

Policies of the Professional Responsibility Program

ADOPTED March 16, 2011

AMENDED October 9, 2013

[These policies adopted on March 16, 2011, replace in their entirety all previously adopted policies of the Professional Responsibility Program. Policies 14 and 15 were amended, Policy 16 was added, and the remaining Policies were renumbered on October 9, 2013]

General Provisions

Minutes:

- 1.** Inasmuch as the open meeting law at 1 V.S.A. §312 does not apply to the Judiciary, the Board concluded that it is not required to open its meetings to members of the press.
- 2.** The Board shall maintain minutes of its meetings. Once the minutes are approved and adopted by the Board they shall be sent to the Court Administrator, the Board's liaison on the Court and to the Chief Justice. In all other respects, the minutes will remain confidential.

Records:

- 3.** Records will be maintained and destroyed in accordance with the current record schedule as approved by the Chair and the State Archivist on April 1, 2009. The current policy is attached at Appendix 1.

Inquiries from Attorneys:

- 4.** All inquiries from attorneys regarding ethical issues or practice questions will be referred to Bar Counsel and will remain confidential, in accordance with A.O. 9, Rule 3 B.(1) and Rule 9.

Assistance Panels

- 5.** All proceedings before Assistance Panels pursuant to Rule 4.B.(1) are confidential.
- 6.** When Counsel refers a file to an Assistance Panel, the panel will receive the intake sheet, Counsel's notes, annotations, and all information that is

in the file. In making a referral to an Assistance Panel, Disciplinary Counsel shall explain his rationale to the Respondent and the Panel for a referral, which may include reference to relevant past disciplinary history.

7. If a case is transferred by an Assistance Panel to Disciplinary Counsel in accordance with Rule 4.B(1), Disciplinary Counsel may not subsequently resubmit the case to the Assistance Panel.
8. Assistance Panels may proceed with a quorum of two of the three Panel members. The absent member may be a member of the PRB, a lawyer, or a member of the public.
9. The Chair may delegate to Bar Counsel the authority to constitute a particular three member panel as needed for each case referred for alternative resolution. The Chair will appoint persons to serve on Assistance Panels.
10. Bar Counsel will inform participants in Assistance Panel proceedings that Respondent's failure to carry out a directive of the Assistance Panel could be grounds for a separate disciplinary violation.
11. Upon request from either party, the Assistance Panel Chair may allow persons other than Respondent and Complainant to attend an Assistance Panel hearing.

Disciplinary Matters

Screening and Investigation:

12. Disciplinary Counsel may investigate any conduct that comes to his or her attention-which appears to constitute misconduct that might require a disciplinary sanction.
13. Information obtained by Bar Counsel in response to inquiries from members of the public and processed in accordance with AO 9, Rule 10 A. may be shared with Disciplinary Counsel.
14. When ~~Disciplinary~~ Bar Counsel refers a complaint for investigation, the Respondent will be given 20 days in which to respond, unless the matter involves an issue pertaining to client trust funds, in which case the response period will be shortened to 5 days. **[Amended 10/9/2013].**
15. The Rule 10(D) notice to the Complainant that he or she may seek independent review of ~~Disciplinary~~ Bar Counsel's decision to dismiss the

complaint shall specify that any such request for review must be in writing and filed with the Chair within ~~60~~ 30 days of the date of the dismissal by ~~writing a letter to the Board Chair~~. Respondent will be notified when the Complainant ~~appeals~~ requests independent review of Disciplinary Bar Counsel's decision to dismiss. **[Amended 10/9/2013].**

- 16.** Bar Counsel shall not screen any complaint in which he or she has a conflict of interest. Disciplinary Counsel may screen any such complaint. **[Added 10/9/2013].**

Probable Cause:

- 17.** One hearing panel will be assigned each year as the Probable Cause Hearing Panel. All requests for probable cause will be submitted to that panel. The Probable Cause Panels will be appointed in a fixed rotation to be determined by the Chair.
- 18.** A probable cause decision will indicate only whether or not probable cause was found. There will be no written decisions.
- 19.** Where an initial request for a finding of probable cause is denied, Disciplinary Counsel may resubmit the request if there is new or additional information for the panel's consideration.

Hearing Panel Proceedings:

- 20.** Hearing panel members are prohibited from representing respondents.
- 21.** All proceedings initiated by a stipulation recommending admonition shall remain under seal. In event the hearing panel rejects the recommended admonition, the stipulation can be withdrawn and the file remains sealed pending further proceedings.
- 22.** When formal proceedings are commenced by the filing of stipulated facts and a hearing panel determines that a hearing is not necessary, the hearing panel shall issue a decision containing its findings of fact, conclusions of law, and the sanction imposed, if any, within sixty days of the filing of the stipulated facts. The sixty day time period is directory and not jurisdictional. A hearing panel's failure to observe the sixty day time period does not justify the abatement or dismissal of the disciplinary or disability proceeding.

Review and Distribution of Hearing Panel Decisions:

23. The Board will review all decisions of the hearing panels, but not before those decisions are filed with the Program Manager. When the hearing panel report is transmitted to the Supreme Court, an electronic copy of the report will be sent to the Board. The Board will review these decisions at its next meeting.
24. All finalized decisions published by Bar Counsel pursuant to AO 9, Rule 13 will be distributed electronically to assistance and hearing panel members.

APPENDIX 1

RECORD SCHEDULE FOR: Professional Responsibility Board

This is an agency-specific record schedule that satisfies the requirements of 1 V.S.A. § 317a and, where mandated, 3 V.S.A. § 218. It is subject to annual certification and may be amended by mutual consent at any time. If not otherwise listed, all other agency records are addressed by general record schedules.

Public agencies are responsible for developing their own internal policies and procedures to assure that the requirements outlined in this record schedule are being applied across the the agency. Records listed on the record schedule that need to be retained until OBSOLETE must be supported by an internal policy that clearly states a specific retention requirement that best meets the agency or department's administrative needs.

Transferring records to the State Records Center or State Archives requires a transfer agreement from the Vermont State Archives and Records Administration and additional documentation. See the ARCHIVES AND RECORDS MANAGEMENT HANDBOOK for related forms, definitions and additional procedures.

**SIGNATURES ON FILE
APPROVED AND SIGNED BY
THE VERMONT STATE ARCHIVIST ON 4/1/2009**

*George Nostrand, Chair/Professional Responsibility Board, Chair
Gregory Sanford, Vermont State Archivist*

This record schedule was approved on 4/11/2009 and is applicable to records created and received by the Professional Responsibility Board.

1246.1063: CDC 9 AND CDC 11 CASES

Classification: Attorneys at law (Monitoring)

Scope: Complaint is dismissed following an investigation but the respondent was disciplined in another case (CDC-9) or transferred to disability/ inactive status (CDC-11).

Directive: Retain until the attorney is reinstated to active status or has passed away; or 50 years from the date of the case was dismissed, whichever is less. Destroy by shredding.

Exemption: **Yes** *If yes, see below for specific records that may be exempt from public use and inspection.*

RECORDKEEPING REQUIREMENTS (see APPENDIX for any related legal references)

Record:	Applicability/Use:	Appraised Value:	Retention/Disposition:
Case files	Use for entire file related to a case.	Temporary (Administrative)	RETAIN UNTIL: Completed/Closed
<i>ID: 1246.1063.20</i>		Exempt? Yes	PLUS: 50 Year(s) THEN: Destroy (Shred)
Dockets	Use for the Board's electronic docketing system.	Permanent (Archival)	RETAIN UNTIL: Completed/Closed
<i>ID: 1246.1063.117</i>		Exempt? Yes	PLUS: 0 Year(s) THEN: Archives

1246.1075: PRB HEARING FILES

Classification: Attorneys at law (Disciplining)

Scope: Case hearing held; Decision issued.

Directive: Retain docket and signed decision permanently. Retain petitions, pleadings, notices, letters, and other records in the files for 10 years from date of final decision or the date of which the requirements imposed in the decision have been satisfied, whichever is greater. Destroy by shredding

Exemption: **No** *If yes, see below for specific records that may be exempt from public use and inspection.*

RECORDKEEPING REQUIREMENTS (see APPENDIX for any related legal references)

Record:	Applicability/Use:	Appraised Value:	Retention/Disposition:
Decisions <i>ID: 1246.1075.133</i>	Use for signed decisions.	Permanent (Archival) Exempt? No	RETAIN UNTIL: Completed/Closed PLUS: 10 Year(s) THEN: Archives
Dockets <i>ID: 1246.1075.117</i>	Use for the Board's electronic docketing system.	Permanent (Archival) Exempt? Yes	RETAIN UNTIL: Completed/Closed PLUS: 0 Year(s) THEN: Archives
Notices, Legal <i>ID: 1246.1075.50</i>	Use for notices, certified mail receipts, and other returns of service.	Temporary (Administrative) Exempt? No	RETAIN UNTIL: Completed/Closed PLUS: 10 Year(s) THEN: Destroy (Shred)
Pleadings <i>ID: 1246.1075.126</i>	Use for petition, pleadings, letters and other records in the file not otherwise specified in this records schedule.	Temporary (Administrative) Exempt? No	RETAIN UNTIL: Completed/Closed PLUS: 10 Year(s) THEN: Destroy (Shred)

1246.1100: COMPLAINTS DISMISSED AT SCREENING OR DISMISSED FOR ANY REASON OTHER THAN CDC-9 OR CDC-11.

Classification: Attorneys at law (Investigating)

Scope: Complaint is dismissed at screening or for any reason other than CDC-9 or CDC-11.

Directive: Retain for 1 year from date of dismissal; Destroy by shredding. Any other records related to the complaint kept elsewhere will also apply this retention with the exception of a docket, which is to be kept permanently.

Exemption: **Yes** *If yes, see below for specific records that may be exempt from public use and inspection.*

RECORDKEEPING REQUIREMENTS (see APPENDIX for any related legal references)

Record:	Applicability/Use:	Appraised Value:	Retention/Disposition:
Case files <i>ID: 1246.1100.20</i>	Use for entire file related to a complaint.	Temporary (Administrative) Exempt? Yes	RETAIN UNTIL: Completed/Closed PLUS: 1 Year(s) THEN: Destroy (Shred)
Dockets <i>ID: 1246.1100.117</i>	Use for the Board's electronic docketing system.	Permanent (Archival) Exempt? Yes	RETAIN UNTIL: Completed/Closed PLUS: 0 Year(s) THEN: Archives

1246.1102: BOARD MINUTES

Classification: Attorneys at law (Administrating)
Scope: Full board meeting held; minutes taken.
Directive: Retain permanently.
Exemption: **No** *If yes, see below for specific records that may be exempt from public use and inspection.*

RECORDKEEPING REQUIREMENTS (see APPENDIX for any related legal references)

Record:	Applicability/Use:	Appraised Value:	Retention/Disposition:
Minutes	Use for final, approved Board meeting minutes.	Permanent (Archival) Exempt? No	RETAIN UNTIL: Completed/Closed PLUS: 0 Year(s)
<i>ID: 1246.1102.59</i>			

THEN: Archives

1246.1129: PROSECUTION / LITIGATION FILES

Classification: Attorneys at law (Prosecuting)
Scope: Complaint results in the imposition of discipline or transfer to disability status.
Directive: Retain file for 10 years from date of final decision; Destroy by shredding with the exception of a docket, which is to be kept permanently.
Exemption: **Yes** *If yes, see below for specific records that may be exempt from public use and inspection.*

RECORDKEEPING REQUIREMENTS (see APPENDIX for any related legal references)

Record:	Applicability/Use:	Appraised Value:	Retention/Disposition:
Case files	Use for entire file related to a case.	Temporary (Administrative) Exempt? Yes	RETAIN UNTIL: Completed/Closed PLUS: 10 Year(s) THEN: Destroy (Shred)
<i>ID: 1246.1129.20</i>			
Dockets	Use for the Board's electronic docketing system.	Permanent (Archival) Exempt? Yes	RETAIN UNTIL: Completed/Closed PLUS: 0 Year(s) THEN: Archives
<i>ID: 1246.1129.117</i>			

1246.1130: ASSISTANCE PANEL FILES

Classification: Attorneys at law (Remediating)
Scope: Complaint is dismissed following successful completion of any required corrective actions.
Directive: Retain for 1 year from date of dismissal; Destroy by shredding. Any other records related to the complaint kept elsewhere will also apply this retention with the exception of a docket, which is to be kept permanently.
Exemption: **Yes** *If yes, see below for specific records that may be exempt from public use and inspection.*

RECORDKEEPING REQUIREMENTS (see APPENDIX for any related legal references)

Record:	Applicability/Use:	Appraised Value:	Retention/Disposition:
Case files <i>ID: 1246.1130.20</i>	Use for entire file related to a case.	Temporary (Administrative) Exempt? Yes	RETAIN UNTIL: Completed/Closed PLUS: 1 Year(s) THEN: Destroy (Shred)
Dockets <i>ID: 1246.1130.117</i>	Use for the Board's electronic docketing system.	Permanent (Archival) Exempt? Yes	RETAIN UNTIL: Completed/Closed PLUS: 0 Year(s) THEN: Archives

APPENDIX TO THE RECORD SCHEDULE – LEGAL RESOURCES

1246.1063: CDC 9 AND CDC 11 CASES

- Administrative Order No. 41 (Licensing of attorneys) *Review for Exemption: No*
- Administrative Order No. 9, Rule 1 (Professional responsibility board) *Review for Exemption: No*
- Administrative Order No. 9, Rule 12 (Access to disciplinary information) *Review for Exemption: Yes*
- Administrative Order No. 9, Rule 13 (Dissemination of disciplinary information) *Review for Exemption: No*

1246.1075: PRB HEARING FILES

- Administrative Order No. 41 (Licensing of attorneys) *Review for Exemption: No*
- Administrative Order No. 9, Rule 1 (Professional responsibility board) *Review for Exemption: No*
- Administrative Order No. 9, Rule 11 (Disciplinary and disability proceedings) *Review for Exemption: No*
- Administrative Order No. 9, Rule 12 (Access to disciplinary information) *Review for Exemption: Yes*
- Administrative Order No. 9, Rule 16 (Additional rules of procedure) *Review for Exemption: No*
- Administrative Order No. 9, Rule 21 (Proceedings in which lawyer is
declared to be incompetent or alleged to be incapacitated.) *Review for Exemption: No*
- Administrative Order No. 9, Rule 8 (Sanctions) *Review for Exemption: No*

1246.1100: COMPLAINTS DISMISSED AT SCREENING OR DISMISSED FOR ANY REASON OTHER THAN CDC-9 OR CDC-11.

- Administrative Order No. 41 (Licensing of attorneys) *Review for Exemption: No*
- Administrative Order No. 9, Rule 1 (Professional responsibility board) *Review for Exemption: No*
- Administrative Order No. 9, Rule 10 (Filing and review of complaints) *Review for Exemption: No*
- Administrative Order No. 9, Rule 11 (Disciplinary and disability proceedings) *Review for Exemption: No*
- Administrative Order No. 9, Rule 12 (Access to disciplinary information) *Review for Exemption: Yes*
- Administrative Order No. 9, Rule 15 (Subpoena power; discover; testimony) *Review for Exemption: No*

1246.1102: BOARD MINUTES

- Administrative Order No. 9, Rule 1 (Professional responsibility board) *Review for Exemption: No*

1246.1129: PROSECUTION / LITIGATION FILES

- Administrative Order No. 41 (Licensing of attorneys) *Review for Exemption: No*
- Administrative Order No. 9, Rule 1 (Professional responsibility board) *Review for Exemption: No*
- Administrative Order No. 9, Rule 11 (Disciplinary and disability proceedings) *Review for Exemption: No*
- Administrative Order No. 9, Rule 12 (Access to disciplinary information) *Review for Exemption: Yes*

1246.1130: ASSISTANCE PANEL FILES

- Administrative Order No. 9, Rule 1 (Professional responsibility board) *Review for Exemption: No*

- Administrative Order No. 9, Rule 12 (Access to disciplinary information)
- Administrative Order No. 9, Rule 4 (Assistance panels)

Review for Exemption: Yes

Review for Exemption: No