

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Carrie J. Legus, Esq.
PRB File No. 2020-102

RULING ON MOTION FOR SUBSTITUTE COUNSEL

Respondent, Carrie J. Legus, Esq., has filed a motion requesting that the Hearing Panel appoint substitute counsel to serve as Disciplinary Counsel in this proceeding in place of Disciplinary Counsel Sarah Katz. Respondent argues that Attorney Katz is automatically disqualified under Administrative Order 9, Rule 16(J) from serving as Disciplinary Counsel in this proceeding as a result of Respondent filing an ethics complaint against her with the Professional Responsibility Board. Respondent maintains that the mere filing of the complaint against Disciplinary Counsel, without regard to the “result ensuing from [the] complaint,” Respondent’s Motion, 12/29/20, at 1, requires replacement of Attorney Katz.

Rule 16(J) states as follows:

If a complaint is filed against a member of a hearing panel, no member of that hearing panel shall participate in disposition of that complaint. *If a complaint is filed against bar counsel or disciplinary counsel, the [Professional Responsibility] Board shall appoint substitute counsel to serve in that lawyer’s place on that matter.* If a complaint is filed against a member of the Board, neither bar counsel nor disciplinary counsel shall process the complaint; the complaint will be sent to the chair of one of the hearing panels, who shall appoint special counsel to handle the complaint consistent with these rules. The hearing panel chair who appoints special counsel shall not thereafter participate in any disciplinary proceedings brought by the special counsel.

A.O. 9, Rule 16(J) (emphasis added).

We conclude that Rule 16(J) was not intended to disqualify Disciplinary Counsel from handling a pending matter by virtue of a respondent filing an ethics complaint against Disciplinary Counsel. Rather, it was intended to remove Disciplinary Counsel from playing any role in the resolution of an ethics complaint

filed against Disciplinary Counsel: the screening of the complaint, *see* A.O. 9, Rule 10(A); the determination of whether referral for investigation is warranted and, if so, the supervision of the investigation, *see* Rules 10(C) & 11(A); the determination of whether a misconduct charge or other action is appropriate, *see* Rule 11(B), and, assuming the filing of a charge, the actual prosecution of the charge, *see* Rule 11(D).

The language of the rule supports this conclusion. Rule 16(J) provides for appointment of substitute counsel in the specific context of “a complaint [that] is filed against . . . disciplinary counsel,” and expressly provides that substitute counsel is appointed “to serve in that lawyer’s place *on that matter.*” *Id.* (emphasis added). The appointment of substitute counsel is thus linked directly to the ethics complaint filed against Disciplinary Counsel. “That matter” – the complaint against Disciplinary Counsel – is a separate matter from the matter under consideration by this Hearing Panel in this proceeding –the petition of misconduct that has been filed against Respondent Legus.

This interpretation is supported not only by the plain language in the second sentence of Rule 16(J) but also by the other provisions contained within the rule. The rule was intended to address conflicts of interest that could arise in the process of resolving ethics complaints filed against the various governmental agents who participate in the Professional Responsibility Program – Board members, Bar Counsel, Disciplinary Counsel, and Hearing Panel members.

In addition, Respondent’s interpretation of the rule must be rejected because it would lead to irrational consequences – giving respondents a right to disqualify Disciplinary Counsel in any disciplinary proceeding and thereby disrupt the proceeding simply by filing a complaint against Disciplinary Counsel. *See, e.g., Wesco, Inc. v. Sorrell*, 2004 VT 102, ¶ 14, 177 Vt. 287, 865 A.2d 350 (2004) (courts

avoid statutory interpretations that “would lead to absurd or irrational consequences.”). The Supreme Court would not have conferred a broad right on respondents to disrupt proceedings – a right that would attach in literally every pending disciplinary action – based only on an allegation of misconduct against the prosecutor. That could not logically have been the Court’s intent.

* * *

A second reason for denial of Respondent’s motion is that, apart from the Panel’s conclusion that the “substitute counsel” provision does not extend to the petition of misconduct under consideration by this Panel, the authority to assign substitute counsel when a complaint is filed against Disciplinary Counsel is conferred on the Professional Responsibility Board – not on any hearing panel. Rule 16(J) states that “[i]f a complaint is filed . . . *the Board* shall appoint substitute counsel” A.O. 9, Rule 16(J) (emphasis added); *see also* Rule 1 (Professional Responsibility Board to be referred to “hereafter [as] ‘Board’”). The Board and the hearing panels are different entities under A.O. 9 and their powers and duties are not co-extensive. *Compare* Rule 1 (“Professional Responsibility Board”) *and* Rule 2 (“Hearing Panels”). Therefore, the term “Board” must be given its plain meaning.

Moreover, the list of powers and duties expressly assigned to the Board include “the appointment of alternates when any member of a hearing panel, bar counsel, disciplinary counsel, or staff has a conflict or is other disqualified or unable to serve.” Rule 1(E)(1)(c). By contrast, no such authority is included in the powers and duties conferred upon the hearing panels. *See* Rule 2(C). In sum, the power to assign substitute counsel in any given case resides with the Board, not the hearing panels.¹

¹ The Hearing Panel has received no information suggesting that the Board has appointed substitute counsel in connection with Respondent’s complaint. On the contrary, Disciplinary Counsel has

For these reasons, it is ORDERED that Respondent's Motion Rule 16(J) Motion for Substitute Counsel is hereby DENIED.

Dated this 10th day of February of 2021.

Hearing Panel No. 7



Jesse Bugbee, Esq., Chair



Vanessa Kittell, Esq., Member



Carl J. Rosenquist, Public Member

represented in her opposition to Respondent's motion that Respondent's complaint was assigned to a "[s]pecial screening counsel," Retired Supreme Court Justice Brian Burgess, and that Disciplinary Counsel subsequently received notice from Justice Burgess on November 3, 2020 that the complaint was closed without further action. Respondent has not taken issue with this factual representation.