



STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY PROGRAM

INFORMATION CONCERNING

COMPLAINT PROCEDURES

AND

DISCIPLINE OF ATTORNEYS

March 2015

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Complaints against attorneys should be mailed to:

Michael Kennedy, Bar Counsel
Professional Responsibility Program
32 Cherry Street, Suite 213
Burlington, VT 05401

Questions? 802-859-3000

To file a complaint via e-mail, send to: JUD.PRPComplaints@state.vt.us

Please review this material before filing a complaint.

1. The Professional Responsibility Program

The [Vermont Constitution](#) provides the Vermont Supreme Court with the exclusive authority to discipline attorneys. In 1999, pursuant to its constitutional authority, the Supreme Court adopted [Administrative Order No. 9](#).

The Order, often referred to as “A.O. 9”, sets out the rules governing the establishment and operation of the Professional Responsibility Program (“the Program”). The Program’s 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.

2. The Professional Responsibility Board

The Professional Responsibility Board (“the Board”) is responsible for the supervision of the Program.

The Board’s mission is to protect the public, promote confidence in the integrity of the legal profession, and assist attorneys to achieve and maintain high standards of professional responsibility.

The Board sets the [Program Policies](#) and goals. The Board meets several times throughout the year to review the Program’s operations. The Board does not have any role in the investigation, prosecution, or adjudication of complaints. The Board actively reviews the Program’s docket and caseflow.

The Board consists of seven members: 3 lawyers, 3 non-lawyers, and 1 judge. Each member is appointed by the Supreme Court. Terms are three years, with members limited to three consecutive terms. Board members are not full-time employees of the Program.

3. The Vermont Rules of Professional Conduct

In 1999, the Vermont Supreme Court promulgated the [Vermont Rules of Professional Conduct](#) (“the Rules”). The Rules are often referred to as “the ethics rules.” A lawyer who violates the Rules is subject to having a disciplinary sanction imposed against his or her law license.

4. Bar Counsel & Disciplinary Counsel

The Program employs two full-time attorneys: Bar Counsel and Disciplinary Counsel. Bar Counsel and Disciplinary Counsel are responsible for executing the Board’s mission.

Bar Counsel administers the dispute resolution program, responds to inquiries, screens complaints, and serves as the Program’s liaison to various organizations on matters related to attorney conduct and professional responsibility.

Disciplinary Counsel administers the disciplinary program and is responsible for the investigation and prosecution of all disciplinary and disability matters. Disciplinary Counsel supervises a single deputy. The position of Deputy Disciplinary Counsel is a part-time position that must be filled by an attorney who is licensed to practice law in Vermont.

5. Assistance Panels

Assistance panels provide a forum to resolve complaints in a non-disciplinary manner. The Program maintains a roster of volunteers who have agreed to serve on assistance panels. The roster includes lawyers and non-lawyers alike.

When a complaint is referred to an assistance panel, three people are assigned to serve. The panel must include one non-lawyer and one member of the Board. This can be the same person.

An assistance panel may meet with the complainant and respondent-attorney, but is not required to. An assistance panel's resolution may include conditions with which the respondent-attorney must comply. The resolution cannot include a sanction against the respondent-attorney's law license.

If an assistance panel resolves a complaint, the Program keeps confidential the complaint and the manner in which it was resolved. If an assistance panel determines that the complaint is more appropriate for disciplinary proceedings, it may refer the complaint to Disciplinary Counsel for an investigation.

6. Hearing Panels

Hearing panels preside over disciplinary proceedings. There are ten standing panels. Each panel has three members. Two must be lawyers, one must be a non-lawyer. Board members cannot serve on hearing panels.

The hearing panels make findings of fact & conclusions of law, and impose sanctions. They are the Program's equivalent of the trial courts. The Program has contracted with an attorney who provides legal advice and counsel to the hearing panels.

7. Inquiries

Bar Counsel responds to inquiries regarding ethics and law practice. Lawyers and non-lawyers may inquire of Bar Counsel. Inquiries are confidential and are not treated as complaints.

Inquiries are done by telephone. Bar Counsel's role is to steer the inquirer in the proper direction. That might mean trying to resolve a dispute before a complaint is filed. It might mean referring the inquirer to the applicable Rule of Professional Conduct or to a case or opinion that relates to the subject of the inquiry. It might mean suggesting that the inquirer file an ethics complaint. It might mean referring the inquirer to another program; for example, the [Vermont Bar Association](#) or the [Office of the Attorney General](#).

Bar Counsel provides guidance, not legal advice. An inquirer does not have a reasonable expectation that an inquiry gives rise to an attorney-client relationship between the inquirer and Bar Counsel. Bar Counsel does not share or disclose information received during an inquiry without the inquirer's permission.

To make an inquiry, contact Bar Counsel at 802-859-3004.

8. Advisory Ethics Opinions

Bar Counsel does not provide written or formal advisory ethics opinions. The Vermont Bar Association has a Professional Responsibility Committee. The Committee issues [advisory ethics opinions](#). The Bar Association and its committees are not part of the Judiciary system or the Professional Responsibility Program. To contact the Bar Association, call 802-223-2020.

9. Complaints

The Program reviews complaints that allege that an attorney has violated the [Rules of Professional Conduct](#). A complaint must be in writing and should set out the facts that make you think that the attorney did something wrong. Complaints should focus on facts, not opinion or argument.

If you file a complaint, a copy will be sent to the attorney who is the subject of complaint. You are not required to include exhibits and attachments, but you may include whatever you think would help to clarify your complaint. You do not need to cite particular Rules of Professional Conduct. Please do not send originals. The Program will not return material to you once a complaint is closed.

Complaints should be sent to:

Michael Kennedy, Bar Counsel
Professional Responsibility Program
32 Cherry Street, Suite 213
Burlington, VT 05401

To file a complaint via e-mail, send to: JUD.PRPComplaints@state.vt.us

10. Confidentiality

Complaints are confidential. A complaint does not become public unless Disciplinary Counsel initiates formal disciplinary proceedings against the respondent-attorney. The confidentiality applies only to employees, staff within the Program. The confidentiality does not apply to the complainant or to the respondent-attorney.

11. Complaints Against Bar Counsel & Disciplinary Counsel

The Program assigns conflict counsel to review complaints that are filed against Bar Counsel and Disciplinary Counsel. Mail complaints against Bar Counsel or Disciplinary Counsel to:

Deb Laferriere, Program Administrator
VT Supreme Court Professional Responsibility Board
109 State Street
Montpelier, VT 05609-0701

12. Screening

Bar Counsel “screens” each complaint. The screening process is intended to determine the nature of the complaint and whether Bar Counsel can resolve it through non-disciplinary dispute resolution methods. If a complaint can be resolved, Bar Counsel may either resolve it or refer it to an Assistance Panel or other dispute resolution program.

If a complaint cannot be resolved by Bar Counsel, it is either dismissed or referred for further investigation.

If Bar Counsel determines that a complaint should be dismissed, the complainant and the respondent-attorney are notified in writing. The complainant has thirty days to file a written request that the Board Chair review Bar Counsel's decision.

If Bar Counsel refers a complaint for further investigation, the complainant and respondent-attorney are notified.

13. Non-Disciplinary Dispute Resolution

Some complaints can be resolved without imposing discipline against an attorney. Bar Counsel is authorized to resolve complaints or refer them to assistance panels or any other dispute resolution programs, including the Vermont Bar Association's Committee for the Arbitration of Fee Complaints.

When a complaint is resolved in a non-disciplinary manner, no sanction is imposed against the respondent-attorney's license and the attorney is allowed to continue to practice law. The file is closed and the Program is required to keep confidential the complaint, the fact that it was filed, and the manner in which it was resolved.

14. Investigations by Disciplinary Counsel

Complaints that are not resolved, dismissed, or referred for non-disciplinary resolution are referred to Disciplinary Counsel. Disciplinary Counsel investigates to determine whether formal disciplinary proceedings should be commenced against the respondent-attorney's law license.

Disciplinary Counsel's investigations might include contacting the complainant, contacting the respondent-attorney, reviewing documents, and interviewing witnesses. Attorneys are required to cooperate with investigations by Disciplinary Counsel. The failure to do so is grounds for the imposition of a disciplinary sanction.

At the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint, refer it to an Assistance Panel for non-disciplinary resolution, or commence formal disciplinary proceedings. Disciplinary Counsel's decision may not be appealed.

If Disciplinary Counsel dismisses a complaint or refers it to an Assistance Panel, the Program keeps confidential the complaint, the results of the investigation, and the disposition. If Disciplinary Counsel decides that the respondent-attorney should be charged with violating the Rules of Professional Conduct, the decision is subject to review for probable cause.

15. Probable Cause Review

Each year, one of the Program's hearing panels serves as "the probable cause panel." If Disciplinary Counsel decides that the respondent-attorney should be charged with violating the Rules of Professional Conduct, Disciplinary Counsel must prepare an affidavit and memorandum that describes the factual basis for the decision to file charges. The material is filed with the probable cause panel. The filing is confidential.

The panel reviews the filing in order to determine whether Disciplinary Counsel's decision is supported by probable cause. If so, Disciplinary Counsel must initiate formal disciplinary proceedings. If not Disciplinary Counsel must determine whether to dismiss the complaint or conduct further investigation.

The probable cause review is *ex parte*. In other words, there is no hearing. The panel bases its decision on the written material submitted by Disciplinary Counsel.

16. Formal Disciplinary Proceedings

If a hearing panel finds that Disciplinary Counsel's decision to charge the respondent-attorney with violating the Rules of Professional Conduct is supported by probable cause, Disciplinary Counsel must initiate formal disciplinary proceedings.

There are two ways to initiate formal disciplinary proceedings.

Disciplinary Counsel may file a *Petition of Misconduct* that sets out factual allegations and the Rules of Professional Conduct that Disciplinary Counsel alleges the respondent-attorney has violated. A petition is public and is assigned to a hearing panel. The respondent-attorney has 20 days to file a response that admits or denies the allegations. Then, the Disciplinary Counsel and the respondent-attorney have 60 days to complete discovery and prepare for a final hearing.

As an alternative to a Petition of Misconduct, Disciplinary Counsel and the respondent-attorney may initiate formal disciplinary proceedings by filing a *Stipulation of Facts*. The stipulation is public and is assigned to a hearing panel. It is a document in which Disciplinary Counsel and the respondent agree to particular facts.

When proceeding by stipulation, Disciplinary Counsel and the respondent-attorney may reserve the right to argue whether the stipulated facts constitute a violation of the rules that warrants a sanction. Or, they may join to recommend that a hearing panel make particular conclusions of law and impose a specific sanction. The panel is not required to accept the recommendations.

17. Hearings

At a hearing, both Disciplinary Counsel and the respondent-attorney may call witnesses and present evidence. Disciplinary Counsel bears the burden of proving a violation of the Rules of Professional Conduct by "clear and convincing" evidence. In every case, the hearing panel must issue a written decision that includes its findings of fact, conclusions of law, and, if appropriate, sanction.

A hearing panel is authorized to bifurcate the hearing. That is, the panel may hold a hearing on the issue of whether the respondent-attorney violated the Rules of Professional Conduct. Then, if Disciplinary Counsel proves the violation, the panel may hold another hearing on the issue of the sanction that should be imposed. The decision whether to bifurcate the hearing lies in the panel's discretion.

18. Sanctions

If a hearing panel concludes that the respondent-attorney violated the Rules of Professional Conduct, it must impose a sanction. There are four sanctions to choose from.

1. **Admonition:** An admonition is the least severe sanction and is to be imposed only in cases involving minor misconduct, with little or no injury, and little likelihood of repetition by the respondent-attorney. An admonition sets out the conduct that violated the Rules of Professional Conduct, but does not identify the lawyer. An admonition does not prohibit a lawyer from continuing to practice law.
2. **Public Reprimand:** A public reprimand sets out the conduct that violated the Rules of Professional Conduct and identifies the lawyer. A public reprimand does not impact a lawyer's authorization to continue to practice law.
3. **Suspension:** A suspension sets out the conduct that violated the Rules of Professional Conduct, identifies the lawyer, and prohibits the lawyer from practicing law for a fixed period of time. A suspension must be for at least one day but for no longer than 3 years.
4. **Disbarment:** A disbarment sets out the conduct that violated the Rules of Professional Conduct, identifies the lawyer, and prohibits the lawyer from practicing law for 5 years.

If a hearing panel imposes a sanction, it may also order the respondent-attorney to reimburse any money collected from the client. Also, a hearing panel may impose probation in connection with any sanction. Conditions of probation must be in writing and are monitored by Disciplinary Counsel.

19. **Appeals**

Once a hearing panel issues a decision, Disciplinary Counsel and the respondent-attorney may appeal. Appeals are direct to the Vermont Supreme Court and are governed by the Rules of Appellate Procedure. Even in the absence of an appeal from Disciplinary Counsel or the respondent-attorney, the Supreme Court may order appellate review of any hearing panel decision. If there is no appeal and the Court does not order its own review, a hearing panel decision becomes final and has the full force and effect of an order of the Supreme Court.

20. **Published Decisions**

The Program publishes final disciplinary decisions issued by a hearing panel or the Supreme Court. [Click here](#) to review the decisions.

21. **Petitions for Reinstatement**

If an attorney is disbarred or suspended for six months or longer, the attorney must petition for reinstatement. The petition is assigned to a hearing panel. The attorney has the burden of demonstrating by clear and convincing evidence should be allowed to resume the practice of law. Disciplinary Counsel may oppose the petition.

An attorney who has been disbarred may not apply for reinstatement until five years from the date of the disbarment. An attorney who has been suspended for six months or longer may not apply for reinstatement until three months before the suspension is set to expire. An attorney suspended for fewer than six months does not have to apply for reinstatement.

22. Trust Accounts

Central to the Board's mission of protecting the public, promoting confidence in the integrity of the legal profession, and assisting lawyers to achieve and maintain high standards of professional responsibility is its emphasis on a lawyer's fundamental duty to safeguard client funds and property.

The Board maintains a [list of approved financial institutions](#) that have agreed to notify Disciplinary Counsel whenever an attorney's trust account is overdrawn or an instrument drawn on an attorney's trust account is presented against insufficient funds. Lawyers may not open trust accounts at institutions that are not on the approved list.

The Program has developed a [trust account manual](#) and a [trust account survey](#). Bar Counsel regularly presents seminars on trust account management. Disciplinary Counsel has retained accounting firms that frequently conduct audits of lawyers' trust accounts and trust accounting systems.

23. Fee Disputes

The Rules of Professional Conduct prohibit lawyers from charging unreasonable fees. Bar Counsel and Disciplinary Counsel review complaints that allege that a fee is unreasonable. Bar Counsel and Disciplinary Counsel do not mediate, arbitrate, or resolve fee disputes.

The Vermont Bar Association has a *Committee for the Arbitration of Fee Complaints*. For information on how to file a fee dispute complaint, contact the Vermont Bar Association at 802-223-2020. The Committee will not review a fee dispute if there is a complaint pending with Bar Counsel or Disciplinary Counsel.

24. Complaints against Judges

The Program does not oversee the judicial conduct. The Supreme Court has created a [Judicial Conduct Board](#) that investigates and prosecutes violations of the [Code of Judicial Conduct](#). [Click here](#) for information on how to file a complaint against a judge.

25. Malpractice

The Program does not provide legal advice or legal representation on malpractice issues. For advice on whether you have a claim for malpractice against an attorney, you must contact a lawyer. If you do not have a lawyer, the Vermont Bar Association has a lawyer referral service. The phone number is 1-800-639-7036.

26. Disciplinary Record Checks

The only information that the Program will disclose with respect to a lawyer's disciplinary history is whether the lawyer has ever been reprimanded, suspended, disbarred, or formally charged with violating the Rules of Professional Conduct. With the exception of complaints that result in formal disciplinary charges and a public sanction, the Program will not confirm or deny that a complaint has ever been filed against an attorney.

If you are an attorney and need an ethics letter or your disciplinary history, please call the Program Administrator at 802-828-3204. Please note: if you are an attorney and you need a Certificate of Good Standing, you need to [contact the Attorney Licensing Office](#) at 802-828-3281.

Appendix 1 -- Current Contact List

Bar Counsel:	Michael Kennedy	802-859-3004	michael.kennedy@state.vt.us
Disciplinary Counsel:	Beth DeBernardi	802-859-3000	beth.debernardi@state.vt.us
Deputy Disciplinary Counsel:	Kimberly Rubin	802-859-3000	kimberly.rubin@state.us
Program Administrator:	Deb Laferriere	802-828-3204	deb.laferriere@state.vt.us
Administrative Assistant:	Brandy Sickles	802-859-3000	brandy.sickles@state.vt.us
Board Chair:	Jan Eastman, Esq.	802-828-3204	
Court Administrator	Patricia Gabel, Esq.	802-828-3278	
Vermont Bar Association:		802-223-2020	info@vtbar.org
Lawyer Referral Service:		1-800-639-7036	
Office of the Attorney General:		802-828-3171	ago.info@state.vt.us
Attorney Licensing/Bar Admissions		802-828-3281	jud-attylicensing@state.vt.us

Appendix 2 – Links to Resources

Vermont Judiciary

[Professional Responsibility Program](#)
[Supreme Court Administrative Order 9](#)
[Vermont Rules of Professional Conduct](#)
[Approved List of Financial Institutions](#)
[Disciplinary Decisions](#)
[Policies of the Professional Responsibility Board](#)
[Trust Account Manual](#)

Attorney General's Office

[Attorney Licensing](#)
[Bar Admissions](#)
[Mandatory Continuing Legal Education](#)

Judicial Conduct Board

[Vermont Bar Association](#)
[VBA Advisory Ethics Opinions](#)