

**STATE OF VERMONT  
SUPREME COURT  
MARCH TERM**

**Order Repealing and Replacing Administrative Order No. 41**

1. Pursuant to the Vermont Constitution, Chapter II, §§ 30, 37, Administrative Order No. 41, as promulgated on April 11, 2001 and subsequently amended, is repealed and replaced with the following:

**LICENSING OF ATTORNEYS**

Pursuant to the Vermont Constitution, the following Rules providing for the licensing of attorneys are effective for all licenses issued or renewed for the period beginning on or after July 1, 2017.

**§ 1. Unauthorized Practice of Law.** Unless otherwise authorized by Rule 5.5 of the Vermont Rules of Professional Conduct, the practice of law without a license is prohibited and may be punished as contempt.

**§ 2. License Renewal.** Upon being approved for admission to the Bar of the Vermont Supreme Court and on or before June 30 of every other year thereafter, an attorney must:

- (a) Complete, sign, and file a licensing statement with the State Court Administrator; and
- (b) Remit the licensing fee required by a fee schedule that has been approved by the State Court Administrator. The fee schedule will be approved and published no later than April 1 of each year.

**§ 3. Use of Licensing Fees.** All fees received by the State Court Administrator pursuant to this order will be transferred to the State Treasurer for deposit into and use consistent with the Attorneys' Admission, Licensing and Professional Responsibility Special Fund. See 4 V.S.A. § 908.

**§ 4. Licensing Statement.** The following provisions apply to all licensing statements.

(a) Contents. The licensing statement must be on a form approved by the State Court Administrator and must include the following:

- (1) a certification that the attorney is not obligated to pay child support or is in good standing with respect to any and all child support payable, as defined by § 14;
- (2) a signed written declaration under the pains and penalties of perjury that the attorney is in good standing with respect to any and all taxes due to the State of Vermont, as defined by § 13, as of the date such declaration is made;
- (3) an option for the attorney to select active, inactive, judicial, or pro bono emeritus status;
- (4) current postal addresses for the attorney's office and residence;
- (5) a current email address;

(6) a certification that the attorney has registered at least one current email address pursuant to Administrative Order No. 44;

(7) the attorney's pooled interest bearing trust account number(s) (IOLTA), or an indication of exemption; and

(8) any other information deemed necessary by the State Court Administrator.

(b) Signature. The attorney must sign the statement. An electronic signature complies with this rule.

(c) Reporting Requirement. An attorney must report to the State Court Administrator within thirty days any change of the office mailing or electronic mail address or change of residential address or change of the IOLTA account. The office mail or electronic mail addresses reported to the State Court Administrator may be used by any court to send notice to an attorney, if notice by electronic mail is authorized by an applicable procedural rule. Notice sent to a reported address is sufficient even if not received by the attorney because of failure to report the proper address or failure of delivery not caused by the court. If a court delivers some or all notices by electronic mail, and the attorney fails to maintain a reported, operable electronic mail address, notice is sufficient if available on inquiry at the courthouse.

**§ 5. License.** Upon an attorney's compliance with § 2, the State Court Administrator or designee will issue a license to that attorney.

**§ 6. Nondisciplinary, Administrative Suspension.** Upon an attorney's failure to comply with § 2, an attorney's license to practice law in Vermont will be immediately suspended on a nondisciplinary, administrative basis. The State Court Administrator or designee will send notice of the suspension to the attorney by email, as well as to all courts of the State of Vermont.

**§ 7. Reinstatement.** As soon as an attorney who has been suspended pursuant to § 6 complies with § 2 and pays an additional reinstatement fee, the State Court Administrator or designee will reinstate the attorney and issue a license.

**§ 8. Active Status.** An attorney on active status is authorized to practice law in the State of Vermont and must comply with the Mandatory Rules for Continuing Legal Education.

**§ 9. Inactive Status.** An attorney on inactive status is not authorized to practice law in the State of Vermont. Attorneys on inactive status must comply with § 2, but are exempt from compliance with the Mandatory Rules for Continuing Legal Education, except to the extent that those rules apply to attorneys who transfer to active status.

