STATE OF VERMONT
VERMONT SUPREME COURT
NOVEMBER TERM, 2020

Order Promulgating Amendments to Administrative Order No. 9, Permanent Rules Governing Establishment and Operation of the Professional Responsibility Program

Pursuant to the Vermont Constitution, Chapter II, § 30, it is hereby ordered:

1. That Administrative Order No. 9, be amended as follows (new matter underlined; deleted matter struck through):

Purpose

The Professional Responsibility Program is established to provide a comprehensive system of regulation of the legal profession. Its objectives are: ~~(1) to resolve complaints against attorneys through fair and prompt dispute resolution procedures; (2) to investigate and discipline attorney misconduct; and (3) to assist attorneys and the public by providing education, advice, referrals, and other information designed to maintain and enhance the standards of professional responsibility.~~

(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.

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").

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E. **Powers and Duties.** The Board ~~shall~~ oversees the program, and implements, coordinates, and periodically reviews its policies and goals. Its powers and duties ~~shall~~ 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:

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

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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.

~~**Rule 2. Hearing Panels**~~

~~A. **Appointment and Membership**. The chair of the Board shall appoint standing hearing panels as may be required. Each hearing panel shall consist of two members of the bar of this state and one public member. The chair of the Board shall appoint a lawyer member of each hearing panel to serve as chair of the panel. Terms shall be for two years, and no member shall serve for more than three consecutive terms or parts thereof. Members of the Board may not serve simultaneously as members of a hearing panel.~~

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

~~C. **Powers and Duties**. Hearing panels shall adjudicate all formal disciplinary and disability proceedings. The powers and duties of the hearing panel shall 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 11.D(5); and~~

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

~~D. **Abstention of Hearing Panel Members**. A hearing panel member shall disqualify himself or herself 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 shall rule on any motion to disqualify. Any appeal of that decision will be decided by the chair of the Board, whose decision is final.~~

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

Rule ~~3~~ 2. Bar Counsel, Screening Counsel, and Disciplinary Counsel

~~A.~~ **Appointment**. ~~Upon the recommendation of~~ Following consultation with the Board, and subject to Court approval, the Court Administrator ~~shall~~, 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.

~~B. **Powers and Duties**. Pursuant to guidelines established by the Board, the powers and duties of bar counsel and disciplinary counsel shall be as follows:~~

~~**(**1) Bar Counsel shall administer the dispute resolution program; respond to inquiries from lawyers regarding ethics and law practice; consult and coordinate with state and local bar associations, the Judicial Conduct Board, the Board of Bar Examiners, and other related organizations on matters concerning attorney conduct and professional responsibility; confer periodically with the Board to review program operations; provide administrative and legal support to the Board and assistance panels; and perform such other functions as are necessary to accomplish the goals of the program.~~

~~(2) Disciplinary Counsel shall administer the disciplinary program; investigate and litigate all disciplinary and disability matters; and select and recommend for appointment investigative staff pursuant to Administrative Order 3. Disciplinary Counsel shall also confer periodically with the Board to review operations and perform other assigned tasks.~~

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 4. Assistance Panels**~~

~~A. **Appointment.** The chair of the Board shall appoint three-member assistance panels as may be required, and shall appoint one of the members to serve as chair. Terms shall be for two years. The membership of each assistance panel shall include at least one member of the Board, and at least one public member, who may be the same person. Two members shall constitute a quorum, and the panel shall act only with the concurrence of two members. Vacancies shall be filled by the Board chair.~~

~~B. **Powers and Duties.**~~

~~(1) The assistance panel shall review all complaints referred to it by bar counsel or disciplinary counsel and provide a process to resolve such complaints. The panel may meet with the person filing the complaint and the attorney who is the subject thereof, and, with the concurrence of the attorney, may impose conditions as an alternative to discipline. Any terms or conditions shall be stated in writing, and may include, but shall not be limited to, participation in law office management training, continuing legal education, psychological counseling, substance abuse programs, and referral to fee arbitration. The panel may transfer any matter to disciplinary counsel which, in its view, is more appropriate for disciplinary proceedings.~~

~~(2) Upon the imposition of conditions, the complaint may be conditionally closed. Upon motion of the attorney and proof of successful completion of any terms or conditions, the complaint will be dismissed.~~

~~(3) If an attorney refuses to participate in the assistance program, or fails to comply with any terms or conditions, the complaint may be referred to disciplinary counsel for further action.~~

~~C. **Compensation and Expenses.** Members shall be reimbursed for reasonable and necessary expenses related to the performance of their duties in the same manner in which Board members are compensated pursuant to Rule 1.D.~~

Rule ~~5~~ 3. Jurisdiction

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Reporter's Notes—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.

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%20Commissi

on%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.

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.

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.

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.

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.

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 ~~6~~ 10. Roster of Lawyers

Disciplinary counsel shall have access to all annual licensing statements.

Reporter's Notes—2021 Amendment

Former Rule 6 is renumbered Rule 10.

Rule ~~7~~ 11. Grounds for Discipline

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Reporter's Notes—2021 Amendment

Former Rule 7 is renumbered Rule 11.

~~**Rule 9. Prevention and Education**~~

~~Inquiries from attorneys regarding ethical issues or practice questions shall be referred to bar counsel, who may provide referrals, educational materials, and preventive advice and information to assist attorneys to achieve and maintain high standards of professional responsibility~~.

