

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2022

Order Promulgating Amendments to Rule 13 of 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 Rule 13.E be amended as follows (new matter underlined):

Rule 13. Disciplinary and Disability Proceedings

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. If a hearing panel suspends or disbars the respondent and an appeal is taken or the Court orders review on its own motion, the hearing panel decision shall be stayed for the duration of the appeal.

Reporter's Notes—2022 Amendment

Prior to this amendment, an argument existed that the rule allowed a disciplinary suspension to be enforced and to expire before the Court could fully review and dispose of an appeal. The amendment clarifies that a lawyer (1) will not have to serve a suspension prior to receiving an opportunity to challenge it; and (2) cannot moot the Court's review of a disciplinary decision by "serving" a suspension before the Court fully reviews and disposes of a disciplinary matter.

The amendment is consistent with the law and current practice. The Rules of Civil Procedure apply to disciplinary proceedings. A.O. 9, Rule 20.B. But for exceptions that do not apply in attorney discipline cases, Vermont Rule of Civil Procedure 62(a) prohibits enforcement of a judgment until 30 days have passed or the time to appeal has run. When an appeal is taken from a judgment that falls within the scope of Civil Rule 62(a), the appeal operates to stay the underlying judgment for the duration of the appeal. V.R.C.P. 62(d). This amendment clarifies that when a hearing panel decision is appealed or reviewed by the Court, the decision is stayed for the duration of the appeal.

The new language does not change or alter the language in Rule 22. When a hearing panel decision is appealed or reviewed by the Court, while the decision is stayed, Disciplinary Counsel and the Court retain the authority granted by Rule 22 to request and to issue an interim suspension of the respondent's law license for threat or harm.

2. That this administrative order, as amended, is prescribed and promulgated effective _____. The Reporter's Notes are advisory.
3. 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 ____ day of _____, 2022.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice