratory relief and permanently enjoining this miscarriage of justice.

A. THE MATTER HAS BEEN PENDING WITHOUT RESOLUTION FOR NEARLY SIX YEARS; CASELAW HOLDS THAT EVEN THREE YEARS IS *PER SE* VIOLATIVE AND PREJUDICIAL

This is a case still pending in 2024 with a docket number from six years before -- 2018. We have found no published case in which a Grievance Committee has been permitted to pursue a case for six years without resolution. Yet the grossly violative age of the matter is not the only basis for extreme concern about this case.

B. It Was Brought for Extortive Purposes

It is a case that the grievant, a former client -- who was sued for attorney's fees by

Plaintiff (his former counsel) — brought, for extortive purposes to wiggle out of a PJR court order to pay a $100,00 bond. In a settlement conference with a judge-referee, the former grievant-client dangled the threat of bringing a grievance and said he would not bring the grievance if Plaintiff agreed to forego the right to the $100,000 bond ordered by the PJR judge.

C. The Former Grievant-Client Admitted His Allegations Were False And Asked To Dismiss His Grievance.

After the PJR award, the former client brought federal litigation for an alleged malpractice claim and Plaintiff counter-sued. After some discovery was ordered by a federal judge – the results of which undermined his claims-- the former client asked the Statewide Grievance Committee (SGC) and Disciplinary Counsel (DC) to **dismiss** the grievance that he had brought. He submitted an affidavit to the SGC and DC admitting that his previous grievance allegations were false and informed them that he did not wish to pursue his grievance and requested dismissal.

Indeed, that former client **admitted in an affidavit** that each of his attestations that the local panel had relied on in finding probable cause were **false.** He claimed in his affidavit that he learned through discovery that his assertions were incorrect.

D. Disciplinary Counsel Recognized The Case Was Lacking In Merit And Filed A Motion To Dismiss

This is also a case in which, after reviewing the affidavit and investigating the facts, the Disciplinary Counsel (DC) itself agreed that the case should be dismissed. The DC determined that --- given the grievant-former client's sworn disavowal of the relevant allegations -- she could **not** prove the DC's case by clear and convincing evidence.

Yet, despite that -- years ago in July 2021—the DC sought dismissal of the case as legally insufficient, the case is now still pending in gross violation of the law. A prior Grievance subcommittee incorrectly indicated at an August 2021 hearing about the DC's Motion to Dismiss that the DC could simply rely on the former grievant-client's previous disavowed testimony, even though the former grievant-client admitted it was false. As set forth further herein, that untutored opinion would violate due process, as a disciplinary prosecutor cannot knowingly rely on disavowed testimony and false evidence.

E. The DC Engaged In Retaliation When Plaintiff Was Unable To Settle When The Condition Precedent Required By The DC Was To Signing A False Affidavit

Even more disturbing is what happened next: the DC indicated in her 2021 Motion to Dismiss that she knew a disciplinary prosecution of the Plaintiff lacked merit. The DC had admitted in her Motion to Dismiss that the charges could not be proven by clear and convincing evidence, and therefore the DC could not meet its burden of proof on any of the counts. Yet the DC asked the Plaintiff to settle (for merely the punishment of taking a CLE course) in exchange for the Plaintiff admitting that there was clear and convincing evidence of proof on one of the claims. But the DC had previously filed a motion to dismiss acknowledging that there was no such clear and convincing evidence to support any of the claims, yet she then wanted Plaintiff to lie under oath and admit to nonexistent "clear and convincing evidence" in an affidavit. The DC she asked Plaintiff to agree to a statement that they both knew was untrue, simply to avoid a hearing in which the DC conceded she could not prove guilt by clear and convincing evidence because all the material allegations had now been disavowed under oath by the grievant.

