



Vermont Bar Association
139th Annual Meeting Seminar Materials

Pro Bono Opportunities

October 13, 2017
Hilton Burlington
Burlington, VT

Speakers:

Sam Abel-Palmer, Esq.
Mary Ashcroft, Esq.
Angele Court
Maggie Frye, Esq.

**STATE OF VERMONT
SUPREME COURT
MARCH TERM**

Order Repealing and Replacing Administrative Order No. 41

1. Pursuant to the Vermont Constitution, Chapter II, §§ 30, 37, Administrative Order No. 41, as promulgated on April 11, 2001 and subsequently amended, is repealed and replaced with the following:

LICENSING OF ATTORNEYS

Pursuant to the Vermont Constitution, the following Rules providing for the licensing of attorneys are effective for all licenses issued or renewed for the period beginning on or after July 1, 2017.

§ 1. Unauthorized Practice of Law. Unless otherwise authorized by Rule 5.5 of the Vermont Rules of Professional Conduct, the practice of law without a license is prohibited and may be punished as contempt.

§ 2. License Renewal. Upon being approved for admission to the Bar of the Vermont Supreme Court and on or before June 30 of every other year thereafter, an attorney must:

- (a) Complete, sign, and file a licensing statement with the State Court Administrator; and
- (b) Remit the licensing fee required by a fee schedule that has been approved by the State Court Administrator. The fee schedule will be approved and published no later than April 1 of each year.

§ 3. Use of Licensing Fees. All fees received by the State Court Administrator pursuant to this order will be transferred to the State Treasurer for deposit into and use consistent with the Attorneys' Admission, Licensing and Professional Responsibility Special Fund. See 4 V.S.A. § 908.

§ 4. Licensing Statement. The following provisions apply to all licensing statements.

(a) Contents. The licensing statement must be on a form approved by the State Court Administrator and must include the following:

- (1) a certification that the attorney is not obligated to pay child support or is in good standing with respect to any and all child support payable, as defined by § 14;
- (2) a signed written declaration under the pains and penalties of perjury that the attorney is in good standing with respect to any and all taxes due to the State of Vermont, as defined by § 13, as of the date such declaration is made;
- (3) an option for the attorney to select active, inactive, judicial, or pro bono emeritus status;
- (4) current postal addresses for the attorney's office and residence;
- (5) a current email address;

(6) a certification that the attorney has registered at least one current email address pursuant to Administrative Order No. 44;

(7) the attorney's pooled interest bearing trust account number(s) (IOLTA), or an indication of exemption; and

(8) any other information deemed necessary by the State Court Administrator.

(b) Signature. The attorney must sign the statement. An electronic signature complies with this rule.

(c) Reporting Requirement. An attorney must report to the State Court Administrator within thirty days any change of the office mailing or electronic mail address or change of residential address or change of the IOLTA account. The office mail or electronic mail addresses reported to the State Court Administrator may be used by any court to send notice to an attorney, if notice by electronic mail is authorized by an applicable procedural rule. Notice sent to a reported address is sufficient even if not received by the attorney because of failure to report the proper address or failure of delivery not caused by the court. If a court delivers some or all notices by electronic mail, and the attorney fails to maintain a reported, operable electronic mail address, notice is sufficient if available on inquiry at the courthouse.

§ 5. License. Upon an attorney's compliance with § 2, the State Court Administrator or designee will issue a license to that attorney.

§ 6. Nondisciplinary, Administrative Suspension. Upon an attorney's failure to comply with § 2, an attorney's license to practice law in Vermont will be immediately suspended on a nondisciplinary, administrative basis. The State Court Administrator or designee will send notice of the suspension to the attorney by email, as well as to all courts of the State of Vermont.

§ 7. Reinstatement. As soon as an attorney who has been suspended pursuant to § 6 complies with § 2 and pays an additional reinstatement fee, the State Court Administrator or designee will reinstate the attorney and issue a license.

§ 8. Active Status. An attorney on active status is authorized to practice law in the State of Vermont and must comply with the Mandatory Rules for Continuing Legal Education.

§ 9. Inactive Status. An attorney on inactive status is not authorized to practice law in the State of Vermont. Attorneys on inactive status must comply with § 2, but are exempt from compliance with the Mandatory Rules for Continuing Legal Education, except to the extent that those rules apply to attorneys who transfer to active status.

§ 10. Judicial Status. An attorney who is a Supreme Court Justice, Superior Judge, Magistrate, or Judicial Bureau Hearing Officer has judicial status and is exempt from compliance with § 2.

§ 11. Pro Bono Emeritus Status. An attorney on pro bono emeritus status is not authorized to practice law, except to provide legal services without fee or expectation of fee, under the auspices of a nonprofit organization, to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations which are designed primarily to address the needs of persons of limited means.

(a) Eligibility. To claim pro bono emeritus status, an attorney must be admitted to the Bar of any state or the District of Columbia and not suspended or disbarred in any jurisdiction in which the attorney is admitted or was formerly admitted.

(b) MCLE. An attorney on pro bono emeritus status is subject to the Mandatory Rules for Continuing Legal Education, except that the attorney must complete at least 8 hours of accredited continuing legal education, including at least 2 hours in ethics, during each 2-year licensing period.

(c) Disciplinary Jurisdiction. An attorney on pro bono emeritus status is subject to the disciplinary jurisdiction of the Court and the Professional Responsibility Board, as well as to the Vermont Rules of Professional Conduct.

(d) Court Awarded Fees. This rule does not preclude an attorney on pro bono emeritus status from sharing in the award of statutory attorney's fees.

§ 12. Relinquishing a License. An attorney may relinquish a license to practice law in Vermont. An attorney who relinquishes a license to practice is not authorized to practice law in Vermont or to claim a licensing status.

(a) Eligibility. To relinquish a license, an attorney must:

- (1) not currently be the subject of any criminal or disciplinary investigations or proceedings in any jurisdiction;
- (2) not currently be suspended or disbarred;
- (3) have provided notice of the pending relinquishment to all clients by whom the attorney was retained or to whom the attorney provided legal advice or legal services within the previous 2 years;
- (4) have fully complied with Rule 1.16 of the Vermont Rules of Professional Conduct;
- (5) submit a form approved by the State Court Administrator in which the attorney certifies compliance with this rule and acknowledges that the license is freely and voluntarily relinquished with a full understanding of this rule; and
- (6) complete any forms required by the State Court Administrator or designee.

(b) Continuing Disciplinary Jurisdiction. An attorney who relinquishes a license remains subject to the disciplinary jurisdiction of the Court and the Professional Responsibility Board for conduct that occurred on or before the date that the license was relinquished, even if the conduct is not brought to the attention of the Professional Responsibility Program until after the attorney has relinquished the license.

(c) Subsequent Application for Admission. An attorney who relinquishes a license is no longer admitted to the Bar of the Vermont Supreme Court, is not eligible to practice law in Vermont, and is not eligible to return to active, inactive, or pro bono emeritus status without applying for admission to the Bar of the Vermont Supreme Court, which may include having to pass the bar examination.

§ 13. Good Standing with Respect to Taxes. An attorney is in good standing with respect to any and all taxes due to the State of Vermont if the attorney:

- (a) has paid all taxes due to the State of Vermont and has filed all returns;
- (b) has entered into an agreement with the Commissioner of Taxes for becoming current on an unpaid tax obligation;
- (c) has appealed the alleged obligation;
- (d) has requested the Commissioner of Taxes to abate the unpaid tax claim for good cause; or
- (e) has filed a court challenge to the claim.

§ 14. Good Standing with Respect to Child Support. An attorney is in good standing with respect to any and all child support payable if:

- (a) less than 1/12th of the annual support obligation is overdue;
- (b) liability for any support payable is being contested in a judicial or quasi-judicial proceeding;
- (c) the person is in compliance with a repayment plan approved by the Office of Child Support or agreed to by the parties or ordered by the court; or
- (d) the State Court Administrator finds that requiring immediate payment of support due and payable would impose an unreasonable hardship.

§ 15. Enforcement of Child Support Orders. Upon receipt of a license suspension order issued under 15 V.S.A. § 798 for failure to pay child support, the Professional Responsibility Board will notify the attorney of the pending suspension and provide the attorney with an opportunity to contest the suspension based solely on the grounds of mistaken identity or compliance with the underlying child support order. If the Board finds neither a mistake in identity nor compliance with the underlying child support order, the right of the attorney to practice law in Vermont will be suspended. The license will be reinstated

- (a) within 5 days of:
 - (1) a reinstatement order from the court, or
 - (2) notification from the Office of Child Support or the custodial parent, where the rights of that parent have not been assigned to the Office of Child Support, that the parent is in compliance with the underlying child support order, and
- (b) upon payment of a reinstatement fee set by the fee schedule established by the State Court Administrator.

§ 16. Admission Pro Hac Vice.

(a) An attorney who is not a member of the Bar of the Vermont Supreme Court, but who is admitted to practice law in another state or the District of Columbia (hereinafter called a “nonresident attorney”), and who is not currently suspended or disbarred in any state or the District of Columbia, must file a pro hac vice licensing statement and pay the required fee in accordance with this administrative order prior to filing a motion to be admitted in a particular case pursuant to V.R.C.P. 79.1(e), V.R.Cr.P. 44.2(b), V.R.F.P. 15(e), V.R.P.P. 79.1(d), or V.R.A.P. 45.1(e).

(b) The nonresident attorney seeking admission pro hac vice must complete under oath and submit to the State Court Administrator an application on a pro hac vice licensing statement form prescribed by the State Court Administrator. The applicant must attach to the licensing statement a Certificate of Good Standing from a state in which the applicant is admitted. The applicant must complete a separate licensing statement for each case in which the applicant wants to be admitted. The nonresident attorney must pay the fee set in the fee schedule approved by the State Court Administrator; however, the licensing fee may be waived to permit pro bono representation of an indigent client or clients, at the discretion of the State Court Administrator.

