

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**IN RE:** ) **PROMULGATION No. 2014-006**  
 )  
**AMENDMENTS TO SUPREME COURT** )  
**RULES 203, 207, AND ADOPTION OF** )  
**SUPREME COURT RULE 212.** )  
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**ORDER OF THE COURT**

This Court, pursuant to the authority granted to it by section 21(c) of the Revised Organic Act of 1954, as amended, and title 4, sections 32(e), 32(f)(2), and 34(a) of the Virgin Islands Code, as well as its inherent authority, hereby proposes the following amendments to the Rules Governing the Virgin Islands Bar. Accordingly, it is hereby

**ORDERED** that Supreme Court Rules 203 and 207 are **HEREBY AMENDED** by striking all existing language in their entirety and inserting in their place the new language designated as Supreme Court Rules 203 and 207 in the attached “Exhibit 1”. It is further

An application to voluntarily resign from the Bar shall be electronically filed with the court, and be accompanied by a fee of \$150.00, of which \$50.00 shall be retained by the clerk as a filing fee and the remaining \$100.00 remitted to Virgin Islands Bar Association to defray its costs in administering this Rule. Each application for transfer to inactive status shall be accompanied by a fee of \$150.00, of which \$50.00 shall be retained by the clerk as a filing fee and the remaining \$100.00 remitted to Virgin Islands Bar Association to defray its costs in administering this Rule. Applicants shall submit one check or money order payable to the Clerk of the Supreme Court, as well as proof that the remaining \$100.00 had been paid directly to the Virgin Islands Bar Association.

It is further

**ORDERED** that the language designated as Supreme Court Rule 212 in the attached “Exhibit 1” is **HEREBY ADOPTED** as the new Supreme Court Rule 212. It is further

**ORDERED** that all other Rules of the Supreme Court are **HEREBY AMENDED** to strike all references to the Ethics & Grievance Committee of the Virgin Islands Bar Association

outside of Supreme Court Rules 203 and 207 and replace it with the phrase “Board on Professional Responsibility”. It is further

**ORDERED** that, pursuant to Supreme Court Rule 37, the public as well as members of the local Bench and bar **MAY SUBMIT WRITTEN COMMENTS** on these proposed amendments to the Clerk of the Court within thirty (30) days of entry of this order. It is further

**ORDERED** that the proposed amendments **SHALL TAKE EFFECT** on January 1, 2015, and **SHALL REMAIN IN EFFECT** unless modified as a result of comments from the public and the local Bench and bar. It is further

**ORDERED** that copies of this order be directed to the appropriate parties.

**SO ORDERED** this 4<sup>th</sup> day of December, 2014.

/s/ Ive Arlington Swan  
**IVE ARLINGTON SWAN**  
Associate Justice

/s/ Maria M. Cabret  
**MARIA M. CABRET**  
Associate Justice

/s/ Rhys S. Hodge  
**RHYS S. HODGE**  
Chief Justice

**ATTEST:**  
**VERONICA J. HANDY, ESQ.**  
Clerk of the Court

# **EXHIBIT 1**

## **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.

## SUPREME COURT RULE 207

### THE VIRGIN ISLANDS RULES FOR ATTORNEY DISCIPLINARY ENFORCEMENT

#### PART I. STRUCTURE AND SCOPE.

##### **Rule 207.1. Virgin Islands Supreme Court.**

(a) *Inherent power and authority.* -- Pursuant to the Court's inherent and statutory power and authority over the regulation of the legal profession in the Virgin Islands, the Court shall maintain appropriate standards of professional conduct for all lawyers subject to its jurisdiction, dispose of individual cases of lawyer discipline and disability, and administer the lawyer disciplinary system.

(b) *Appointment of members of disciplinary agencies.* -- Pursuant to Supreme Court Rules 203(b) and 203(c), the Court shall appoint the members of the Board on Professional Responsibility ("Board"), the Preliminary Review Committee ("PRC"), and the Office of Disciplinary Counsel ("ODC"), who shall function with such powers and duties as set forth by the Court.

(c) *Administration of disciplinary system.* -- The Board Chair shall be appointed by the Virgin Islands Supreme Court. To maintain the efficient operation and regulation of the disciplinary system, the Board Chair shall oversee implementation and coordination of procedures for the processing and disposition of disciplinary matters, including, without limitation, the assignment of individual panels of the Board and the PRC, the scheduling of Board hearings and PRC meetings, and the filing, docketing, and maintenance of original pleadings and other original papers constituting the official record in individual disciplinary cases. The Board Chair shall also have such powers and duties with respect to the administration of the disciplinary system as are authorized by the Court.

##### **Rule 207.2. Board on Professional Responsibility.**

(a) *Composition, powers, and duties.* -- The composition of the Board shall be as set forth in Supreme Court Rule 203(b). Subject to the approval of the Court, the Board shall:

(1) Adopt guidelines for the conduct of hearings and other business, not inconsistent with these Rules;

(2) Periodically review the operation of the disciplinary system with the Court, the PRC, and the ODC;

(3) Consider matters and conduct hearings in cases filed within the Board's jurisdiction;

(4) Through its Hearing Panels, make findings of fact, conclusions of law, and recommended dispositions, and file its findings, conclusions, and recommendations with the Court; and

(5) Delegate, in its discretion, to the Chair and Vice Chair the power to act for the Board on administrative and procedural matters.

(b) *Quorum.* -- Except for the administrative duties specified herein for the Board Chair or as the Board may have otherwise delegated powers to the Chair, Vice Chair or Hearing Panels, action by the Board requires the concurrence of a majority of the entire Board. A majority of the whole Board shall constitute a quorum for any meeting of the Board.

(c) *Hearing panels.* -- The Board's power to act with respect to disciplinary or disability matters, including, without limitation, conducting hearings, and making findings, recommendations, reports, and orders, shall be exercised by hearing panels, each of which shall consist of three members of the Board, of whom two shall be lawyers and to the maximum extent possible one shall be a non-lawyer, except as otherwise provided in these Rules. The Hearing Panel Chair shall be a lawyer. Despite the goal of having the participation of non-lawyer public members involved in the disciplinary process, the Board and its Hearing and Review Panels may be properly constituted with lawyer members only. The Board Chair shall designate the members of the Hearing Panel and its chair. Decisions of the Hearing Panel on the merits of discipline or disability matters require the concurrence of at least two votes. The Hearing Panel Chair shall decide scheduling, administrative, procedural, and evidentiary matters. If the Hearing Panel Chair is not available to rule on an administrative, procedural, or evidentiary matter, the parties may address the matter to the remaining lawyer on the Hearing Panel or the Chair or Vice Chair of the Board.

(d) *Disqualification of members.* -- Members shall not take part in any proceeding in which a judge, similarly situated, would be required to abstain pursuant to 4 V.I.C. § 284, Canon 3(C) of the Virgin Islands Code of Judicial Conduct, or any subsequently adopted similar code. The decision to disqualify oneself from a proceeding is a matter within the sound discretion of the individual member. If necessary, the Court may appoint an Acting Chair in any matter in which the Chair or Vice Chair have entered their disqualifications or are otherwise unavailable.

(e) *Appointment of counsel.* -- Upon receipt of satisfactory proof of a respondent's indigence, the Chair or Vice Chair of the Board, or if a panel of the Board has already been assigned, the Hearing Panel Chair, may appoint a lawyer to serve as counsel for the respondent upon such stated and specified terms and subject to such provisions as justice and equity may require. The respondent shall file with the Board an affidavit demonstrating a financial inability to retain counsel. The respondent must, upon request from the Board, also produce financial records (including tax returns) to support an application for the appointment of counsel on the grounds of indigence. The determination of indigence shall be based upon a review of the financial circumstances of the respondent. A request for counsel shall not be considered if respondent fails or refuses to furnish proof of indigence. The appointment of counsel under this provision shall be on terms of payment similar to those applicable to appointments for indigent criminal defendants in the courts of the Virgin Islands.

(f) *Compensation and expenses.* -- Members shall receive no compensation for their services, but may be reimbursed by application to the Board Chair for travel and other expenses incidental to the performance of their duties. Notwithstanding any other provision of law, in recognition of their public service, members shall not be involuntarily appointed to represent an indigent criminal defendant or any other client by any court of the Virgin Islands.

### **Rule 207.3. Preliminary Review Committee.**

(a) *Composition, powers, and duties.* -- The composition of the PRC shall be as set forth in Supreme Court Rule 203(b)(2). The PRC shall review the recommendations of the ODC following its initial investigation. The PRC may request such additional information and investigation, as it deems appropriate.

(b) *Quorum.* -- The PRC shall act through panels, each of which shall consist of at least two lawyer members and, to the maximum extent possible, one non-lawyer member. Two members shall constitute a panel quorum, provided that to the maximum extent possible, one member is a non-lawyer. A panel may act only with the concurrence of at least two of its members.

(c) *Record.* -- Each panel of the PRC shall prepare for filing with the Board Chair a disposition sheet recording the actions taken by the panel.

(d) *Appointment and scheduling.* -- Panels of the PRC shall be appointed by the Board Chair, and shall meet in accordance with schedules established by the Board Chair.

(e) *Disqualification of PRC members.* -- Members of the PRC shall not take part in any proceeding in which a judge, similarly situated, would be required to abstain pursuant to 4 V.I.C. § 284, Canon 3(C) of the Virgin Islands Code of Judicial Conduct, or any subsequently adopted similar code. The decision to disqualify oneself from a proceeding is a matter within the sound discretion of the individual member.

(f) *Compensation and expenses.* -- Members of the PRC shall receive no compensation for their services, but may be reimbursed by application to the Board Chair for travel and other expenses incidental to the performance of their duties. Notwithstanding any other provision of law, in recognition of their public service, members of the PRC shall not be involuntarily appointed to represent an indigent criminal defendant or any other client by any court of the Virgin Islands.

### **Rule 207.4. Office of Disciplinary counsel.**

All disciplinary counsel shall be appointed and shall have such powers and duties as designated by the Court pursuant to Supreme Court Rule 203(c).

### **Rule 207.5. Jurisdiction.**

(a) *Lawyers admitted to practice.* -- Any lawyer admitted to practice law in this jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to suspension, disbarment, resignation, transfer to inactive status or disability inactive status, or with respect to later acts which amount to the practice of law or constitute a violation of these Rules or of the Virgin Islands Rules of Professional Conduct, any Virgin Islands statutes, or any rules or code the Court adopts later; any lawyer specially admitted by a court of this jurisdiction for a

particular proceeding; and any lawyer not admitted in this jurisdiction who practices law or renders or offers to render any legal services in this jurisdiction, is subject to this Court and the Board's disciplinary jurisdiction.

(b) *Former judges.* -- A former judge who has resumed the status of a lawyer is subject to the disciplinary jurisdiction of the Court under these Rules not only for conduct as a lawyer but also for misconduct that occurred while a judge and that would have been grounds for lawyer discipline.

(c) *Incumbent judges.* -- Any lawyer who is an incumbent judge is subject to the disciplinary jurisdiction of the Court under these Rules with respect to acts committed prior to taking office as a judge.

(d) *Powers not assumed.* -- These Rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.

#### **Rule 207.6. Roster of lawyers and disciplinary records.**

(a) *Roster of lawyers.* -- The Supreme Court shall maintain a roster of lawyers who are subject to the disciplinary jurisdiction of the Court pursuant to Supreme Court Rule 203(e). The Board, the PRC, and the ODC shall have access to information contained in the roster.

(b) *Disciplinary record of lawyer.* -- The disciplinary record of a lawyer subject to the disciplinary jurisdiction of the Court shall be maintained by the ODC and shall consist of the history of disciplinary sanctions which have been imposed upon the lawyer since the time that the lawyer became subject to such jurisdiction, except for disciplinary sanctions which have been removed pursuant to Rule 207.9(b)(4) or expunged pursuant to Rule 207.9(i) herein. The fact that a disciplinary evaluation or investigation has been undertaken pursuant to Rules 207.9(a) or 207.9(b) herein shall not be considered as part of the disciplinary record of a lawyer unless a disciplinary sanction has been imposed in that matter.

#### **Rule 207.7. Grounds for discipline.**

It shall be grounds for disciplinary action for a lawyer to:

(a) Violate any of the Virgin Islands Rules of Professional Conduct or any subsequent rules or code adopted by the Court in lieu thereof, whether or not the violation occurred in the course of a lawyer-client relationship;

(b) Engage in conduct that results in lawyer or judicial discipline in another jurisdiction;

(c) Violate the terms of any conditional diversion or private or public disciplinary or disability disposition;

- (d) Fail to furnish information to or respond to a request for information from the ODC, the PRC, the Board, or the Court, unless a protective order has been obtained from the Board or the Court; or
- (e) Fail to appear before the Court or the Board when required to do so.

**Rule 207.8. Sanctions.**

(a) *Types of sanctions.* -- Misconduct shall be grounds for one or more of the following sanctions:

- (1) Disbarment by the Court;
- (2) Suspension by the Court for an appropriate fixed period of time not in excess of three years;
- (3) Immediate interim suspension by the Court, pending final determination of disciplinary sanctions, or suspension by the Court as a result of “show cause” proceedings under Rule 207.17 or on a *sua sponte* basis;
- (4) Public probation by the Court;
- (5) Public reprimand by the Court;
- (6) Private admonition by the Court or, with the consent of the respondent, by the PRC;
- (7) Private probation by the Court or, with the consent of the respondent, by the PRC;
- (8) Conditional diversion by the Court or, with the consent of the respondent, by the PRC;
- (9) Court-ordered restitution to persons financially injured; and
- (10) Limitation by the Court on the nature and/or extent of the respondent’s future practice.

(b) *Conditions.* -- Written conditions may be attached.

(c) *Mitigating or aggravating circumstances.* -- Mitigating or aggravating circumstances that affect the nature or degree of discipline to be imposed in a matter shall be fully set forth in the Board report recommending to the Court an appropriate sanction.

(d) *Dismissals.* -- A disciplinary matter that results in a dismissal, with or without conditions or cautionary language, shall not be considered as the imposition of a disciplinary sanction.

(e) *Conditional diversion.* -- With the consent of the respondent, the recommendation of the ODC, and the approval of the PRC, conditional diversion may be granted, except if the misconduct is serious, including but not limited to, the misappropriation of funds or property or other misconduct that is serious enough to warrant suspension or disbarment.

**PART II. PROCEDURE**

**Rule 207. 9. General procedures.**

(a) *Screening and evaluation.* -- The ODC shall screen and evaluate all information coming to its attention by complaint or otherwise concerning possible misconduct by or incapacity of a lawyer.

(i) *Screening.* -- If the lawyer is not subject to the disciplinary jurisdiction of the Court, the matter shall be dismissed and referred to the appropriate entity in the jurisdiction in which the lawyer is admitted.

(ii) *Evaluation.* -- If the lawyer is subject to the disciplinary jurisdiction of the Court, the ODC shall conduct an evaluation of the information regarding the lawyer, utilizing the following general procedure:

- (A) If the information regarding the lawyer, on its face, is not sufficient to raise a reasonable inference of misconduct or incapacity, the ODC shall dismiss the matter;
- (B) If the information regarding the lawyer, on its face, is sufficient to raise a reasonable inference of misconduct or incapacity, the ODC shall gather supplemental information;
- (C) If the aggregate of information gathered by the ODC is not sufficient to raise a reasonable inference of misconduct or incapacity, the ODC shall dismiss the matter;
- (D) If the aggregate of information gathered by the ODC is sufficient to raise a reasonable inference of misconduct or incapacity, the ODC shall conduct a formal investigation of the matter.

(b) *Formal investigation and consideration by the PRC.* -- The ODC shall conduct all formal investigations subsequent to the screening and evaluation procedures described in Rule 207.9(a). Following the receipt of sufficient information, the ODC shall dismiss the matter or present the matter to the PRC.

(1) If the matter is to be presented to the PRC, the ODC shall notify the respondent in a timely manner prior to the scheduled meeting of the PRC, and shall inform the respondent that the respondent may submit to the ODC any further written information for consideration by the PRC at such meeting. Neither the respondent nor the respondent's counsel shall have the right to appear at a meeting of the PRC.

(2) The ODC may recommend to the PRC one or more of the following:

- (A) dismissal of the matter with or without conditions;
- (B) the offer of a private probation not to exceed two years with or without conditions;
- (C) the offer of a private admonition with or without conditions;
- (D) a stay;
- (E) the filing of a petition for discipline with the Board; or
- (F) conditional diversion.

(3) The PRC shall review the ODC's recommendation and any written information submitted by the respondent. Disciplinary matters involving the same respondent may be consolidated by the PRC as it deems appropriate. The PRC shall determine whether there is probable cause to conclude that the respondent has engaged in professional misconduct. The PRC may approve, disapprove, or modify the ODC's recommendation, and may request additional information and investigation as it deems appropriate.

(4)(a) Where the PRC determines that an offer of conditional diversion, a private probation or a private admonition is appropriate, the ODC shall send a letter to the respondent or the respondent's counsel, which shall contain the following:

- (A) a description of the facts and legal issues considered by the PRC;
- (B) the PRC's conclusion that there is probable cause that the respondent committed at least one specified disciplinary violation;
- (C) a description of any conditions attached to the offer of conditional diversion, a private probation or a private admonition; and
- (D) a certification of acceptance and imposition of conditional diversion, a private probation or a private admonition.

(b) If the respondent desires to accept the offer of conditional diversion, a private probation or a private admonition, the respondent shall execute the certification attached to the letter and return the certification in a timely manner to the ODC.

(1) In the case of conditional diversion the respondent shall submit a signed conditional diversion agreement and an executed release of information through an approved monitor including but not limited to the Virgin Islands Lawyers Assistance Program to enable the ODC to verify the satisfaction of the conditions of the conditional diversion. The respondent's acceptance of the imposition of conditional diversion or a private admonition under this Rule means that the respondent does not contest the findings of the PRC that there was probable cause that the respondent engaged in professional misconduct, and that such sanction may be treated for all other purposes as if the sanction had otherwise been imposed after the filing of a petition for discipline with the Board.

(2) The respondent's acceptance of the imposition of a private probation under this Rule means that the respondent does not contest the findings of the PRC that there was probable cause that the respondent engaged in professional misconduct; however, if the respondent is not subsequently found by a panel of the PRC to have engaged in professional misconduct within the probationary period, the conditional diversion or probation will be removed from the respondent's formal disciplinary record and cannot be used in any subsequent disciplinary proceeding.

(c) Whenever the PRC concludes that an offer of conditional diversion or a private probation or a private admonition is appropriate, the PRC shall also concurrently approve the filing of a petition for discipline, which may contain additional or different disciplinary violations than those specified in the letter, and which shall be filed with the Board if the respondent does not accept the offer of conditional diversion, a private probation, or a private admonition. If the conditions of the conditional diversion agreement are satisfied, including that the respondent is not subsequently found by a panel of the PRC to have engaged in professional misconduct within the period of conditional diversion, the disciplinary matter shall be removed from the respondent's record. If the conditions of the conditional diversion agreement are not satisfied, the ODC shall file the petition for discipline with the Board.

(c) *Disposition prior to formal charges.* -- The respondent may accept or reject any offer of conditional diversion or a private probation or a private admonition prior to the filing of a

petition for discipline. Upon receipt by the ODC of the signed certificate of acceptance and imposition, and the payment of costs, the matter shall be closed. If the respondent rejects the offer of conditional diversion or a private probation or a private admonition or does not timely respond thereto, the offer shall be deemed rejected, and the ODC shall proceed to file a petition for discipline with the Board containing charges that have been approved by the PRC.

(d) *Formal proceedings.* --

(1) Formal disciplinary proceedings before the Board shall be instituted by the ODC by filing with the Board Chair, and serving upon the respondent, after approval by a panel of the PRC, a petition which is sufficiently clear and specific to inform the respondent of the alleged misconduct. The filing of a petition with the Board Chair commences the official Board record in the matter. No member who served on the PRC of a disciplinary matter shall participate in any manner, in the formal disciplinary proceeding of that matter before the Board.

(2) The respondent shall serve an answer upon the ODC and file the original with the Board Chair within 20 days after service of the petition, unless the time is extended by the Chair or Vice Chair of the Board. In the event the respondent fails to serve an answer within the prescribed time, all of the allegations and charges in the petition shall be deemed admitted, such that the sole remaining issue to be determined by the Board shall be the appropriate disciplinary sanction.

(3) The Board Chair shall serve a notice of hearing upon the ODC and the respondent, identifying the members of the Board assigned to the matter, and the date and place of the hearing. The notice shall be given at least 20 days in advance of the date of the hearing. The notice of hearing shall state that the respondent is entitled to be represented by a lawyer at the respondent's expense, to cross-examine witnesses, and to present evidence.

(4) All hearings before the Board shall be recorded. Following a hearing, briefs, memoranda, and oral argument may be permitted in the discretion of the Board. If the Board initially finds that the respondent has engaged in professional misconduct, the Board shall then make a separate finding as to the appropriate disciplinary sanction. The Board may conduct a separate hearing on sanctions in order to evaluate evidence of possible aggravating and mitigating factors.

(5) The Board shall submit to the Court a final report containing its findings, reasons, and recommendations no later than 60 days after the conclusion of its proceedings. A copy of the report shall be served on the ODC and the respondent. If a matter is held under advisement by the Hearing Panel for more than 60 days, then the chair of the Hearing Panel, either before or immediately upon the expiration of the 60 day period, shall submit to the Court a written request for an extension of time to complete the final report. The written request shall contain the following information:

(A) The Board case number(s);

(B) The date the matter was taken under advisement;

(C) The specific reason for the delay; and

(D) A target date on which the chair of the Hearing Panel reasonably expects the final report to be issued. The Court may grant an extension for completing the final report for good cause shown.

(e) *Review by the Court.* -- Upon the submission by the Board of its report and recommendations to the Court for review, the Clerk of the Court shall notify the ODC and the respondent of their

respective rights to file objections to the Board's report and recommendations within 20 days from the date of service, except for reports filed pursuant to Rule 207.17. The respondent and the ODC may waive the right to file objections. No further briefing will be permitted unless ordered by the Court for good cause.

(f) *Witnesses and evidence.* --

(1) All witnesses shall be sworn in all proceedings. The court reporter or any member of the Board or the ODC may administer oaths and affirmations.

(2) The Rules of Evidence, applicable to the Virgin Islands courts, shall be followed as far as practicable, provided that evidence may be admitted and considered which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs, or as otherwise provided in these Rules.

(3) Where the respondent is or has been a party to or a participant in a proceeding, whether administrative, criminal, civil, or otherwise, the relevant portions of the transcript of the proceedings, exhibits, findings of fact, conclusions of law, opinions, decisions, and judgments, shall be admitted in evidence, if offered, and shall be accorded such weight as the Board shall deem appropriate; provided, however, that evidence of a conviction of the respondent for any crime shall be deemed conclusive as to the fact that such crime was committed, and evidence of the imposition of a disciplinary sanction in a foreign jurisdiction shall be deemed conclusive as to the fact of the disciplinary violation upon which such sanction was predicated. Relevant correspondence among and between the ODC, the respondent, and the complainant shall also be admitted in evidence, if offered, and shall also be accorded such weight as the Board shall deem appropriate. Evidence of conduct or statements made in compromise negotiations prior to a hearing shall not be admitted, unless there is no objection by any party.

(4) Information relating to prior discipline of a respondent shall not normally be divulged until after there is a finding of misconduct in the pending matter, unless the prior discipline is relevant to the current proceedings.

(5) After conviction of a felony or of any other form of criminal conduct demonstrating a significant threat of substantial harm to the public or to the orderly administration of justice, the sole issue to be determined by the Board shall be the discipline to be imposed, if any, provided that a disciplinary proceeding on such basis shall not be brought to a hearing until all appeals from the conviction are concluded, unless the respondent requests that the matter not be deferred.

(g) *Dismissals with warning.* -- When a disciplinary matter is dismissed, whether by the ODC, the PRC, or the Court, the written notice of dismissal that is sent to the respondent, whether in the form of a letter, report, order, or otherwise, may contain cautionary language directed to the respondent, for the purpose of directly informing and educating the respondent as to conduct which, while not violative of a disciplinary rule or worthy of a disciplinary sanction, nevertheless has raised professional concerns.

(h) *Retention of disciplinary files.* -- Files of the ODC, the PRC, and the Board in individual disciplinary matters in which no disciplinary sanction was imposed shall be retained for three years after the date that the matter was resolved, after which time such files may be destroyed; provided, however, that this requirement shall not apply to recordkeeping dockets and other

listings of disciplinary matters, general tabulations of information, or statistical reports or summaries. Files in which a disciplinary sanction has been imposed shall be permanently retained.

(i) *Limited expungement of disciplinary record.* -- A lawyer who has received a single private admonition and has received no other disciplinary sanction for a period of seven years after the imposition of that sanction may request that the sanction be expunged from the lawyer's disciplinary record, for the sole purpose of precluding reference to that sanction in any future disciplinary proceeding. Any such request shall be in writing and shall be directed to the Board Chair, who shall take the appropriate steps in having the sanction expunged from the lawyer's disciplinary record; provided, however, that no request for expungement shall be granted when there is a disciplinary matter relating to the lawyer that is pending at any stage of the proceedings described in these Rules.

#### **Rule 207.10. Immunity.**

All communications to and from the Board, the PRC, or the ODC relating to lawyer misconduct or disability, and all testimony given in related proceedings, shall be absolutely privileged, and no civil suit predicated on those proceedings may be instituted against any complainant, witness, or lawyer. Members of the Board, members of the PRC, and members of the ODC and its agents and staff; Special Disciplinary Counsel and his or her agents and staff; the Board Chair and staff; and receivers and their agents and staff shall be immune from civil suit for any conduct in the discharge of their official duties.

#### **Rule 207.11. Service.**

(a) *Service of petition.* -- Service of the petition upon the respondent or respondent's counsel in any disciplinary or disability proceeding shall be made by personal service by any person authorized by the ODC, or by registered or certified mail at the address last furnished by the respondent pursuant to Supreme Court Rule 203(e).

(b) *Service of other papers.* -- Service of any other papers or notices required by these Rules shall, unless otherwise provided by these Rules, be made in accordance with the Rules of Civil Procedure for the Superior Court of the Virgin Islands including electronic mail.

#### **Rule 207.12. Subpoena power and discovery.**

(a) *Subpoenas.* --

(1) Before the filing of a petition for discipline, the ODC may compel by subpoena the testimony of witnesses (including the respondent) and the production of pertinent books, papers, and documents for purposes of evaluation or investigation.

(2) After the filing of a petition for discipline, the ODC or the respondent may compel by subpoena the testimony of witnesses, or the production of pertinent records, books, papers, and documents, at a deposition or hearing under these Rules. The Clerk of the Supreme Court shall issue such subpoenas as are requested in writing by the respondent.

Upon the written request of either the ODC or the respondent to the Board Chair, the Clerk of the Supreme Court shall issue a commission for the issuance of a subpoena where the evidence sought is beyond jurisdictional limits.

(3) Subpoenas issued by the ODC or by the Clerk of the Supreme Court shall clearly indicate on their face that the subpoenas are issued in connection with a confidential matter under these Rules. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

(b) *Quashing subpoena.* -- Any attack on the validity of a subpoena so issued shall be heard and determined by the Chair or Vice Chair of the Board. All orders by the Chair of the Board relating to attacks on the validity of a subpoena are interlocutory and may not be appealed prior to the Board's submission to the Court of its final report.

(c) *Enforcement of subpoena.* -- The Court may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(d) *Subpoena pursuant to law of another jurisdiction.* -- Whenever a subpoena is sought in the Virgin Islands pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, and where the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the Clerk of the Supreme Court, upon request from the Chair or Vice Chair of the Board, and for good cause, may issue a subpoena as provided in this Rule to compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. Service, enforcement, or challenges to this subpoena shall be as provided in these rules.

(e) *Depositions.* -- The ODC and the respondent may take the deposition of a witness (including the respondent) by subpoena as set forth in Rule 12(a)(2) above. Testimony of a deponent to be presented at a hearing may be taken by deposition or by commission if the witness is not subject to service of subpoena issued by a Virgin Islands tribunal or is unable to attend or testify at a hearing because of age, illness or other compelling reason. A complete record of the testimony so taken shall be made and preserved.

(f) *Witnesses and fees.* -- Subpoena and witness fees and mileage reimbursements shall be the same as those provided for in the Rules of Civil Procedure for the Superior Court of the Virgin Islands.

(g) *Discovery.* -- Disputes concerning the scope and other aspects of the limited discovery afforded under these Rules shall be heard and determined by the Chair or Vice Chair of the Board, unless a Hearing Panel has been assigned to the matter, in which case such disputes shall be heard and determined by the chair of the Hearing Panel. All discovery orders by the Chair or Vice Chair of the Board or the chair of a Hearing Panel are interlocutory and may not be appealed prior to the Board's submission to the Court of its final report. As soon as is practicable after a petition for discipline is filed, the ODC shall provide to the respondent access to any exculpatory evidence.

(h) *Exchange of information.* -- The ODC and the respondent shall exchange names of witnesses

and copies of documents to be used by each side in its case in chief ten business days prior to any hearing, and may supplement those lists thereafter with the approval of the opposing party or the chair of the Hearing Panel. Recorded statements, if any, of all witnesses so designated shall be exchanged at the same time. The exchange may take place electronically or by first-class mail to the respondent's last known address. The Hearing Panel may exclude any evidence offered by a party who fails to comply with this Rule.

(i) *Duty to respond.* -- Nothing in these Rules shall be deemed to limit the respondent's obligation to respond at any point in the disciplinary process to a lawful demand for information from the ODC under the Virgin Islands Rules of Professional Conduct or any subsequent rules or code adopted by the Court in lieu thereof.

### **Rule 207.13. Access to disciplinary information.**

(a) *Confidentiality.* -- Prior to the Hearing Panel's submission to the Court of its final report, and except as otherwise described in these rules, disciplinary and disability proceedings and the official record in such matters are confidential. If the Hearing Panel's report recommends that the matter be dismissed, that a lawyer not be transferred to disability inactive status, or that a private sanction be imposed, any further proceedings by the Court and the official record in the matter are confidential unless and until otherwise ordered by the Court.

(b) *Protective orders.* -- Upon proper application with good cause shown, or on a *sua sponte* basis, the Chair or Vice Chair of the Board, the Chair of the Hearing Panel, or the Court may issue appropriate protective orders with respect to any proceedings, reports, documents, or other information which may otherwise be made public, for the purpose of preserving confidentiality.

(c) *Complainant's right to appear.* -- The complainant in a disciplinary matter, if any, shall have the right to appear at any Board hearing on sanctions or any Court hearing on a petition for interim suspension relating to the matter for the sole purpose of making a statement on the record regarding the matter.

(d) *Requests for confidential information.* -- A request for the release of confidential information as described under these Rules shall be made by written application, with good cause shown, directed to the Board Chair. Such application shall be considered and determined by the Court.

(e) *Release of confidential information.* -- The work product of the ODC may not be disclosed or released except pursuant to Rules 203(f) and 207.13(f). The pendency, subject matter, or status of a disciplinary matter may be disclosed or released if:

- (1) the respondent has waived confidentiality in writing;
- (2) the proceeding is based upon allegations which include the conviction of any crime;
- (3) the respondent has been placed upon interim suspension or disability inactive status;
- (4) such disclosure or release is necessary to obtain the assistance of another person, agency, or organization, provided that such person, agency, or organization agrees to maintain the confidentiality mandated by these Rules;

(5) the proceedings are based upon allegations which have otherwise been made public;  
or

(6) with the approval of the Court, such disclosure or release is necessary in order to correct false or misleading public statements with respect to any otherwise confidential proceeding or information, or is necessary to prevent public confidence in the disciplinary system from being undermined.

(f) *Cooperation with criminal justice authorities.* -- Any evidence or information obtained through the disciplinary process indicating criminal conduct by a lawyer, including documents, transcripts, and work product, or any selected portions thereof, may be disclosed or turned over to the appropriate criminal justice authorities for their independent review and investigation.

(g) *Duty of participants.* -- All participants in a proceeding under these Rules shall conduct themselves so as to maintain the confidentiality mandated by these Rules.

#### **Rule 207.14. Dissemination of disciplinary information.**

The ODC shall publicly disseminate all information relating to disciplinary matters and proceedings as is consistent with these Rules. In particular, the ODC shall transmit notices and information regarding the imposition of all public discipline, transfers to or from disability inactive status, or reinstatements to:

(a) the disciplinary enforcement agency in any jurisdiction in which the respondent is admitted,

(b) the chief judicial officers of all courts of this Territory,

(c) the chief judicial officers of all federal courts located in this Territory, the United States Court of Appeals for the Third Circuit, and the United States Supreme Court,

(d) any national data bank maintained for the purposes of reporting disciplinary action relating to lawyers, and

(e) the news media.

#### **Rule 207.15. Additional rules of procedure.**

(a) *Nature of proceedings.* -- Disciplinary proceedings are neither civil nor criminal, but are *sui generis*.

(b) *Proceedings governed by Rules of Civil Procedure.* -- Except as otherwise provided in these Rules, the Rules of Civil Procedure applicable to the Superior Court of the Virgin Islands shall apply to the extent practicable in disciplinary and disability matters, provided that discovery procedures shall not be expanded beyond those provided in Rule 12 hereof, and there shall be no proceedings for summary judgment.

(c) *Standard of proof.* -- Formal charges of misconduct, petitions for reinstatement, and petitions for transfer to and from disability inactive status shall be established by clear and convincing evidence.

(d) *Burden of proof.* -- The burden of proof in proceedings seeking discipline or transfer to disability inactive status is on the ODC. The burden of proof in proceedings seeking reinstatement or transfer from disability inactive status is on the respondent.

(e) *Prehearing conferences.* -- Upon request of a party or at the discretion of the chair of the Hearing Panel, a prehearing conference may be held for the purpose of dealing with administrative, evidentiary, or procedural issues, obtaining admissions, identifying the issues to be presented at the hearing, or for other reasons. The conference shall be held before the chair of the Hearing Panel, and may be recorded in the chair's discretion.

(f) *Availability of hearing transcript.* -- The transcript and official record of any hearing shall be made available to the respondent at the respondent's expense.

(g) *Related pending litigation.* -- Where there are civil, criminal, or other disciplinary proceedings pending with respect to the respondent in a disciplinary matter, the PRC or the Board may stay the matter as appropriate and necessary, with notice to the Court of its reasons for taking such action.

(h) *Position of complainant.* -- Neither unwillingness nor neglect of the complainant to cooperate with the disciplinary process, nor settlement, nor compromise between the complainant and the respondent, nor restitution by the respondent, shall in itself justify abatement of the processing of any disciplinary matter. The complainant in a disciplinary matter shall not be considered as a party and shall have no standing to appeal the disposition of such matter.

(i) *Effect of time limitations.* -- Except as otherwise provided in these Rules, time provisions are directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any disciplinary or disability investigation or proceeding.

(j) *Complaints against disciplinary agency members.* -- Disciplinary matters involving any member of the ODC, Special Disciplinary Counsel, the PRC, or the Board shall be submitted directly to the Court for the assignment by the Court of a special disciplinary counsel pursuant to Supreme Court Rule 203(c) for the evaluation, investigation, and possible prosecution of the matter.

(k) *ODC investigations of serious misconduct.* -- Where the misconduct under investigation by the ODC is deemed to be serious and potentially criminal in nature, and where other means of investigation may not be effective or practical, the ODC shall be authorized, with the approval of the Court for good cause shown, to use all investigatory means and methods as are commonly used by criminal prosecuting agencies.

#### **Rule 207.16. Interim suspension.**

(a) *Transmittal of evidence.* -- Upon receipt of sufficient evidence demonstrating that a lawyer subject to the disciplinary jurisdiction of the Court (i) has been charged with or convicted of a felony, (ii) has been charged with or convicted of other criminal conduct which demonstrates

that the lawyer poses a significant threat of substantial harm to the public or to the orderly administration of justice, or (iii) has otherwise engaged in professional misconduct which demonstrates that the lawyer poses a significant threat of substantial harm to the public or to the orderly administration of justice, the ODC shall transmit such evidence to the Court together with a petition and proposed order for the lawyer's immediate interim suspension pending the disposition of disciplinary proceedings as otherwise described in these Rules. The ODC shall also take all appropriate steps to process the matter through the disciplinary system as otherwise described in these Rules. The ODC's filing of a petition for interim suspension, and all subsequent proceedings, shall be confidential unless otherwise ordered by the Court.

(b) *Certificate of conviction conclusive.* -- A certified copy of a judgment of conviction of an attorney for any crime shall be prima facie evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

(c) *Petition for interim suspension.* -- The ODC's petition for interim suspension shall set forth a plain and concise statement of the grounds, shall be verified by the member of the ODC signing the petition, or otherwise supported by an affidavit, and shall be filed with the Court and served upon the respondent.

(d) *Hearing before the Court.* -- The Court shall promptly schedule a hearing on the petition for interim suspension, with notice to the ODC and the respondent. The notice of hearing shall state that the respondent is entitled to be represented by a lawyer at the respondent's expense, to cross-examine witnesses, and to present evidence. At the request of the respondent, the Clerk of the Court shall compel by subpoena for any such hearing the attendance of witnesses and the production of pertinent records, books, papers, and documents. The ODC may exercise its subpoena powers as otherwise described in these Rules for purposes of the proceedings described in this Rule.

(e) *Standard and burden of proof.* -- The standard of proof in proceedings under this Rule shall be that the misconduct or charges are supported by clear and convincing evidence. The burden of proof in such proceedings shall be upon the ODC.

(f) *Disposition by the Court.* -- Following the hearing, the Court may enter an order suspending the respondent from the practice of law on an interim basis pending the disposition of disciplinary proceedings as otherwise described in these Rules, or may enter such orders as it deems necessary to protect the interests of the public and the orderly administration of justice, including but not limited to orders restricting the respondent's right to practice pending the ultimate disposition of disciplinary proceedings.

(g) *Publicity.* -- If the Court issues an order that suspends or otherwise restricts the respondent's authority to practice law, such order shall be public, and shall be disseminated as otherwise described in these Rules, unless otherwise ordered by the Court. If the Court issues an order which dismisses the petition, such order shall remain confidential unless otherwise ordered by the Court.

(h) *Appointment of receiver.* -- In the event that the Supreme Court enters an order suspending the respondent from the practice of law on an interim basis, the Supreme Court may direct that proceedings be instituted by the ODC for the appointment of a receiver of the respondent's law practice by the Superior Court of the Virgin Islands pursuant to Rule 207.24.

(i) *Cooperation and compliance by respondent.* -- Any lawyer suspended under this Rule shall comply with the notice and other requirements for suspensions set forth in these Rules, and with any other conditions set forth in the Court's disposition of the matter. A lawyer not suspended by the Court under this Rule but whose law practice or conduct is restricted by the Court shall take all appropriate steps to comply fully with the Court's orders.

(j) *Reinstatement.* -- Reinstatement upon dismissal of charges or reversal of conviction, demonstrates to the Court that the criminal charges have been dismissed or the underlying conviction has been reversed or vacated, the order for interim suspension may be vacated by the Court upon motion, and the lawyer reinstated to practice. The vacating of the interim suspension shall not automatically terminate any other disciplinary proceedings currently pending involving the lawyer with the ODC, the PRC, or the Board, the disposition of which shall be determined on the basis of the available evidence.

(k) *Duty to report.* -- Any lawyer subject to the disciplinary jurisdiction of the Court who is charged with or convicted of a felony, whether within or outside of this Territory, shall within 10 days of such charge or conviction report the matter to the ODC.

#### **Rule 207.17. Conditional admissions and discipline by consent.**

(a) *Conditional admission and proposed sanction.* -- A lawyer against whom a petition for discipline has been filed may offer to the Board a conditional admission to the petition or to a particular count or counts thereof in exchange for a specific disciplinary sanction, provided that the ODC agrees in writing to the conditional admission and proposed disciplinary *sanction*.

(b) *Affidavit of consent.* -- A conditional admission offered to the Board shall be accompanied by the respondent's proposed affidavit setting forth the following:

- (1) A description of the specific factual allegations and the particular count or counts of the petition for discipline which are being conditionally admitted, and
- (2) A statement that the respondent desires to consent to the imposition of the proposed sanction, that such consent is freely and voluntarily given and is not the subject of coercion or duress, and that the respondent is fully aware of the implications of submitting such consent.

(c) *Consideration by the Board.* -- Upon the offer to the Board of a conditional admission as described herein, the Board shall hold a hearing on the matter to determine the respondent's reasons for the proffered conditional admission and the agreement by the ODC. If the Board is satisfied that the conditional admission and the proposed sanction are appropriate, the Board shall issue a report with recommendations to the Court as described in Rule 207.9(d). If the

Board is not satisfied with either the conditional admission or the proposed sanction, the Board shall inform the ODC and the respondent of its determination and reasons.

(d) *Rights of respondent.* -- If the Board rejects a proposed conditional admission, or if after the Board approves a proposed conditional admission, it is rejected by the Court upon review under Rule 207.9(e), the admissions made in the prior proceedings shall not be used against the respondent in the pending or any subsequently filed proceedings.

(e) *Disbarment by consent.* -- Where the respondent has admitted engaging in misconduct that is serious enough to warrant disbarment as a final disposition, the respondent and the ODC may submit at any stage of the disciplinary proceedings described in these Rules a written stipulation of disbarment by consent directly to the Court requesting that the Court enter an order of disbarment as soon as possible. Any such stipulation shall contain a detailed description of the misconduct in which the respondent admittedly engaged, an analysis of legal precedent for the imposition of such a sanction, a signed affidavit of consent from the respondent in the form described in subsection (b) of this Rule, and any other supplementary materials which may be appropriate for the Court to consider. The Court may thereupon enter an order of disbarment as it deems appropriate, or may remand the matter in its discretion to the ODC or the Board for further proceedings under these Rules.

#### **Rule 207.18. Reciprocal discipline and reciprocal disability inactive status.**

(a) *Duty of disciplinary counsel to obtain order of discipline or disability inactive status from other jurisdiction.* -- Upon being disciplined or transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in the Virgin Islands shall promptly inform ODC of the discipline or transfer. Upon notification from any source that a lawyer within the Court's jurisdiction has been disciplined or transferred to disability inactive status in another jurisdiction, ODC shall obtain a certified copy of the disciplinary order and file it with the Board and with the Court.

(b) *Notice served upon respondent.* -- Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in the Virgin Islands has been disciplined or transferred to disability inactive status in another jurisdiction, the Chair or Vice Chair of the Board shall forthwith issue a notice directed to the lawyer or to counsel containing:

- (1) a copy of the order from the other jurisdiction; and
- (2) an order directing that the lawyer or lawyer's counsel inform the Board and the Court, within 30 days from service of the notice, of any claim by the lawyer or lawyer's counsel predicated upon the grounds set forth in paragraph (d), that the imposition of the identical discipline or disability inactive status in this Territory would be unwarranted and the reasons therefor.

(c) *Effect of stay of discipline or transfer in other jurisdiction.*-- In the event the discipline imposed or transfer in the other jurisdiction has been stayed there, any reciprocal discipline imposed or transfer in this Territory may be deferred until the stay expires.

(d) *Discipline to be imposed or transfer to disability inactive status.*-- Upon the expiration of 30 days from the service of the notice pursuant to the provisions of paragraph (b), the Board shall recommend to the Court that it shall impose the identical discipline or disability inactive status unless counsel or the lawyer demonstrates, or the Court finds it clear upon the face of the record on which the discipline is predicated it clearly appears that:

- (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 infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject;
- (3) the imposition of the same discipline by the Court would result in grave injustice; or
- (4) the misconduct established warrants substantially different discipline or no discipline in this Territory; or
- (5) the reason for the original transfer to disability inactive status no longer exists.

(d) If the Court determines that any of those elements exists, the Court shall enter such other order as it deems appropriate.

(e) *Conclusiveness of adjudication in other jurisdiction.* -- In all other aspects, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Territory.

**Rule 207.19. Disability proceedings in which a lawyer is alleged or declared to be incompetent or incapacitated.**

(a) *Involuntary commitment or adjudication of incompetency.* -- If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the Court, upon proper proof of the fact, may enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until further order of the Court. A copy of the order shall be served upon the lawyer, the lawyer's guardian, and/or the director of the institution to which the lawyer has been committed in the manner the Court may direct.

(b) *Inability to properly defend.* -- If a respondent contends in the course of a disciplinary proceeding that the respondent is unable to assist in the respondent's defense due to mental or physical incapacity, the Court shall, upon application, promptly transfer the lawyer to disability inactive status pending determination of the incapacity.

If the Court determines the claim of inability to defend is valid, the disciplinary proceeding shall be stayed and the respondent retained on disability inactive status until the Court subsequently considers a petition for transfer of the respondent to active status filed by the respondent or the ODC. If the Court determines that this petition for transfer shall be granted, the Court shall also determine the disposition of the interrupted disciplinary proceedings.

If the Court determines the claim of incapacity to defend to be invalid, the disciplinary proceeding shall resume and the respondent shall promptly be placed on interim suspension

pending final disposition of the matter, unless the respondent can demonstrate to the Court by clear and convincing evidence that interim suspension is not appropriate.

(c) *Proceedings to determine incapacity.* -- Information relating to a lawyer's physical or mental condition which adversely affects the lawyer's ability to practice law shall be investigated by the ODC. If there are reasonable grounds to believe the interests of respondent's clients or the public are endangered, such information shall be the subject of formal proceedings to determine whether the respondent shall be transferred to disability inactive status. The procedures and hearings shall be conducted in the same manner as disciplinary proceedings. The Board 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 at the respondent's expense. If, after reviewing the recommendation of the Board and 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 respondent to disability inactive status for an indefinite period and until further order of the Court. Any pending disciplinary proceedings against the respondent shall be held in abeyance.

The Board shall provide for such notice to the respondent of proceedings in the matter as it deems proper and advisable. If the respondent is not represented by counsel, the Court shall appoint counsel for the respondent on the same terms of payment as currently applicable to indigent criminal defendants in the courts of the Virgin Islands.

(d) *Public notice of transfer to disability inactive status.* -- The ODC shall publicize any transfer to disability inactive status in the same manner as for the final imposition of public discipline.

(e) *Reinstatement from disability inactive status.* -- No respondent transferred to disability inactive status may resume active status except by order of the Court. Any respondent transferred to disability inactive status shall be entitled to petition the Court for transfer to active status once a year, or at whatever shorter intervals the Court may direct in the order transferring the respondent to disability inactive status or any modification thereof. The petition may be granted by the Court upon a showing by clear and convincing evidence that the disability has been removed.

Upon the filing of a petition for transfer to active status, the Court may take or direct whatever action it deems necessary or proper, including a remand to the Board for hearing and recommendation, to determine whether the disability has been removed, and may order an examination of the respondent by qualified medical experts. In its discretion, the Court may direct that the expense of the examination be paid by the respondent.

The Court may also direct that the respondent establish proof of competence and learning in law, which proof may include certification by the Board of Bar Examiners of the respondent's successful completion of an examination for admission to practice.

If a respondent transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the Court may dispense with further

evidence that the disability has been removed and may immediately direct reinstatement to active status upon terms as are deemed proper and advisable.

(f) *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 disclose the name of each psychiatrist, psychologist, physician, hospital, or other institution by whom or in which the respondent has been examined or treated since transfer to disability inactive status. The respondent shall furnish the Court with written consents for each doctor to divulge information and records relating to the disability if requested by the Court or Court-appointed experts.

(g) *Mental incompetency as a defense to misconduct.* --

(1) Mental incompetency is a complete defense to conduct of a lawyer which would otherwise warrant disciplinary action if:

- (A) such conduct was the result or consequence of mental incompetency; and
- (B) the mental incompetency which was responsible for such conduct has been cured so completely that there is no reasonable basis to believe there will be a recurrence of the condition. The burden of proof of this defense is upon the respondent.

(2) If the respondent is able to sustain the burden of proof as to mental incompetency at the time of the conduct that is the basis of the complaint, but is unable to prove recovery to the extent indicated in subsection (1) of this Rule, and the Board has reason to believe that such recovery is possible, the Board shall recommend to the Court that respondent be suspended until such time as the respondent can prove recovery; otherwise the Board shall recommend transfer to disability inactive status.

(3) Any respondent defending on the grounds of mental incompetency shall be suspended immediately on an interim basis until and unless the respondent shall sustain the burden of proof that the respondent has been cured so completely that there is no reasonable basis to believe there will be a recurrence of the condition.

#### **Rule 207.20. Probation.**

(a) *Imposition of probation.* -- Probation may be imposed by order of the Court in any disciplinary matter where there is no reasonable basis to conclude that the respondent will harm the public or the orderly administration of justice during the period of the probation, where the conditions of probation can be adequately supervised or monitored, and where the imposition of such a sanction is otherwise appropriate. Probation and any conditions attached thereto shall continue for any period of time deemed appropriate by the Court. When conditions are imposed, probation shall not terminate until;

- (1) the expiration of the period established;
- (2) the filing with the Court of an affidavit by the respondent averring that the respondent has complied with the conditions of probation; and
- (3) an order of the Court that the probation has terminated.

(b) *Publicity.* -- If probation is imposed along with a private sanction, the probation itself and the terms thereof shall be confidential. If probation is imposed along with a public sanction, the probation itself and the terms thereof shall be public. If probation is imposed alone, the Court shall direct whether the existence and terms thereof shall be confidential or public.

**Rule 207.21. Orders and post-order procedures.**

Unless otherwise ordered, orders imposing discipline or transfers to disability inactive status are effective immediately. The respondent shall refund any part of any fees paid in advance which have not been earned. In the event the client does not obtain another lawyer before the effective date of a disbarment or suspension, it shall be the responsibility of the respondent to move the court, agency, or tribunal in which the proceeding is pending for leave to withdraw. The respondent shall in that event file with the court, agency, or tribunal before which the litigation is pending a copy of the notice pursuant to Rule 207.23 to opposing counsel or adverse parties.

**Rule 207.22. Reinstatement proceedings.**

(a) *Proof of rehabilitation.* -- Reinstatement following suspension from practice, except for suspensions of 6 months or less shall require proof of rehabilitation before the Board and a final order of reinstatement by the Court.

(b) *Reinstatement after suspension of 6 months or less.* -- A lawyer suspended for less than 6 months may resume practice at the end of the period of suspension by filing with the Court and serving upon the ODC an affidavit affirming that the lawyer has fully complied with the requirements of the suspension order, and paying any required costs.

(c) *Reinstatement after disbarment.* -- A lawyer who has been disbarred may not apply for reinstatement until the expiration of at least 5 years from the effective date of the disbarment.

(d) *Successive petitions.* -- No petition for reinstatement shall be filed within one (1) year following an adverse judgment upon a prior petition for reinstatement.

(e) *Notice to ODC and deposit for costs.* -- Prior to filing a petition for reinstatement, a suspended or disbarred lawyer, except for lawyers suspended pursuant to Rule 207.16 or suspended on a non-reciprocal basis pursuant to Rule 207.17, shall send a written notification to the ODC of the intent to petition for reinstatement. The lawyer shall thereupon comply with any procedures deemed appropriate by the ODC for the purpose of gathering information for presentation to the Board, including the submission of any information or waivers requested by the ODC, and the advance payment to the ODC of a deposit for the anticipated costs of the reinstatement proceeding. The ODC's gathering of information as to the lawyer's proposed

candidacy for reinstatement may include physical or psychological examinations of the lawyer at the lawyer's expense.

(f) *Petition to Board.* -- All petitions for reinstatement shall be filed with the Board Chair and served upon the ODC. The petition and all subsequent proceedings shall be public. The petition shall set forth a plain and concise statement of the grounds therefor. The ODC may publicly solicit comments or other information on the petition from members of the legal community or the general public by any means the ODC deems appropriate. The ODC may file an answer to the petition with the Board within 30 days of service. The ODC may support, object to, or take no position with respect to the petition.

(g) *Hearing before Board.* -- After the time expires during which the ODC may file an answer to the petition for reinstatement, the Board Chair shall schedule a hearing on the petition before the Board within 30 days. The petitioner shall have the burden of demonstrating, by clear and convincing evidence:

- (1) the petitioner's professional rehabilitation, including substantial rehabilitation from any drug or alcohol problem from which the petitioner had suffered;
- (2) the petitioner's compliance with all applicable disciplinary orders and other rules, including conditions of restitution;
- (3) the petitioner's fitness to practice;
- (4) the petitioner's overall competence and current awareness of recent developments in the law;
- (5) that the petitioner has not engaged in any other professional misconduct in any jurisdiction since suspension or disbarment;
- (6) that the petitioner sincerely recognizes the wrongfulness and seriousness of any misconduct upon which the suspension or disbarment was predicated;
- (7) that the petitioner has the requisite honesty and professional integrity to resume the practice of law; and
- (8) that the petitioner's resumption of the practice of law will not be detrimental to the administration of justice.

The ODC may in its discretion present evidence in support of or adverse to the petition, and upon the presentation of all evidence, the ODC may make a recommendation to the Board or take no position with respect to the petition. The Board shall conduct the hearing as otherwise provided in these Rules with respect to ordinary disciplinary proceedings. The Board shall file a report containing its findings and recommendations with the Court as provided in Rule 207.9(d)(5) hereof, within 60 days of the conclusion of its proceedings, with service upon the petitioner and the ODC.

(h) *Review by Court.* -- The petitioner or the ODC may file objections to the Board's report within 20 days from the date of service. If objections are filed to the Board's report, the Court may schedule the matter for briefing and argument as appropriate. If no objections are filed, the Court may request argument on the matter prior to entering a final order. If the Court finds that the petitioner has not shown good reasons for reinstatement, whether or not reinstatement has been recommended by the Board, the Court may dismiss the matter or remand it to the Board for

further proceedings as appropriate. If the Court finds that the petitioner has shown good reasons for reinstatement, the Court may enter an appropriate order reinstating the petitioner. The Court may attach any conditions it deems appropriate to such a reinstatement order, including but not limited to, restitution to former clients or third parties, the successful completion of the bar examination administered by the Board of Bar Examiners, or a period of probation with such terms and conditions as the Court deems appropriate.

**Rule 207.23. Notice to clients, adverse parties, and others.**

(a) *Recipients of notice; contents.* -- Unless otherwise ordered, within 10 days after the date of a court order imposing a disciplinary sanction or transfer to disability inactive status, a respondent disbarred, transferred to disability inactive status, placed on interim suspension or suspended from practice shall notify or cause to be notified by registered or certified mail, return receipt requested:

- (1) All clients being represented in pending matters;
- (2) Any co-counsel in pending matters;
- (3) Any opposing attorney in pending matters, or in the absence of such attorney, the adverse parties. The notice shall advise of the order of the Court and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order. The notice to be given to the opposing attorneys or the adverse party shall state the place of residence of the client of the respondent;
- (4) All persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after discipline or transfer to disability inactive status; and
- (5) All other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that respondent continues as an attorney in good standing.

(b) *Affidavit of compliance.* -- Immediately thereafter, the respondent shall file an affidavit with this Court indicating compliance with subsection (a).

(c) *Special notice.* -- The Court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

(d) *Return of client's property.* -- Unless otherwise ordered, any respondent described in paragraph (a) of this Rule shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

**Rule 207.24. Law practice receivers.**

(a) *Appointment of receiver of law practice.* -- If a lawyer has been transferred to disability inactive status, has died, has abandoned the lawyer's law practice, or has been suspended or disbarred under these Rules, and there is evidence that the lawyer has not complied with Rules 21 and 23, and no partner, executor, or other responsible party capable of conducting the

lawyer's affairs is known to exist, the Superior Court of the Virgin Islands, upon proper application by the ODC, shall appoint a receiver of the lawyer's law practice with such powers and authority as are appropriate and necessary.

(b) *Maintenance of client confidences.* -- Any receiver appointed under these Rules shall maintain the confidentiality of information contained in client files that have been entrusted to the receiver.

**Rule 207.25. Notice to complainant.**

The ODC shall notify in writing the complainant(s), as to the final disposition of each disciplinary matter promptly after the matter has been concluded, notwithstanding provisions elsewhere in these Rules relating to confidentiality. Such notice shall specify whether the matter has been dismissed, with or without conditions, or whether the matter has resulted in the imposition of a disciplinary sanction, and if so, a description of the sanction imposed and the misconduct upon which the sanction was predicated. Unless the sanction imposed is public as provided pursuant to these Rules, the complainant(s) shall be notified that all records and proceedings shall be private and confidential and shall not be subject to production in any later proceedings before any tribunal except future disciplinary proceedings involving the respondent before the PRC, the Board, or the Court where such prior proceedings may be relevant.

**Rule 207.26. Limitations Period**

(a) General rule. The Office of Disciplinary Counsel, the PRC, or the Board shall not entertain any complaint arising out of acts or omissions occurring more than six years prior to the date of the complaint, except as provided in subsection (b).

(b) Exceptions. The six year limitation in subsection (a) shall:

(1) Not apply in cases involving theft or misappropriation, conviction of a crime or a knowing act of concealment.

(2) Be tolled during any period when there has been litigation pending that has resulted in a finding that the subject acts or omissions involved civil fraud, ineffective assistance of counsel or prosecutorial misconduct by the respondent-attorney.

**Rule 207.27. Payment of costs.**

Unless otherwise ordered by the Court, costs of all proceedings conducted under these Rules shall be assessed against the respondent in any case where a disciplinary sanction is imposed or where there is a transfer to disability inactive status.

**Rule 207.28. Effective date.**

These Rules shall become effective on July 1, 2014, and any disciplinary or disability proceeding pending on that date shall be processed pursuant to these Rules from that point on unless otherwise directed by the Court.

**Rule 207.29 No final mandate.**

All decisions of the Court in professional responsibility matters shall be final on issuance, and no mandate shall issue to the Board following the Court's decision. However, any party to a lawyer discipline or disability proceeding before the Court may move for a stay, rehearing, reargument, or other relief as would normally be available to the parties in any appellate proceeding before the Court. The provisions of Rule 31 shall govern any such motion.

**OFFICIAL FORMS FOR BOARD ON PROFESSIONAL RESPONSIBILITY.**

Form 1. Petition for discipline.

**BOARD ON PROFESSIONAL RESPONSIBILITY  
of the  
SUPREME COURT OF THE VIRGIN ISLANDS**

In the Matter of a Member  
of the Bar of the Supreme  
Court of the Virgin Islands }

No.2014-xxxx

To \_\_\_\_\_, Respondent

**PETITION FOR DISCIPLINE**

Disciplinary counsel petitions the Board of Professional Responsibility to discipline the above-named respondent for the following reasons:

(Here set forth the formal charges or incorporate by reference the written charges attaching the same to this order)

This petition was approved by a panel of the Preliminary Review Committee on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is issued and served pursuant to the Rules of the Board on Professional Responsibility of the Supreme Court of the Virgin Islands and the rules of that Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Disciplinary Counsel

Note: The answer of respondent to this petition is due within 20 days after service.

Form 2. Subpoena.

BOARD ON PROFESSIONAL RESPONSIBILITY  
of the  
SUPREME COURT OF THE VIRGIN ISLANDS

In the Matter of a Member  
of the Bar of the Supreme  
Court of the Virgin Islands }

SUBPOENA  
No. \_\_\_\_\_

To \_\_\_\_\_  
(Name of Witness)

You are hereby directed to appear and attend before the Board on Professional Responsibility of the Supreme Court of the Virgin Islands at \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_,

20 \_\_\_\_\_, at the hour of \_\_\_\_\_ o'clock, \_\_\_\_\_ M., Atlantic Standard time, then and there to testify in the above entitled matter.

(If the production of books, etc., is desired, add "and to bring with you the following"; and describe the same.)

For failure to appear and attend as herein required you may be deemed to be in contempt of the Supreme Court of the Virgin Islands.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Disciplinary Counsel,  
whose address is

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Virgin Islands

Form 3. Subpoena for interrogatories.

BOARD ON PROFESSIONAL RESPONSIBILITY  
of the  
SUPREME COURT OF THE VIRGIN ISLANDS

In the Matter of a Member  
of the Bar of the Supreme  
Court of the Virgin Islands

SUBPOENA  
No. \_\_\_\_\_

To \_\_\_\_\_  
(Name of Witness)

You are hereby directed to make written answers under oath signed by you to the written interrogatories attached hereto and to file such answer with the Board on Professional Responsibility of the Supreme Court of the Virgin Islands at \_\_\_\_\_ in

\_\_\_\_\_, \_\_\_\_\_, on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

For failure so to answer said written interrogatories as herein required you may be deemed to be in contempt of the Supreme Court of the Virgin Islands.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Disciplinary Counsel,

whose address is

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_, Virgin Islands

*Last updated: January, 2014*

## **SUPREME COURT RULE 212**

### **RULES OF THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW**

#### **PART I. STRUCTURE AND SCOPE.**

##### **Rule 212.1. Board on the Unauthorized Practice of Law.**

(a) *Powers and duties.* -- In addition to the powers set forth in Supreme Court Rule 203(d), the Board shall have the power to institute actions in its name in any court of competent jurisdiction, and to take such other and further action, as the Board deems prudent and necessary to fulfill its duties and responsibilities.

(b) *Advisory opinions.* -- The Board shall not render advisory opinions on the unauthorized practice of law.

(c) *Chair and officers.* -- The Chair and officers of the Board shall be as designated by the Supreme Court. The Chair shall have the authority to take all necessary or appropriate actions to

carry out the duties of the Chair as specified in these Rules. If the Chair is absent or disqualified, the Vice Chair shall serve temporarily as necessary with the same authority as the Chair. Whenever a committee or hearing panel of the Board has been appointed with respect to a particular matter, every reference in these Rules to “the Board” shall refer to such committee or hearing panel.

### **Rule 212.2. Abstention of Board members.**

Members shall not take part in any proceeding in which a judge, similarly situated, would be required to abstain pursuant to 4 V.I.C. § 284, Canon 3(C) of the Virgin Islands Code of Judicial Conduct, or any subsequently adopted similar code. The decision to disqualify oneself from a proceeding is a matter within the sound discretion of the individual member. If necessary, the Court may appoint an Acting Chair in any matter in which the Chair or Vice Chair have entered their disqualifications or are otherwise unavailable.

### **Rule 212.3. Meetings, quorum, and operations.**

(a) *Meetings.* -- The Board shall meet upon call of its Chair, or in the absence or disqualification of the Chair any two members of the Board, or upon call of the Supreme Court, at such place and time as may be specified in the call.

(b) *Quorum for hearings and meetings.* -- Hearings before the Board in formal proceedings under these Rules shall be held before hearing panels consisting of at least three members of the Board, as appointed pursuant to Rule 203.3(d). Hearing panels consisting of more than three members of the Board may be appointed if the Chair considers a larger panel appropriate. With respect to meetings of the Board other than hearings in formal proceedings, a majority of the members of the Board not disqualified, but no fewer than three, shall constitute a quorum.

(c) *Ad hoc members.* -- If, in any given proceeding, the number of the Board members not disqualified is less than a quorum, the Supreme Court may appoint, for that proceeding only, the number of ad hoc members necessary to establish a quorum for the purposes of that proceeding only.

(d) *Hearing panels and committees.* -- Following the commencement of formal proceedings before the Board pursuant to Rule 203.6(b), the Chair shall appoint a hearing panel consisting of members of the Board, and shall designate one such member as the chair of the hearing panel. The Chair shall not serve as a member of a hearing panel unless no other member of the Board is available. If non-attorney members have been appointed to the Board, at least one member of each hearing panel should be a non-attorney member of the Board. Prior to the appointment of a hearing panel in a formal proceeding, the Chair shall consider and determine all procedural, evidentiary, and administrative issues relating to the proceeding; after such appointment but prior to a hearing, the chair of the hearing panel shall consider and determine all such issues, except as otherwise stated in these Rules. Upon the commencement of a hearing in a formal proceeding, the making of any subsequent ruling, disposition, order, or final report by the hearing panel shall require a majority vote of its panelists. The Chair may appoint committees or panels of the Board other than for hearing purposes with such composition and powers as the Chair shall designate.

(e) *Telephonic meetings.* -- Except in respect of a hearing in any formal proceeding, the Board, or any of the members thereof, may participate in any meeting of the Board, or a committee or panel thereof, by means of video or conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(f) *Compensation and expenses.* -- Members shall receive no compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties. The expenses of the Board shall be paid by the Court or Board in accordance with a policy adopted by the Board and approved by the Court. Unless otherwise instructed by the Board, Disciplinary Counsel is authorized to expend such funds as may be necessary for Disciplinary Counsel to carry out the duties and obligations imposed by Supreme Court Rule 203, these Rules and the Board.

(g) *Administration of system.* -- To maintain the efficient operation of the regulatory system contained in these Rules, the Board Administrator shall assist the Chair in establishing policies and procedures for the processing and disposition of all unauthorized practice matters, including without limitation the assignment of hearing panels, the scheduling of hearings, and the filing, docketing, and maintenance of pleadings and other papers constituting the official record in individual unauthorized practice cases. The Board Administrator shall be an ex officio member of the Board with respect to any of its administrative functions, and the Chair or the Board may delegate to the Board Administrator such administrative duties as each may decide appropriate. The Board Administrator shall also have such administrative powers and duties as are authorized by the Court.

The Supreme Court may designate a person on its staff to serve as Board Administrator.

(h) *Reports.* -- On or before January 31st, the Chair shall file a report with the Supreme Court advising the Court of the following:

- (1) The number of petitions filed with the Board during the previous year.
- (2) The number of Board hearings conducted by panels during the previous year.
- (3) The number of Board recommendations filed with the Court during the previous year.
- (4) The number of matters resolved through the Rule 212.14 Affidavit of Voluntary Compliance procedure during the previous year.
- (5) The number and status of matters pending before the Board as of the date of the Chair's report.

## **II. PROCEDURE**

### **Rule 212.4. Intake of complaints.**

(a) *Complaints.* -- All information, whether received by complaint or otherwise, regarding a possible occurrence of the unauthorized practice of law in the Virgin Islands shall initially be processed by the Office of Disciplinary Counsel, which shall act as the intake agency for the receipt of all such information. Complaints should be in writing. Upon receipt of any such

information, Disciplinary Counsel shall open an appropriate file and assign the matter a docket number. Neither unwillingness nor neglect of the complainant to press a complaint once made, nor settlement, nor compromise between the complainant and any respondent, nor restitution by the respondent shall, in itself, justify abatement of the processing of any complaint.

(b) *Evaluation and summary dismissal.* -- Upon the receipt and docketing of a complaint or other information regarding a possible occurrence of the unauthorized practice of law in the Virgin Islands, Disciplinary Counsel shall conduct an evaluation of the matter. If the complaint or information on its face does not indicate an occurrence of the unauthorized practice of law in the Virgin Islands, Disciplinary Counsel shall summarily dismiss the matter without prejudice and close the file with written notice to the complainant.

(c) *Criteria for evaluation.* -- In evaluating any information involving the possible unauthorized practice of law in the Virgin Islands, Disciplinary Counsel shall initially determine whether the person which is the subject of such information is otherwise authorized to practice law in the Virgin Islands. If not, Disciplinary Counsel shall then determine whether such person has possibly engaged in the doing of any act usually done by attorneys-at-law in the course of their profession, and shall include but not be limited to: the appearance, acting as the attorney-at-law, or representative of another person, firm or corporation, before any court, referee, department, commission, board, judicial person or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation and/or filing of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the same.

### **Rule 212.5. Investigations.**

(a) *Investigation by Disciplinary Counsel.* -- If the evaluation of a matter by Disciplinary Counsel does not result in summary dismissal under Rule 212.4(b), Disciplinary Counsel shall proceed to initiate an investigation of the matter, with written notice to the Chair and the complainant.

(b) *Subpoenas.* -- Following the designation of a matter as an investigation under Rule 212.5(a), Disciplinary Counsel may administer oaths and affirmations and may compel by subpoena the attendance of witnesses and the production of relevant books, papers, and documents. Subpoenas shall be issued under the signature of Disciplinary Counsel and served by any means deemed appropriate.

(c) *Dismissal after investigation.* -- Following an investigation, Disciplinary Counsel may dismiss the matter without prejudice and close the file with written notice to the complainant. When an investigation has revealed that there is insufficient evidence of conduct involving an occurrence of the unauthorized practice of law in the Virgin Islands to prosecute the matter further, the matter shall be dismissed.

**Rule 212.6. Formal proceedings.**

(a) *Approval of petition by Chair.* -- Following an investigation, if Disciplinary Counsel determines that there is sufficient evidence of conduct involving an occurrence of the unauthorized practice of law in the Virgin Islands to warrant further prosecution, Disciplinary Counsel shall draft a petition seeking appropriate relief directed to the Board. The petition shall be sufficiently clear and specific to inform the respondent of the alleged unauthorized practice of law, and shall contain a notice that the respondent's failure to file a response with the Board in a timely manner will result in the allegations and charges contained therein being deemed as conclusively established. Disciplinary Counsel shall submit the draft petition to the Chair for review, and no petition may be filed by Disciplinary Counsel without the prior approval of the Chair.

(b) *Commencement of formal proceedings.* -- Following approval of a petition by the Chair, Disciplinary Counsel shall sign and file the petition with the Board, and shall serve the petition upon the respondent pursuant to these Rules. The respondent shall file an answer with the Board within 20 days of service of the petition, with service of same upon Disciplinary Counsel. In the event the respondent fails to answer in a timely manner, all factual allegations contained therein shall be deemed as conclusively established.

**Rule 212.7. Service of petition and other papers; filing.**

(a) *Service.* -- Service of the petition upon the respondent shall be made in the manner provided for service of a civil complaint under the Rules of Civil Procedure for the Superior Court and may be made by any person authorized by the Board to make such service.

All papers subsequent to the petition which are filed with the Board shall be served upon each party to the proceeding. Service upon a party represented by an attorney shall be made by serving the attorney unless service upon the party personally is ordered by the Board. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the Board Administrator.

Delivery of a copy within this Rule means: Handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(b) *Filing requirement and manner of filing.* -- A petition to the Board and all other pleadings relating to a matter before the Board shall be filed with and maintained by the Board pursuant to the administrative procedures established by the Chair and the Board Administrator. The filing of any such paper with the Board shall be made by delivering one original and three copies of such document to the Board Administrator. All such documents shall thereupon be date-stamped by

the Board Administrator as “filed” with the Board. The original copy of all such filings shall be retained by the Board Administrator as the official record of the Board in the matter.

**Rule 212.8. Subpoenas and discovery.**

(a) *Oaths and affirmations.* -- Any member of the Board who is authorized by law to do so may administer oaths and affirmations in matters before the Board.

(b) *Subpoenas.*

(1) For the hearing, Disciplinary Counsel may compel by subpoena the attendance of such witnesses (including the respondent) and the production of such books, papers and documents as are relevant to the issues that are the subject matter of the hearing.

(2) After formal proceedings are instituted and at the written request of the respondent, the Secretary of the Board, or the designee of the Chair in the Secretary’s absence, shall compel by subpoena the attendance of such witnesses and the production of such books, papers and documents at the hearing as are relevant to the issues that are the subject matter of the hearing.

(c) *Challenges to subpoenas.* -- Any attack on the validity of a subpoena so issued shall be heard and determined by the Board, or by a court in the jurisdiction wherein enforcement of the subpoena is being sought.

(d) *Enforcement of subpoenas.* -- The Supreme Court may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(e) *Depositions.* -- With the approval of the Board, testimony may be taken by deposition or by commission if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness, absence from the State or other compelling reason. A complete record of the testimony so taken shall be made and preserved.

(f) *Witness fees.* -- Subpoena and witness fees and mileage shall be the same as those provided for proceedings in the Virgin Islands Superior Court.

(g) *Discovery disputes.* -- Disputes concerning the scope and other aspects of discovery shall be determined by the Board. All discovery orders by the Board are interlocutory and may not be appealed.

**Rule 212.9. Hearings.**

(a) *Notice of hearing.* -- If a panel determines there are material issues of fact raised by the pleadings or if any party requests the opportunity to be heard, the Board Administrator shall serve notice of a hearing upon Disciplinary Counsel and the respondent, stating the date and place of the hearing at least 20 days in advance thereof. The notice of hearing shall advise the respondent that the respondent is entitled to be represented by a lawyer, to cross-examine

witnesses and to present evidence in the respondent's own behalf. Briefs, argument or other submissions may be permitted in the discretion of the Board.

(b) *Pre-hearing conference.* -- Upon the application of any party or on its own motion the Board may order a conference to be held for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. The conference shall be held before the chair of the hearing panel assigned to the matter, or before the chair's designee.

(c) *Stenographic record.* -- A stenographic record shall be made of the hearing. The record of the hearing shall be made available to the respondent at the respondent's expense upon the respondent's request.

(d) *Findings.* -- Following a hearing, the Board shall express its findings of fact, conclusions of law, and recommended disposition in a final report which is sufficiently specific for the purposes of review by the Supreme Court. A copy of the report shall be served upon the parties.

(e) *Supreme Court review.* -- The Board's final report shall be filed with the Supreme Court together with the record of its proceedings, including transcripts, briefs, and other pleadings, within 90 days of the date upon which the matter was finally submitted to the Board. The Board shall promptly serve notice of such filing to the parties. Within 20 days of the receipt of such notice, any party may file objections to the Board's report with the Supreme Court. Such objections may not exceed five (5) pages in length. If objections are filed, the Court may then treat the matter pursuant to its rules governing civil appeals, designating the appropriate party as the appellant, and scheduling the matter for briefing and argument. If no objections are timely filed, the report of the Board shall be approved by order of the Court as the final disposition of the matter unless the Court orders otherwise within 30 days of the last date for filing objections. The final disposition of a matter by the Court shall be enforceable in the Court through contempt proceedings.

#### **Rule 212.10. Witnesses and evidence.**

All witnesses shall be sworn or shall give proper affirmation in all proceedings hereunder. The Rules of Evidence applicable to the Virgin Islands courts shall be followed as far as practicable, provided that evidence may be admitted and considered which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Where the respondent is or has been a party to a proceeding, whether criminal, civil, administrative or otherwise, the relevant portions of the transcript of the proceedings, exhibits, findings of fact, conclusions of law, opinions, decisions and judgments, shall be admitted in evidence and shall be accorded such weight as the Board shall deem appropriate; provided, however, that proof of a conviction of the respondent for any crime shall be conclusive evidence of the commission of that crime.

**Rule 212.11. Burden of proof.**

The burden of proving action constituting the unauthorized practice of law shall be upon Disciplinary Counsel and shall be by clear and convincing evidence.

**Rule 212.12. Related litigation.**

Whenever in the course of an investigation or formal proceeding the Board ascertains that there is in process civil litigation to which the person under investigation or the respondent is a party, or a criminal action in which such person or respondent is, or becomes, a defendant, either of which involves the subject matter of the investigation or formal proceeding, the Board may upon application or on its own motion direct that the investigation or formal proceeding be stayed for a period not to exceed 90 days, and upon such terms as the Board may deem desirable because of the pending litigation. Upon application or on the Board's own motion, any stay so granted which has expired or is about to expire may be renewed from time to time for periods not to exceed 90 days. The Board may, upon application or on its own motion, at any time, revoke or modify such stay. In determining whether and upon what terms a stay should be granted, denied, revoked or extended the Board shall consider all relevant factors, including the following: (1) the need for disposing of the matter at the earliest practicable time, (2) the extent to which the issues in the pending litigation are the same or substantially the same as those before it, (3) the extent to which the matter under investigation or subject to the formal proceedings would probably be delayed by awaiting the disposition of the pending civil litigation or criminal action, (4) the extent to which the matter under investigation or subject to the formal proceedings would probably be expedited by awaiting the plea or judgment in the criminal action, (5) the extent to which the matter under investigation or subject to the formal proceedings would be aided, as to the determination of a material issue, by awaiting evidence to be adduced in the pending litigation, (6) the extent to which evidence may be unavailable to the investigation or formal proceeding because of any delay occasioned by withholding further action, (7) the extent to which witnesses or documents may be unavailable to the investigation or formal proceedings because of concurrent discovery or trial proceedings in the pending litigation, and (8) the extent to which the person under investigation or the respondent or any party to the pending litigation may be prejudiced in the pending litigation by withholding or failing to withhold further action. The acquittal of the person under investigation or the respondent on criminal charges or a verdict or judgment in favor of the person under investigation or the respondent in civil litigation involving substantially similar material allegations shall not, in and of itself, abate the investigation or formal proceedings even though predicated upon the same material allegations.

**Rule 212.13. Rulings, orders, and reports.**

The Board shall have power to make such rulings, dispositions, orders, recommendations, and reports as may be permitted under Supreme Court Rule 203(d) and these Rules. Any such action which is reduced to writing shall be signed by an appropriate member of the Board.

**Rule 212.14. Voluntary compliance.**

At any time after a matter is initially docketed by the Office of Disciplinary Counsel, the respondent may voluntarily offer an assurance that the respondent shall not engage in the unauthorized practice of law in the Virgin Islands. Any such voluntary assurance must be in writing and duly sworn, and must be approved in writing by the Disciplinary Counsel and either (a) the Chair, if no panel of the Board has yet been assigned to the matter, or (b) the Board, if a panel thereof has been assigned to the matter. Upon such approval, the voluntary assurance shall be filed by Disciplinary Counsel in the Supreme Court with a petition for the Court's approval briefly describing the facts of the matter and a form of order. The Supreme Court's entry of an order approving the voluntary assurance shall be enforceable in the Court through contempt proceedings.

**Rule 212.15. Notice to complainant.**

Disciplinary Counsel shall promptly notify the complainant, if any, as to the final disposition of each complaint after the matter is concluded.

**Rule 212.16. Costs.**

Unless otherwise ordered by the Supreme Court or the Board, costs of all proceedings, including the costs of investigation, service of process, witness fees and court reporting services, shall be assessed against the respondent in any case where the Court makes a final determination that the respondent has engaged in the unauthorized practice of law.

**III. ENFORCEMENT PROCEEDINGS.**

**Rule 212.17. Rulings of the Board.**

Except for the findings and other dispositions contained in the Board's final report pursuant to Rule 212.9(d), all rulings of the Board shall be considered interlocutory and shall not be subject to interlocutory review by the Supreme Court.

**Rule 212.18. Objections.**

Objections to the findings of the Board following a hearing may be filed with the Supreme Court in the manner described in Rule 212.9(e). The pendency of the Supreme Court's review of the Board's findings pursuant to Rule 212.9(e) shall operate as a stay of such findings until final disposition by the Court.

**Rule 212.19. Enforcement proceedings.**

Whenever it shall come to the attention of the Disciplinary Counsel that a respondent is or may be in violation of an order of the Court, Disciplinary Counsel shall initiate an investigation of the

matter. If after investigation Disciplinary Counsel determines that the respondent is not in violation, Disciplinary Counsel shall dismiss the matter without prejudice subject to the approval of the Chair, and close the file with written notice to the appropriate parties. If after investigation Disciplinary Counsel concludes that the matter should not be dismissed, Disciplinary Counsel shall draft a petition to the Court for a rule to show cause why the respondent should not be found in contempt. Disciplinary Counsel shall submit the draft petition to the Chair for review, and no such petition may be filed by Disciplinary Counsel without the prior approval of the Chair.

Following approval of such petition by the Chair, Disciplinary Counsel shall file the petition with the Court, and shall serve the petition upon the respondent in the same manner as a petition which is initially filed with the Board. The respondent shall file an answer with the Court within 20 days of service of the petition, with service of same upon Disciplinary Counsel. In the event that the respondent fails to answer the petition in a timely manner, or otherwise does not dispute the petition, all allegations and charges contained therein shall be deemed as conclusively established, and the Court may thereupon enter an appropriate order of enforcement. If the respondent answers the petition in a timely manner and disputes the allegations and charges contained therein, the Court may thereupon treat the matter as it would any contempt proceeding. The Court may direct that the Board conduct an evidentiary hearing with respect to the petition and submit a report with its findings and recommendations to the Court on the issue of contempt.

#### **IV. MISCELLANEOUS PROVISIONS.**

##### **Rule 212.20. Immunity.**

(a) *From civil suit.* -- Communications to any member of the Board or Disciplinary Counsel relating to the alleged unauthorized practice of law and testimony given in the proceedings shall be absolutely privileged, and no civil lawsuit may be instituted against any complainant or witness based on such communications or testimony. All persons performing official duties under these Rules, including but not limited to members of the Board and associate members of the Board, the agents, employees or other persons working on behalf of the Board, Disciplinary Counsel and staff, and the Board Administrator, shall be immune from civil suit for any conduct in the course of their official duties.

(b) *From criminal prosecution.* -- Upon application by Disciplinary Counsel or the respondent and notice to the Attorney General, the Supreme Court may grant immunity from criminal prosecution to a witness in any proceedings under these rules.

##### **Rule 212.21. Confidentiality.**

(a) *Complaints, investigations, and hearings.* -- In connection with a particular matter being considered by the Court, the Board, or Disciplinary Counsel, all information and proceedings are confidential, except that the following shall be considered as public:

- (1) the fact that a matter is being evaluated or investigated by Disciplinary Counsel,
- (2) the identity of a person being evaluated or investigated by Disciplinary Counsel,

- (3) the general subject matter, pendency, and status of a matter being evaluated or investigated by Disciplinary Counsel,
- (4) the official record in a matter as filed with the Board pursuant to Rule 212.7(b),
- (5) hearings in particular matters before the Board,
- (6) the rulings, orders, dispositions, and reports of the Board in particular matters, and
- (7) the record and proceedings in particular matters which are reviewed by the Supreme Court.

(b) *Protective orders.* -- In order to protect the interests of complainants, witnesses, third parties or respondents, the Board may, upon application and for good cause shown, issue a protective order prohibiting the disclosure of specific information and direct that the proceedings be conducted so as to implement the order.

(c) *Duty of participants.* -- All participants in a proceeding under these rules shall conduct themselves so as to maintain the confidentiality mandated by any protective order.

(d) *Cooperation with criminal justice authorities.* -- Any evidence or information obtained pursuant to these Rules indicating criminal conduct, including documents, transcripts, and work product, or any selected portions thereof, may be disclosed or turned over to the appropriate criminal justice authorities for their independent review and investigation.

#### **Rule 212.22. Nature of proceedings.**

Proceedings concerning the unauthorized practice of law are neither civil nor criminal but are *sui generis*.

#### **Rule 212.23. Time.**

(a) *Computation of time.* -- In computing any period of time prescribed or allowed by these Rules, the provisions of Supreme Court Rule 16, as amended from time to time, shall control.

(b) *Effect of time limitations.* -- Except as is otherwise provided in these Rules, time provisions stated in these Rules are directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any investigation or proceeding.

#### **Rule 212.24. Limitations on actions.**

An occurrence or course of conduct involving the possible unauthorized practice of law which concluded prior to three years of the receipt of information of such activity by the Office of Disciplinary Counsel may be evaluated or investigated by Disciplinary Counsel for the purposes of verification, but shall not otherwise become the subject of formal proceedings before the Board pursuant to Rule 212.6(b).

#### **Rule 212.25. Original proceedings in the Supreme Court.**

(a) *Complaints against non-lawyer member.* Complaints against non-lawyer members of the Board alleging that they have engaged in the unauthorized practice of law shall be submitted directly to the Supreme Court, which may take any action it deems appropriate with respect to the complaint, including, but not limited to, (1) adjudicating the matter in the first instance, (2) directing that the matter be adjudicated by the Superior Court or a special master, or (3) referring the matter to the Board, with ad hoc members appointed if necessary.

(b) *Actions by Attorney General and Virgin Islands Bar Association.* Actions initiated by the Attorney General of the Virgin Islands or the Virgin Islands Bar Association pursuant to section 443 of title 4 of the Virgin Islands Code shall be submitted directly to the Supreme Court, which may take any action it deems appropriate with respect to the complaint, including, but not limited to, (1) adjudicating the matter in the first instance, (2) directing that the matter be adjudicated by the Superior Court or a special master, or (3) referring the matter to the Board. In such actions, the Attorney General or the Bar Association, as the case may be, shall assume primary authority to investigate and prosecute the complaint, while the Office of Disciplinary Counsel shall have the opportunity to intervene if it desires to do so.

**Rule 212.26. Permanent file of opinions.**

All written opinions issued by the Board shall be public unless otherwise provided in accordance with Rule 21 and shall be maintained by the Board Administrator in a permanent file of opinions.

**Rule 212.27. Disciplinary Counsel.**

As used in these rules, “Disciplinary Counsel” shall mean disciplinary counsel as defined by Supreme Court Rule 203(c), or as the case may be, the Office of Disciplinary Counsel.

**Rule 212.28. Effective date.**

These rules shall become effective on January 1, 2015, and any investigation or other proceeding relative to the unauthorized practice of law pending on that date shall be processed pursuant to these rules from that point on unless the Supreme Court shall otherwise order to avoid substantial injustice.