Rule ~~10~~ 12. Screening Counsel and Filing and Review of Disciplinary Complaints

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

A. **Screening**. ~~All complaints will be screened by bar counsel, who~~ 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. ~~Bar counsel~~ Screening Counsel may attempt to resolve any complaint, of whatever nature, that does not appear to require formal intervention by ~~an assistance panel~~ the Bar Assistance Program or the disciplinary program.

B. **Referral to ~~Assistance Panel~~ Alternate Program**. ~~Bar counsel~~ Screening Counsel may refer any matter that does not appear to require prosecution and sanctions to the ~~assistance panel (see Rule 4)~~ Bar Assistance Program, Vermont Lawyer Assistance Program, the Vermont Bar Association Committee for the Arbitration of Fee Complaints or any other dispute resolution program~~. including, but not limited to, the Arbitration of Fee Complaints Committee of the Vermont Bar Association~~.

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 ~~shall~~ investigate further to determine whether formal disciplinary proceedings should be pursued under Rule ~~11~~ 15.

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

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.

Rule ~~11~~ 13. Disciplinary and Disability Proceedings

A. **Investigation and Notice**. If initial review pursuant to Rule ~~10.A~~ 14.A indicates that an investigation is warranted, the matter ~~shall~~ must be referred to disciplinary counsel with notice to complainant and respondent. All investigations and disciplinary or disability proceedings ~~shall~~ are conducted or supervised by disciplinary counsel. Disciplinary counsel ~~shall~~ 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 ~~shall~~ 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 ~~assistance panel~~ Bar Assistance Program or other dispute resolution program, initiate formal disciplinary or disability proceedings in accordance with Rule ~~11.D~~ 15.D, or initiate disability proceedings in accordance with Rule ~~21~~ 25. Disciplinary counsel ~~shall~~ must inform the complainant of the disposition of the complaint and reasons ~~therefor~~.

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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.

Reporter's Notes—2021 Amendment

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

Rule ~~8~~ 15. Sanctions

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

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(6) Probation:

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(c) Violation of Probation. A violation of probation may be the basis for interim suspension pursuant to Rule ~~18~~ 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.

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Reporter's Notes—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 ~~12~~ 16. Access to Disciplinary Information

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Reporter's Notes—2021 Amendment

Former Rule 12 is renumbered Rule 16.

Rule ~~13~~ 17. Dissemination of Disciplinary Information

A. **Notice to Disciplinary Agencies and National Discipline Data Bank.** ~~Bar counsel~~ 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.** ~~Bar counsel~~ 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.** ~~Bar counsel~~ 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 ~~23~~ 27, maintained his or her practice to take such action under the provision of Rule ~~24~~ 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.

Reporter's Notes—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.

Rule ~~14~~ 18. Service

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Reporter's Notes—2021 Amendment

Former Rule 14 is renumbered Rule 18.

Rule ~~15~~ 19. Subpoena power; discovery; testimony

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Reporter's Notes—2021 Amendment

Former Rule 15 is renumbered Rule 19.

Rule ~~16~~ 20. Additional Rules of Procedure

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Reporter's Notes—2021 Amendment

Former Rule 16 is renumbered Rule 20.

Rule ~~17~~ 21. Attorneys Convicted of a Crime

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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 ~~23~~ 27.

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Reporter's Notes—2021 Amendment

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

Rule ~~18~~ 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 ~~21.A~~ 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 ~~24~~ 28 to protect clients' interests.

C**. Notice to Clients**. Any lawyer suspended pursuant to this rule shall comply with the notice requirements of Rule ~~23~~ 27.

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Reporter's Notes—2021 Amendment

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

Rule ~~19~~ 23. Resignation by Attorneys Under Disciplinary Investigation

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Reporter's Notes—2021 Amendment

Former Rule 19 is renumbered Rule 23.

Rule ~~20~~ 24. Reciprocal Discipline

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Reporter's Notes—2021 Amendment

Former Rule 20 is renumbered Rule 24.

Rule ~~21~~ 25. Proceedings in Which Lawyer is Declared to be Incompetent or Alleged to be Incapacitated

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Reporter's Notes—2021 Amendment

Former Rule 21 is renumbered Rule 25.

Rule ~~22~~ 26. Reinstatement

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C. **Waiting Period; Disability**. In the event an application for reinstatement to active status made pursuant to Rule ~~21~~ 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 ~~11.E~~ 15.E.

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Reporter's Notes—2021 Amendment

Former Rule 12 is renumbered Rule 16 and cross references to rules are updated.

Rule ~~23~~ 27. Notice to Client, Adverse Parties, and Other Counsel

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Reporter's Notes—2021 Amendment

Former Rule 23 is renumbered Rule 27.

Rule ~~24~~ 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 ~~23~~ 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.

Reporter's Notes—2021 Amendment

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

2. That this administrative order, as amended, is prescribed and promulgated effective February 1, 2021. The Reporter's Notes are advisory.

3. That the Court recognizes that the creation of the Bar Assistance Program, changing of Bar Counsel's duties, and reassignment of the duties of screening to a designated Screening Counsel are significant structural changes to the current Professional Responsibility Program. Therefore, the Professional Responsibility Board and the State Court Administrator are directed to report back to the Court in February 2023 on the effectiveness of the Bar Assistance Program and the

accompanying structural changes to the Professional Responsibility Program and provide recommendations on how best to proceed.

4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 2nd day of November, 2020.

Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice