

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

**Order Promulgating Amendments to Rules 7, 8, 20 and 26 of Administrative Order No. 9,  
Permanent Rules Governing Establishment and Operation of the Professional  
Responsibility Program**

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

1. That Rule 7 be amended as follows (deleted matter struck through):

**Rule 7. Assistance Panels**

\* \* \* \* \*

**B. Terms.** Terms are for two years. ~~No member may serve more than 4 consecutive full or partial terms.~~

**C. Membership and Quorum.** Whenever a matter is referred to an Assistance Panel, Bar Counsel will appoint three members to serve and designate one member as the chair. A panel will include ~~at least one member of the Board and~~ at least one nonlawyer, ~~who may be the same person.~~ When a panel is constituted to address a behavioral health issue, at least one member should be a qualified health professional or have experience in dealing with issues related to behavioral health. Two members will constitute a quorum, and a panel will act only with the concurrence of two members.

\* \* \* \* \*

**Reporter's Notes—2022 Amendment**

Rule 7.B is amended to rescind the limitation on the number of terms that an Assistance Panel member may serve. Given the nondisciplinary format and goals of the Bar Assistance Program, the value of experienced members, and the relatively small pool of potential members, there is no reason to limit terms. Nevertheless, the Board and Bar Counsel should strive to recruit new members.

Rule 7.C is amended to rescind the requirement that at least one member of an Assistance Panel be a current member of the Board. With only seven volunteer members, this requirement puts an unreasonable expectation on Board members' time. Board members remain eligible to volunteer to serve as members of assistance panels.

2. That Rule 8 be amended as follows (new matter underlined; deleted matter struck through):

**Rule 8. Confidentiality.**

A. All information related to Bar Counsel's exercise of the duties set out in Rule 5 paragraphs C, G, H, I, J, and M is confidential and will not be disclosed outside the Bar Assistance Program unless disclosure is expressly authorized by this rule. ~~Information received by and disclosed to Bar Counsel and the Bar Assistance Program pertaining to the identity, diagnosis, prognosis, referral, or treatment of any lawyer or judge and records thereof, will be confidential and will not be disclosed except as expressly authorized by this rule.~~

B. All information related to inquiries and referrals made pursuant to Rule 6 is confidential and will not be disclosed outside the Bar Assistance Program unless disclosure is expressly authorized by this rule. ~~Bar Counsel must not disclose information pertaining to any inquiry or to the identity, diagnosis, prognosis, referral, or treatment of any lawyer or judge, or records thereof, except as needed to carry out the purposes of the Bar Assistance Program, or as would be required or permitted by Rule 1.6 of the Vermont Rules of Professional Conduct.~~

C. All information, communications, and records related to a matter reviewed by an Assistance Panel pursuant to Rule 7.E is confidential and will not be disclosed unless disclosure is expressly authorized by this rule.

D. Information, communications, and records otherwise confidential pursuant to paragraph A, B, or C must be disclosed by Bar Counsel when Bar Counsel reasonably believes that disclosure is necessary:

(1) to prevent any act that Bar Counsel reasonably believes is likely to result in the death of, or substantial bodily harm to, any person, including the lawyer or judge who is the subject of the information, communications, or records; or

(2) to prevent a criminal act that Bar Counsel reasonably believes is likely to result in substantial injury to the financial interest or property of any organization or person, including the financial interests and property of the lawyer or judge who is the subject of the information, communications, or records.

~~—C E.~~ Information, communications, and records otherwise confidential pursuant to paragraph A, B, or C may be disclosed by Bar Counsel or the Bar Assistance Program with the written consent of the lawyer or judge who is the subject of the information, communications, or records.

~~Ð F.~~ Information, communications, and records otherwise confidential pursuant to paragraph A, B, or C may be disclosed by Bar Counsel or the Bar Assistance Program without the written consent of the lawyer or judge who is the subject of the information, communications, or records in the following circumstances:

(1) to medical personnel in a bona fide medical emergency involving the health of the lawyer or judge who is the subject of the information, communications, or records;

(2) to conduct research or program evaluations, provided that the information, communications, or records disclosed ~~does~~ do not identify any individual;

(3) to Disciplinary Counsel if the information, communications, or records shows that a lawyer's or judge's refusal to seek or participate in treatment indicates that the lawyer or judge presently poses a substantial threat of serious harm to the public;

(4) ~~to protect against an existing threat to life or serious bodily injury; to Disciplinary Counsel if the lawyer or judge who is the subject of the information, communications, or records is not responding to Bar Counsel and Bar Counsel reasonably believes that the lawyer or judge presently poses a substantial threat of harm to the public;~~

(5) in connection with any civil or licensing action ~~against the lawyer or judge in which the lawyer or judge who is the subject of the information, communications, or records offers testimony or other evidence pertaining to the information, communications, or records;~~ ~~or~~

(6) for Bar Counsel or the Bar Assistance Program to seek legal advice related to complying with these rules; or

~~(7)~~ by order of the Vermont Supreme Court. An application to disclose information must be made in writing filed with the Supreme Court, must demonstrate good cause for disclosing the information, communications, or records and must be served on the lawyer or judge who is the subject of the information, communications, or records and on Bar Counsel ~~bar counsel~~. The respondent and Bar Counsel will have an opportunity to respond. The application, the response, and any related filings will be nonpublic unless and until the Court orders otherwise.

