

**STATE OF VERMONT
VERMONT SUPREME COURT
APRIL TERM, 2023**

**Order Promulgating Amendments to Rules 3.A(4), 13.D(3), 16.F(2), 17.C,
20.F, 25, 26.D, and 27.H and I 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 3.A(4) be amended as follows (deleted matter struck through):

Rule 3. Jurisdiction

A. The Board shall have jurisdiction over:

(4) A former judicial officer who has resumed ~~his or her~~ status as a lawyer, not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline, provided that the misconduct has not been the subject of a judicial discipline proceeding as to which there has been a final determination by the Court;

Reporter's Note—2023 Amendment

The changes to Rule 3.A(4) are not substantive. Rather, they reflect an intent to remove gender-specific pronouns from Administrative Order 9.

2. That Rule 13.D(3) be amended as follows (new matter underlined; deleted matter struck through):

Rule 13 Disciplinary and Disability Proceedings

D. **Formal Proceedings.**

(3) *Answer.* If proceedings are initiated by petition, respondent shall serve ~~his or her~~ an answer upon disciplinary counsel and file the original with the Board within 20 days after the service of the petition, unless the time is extended by the chair of the hearing panel. In the event the respondent fails to answer within the prescribed time, the charges shall be deemed admitted, unless good cause is shown.

Reporter's Note—2023 Amendment

The changes to Rule 13.D(3) are not substantive. Rather, they reflect an intent to remove gender-specific pronouns from Administrative Order 9.

3. That Rule 16.F(2) be amended as follows (new matter underlined; deleted matter struck through):

Rule 16. Access to Disciplinary Information

F. Request for Nonpublic Information.

(2) *Notice to Lawyer.* If the Board or hearing panel decides to provide nonpublic information requested, and if the lawyer has not signed a waiver permitting the requesting agency to obtain nonpublic information, the lawyer shall be notified in writing at ~~his or her~~ the lawyer's last known address of that information which has been requested and by whom. The notice shall advise the lawyer that the information shall be released at the end of twenty-one (21) days following mailing of the notice unless the lawyer obtains a Court order to prevent such disclosure.

Reporter's Note—2023 Amendment

The changes to Rule 16.F(2) are not substantive. Rather, they reflect an intent to remove gender-specific pronouns from Administrative Order 9.

4. That Rule 17.C be amended as follows (new matter underlined; deleted matter struck through):

Rule 17. Dissemination of Disciplinary Information

C. **Notice to the Courts.** Disciplinary counsel shall promptly transmit a certified copy of the order of suspension, disbarment, reinstatement, transfer to or from interim suspension status and transfer to or from disability inactive status to all courts in this state. In addition, bar counsel may request the presiding judge of the superior court of the county in which a respondent, transferred to disability inactive status or otherwise unable to comply with the requirement of Rule 27, maintained ~~his or her~~ a law practice to take such action under the provision of Rule 28 as may be indicated in order to protect the interests of the respondent and respondent's clients.

Reporter's Note—2023 Amendment

The changes to Rule 17.C are not substantive. Rather, they reflect an intent to remove gender-specific pronouns from Administrative Order 9.

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

Rule 20. Additional Rules of Procedure

F. **Availability of Hearing Transcript.** The record of a hearing shall be made available to the respondent at ~~his or her~~ the respondent's expense on request made to disciplinary counsel.

Reporter’s Note—2023 Amendment

The changes to Rule 20.F are not substantive. Rather, they reflect an intent to remove gender-specific pronouns from Administrative Order 9.

6. That Rule 25 be amended as follows (new matter underlined; deleted matter struck through):

Rule 25. Proceedings in Which Lawyer is Declared to be Incompetent or Alleged to be Incapacitated

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B. Inability to Properly Defend. If a respondent alleges in the course of a disciplinary proceeding that ~~he or she~~ the respondent is unable to assist in ~~his or her~~ the respondent’s own defense due to a mental or physical disability, the Court shall immediately transfer the ~~lawyer respondent~~ respondent to disability inactive status pending determination of the incapacity. Such determination shall be made by a hearing panel assigned by the Board, following notice and an opportunity to be heard. The panel shall submit a report to the Court with its recommendation.

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C. Proceedings to Determine Incapacity. Information relating to a lawyer’s physical or mental condition which adversely affects ~~his or her~~ the lawyer’s ability to practice law shall be the subject of formal proceedings to determine whether the lawyer shall be transferred to disability inactive status. The Court may take or direct whatever action it deems necessary or proper to determine whether the respondent is so incapacitated, including the examination of the respondent by qualified medical experts designated by the Court. If, upon due consideration of the matter, the Court concludes that the respondent is incapacitated from continuing to practice law, it shall enter an order transferring the lawyer to disability inactive status for an indefinite period and until the further order of the Court. Any pending disciplinary proceedings against the respondent shall be held in abeyance.

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E. Reinstatement from Disability Inactive Status.

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(4) *Waiver of Doctor-Patient Privilege.* The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the respondent during the period of disability. The respondent shall be required to disclose the name of each psychiatrist, psychologist, physician and hospital or other institution by whom or in which the respondent has been examined or treated since ~~his or her~~ being transferred to disability inactive status. The respondent shall furnish to this Court written consent to each doctor to divulge information and records relating to the disability if requested by the Court or court appointed medical experts.

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Reporter's Note—2023 Amendment

The changes to Rule 25 are not substantive. Rather, they reflect an intent to remove gender-specific pronouns from Administrative Order 9.

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

Rule 26. Reinstatement

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 six months or longer shall be served upon the Board and 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~~ the respondent 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 13.E.

Reporter's Note—2023 Amendment

The changes to Rule 26.D are not substantive. Rather, they reflect an intent to remove gender-specific pronouns from Administrative Order 9.

8. That Rule 27.H and I be amended as follows (new matter underlined; deleted matter struck through):

Rule 27. Notice to Client, Adverse Parties, and Other Counsel

H. Affidavit Filed with Board. Within 10 days after the effective date of the disbarment or suspension order, or order transferring ~~him or her~~ the respondent to disability inactive status, the respondent shall file with the Board an affidavit showing:

(1) ~~He or she~~ The respondent has fully complied with the provisions of the order and with these rules;

(2) All other state, federal and administrative jurisdictions to which ~~he or she~~ the respondent is admitted to practice;

(3) The residence or other addresses where communications may thereafter be directed to ~~him or her~~ the respondent; and that

(4) ~~He or she~~ The respondent has served a copy of such affidavit upon disciplinary counsel.

I. Registration and Records. ~~An attorney~~ A lawyer suspended or disbarred shall continue to file the registration statement required by § 1 of the Annual Licensing of Attorneys Rules without payment therefor throughout the period of suspension or for five years after an order of disbarment is entered, so that the ~~attorney lawyer~~ can be located in the event complaints are made about ~~his or her~~ the lawyer's conduct while engaged in practice. Such ~~attorney lawyer~~ also shall keep and maintain records of the various steps taken under this rule so that, upon any subsequent proceedings instituted by or against the lawyer ~~attorney~~, proof of compliance with these rules and the order will be available.

Reporter's Note—2023 Amendment

The changes to Rule 27.H and I are not substantive. Rather, they reflect an intent to remove gender-specific pronouns from Administrative Order 9.

9. That this administrative order, as amended, is prescribed and promulgated effective July 3, 2023. The Reporter's Notes are advisory.

10. 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 10th day of April, 2023.



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