**§ 10. Judicial Status.** An attorney who is a Supreme Court Justice, Superior Judge, Magistrate, or Judicial Bureau Hearing Officer has judicial status and is exempt from compliance with § 2.

**§ 11. Pro Bono Emeritus Status.** An attorney on pro bono emeritus status is not authorized to practice law, except to provide legal services without fee or expectation of fee, under the auspices of a nonprofit organization, to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations which are designed primarily to address the needs of persons of limited means.

(a) Eligibility. To claim pro bono emeritus status, an attorney must be admitted to the Bar of any state or the District of Columbia and not suspended or disbarred in any jurisdiction in which the attorney is admitted or was formerly admitted.

(b) MCLE. An attorney on pro bono emeritus status is subject to the Mandatory Rules for Continuing Legal Education, except that the attorney must complete at least 8 hours of accredited continuing legal education, including at least 2 hours in ethics, during each 2-year licensing period.

(c) Disciplinary Jurisdiction. An attorney on pro bono emeritus status is subject to the disciplinary jurisdiction of the Court and the Professional Responsibility Board, as well as to the Vermont Rules of Professional Conduct.

(d) Court Awarded Fees. This rule does not preclude an attorney on pro bono emeritus status from sharing in the award of statutory attorney's fees.

**§ 12. Relinquishing a License.** An attorney may relinquish a license to practice law in Vermont. An attorney who relinquishes a license to practice is not authorized to practice law in Vermont or to claim a licensing status.

(a) Eligibility. To relinquish a license, an attorney must:

- (1) not currently be the subject of a
- (2) ny criminal or disciplinary investigations or proceedings in any jurisdiction;
- (3) not currently be suspended or disbarred;
- (4) have provided notice of the pending relinquishment to all clients by whom the attorney was retained or to whom the attorney provided legal advice or legal services within the previous 2 years;
- (5) have fully complied with Rule 1.16 of the Vermont Rules of Professional Conduct;
- (6) submit a form approved by the State Court Administrator in which the attorney certifies compliance with this rule and acknowledges that the license is freely and voluntarily relinquished with a full understanding of this rule; and
- (7) complete any forms required by the State Court Administrator or designee.

(b) Continuing Disciplinary Jurisdiction. An attorney who relinquishes a license remains subject to the disciplinary jurisdiction of the Court and the Professional Responsibility Board for conduct that occurred on or before the date that the license was relinquished, even if the conduct is not brought to the attention of the Professional Responsibility Program until after the attorney has relinquished the license.

(c) Subsequent Application for Admission. An attorney who relinquishes a license is no longer admitted to the Bar of the Vermont Supreme Court, is not eligible to practice law in Vermont, and is not eligible to return to active, inactive, or pro bono emeritus status without applying for admission to the Bar of the Vermont Supreme Court, which may include having to pass the bar examination.

**§ 13. Good Standing with Respect to Taxes.** An attorney is in good standing with respect to any and all taxes due to the State of Vermont if the attorney:

- (a) has paid all taxes due to the State of Vermont and has filed all returns;
- (b) has entered into an agreement with the Commissioner of Taxes for becoming current on an unpaid tax obligation;
- (c) has appealed the alleged obligation;
- (d) has requested the Commissioner of Taxes to abate the unpaid tax claim for good cause; or
- (e) has filed a court challenge to the claim.

**§ 14. Good Standing with Respect to Child Support.** An attorney is in good standing with respect to any and all child support payable if:

- (a) less than 1/12th of the annual support obligation is overdue;
- (b) liability for any support payable is being contested in a judicial or quasi-judicial proceeding;
- (c) the person is in compliance with a repayment plan approved by the Office of Child Support or agreed to by the parties or ordered by the court; or
- (d) the State Court Administrator finds that requiring immediate payment of support due and payable would impose an unreasonable hardship.

**§ 15. Enforcement of Child Support Orders.** Upon receipt of a license suspension order issued under 15 V.S.A. § 798 for failure to pay child support, the Professional Responsibility Board will notify the attorney of the pending suspension and provide the attorney with an opportunity to contest the suspension based solely on the grounds of mistaken identity or compliance with the underlying child support order. If the Board finds neither a mistake in identity nor compliance with the underlying child support order, the right of the attorney to practice law in Vermont will be suspended. The license will be reinstated

- (a) within 5 days of:
  - (1) a reinstatement order from the court, or
  - (2) notification from the Office of Child Support or the custodial parent, where the rights of that parent have not been assigned to the Office of Child Support, that the parent is in compliance with the underlying child support order, and
- (b) upon payment of a reinstatement fee set by the fee schedule established by the State Court Administrator.

**§ 16. Admission Pro Hac Vice.**

(a) An attorney who is not a member of the Bar of the Vermont Supreme Court, but who is admitted to practice law in another state or the District of Columbia (hereinafter called a “nonresident attorney”), and who is not currently suspended or disbarred in any state or the District of Columbia, must file a pro hac vice licensing statement and pay the required fee in accordance with this administrative order prior to filing a motion to be admitted in a particular case pursuant to V.R.C.P. 79.1(e), V.R.Cr.P. 44.2(b), V.R.F.P. 15(e), V.R.P.P. 79.1(d), or V.R.A.P. 45.1(e).

(b) The nonresident attorney seeking admission pro hac vice must complete under oath and submit to the State Court Administrator an application on a pro hac vice licensing statement form prescribed by the State Court Administrator. The applicant must attach to the licensing statement a Certificate of Good Standing from a state in which the applicant is admitted. The applicant must complete a separate licensing statement for each case in which the applicant wants to be admitted. The nonresident attorney must pay the fee set in the fee schedule approved by the State Court Administrator; however, the licensing fee may be waived to permit pro bono representation of an indigent client or clients, at the discretion of the State Court Administrator.

(c) A pro hac vice licensing card must be filed in the court in which the case is pending along with a motion by a member of the Vermont Bar pursuant to V.R.C.P. 79.1(e), V.R.Cr.P. 44.2(b), V.R.F.P. 15(e); V.R.P.P. 79.1(d) or V.R.A.P. 45.1(e) if not previously filed in that case pursuant to one of the preceding listed rules.

(d) A nonresident attorney admitted pro hac vice must comply with and is subject to Vermont statutes and rules of the Vermont Supreme Court, including the Rules of Professional Conduct and the Rules Governing Establishment and Operation of the Professional Responsibility Program.

**§ 17. Extended Active Duty.** Any attorney while on extended active duty in the uniformed services of the United States or member of the national guard, state guard, or reserve component who is licensed to practice law at the time of activation or deployment will:

(a) receive an extension of licensure up to 90 days following the attorney’s return from activation or deployment, provided the attorney:

(1) notifies the State Court Administrator of his or her activation or deployment prior to the expiration of the current license, and

(2) certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

(b) be given a reasonable opportunity to meet the terms or conditions of licensure following the person’s return from activation or deployment if military service in any way interferes with a good faith effort to complete a term or condition of licensure.

## **Reporter's Notes—2017 Amendments**

The 2017 amendments to Administrative Order 41 are comprehensive. Some sections have been added, some existing sections have been reorganized and renumbered, and other sections have been deleted. The changes are intended to bring clarity to the licensing (and relicensing process) and to reflect practices that have developed over time. Because of the comprehensive nature of the proposed revision, it is not possible to present the amendments with strike out and underline to show changes. Instead, the prior administrative order has been repealed and replaced. These Notes attempt to identify the relevant prior sections where the language in the sections are drawn and to point out where the new rules reflect a substantive change from the prior requirements.

New § 1 is derived from former § 2 and the language is mostly unchanged. A reference to V.R.Pr.C. 5.5 is added to reflect that there are exceptions to the general prohibition of the unauthorized practice of law.

New § 2 is derived from former § 1. Revised § 2 omits reference to a specific fee and instead references a fee schedule approved by the State Court Administrator. This obviates the need to amend the rules each time fees change.

New § 3 carries over the language former § 3. A specific reference to 4 V.S.A. § 908 is added to reinforce the requirement that attorney licensing fees must be used only for the specific purposes stated in the statute.

