



Vermont Bar Association

• *Serving the Public and the Profession*

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March 28, 2017

Hon. Maida Townsend, Chair
House Committee on Government Operations
Vermont Statehouse
Montpelier, Vermont 05601

Re: H. 206 (17-1218)

Dear Representative Townsend:

I'm sorry that I'm not able to attend the re-scheduled hearing date for H. 206 on March 31. Below is the testimony that I had planned to present. Bob Paolini, the Government Relations Coordinator for the Vermont Bar Association, is able to attend the hearing, and can answer any questions regarding the testimony.

The Vermont Bar Association supports H. 206 in many respects, and very much appreciates the Secretary of State incorporating several provisions that we recommended be included in the current version. We would like the opportunity to testify regarding one aspect of the current draft that we are not able to support, however. That aspect concerns the discipline of attorneys. The current draft permits the assistant judges to discipline attorneys regarding their notary public commissions. It is our position that the disciplining of attorneys, when they are acting within the scope of their profession as attorneys, is within the sole purview of the Vermont Supreme Court. This position is based on specific provisions in the Vermont Constitution.

Section 30 in Chapter II of the Vermont Constitution provides in part: **"The Supreme Court shall have administrative control of all the courts of the state, and disciplinary authority concerning all judicial officers and attorneys at law in the State."** See In Re Morales, 2016 VT 85, ___ Vt. ___, 151 A. 3d 333 (Supreme Court enjoys "plenary authority over the admission of attorneys and the practice of law before the courts of Vermont"); Petition of Harrington, 134 Vt. 549, 552 (1976) ("[I]t is upon this Court that the responsibility for regulation and discipline of the legal profession falls.") Pursuant to its inherent and Constitutional authority to oversee the professional conduct of Vermont attorneys, the Court established the Vermont Professional Responsibility Program. See Administrative Order No. 9. The purpose of the Program is "to provide a comprehensive system of regulation of the legal profession." Objectives of the Program include

regulating the legal profession by resolving ethics complaints against attorneys, and investigating and disciplining attorney misconduct.

The Professional Responsibility Board oversees the Program, and is responsible for adopting procedures to meet its functions. The Board consists of seven members, including three lawyers, three non-lawyers, and a judge. Each member is appointed by the Supreme Court. The Program employs two full-time attorneys and one part-time attorney. Bar Counsel administers the dispute resolution program and responds to inquiries regarding ethics and the practice of law. Bar Counsel also screens all complaints that are filed against attorneys. If Bar Counsel concludes that an investigation is warranted, the complaint is referred to Disciplinary Counsel for investigation and prosecution.

Disciplinary Counsel is not authorized to commence formal disciplinary proceedings on her own. Rather, Disciplinary Counsel's decision to charge an attorney with a violation of the Rules of Professional Conduct is reviewed for probable cause by a hearing panel. If probable cause is found, charges are filed with another hearing panel. The Rules of Civil Procedure and the Rules of Evidence apply once a matter is filed with a hearing panel.

At a hearing, Disciplinary Counsel bears the burden of proving a violation by clear and convincing evidence. The rules require hearing panels to make findings of fact, conclusions of law and, in cases where a violation is found, to impose a sanction against the lawyer's license. Either party can appeal to the Vermont Supreme Court and, even if no appeal is taken, the Court can order review of a hearing panel's decision on its own motion. While a hearing panel's sanction determination is afforded deference, the Court renders the ultimate decision in attorney discipline cases. In Re Fink, 2011 VT 42 ¶16. Attached is a document that describes the Professional Responsibility Program in more detail.

It is our position that permitting assistant judges to discipline attorneys for notary public commission violations would be contrary to Section 30 in Chapter II of the Vermont Constitution and, therefore, would violate the separation-of-powers provision in Chapter 2, Section 5 of the Vermont Constitution. It is also our position that the Professional Responsibility Program is well-suited to address any notary public commission violations that may be asserted against attorneys. (If an attorney is accused of a notary public commission violation when not acting as an attorney, it is our assumption that he or she would be subject to the usual disciplinary provisions in H.206.)

Please let us know if you have any questions regarding our position that there should be a provision in H. 206 that would refer any disciplinary actions against attorneys acting within the scope of their profession as attorneys to the Professional Responsibility Program. Thank you and the House Committee on Government Operations Members for your consideration.

Yours truly,



Therese M. Corsones, Esq.
Executive Director