~~E~~ G. Bar Counsel, Board members, assistance panel members, and any staff, contract, or volunteer attorney within the Bar Assistance Program are exempt from the reporting requirements of Rule 8.3(a) or (b) of the Vermont Rules of Professional Conduct with respect to information acquired while acting pursuant to the rules governing the Bar Assistance Program.

~~F~~ H. Bar Counsel, Board members, assistance panel members, and ~~any staff or volunteer attorney within the Bar Assistance Program~~ staff, contractors, and volunteers will maintain the confidentiality required by this rule

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

Paragraphs A and B are amended to clarify the scope of the confidentiality of all information, communications, and records received and generated by the Bar Assistance Program. Nearly all

information disclosed to or by the Bar Assistance Program or otherwise maintained within the Bar Assistance Program is confidential.

New paragraph C is added to clarify that all information, communications, and records related to matters considered by Assistance Panels are confidential.

New paragraph D is added to clarify the situations in which otherwise confidential information, communications, or records must be disclosed. Paragraph D loosely tracks Vermont Rule of Professional Conduct 1.6(b) and is intended to clarify that Bar Counsel and the Bar Assistance Program must disclose information in the specified situations, as would a lawyer in a lawyer-client relationship.

Old paragraph C is relabeled as paragraph E and is amended for clarity and to strengthen the confidentiality of information, communications, and records.

Old paragraph D is relabeled as paragraph F and is amended to clarify the situations in which otherwise confidential information, communications, or records may be disclosed. Paragraph F loosely tracks V.R.Pr.C. 1.6(c) and is intended to permit Bar Counsel or the Bar Assistance Program to disclose information in situations in which a lawyer would be permitted to do so in a lawyer-client relationship.

Old paragraph E is relabeled as paragraph G and is amended to reflect that, on occasion, the Professional Responsibility Program might contract with an attorney to serve when Bar Counsel has a conflict of interest or is otherwise unable to serve.

Old paragraph F is relabeled as paragraph H and is amended make clear that the confidentiality provisions of Rules 5, 6, and 7 encompass all who might work or volunteer in or for the Bar Assistance Program.

3. That Rule 20 be amended as follows (new matter underlined; deleted matter struck through):

## **Rule 20. Additional Rules of Procedure**

\* \* \* \* \*

**J. Complaints Against Panel Members or Staff of the Professional Responsibility Program.** 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 Screening Counsel, Bar Counsel, or Disciplinary Counsel ~~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 Screening Counsel, ~~bar counsel~~ Bar Counsel, nor ~~disciplinary counsel~~ 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.

### Reporter's Notes—2022 Amendments

Paragraph J is amended to reflect the 2021 amendments that created the role of Screening Counsel.

4. That Rule 26 be amended as follows (new matter underlined; deleted matter struck through):

#### Rule 26. Reinstatement

\* \* \* \* \*

**B. Waiting Period; Suspension.** A lawyer suspended for less than six months may resume practice at the end of the period of suspension by filing with the Court and serving upon disciplinary counsel an affidavit setting forth the manner in which the lawyer has complied with the requirements of the suspension order. A lawyer who has been suspended for six months or longer shall comply with paragraph D of this rule.

\* \* \* \* \*

**D. Motions by Disbarred, Suspended, Resigned Attorneys.** Motions for reinstatement by a disbarred attorney, an attorney who has resigned, or an attorney who has been suspended for ~~more than~~ six months or longer shall be served upon the Board and Disciplinary Counsel ~~disciplinary counsel~~. In the case of a suspension, the motion may not be filed until three months before the period of suspension expires. Upon receipt of the motion, the Board shall promptly refer the matter to a hearing panel. Such panel shall promptly schedule a hearing, at which the respondent-attorney shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency, and learning required for admission to practice law in the state, and the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest and that the respondent-attorney has been rehabilitated. At the conclusion of the hearing, the panel shall promptly issue a decision containing its findings and conclusions, and file the decision, together with the record, with the Board for filing with the Court. In the case of a suspension, the hearing panel shall issue its decision within ninety days of the date of the filing of the motion for reinstatement. The hearing panel's decision may be appealed as of right pursuant to the procedures set forth in Rule 15.E.

### Reporter's Notes—2022 Amendment

Paragraph D is amended to conform with paragraph B and to clarify that lawyers who are suspended for 6 months or longer must petition for

reinstatement to the active practice of law. By contrast, lawyers who are suspended for less than 6 months may resume practicing upon the expiration of the suspension.

5. That this administrative order, as amended, is prescribed and promulgated effective September 23, 2022. The Reporter's Notes are advisory.

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 11<sup>th</sup> day of July, 2022.



Signed by the Vermont Supreme Court

---

Paul L. Reiber, Chief Justice

---

Harold E. Eaton, Jr., Associate Justice

---

Karen R. Carroll, Associate Justice

---

William D. Cohen, Associate Justice

---

Nancy J. Waples, Associate Justice