Administrative Order No. 9
PERMANENT RULES GOVERNING ESTABLISHMENT AND OPERATION OF THE PROFESSIONAL RESPONSIBILITY PROGRAM

HISTORY

Effect of rules on matters pending as of Sept. 1, 1999. The Supreme Court Order dated March 11, 1999, eff. Sept. 1, 1999, provided that the rules contained in this order shall become effective on Sept. 1, 1999, except that any matter then pending with respect to which a formal hearing has been commenced shall be concluded under the procedure existing prior to Sept.1, 1999.

ANNOTATIONS

Cited. Cited in Stowell v. Bennett (1999) 169 Vt. 630, 739 A.2d 1210 (mem.).

PREAMBLE: AUTHORITY OF THE COURT

Under the constitutional authority of the Supreme Court of Vermont to structure and administer the lawyer discipline and disability system, Vt. Const. ch. II, § 30, the following rules are promulgated.

Purpose

The Professional Responsibility Program is established to provide a comprehensive system of regulation of the legal profession. Its objectives are:

(1) to assist attorneys and the public by providing education, guidance, referrals, and other information designed to achieve, maintain, and enhance professional competence and professional responsibility;

(2) to resolve disciplinary complaints against attorneys through fair and prompt dispute resolution procedures; and

(3) to investigate and discipline attorney misconduct.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

The changes are not substantive. The Purpose is reorganized so that former paragraph (3) is now (1). For clarity, new paragraph (1) is amended to add "achieve."

Vermont's Professional Responsibility Program has long focused on prevention and education as much as on disciplinary prosecution. Assisting attorneys to achieve professional competence is as critical to an effective system of attorney regulation as investigating and prosecuting violations of the Rules of Professional Conduct. Proactive regulation serves to protect the public and instill confidence in the profession while promoting professionalism and civility.

I. Structure and Scope

Rule 1. The Professional Responsibility Board

Responsibility for, and overall supervision of, the program shall be vested in the Professional Responsibility Board (hereafter ‘‘Board’’).

A. **Appointment and Membership.** The Board shall consist of seven members appointed by the Supreme Court of Vermont (hereafter ‘‘Court’’). The membership of the Board shall be comprised of three members of the bar of this state, three public members, and one judge or retired judge of this state. The Court shall annually appoint one of the members of the Board to serve as chair, and one of the members to serve as vice-chair.

B. **Quorum.** Five members shall constitute a quorum, and the Board shall act only with the concurrence of a majority of those present.

C. **Terms.**

(1) The Board’s seven members shall be appointed for staggered terms of five years each. Terms begin on September 1 and end of August 31st of the fifth year. Appointments shall be made so that one board member term begins each calendar year in a seven year appointment cycle.

(2) A person may be appointed to serve the remainder of an unexpired term and then to no more than two consecutive five year terms.

(3) The Court may modify the terms of board members who are serving when the rule becomes effective and thereafter appoint new members so that their terms conform to part (1) of this rule.

D. **Compensation and Expenses.** Members shall be reimbursed for reasonable and necessary expenses related to the performance of their duties, and nonstate employees shall receive per diem compensation equivalent to that provided by law for comparable boards and commissions. The Commissioner of Finance and Management shall pay from the judicial appropriation all expenses of Board members when claims are submitted on proper vouchers approved by the Court Administrator.

E. **Powers and Duties.** The Board oversees the program, and implement, coordinate, and periodically review its policies and goals. Its powers and duties include the following:

(1) Adopt internal procedures for the administration of the program that are consistent with these rules, including but not limited to guidelines for:

(a) the prompt and timely disposition of all complaints;

(b) efficient coordination of the program’s Bar Assistance Program, dispute resolution, and disciplinary functions;

(c) the appointment of alternates when any member of a hearing panel, bar counsel, disciplinary counsel, or staff has a conflict or is otherwise disqualified or unable to serve;

(d) the assignment and rotation of hearing panels to conduct disciplinary and disability proceedings;

(e) the contracting of law clerk services for the hearing panels; and

(f) supervision of the program’s case docket and review of caseflow management procedures.

(2) Periodically review the operation of the program with the Court, and make an annual report, including statistics and recommendations for any rule changes, which report shall be public;

(3) Inform the public about the existence and operation of the program and the disposition of each matter in which public discipline has been imposed, a lawyer has been transferred to or from disability inactive status, or a lawyer has been reinstated or readmitted, including the findings of fact and conclusions of law upon which the public discipline is based.

(4) Continually review the operation and effectiveness of the Rules of Professional Responsibility and recommend to the Supreme Court amendment to those rules or other appropriate actions which it finds advisable. Pursuant to A.O. 11, the Board must provide the proper notice and opportunity to comment on proposals to amend the rules. Any individual having proposals for amendment to the Rules of Professional Conduct or other proposals for change related to attorney discipline is requested to forward it in writing to the chair or a member of the Board for consideration.

Historical Citation

Amended Jan. 11, 2016, eff. March 11, 2016; May 8, 2017, eff. July 10, 2017; Nov. 2, 2020, eff. April 1, 2021.

Reporter's Notes—2021 Amendment

Rule 1.E(1)(b) is amended to reflect that overall supervision of the Bar Assistance Program falls within the purview of the Professional Responsibility Board's powers and duties. See Rule 4. The word "educational" is deleted and replaced with "Bar Assistance Program," which encompasses education as well as other types of lawyer assistance.

Reporter's Notes—2017 Amendment

Paragraph (4) is added to Rule 1(E) to make clear that the Board has the responsibility to review the Rules of Professional Conduct and to make proposals to the Court to amend those rules. The amendment reiterates the obligation under Administrative Order 11 to provide the proper notice and opportunity to comment on amendment proposals and notifies individuals that requests for changes should be directed to the Board.

Rule 2. Bar Counsel, Screening Counsel, and Disciplinary Counsel

Appointment. Following consultation with the Board, and subject to Court approval, the Court Administrator, pursuant to Administrative Order 3, appoints lawyers admitted to the bar of this state to perform the duties of Bar Counsel, Screening Counsel, and Disciplinary Counsel.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

Former Rule 2 is deleted and is reproduced in new Rule 11.

Former Rule 3.A is renumbered Rule 2. New Rule 2 is amended to require the appointment of Screening Counsel, whose role is set out in Rule 12.

Former Rule 3.B(1) is deleted and its provisions now appear in Rule 5. Former Rule 3.B(2) is deleted and its provisions now appear in Rule 10.

Rule 3. Jurisdiction

A. The Board shall have jurisdiction over:

(1) Any lawyer admitted in the state, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of

these rules or of the Code of Professional Responsibility or any rules or code subsequently adopted by the Court in lieu thereof;

(2) Any lawyer specially admitted by a court of the state for a particular proceeding, including any intern permitted to appear as legal counsel pursuant to the Rules of Admission;

(3) Any lawyer not admitted in this state who practices law or renders legal services in this state;

(4) A former judicial officer who has resumed his or her status as a lawyer, not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline, provided that the misconduct has not been the subject of a judicial discipline proceeding as to which there has been a final determination by the Court;

(5) An incumbent judicial officer, as set forth in paragraph B below.

B. If an incumbent judicial officer is to be removed from office in the course of a judicial discipline or disability proceeding, the Court shall first afford disciplinary counsel and the respondent an opportunity to submit a recommendation whether lawyer discipline should be imposed, and if so, the extent thereof.

C. The fact that an attorney's right to practice has been suspended or revoked only by reason of failure to comply with licensing requirements or to meet minimum continuing legal education requirements will not deprive the Court or the Board of disciplinary jurisdiction with respect to allegations of misconduct which occurred during a time that the attorney was admitted to practice in this state.

D. These rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.

ANNOTATIONS

1. Violation of Rules of Ethics. Paragraph A(1) of this rule unequivocally vests the Professional Responsibility Board with jurisdiction over lawyers who violate the rules of ethics prior, and subsequent, to their transfer to inactive status. In re Keitel (2001) 172 Vt. 537, 772 A.2d 507 (mem.).

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 5 is renumbered Rule 3. There is no substantive change in the Professional Responsibility Program's jurisdiction.

II. The Bar Assistance Program

Rule 4. Establishment and Purpose

The Bar Assistance Program is established within the Professional Responsibility Program. The Bar Assistance Program will assist lawyers to achieve, maintain, and enhance professional competence and professional responsibility by:

A. providing a forum for the nondisciplinary resolution of disputes involving lawyers, including the nondisciplinary resolution of professional conduct complaints filed against lawyers;

B. responding to inquiries regarding professional competence, professional responsibility, legal ethics, law practice management, and behavioral health issues that impact the practice of law;

C. developing programs related to professional competence, professional responsibility, legal ethics, law practice management, and behavioral health issues that impact the practice of law;

D. developing programs that promote attorney wellness and educate on issues related to the signs, symptoms, causes, and prevention of behavioral health issues that affect professional competence and impact the practice of law; and

E. assisting impaired judges and lawyers.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

Former Rule 4 is deleted in its entirety. Rule 7 now governs the Assistance Panel process.

New Rule 4 sets out the purposes of the Bar Assistance Program, which expands on services previously provided by the Professional Responsibility Program.

Competent representation is a professional responsibility. Lawyers suffer from behavioral health issues at staggering rates. In 2017, the National Task Force on Lawyer Well-Being issued The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf [https://perma.cc/X43F-C5PT]. In it, the Task Force noted:

> Sadly, our profession is falling short when it comes to well-being. The two studies referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance abuse. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence.

In response, the Vermont Supreme Court committed to review its approach to attorney health, wellness, and competence. The review included forming the Vermont Commission on the Well-Being of the Legal Profession. In creating the Commission, the Court acknowledged:

- that lawyers deal with behavioral health issues at significant rates; and
- that the well-being of lawyers and judges is a critical component of access to justice.

In 2018, the Vermont Commission on the Well-Being of the Legal Profession issued its State Action Plan, https://www.vtbar.org/UserFiles/files/For%20Attorneys/VT%20Commission%20on%20the%20Well-Being%20of%20the%20Legal%20Profession/CWBLP%20State%20Action%20Plan%d20-%20Finalwithedits132019.pdf [https://perma.cc/CS5L-5TUB]. The Court acknowledges many aspects of the State Action Plan, including its statement that the "profession has a duty to deliver competent legal and judicial services that will uphold the integrity of the justice system." Related, in 2019, the Court amended Vermont Rule of Professional Conduct 1.1 to stress that a lawyer's mental, emotional, and physical well-being is an aspect of competence. See V.R.Pr.C. 1.1 cmt. [9].

The public and profession are best served by proactive assistance to lawyers and judges. Therefore, the Court establishes the Bar Assistance Program. The program will continue to provide guidance and educational programs on "traditional" legal ethics and professional responsibility. In addition, the bar assistance program will assist by:

- developing programs to educate judges, lawyers, legal professionals, law students, and the public on issues related to professional competence, professional responsibility, legal ethics, law practice management, and behavioral health issues that impact the practice of law;
- developing programs that promote lawyer wellness and educate judges, lawyers, legal professionals, and law students on issues related to the signs, symptoms, causes, and prevention of behavioral health issues that affect professional competence and impact the practice of law; and
- helping impaired lawyers and judges to begin and continue recovery.

The Court and Board will continue to work closely with stakeholders such as the Vermont Bar Association, Vermont Law School, and the state's legal employers to assess areas in which partnerships might be formed to make aspects of the Bar Assistance Program available to law students and lawyers' nonlawyer assistants, employees, and staff members as appropriate.

Rule 5. Bar Counsel

Bar Counsel will:

A. Administer the Bar Assistance Program;

B. Respond to inquiries from judges, lawyers, legal professionals, law students, and the public regarding the Rules of Professional Conduct, professionalism and professional responsibility, legal ethics, law practice management, and behavioral health issues that impact a lawyer or judge's professional competence;

C. Provide referrals, educational materials, guidance, and preventive advice and information to assist lawyers to achieve, maintain, and enhance professional competence and professional responsibility;

D. Develop and present programs related to the Rules of Professional Conduct, legal ethics, and a lawyer's professional competence and professional responsibilities;

E. Develop and present programs concerning lawyer wellness and on issues related to the signs, symptoms, causes, and prevention of behavioral health issues that affect lawyers' and judges' professional competence;

F. Develop mechanisms to help others to identify and intervene with impaired lawyers and judges;

G. Help lawyers and judges to secure expert counseling and treatment for behavioral health issues that affect professional competence, and maintain information on available treatment programs and services;

H. As necessary, assist lawyers and judges to coordinate aftercare services upon request, by order, or under contract that may include the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer-support meetings; and assistance in obtaining a primary care physician or local peer counselor;

I. As necessary, assist lawyers and judges to arrange monitoring services that may include the following: alcohol and drug-screening programs; tracking aftercare, peer-support, and twelve-step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program;

J. Administer the nondisciplinary dispute-resolution program, including its assistance panels;

K. Work with the Board to recruit, coordinate, and train judges, lawyers, legal professionals, qualified health professionals, and members of the public to serve as assistance panel members;

L. As the Board's liaison, consult and coordinate with the ABA Commission on Lawyer Assistance Programs, the Vermont Bar Association, Vermont's local and county bar associations, Vermont Law School, the Judicial Conduct Board, the Board of Bar Examiners, the Character and Fitness Committee, the Board of Mandatory Continuing Legal Education, and other related organizations on matters related to professional responsibility, legal ethics, and law practice management; and

M. Any other task assigned by the Board within the scope of responsibility of Bar Counsel pursuant to these Rules.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

New Rule 5 assigns to Bar Counsel the responsibility for the day-to-day operation of the Bar Assistance Program. Bar Counsel continues to respond to ethics inquiries, administer the dispute-resolution program, and create and present continuing legal education seminars. Inquiries and educational programs will continue to be available to all. In addition, this rule vests Bar Counsel with new responsibilities to respond to and assist lawyers and judges facing issues that impact their mental, emotional, and physical well-being and their professional competence. This new role is consistent with the Court's long-standing position that Bar Counsel's role includes assisting lawyers to achieve and maintain high standards of professional responsibility. Notably, this new rule does not give Bar Counsel any role in the process by which formal disciplinary complaints are screened.

Rule 6. Inquiries and Referrals

Bar Counsel will respond to all inquiries and referrals.

A. **Legal Ethics Inquiries.** In response to an inquiry related to the Rules of Professional Conduct, law practice management, or a lawyer or judge's professionalism or professional responsibilities, Bar Counsel will provide the inquirer with:

(1) the appropriate referral, educational materials, or guidance; or

(2) the preventive advice and information necessary to assist lawyers and judges to achieve, maintain, and enhance professional competence and professional responsibility.

B. **Informal Referrals and Compliance Agreements**.

(1) *Informal Referral*. Upon receiving an informal referral, Bar Counsel may take any action authorized by Rule 5. Bar Counsel's response to an informal referral may include, but is not limited to:

(a) contacting the subject of the referral and providing guidance, advice, referrals, education material, or information as to the lawyer or judge's professional competence and professional responsibility;

(b) with the consent of the lawyer or judge who is the subject of the referral, referring the matter to an Assistance Panel to review pursuant to Rule 7;

(c) investigating, planning, and assisting in appropriately timed interventions with lawyers and judges in need of assistance;

(d) assisting lawyers and judges in need of assistance to secure the counseling, treatment, aftercare, and monitoring services referenced in Rule 5.G, 5.H, and 5.I; and

(e) entering into compliance agreements.

(2) *Compliance Agreements*.

(a) The lawyer or judge who is the subject of the referral may enter a compliance agreement with Bar Counsel.

(b) The failure to comply with a compliance agreement authorized by this rule will not be grounds for a referral to Disciplinary Counsel, the Judicial Conduct Board, or any other disciplinary person or organization.

(c) Demonstrated compliance with a compliance agreement authorized by this rule may be used to mitigate against any charge that the lawyer or judge violated the Rules of Professional Conduct or the Vermont Code of Judicial Conduct.

C. **Formal Referrals for Behavioral Health Issues**. Any matter referred to the Bar Assistance Program by Screening Counsel, Disciplinary Counsel, a hearing panel, the Character and Fitness Committee, or the Judicial Conduct Board in which the purpose of the referral is to address issues related a lawyer or judge's behavioral health must be reviewed by an Assistance Panel pursuant to Rule 7.

D. **Nonbehavioral Health Referrals.** Disciplinary Counsel and Screening Counsel may refer matters to the Bar Assistance Program to address conduct that does not involve a behavioral health issue. Upon review, Bar Counsel may resolve the matter in a manner authorized by 6.A or refer the matter to an Assistance Panel for nondisciplinary resolution pursuant to Rule 7.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

New Rule 6 sets out the process for Bar Counsel to respond to inquiries and referrals, including inquiries and referrals related to a lawyer's or judge's mental, emotional, and physical well-being. Paragraph A provides that Bar Counsel will respond to inquiries regarding the Rules of Professional Conduct, professionalism, and professional responsibility.

Paragraph B is intended to encourage lawyers and judges to seek assistance for themselves or others and to provide those who seek assistance for themselves with an incentive to comply with any assistance plan facilitated by Bar Counsel or the Bar Assistance Program. See Rule 7. The rule encompasses referrals from Screening Counsel and Disciplinary Counsel made pursuant to Rule 11.B or Rule 12.B. The rule describes compliance agreements and the limits on use of an attorney's or judge's compliance with an agreement.

