Carrie J. Legus
P.O. Box 843
Burlington, VT 05402
(802) 825-0335

December 29, 2020

Jesse Bugbee
Chair, Hearing Panel
Professional Responsibility Board
Vermont Supreme Court
109 State Street
Montpelier, VT 5609-0703
(802) 828-3204

Re: Carrie J. Legus—Respondent
PRB Docket No. 2020-102

Dear Mr. Bugbee:

Enclosed please find Respondent's A.O.9 Rule 16J Motion for Substitute Counsel and copies for dispersal to the rest of the hearing panel.

Regards,

Carrie J. Legus

Enc.

cc: Vanessa Kittell, Hearing Panel
Carl J. Rosenquist, Hearing Panel
Merrick Grutchfield, Program Administrator
Sarah Katz, Disciplinary Counsel

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re Carrie J. Legus, Esq.	)	**PRB No. 2020-102**

RESPONDENT'S A.O.9 RULE 16(J) MOTION FOR SUBSTITUTE COUNSEL

In accordance with the recent status conference, I, Carrie J. Legus, (hereinafter "Respondent"), appearing *pro se*, move that the Professional Responsibility Board Panel (hereinafter "Board") execute the mandatory, and, now overdue, action of substituting counsel for disciplinary counsel Sara Katz (hereinafter "Katz"). Respondent proffers the following memorandum of law in support of the motion.

MEMORANDUM

At the recent telephone status conference, Katz appeared even though Respondent had filed a complaint against her for infringement of Respondent's U.S. and Vermont Constitutional rights as a criminal defendant by trying to preempt the criminal proceedings. Regardless of the result ensuing from Respondent's complaint, according to the administrative order covering operation of the Professional Responsibility Program "the Board *shall* appoint substitute counsel." A.O. 9 Rule 16(J) (emphasis added.) The term "shall" signifies the compulsory nature of the substitution. Generally, "shall" sets forth an obligation equivalent to "must" in a statute. 16 Am. Jur.2nd Const. L. § 92. Where use of the word in a directory, i.e., discretionary, manner could destroy or impair a benefit or right, the word bears interpretation as unavoidable. Id. In other words, the Board had no option under Rule 16(J) except to appoint substitute counsel for Katz. "Shall" constitutes the operative hinge for the rule on substitute counsel.

Upon complaint, Rule 16(J) automatically excises the hearing panel member, board member, bar counsel, or disciplinary counsel from further participation in the proceedings. Rule 16(J) states in pertinent part:

> 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 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.

A.O. 9 Rule 16(J). Pursuant to Rule 16(B), Vermont Rules of Civil Procedure apply to disciplinary proceedings except as otherwise provided by the disciplinary rules. In this instance, the Vermont Supreme Court used its Constitutional authority specifically to promulgate a rule concerning substitution of counsel in contradistinction from the more discretionary procedures for disqualification. A.O. 9 PREAMBLE: AUTHORITY OF THE COURT (citing VT. CONST., ch II, 30), Rule 16(j); compare V.R.C.P. 40(e) (judicial disqualification); V.R.C.P. 12(f) (strike counsel); see also Stowell v. Bennett, 169 Vt. 630, 631, 739 S.2d 1210, 1210-1211 (1999) (mem.). Respondent made this argument during the status conference in response to the Board's order for a written motion to disqualify. Again, Respondent emphasizes the difference between the perfunctory, requisite nature of the Rule 16(J) substitution of counsel in disciplinary proceedings and the discretionary disqualification procedures under the civil rules. Id.

December 29, 2020.

PRO SE

Carrie J. Legus
P.O. Box 843
Burlington, VT 05402
(802) 825-0335

RECEIVED
DEC 30 2020
COURT
ADMINISTRATION

Merrick Crutchfield
Program Administrator
Professional Responsibility Program
109 State Street
Montpelier, Vermont
05609-0701