New § 4 is derived from former § 7. The new section is revised to add to the licensing statement a requirement that attorneys must choose a particular status.

New § 5 is derived from former § 10 without much change.

New § 6 substantially carries over the language from former § 6. The section is revised to clarify that suspension for failure to pay a licensing fee will be nondisciplinary and administrative. The new section directs that notices of suspension will be sent by email rather than by certified mail as required by the former rule.

New § 7 contains the language from former § 12 without change, except to eliminate reference to a specific reinstatement fee.

The amendments to §§ 8-11 include two new licensing categories: judicial and pro bono emeritus. For clarity, the amendments create a separate rule for each category.

New § 9 concerns inactive status, which was covered by former § 5. Under former § 5, only certain lawyers were authorized to choose “inactive” status. The revised § 9 allows any lawyer to choose inactive status. The new section clarifies that lawyers choosing inactive status must complete and file a licensing statement and are not authorized to practice.

New § 10 is derived from former § 5, which exempted judges from paying a fee and filing a licensing statement, and made them eligible to choose inactive status. New § 10 carries over prior practice, but is intended to create a category specific to the listed judicial officers, rendering them ineligible to claim any other status while in office.

Section 11 creates a pro bono emeritus status—a new category of license in Vermont, but one that has been adopted by 40 other states. The proposal originated with Vermont Bar Association’s Pro Bono Committee and was endorsed by the VBA Board of Bar Managers. A substantial number of Vermonters do not have reasonable and affordable access to legal services. The result is a staggering number of self-represented litigants left to navigate complicated issues in a complex system without legal advice. The pro bono emeritus status provides a tool for the growing number of attorneys, from within and without Vermont, who are willing to provide legal services to those of limited means, but who want to do so without maintaining an active license that requires a significant fee and completion of 20 hours of mandatory continuing legal education.

Under new § 11, lawyers will be required to complete at least 8 hours of CLE, including 2 hours of ethics. In addition, it is expected that the fee approved by the State Court Administrator for this category will be substantially less than the fee charged to lawyers on active and inactive status.

The amendment limits pro bono emeritus lawyers to providing legal services to the same category of people and organizations

listed in Rule 6.1 of the Vermont Rules of Professional Conduct, the rule on Voluntary *Pro Bono Publico* Service.

An attorney on pro bono emeritus status is precluded from charging, collecting, or attempting to collect a fee and must provide legal services without expectation of a fee. However, an attorney on pro bono emeritus status may accept an award of statutory attorney's fee. See V.R.Pr.C. 6.1 cmt. [4]. Attorneys who receive such awards "are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means." Id.

Attorneys who chose pro bono emeritus status should explore obtaining free liability or malpractice insurance through programs offered by the Vermont Volunteer Lawyers Project, the Vermont Bar Association, and <http://vt.freelegalanswers.org>

Section 12 is new and allows a lawyer to relinquish a license to practice law. Under the old rules, a lawyer's choice was limited to active or inactive status. A practice developed in which the Attorney Licensing Office allowed lawyers to resign, subject to agreeing they might be required to go through the entire admission process to return to active status, including the bar exam. Neither former Administrative Order No. 41 nor the Rules of Admission allowed such a practice. This amendment provides lawyers with a tool to relinquish a license, defines who is eligible to relinquish a license, and sets out the consequences of relinquishment of a license.

New § 13 carries over the language of former § 8 without substantive change.

New § 14 carries over the language of former § 9 without substantive change.

New § 15 carries over the language of former § 11 without substantive change.

New § 16 carries over the language of former § 13 without substantive change.

New § 17 carries over the language of former § 14 without substantive change.

Former § 13A, which allowed government attorneys seeking admission without examination to practice pending completion of a



three-month clerkship, has been removed because attorneys are no longer required to complete a three-month clerkship prior to admission.

2. That this order, as amended, will become effective on May 15, 2017. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. §1, as amended.

Done in chambers at Montpelier, Vermont this 13<sup>th</sup> day of March, 2017.

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice