

SUPREME COURT RULE 203 – Professional responsibility and discipline

(a) Professional ethics

Supreme Court Rule 211, establishing the Virgin Islands Rules of Professional Conduct, promulgated by order of this Court dated December 23, 2013, and effective February 1, 2014, and, to the extent applicable, the accompanying or related ABA INTERPRETIVE GUIDELINES, COMMENTS, and COMMITTEE COMMENTS, shall govern the conduct of members of the Bar of this Territory, including attorneys admitted *pro hac vice*. Notwithstanding this rule, any conduct which occurred prior to the February 1, 2014, effective date shall continue to be analyzed under the ethical rules that were in effect at the time of the conduct in question.

(b) Board on Professional Responsibility and Preliminary Review Committee.

(1) *Appointment and term of office.* There shall be a Board on Professional Responsibility (“Board”) consisting of such persons as the Court shall from time to time designate by order of appointment, provided however, that to the extent possible one-third of the members of the Board shall be public members who are not members of the Virgin Islands Bar and the remainder shall be members of the Virgin Islands Bar in good standing. Of the members who are members of the Virgin Islands Bar, each of the judicial districts shall be represented on the Board. Despite the goal of including public members on the Board, until public members are appointed, the Board may consist of all attorney members. The Court shall from time to time select a Chair, a Vice Chair and other such officers as it deems necessary and appropriate. Each member of the Board shall be appointed for a term of three years except that the Court may appoint for shorter terms so as to stagger the terminations. No member shall be appointed for more than two consecutive terms.

The members of the former Ethics and Grievance Committee of the Virgin Islands Bar Association, as heretofore constituted upon the effective date of these Rules, shall constitute the Board on Professional Responsibility hereby provided for and shall severally hold office until the expiration of their respective terms and until their successors shall be appointed and, with the approval of the Court, until the conclusion of any matter commenced before the member prior to the expiration of such term.

(2) *Preliminary Review Committee.* There shall be a Preliminary Review Committee consisting of such persons as the Court shall from time to time separately designate by order of appointment, provided however, that to the extent possible, at least one-third of the members of the Committee shall be public members who are not members of the Virgin Islands Bar and the remainder shall be members of the Virgin Islands Bar in good standing. Preliminary Review Committee members shall be separately appointed by the Court for terms of three years, and each shall be subject to all obligations of the members of the Board concerning the confidentiality of the Board’s records and proceedings. They shall sit in panels of three, consisting where possible of two members of the Bar and one public member who is not, and never has been, a member of the Virgin Islands Bar or the Bar of any other jurisdiction. Despite the goal of including public members on the panels, panels of the Preliminary Review Committee may consist of all attorney members. No Preliminary Review Committee member shall serve for more than six years. Vacancies on the Preliminary Review Committee shall be filled by the Court.

(3) *Rules and hearings.* The Court shall adopt rules, which may be proposed by the Board, for the conduct of hearings and of the Board's other business. Subject to the approval of the Court, the Board shall have power to employ stenographic and other assistance as may from time to time be necessary and proper. The rules of the Board shall have the same force and effect as the rules of this Court.

(4) *Assessments to fund operating expenses.* [Reserved].

(c) Office of Disciplinary Counsel.

(1) *Appointment.* There shall be an Office of Disciplinary Counsel, consisting of a chief disciplinary counsel, as provided by Supreme Court Rule 209.4 and, as needed, one or more deputy disciplinary counsel, and as necessary or appropriate, one or more special disciplinary counsel. Each such disciplinary counsel shall be an attorney admitted to practice in this Territory and shall be appointed by the Court. Each such disciplinary counsel shall serve at the pleasure of the Court.

(2) *Chief Disciplinary Counsel.* The attorney appointed by the Court pursuant to Rule 209.4 as Chief Disciplinary Counsel shall be the full-time director of the Office of Disciplinary Counsel, and in such capacity shall be responsible for the management and administration of the Office. The Chief Disciplinary Counsel shall prepare budgets, reports, and other proposals as necessary or appropriate for the operation of the Office. The Chief Disciplinary Counsel shall be responsible for liaisons with the Court, the Board on Professional Responsibility, the Commission on Judicial Conduct, the Board on the Unauthorized Practice of Law, the Virgin Islands Bar Association, the National Organization of Bar Counsel, and other related agencies. The Chief Disciplinary Counsel shall be responsible for the supervision of all other persons serving the Office. The Chief Disciplinary Counsel shall also have such powers and duties as described in subsection (5) below and other rules adopted by this Court.

