



ATTORNEY DISCIPLINARY RULES

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Rule 1. Jurisdiction.

(a) Applicability. These rules apply to:

- (1)** any lawyer who practices law in this Court, or any incumbent judicial officer, with respect to acts committed prior to resignation, suspension, disbarment or transfer to inactive status, or with respect to subsequent acts that amount to the practice of law or constitute a violation of these rules or of the Vermont Rules of Professional Conduct or any rules or code subsequently adopted by the Court in lieu thereof;
- (2)** any lawyer specially admitted by this Court for a particular proceeding, including any intern permitted to appear as legal counsel pursuant to the Rules of Admission;
- (3)** any lawyer not admitted in this State, with respect to a matter pending before this Court who practices law or renders legal services in this Court;
- (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 of this Court that would have been grounds for lawyer discipline, provided that the misconduct has not been the subject of a judicial disciplinary proceeding as to which there has been a final determination.

(b) Licensing and CLE Requirements. The fact that an attorney's right to practice has been suspended or revoked only by reason of failure to comply with licensing requirements or to meet minimum continuing legal education requirements will not deprive the Court of jurisdiction with respect to allegations of misconduct that occurred during a time that the attorney was admitted to practice in this Court.

(c) Miscellaneous. These rules shall not be construed to deny this Court necessary powers to maintain control over proceedings conducted before it, such as proceedings for contempt under

Title 18 of the United States Code or under Federal Rule of Criminal Procedure 42. Nothing in these rules shall preclude this Court from making a referral to any other disciplinary or law enforcement authority. Nothing in these rules shall preclude this Court, in exercising its discretion, from imposing an immediate interim suspension.

Rule 2. Grounds for Discipline.

(a) Applicable Rules. The Rules of Professional Conduct adopted by this Court are the Rules of Professional Conduct adopted by the highest court of the State of Vermont.

(b) Grounds. Discipline may be imposed for any conduct that constitutes “misconduct,” as found by the Court under these rules, based upon any of the following:

- (1) violation of any of the Rules of Professional Conduct that were in effect at the time of the conduct in question;
- (2) conduct that results in lawyer or judicial discipline in another jurisdiction;
- (3) violation of any rule or order of this Court; or
- (4) failure to furnish information to, or respond to a request from the Court or any Disciplinary Committee appointed pursuant to Rule 6 *infra*, without reasonable grounds for refusing.

Rule 3. Sanctions.

(a) Purpose. The purpose of attorney discipline proceedings and sanctions is to protect the public and the administration of justice in this Court from attorneys who have not discharged, will not discharge, or are unlikely to discharge properly their professional duties to clients, the public, the legal system, and the legal profession.

(b) Sanctions. Any misconduct set forth in Rule 2, above, shall be grounds for one or more of the following sanctions:

- (1)** disbarment or preclusion from admission to practice in this Court, in which case the lawyer shall not be eligible to apply for admission for at least five years;
- (2)** suspension from the bar of this Court for an appropriate fixed period of time not in excess of three years;
- (3)** immediate interim suspension from the bar of this Court, pending final determination of discipline;
- (4)** public reprimand;
- (5)** admonition, which shall be a sanction imposed only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer. In any proceeding in which the respondent has been found guilty of misconduct, prior admonitions may be used as evidence of prior misconduct bearing upon the issue of the sanction to be imposed. All admonitions shall be in writing and served upon the respondent.
- (6)** probation, in accordance with Rule 3(c); and
- (7)** other sanctions and remedies:
 - (A)** restitution;
 - (B)** assessment of costs;
 - (C)** requirement that the attorney attend continuing education courses; or other appropriate professional counseling; and
 - (D)** appointment of a receiver.

(c) Imposition of Probation. Probation may be imposed only in conjunction with any other sanction, reinstatement from disability, and reinstatement from disbarment or suspension. It shall be used only in those cases in which there is little likelihood that the respondent will harm the public or the legal system during the period of probation and the conditions of probation can be adequately supervised. Probation shall be imposed for a specific time period and, on notice and opportunity to be heard, may be renewed for an additional period.

(A) Conditions in Writing. The conditions of the probation shall be in writing and served pursuant to Rule 7(e), *infra*. All or some of the costs of probation may be assessed against the respondent. The probation will be supervised by a probation monitor approved by the Court, with any expense borne by respondent. The Court shall terminate probation upon the filing of an affidavit by the respondent showing compliance with the conditions and an affidavit by the probation monitor stating that probation is no longer necessary and summarizing the basis for that conclusion.

(B) Violation of Probation. A violation of probation may be the basis for interim suspension pursuant to Rule 3(b)(3) above, or may be the basis of independent disciplinary charges. Upon proof of a probation violation by clear and convincing evidence, any sanction under this rule may be imposed.

Rule 4. Discipline Without Pre-Deprivation Hearing.

(a) Immediate Interim Suspension. The Court shall have the discretion to impose an immediate interim suspension under the following conditions:

(1) with respect to an attorney convicted of a crime:

(A) when a certified copy of a judgment of conviction of any bar member of this

Court is filed in this Court, the Court will enter an order immediately suspending the bar member convicted of a serious crime in any federal court, District of Columbia, or any state, territory, commonwealth, or United States possession, regardless of the pendency of any appeal;

(B) the term “serious crime” includes: a felony; or any lesser crime with a necessary element (as determined by the statutory or common law definition of such crime in the relevant jurisdiction) of false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation; or an attempt or a conspiracy or solicitation of another to commit a “serious crime”;

(C) a certified copy of a final judgment of conviction of an attorney for any crime is conclusive evidence of the commission of that crime in any disciplinary proceeding unless the conviction is challenged in an appeal and no final judgment on the appeal has been entered;

(D) if a certified copy of a final judgment of conviction is filed with this Court, in addition to suspending the attorney, the Court may refer the matter to the Disciplinary Committee to determine the final discipline to be imposed as a result of the illegal conduct;

(E) when a certified copy of a judgment of conviction of any bar member of this Court for a “non-serious” crime in any federal court, District of Columbia, or any state, territory, commonwealth, or United States possession, is filed in this Court, the Court may refer the matter to the Disciplinary Committee for necessary action, including the institution of a disciplinary proceeding. The Court may, in its discretion, make no reference with respect to convictions for non-serious crimes;

- (2) upon recommendation of the Disciplinary Committee; and
- (3) under any other circumstances where the Court determines that there exists significant risk of immediate, serious harm to the public or the legal system.

The Court shall immediately serve a copy of the interim suspension order by certified mail upon the attorney. Service shall be effective as of the date of receipt. Such interim suspension shall terminate upon the final disposition of a disciplinary proceeding. Upon good cause shown, the Court may set aside the interim suspension order, in whole or for a particular proceeding, when it is in the interest of justice to do so. The immediate interim suspension shall serve as a referral under Rule 6(c).

(b) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

(1) Affidavit Required. Any attorney admitted to practice before this Court, who is the subject of an investigation into or a pending proceeding involving an allegation of misconduct, may consent to disbarment by delivering to this Court an affidavit stating that the attorney consents to disbarment and:

- (A) the attorney's consent is voluntarily rendered, the attorney's consent is not the product of coercion or duress, and the attorney is fully aware of the consequences of so consenting;
- (B) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline; and
- (C) the attorney waives all applicable defenses.

(2) Order of Disbarment. Upon receipt of the required affidavit, this Court will enter an order disbarring the attorney.

(3) Public Record. The order disbaring the attorney on consent is a public record.

However, the affidavit required under Rule 4(b)(1) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(c) Disbarment on Consent or Resignation in Other Courts.

(1) Disbarment in this Court. Any bar member of this Court who is disbarred on consent or resigns from the bar of another federal court or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, will be disbarred from this Court and stricken from the attorney roll, upon the filing with this Court of a certified copy of the judgment or order of disbarment or resignation.

(2) Duty to Notify. Upon being disbarred on consent or resigning from the bar of any other federal court or the District of Columbia, from the bar of any state, territory, commonwealth or possession of the United States, or from a bar in any foreign jurisdiction, while an investigation into allegations of misconduct is pending, any attorney admitted to practice before this Court must promptly inform the Clerk of this Court of such disbarment on consent or resignation.

Rule 5. Discipline Imposed by Other Courts.

(a) Duty to Notify. Any bar member of this Court must promptly notify the Clerk of the Court upon being disciplined by any other court of the United States or the District of Columbia, by a court of any state, territory, commonwealth, or possession of the United States, or by a bar in any foreign jurisdiction.

(b) Notice to Attorney. On filing a certified copy of a judgment or order showing that a bar member of this Court has been disciplined by another court, this Court will promptly issue a notice to the attorney containing:

- (1) a copy of the judgment or order from the other court; and
- (2) an order to show cause directing that the attorney inform this Court, within thirty days after service of that order, of any claim by the attorney predicated upon the grounds set forth in 5(d) below, that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

(c) Discipline Deferred. If the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court will be deferred until the stay expires.

(d) Identical Discipline. Thirty days after service of the order to show cause issued per Rule 5(b) above, this Court shall impose the identical discipline unless the respondent has demonstrated, or this Court finds, that upon consideration of the underlying record from the other jurisdiction, it clearly appears:

- (1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the determination of misconduct;
- (3) the imposition of the same discipline by this Court would result in grave injustice; or
- (4) the misconduct is deemed by this Court to warrant substantially different discipline.

Where this Court determines that any of these elements exists, it shall enter another order as it deems appropriate.

(e) Misconduct Established. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct establishes the misconduct conclusively for purposes of disciplinary proceedings in this Court.

Rule 6. Disciplinary Committee.

(a) Appointment of Disciplinary Committee. The Court shall appoint a standing committee of five members of the bar to serve as the Disciplinary Committee (the “Committee”). Three of those first appointed shall serve for a term of three years and two for two years. After the initial term, members shall be appointed for a term of three years, or until a successor is appointed. If a vacancy occurs because of death, resignation, or otherwise, the Court shall appoint a successor to serve the unexpired term.

(b) Functioning of the Committee. The Court shall designate one member of the Committee to serve as chairperson. The Court shall also designate an individual who is not a member of the Committee to serve as secretary. Three members of the Committee shall constitute a quorum of the Committee. All Committee decisions and recommendations for discipline shall be by majority vote of the Committee members voting on the issue, provided that at least a quorum is present. Voting may occur by any means determined by the Committee, but a record shall be maintained of any decisions. The Committee may assign investigatory, hearing, or other tasks to individual members, subcommittees, or other persons acting under the direction of the Committee.

(c) Referral to Committee. On its own initiative, or following a request by a member of the bar of this Court, the Court may refer to the Committee: possible misconduct by any attorney admitted to practice or appearing before the Court; any possible violation by an attorney of a

federal Court procedural rule, local rule of this Court, or court order; or any other situation involving the practice or admission of an attorney before the Court. The Committee will consider only those matters referred to it by the Court.

(d) Evidence of Other Misconduct. If, during the course of its investigation, the Committee obtains evidence of other misconduct, the Committee shall inform the Court of the evidence.

Rule 7. Disciplinary Proceedings.

(a) Committee Process. Except for the purpose of determining whether to recommend an immediate interim suspension, or when the attorney's death, incapacity, or withdrawal from the bar makes this process unnecessary, the Committee shall proceed using the following process:

(1) after receiving a referral, the Committee shall serve the attorney, in accordance with Rule 7(e), with a copy of the referral and an order to show cause. The order to show cause shall contain written notice of the charges, shall provide the attorney at least fourteen calendar days to respond in writing to those charges (unless an immediate interim suspension is warranted), and direct where the attorney's response shall be sent. The attorney's response shall include:

(A) a list of all bars to which the attorney is admitted;

(B) a list of all cases pending before the Court in which the attorney is involved;

and

(C) a point-by-point response to the charges identifying any facts that are controverted and why. The response must be signed under oath under penalty of perjury.

(2) after receipt of the response by the attorney, or if no response is received, after the expiration of the time established by the Committee for a response, the Committee shall schedule a hearing before the Committee or a hearing panel appointed by the Committee.

(3) at least fourteen calendar days prior to the hearing, the Committee shall provide the attorney with written notice of: the date, time and place of the hearing; the names of the Committee or hearing panel members; the identity of any witnesses expected to be called; and the attorney's rights to be represented by counsel, to present witnesses and evidence on his/her behalf, to cross-examine witnesses, if any, against the attorney, and to review and respond to any evidence to be considered by the Committee or hearing panel.

(4) at least fourteen calendar days prior to the hearing, the Committee shall provide copies of the document or other information that may be considered by the Committee.

(5) if the attorney does not appear at the scheduled time and place, the Committee may proceed without a hearing.

(6) the Committee and Respondent may call witnesses and introduce other evidence. The attorney and any witnesses shall testify under oath, and a record of the proceeding shall be made. Court orders, docket sheets, public or private records of the Court, and materials from relevant Court files shall be entered directly into the record. If the Committee decides to produce a transcript of the proceeding, a copy shall be provided to the attorney at no cost. Otherwise, the attorney may have a transcript made at his/her own cost.

(7) the Committee or hearing panel shall appoint a chairperson for each hearing who shall direct the proceeding and maintain or ensure maintenance of the record. Any member of the Committee or hearing panel present may ask questions or participate in the hearing.

(8) the Committee may allow or request submission of post-hearing materials.

(9) the Committee shall then issue a report containing its summary of the evidence and arguments, any findings and conclusions from the evidence, and its recommendations to

the Court, along with the record of its proceedings. Any finding that an attorney has engaged in misconduct or is otherwise subject to discipline must be supported by clear and convincing evidence. A certified copy of a final order or suspension or disbarment or of a judgment of conviction for a criminal offense, entered in any state or federal court, will be considered clear and convincing evidence.

(10) a copy of the Committee's recommendation shall be provided to the attorney, and within fifteen days, the attorney may file a response to the Committee's report with the Court.

(b) Proceedings Initiated By Stipulation. Where proceedings have been initiated by stipulation, the Court shall review the stipulation and either:

(1) reject the stipulation, in which case the parties may amend and resubmit it, or the Committee may institute proceedings; or

(2) accept the stipulation and adopt it as its own findings of fact regarding the existence of a violation of these rules.

(c) Confidentiality. Except as may be required by Vermont Rule of Professional Conduct 8.3(a), or as otherwise set forth herein, all proceedings of the Committee involving disciplinary action towards an attorney shall remain confidential unless or until the Court orders otherwise. An attorney who is the subject of a proceeding may request that all or part of a proceeding be made public.

(d) Subpoenas.

(1) Issuance of subpoenas. Upon application by the Committee or the respondent, the Court may issue a subpoena to compel the attendance and testimony of any witness to the hearing and the production of any pertinent books, papers or documents at the hearing.

(2) Quashing subpoenas. The Committee or the respondent may file a motion to

quash a subpoena, and the Court may, for good cause shown, grant the motion in whole or in part.

(3) Sanctions. The Committee or the respondent may apply to the Court for an order sanctioning any person who fails to obey a subpoena.

(e) Service of Papers and Other Notices. Service of (1) an order to show cause instituting a formal disciplinary proceeding and/or (2) conditions of probation, must be made by personal service or by registered or certified mail addressed to the respondent at the address filed with the Court. Service of any other paper or notice required by these Rules is deemed made if such paper or notice is addressed to a party at the last address recorded with the Court or to counsel for respondent at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

(f) Nature of Proceedings. Disciplinary proceedings are neither civil nor criminal but are *sui generis*.

Rule 8. Court Decision.

(a) Further Evidence. Prior to issuing a decision, in the exercise of its discretion, the Court may take further evidence on the issue of sanctions, either *sua sponte*, or in response to a request by the Committee or the respondent.

(b) Final Decision. The Court shall issue a written decision either adopting in whole or in part, or rejecting in whole or in part, and/or modifying the Committee's recommendation. The clerk shall promptly serve the decision on the Committee and the respondent. Upon service, the decision shall become final.

Rule 9. Reinstatement.

(a) After Interim Suspension. An attorney suspended under Rule 4(a) will be reinstated immediately upon filing a certificate showing that the conviction has been reversed. However, the reinstatement shall not affect any disciplinary proceeding then pending against the attorney. The disciplinary proceeding shall proceed on the basis of all available evidence pertaining to both alleged misconduct and any discipline to be imposed.

(b) After Suspension of Less Than Three Months. An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon filing with the Court an affidavit of compliance with the order of suspension, and after retaking the attorney's oath.

(c) After Suspension of More Than Three Months. An attorney suspended for more than three months or an attorney who has been disbarred, may not resume practice in this Court until reinstated by order of this Court, which shall require the retaking of the attorney's oath. An attorney suspended for more than three months, or disbarred, who seeks reinstatement shall file a petition for reinstatement with the Court. The Court may hold a hearing on the petition, or may refer the petition to the Committee for hearing and a recommendation.

(d) Burden of Proof. At any hearing for reinstatement, the petitioner has the burden of demonstrating by clear and convincing evidence that the petitioner no longer has any incapacity, possesses the moral qualifications, competency and learning in the law required for admission to practice before this Court, and resumption of practice in this Court by petitioner will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subvert public interest.

(e) Order of Reinstatement. The Court's order of reinstatement may include conditions that the Court deems necessary to protect the public interest.

Rule 10. Duties of the Clerk.

(a) Copy of Conviction Order. When informed that an attorney admitted to practice before this Court has been convicted of any crime, the clerk shall determine whether a certificate of conviction has been received in this Court. If not, the clerk shall promptly obtain a certificate and provide it to the Chief Judge.

(b) Copy of Disciplinary Order. When informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed in this Court. If not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and provide it to the Chief Judge.

(c) Notification of Other Courts. Whenever it appears that any person who is convicted of any crime in this Court or is disciplined by this Court, is admitted to practice law in any other jurisdiction or before any other court, the clerk shall, within 30 days of the conviction or discipline, transmit to the disciplinary authority in the other jurisdiction, a certificate of the conviction or a certified exemplified copy of the judgment or disciplinary order, as well as the last known office and residential address of the defendant or respondent.

(d) Notification to ABA. The clerk shall also promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.