

**STATE OF VERMONT  
VERMONT SUPREME COURT  
SEPTEMBER TERM, 2022**

**Emergency Order Promulgating Amendments to Rules 6 and 9 of the Vermont Rules of Supreme Court for Disciplinary Control of Judges**

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

1. That Rule 6(19)(a) of the Vermont Rules for Disciplinary Control of Judges be amended to read as follows (new matter underlined):

**Rule 6. General Provisions**

(19)(a) A complaint shall be filed with the Board by delivering it or by sending it by regular mail to the Chair. In the alternative, a complaint may be filed as an attachment to an email sent to the Chair at the address associated with the Board on the Vermont Judiciary website. The subject line must indicate the case or subject matter of the filing. The Chair shall keep a docket in which the filing of all complaints and their final disposition shall be recorded. This docket shall not be available for inspection as a public record. A copy of each complaint shall be furnished to each member by the Chair.

**Reporter's Notes—2022 Amendment**

Rule 6(19)(a) is amended to allow a complaint to be filed with the Chair of the Board by email. The complaint must be submitted as an attachment to the email and must be sent to the email for the Chair that is associated with the Board. Following the COVID-19 pandemic, the Board was authorized to conduct its business by email under Administrative Order 49, ¶ 15(c). This was an efficient and helpful means of communication and therefore has been incorporated into the permanent rules.

2. That Rule 9 of the Vermont Rules for Disciplinary Control of Judges be amended to read as follows (new matter underlined):

**Rule 9. Proceedings after the filing of a Formal Complaint**

(1) Within twenty-one days of service of a Formal Complaint, the judge may file an answer with the Board in a manner consistent with Rule 6(19)(a). The answer shall contain all defenses. No further pleadings need be filed. Failure to answer or to deny misconduct or disability shall be deemed an admission of the charges. The Chair may permit late filing of an answer upon a showing of mistake, inadvertence, surprise or excusable neglect.

(2) At any time prior to its final order of recommendation, the Board or investigative panel may allow or require amendments to the formal complaint or answer. The Formal Complaint may be amended to conform to the proof or to state additional facts, either before or after the

commencement of the hearing. If the Formal Complaint is amended, the judge shall be given reasonable time to answer the amendment and to prepare and present a defense against the matters charged thereby.

(3) If the Board concludes that a judge who is the subject of a complaint is incompetent to defend against the charges, it shall appoint a guardian ad litem unless the judge has a guardian who will represent the judge. In appointing a guardian ad litem, the Board shall consult with and consider the wishes of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, a copy of the notice or matter shall also be served upon the guardian or guardian ad litem.

(4) Discovery shall be permitted as provided for in the Rules of Civil Procedure. No materials made confidential by Rule 6(7) shall be discoverable, and no depositions may be taken of Board members or counsel to the Board. However, all records reviewed by the Board in its initial inquiry shall be discoverable. This shall not be construed to make public any communications among Board members, the Board and special or disciplinary counsel, or other records otherwise made confidential by law or rule.

(5) Upon the filing of an answer or upon the expiration of the time for its filing, the Board shall set a deadline for any discovery. The evidentiary hearing shall be held before a hearing panel consisting of at least five members of the Board, at least one of whom shall be a lay member. The Board shall set a time and place for the hearing and shall give notice of the hearing to the judge at least twenty days prior to the hearing date. The Board may preside remotely and may allow or require remote participation by the judge, witnesses, and other necessary participants as provided in Vermont Rule of Civil Procedure 43.1. The Chair shall name the hearing panel and shall preside or designate a member to serve as the presiding officer.

(6) The judge shall have the right to appear personally or remotely, if authorized under Rule 9(5), and by attorney and to answer the charge, to present evidence in his or her defense, to examine and cross-examine witnesses, to secure subpoenas, to have a guardian ad litem appointed if indicated, and to secure a transcript of the evidence, findings, conclusions and recommendations.

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### **Reporter's Notes—2022 Amendment**

Rule 9 is amended to incorporate provisions related email filing and remote participation that were first implemented in response to the COVID-19 pandemic under Administrative Order 49, ¶ 15(c) and (d). Rule 9(1) is amended to provide that a judge's answer may be filed by the same means as provided under 6(19)(a), which is simultaneously amended to include email. Rule 9(5) and (6) are

amended to allow the Board to preside remotely or to allow or require remote participation pursuant to V.R.C.P. 43.1.

3. That these rules as amended are prescribed and promulgated effective October 1, 2022. The Reporter’s Notes are advisory.

4. That the Court finds that this emergency amendment must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11, to provide continuity of operations for email filing and use of remote participation that have been authorized and implemented by Administrative Order No. 49, ¶ 15, which will expire on September 30, 2022, without disruption or uncertainty as to procedural rules.

5. That the Court Administrator is directed to send this rule as amended out for comment pursuant to Administrative Order No. 11, with comments to be made to the Judicial Conduct Board. The Judicial Conduct Board is directed to review any comments received and advise the Court whether the amendments should be revised or remain permanent.

6. 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 13<sup>th</sup> day of September, 2022.



Signed by the Vermont Supreme Court

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice

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Nancy J. Waples, Associate Justice