(3) *Deputy Disciplinary Counsel.* The attorney or attorneys who may in the future be appointed by the Court as Deputy Disciplinary Counsel shall constitute, with the Chief Disciplinary Counsel, the full-time legal staff of the Office, with such powers and duties as described in subsection (5) below. Deputy Disciplinary Counsel shall also assist the Chief Disciplinary Counsel with management or administrative tasks, as necessary or appropriate, under the supervision of the Chief Disciplinary Counsel.

(4) *Special disciplinary counsel.* The Court may, as necessary or appropriate, appoint on a part-time basis one or more special disciplinary counsel for specific matters which cannot, for whatever reason, be handled by the Chief Disciplinary Counsel or Deputy Disciplinary Counsel. An attorney acting as special disciplinary counsel shall have the powers and duties as described in subsection (e) below and shall be subject to the supervision of the Court.

(5) *Powers and duties of disciplinary counsel.* Each disciplinary counsel, as described in this rule, shall, in addition to the duties and powers provided by Rule 209.4 and other rules of Court, have the following general powers and duties, to the extent necessary or appropriate to carry out disciplinary counsel's designated role:

(i) Screen and evaluate all information coming to the attention of the Office relating to conduct by a lawyer and/or the practice of law in the Virgin Islands;

(ii) Investigate when necessary or appropriate all information coming to the attention of the Office that might be grounds for discipline or other action regarding the practice of law in the Virgin Islands;

(iii) Make such recommendations as to discipline or other action regarding the practice of law in the Virgin Islands to the Court, the Board on Professional Responsibility, the Preliminary Review Committee, the Board on the Unauthorized Practice of Law, the Commission on Judicial Conduct, and any other related agency;

(iv) Prosecute cases for disciplinary or other action before the Court, the Board on Professional Responsibility, the Commission on Judicial Conduct and the Board on the Unauthorized Practice of Law;

(v) Employ, subject to the budgetary limitations set by the Court, and supervise non-legal staff as necessary or appropriate for the operation of the Office;

(vi) Promptly notify the complainant and the respondent of the disposition of each matter;

(vii) Notify each jurisdiction in which a lawyer is admitted, as well as the National Lawyer Regulatory Data Bank, of any public discipline, reinstatement, transfer to or from disability inactive status, or other official action, as appropriate;

(viii) When a lawyer is convicted of a serious crime (as defined in the Rules of the Board on Professional Responsibility) in this Territory, forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which the lawyer is admitted;

(ix) Maintain permanent records of discipline, disability, and unauthorized practice matters, and compile statistics to aid in the administration of the system; and

(x) Pursuant to directions from the Court, or as necessary or appropriate to the purposes of the regulation of the practice of law in this Territory, undertake any other tasks or investigations as so required.

(6) *Expenses.* The expenses of counsel and staff, administrative costs, and all other expenses relating to disciplinary matters shall be paid in accordance with subsection (g) of this rule. An audit of all funds entrusted to the Board and the Office of Disciplinary Counsel shall be filed with the Court on a yearly basis.

(7) *Funding.* The annual expenses of the Office of Disciplinary Counsel shall be paid out of appropriations to the Supreme Court for that purpose, or from the Judicial Council Imprest Fund, assessments made annually against the members of the Bar of this Court, and from other such sources as are determined by the Court. As a condition of continuing membership in the Bar of this Court, every active member, except judges disqualified from practicing law, shall pay to the Court an annual assessment as determined by the Court in the Annual Registration Statement pursuant to Supreme Court Rule 203(e). When accessed and activated, the assessment is due and payable on February 1 of each year and delinquent if not paid by March 1 of that year.

(d) Board on the Unauthorized Practice of Law.

(1) *Appointment and term of office.* There shall be a Supreme Court Board on the Unauthorized Practice of Law. The Board shall consist of up to nine members appointed by the Court from both districts of the Virgin Islands. Members shall be appointed for three-year terms, and no person may serve more than two full consecutive terms as a member of the Board. At least six members of the Board shall be members of the Virgin Islands Bar and to the maximum extent possible three members of the Board shall be public members who are not members of the Virgin Islands Bar. Vacancies occurring during a term shall be filled for the unexpired term. The Court shall appoint the Chair and other officers of the Board.

In lieu of appointing the separate Board as provided for herein, the Court may authorize the Board on Professional Responsibility established by Rule 203(b) to sit as the Board on the Unauthorized Practice of Law. Where the Board on Professional Responsibility is acting as the Board on the Unauthorized Practice of Law it shall exercise all the powers and duties specified in these rules and when so acting the Vice Chair of the Board on Professional Responsibility shall serve a Chair of the Board on the Unauthorized Practice of Law and the Chair of the Board on Professional Responsibility shall serve as Vice Chair of the Board on the Unauthorized Practice of Law. When acting as the Board on the Unauthorized Practice of Law, the Board on Professional Responsibility shall follow the procedure set forth in Rule 212, as supplemented by any Internal Operating Procedures or other rules adopted by the Board and approved by this Court.

(2) *Duties.* It shall be the duty of the Board to administer this Rule, to investigate matters *sua sponte*, or referred to it from any source, respecting issues of the unauthorized practice of law.

(3) *Powers.* The Board shall have the power to:

(i) Adopt rules. Subject to the approval of the Court to adopt rules of procedure for the conduct of its duties, and to adopt general rules, in furtherance of and supplemental to the Rules of this Court, relating to the unauthorized practice of law. Approved Rules of the Board shall have the same force and effect as Rules of this Court;

(ii) Issue Subpoena. In connection with the performance of its duties, to take testimony under oath, and to compel the attendance of witnesses and the production of documents by the filing of a praecipe for a subpoena with the Clerk of the Supreme Court, service of such subpoena to be made by the Marshal of Court;

(iii) Employ Stenographic assistance. To employ such stenographic or other assistance as may from time to time be necessary or proper;

(iv) Conduct Investigations and hearings. To conduct such investigations and hearings as may be necessary respecting any questions of the unauthorized practice of law, to make findings of fact and conclusions of law regarding the same, to make recommendations to the Court as to the disposition of individual matters, and to file its report of such findings with the Court in a timely manner;

(v) Make Assessment of costs. To assess and require the payment of the Board's reasonable costs and expenses by any person or organization found by the Court to be engaging in the unauthorized practice of law, or attendant to any investigation or hearing which results in a cessation of the unauthorized practice of law or an Order of this Court directing the same;

(vi) Initiate Enforcement Proceedings. Pursuant to this Court's inherent and exclusive jurisdiction over all matters respecting the practice of law in the Virgin Islands, to approve after investigation the initiation of enforcement proceedings in this Court to enforce any order of the Court directing a person or organization to cease and desist from the unauthorized practice of law, to conduct such hearings as are directed by the Court for such purpose, to make findings of fact and conclusions of law regarding the same, to make recommendations to the Court as to the disposition of such matters, and to file its report of such findings with the Court in a timely manner.

(4) *All presentations by Office of Disciplinary Counsel.* In all investigations and hearings, the Office of Disciplinary Counsel shall be responsible for conducting such investigations and presenting the matters to the Board pursuant to paragraph (c) above.

(5) *Court review of actions by the Board.* Findings by the Board related to disputed issues of fact and credibility shall not be reversed by the Court so long as they are supported by substantial evidence. The Board's findings related to legal issues and its recommended disposition in individual matters shall be reviewed by the Court on a *de novo* basis.

(6) *Powers of Attorney General and Virgin Islands Bar Association not affected.* Establishment of the Board on Unauthorized Practice of Law shall not affect the authority of the Attorney General of the Virgin Islands or the Virgin Islands Bar Association to initiate an action to immediately enjoin the unauthorized practice of law pursuant to section 443 of title 4 of the Virgin Islands Code. The filing of an action pursuant to section 443 shall not automatically stay any current or future proceedings by the Board with respect to the respondent.

(e) Registration. Beginning in 2015 and every year thereafter, all active members of the Bar, whether regularly or specially admitted or admitted only on a *pro hac vice* basis, and whether or not in good standing, shall pay a \$50.00 annual assessment fee and file an Annual Registration Statement with the Office of Disciplinary Counsel no later than February 1, and during each year thereafter, for as long as the attorney remains duly admitted to the Virgin Islands Bar. The Annual Registration Statement shall be on a form provided by the Chief Disciplinary Counsel and approved by the Court, and shall, at a minimum, contain the following information:

- (1) name of attorney and, if different, name when admitted to the bar;
- (2) home and business addresses;
- (3) home and business telephone number; and
- (4) personal and business e-mail addresses;

Notwithstanding this Rule 203(e), an attorney may file an untimely Annual Registration Statement between February 2 and March 1, provided that the attorney, in addition to the \$50.00 annual assessment, pays a \$150.00 late filing fee. Failure by any attorney to comply with the

provisions of this section shall authorize the Office of Disciplinary Counsel, on or after March 2, to seek an attorney's automatic suspension by filing of a Notice of Non-Compliance with the Court. An attorney suspended pursuant to this Rule 203(e) may not be reinstated until and unless he or she has filed, and the Court granted, a petition for reinstatement evincing that the attorney has duly registered, paid the \$50.00 annual assessment and \$150.00 late filing fee, and also paid a \$200.00 delinquency fee. All fees assessed under this Rule 203(e) shall fund the operations of the Office of Disciplinary Counsel, the Board on Professional Responsibility, and the Board on Unauthorized Practice of Law.

(f) International Regulatory Information Exchange.

(1) *Information Exchange.* Upon the imposition of discipline against a Virgin Islands lawyer, or a lawyer not admitted in the Virgin Islands who has engaged in the unauthorized practice of law in the Virgin Islands, the Office of Disciplinary Counsel shall provide the following information to its regulatory counterpart in any United States or foreign jurisdictions in which it knows the disciplined attorney is licensed, admitted, or otherwise authorized to practice:

- a. The lawyer's residence and business address, telephone number(s), and e-mail address(es);
- b. Dates of licensure/admission, if applicable, in the Virgin Islands, and a statement as to whether the lawyer is in good standing;
- c. The details regarding the disciplinary proceedings leading to the imposition of discipline against the lawyer, such as the substance of the allegations of misconduct; the date the proceedings were initiated; the date upon which the proceedings were concluded; the caption of the proceedings; any findings made; and the discipline imposed or actions taken in connection with those proceedings; and
- d. A description of the disciplinary process in the Virgin Islands or the location where such information can be found, as well as any further information that the Office of Disciplinary Counsel deems appropriate

As used in this Rule, "discipline" refers to any sanction imposed by the Supreme Court of the Virgin Islands, the Board on Professional Responsibility, the Board on the Unauthorized Practice of Law, or the Commission on Judicial Conduct against a lawyer. Discipline may include, but is not limited to, disbarment, resignation with charges pending or in lieu of discipline, suspension, transfer to disability inactive status, censure, reprimand, admonition, probation, restitution, assessment of costs, or any restriction imposed on the right to practice law for a period of time.

(2) *Confidentiality.* Information exchanged between the Office of Disciplinary Counsel and the regulatory authority of another jurisdiction should be for the purpose of enhancing the protection of clients and the public. Disclosure and use of such information is subject to applicable rules and other law.

- (3) *Notice to Lawyer.* The Office of Disciplinary Counsel, after sending information about a lawyer to a regulatory authority should, if it has the lawyer's contact information, notify the lawyer of its actions.
- (4) *Receipt of Information From Other Jurisdiction.* The Office of Disciplinary Counsel, upon receiving information from the regulatory authority of another jurisdiction, shall acknowledge receipt of the information, and may provide the sending regulatory authority with any additional information it considers relevant. The Office of Disciplinary Counsel should notify the sending regulatory authority of any responsive action it takes, such as the institution of reciprocal discipline proceedings.