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

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SCHALLER, J., dissenting. I respectfully disagree with the majority, which affirms the trial court's dismissal of the appeal by the plaintiff, Joseph J. Notopoulos, from the reprimand of the defendant, the statewide grievance committee. I do so without condoning the plaintiff's unnecessarily harsh and intemperate manner of criticizing the probate judge in question. I am compelled to dissent, however, because I believe that the reviewing grievance committee's decision to reprimand the plaintiff, which the statewide grievance committee and the trial court affirmed, was based on inappropriate assumptions, inadequate evidence and improper procedures.

The majority has capably and accurately stated most of the important facts, procedural history and applicable law. The plaintiff's intemperate remarks in his letter to Renee Bradley are part of the record. As noted, Judge Berman filed a complaint with the statewide grievance committee (committee) by letter. Although he took offense at the plaintiff's remarks, it is significant, in terms of evidence, that he did not specifically refute the substance of the allegations or explain his actions, which the plaintiff had criticized. After several additional submissions to the committee, the matter proceeded to a hearing. Although, unquestionably, the committee has the burden of proving violations by clear and convincing evidence, it chose to call no witnesses and, instead, relied solely on the written record. The only witness to testify before the committee was the plaintiff, who explained and elaborated on his charges of misconduct against the probate judge.

At the outset, I note on the basis of our previous case law and as a matter of logic that multiple burdens of proof exist in this case. There exists, generally, a ''burden of evidence,'' which is ''[t]he duty of a party to proceed with evidence at the beginning, or at any subsequent state, of the trial, in order to make or meet a prima facie case. . . . This duty, otherwise, and perhaps more appropriately, called the burden of producing evidence, may arise at different stages of the trial, even be borne successfully once, only to arise again at a later stage . . . . [It is the burden of] making a prima facie showing as to each factual ingredient necessary to establish a prima facie case. Having done this, a plaintiff has discharged his burden of evidence, and the burden shifts to the defendant to produce, if he desires, competent controverting evidence, which, if believed, will offset the plaintiff's prima facie case.'' (Citation omitted.) Ballentine's Law Dictionary (3d Ed. 1969). This is to be distinguished from the ''burden of persuasion,'' that is ''[t]he burden of convincing the jury or the court as the trier of the issue or issues of fact; the

ultimate burden of proof.'' Id.

As I stated earlier, it is well settled that the committee bears the initial burden of evidence to prove the ethics violation by clear and convincing evidence. *Lewis* v. *Statewide Grievance Committee*, 235 Conn. 693, 698, 669 A.2d 1202 (1996). When the committee presents sufficient evidence to meet the burden, the burden of evidence shifts to the alleged violator. As the majority correctly notes, after the committee carries its burden, ''[t]he plaintiff must . . . provide evidence of an objective, reasonable belief that his statements were true. See *Burton* v. *Mottolese*, 267 Conn. 1, 49–52, 835 A.2d 998 (2003), cert. denied, U.S. , 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004).'' The plaintiff has no burden to carry until the committee presents clear and convincing evidence of the violation. Here, after the plaintiff provides evidence that he had an objective, reasonable belief that his statements were true, the burden shifts back to the committee to rebut that evidence and, ultimately, to carry its burden of persuasion and to convince the finder of fact of the truth of the claimed violation. See, e.g., *Somers* v. *Statewide Grievance Committee*, 245 Conn. 277, 296–98, 715 A.2d 712 (1998) (holding that committee failed to carry its ultimate burden).

At this point, I depart from the majority's interpretation of the case. I focus on what the committee and the court considered to be the most serious charge against the plaintiff, that is, the plaintiff's claim of ''extortion'' on the part of the judge. Whereas I believe it is likely that the plaintiff was using the word ''extortion'' in a colloquial sense—rather than making a charge, literally, of criminal extortion—the committee seemed to assume for purposes of its conclusions that the language meant, quite literally, criminal extortion. It thereupon determined that the plaintiff had not substantiated his charge and, therefore, either he made the statement knowing that it was false or made it with reckless disregard as to its truth or falsity. The plaintiff accused the judge of ''reprehensible extortion from the [plaintiff], without legal authority, of money for his crony . . . .'' If the plaintiff had intended to charge criminal extortion as such, the words ''reprehensible'' and ''without legal authority'' would be repetitive and irrelevant.

Even the committee recognized on some level the metaphoric and colloquial use of the term when it concluded that he had ''likened this to criminal extortion.'' If, in fact, the plaintiff claimed that the judge's conduct was merely *likened* to criminal extortion, the plaintiff's explanations of his observations and conclusions that charging fees, ''threatening'' a mental examination of his mother and asserting that a substantial cash bond could be imposed were sufficient, in my view, to shift the burden of evidence back to the committee. Once

the plaintiff offered some reasonable explanations of the conduct that he concluded was similar to extortion, the committee had the burden of persuasion on the issue. Clear and convincing evidence is a high standard indeed and rarely, if ever, can it be met without the committee producing some witnesses and more evidence than an equivocal letter. ''[C]lear and convincing proof denotes a degree of belief that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution. . . . [The burden] is sustained if evidence induces in the mind of the trier *a reasonable belief that the facts asserted are highly probably true*, that the probability that they are true or exist is *substantially greater* than the probability that they are false or do not exist.'' (Emphasis added; internal quotation marks omitted.) *Somers* v. *Statewide Grievance Committee*, supra, 245 Conn. 290–91.

If the plaintiff's remarks about the probate judge were to be taken literally, as a claim of criminal extortion in violation of General Statutes § 53a-119 (5), I believe the same result would apply. Under § 53a-119 (5) (H), ''[a] person obtains property by extortion when he compels or induces another person to deliver such property to himself or a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will . . . use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely . . . .'' The plaintiff's explanation that the judge threatened to impose a substantial cash bond or a mental examination of the plaintiff's mother unless the plaintiff paid certain fees could constitute criminal extortion.

Whether accepted ultimately, the plaintiff's testimony concerning the judge's conduct was sufficient, once again, to shift the burden of evidence to the committee. Once that testimony was offered, the committee, to meet its burden of persuasion by clear and convincing evidence, could not rely solely upon the plaintiff's assertions in his letter and the judge's brief complaint.

In this case, the committee rejected out of hand the plaintiff's assertions that the judge acted improperly. Given our prior cases, the proper procedure, after the plaintiff had testified as to the factual basis for his beliefs, was for the panel to call witnesses to explain the judge's actions under the circumstances. The panel assumed, without having considered enough evidence to know, that the plaintiff's statements were false or reckless and thereby found a violation based on mere assumption, rather than on clear and convincing evidence.

Although the committee may well have weighed the

evidence against the plaintiff's interests ultimately, in that event the decision at least would have been based on evidence rather than assumption. To assume lack of veracity merely because an attorney speaks harshly or even offensively about a judge's actions is not proper under any circumstances. *It is a simple matter, once some explanation is offered, to call a witness to rebut and explain*. I note that the record contains no clear and convincing documentary evidence explaining the judge's actions that the plaintiff cites in support of his statements. It would appear that the sole basis of the violation and reprimand was the committee's incredulous reaction to the plaintiff's statements; the committee lacked explanations, oral or documentary, as to why the probate judge did what he did.

Speech rights, qualified as they are under these circumstances, should not be treated so lightly as to determine violation of the Rules of Professional Conduct on the basis of assumption alone. Abusive and insulting remarks, however offensive and unwelcome they may be, cannot alone support a violation when an explanation is offered. For the foregoing reasons, I would reverse the judgment of the trial court. Accordingly, I respectfully dissent.