

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Carrie J. Legus
PRB File No. 2020-102

Disciplinary Counsel's Response to the Motion for Substitute Counsel

Respondent Carrie Legus filed a motion with this panel asserting that A.O. 9, Rule 16(j) requires that "substitute counsel" be assigned in place of disciplinary counsel to handle the pending disciplinary matter against her. This responsive pleading is not intended to advocate for or against Respondent's request, but rather to assist the panel in identifying the issues and law it must consider in ruling upon the motion.

1. Respondent correctly states that she did file a disciplinary complaint against disciplinary counsel. Special screening counsel was appointed to screen the complaint (Retired Supreme Court Justice Burgess), and I received written notice from Justice Burgess that the matter was closed on November 3, 2020.
2. Respondent does not appear to allege there is any substantive reason, such as a conflict of interest, which requires my removal from the public pending disciplinary matter against her.
3. A.O. 9, Rule 12.A states: "Confidentiality Prior to the Commencement of Formal Proceedings. Prior to the filing of formal disciplinary proceedings, all proceedings and communications in connection with a complaint shall be confidential within the program, unless confidentiality is waived by both the complainant and the respondent attorney, or is otherwise dispensed with for good cause by order of the Board chair. Good cause may include, but is not limited to, the need to protect the public by providing information to the Vermont Bar Association Client Security Fund."

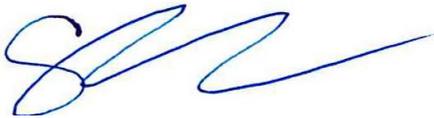
4. A.O. 9, Rule 16(j) states that “[i]f a complaint is filed against bar counsel or disciplinary counsel, the Board shall appoint substitute counsel to serve in that lawyer’s place on that matter.” (Emphasis added.)
5. The plain meaning of A.O. 9 supports that a complaint is its own, confidential, “matter.” By contrast, a petition of misconduct against different party, which is a public charge, is a separate “matter.”
6. I represent to the panel that Respondent’s decision to file a complaint against me has had no effect on my ability to carry out my duties related to the already-pending public matter against Respondent.
7. I am not aware of any Vermont authority interpreting A.O. 9, Rule 16(j) as triggering a mandatory, automatic disqualification of disciplinary counsel in a pending public matter upon that Respondent’s filing of a complaint against disciplinary counsel.
8. As a practical matter, if Respondent’s reading of Rule 16(g) were accurate, any respondent could disrupt a pending public matter at any time for any reason simply by filing a complaint against a panel member or disciplinary counsel.
9. Respondent’s assertion that Rule 16(j) “automatically excises the hearing panel member, board member, bar counsel or disciplinary counsel [against whom a complaint is filed] from further participation” in the pending public disciplinary matter is not consistent with Rule A.O. 9, Rule 2.D, which dictates the standard for disqualification 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.”

10. The respondent in *In re Rockwell*, PRB File No. 2012-097 raised a similar argument citing A.O. 9, Rule 16(j), and no substitution of disciplinary counsel or hearing panel members resulted.

11. The three applicable orders from *In re Rockwell*, PRB File No. 2012-097 are provided as attachments in the event that they prove helpful to the panel, although they do not contain much in the way of analysis.

Dated: January 12, 2021

Respectfully submitted,



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