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STATEWIDE GRIEVANCE COMMITTEE *v.*
NANCY BURTON
(AC 25284)

Foti, Dranginis and Bishop, Js.

Argued January 7—officially released April 19, 2005

(Appeal from Superior Court, judicial district of Danbury, Mintz, J.)

Michael P. Bowler, acting bar counsel, for the appellant (plaintiff).

Nancy Burton, pro se, the appellee (defendant), filed a brief.

Opinion

DRANGINIS, J. The issue in this appeal is whether a trial court has subject matter jurisdiction over a presentment complaint (presentment), filed pursuant to Practice Book § 2-47,[1] alleging misconduct by an attorney who was disbarred subsequent to the events alleged in the presentment. We conclude that the court has subject matter jurisdiction because the issue is justi-

ciable.

The plaintiff, the statewide grievance committee, appeals from the judgment of the court, *Mintz, J.*, dismissing the presentment for lack of subject matter jurisdiction. The court concluded that it did not have jurisdiction because the defendant, Nancy Burton, *already* had been disbarred. On appeal, the plaintiff claims that the court improperly concluded that it lacked subject matter jurisdiction. We agree.[2]

The incident that forms the basis of the presentment occurred in 1995 (1995 incident) and has spawned, directly or indirectly, prior appeals to this court. See *Burton* v. *Statewide Grievance Committee*, 80 Conn. App. 536, 835 A.2d 1054 (2003), cert. denied, 268 Conn. 907, 845 A.2d 410 (2004); *Burton* v. *Statewide Grievance Committee*, 60 Conn. App. 698, 760 A.2d 1027 (2000). In the earlier appeal, directly related to the 1995 incident, this court reversed the judgment of the trial court, *McWeeny, J.*, affirming the decision of the plaintiff to reprimand the defendant for violation of rules 8.2 (a) and 8.4 (4) of the Rules of Professional Conduct. The case was remanded to the trial court with orders to reverse the judgment dismissing the defendant's appeal and to remand the matter to the plaintiff for further proceedings. *Burton* v. *Statewide Grievance Committee*, supra, 60 Conn. App. 707.

Subsequently, in November, 2001, the court, *Mottolese, J.*, disbarred the defendant from the practice of law in this state for misconduct that occurred subsequent to the 1995 incident. See *Sullivan* v. *Monroe*, Superior Court, judicial district of Fairfield, Docket No. 370545 (November 2, 2001).[3] The defendant thereafter filed a writ of error to contest her disbarment. Our Supreme Court dismissed the writ of error, thereby upholding the defendant's disbarment. *Burton* v. *Mottolese*, 267 Conn. 1, 59, 835 A.2d 998 (2003), cert. denied, U.S. , 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004).

The plaintiff filed the presentment at issue in January, 2004. The presentment is the means by which to bring the defendant's alleged misconduct with respect to the 1995 incident before the Superior Court for a hearing. See Practice Book § 2-47. The presentment alleges, in part,[4] that in December, 1995, the defendant, who at the time was a member of the Connecticut bar, wrote a letter to then Chief Justice Ellen A. Peters, in which she stated that the conduct of three judges of the Superior Court displayed the ''stark appearance of judicial corruption.'' The presentment further alleges that the defendant's conduct with respect to her remarks about the three judges violated rules 8.2 (a)[5] and 8.4 (4)[6] of the Rules of Professional Conduct. At a preliminary hearing on the presentment, Judge Mintz, sua sponte, raised the issue of the court's subject matter jurisdiction in light of the defendant's disbarment.[7] The court ordered the parties to brief the issue and to return to

court for oral argument thereafter. After hearing the parties' arguments on March 16, 2004, Judge Mintz concluded that the court lacked subject matter jurisdiction because the defendant had been disbarred. The court found that there is no rule authorizing the Superior Court's continued jurisdiction over a disbarred attorney, concluded that the matter was not justiciable and dismissed the presentment. The plaintiff appealed.

''A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.'' (Internal quotation marks omitted.) *Berlin Batting Cages, Inc.* v. *Planning & Zoning Commission*, 76 Conn. App. 199, 203, 821 A.2d 269 (2003). ''Because such a determination involves a question of law, our review is plenary.'' (Internal quotation marks omitted.) *Goodyear* v. *Discala*, 269 Conn. 507, 511, 849 A.2d 791 (2004). ''Where a decision as to whether a court has subject matter jurisdiction is required, every presumption favoring jurisdiction should be indulged.'' (Internal quotation marks omitted.) *Stewart-Brownstein* v. *Casey*, 53 Conn. App. 84, 88, 728 A.2d 1130 (1999).

There is a distinction between a court's jurisdiction and its statutory authority to act. See 1 Restatement (Second) Judgments § 11 (1982). ''Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. . . . A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it. . . . Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action.'' (Citations omitted; internal quotation marks omitted.) *Amodio* v. *Amodio*, 247 Conn. 724, 727–28, 724 A.2d 1084 (1999). ''Fixing the qualifications for, as well as admitting persons to, the practice of law in this state has ever been an exercise of judicial power.'' (Internal quotation marks omitted.) *Scott* v. *State Bar Examining Committee*, 220 Conn. 812, 817, 601 A.2d 1021 (1992).

''The Superior Court possesses inherent authority to regulate attorney conduct and to discipline the members of the bar. . . . The judiciary has the power to admit attorneys to practice and to disbar them . . . to fix the qualifications of those to be admitted . . . and to define what constitutes the practice of law. . . . In the exercise of its disciplinary power, the Superior Court has adopted the Code of Professional Responsibility.'' (Citations omitted; internal quotation marks omitted.) *Massameno* v. *Statewide Grievance Committee*, 234 Conn. 539, 553–54, 663 A.2d 317 (1995).

Judge Mintz concluded that the court lacked subject matter jurisdiction because the issue was not justiciable, as the defendant was no longer a member of the bar. In reaching this conclusion, he relied on the definition of

justiciability set forth in *Mayer* v. *Biafore, Florek & O'Neill*, 245 Conn. 88, 713 A.2d 1267 (1998). ''Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant.'' (Internal quotation marks omitted.) Id., 91. Judge Mintz concluded that because the defendant had been disbarred prior to the filing of the presentment, the third and fourth prongs of the justiciability rule were wanting. We conclude, however, that, although the defendant has been disbarred for conduct unrelated to the 1995 incident alleged in the presentment, the matter is capable of being adjudicated and the determination of the controversy will result in practical relief to the plaintiff.

Although the dissent contends that Judge Mintz properly dismissed the presentment because the issue is moot as there is no *legal* relief that can be granted, we note that our case law uses the terms legal and practical relief. ''Mootness presents a circumstance wherein the issue before the court has been resolved or had lost its significance because of a change in the condition of affairs between the parties. . . . Since mootness implicates subject matter jurisdiction . . . it can be raised at any stage of the proceedings. . . . A case becomes moot when due to intervening circumstances a controversy between the parties no longer exists. . . . An issue is moot when the court can no longer grant any practical relief.'' (Internal quotation marks omitted.) *Taylor* v. *Zoning Board of Appeals*, 71 Conn. App. 43, 46, 800 A.2d 641 (2002). ''[C]ourts do not decide moot questions 'disconnected from the granting of actual relief or from the determination of which no practical relief can follow.' . . . One oft-cited case put it this way in finding mootness: 'So, as no practical benefit could follow from the determination of the questions . . . it is not incumbent upon us to decide them.' '' (Citation omitted.) *State* v. *Klinger*, 50 Conn. App. 216, 222, 718 A.2d 446 (1998). We are of the mind that there is actual relief and practical benefit to be afforded both the plaintiff and the defendant by a court's determining whether the defendant's alleged conduct related to the 1995 incident was, in fact, misconduct.

General Statutes § 51-90e provides in relevant part: ''(a) Any person may file a written complaint alleging *attorney misconduct*. . . .'' (Emphasis added.) Practice Book § 2-47 provides in relevant part: '' (a) *Presentment of attorneys for misconduct* . . . shall be made by written complaint of the statewide grievance committee. . . .'' (Emphasis added.) When construing a statute, we ascertain its meaning from the text of the statue itself and its relationship to other statutes. General Statutes § 1-2z. The presentment here concerns an

incident that occurred in 1995, alleging misconduct that occurred before the defendant was disbarred. Section 51-90e and Practice Book § 2-47 concern the misconduct of attorneys. ''[E]ach disciplinary action must be decided on its own particular facts in order to determine the appropriate discipline.'' *In re Application of Kraemer*, 411 N.W.2d 71, 74 (N.D. 1987); see also *People* v. *Jamrozek*, 921 P.2d 725 (Colo. 1996) (affirming recommendation for disbarment but not imposing additional discipline as respondent already disbarred). We therefore conclude that the court can adjudicate the 1995 incident to determine whether the defendant's alleged conduct was, in fact, misconduct. That determination can be made irrespective of the defendant's current status.

''[A] comprehensive disciplinary scheme has been established to safeguard the administration of justice, and [is] designed to preserve public confidence in the system and to protect the public and the court from unfit practitioners. . . . General Statutes § 51-90g and the parallel rules of practice authorize the grievance committee to act as an arm of the court in fulfilling this responsibility. . . . These rules exist within the broader framework of the relationship between attorneys and the judiciary. . . . This unique position as officers and commissioners of the court . . . casts attorneys in a special relationship with the judiciary and subjects them to its discipline. . . .

''An attorney as an officer of the court in the administration of justice, is continually accountable to it for the manner in which [she] exercises the privilege which has been accorded [her]. [Her] admission is upon the implied condition that [her] continued enjoyment of the right conferred is dependent upon [her] remaining a fit and safe person to exercise it, so that when [she], by misconduct in any capacity, discloses that [she] has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, [her] right to continue in the enjoyment of [her] professional privilege may and ought to be declared forfeited. . . . Therefore, [i]f a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession.'' (Citations omitted; internal quotation marks omitted.) *Massameno* v. *Statewide Grievance Committee*, supra, 234 Conn. 554–55.

When Judge Mottolese disbarred the defendant, he ordered that she was prohibited from applying for readmission to the bar for five years, among other things. *Sullivan* v. *Monroe*, supra, Superior Court, Docket No. 370545. One who has been disbarred has the right to apply for readmission. Practice Book § 2-53; *In re Appli-*

cation of Koenig, 152 Conn. 125, 131–32 n.2, 204 A.2d 33 (1964). The Superior Court may reinstate as an attorney-at-law, any person who has been disbarred. General Statutes § 51-93. "[T]he appropriate inquiry when deciding whether to grant admission to the bar is whether the applicant has *present* fitness to practice law. . . . Fitness to practice law does not remain fixed in time." (Citations omitted; emphasis in original.) *Scott* v. *State Bar Examining Committee*, supra, 220 Conn. 829.

We conclude therefore that there is practical benefit to both parties to resolve this controversy sooner rather than later. We take judicial notice of the plaintiff's argument before Judge Mintz on the motion to dismiss that all three of the judges involved in the 1995 incident are now trial judge referees. As in any case, time dims the memory of all witnesses. A resolution of the controversy also will benefit the courts and the public, the third party beneficiaries of our attorney disciplinary system. If, and when, the defendant seeks to apply for readmission to the bar, the defendant's record before the bar admission committee will be more complete if this matter is adjudicated. The issue to be decided is whether the defendant's conduct with respect to the 1995 incident violates our code of professional conduct.

With respect to the defendant, we foresee a possible impediment to her applying for readmission to the bar if the 1995 incident remains unresolved. We cannot anticipate how the absence of a decision will be considered by the bar examining committee that would review the defendant's application for readmission. Alternatively, if the defendant is readmitted to the bar, will she immediately be faced with a presentment related to the 1995 incident? We also take issue with the dissent's position that the Superior Court can not suspend or disbar the defendant because she has been disbarred and remains so. Practice Book § 2-47 does not limit the Superior Court to those two forms of discipline, as it may impose "such other discipline as the court deems appropriate." Although the imposition of certain sanctions may be moot at this time, the adjudication of the defendant's conduct has future relevance. See *Louisiana State Bar Assn.* v. *Krasnoff*, 515 So. 2d 780, 784 (La. 1987) (although no sanction imposed on disbarred attorney, determination of gravity of violation relevant if he seeks readmission). We have no way of knowing, first of all, whether the court will uphold the plaintiff's reprimand, and second, what discipline it may impose. Hypothetically, it could impose an additional period of time before the defendant may seek readmission to the bar or additional obligations the defendant must fulfill before she may reapply.

Although it is true, as the dissent points out, that the plaintiff reprimanded the defendant for the 1995 incident, the defendant appealed from the reprimand. Although the reprimand was upheld on appeal in the

Superior Court, this court reversed that judgment after concluding that the defendant had been denied due process of law because she was not present at the hearing on the appeal. *Burton* v. *Statewide Grievance Committee*, supra, 60 Conn. App. 699, 707. Consequently, the appropriateness of the reprimand is still in question, a fact known to our Supreme Court when it denied the defendant's writ of error. *Burton* v. *Mottolese*, supra, 267 Conn. 56 n.51. Our Supreme Court has not issued an order pursuant to its supervisory powers with respect to this court's remanding the matter to the plaintiff for further proceedings. We therefore presume that our Supreme Court intended that the order be followed.[8]

We therefore conclude that the Superior Court has jurisdiction to consider the presentment related to the defendant's conduct that occurred prior to her disbarment, as the controversy is justiciable.[9]

The judgment is reversed and the case is remanded for further proceedings.

In this opinion FOTI, J., concurred.

[1] Practice Book § 2-47 provides in relevant part: "(a) *Presentment of attorneys for misconduct,* whether or not the misconduct occurred in the actual presence of the court, shall be made by written complaint of the statewide grievance committee or a reviewing committee. Service of the complaint shall be made as in civil actions. . . . After such hearing the court shall render a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or *such other discipline as the court deems appropriate.* This may include conditions to be fulfilled by the attorney before . . . she may apply for readmission or reinstatement. . . ." (Emphasis added.)

[2] The defendant failed to appear for oral argument before this court, thereby waiving her right to present oral argument. See *Lauer* v. *Zoning Commission*, 246 Conn. 251, 253 n.4, 716 A.2d 840 (1998).

In her brief, the defendant argued that the court should have dismissed the presentment as a disciplinary sanction and granted her motion for sanctions against the plaintiff, its attorneys and several others. The defendant, however, failed to raise these claims in a cross appeal pursuant to Practice Book § 61-8. We decline to review the claims, as they are not properly before this court. See *Housing Authority* v. *Charter Oak Terrace/Rice Heights Health Center, Inc.*, 82 Conn. App. 18, 19 n.1, 842 A.2d 601 (2004).

[3] Judge Mottolese ordered as follows: "The court hereby orders that Nancy Burton be disbarred from the practice of law in this state and that she be prohibited from applying for readmission for a period of five years. Any application for readmission shall comply with the provisions of Practice Book § 2-53 and in addition shall comply with the following:

"1. Successful completion of a course in Connecticut civil practice and procedure at an accredited law school.

"2. Successful completion of a course in professional responsibility and legal/ethics at an accredited law school.

"3. Pass the multi-state examination in professional responsibility administered under the auspices of the Connecticut Bar Examining Committee." *Sullivan* v. *Monroe*, supra, Superior Court, Docket No. 370545.

[4] Paragraphs 2 through 6 of the presentment allege four prior disciplinary actions in which the defendant had been reprimanded and one in which she had been disbarred. The remainder of the allegations of the presentment concerned the 1995 incident.

[5] Rule 8.2 of the Rules of Professional Conduct provides in relevant part: "(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office. . . ."

[6] Rule 8.4 of the Rules of Professional Conduct provides in relevant part:

"It is professional misconduct for a lawyer to . . . (4) Engage in conduct that is prejudicial to the administration of justice . . . ."

[7] Subject matter jurisdiction may be raised at any time by any party or sua sponte by the court. See *Beneduci* v. *Valadares*, 73 Conn. App. 795, 805, 812 A.2d 41 (2002).

[8] We are troubled by footnote 2 of the dissenting opinion, which states specifically "when an attorney's disciplinary history already has been utilized as part of the justification for disbarment, the [plaintiff] may not bring a subsequent presentment based on that same history." The dissent cites no authority for its position. In our view, the defendant's disciplinary history is what it is, and it is relevant to any current or future presentments as it reflects on the defendant's ability to practice law. See A.B.A., Standards for Imposing Lawyer Sanctions (1986) standard 9.22, p. 49 (prior disciplinary offenses among factors that may be considered in aggravation).

[9] Our conclusion is consistent with the decisions of other jurisdictions brought to our attention by the plaintiff. See, e.g., *Grievance Administrator* v. *Attorney Discipline Board*, 447 Mich. 411, 413, 522 N.W.2d 868 (1994) (disciplinary board retains jurisdiction to consider misconduct committed during period of licensure by attorneys whose licenses were later revoked); *In re Sloan*, 135 App. Div. 2d 140, 142, 524 N.Y.S.2d 699 (1988) (petition not moot in view of fact that respondent will be eligible to apply for reinstatement at some future date).