

PROFESSIONAL RESPONSIBILITY BOARD

Policies

Effective March 25, 2022

General Provisions

Minutes

1. Inasmuch as the open meeting law at 1 V.S.A. §312 does not apply to the Judiciary, the Board concluded that it is not required to open its meetings to members of the press.
2. The Board shall maintain minutes of its meetings. Once the minutes are approved and adopted by the Board they shall be sent to the Court Administrator, the Board's liaison on the Court and to the Chief Justice. In all other respects, the minutes will remain confidential.

Records

3. Records will be maintained and destroyed in accordance with the current record schedule as approved by the Chair and the State Archivist on April 1, 2009. The current policy is attached at Appendix 1.

Inquiries

4. 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 will be referred to Bar Counsel pursuant to Rule 5(b) of Administrative Order 9 and will remain confidential.

Bar Assistance Program

5. All proceedings before Assistance Panels pursuant to Rule 7 of Administrative Order 9 are confidential.
6. When Screening or Disciplinary Counsel refers a file to the Bar Assistance Program, the referral will include the complaint and the respondent's response to the complaint. If an oral response was provided in lieu of a written response, the referral will include a summary of the oral response. In making a referral to the Bar Assistance Program, Screening and Disciplinary Counsel shall provide the complainant, the respondent, and the Bar Assistance Program with a written explanation of the reasons for the referral, which may include reference to relevant past disciplinary history.
7. If a case is referred to Disciplinary Counsel by an Assistance Panel pursuant to Rule 7(e)(4) of Administrative Order 9, Disciplinary Counsel may not subsequently resubmit the case to the Assistance Panel.
8. Bar Counsel will inform participants in Assistance Panel proceedings that the respondent's failure to carry out a directive of the Assistance Panel could be grounds for a separate disciplinary violation.
9. Upon request from either party, the Assistance Panel Chair may allow persons other than the respondent and the complainant to attend an Assistance Panel meeting.

Disciplinary Matters

Screening and Investigation

10. Disciplinary Counsel may investigate any conduct that comes to their attention which appears to constitute misconduct that might require a disciplinary sanction.
11. When Screening Counsel refers a complaint for investigation, the respondent will be given 20 days in which to respond, unless the matter involves an issue pertaining to client trust funds, in which case the response period will be shortened to 5 days.
12. Screening Counsel's notice to the complainant that they may seek independent review of the decision to dismiss the complaint shall specify that a request-for review must be in writing and filed with the Chair within 30 days of the date of the dismissal. The respondent will be notified when the complainant requests independent review of Screening Counsel's decision to dismiss a complaint.
13. Screening Counsel shall not screen any complaint in which they have a conflict of interest. Disciplinary Counsel may screen any such complaint.

Probable Cause

14. One hearing panel will be assigned each year as the Probable Cause Hearing Panel. All requests for probable cause will be submitted to that panel. The Probable Cause Panels will be appointed in a fixed rotation to be determined by the Chair.
15. A probable cause decision will indicate only whether or not probable cause was found. There will be no written decisions.
16. Where an initial request for a finding of probable cause is denied, Disciplinary Counsel may resubmit the request if there is new or additional information for the panel's consideration.

Hearing Panel Proceedings

17. Hearing panel members are prohibited from representing respondents.
18. All proceedings initiated by a stipulation recommending admonition shall remain under seal. In the event the hearing panel rejects the recommended admonition, the stipulation can be withdrawn and the file remains sealed pending further proceedings.
19. When formal proceedings are commenced by the filing of stipulated facts and a hearing panel determines that a hearing is not necessary, the hearing panel shall issue a decision containing its findings of fact, conclusions of law, and the sanction imposed, if any, within sixty days of the filing of the stipulated facts. The sixty-day time period is directory and not jurisdictional. A hearing panel's failure to observe the sixty-day time period does not justify the abatement or dismissal of the disciplinary or disability proceeding.

Review and Distribution of Hearing Panel Decisions

20. The Board will review all decisions of the hearing panels, but not before those decisions are filed with the Program Manager. When the hearing panel report is transmitted to the Supreme Court, an

electronic copy of the report will be sent to the Board. The Board will review these decisions at its next meeting.

21. All finalized decisions published by Bar Counsel pursuant to AO 9, Rule 13 will be distributed electronically to assistance and hearing panel members.

22. When bar counsel, disciplinary counsel, screening counsel or any member of a hearing panel has a conflict or is otherwise disqualified or unable to serve, the Board Chair shall appoint an alternate.

NOTES

2022 Amendments

On January 21, 2022:

The heading that appears between Policies 3 and 4 was amended to reflect that bar counsel receives and responds to inquiries from people other than attorneys.

Policies 4, 5, 6, and 7 were amended to reflect the 2021 amendments to Administrative Order 9.

Policy 8 was repealed. It stated what is now stated in Rule 7(C) of the 2021 amendments to Administrative Order 9.

Policy 9 was repealed. It stated what is now stated in Rule 7(C) of the 2021 amendments to Administrative Order 9.

Policies 10, 11, and 12 were amended for style and were renumbered as Policies 8, 9, and 10.

Policy 13 was repealed. It dealt with the way bar counsel screened a complaint after previously having responded to an inquiry from the complainant. Given the 2021 amendments to Administrative Order 9, Policy 13 was no longer necessary or applicable.

Policies 14, 15, and 16 were amended for style and to reflect the 2021 amendments to Administrative Order 9. They were renumbered as Policies 11, 12, and 13.

Policy 17, 18, 19, 20, 21, 22, 23, and 24 were renumbered as Policies 14, 15, 16, 17, 18, 19, 20, and 21.

Policy 25 was amended to reflect the 2021 amendments to Administrative Order 9 and was renumbered as Policy 22.

Several policies were amended to remove gender-specific pronouns.

Effective date of the 2022 amendments is March 25, 2022.

2021 Amendment

On September 23, 2021, Policy 25 was adopted to clarify that the Board chair, not staff, assigns conflict counsel and replaces hearing panel members who are disqualified.

2013 Amendments

On October 9, 2013, Policies 14 and 15 were amended, Policy 16 was added, and the remaining Policies were renumbered.

2011 Adoption

These policies adopted on March 16, 2011, replace in their entirety all previously adopted policies of the Professional Responsibility Program.