

**STATE OF VERMONT  
VERMONT SUPREME COURT  
OCTOBER TERM, 2025**

**Order Promulgating Amendments to Rules 2, 5, 6.C and D, and 12 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 2 be amended as follows (deleted matter struck through):

**Rule 2. Bar Counsel, ~~Screening Counsel~~, and Disciplinary Counsel**

**Appointment.** Following consultation with the Board, and subject to Court approval, the Court Administrator, pursuant to Administrative Order 3, appoints lawyers admitted to the bar of this state to perform the duties of Bar Counsel, ~~Screening Counsel~~, and Disciplinary Counsel.

**Reporter's Note—2026 Amendment**

The position of Screening Counsel has been eliminated. See Rules 5, 12, and the accompanying Reporter's Notes to the 2026 Amendment.

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

**Rule 5. Bar Counsel**

Bar Counsel will:

A. Screen all disciplinary complaints;

~~A. B.~~ Administer the Bar Assistance Program;

~~B. C.~~ Respond to inquiries from judges, lawyers, legal professionals, law students, and the public regarding the Rules of Professional Conduct, professionalism and professional responsibility, legal ethics, law practice management, and behavioral health issues that impact a lawyer or judge's professional competence;

~~C. D.~~ Provide referrals, educational materials, guidance, and preventive advice and information to assist lawyers to achieve, maintain, and enhance professional competence and professional responsibility;

~~D. E.~~ Develop and present programs related to the Rules of Professional Conduct, legal ethics, and a lawyer's professional competence and professional responsibilities;

~~E. F.~~ Develop and present programs concerning lawyer wellness and on issues related to the signs, symptoms, causes, and prevention of behavioral health issues that affect lawyers' and judges' professional competence;

~~F. G.~~ Develop mechanisms to help others to identify and intervene with impaired lawyers and judges;

~~G.~~ H. Help lawyers and judges to secure expert counseling and treatment for behavioral health issues that affect professional competence, and maintain information on available treatment programs and services;

~~H.~~ I. As necessary, assist lawyers and judges to coordinate aftercare services upon request, by order, or under contract that may include the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer-support meetings; and assistance in obtaining a primary care physician or local peer counselor;

~~I.~~ J. As necessary, assist lawyers and judges to arrange monitoring services that may include the following: alcohol and drug-screening programs; tracking aftercare, peer-support, and twelve-step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program;

~~J.~~ K. Administer the nondisciplinary dispute-resolution program, including its assistance panels;

~~K.~~ L. Work with the Board to recruit, coordinate, and train judges, lawyers, legal professionals, qualified health professionals, and members of the public to serve as assistance panel members;

~~L.~~ M. As the Board's liaison, consult and coordinate with the ABA Commission on Lawyer Assistance Programs, the Vermont Bar Association, Vermont's local and county bar associations, Vermont Law School, the Judicial Conduct Board, the Board of Bar Examiners, the Character and Fitness Committee, the Board of Mandatory Continuing Legal Education, and other related organizations on matters related to professional responsibility, legal ethics, and law practice management; and

~~M.~~ N. Any other task assigned by the Board within the scope of responsibility of Bar Counsel pursuant to these Rules.

### **Reporter's Notes—2026 Amendment**

Paragraph 12.A is added to reflect that Bar Counsel will screen all disciplinary complaints. The remaining paragraphs are re-lettered.

In 2021, the Court amended A.O. 9 to create the Bar Assistance Program. The amendments included removing Bar Counsel from the process by which disciplinary complaints are screened based on a recommendation from the Professional Responsibility Board. When it promulgated the amendments, the Court directed the Board to report back on the effectiveness of those amendments and to make any structural recommendations.

The Board compared the impact of the 2021 amendments to the way the Professional Responsibility Program (PRP) operated from 2012 through the effective date of the 2021 amendments, a period when, by rule, Bar Counsel screened all disciplinary complaints. The Board concluded that the goals and purpose of A.O. 9 are best served by returning the screening function to Bar Counsel. In

particular, the Board concluded (1) that the consistency that comes from having Bar Counsel screen complaints while also providing proactive guidance better effectuates the PRP’s goals to enhance professional competence and to promote confidence in the program; (2) that the data does not support the idea that lawyers will not seek proactive assistance from the person who screens disciplinary complaints; and (3) that an active nondisciplinary, dispute-resolution process is a critical component of the “comprehensive system of regulation of the legal profession” envisioned by A.O. 9. See A.O. 9, Purpose. The Board concluded that the 2021 amendments resulted in an under-utilization of the assistance panels authorized by Rule 7 and that returning screening to Bar Counsel will reinvigorate the nondisciplinary, dispute-resolution component of the PRP. In reaching its conclusions, the Board noted that the vast majority of comments submitted in response to the proposed 2021 amendments recommended against removing Bar Counsel from the screening process.

3. That Rule 6.C and D be amended as follows (new matter underlined; deleted matter struck through):

#### **Rule 6. Inquiries and Referrals**

**C. Formal Referrals for Behavioral Health Issues.** Any matter or complaint referred to the Bar Assistance Program by ~~Screening Counsel~~, Bar Counsel, Disciplinary Counsel, a hearing panel, the Character and Fitness Committee, or the Judicial Conduct Board in which the purpose of the referral is to address issues related to a lawyer or judge’s behavioral health must be reviewed by an Assistance Panel pursuant to Rule 7.

**D. Nonbehavioral Health Referrals.** ~~Disciplinary Counsel and Screening Counsel may refer matters to the Bar Assistance Program to address conduct that does not involve a behavioral health issue.~~ A complaint that does not involve a behavioral health issue may be referred to the Bar Assistance Program by Bar Counsel pursuant to Rule 12.B(2) or by Disciplinary Counsel pursuant to Rule 13.B. Upon ~~review~~ receiving such a referral, Bar Counsel may resolve the ~~matter~~ complaint in a manner authorized by Rule 6.A or refer the matter to an Assistance Panel for nondisciplinary resolution pursuant to Rule 7.

#### **Reporter’s Notes—2026 Amendment**

The changes to Rule 6.C and D reflect the amendments to Rules 5 and 12 designating to Bar Counsel the task of screening disciplinary complaints. Rule 6.D is amended to reflect the fact that there will be situations in which dismissing a complaint is not appropriate even though a disciplinary investigation or disciplinary prosecution is not warranted. In such situations, the complaint should be referred to the Bar Assistance Program for nondisciplinary resolution in a manner authorized by Rules 6 or 7.

4. That Rule 12 be amended as follows (new matter underlined; deleted matter struck through):

## Rule 12. Screening Counsel and Filing and Review of Disciplinary Complaints

All complaints concerning attorney conduct must be directed to the Professional Responsibility Program.

**A. Screening.** ~~Screening Bar Counsel will conduct the Professional Responsibility Program's initial reviews of all disciplinary complaints. Screening Bar Counsel may contact the subject attorney and conduct other limited investigation necessary to determine the nature of the complaint and whether it can be resolved through nondisciplinary dispute resolution methods. Screening Counsel may attempt to resolve any complaint, of whatever nature, that does not appear to require formal intervention by the Bar Assistance Program or the disciplinary program.~~

**B. Referral to Alternate Program.** ~~Screening Counsel may refer any matter that does not appear to require prosecution and sanctions to the Bar Assistance Program, Vermont Lawyer Assistance Program, the Vermont Bar Association Committee for the Arbitration of Fee Complaints or any other dispute program.~~

**C. Formal Investigation.** ~~If the conduct which is the subject of the complaint appears to constitute misconduct that may require disciplinary sanctions, Screening Counsel must refer the matter to Disciplinary Counsel, who must investigate further to determine whether formal disciplinary proceedings should be pursued under Rule 13.~~

**B. Screening Decisions.** Upon concluding the limited investigation that is authorized by subdivision (A), Bar Counsel may:

(1) resolve the complaint in a nondisciplinary manner if, in Bar Counsel's judgment, the complaint does not require intervention by the Bar Assistance Program or an investigation by Disciplinary Counsel;

(2) refer the complaint to the Bar Assistance Program for nondisciplinary resolution pursuant to Rules 5, 6, or 7 if, in Bar Counsel's judgment, the complaint does not require an investigation by Disciplinary Counsel;