Paragraph C reflects the understanding that matters appropriate for resolution by the new Bar Assistance Program might not come to light until after screening or an investigation by Disciplinary Counsel. Paragraph D refers to the traditional conduct complaints referred to an Assistance Panel prior to the creation of the Bar Assistance Program. The creation of the Bar Assistance Program does not preclude Disciplinary Counsel from continuing to make such referrals. In exercising the discretion conferred by paragraph D of this rule, Bar Counsel should be mindful of any specific recommendation made in Disciplinary Counsel's referral. The Court and Board support the notion that Assistance Panels play an important role in building and maintaining the public's confidence in the legal profession.

Rule 7. Assistance Panels

A. **Appointment**. The Chair of the Board appoints persons to serve as assistance panel members. The Chair of the Board fills any vacancies.

B. **Terms**. Terms are for two years. No member may serve more than 4 consecutive full or partial terms.

C. **Membership and Quorum.** Whenever a matter is referred to an Assistance Panel, Bar Counsel will appoint three members to serve and designate one member as the chair. A panel will include at least one member of the Board and at least one nonlawyer, who may be the same person. When a panel is constituted to address a behavioral health issue, at least one member should be a qualified health professional or have experience in dealing with issues related to behavioral health. Two members will constitute a quorum, and a panel will act only with the concurrence of two members.

D. **Purpose.** An assistance panel will attempt to facilitate the confidential and nondisciplinary resolution of any matter referred to it.

E. **Powers and Duties.** An assistance panel will:

(1) review all matters referred to it;

(2) unless there is good cause not to, meet with the lawyer or judge who is the subject of the referral and, if there is one, the complainant, either individually or at the same time, and attempt to facilitate a nondisciplinary resolution of the matter at issue;

(3) impose terms or conditions as an alternative to discipline;

(4) refer to Disciplinary Counsel any matter that the panel concludes is more appropriate for a disciplinary or disability investigation.

F. **Terms and Conditions.** Any terms or conditions will be in writing and delivered to the responding attorney. Terms and conditions may include, but will not be limited to:

(1) a referral to an appropriate health-care provider, counseling program, treatment program, or substance-abuse program;

(2) participation in aftercare services;

(3) continuing legal education;

(4) law practice management training;

(5) participation in the fee arbitration program offered by the Vermont Bar Association;

(6) mentoring;

(7) compliance monitoring.

G. **Failure to Participate or Violation of Terms and Conditions.** If a lawyer refuses to participate in the nondisciplinary resolution of the matter or fails to comply with any terms or conditions imposed by an assistance panel, the matter may be referred to Disciplinary Counsel for investigation.

H. **Satisfaction of Terms and Conditions.** A lawyer will provide an affidavit demonstrating compliance with any terms and conditions imposed by an assistance panel. Upon satisfaction of compliance, the assistance panel will close the matter. The resolution will be considered nondisciplinary.

I. **Closure.** Any matter fully resolved by an assistance panel will be closed. The resolution will be considered nondisciplinary.

J. **Compensation and Expenses.** Assistance panel members will be reimbursed for reasonable and necessary expense related to the performance of their duties in the same way Board members are reimbursed.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

Rule 7 continues the powers and duties of the assistance panels as set out in former Rule 4. The term limit of four terms is added. In addition, this new rule adds powers and duties that are consistent with the creation of the Bar Assistance Program.

Rule 8. Confidentiality

A. Information received by and disclosed to Bar Counsel and the Bar Assistance Program pertaining to the identity, diagnosis, prognosis, referral, or treatment of any lawyer or judge and records thereof, will be confidential and will not be disclosed except as expressly authorized by this rule.

B. Bar Counsel must not disclose information pertaining to any inquiry or to the identity, diagnosis, prognosis, referral, or treatment of any lawyer or judge, or records thereof, except as needed to carry out the purposes of the Bar Assistance Program, or as would be required or permitted by Rule 1.6 of the Vermont Rules of Professional Conduct.

C. Information and records otherwise confidential pursuant to paragraph A may be disclosed with the written consent of the lawyer or judge who is the subject of the information or record.

D. Information and records otherwise confidential pursuant to paragraph A may be disclosed, without the written consent of the lawyer or judge who is the subject of the record in the following circumstances:

(1) to medical personnel in a bona fide medical emergency;

(2) to conduct research or program evaluations, provided that the information or record disclosed does not identify any individual;

(3) to Disciplinary Counsel if the information or record shows that a lawyer's refusal to seek or participate in treatment indicates that the lawyer presently poses a substantial threat of serious harm to the public;

(4) to protect against an existing threat to life or serious bodily injury;

(5) in connection with any civil or licensing action against the lawyer or judge in which that person offers testimony or other evidence pertaining to the information or record; or

(6) by order of the Vermont Supreme Court. An application to disclose information must be made in writing filed with the Supreme Court, must demonstrate good cause for disclosing the information, and must be served on the lawyer or judge who is the subject of the information or record and on bar counsel. The respondent will have an opportunity to respond. The application, the response, and any related filings will be nonpublic unless and until the Court orders otherwise.

E. Bar Counsel, Board members, assistance panel members, and any staff or volunteer attorney within the Bar Assistance Program are exempt from the reporting requirements of Rule 8.3(a) or (b) of the Vermont Rules of Professional Conduct with respect to information acquired while acting pursuant to the rules governing the Bar Assistance Program.

F. Bar Counsel, Board members, assistance panel members, and any staff or volunteer attorney within the Bar Assistance Program will maintain the confidentiality required by this rule.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

New Rule 8 provides that all information related to the operation of the Bar Assistance Program is confidential and will not be disclosed unless authorized by the rule. Paragraphs B, C, and D provide instances where information may be disclosed. Paragraph E clarifies that lawyers working or volunteering in the program are not subject to the reporting requirement of V.R.Pr.C. 8.3(a) and (b) with respect to information acquired while working or volunteering in the Bar Assistance Program.

III. Disciplinary and Disability Matters

Rule 9. Disciplinary Counsel

Disciplinary Counsel administers the disciplinary program; investigates and litigates all disciplinary and disability matters; and selects and recommends for appointment investigative staff pursuant to Administrative Order 3. Disciplinary Counsel confers periodically with the Board to review operations and perform other assigned tasks.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

Part III is added and named Disciplinary and Disability Matters. New Rule 9 is added and adopts similar language as former Rule 3.B(2).

Rule 10. Roster of lawyers

Disciplinary counsel shall have access to all annual licensing statements.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 6 is renumbered Rule 10.

Rule 11. Grounds for discipline

Discipline may be imposed for any of the following:

A. Violation of any rules of this jurisdiction regarding professional conduct of lawyers;

B. Conduct which results in lawyer or judicial discipline in another jurisdiction;

C. Violation of any rule or order of a hearing panel, the Board, or the Court issued pursuant to these rules; or

D. Failure to furnish information to or respond to a request from disciplinary counsel, a hearing panel chair, a hearing panel, or the Court without reasonable grounds for refusing to do so.

ANNOTATIONS

Cited. Cited in In re Bridge (1998) 168 Vt. 633, 724 A.2d 462 (mem.).

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 7 is renumbered Rule 11.

Rule 12. Screening Counsel and Filing and Review of Disciplinary Complaints

All complaints concerning attorney conduct must be directed to the Professional Responsibility Program.

A. **Screening.** Screening Counsel reviews all disciplinary complaints. Screening Counsel may contact the subject attorney and conduct other limited investigation necessary to determine the nature of the complaint and whether it can be resolved through nondisciplinary dispute resolution methods. Screening Counsel may attempt to resolve any complaint, of whatever nature, that does not appear to require formal intervention by the Bar Assistance Program or the disciplinary program.

B. **Referral to Alternate Program.** Screening Counsel may refer any matter that does not appear to require prosecution and sanctions to the Bar Assistance Program, Vermont Lawyer Assistance Program, the Vermont Bar Association Committee for the Arbitration of Fee Complaints or any other dispute program.

C. **Formal Investigation.** If the conduct which is the subject of the complaint appears to constitute misconduct that may require disciplinary sanctions, Screening Counsel must refer the matter to Disciplinary Counsel, who must investigate further to determine whether formal disciplinary proceedings should be pursued under Rule 15.

D. **Complainant's Right to Independent Review**. Screening Counsel may close or dismiss complaints which, in Counsel's judgment, do not require either formal investigation by Disciplinary Counsel or referral to an alternate program. In such cases, Counsel must inform the complainant in writing of the decision and the reasons, and notify the complainant of the right to seek review from the Board chair.

Historical Citation

Amended Oct. 11, 2013, eff. Dec. 9, 2013; Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

Former Rule 10 is renumbered Rule 12 and amended to remove Bar Counsel from the disciplinary screening process. To be effective, proactive regulation must be decoupled from the disciplinary process, including the screening of disciplinary complaints. Under Rule 2, the State Court Administrator will assign Screening Counsel to screen complaints. Rule 14.B is amended to reflect that complaints formerly referred to an assistance panel upon screening will, under the new rules, be referred to the Bar Assistance Program, which may result in the involvement of an assistance panel. Minor language edits are made, and cross references are updated.

Board's Notes—2013 Amendment

Previously, Administrative Order 9 was silent as to who would screen ethics complaints. This amendment clarifies the Board's position that bar counsel shall screen ethics complaints and is consistent with how bar counsel and disciplinary counsel have operated since the offices were restructured in June of 2012. This amendment also clarifies that these rules do not provide for an appeal or review of disciplinary counsel's decision to dismiss a complaint that has been referred for an investigation. Rather, these rules limit a complainant's ability to request review to those cases which, in bar counsel's judgment, do not require either formal investigation by disciplinary counsel or referral to an assistance panel.

Rule 13. Disciplinary and Disability Proceedings

A. **Investigation and Notice.** If initial review pursuant to Rule 12.A indicates that an investigation is warranted, the matter must be referred to disciplinary counsel with notice to complainant and respondent. All investigations and disciplinary or disability proceedings are conducted or supervised by disciplinary counsel. Disciplinary counsel must provide respondent with a copy of the complaint or otherwise notify respondent in writing of the substance of the matter under investigation unless disciplinary counsel determines that there is a substantial likelihood that a

client would be harmed, evidence would be destroyed, or for other good cause. If the respondent is not subject to the jurisdiction of the Court, and if the allegations or information, if true, would constitute misconduct or disability, the matter must be referred to the appropriate entity in the jurisdiction in which the lawyer is admitted.

B. **Review by Disciplinary Counsel.** Following an investigation, disciplinary counsel may dismiss the complaint, refer it to the Bar Assistance Program or other dispute resolution program, initiate formal disciplinary or disability proceedings in accordance with Rule 15.D, or initiate disability proceedings in accordance with Rule 25. Disciplinary counsel must inform the complainant of the disposition of the complaint and the reasons.

C. **Probable Cause Review.** Disciplinary counsel's decision to proceed with a petition of misconduct shall be reviewed for probable cause by a hearing panel assigned by the chair of the Board pursuant to a fixed rotation, and such review shall be based upon written application and affidavit setting forth a factual basis for the charges. If the panel finds probable cause to believe that a violation has occurred, disciplinary counsel shall present formal charges to a different hearing panel assigned by the chair of the Board, unless a stipulation to misconduct is earlier submitted.

D. **Formal Proceedings.**

(1) *Filing of charges; notice to complainant.* Disciplinary counsel may initiate formal disciplinary proceedings either: (a) by filing with the Board facts stipulated to by the respondent, along with any proposed legal conclusions and recommended sanction which disciplinary counsel and respondent, either separately or jointly, would like the hearing panel to consider; or (b) by filing with the Board and serving upon respondent a petition of misconduct which is sufficiently clear to inform respondent of the alleged misconduct and the rules alleged to have been violated.

Disciplinary counsel shall inform the complainant of the filing of formal charges against the respondent.

(2) *Assignment of hearing panel.* Upon receipt of the stipulation or petition, the Board shall assign the matter to a hearing panel pursuant to a fixed rotation. Substitution of members will be allowed only in the event of conflicts of interest or unavailability.

(3) *Answer.* If proceedings are initiated by petition, respondent shall serve his or her answer upon disciplinary counsel and file the original with the Board within 20 days after the service of the petition, unless the time is extended by the chair of the hearing panel. In the event the respondent fails to answer within the prescribed time, the charges shall be deemed admitted, unless good cause is shown.

(4) *Hearing.* If an answer to a petition of misconduct is filed, the hearing panel shall serve a notice of hearing upon disciplinary counsel and respondent, stating the date and place of hearing at least 25 days in advance thereof. If stipulated facts are filed, the hearing may be scheduled sooner at the discretion of the chair. The notice of hearing on a petition of misconduct shall state that the respondent is entitled to be represented by a lawyer, to cross-examine witnesses, and to present evidence. Disciplinary counsel shall further inform the complainant of the date and place of the hearing. The hearing shall be recorded.

(5) *Hearing panel decision; service; finality:*

(a) Where proceedings have been initiated by stipulated facts, the hearing panel shall review the stipulation and either: (i) reject the stipulation, in which case the parties may amend and resubmit it, or disciplinary counsel may reinstitute proceedings by filing a petition of misconduct in accordance with this rule; or (ii) accept the stipulation and adopt it as its own findings of fact, although the panel may take further evidence on the issue of sanctions.

(b) Where proceedings have been initiated by petition, disciplinary counsel shall have the burden of proving the alleged violations by clear and convincing evidence. In its discretion, the hearing panel may bifurcate the hearing in order to consider evidence relevant to the charged violations separately from evidence relevant to sanctions.

(c) The hearing panel shall in every case issue a decision containing its findings of fact, conclusions of law, and the sanction imposed, if any, within 60 days after the conclusion of the hearing. The panel shall promptly serve its decision on disciplinary counsel and the respondent, and submit a copy, together with a record of its proceedings, pleadings and briefs, if any were submitted, to the Board for filing with the Court. The Board shall promptly inform the complainant of the decision and provide a copy to the complainant if so requested. If no appeal is served and filed within 30 days of the hearing panel decision, and the Court does not otherwise order review on its own motion, the decision shall become final, and shall have the same force and effect as an order of the Court.

E. **Review by the Court.** All final decisions of the hearing panel which fully dispose of an entire proceeding may be appealed as of right to the Court by respondent or disciplinary counsel pursuant to the Vermont Rules of Appellate Procedure, which rules shall govern the proceedings on appeal except where these rules establish a different procedure. To the extent applicable, all references in the Vermont Rules of Appellate Procedure to the superior court shall be deemed to be a reference to the hearing panel, and all references to the clerk of the superior court shall be deemed to be a reference to the chair of the hearing panel. If no appeal or petition for review is filed with the Court, the Court may order review on its own motion within 30 days of the date the hearing panel decision is filed with the Court. The Court may remand a case to the hearing panel or modify its decision only upon notice and opportunity to be heard. The Court shall not receive any additional evidence. Arguments not advanced before the hearing panel shall not be presented to the Court, except for good cause shown. Findings of fact shall not be set aside unless clearly erroneous.

ANNOTATIONS

Cited. Cited in In re Andres, 2004 VT 71, 177 Vt. 511, 857 A.2d 803 (mem.); In re Hongisto, 2010 VT 51, 188 Vt. 553, 998 A.2d 1065 (mem.).

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Notes—2021 Amendment

Former Rule 11 is renumbered Rule 13 and amended to provide that disciplinary matters formerly referred to an assistance panel will, under the new rules, be referred to the Bar Assistance Program. Minor language edits are made, and cross references are updated.

Rule 14. Hearing Panels

A. **Appointment and Membership**. The Chair of the Board appoints standing hearing panels as required. Each hearing panel consists of two members of the bar of this state and one public member. The Chair of the Board appoints a lawyer-member of each hearing panel to serve as chair of the panel. Terms are for two years, and no member may serve for more than three consecutive full or partial terms. Members of the Board may not serve simultaneously as members of a hearing panel.

B. **Quorum**. Three members constitutes a quorum, except for prehearing conferences and motions, in which two members constitutes a quorum. The panel may act only with the concurrence of two members.

C. **Powers and Duties**. Hearing panels adjudicate all formal disciplinary and disability proceedings. The powers and duties of the hearing panel include:

(1) Ruling upon requests from Disciplinary Counsel for findings of probable cause;

(2) Conducting all disability and disciplinary hearings;

(3) Making findings of fact and conclusions of law;

(4) Imposing sanctions in accordance with Rule 15.D(5); and

(5) Undertaking other related tasks assigned by the Board.

D. **Abstention of Hearing Panel Members**. Hearing panel members must disqualify themselves from taking part in any proceeding in which a judge, similarly situated, would be required to do so under the Vermont Code of Judicial Conduct. The chair of the hearing panel rules on any motion to disqualify. Any appeal of that decision is decided by the Chair of the Board, whose decision is final.

E. **Compensation and Expenses**. Members are reimbursed for reasonable and necessary expenses related to the performance of their duties in the same way Board members are compensated pursuant to Rule 1.D.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

New Rule 14 incorporates the language of former Rule 2 with minor wording changes.

Rule 15. Sanctions

A. **Types of Sanctions.** Misconduct shall be grounds for one or more of the following sanctions:

(1) Disbarment, in which case the lawyer shall not be eligible for readmission for at least five years;

(2) Suspension for an appropriate fixed period of time not in excess of three years;

(3) Immediate interim suspension, pending final determination of discipline;

(4) Public reprimand, which shall be published in the Vermont Reports and in a newspaper of general circulation in the geographical area in which the lawyer practices law;

(5) Admonition. Two types of admonition may be imposed:

(a) Admonition by disciplinary counsel imposed with the consent of the respondent and the approval of a hearing panel. Admonitions by disciplinary counsel cannot be imposed after formal charges have been issued.

(b) Admonition by a hearing panel imposed only after formal charges have been issued. All admonitions shall be in writing and served upon the respondent. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should an admonition be imposed. A summary of the conduct for which an admonition was imposed shall be published for the education of the profession, but the lawyer shall not be identified in the published decision. Admonitions may be used in subsequent proceedings in which the

respondent has been found guilty of misconduct as evidence of prior misconduct bearing upon the issue of the sanction to be imposed in the subsequent proceeding.

(6) Probation:

(a) Imposition of Probation. Probation may be imposed only in conjunction with any other sanction, reinstatement from disability, and reinstatement from disbarment or suspension. It shall be used only in those cases in which there is little likelihood that the respondent will harm the public during the period of probation and the conditions of probation can be adequately supervised. Probation shall be imposed for a specific period and on notice and opportunity to be heard may be renewed for an additional period.

(b) Conditions in Writing. The conditions of the probation shall be in writing. Only the Court may impose conditions of probation which limit the lawyer's practice of law in this jurisdiction, except that the hearing panel may do so with the lawyer's consent. All or some of the costs of probation may be assessed against the lawyer. The probation will be supervised by a probation monitor approved by the hearing panel or disciplinary counsel, with any expense borne by respondent. Probation shall be terminated upon the filing of an affidavit by the respondent showing compliance with the conditions and an affidavit by the probation monitor stating that probation is no longer necessary and summarizing the basis for that conclusion.

(c) Violation of Probation. A violation of probation may be the basis for interim suspension pursuant to Rule 22 or may be the basis of independent disciplinary charges which shall be proven by clear and convincing evidence under the same procedures as for charges of misconduct. Upon proof of a probation violation, any sanction under these rules may be imposed. Allegations of violation of probation imposed in conjunction with a reprimand, suspension, or reinstatement shall proceed as public proceedings.

(7) Reimbursement of retainers, fees, trust funds, or other monies collected or received by the lawyer on a client's behalf, but reimbursement shall not be imposed unless some other sanction is imposed;

(8) Assessment of the costs of proceedings, but only in reinstatement or probation violation proceedings.

B. **Prior Misconduct.** Prior findings of misconduct, including admonitions, may be considered in imposing sanctions.

ANNOTATIONS

1. Admonition. Summary of the conduct for which an admonition was imposed shall be published for the education of the profession. The dismissal of a charge by deputy disciplinary counsel prevented the panel from fulfilling this secondary obligation to education and inform the bar. In re PRB Docket No. 2014.133, 2015 VT 63, 199 Vt. 650, 136 A.3d 564 (mem.).

Admonishment was appropriate for an attorney who had failed to promptly and fully comply with discovery, in violation of the rules regarding diligence and expediting litigation. The attorney's conduct did not result in actual substantial harm to his client, the public, the legal system, or the profession; his violations resulted from disorganization, overreliance on his client, and lack of experience in complex litigation, not from an intent to conceal documents; and he had no prior disciplinary record and fully cooperated in the disciplinary proceedings. In re PRB File No. 2007-003, 2009 VT 82A, 186 Vt. 588, 987 A.2d 273 (mem.).

2. Suspension. Two concurrent six-month suspensions were proper for an attorney who failed to cooperate with the disciplinary system, failed to communicate with her client and to return his papers, and practiced law where doing so violated the regulation of the legal profession. Furthermore, when respondent sought reinstatement, she would have to provide a detailed explanation for her lack of participation over the course of these proceedings. In re Hongisto, 2010 VT 51, 188 Vt. 553, 998 A.2d 1065 (mem.).

Cited. Cited in In re Nawrath (2000) 170 Vt. 577, 749 A.2d 11 (mem.); In re PRB Docket No. 2002.093, 2005 VT 2, 177 Vt. 629, 868 A.2d 709 (mem.).

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 8 is renumbered Rule 15. The cross reference to Rule 18 in 15.A(6)(c) is amended to Rule 22.

Rule 16. Access to Disciplinary Information

A. **Confidentiality Prior to the Commencement of Formal Proceedings.** Prior to the filing of formal disciplinary proceedings, all proceedings and communications in connection with a complaint shall be confidential within the program, unless confidentiality is waived by both the complainant and the respondent attorney, or is otherwise dispensed with for good cause by order of the Board chair. Good cause may include, but is not limited to, the need to protect the public by providing information to the Vermont Bar Association Client Security Fund.

B. **Availability of Information after Filing of Formal Charges.** All Professional Responsibility proceedings and all records pertaining thereto formally submitted to a hearing panel after the filing of formal charges or stipulation shall be public unless the complainant, disciplinary counsel, or respondent obtains from a hearing panel or the Board a protective order for specific testimony, documents, or records. Notwithstanding the above, the work product of the Board, hearing panel, and their counsel, as well as the deliberations of the hearing panel, Board, and Court shall remain confidential.

C. **Proceedings Alleging Disability.** Proceedings for transfer to or from disability inactive status are confidential. All orders transferring a lawyer to or from disability inactive status are public.

D. **Proceedings for Interim Suspension**. Proceedings seeking the interim suspension of a lawyer's license are public. All orders suspended a lawyer's license on an interim basis are public.

E. **Protective Orders.** In order to protect the interests of a complainant, witness, third party or respondent, the hearing panel to which a matter is assigned or the Board may, upon application and for good cause shown, issue a protective order prohibiting the disclosure of specific information and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing and prehearing matters be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application and may order that a transcript be sealed.

F. **Request for Nonpublic Information.**

(1) *Requesting Agency.* A request for nonpublic information shall be denied unless the request is from one of the following agencies:

(a) A lawyer or judicial admission or disciplinary agency of this or another jurisdiction; or

(b) Any agency or person to which the attorney has submitted a waiver of confidentiality.

(2) *Notice to Lawyer.* If the Board or hearing panel decides to provide nonpublic information requested, and if the lawyer has not signed a waiver permitting the requesting agency to obtain nonpublic information, the lawyer shall be notified in writing at his or her last known address of that information which has been requested and by whom. The notice shall advise the lawyer that the information shall be released at the end of twenty-one (21) days following mailing of the notice unless the lawyer obtains a Court order to prevent such disclosure.

(3) *Release Without Notice.* If an agency described above has not obtained a waiver from the lawyer to obtain nonpublic information, and requests that the information be released without giving notice to the lawyer, the requesting agency shall certify that:

(a) The request is made in furtherance of an ongoing investigation into misconduct by the lawyer;

(b) The information is essential to that investigation; and

(c) Disclosure of the existence of the investigation to the lawyer would seriously prejudice that investigation.

G. **Duty of Staff.** All officials and employees of the Professional Responsibility Program shall conduct themselves so as to maintain the confidentiality mandated by this rule.

H. **Disclosure to Judicial Conduct Board.** Nothing in these rules shall be construed to prohibit release to the Judicial Conduct Board of any information in the possession of the Professional Responsibility Board which it believes should be brought to the attention of the Judicial Conduct Board.

Historical Citation

Amended Dec. 21, 2010, eff. Feb. 21, 2011; August 30, 2011, eff. Oct. 31, 201; Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 12 is renumbered Rule 16.

Reporter's Note—Second 2011 Amendment

Prior to the amendment (12.D.), the rules were silent as to whether interim suspension proceedings and orders were public. The amendment makes it clear that interim suspension proceedings and orders are public. The rationale behind the amendment is that interim suspension proceedings are sufficiently similar to the filing of formal disciplinary proceedings as to be treated alike. See Administrative Order 9, Rule 12.A. An overriding goal of the amendment is to enable the Court and Bar Counsel to protect the public by putting it on notice that a lawyer's license has been suspended on an interim basis.

Reporter's Notes—First 2011 Amendment

Attorneys who are respondents have expressed concern that, read strictly, Rule 12.F. prohibited them from informing their malpractice carriers and/or the presiding judge that a client has filed an ethics complaint against them. Attorneys who are respondents have also expressed concern that, read strictly, Rule 12.F. [renumbered to Rule 12.G. on 8/31/11] prohibits them from telling their clients that the opposing side has filed an ethics complaint against them. Finally, attorneys would be prohibited from disclosing the fact that a compliant had been dismissed. This amendment allows complainants and respondents to disclose to anyone if a complaint had been filed, and the disposition, if any, of the complaint. This is consistent with steps other states have taken.

Rule 17. Dissemination of Disciplinary Information

A. **Notice to Disciplinary Agencies and National Discipline Data Bank.** Disciplinary counsel shall transmit notice of public discipline, transfers to or from disability inactive status, reinstatements, and certificates of conviction to the disciplinary enforcement agency of any other jurisdiction in which the respondent is admitted, as well as to the National Discipline Data Bank maintained by the American Bar Association.

B. **Public Notice of Discipline Imposed.** Disciplinary counsel shall transmit notice of public discipline, transfers to or from interim suspension status and transfers to or from disability inactive status to be published in the legal journal and in a newspaper of general circulation in each area in which the lawyer actively practiced law.

C. **Notice to the Courts.** Disciplinary Counsel shall promptly transmit a certified copy of the order of suspension, disbarment, reinstatement, transfer to or from interim suspension status and transfer to or from disability inactive status to all courts in this state. In addition, bar counsel may request the presiding judge of the superior court of the county in which a respondent, transferred to disability inactive status or otherwise unable to comply with the requirement of Rule 27, maintained his or her practice to take such action under the provision of Rule 28 as may be indicated in order to protect the interests of the respondent and respondent's clients.

D. **Law Enforcement.** Nothing in these rules shall be construed as prohibiting a member of the Professional Responsibility Program or an attorney participating in these proceedings from disclosing to appropriate law enforcement authorities evidence of a crime, even though that evidence may have arisen or been discovered in the course of the proceedings.

E. **Publicly Available Decisions.** In all cases decided by a hearing panel, the hearing panel shall prepare a record of decision which sets forth the factual, legal and discretionary basis of each decision. The decision shall not identify the parties or witnesses, unless the matter is one in which a disposition of reprimand, suspension or disbarment is imposed. Each decision shall be assigned a number and be available to the public. Where there has been a public disposition, the hearing panel's findings, conclusions and recommendations, and those of the Court, will be assigned a number and will constitute the record of decision.

Historical Citation

Amended August 30, 2011, eff. Oct. 31, 2011; Nov. 2, 2020, eff. Feb. 2, 2021.

Reporter's Note—2021 Amendment

Former Rule 13 is renumbered Rule 17 and cross references to other rules are updated. Subdivisions A, B, and C are amended to indicate that disciplinary counsel, rather than bar counsel, is responsible for transmitting notices of discipline to agencies, the public, and the courts.

Reporter's Note – 2011 Amendment

The rules are amended so as to clarify that Bar Counsel shall notify the public and the courts whenever the Supreme Court enters an order transferring a lawyer's license to or from interim suspension status. The amendments are consistent with the new language that appears in Rule 12.D

Rule 18. Service

A. **Service of Petition.** Service upon the respondent of the petition in any disciplinary or disability proceeding shall be made by registered or certified mail, with restricted delivery and return receipt requested at an address shown on the licensing statement last filed by respondent or other last known address, or may be by personal service, by any person authorized by the chair of the Board. Service in all other respects shall be governed by the Vermont Rules of Civil Procedure.

B. **Service of Other Papers.** Service of any other papers or notices required by these rules shall, unless otherwise provided by these rules, be made in accordance with Rule 5 of the Vermont Rules of Civil Procedure.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 14 is renumbered Rule 18.

Rule 19. Subpoena power; discovery; testimony

A. **Subpoena Power.**

(1) *Investigatory subpoenas.* In order to assist disciplinary counsel's investigation, a hearing panel chair assigned by the Board chair is authorized to issue investigatory subpoenas, upon disciplinary counsel's request, requiring persons and organizations to produce evidence or testimony, under oath, at a place and time specified by the hearing panel chair. In the request, disciplinary counsel must demonstrate, and the hearing panel chair must find: (a) a factual basis, beyond mere conjecture or supposition, that a violation of ethical standards has occurred; (b) the relevance of the information sought to the investigation, and (c) that the demand is not too indefinite or overbroad. Any district or superior judge in the county in which enforcement is sought may issue orders compelling enforcement of the subpoena. Failure to abide by an order enforcing the subpoena will be grounds for contempt of the court.

(2) *Subpoenas for Deposition or Hearing.* After a petition, or a motion for reinstatement, is filed, disciplinary counsel or respondent may compel by subpoena the attendance of witnesses and the production of pertinent books, paper, and documents at a deposition or hearing under these rules.

(3) *Enforcement of subpoenas.* The hearing panel chair assigned by the Board, or a designee thereof, may issue a subpoena with the same effect as if issued by a court. Any district or superior judge in the county in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witness and the production of any documents subpoenaed. Tender of a witness fee and mileage reimbursement is not necessary at the time of service in order to effect proper service of any subpoena issued at the request of the Board or disciplinary counsel.

(4) *Quashing Subpoena.* Any attack upon the validity of a subpoena shall be heard and determined by the chair of the hearing panel or by the court wherein enforcement of the subpoena is being sought.

(5) *Witnesses and Fees.* Subpoena and witness fees and mileage shall be the same as those provided for proceedings in superior court.

(6) *Reciprocal Enforcement of Subpoenas.* Whenever a subpoena is sought in this state pursuant to the laws of another jurisdiction for use in lawyer discipline or disability proceedings, a hearing panel chair assigned by the Board may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents.

B. **Discovery.**

(1) *Scope.* Within 20 days following the filing of an answer, disciplinary counsel and respondent shall exchange the names and addresses of all persons having knowledge of relevant facts and/or of witnesses. This list shall be updated without request. Within 60 days following the filing of an answer, disciplinary counsel and respondent may take depositions and shall comply with reasonable requests for production of (a) nonprivileged documents and evidence relevant to the charges or to respondent and (b) other material upon good cause shown to the chair of the hearing panel.

(2) *Resolution of Disputes.* Disputes concerning discovery shall be determined by the chair of the hearing panel before which the matter is pending.

(3) *Other Rules Not Applicable.* Discovery proceedings under these rules are not subject to the Vermont Rules of Civil Procedure regarding discovery except those relating to depositions and subpoenas.

C. **Testimony.** Testimony before the hearing panel shall be under oath.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 15 is renumbered Rule 19.

Rule 20. Additional Rules of Procedure

A. **Nature of Proceedings.** Disciplinary proceedings are neither civil nor criminal but are sui generis.

B. **Proceedings Governed by Rules of Civil Procedure.** Except as otherwise provided in these rules, the Vermont Rules of Civil Procedure and the Vermont Rules of Evidence apply in discipline and disability cases.

C. **Standard of Proof.** Formal charges of misconduct, petitions for reinstatement, and petitions for transfer to and from disability inactive status shall be established by clear and convincing evidence.

D. **Burden of Proof.** The burden of proof in proceedings seeking discipline or transfer to disability inactive status is on disciplinary counsel. The burden of proof in proceedings seeking reinstatement and transfer from disability inactive status is on the respondent.

E. **Prehearing Conference.** At the discretion of the hearing panel or upon request of either party, a conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. The conference shall be held before the chair of the hearing panel or another member of the hearing panel designated by the chair.

F. **Availability of Hearing Transcript.** The record of a hearing shall be made available to the respondent at his or her expense on request made to disciplinary counsel.

G. **Related Pending Litigation.** The processing of a disciplinary matter shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation unless the Board or a hearing panel in its discretion authorizes a stay for good cause shown.

H. **Delay Caused by Complainant.** Neither unwillingness nor neglect of the complainant to sign a complaint nor to prosecute a charge, nor settlement, nor compromise between the complainant and the lawyer, nor restitution by the lawyer shall, in itself, justify abatement of the processing of any complaint.

I. **Effect of Time Limitations.** Except as otherwise provided in these rules, time is directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any disciplinary or disability investigation or proceeding.

J. **Complaints Against Panel Members or Staff of the Professional Responsibility Program.** If a complaint is filed against a member of a hearing panel, no member of that hearing panel shall participate in disposition of that complaint. If a complaint is filed against bar counsel or disciplinary counsel, the Board shall appoint substitute counsel to serve in that lawyer's place on that matter. If a complaint is filed against a member of the Board, neither bar counsel nor disciplinary counsel shall process the complaint; the complaint will be sent to the chair of one of the hearing panels, who shall appoint special counsel to handle the complaint consistent with these rules. The hearing

panel chair who appoints special counsel shall not thereafter participate in any disciplinary proceedings brought by the special counsel.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 15 is renumbered Rule 19.

Rule 21. Attorneys Convicted of a Crime

A. **Transmittal of Certificate of Conviction by Clerk of Trial Court.** The clerk of any court in this state in which a lawyer is convicted of a crime shall within ten (10) days of the conviction transmit a certificate of conviction to disciplinary counsel who will so advise the Board.

B. **Determination of ''Serious Crime.''** Upon being advised that a lawyer subject to the disciplinary jurisdiction of the Court has been convicted of a crime, disciplinary counsel shall determine whether the crime constitutes a ''serious crime'' warranting immediate interim suspension. If the crime is a ''serious crime,'' disciplinary counsel shall prepare a proposed order for interim suspension and forward it to the Court and the respondent, together with a certificate of the conviction. Disciplinary counsel shall then file formal charges against the respondent predicated upon the conviction. On or before the date established for entry of the order of interim suspension the lawyer may assert any jurisdictional deficiency that establishes that the suspension may not properly be ordered, such as that the crime did not constitute a ''serious crime'' or that the lawyer is not the individual convicted. If the crime is not a ''serious crime,'' disciplinary counsel shall process the matter like any other information coming to the attention of the Professional Responsibility Program.

C. **Definition of a ''Serious Crime.''** A ''serious crime'' is any felony or lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or an attempt, conspiracy, or solicitation of another to commit a ''serious crime.''

D. **Immediate Interim Suspension.** The Court has exclusive power to place a lawyer on interim suspension.

(1) *Imposition.* The Court shall place a lawyer on interim suspension immediately upon proof that the lawyer has been convicted of a serious crime regardless of the pendency of any appeal.

(2) *Termination.* The Court has exclusive power to terminate an interim suspension. In the interest of justice, the Court may terminate an interim suspension at any time upon a showing of extraordinary circumstances, after affording disciplinary counsel notice and an opportunity to be heard.

E. **Certificate of Conviction Conclusive.** A certificate of a conviction of an attorney for any crime shall be conclusive evidence of that crime in any disciplinary proceeding instituted against the lawyer based upon the conviction.

F. **Automatic Reinstatement from Interim Suspension upon Reversal of Conviction.** If a lawyer suspended solely under the provisions of paragraph D demonstrates that the underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the lawyer placed on active status. The vacating of the interim suspension will not automatically terminate any

formal proceeding then pending against the lawyer, the disposition of which shall be determined by the hearing panel on the basis of the available evidence other than conviction.

G. **Notice to Clients and Others on Interim Suspension.** An interim suspension under this rule shall constitute a suspension of the lawyer for the purpose of Rule 27.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 17 is renumbered Rule 21 and cross references to rules are updated.

Rule 22. Interim Suspension for Threat or Harm

A. **Transmittal of Evidence.** Upon receipt of sufficient evidence demonstrating that a lawyer subject to the disciplinary jurisdiction of the Court has: (1) either committed a violation of the rules of professional responsibility as adopted by the Court or is under a disability as set forth in Rule 25, and (2) presently poses a substantial threat of serious harm to the public, disciplinary counsel shall:

(i) transmit the evidence to the Court together with a proposed order for interim suspension; and

(ii) contemporaneously make a reasonable attempt to provide the lawyer with notice, which may include notice by telephone or any other electronic means, that a proposed order for immediate interim suspension has been transmitted to the Court; and

(iii) evidence transmitted to the Court pursuant to subsection (i) is public.

B. **Immediate Interim Suspension.** Upon examination of the evidence transmitted to the Court by disciplinary counsel and of rebuttal evidence, if any, which the lawyer has transmitted to the Court prior to its ruling, the Court may enter an order immediately suspending the lawyer, pending final disposition of a disability or disciplinary proceeding predicated upon the conduct which poses the threat of serious harm, or may order such other action as it deems appropriate. Whenever an order of interim suspension has been issued, the Court may appoint a trustee pursuant to Rule 28 to protect clients' interests.

C. **Notice to Clients.** Any lawyer suspended pursuant to this rule shall comply with the notice requirements of Rule 27.

D. **Motion for Dissolution of Interim Suspension.** On two days notice to disciplinary counsel, a lawyer suspended pursuant to paragraph B may appear and move for dissolution or modification of the order of suspension, and in the event the motion shall be heard and determined by the Court as expeditiously as the ends of justice require.

E. **Automatic Reinstatement.** If a lawyer has been suspended because of conduct constituting a threat of harm to clients under paragraph A of this rule demonstrates that all disciplinary proceedings predicated upon the evidence submitted under paragraph A have been dismissed, the order of interim suspension shall be vacated and the lawyer placed on active status.

Historical Citation

Amended August 30, 2011, eff. Oct. 31, 2011; Nov. 2, 2020; eff. Feb. 2021.

Reporter's Note—2021 Amendment

Former Rule 18 is renumbered Rule 22 and cross references to rules are updated.

Reporter's Notes – 2011 Amendment

Prior to the amendment, there was some confusion as to whether a transmittal made pursuant to Rule 18 was public. The rule is amended to make it clear that evidence transmitted to the Court in support of an interim suspension request is public. The amendment is consistent with the amendments to Rules 12.D, 13.B, and 13.C.

Rule 23. Resignation by Attorneys Under Disciplinary Investigation

A. **Affidavit.** An attorney who is the subject of an investigation into allegations of misconduct may submit a resignation by delivering to the Board an affidavit stating that the attorney desires to resign and that:

(1) The resignation is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress, is fully aware of the implications of submitting a resignation; and

(2) The attorney is aware that there is presently pending an investigation into allegations that the attorney has been guilty of misconduct, the nature of which the attorney shall specifically set forth;

(3) The attorney acknowledges that the material facts upon which the complaint is predicated are true; and

(4) The attorney submits the resignation because the attorney knows that if charges were predicated upon the misconduct under investigation the attorney could not successfully defend against them.

B. **Additional Facts.** Disciplinary counsel shall submit to the Board and to the respondent a statement of facts supporting a finding of violation in addition to those in the affidavit, for consideration in any reinstatement proceeding. If a respondent objects to the statement of facts, the Court shall not accept the resignation.

C. **Order.** Upon receipt of the required affidavit and disciplinary counsel's statement of facts, the Board may file them with the Court, in which case the Court shall enter an order disbarring the attorney on consent, or the Board may assign the matter to hearing panel to investigate the matter, hold a hearing, or make other inquiry.

D. **Disclosure.** The order disbarring the attorney on consent as well as the affidavit and statement of facts shall be a matter of public record.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 19 is renumbered Rule 23.

Rule 24. Reciprocal Discipline

A. **Duty to Inform Disciplinary Counsel of Discipline From Other Jurisdiction.** Upon being disciplined in another jurisdiction, a lawyer admitted to practice in Vermont shall promptly inform disciplinary counsel of such action. Upon notification that a lawyer within the jurisdiction of the Board has been disciplined in another jurisdiction, disciplinary counsel shall obtain a certified copy of the disciplinary order and file it with the Board and with the Court.

B. **Notice Served Upon Respondent.** Upon a receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Vermont has been disciplined in another jurisdiction, the Court shall forthwith issue a notice directed to the lawyer and to disciplinary counsel containing:

(1) A copy of the order from the other jurisdiction; and

(2) An order directing that the lawyer or disciplinary counsel inform the Court, within 30 days from service of the notice, of any claim by the lawyer or disciplinary counsel predicated upon the grounds set forth in Paragraph D, that the imposition of the identical discipline in this state would be unwarranted and the reasons therefore.

C. **Effect of Stay of Discipline in Other Jurisdictions.** In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this state shall be deferred until the stay expires.

D. **Discipline to be Imposed.** Upon the expiration of 30 days from service of the notice pursuant to the provisions of Paragraph B, the Court shall impose the identical discipline unless the Court finds that upon the face of the record from which the discipline is predicated it clearly appears, or disciplinary counsel or the lawyer demonstrates, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) The imposition of the same discipline by the Court would result in grave injustice; or

(4) The misconduct established warrants substantially different discipline in this state.

If the Court determines that any of these elements exists, it shall enter such other order as it deems appropriate.

E. **Conclusiveness of Adjudication in Other Jurisdictions.** Except where grounds exist under Paragraph D above, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this jurisdiction.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 20 is renumbered Rule 24.

ANNOTATIONS

1. Disbarment. Respondent, who was disbarred in New Hampshire for conduct which included falsely testifying about a fee agreement, had failed to show under Vt. Sup. Ct. Order 9, Rule 20.B. that identical discipline was unwarranted. He had not shown due process violations or infirmity or proof, or offered anything to contradict the New Hampshire court's conclusion. In re O'Meara, 2013 VT 17, 193 Vt. 671, 67 A.3d 280 (mem.).

2. Suspension. Two-year suspension from the practice of law was imposed against an attorney in a reciprocal attorney-discipline matter based on the attorney's conviction for identify theft in New York and the two-year suspension which was imposed against her by the State of New York. The attorney admitted that she had engaged in misrepresentation with an intent to defraud, which conduct constituted a violation of the professional rules. In re Pope, 2014 VT 94, 197 Vt. 638, 101 A.3d 1284 (mem.).

Although disciplinary counsel recommended a public reprimand for an attorney who was convicted of identity theft in New York, the reciprocal discipline of a two-year suspension was deemed proper because the attorney admitted that she had engaged in misrepresentation with an intent to defraud, which conduct constituted a violation of the professional rules. In re Pope, 2014 VT 94, 197 Vt. 638, 101 A.3d 1284 (mem.).

Rule 25. Proceedings in Which Lawyer is Declared to be Incompetent or Alleged to be Incapacitated

A. **Involuntary Commitment or Adjudication of Incompetency.** If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the Court, upon proper proof of the fact, shall enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until the further order of the Court. A copy of the order shall be served upon the lawyer, the lawyer's guardian, and the director of the institution to which the lawyer has been committed.

B. **Inability to Properly Defend.** If a respondent alleges in the course of a disciplinary proceeding that he or she is unable to assist in his or her defense due to a mental or physical disability, the Court shall immediately transfer the lawyer to disability inactive status pending determination of the incapacity. Such determination shall be made by a hearing panel assigned by the Board, following notice and an opportunity to be heard. The panel shall submit a report to the Court with its recommendation.

(1) If the Court determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred and the respondent retained on disability inactive status until the respondent's return to active status.

(2) If the Court determines the claim of inability to defend to be invalid, the disciplinary proceeding shall resume.

C. **Proceedings to Determine Incapacity.** Information relating to a lawyer's physical or mental condition which adversely affects his or her ability to practice law shall be the subject of formal proceedings to determine whether the lawyer shall be transferred to disability inactive status. The Court may take or direct whatever action it deems necessary or proper to determine whether the respondent is so incapacitated, including the examination of the respondent by qualified medical experts designated by the Court. If, upon due consideration of the matter, the Court concludes that the respondent is incapacitated from continuing to practice law, it shall enter an order transferring the lawyer to disability inactive status for an indefinite period and until the further order of the Court. Any pending disciplinary proceedings against the respondent shall be held in abeyance. The Court shall provide for such notice to the respondent of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent if the lawyer is without adequate representation.

D. **Public Notice of Transfer to Disability Inactive Status.** The Board or its designee shall cause a notice of transfer to disability inactive status to be published in a newspaper of general circulation in each county in which the disabled attorney maintained an office for the practice of law.

E. **Reinstatement from Disability Inactive Status.**

(1) *Generally.* No respondent transferred to disability inactive status may resume active status except by order of the Court.

(2) *Petition.* Any respondent transferred to disability inactive status shall be entitled to petition for transfer to active status once a year, or at whatever shorter intervals the Court may direct in the order transferring the respondent to disability inactive status or any modifications thereof. The petition shall be granted by the Court upon a showing by clear and convincing evidence that the disability has been removed.

(3) *Examination.* Upon the filing of a petition for transfer to active status, the Court may take or direct whatever action it deems necessary or proper to determine whether the disability has been removed, including a direction for an examination of the respondent by qualified medical

experts designated by the Court. In its discretion, the Court may direct that the expense of the examination be paid by the respondent.

(4) *Waiver of Doctor-Patient Privilege.* The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the respondent during the period of disability. The respondent shall be required to disclose the name of each psychiatrist, psychologist, physician and hospital or other institution by whom or in which the respondent has been examined or treated since his or her transfer to disability inactive status. The respondent shall furnish to this Court written consent to each doctor to divulge information and records relating to the disability if requested by the Court or court appointed medical experts.

(5) *Learning in Law; Bar Examination.* The Court may also direct that the respondent establish proof of competence and learning in law, which proof may include certification by the bar examiners of successful completion of a new examination for admission to practice subsequent to placement on disability inactive status.

(6) *Judicial Declaration of Competence.* If a respondent transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the Court may dispense with further evidence that the disability has been removed and may immediately direct reinstatement to active status upon terms as are deemed proper and advisable.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 21 is renumbered Rule 25.

Rule 26. Reinstatement

A. **Waiting Period; Disbarment.** A person who has been disbarred or who has resigned may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment or resignation.

B. **Waiting Period; Suspension.** A lawyer suspended for less than six months may resume practice at the end of the period of suspension by filing with the Court and serving upon disciplinary counsel an affidavit setting forth the manner in which the lawyer has complied with the requirements of the suspension order. A lawyer who has been suspended for six months or longer shall comply with paragraph D of this rule.

C. **Waiting Period; Disability.** In the event an application for reinstatement to active status made pursuant to Rule 26 is denied, no further application shall be made for at least one year following such denial, unless permitted by the order placing the applicant on inactive status or the order denying a prior application.

D. **Motions by Disbarred, Suspended, Resigned Attorneys.** Motions for reinstatement by a disbarred attorney, an attorney who has resigned, or an attorney who has been suspended for more than six months shall be served upon the Board and disciplinary counsel. In the case of a suspension, the motion may not be filed until three months before the period of suspension expires. Upon receipt of the motion, the Board shall promptly refer the matter to a hearing panel. Such panel shall promptly schedule a hearing, at which the respondent-attorney shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral

qualifications, competency, and learning required for admission to practice law in the state, and the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest and that the respondent-attorney has been rehabilitated. At the conclusion of the hearing, the panel shall promptly issue a decision containing its findings and conclusions, and file the decision, together with the record, with the Board for filing with the Court. In the case of a suspension, the hearing panel shall issue its decision within ninety days of the date of the filing of the motion for reinstatement. The hearing panel's decision may be appealed as of right pursuant to the procedures set forth in Rule 15.E.

E. **Disciplinary Counsel's Role.** In all proceedings upon a motion for reinstatement, disciplinary counsel shall conduct discovery, cross-examination, and the submission of evidence, if any, in response to the motion.

F. **Expenses.** The Court in its discretion may direct that necessary expenses incurred in the investigation and processing of a motion for reinstatement be paid by the respondent-attorney.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 12 is renumbered Rule 26 and cross references to rules are updated.

ANNOTATIONS

1. Reinstatement not warranted. Attorney was not entitled to reinstatement, but would instead be disbarred, given gravity of conduct in issue and absence of anything in record to suggest it would not recur. In re Burgess (1999) 169 Vt. 533, 725 A.2d 302 (mem.).

2. Reinstatement Warranted. Decision of the hearing panel for the Professional Responsibility Board was adopted, as an attorney provided clear and convincing evidence that she should be reinstated to the practice of law in Vermont because she took her reciprocal disciplinary suspension seriously, complied with the terms thereof, and she was remorseful, involved in community volunteering, and was previously a competent attorney. In re Pope, 2017 VT 55, 205 Vt. 631, 171 A.3d 406 (mem.).

Rule 27. Notice to Client, Adverse Parties, and Other Counsel

A. **Recipients of Notice: Contents.** Within ten days after the date of the decision or order imposing discipline or transfer to disability inactive status, a respondent disbarred, transferred to disability inactive status, placed on interim suspension or suspended shall notify or cause to be notified by registered or certified mail, return receipt requested:

(1) All clients being represented in pending matters (and shall call attention to any urgency for action on the client's part);

(2) Any co-counsel in pending matters; and

(3) Any opposing counsel in pending matters, or in the absence of such counsel, the adverse parties.

B. **Contents of Notice**. The notice shall inform the recipient of the order or decision and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order or decision. The notice to be given to the lawyer or lawyers for an adverse party shall state the place of residence of the client of the respondent.

C. **Special Notice.** The order or decision may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

D. **Duty to Maintain Records.** The respondent shall keep and maintain records of the steps taken to accomplish the requirements of paragraphs A, B, and C, and shall make those records available to disciplinary counsel on request.

E. **Return of Client Property.** The respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

F. **Effective Date of Order; Winding Up Affairs.** Orders or decisions imposing suspension or disbarment, reprimand, probation, or transfers to disability inactive status are effective immediately, unless otherwise indicated. The respondent shall refund within ten days of entry of the order or decision any part of any fees paid in advance which have not been earned.

G. **Withdrawal from Representation.** In the event the client does not obtain another lawyer before the effective date of the disbarment or suspension, it shall be the responsibility of the respondent to move in the court, agency, or tribunal in which the proceeding is pending for leave to withdraw. The respondent shall in that event file with the court, agency or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

H. **Affidavit Filed with Board.** Within 10 days after the effective date of the disbarment or suspension order, or order transferring him or her to disability inactive status, the respondent shall file with the Board an affidavit showing:

(1) He or she has fully complied with the provisions of the order and with these rules;

(2) All other state, federal and administrative jurisdictions to which he or she is admitted to practice;

(3) The residence or other addresses where communications may thereafter be directed to him or her; and that

(4) He or she has served a copy of such affidavit upon disciplinary counsel.

I. **Registration and Records.** An attorney suspended or disbarred shall continue to file the registration statement required by § 1 of the Annual Licensing of Attorneys Rules without payment therefor throughout the period of suspension or for five years after an order of disbarment is entered, so that the attorney can be located in the event complaints are made about his or her conduct while engaged in practice. Such attorney also shall keep and maintain records of the various steps taken under this rule so that, upon any subsequent proceedings instituted by or against the attorney, proof of compliance with these rules and the order will be available.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 23 is renumbered Rule 27.

HISTORY

References in text. The reference to § 1 of the Annual Licensing of Attorneys'' referred to in subdiv. I, should now be to Administrative Order No. 41, § 1.

Rule 28. Appointment of Counsel to Protect Clients' Interests

A. **Inventory of Attorney Files.** If a lawyer within the Board's jurisdiction has been transferred to disability inactive status, or has disappeared or died, or has been placed on interim suspension, suspended or disbarred, and there is evidence that the lawyer has not complied with Rule 27, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the superior court of each county in which the respondent maintained a practice, upon proper proof of the fact, shall appoint an attorney or attorneys to inventory the files of the respondent, and to take action as seems indicated to protect the interests of the respondent and respondent's clients.

B. **Protection of Records Subject to Inventory.** Any attorney so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the attorney to make the inventory.

Historical Citation

Amended Nov. 2, 2020; eff. April 1, 2021.

Reporter's Note—2021 Amendment

Former Rule 24 is renumbered Rule 28 and cross references to rules are updated.