Plaintiff stated that he could not lie under oath and could not ethically sign a

perjurious affidavit. Then, the DC implicitly threatened Plaintiff that if Plaintiff did not sign the perjurious affidavit, the DC would bring an additional charge based on one sentence in an email from the Plaintiff, in which Plaintiff corrected an email comment made by the DC. In other words, the DC believed she could not win a prosecution for the pending charges, but wanted Plaintiff to lie and admit to nonexistent "clear and convincing evidence." If Plaintiff would do so, the penalty would be a mere CLE course. If Plaintiff would not do so, the DC would come up with new charges and prosecute Plaintiff for those.[1]

Plaintiff wanted to settle and indicated that the prospect of a new charge was frightening. Therefore, Plaintiff communicated to the DC that she would like to settle in light of that threat, but Plaintiff did not know how ethically she could sign a perjurious affidavit.[2]

In retaliation for Plaintiff refusing to sign the proposed perjurious affidavit, the DC filed new baseless charges, whose facts apparently she knew before the settlement offer for mere CLE credit. These new charges have been asserted because the DC knew she could not win a case based solely on the previous charges, which she had already acknowledged lacked merit, and which she had already admitted could not be proven by "clear and convincing evidence." This was improper.

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[1] Notably, all the underlying facts associated with those potential new charges were already known to the DC and did not give her pause in agreeing to a settlement that excluded those new allegations and resulted only in taking a CLE course as punishment. Yet those known facts would result in a new charge if Plaintiff could not agree to violate his oath as an attorney and swear to facts that both the DC and Plaintiff knew to be false.

[2] The Plaintiff is a former Assistant U.S. Attorney in whom it was instilled that (1) it is highly improper to sign a perjurious affidavit, and (2) even worse for a prosecutor to ask a defendant to sign an affidavit that neither the prosecution nor the defendant believed to be truthful or accurate.

Indeed, the DC and the Grievance Committee continued with retaliatory actions. In a separate matter, years later, the DC has brought another claim against Plaintiff, under Rule 8.4(3), even though the jurisdictional prerequisites for this new disciplinary charge have not yet been met. Rule 1A of the SGC Rules requires that all complaints be filed on form JD-GC-6 in order to be considered. The 8.4(3) allegation was not filed on that form as another complaint. The allegations came in the form of an informal letter on June 5, 2023, which arrived outside the permissible procedures in order to be considered a grievance complaint.

Moreover, Rule 1A requires service of any complaint by original and six copies. The Rules state that 'materials that do not comply with that rule **cannot** and **will not be considered,** and will be returned and not made part of the record.' The June 5, 2023 letter allegation (to wit: that Plaintiff told a former client that Plaintiff had returned all files and therefore believed the former client's concerns lacked merit. Further Plaintiff stated that, if upon review, the former client agrees that all files were returned, then the Plaintiff would respectfully request that the former client correct the record). The former client's informal June 5, 2023 to the panel informing it of that correspondence from Plaintiff does not constitute a grievance complaint compliant with Rule 1A. The former client did not provide six copies as the rules specifically require. Indeed, the panel specifically instructed Plaintiff that he need not respond with six copies in a reply because the letter was not a new complaint.

Moreover, Section 2-32 of the Prac. Bk allows 30 days to respond to a complaint. The panel did not permit Plaintiff 30 days to respond to the informal June 5 letter and explained that was this June 5 letter did not constitute a new complaint. Nothing in the Rules allow the panel to add a new charge that has not gone through the proper complaint procedures set forth under

the GC Rules and the Practice Book. Yet the retaliatory animus against Plaintiff has caused the DC to purposefully and retaliatorily discard the rules that apply to everyone else.[3]

Thus, even though the matter involves merely an informal letter to the committee, and none of the procedural prerequisites were followed, the DC is no purporting to bring yet another charge. Seven months have passed since that June 5 letter was written. The matter has still not been assigned to a subcommittee. These multiple departures from procedural compliance have and will prejudice the Plaintiff in multiple ways.

II. LEGAL STANDARDS

Section 51-90g (c) requires as follows: "The subcommittee shall conclude any hearing or hearings and **shall render its proposed decision not later than ninety days from the date the panel's determination of probable cause** or no probable cause was filed with the State-Wide Grievance Committee "[2] (Emphasis added.) The full sub-section reads as follows:

> *(c) The subcommittee shall conclude any hearing or hearings and shall render its proposed decision not later than ninety days from the date the panel's determination of probable cause or no probable cause was filed with the Statewide Grievance Committee. The subcommittee may file a* ***motion for extension of time not to exceed thirty days*** *with the Statewide Grievance Committee which shall grant the motion only for good cause shown. If the subcommittee does not complete its action on a complaint within the period of time provided in this section, the State-Wide 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. The failure of the subcommittee to complete its action on a complaint within the period of time provided in this section shall not be*

[3] Tellingly, more than six months have passed this that new charge was announced and no action has been taken to begin bringing the charge, in violation of General Statutes § 51-90g.

cause for dismissal of the complaint."

(Emphasis added.)

Likewise, Practice Book § 2-35 (i) provides in relevant part, "[w]ithin ninety days of the date the grievance panel filed its [probable cause] determination ... the reviewing committee shall render a final written decision."

The Statewide Grievance Committee Rule, IA, sets forth the following requirements for a complaint to be filed and accepted as an initial matter:

> **RULE 1A. Filing Procedure; Electronic Filing**
> *A. Filing Procedure: Grievance complaints, and any document related to grievance complaints or unauthorized practice of law complaints pending before the Committee or a reviewing committee, including but not limited to requests, motions, objections, briefs, appeals, or any other document intended for placement in the file of any such matter, or any copies thereof,* ***must be filed with or submitted to the Statewide Bar Counsel or an Assistant Bar Counsel****. No grievance complaint, unauthorized practice of law complaint, or any document attached in support thereof, or any portion of the record as defined by Practice Book §2-32(i) may be filed with or submitted to the Statewide Bar Counsel or Assistant Bar Counsel by way of fax, email, or any other electronic means. Any such document so received will not be considered as being filed with the Committee or the Statewide Bar Counsel.*

Additionally, Rule 1F, entitled "General Regulations" was violated by pursuing this June 5th letter (written by another former client) as if it were a properly submitted complaint, when it is not:

> *F. Grievance complaints filed with the Committee must be submitted on form JD-GC-6 and must contain an original and six copies. Any attachments must be properly collated and attached to the original and each copy of the complaint. .... If the complaint is forwarded to a grievance panel for investigation under Practice Book §2-32(a)(1), the grievance panel will*

> *review the statement and follow Rule 1(I) of the Grievance Panel Rules of Procedure. If the Complainant is Disciplinary Counsel, the Statewide Bar Counsel, the Committee or a reviewing committee thereof, or a grievance panel, then any records, including hospital, psychiatric or medical records as well as records containing personal identifying information may be included in the initial grievance complaint without an offer of proof. Materials that do not meet these requirements will be returned.*

Before a complaint can even be considered by a panel, under Prac. Bk Sec. 2-32(a), a complaint must be first filed with Statewide Bar Counsel ("SBC"). Sec. 2-32(a) states that the SBC "shall" review the complaint first, before deciding whether it should be forwarded to a local panel in the district where the attorney maintains his or her office, or refer the matter to the Chair of the Statewide Grievance Committee, or ref the matter to arbitration. This second matter never went through any of those jurisdictional prerequisites before the DC claimed she intended to proceed with a new prosecution of Plaintiff.

III. STATEMENT OF FACTS REGARDING THE HISTORY OF DELAYS

With respect to this six-year old matter, not a single continuance March 2020 was as a result of a motion for a continuance filed by Plaintiff. The prejudice to Plaintiff in this case is palpable and clear, as set forth below.

This first matter-- NO. 18-0768 -- was filed nearly six years ago in 2018. Yet the local panel did not find probable cause until nearly a year later, in August 2019. This was long before Covid could be an excuse for any delays. Year ONE (pre-Covid) which was from 2018 through 2019 —standing alone – indicates a *prima facie* violation: the Panel delayed a decision in violation of the statutory requirements.

Once the local panel finally rendered its decision, the Plaintiff responsibly and promptly informed the Committee and the Disciplinary counsel in two letters -- one sent on August 7 and one sent on August 13, 2019 -- that there was a pending legal case between Plaintiff and the

former client-grievant that could render the grievance moot, or have a collateral estoppel effect on it. For that reason, the GC, DC and Respondent all agreed that a stay made sense, given the uncontested nature of the appeal, and the potential imminency of a directly relevant appellate decision. This mutual stay occurred before there was ever an assigned hearing date.

In the early winter of 2020, former client-grievant (who shall be called Mr. X for these purposes) communicated that he wanted to settle the pending federal district court case because the deposition testimony of a material witness in that case directly undermined many assertions he had made in litigation. In addition to settling the federal litigation, Mr. X and his counsel later discussed expanding the proposed settlement agreement to include another matter. Once the parties agreed that a global settlement should include all matters, Mr. X notified the Disciplinary Counsel in March 2020 that he was withdrawing his complaint and all allegations relevant to the pending grievance. Because of that settlement agreement and the March 2020 notification to the disciplinary committee of withdrawal and retraction of Mr. X's allegations, the the agreed stay pending litigation ended in March 2020.

Since March 2020 when Mr. X notified DC that all other litigation between the parties had ceased, and he no longer wished to proceed with his grievance complaint, every delay for the last FOUR years and has been either requested by disciplinary counsel or occasioned by delays caused by the Grievance Committee. Thus, of the nearly six years that this has been pending, only one year involved a mutually agreed stay. All the remaining five years were caused by the DC and/or the Grievance Committee.

Under the relevant statutes, the Disciplinary Counsel ("DC") should have, and could have, moved to dismiss the matter within **thirty days** of learning on March 20, 2020 that Mr. X had retracted –under oath-- all relevant and material allegations. Nothing about Covid could

possibly explain why such a motion could not be filed on a timely basis. Covid delayed only live hearings, but did not affect paper filings. Instead, the DC delayed in filing the motion to dismiss for **one year and four months, until July 2021**. A remote hearing was finally scheduled for August 2021, and the DC's motion to dismiss was *incorrectly* denied. Thereafter, pursuant to statute, a hearing should have been rescheduled within thirty days of the August hearing, which should have been in September. Instead, the Grievance Committee failed to reschedule the hearing promptly, until four months later—December 2021. The Grievance Committee ("GC") did not even schedule a new hearing within *ninety* days of the *August 2021 hearing,* much less within ninety days of the 2019 panel decision. Instead, the GC scheduled a hearing four months later, on December 9, 2020. Both General Statutes (Rev. to 1993) §51-90g and Practice Book (1997) § 27J (i) establish a maximum of a four-month time limit for resolving an attorney disciplinary proceeding following the filing of a determination of probable cause or no probable cause. Yet the GC's adjournments, in and of themselves, were longer in some instances than the maximum allowable time to render a decision following a probable cause hearing.

Despite that statutorily violative four-month delay from the August 2021 motion hearing date until December 9, 2021, the DC asserted she was not ready for a December 9, 2021 hearing and yet again, needed more time. Although Plaintiff Doe did not want the hearing to be delayed further, she reluctantly consented to the DC's motion for a continuance, out of concern that the DC might retaliate against her if she did not consent. However, the claim that the DC was "not ready" after so many delays, seemed unfair to Plaintiff Doe. Section 51-90g (c) states that The Grievance Committee shall only grant a motion for extension of time **not to exceed thirty days.** Instead, the GC granted the DC's Motion and

adjourned the December 9, 2021 date to March 3, 2022—three months later.

After all that impermissible and prejudicial delay, the DC attempted in the winter of 2022 to negotiate a settlement of the claims with an agreed suggested penalty of mere CLE training, but with a requirement that Plaintiff sign a perjurious statement—a statement with which the DC herself had previously indicated she disagreed, in which Plaintiff was required to admit there was "clear and convincing evidence." When Plaintiff stated that she could not—consistent with his ethical obligations – sign a perjurious affidavit, the DC made a comment during email negotiations that Plaintiff believed to be an overstatement, and which the Plaintiff, in good faith, corrected. The DC has not claimed that the Plaintiff's assertion with which the DC disagreed was *intentionally* misleading; only that it was imprecise. The risk of imprecision and faded memories are exactly why three- and four- year-long delays in disciplinary cases are violative.

In fact, the additional charges have no merit and were just another justification for the DC to request yet more delay, owing to the DC's continued failure to be ready for the hearing.

On February 18, 2022, the DC moved for another continuance, which the Plaintiff opposed. The GC granted the continuance over Plaintiff's objection. Even though Section 51-90g (c) only permits continuances of a maximum of 30 days, the GC set the new hearing date for May 5, 2022 -- more than two months later.

The DC took that additional time to seek voluminous discovery from the Plaintiff[4]. In response to these voluminous document requests, Respondent indicated she was away in San

[4] Presumably, the DC already had completed her investigation more than a year before when she filed the Motion to Dismiss and told the Grievance Committee that there was a lack of clear and convincing evidence to support the charges.

Francisco, had caught Covid there, and would have to delay her return a few days until the five-day waiting period (from the onset of Covid Symptoms) was over, before she could return, scan the documents, and produce the discovery. Notably, the Plaintiff only sought from the DC her consent for about five extra days to return home and produce discovery. The Plaintiff **did not want or seek** yet another adjournment of the hearing date. However, the DC said she was going away on vacation. She said the few extra days requested for document production would only be received a few days before her vacation plans. Therefore, the DC asked the Respondent to once again consent to a continuance of the hearing. The Respondent consented, because by this time, she had learned that indeed the DC could retaliate with more charges, just as she had done in February 2022.

Because the DC had vacation plans and did not want the discovery produced too close to those plans, as it might interfere with her vacation, the hearing was delayed again. Hence, the DC sought yet another continuance. After the DC --for the third time in six months -- once again moved for a continuance, the GC granted the DC's continuance of the May 5, 2022 hearing date, and set the new hearing date to a date four months later. On September 1, the hearing was scheduled to proceed. The night, before the hearing was to begin, the GC cancelled the hearing because of a lack of a quorum– grossly inconveniencing Plaintiff's counsel, Plaintiff, and the witnesses, and prejudicing the Plaintiff with more delay.

Counsel for Plaintiff asked the GC to schedule the new hearing in October. However, the GC did not do so. Once again, the Section 51-90g (c) mandatory requirement that extensions of time **shall not to exceed thirty days** was violated. The September 1 hearing date was not rescheduled until more than three months later, on December 6.

At that first hearing, only about one hour of testimony was taken. Many months passed,

and then a next hearing was scheduled with only about another hour and a half of testimony. The history of this case has involved as much as four month or more in delays between hearings. Sometimes the SGC has cancelled because of a lack of a quorum. On numerous others, only two of the three SGC members have bothered to show. On several occasions, the DC has asked for extensions of time. On numerous other occasions, Plaintiff and hercounsel have waited for an hour or more for a delayed member of the SGC to show up for the hearing because of his or her work schedule.

At the hearing, the DC asks questions about tangential things like what illness the Plaintiff had a year and a half ago, attempting to prejudice Plaintiff by calling into question credibility if she cannot recall something because this matter has been festering unfairly for six years. Even when and if the hearings ever conclude, the DC wants thirty days to file a closing argument brief. It is unclear how many years it will take for the SGC to then read the closing argument briefs and decide the matter. Unless the Court intervenes, it is possible that this frivolous case will not be decided for another six years. Something similar has happened in another case, in which years passed after the hearing with no decision forthcoming. *See Dickson v. Statewide Grievance Committee,* 1999 WL 163680, 24 Conn. L. Rptr. 200 (Sup. Ct. 1999)(After hearing, delay of more than four years caused Plaintiff to seek injunctive relief: "After such a proposed decision and a fourteen day comment period, the entire State-Wide Grievance Committee was to vote and notify the parties of the final determination. In fact, nothing happened for over three years.")

Yet Practice Book § 2-35 (i) commands that , "[w]ithin ninety days of the date the grievance panel filed its [probable cause] determination ... the reviewing committee **shall** render a final written decision." (Emphasis added).

The above record is one of gross delay. None of the motions for continuance were at the behest of the Plaintiff. The underlying 2018 disciplinary claim was filed more than six years ago. Making matters worse, this is a case that the DC thought should be dismissed, and moved to do so in August 2021. Worse still, it has been almost four years ago since the complainant, Mr. X, admitted under oath that his allegations were false. The claims that arose between Plaintiff and the grievant, Mr. X –and which overlap with the same claims he brought in his grievance complaint—have, in one capacity or another, come before four different courts. Yet not one single judge has ever referred Plaintiff for discipline based on Mr. X's allegations. Not one single judge who heard these allegations has sanctioned Plaintiff or disciplined Plaintiff. There is no "protection of the courts" to be gained by pursuing this vindictive prosecution of Plaintiff. Numerous judges have reviewed the allegations in other fora and have not referred the case for discipline, suggested discipline, or sanctioned Plaintiff as a result of these allegations.

IV. LEGAL DISCUSSION

Practice Book § 2-35 (i) provides in relevant part, "[w]ithin ninety days of the date the grievance panel filed its [probable cause] determination ... the reviewing committee shall render a final written decision." The delay in this case is so long, that one could argue that the length of the delay amounts to a *per se* violation. *See Dickson v. Statewide Grievance Committee, supra,* 24 Conn. L. Rptr. 200(three-year delay was violative of attorney's rights; SGC ordered to render decision within 60 days.) The *Dickson* court explained its view that a three-year delay by the Grievance Committee was inexcusable:

> "*If this plaintiff has indeed engaged in misconduct, then by permitting the plaintiff to escape accountability for over three years, the* ***Statewide Grievance Committee has failed in its duty*** *to protect the public. If the plaintiff has not engaged in misconduct,*

> *then the Committee has treated the plaintiff* ***unfairly*** *by allowing these charges to hang over his head for a perversely long period of time.* ***Either way, the Statewide Grievance Committee has utterly failed in its duty.*** *This court cannot permit this neglect to continue in this case.*

Id. at *2 (emphasis added.

It is beyond peradventure that all the charges filed in this case now are dated, and violate the statutory time requirements under both Section 51-90g (c) and Practice Book § 2-35 (i).

While in an administrative proceeding, the court should normally defer to the agency, in attorney grievance matters, however, the Superior Court ultimately controls "the situation and procedure, in its discretion, as the interests of justice may seem to it to require." *In re Peck,* 88 Conn. 447, 91 A. 274 (1914). Thus, it is in the court's discretion to enjoin the proceeding given this extreme example of delay, coupled with the disavowed claims, weakness of the case, retaliatory improper conduct and below-described record of prejudice

V. PLAINTIFF HAS BEEN PREJUDICE BY THESE DELAYS

In addition to the prejudice Plaintiff has suffered to his practice from all the briefing necessitated by this case—not to mention the stress-related illness arising from these hemorrhaging proceedings – Plaintiff has clearly been prejudiced in this case by delays. One example of that relates to the DC's additional charges. The DC brought another charge against Plaintiff when she claimed Plaintiff misremembered or misspoke in email correspondence with the DC about a detail from years before. The email correspondence with the DC was about whether the parties could settle and whether the Plaintiff could state that here was clear and convincing evidence, when neither the GC nor the Plaintiff believed there was any.

Practice Book § 2-35 (d) (1) provides in relevant part that "[d]isciplinary counsel may add additional allegations of misconduct to the grievance panel's determination that probable cause exists in the following circumstances ... [p]rior to the hearing before the ... reviewing committee, disciplinary counsel may add additional allegations of misconduct from the record of the grievance complaint or its investigation of the complaint."

However, those narrow circumstances outlined in Practice Book § 2-35 (d) (1) are not the circumstance under which the DC purported to add additional charges. The following are the clearly retaliatory circumstances in which the DC added another charge to punish Plaintiff for not being able to settle because the DC was requiring the Plaintiff to lie under oath: the DC was negotiating a settlement with Plaintiff in February 2022. The DC had given every indication that her investigation was complete when the DC filed her motion to dismiss in July 2021. Then, without any indication she was asking an investigative question, the DC made what Plaintiff perceived to be a gratuitous and snarky comment during late night email settlement negotiations about her understanding of the process underlying Mr. X's affidavit. The DC did not pose a question –and certainly gave no indication that she was asking an investigative question or that the investigation was still ongoing. The DC simply made the unproductive email comment, which Plaintiff assessed to be an inaccurate imprecise statement. Minutes later, Plaintiff corrected the DC's imprecise overstatement, also by email. After settlement negotiations fell through because Respondent could not sign the proposed perjurious affidavit (that even Attorney Larson thought was false), the DC then added new charges based on her view that Plaintiff's memory of the affidavit negotiations was faulty. Hence, the delay that the DC has caused has become the trap.

Requiring Plaintiff to recall things precisely from years ago is made more difficult because of the DC's and GC's repeated delays over multiple years. Moreover, it is unfair to both create circumstances of delay to ensure faded memory and then to capitalize on any noted imprecision as an opportunity to add new charges, as the DC has done. Worse still, the DC has then used those new charges as an opportunistic basis for yet another continuance, which she claimed she needed in order to –- incredibly —"investigate" to determine whether

her new charges have validity. This matter presents a clear case of prejudice caused by the DC's delay, in which the DC then capitalizes on what she claims are imprecise recollections, after years of delay that the DC has caused.

Portions of the hearing came at a personally very difficult time when's Plaintiff's father was dying, was an invalid and was having problems with healthcare workers. This caused both concentration problems and problems concerning preparation because of competing priorities relating to those serious end-of-life considerations. Moreover, the delay has affected the Plaintiff's practice and has caused severe emotional toll and stress.

One of the examples of prejudice relates to the Plaintiff's ability to renew Second Circuit admission, which must be renewed every five years with an attestation that there are no pending grievance matters. Plaintiff was not able to make that attestation, because this matter has been pending for six years. The fact that his matter has not been resolved for so many years affects bar admissions elsewhere, and has a negative impact on Plaintiff's ability to practice. As stated above, the DC and the GC have violated 2-35 (i) and General Statutes §51-90g. Unlike other cases that have not granted dismissal because there was no showing of prejudice, in the instant case, the prejudice as outlined above is clear.

Moreover, because the testimony occurs sometimes in one-hour or ninety minute tidbits, and then months pass before the next hearing, memories of testimony have faded over the year of these short hearings spread out over time, and cross examination is rendered more difficult.

For all the above-stated reasons, the Plaintiff moved in 2022 at the SGC to dismiss this case. Instead, in December 2022, the SGC simply denied the motion without giving its reason, and set it would do so in a forthcoming opinion/decision. More than a year has passed, and no opinion or decision has been forthcoming since that motion to dismiss was submitted.

VI. CONCLUSION AND REQUEST FOR RELIEF

For all the above stated reasons, Plaintiff, through her counsel, respectfully submits that these facts present a more egregious case than any of the cases found amongst published decisions. First, the delay is far greater than any other case. Second, it is a case wherein the grievant withdrew his allegations and admitted under oath that they are false. Third, the DC herself admitted there is not clear and convincing evidence. Fourth, there is clear prejudice here, because of the retaliatory loading up of more frivolous charges literally hours after the settlement efforts feel through. Fifth, new charges in a separate matter brought by this DC do not comply with the jurisdictional prerequisites set forth in Prac. Bk sec. 2-32(a) (4) Rule 1.F and (5) Rule 1A of the Statewide Grievance Committee Rules.

For all the above stated reasons, Plaintiff, by and through her counsel, hereby respectfully requests that the court issue declaratory relief, up to an including a permanent injunction against further proceedings in these matters.

PLAINTIFF JANE DOE

BY:_____
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(*January ___, 2023*)

Oath: Counsel for Plaintiff, Jeffrey Bagnell, does hereby affirm the truth of the matters contained in the foregoing Affirmation and Memorandum.

_____
Commissioner of the Superior Court. Juris #408159