(3) refer the complaint to the Vermont Lawyer Assistance Program if, in Bar Counsel's judgment, the complaint is more appropriately addressed there than by the Bar Assistance Program or by an investigation by Disciplinary Counsel;

(4) refer the complaint to the Vermont Bar Association's Committee for the Arbitration of Fee Complaints, or any other dispute resolution program if, in Bar Counsel's judgment, the complaint does not require intervention by the Bar Assistance Program or an investigation by Disciplinary Counsel and is appropriate for resolution by the program to which it is referred;

(5) refer the complaint to Disciplinary Counsel for an investigation to be conducted pursuant to Rule 13 if, in Bar Counsel's judgment, the complaint appears to constitute misconduct that may require disciplinary sanctions; or

(6) dismiss the complaint if, in Bar Counsel's judgment, the complaint does not require a resolution or referral authorized by this paragraph.

**C. Notification.** Bar Counsel will provide written notice of the screening decision to both the complainant and the respondent.

**D. Complainant's Right to Independent Review.** ~~Screening Counsel may close or dismiss complaints which, in Counsel's judgment, do not require either formal investigation by Disciplinary Counsel or referral to an alternate program. In such cases, Counsel must inform the complainant in writing of the decision and the reasons, When Bar Counsel dismisses a complaint pursuant to paragraph B.6, the notice to the complainant that is required by subdivision C will state the reasons for the dismissal and will notify the complainant of the right to that the complainant may seek review from request that the Board chair review the dismissal. The complainant has 30 days from the date of ~~Screening Bar~~ Counsel's decision to request review. Review conducted pursuant to this rule is on the record. Upon concluding the review, the Board chair will either uphold the dismissal or refer the complaint to Disciplinary Counsel for an investigation pursuant to Rule 13. The complainant will be notified in writing of the Board chair's decision.~~

### **Reporter's Notes—2026 Amendment**

Rule 12 is amended to replace all references to “Screening Counsel” with “Bar Counsel.”

In 2021, the Court amended A.O. 9 to create the Bar Assistance Program. The amendments included removing Bar Counsel from the process by which disciplinary complaints are screened. When it promulgated the amendments, the Court directed the Professional Responsibility Board to report back on the effectiveness of the amendments and to make any structural recommendations.

The Board compared the impact of the 2021 amendments to the way the Professional Responsibility Program (PRP) operated from 2012 through the effective date of the 2021 amendments, a period when, by rule, bar counsel screened all disciplinary complaints. The Board concluded that the goals and purpose of A.O. 9 are best served by returning the screening function to Bar Counsel. In particular, the Board concluded (1) that the consistency that comes from having Bar Counsel screen complaints while also providing proactive guidance better effectuates the PRP's goals to enhance professional competence and to promote confidence in the program; (2) that the data does not support the idea that lawyers will not seek proactive assistance from the person who screens disciplinary complaints; and (3) that an active nondisciplinary dispute resolution process is a critical component of the “comprehensive system of regulation of the legal profession” envisioned by A.O. 9. See A.O. 9, Purpose. The Board concluded that the 2021 amendments resulted in an under-utilization of the assistance panels authorized by Rule 7 and that returning screening to Bar Counsel will reinvigorate the nondisciplinary, dispute-resolution component of the PRP. In reaching its conclusions, the Board noted that the vast majority of comments submitted in

response to the proposed 2021 amendments recommended against removing Bar Counsel from the screening process.

In addition to replacing “Screening Counsel” with “Bar Counsel,” Rule 12.B is reorganized for clarity. The reorganization does not include any substantive changes to the screening process. In particular, it does not add to or subtract from the options available once a complaint has been screened.

Paragraph 12.C is added to clarify that Bar Counsel must provide both the complainant and the respondent with written notice of the screening decision.

Paragraph 12.D is amended to clarify the Board chair’s options upon receiving a request to review Bar Counsel’s decision to dismiss a complaint.

5. That this administrative order, as amended, is prescribed and promulgated effective **January 1, 2026**. 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 6<sup>th</sup> day of October, 2025.



Signed by the Vermont Supreme Court

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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William D. Cohen, Associate Justice

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Nancy J. Waples, Associate Justice