(c) A pro hac vice licensing card must be filed in the court in which the case is pending along with a motion by a member of the Vermont Bar pursuant to V.R.C.P. 79.1(e), V.R.Cr.P. 44.2(b), V.R.F.P. 15(e); V.R.P.P. 79.1(d) or V.R.A.P. 45.1(e) if not previously filed in that case pursuant to one of the preceding listed rules.

(d) A nonresident attorney admitted pro hac vice must comply with and is subject to Vermont statutes and rules of the Vermont Supreme Court, including the Rules of Professional Conduct and the Rules Governing Establishment and Operation of the Professional Responsibility Program.

§ 17. Extended Active Duty. Any attorney while on extended active duty in the uniformed services of the United States or member of the national guard, state guard, or reserve component who is licensed to practice law at the time of activation or deployment will:

(a) receive an extension of licensure up to 90 days following the attorney’s return from activation or deployment, provided the attorney:

- (1) notifies the State Court Administrator of his or her activation or deployment prior to the expiration of the current license, and
- (2) certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

(b) be given a reasonable opportunity to meet the terms or conditions of licensure following the person’s return from activation or deployment if military service in any way interferes with a good faith effort to complete a term or condition of licensure.

Reporter's Notes—2017 Amendments

The 2017 amendments to Administrative Order 41 are comprehensive. Some sections have been added, some existing sections have been reorganized and renumbered, and other sections have been deleted. The changes are intended to bring clarity to the licensing (and relicensing process) and to reflect practices that have developed over time. Because of the comprehensive nature of the proposed revision, it is not possible to present the amendments with strike out and underline to show changes. Instead, the prior administrative order has been repealed and replaced. These Notes attempt to identify the relevant prior sections where the language in the sections are drawn and to point out where the new rules reflect a substantive change from the prior requirements.

New § 1 is derived from former § 2 and the language is mostly unchanged. A reference to V.R.Pr.C. 5.5 is added to reflect that there are exceptions to the general prohibition of the unauthorized practice of law.

New § 2 is derived from former § 1. Revised § 2 omits reference to a specific fee and instead references a fee schedule approved by the State Court Administrator. This obviates the need to amend the rules each time fees change.

New § 3 carries over the language former § 3. A specific reference to 4 V.S.A. § 908 is added to reinforce the requirement that attorney licensing fees must be used only for the specific purposes stated in the statute.

New § 4 is derived from former § 7. The new section is revised to add to the licensing statement a requirement that attorneys must choose a particular status.

New § 5 is derived from former § 10 without much change.

New § 6 substantially carries over the language from former § 6. The section is revised to clarify that suspension for failure to pay a licensing fee will be nondisciplinary and administrative. The new section directs that notices of suspension will be sent by email rather than by certified mail as required by the former rule.

New § 7 contains the language from former § 12 without change, except to eliminate reference to a specific reinstatement fee.

The amendments to §§ 8-11 include two new licensing categories: judicial and pro bono emeritus. For clarity, the amendments create a separate rule for each category.

New § 9 concerns inactive status, which was covered by former § 5. Under former § 5, only certain lawyers were authorized to choose “inactive” status. The revised § 9 allows any lawyer to choose inactive status. The new section clarifies that lawyers choosing inactive status must complete and file a licensing statement and are not authorized to practice.

New § 10 is derived from former § 5, which exempted judges from paying a fee and filing a licensing statement, and made them eligible to choose inactive status. New § 10 carries over prior practice, but is intended to create a category specific to the listed judicial officers, rendering them ineligible to claim any other status while in office.

Section 11 creates a pro bono emeritus status—a new category of license in Vermont, but one that has been adopted by 40 other states. The proposal originated with Vermont Bar Association’s Pro Bono Committee and was endorsed by the VBA Board of Bar Managers. A substantial number of Vermonters do not have reasonable and affordable access to legal services. The result is a staggering number of self-represented litigants left to navigate complicated issues in a complex system without legal advice. The pro bono emeritus status provides a tool for the growing number of attorneys, from within and without Vermont, who are willing to provide legal services to those of limited means, but who want to do so without maintaining an active license that requires a significant fee and completion of 20 hours of mandatory continuing legal education.

Under new § 11, lawyers will be required to complete at least 8 hours of CLE, including 2 hours of ethics. In addition, it is expected that the fee approved by the State Court Administrator for this category will be substantially less than the fee charged to lawyers on active and inactive status.

The amendment limits pro bono emeritus lawyers to providing legal services to the same category of people and organizations

listed in Rule 6.1 of the Vermont Rules of Professional Conduct, the rule on Voluntary *Pro Bono Publico* Service.

An attorney on pro bono emeritus status is precluded from charging, collecting, or attempting to collect a fee and must provide legal services without expectation of a fee. However, an attorney on pro bono emeritus status may accept an award of statutory attorney's fee. See V.R.Pr.C. 6.1 cmt. [4]. Attorneys who receive such awards "are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means." Id.

Attorneys who chose pro bono emeritus status should explore obtaining free liability or malpractice insurance through programs offered by the Vermont Volunteer Lawyers Project, the Vermont Bar Association, and <http://vt.freelegalanswers.org>

Section 12 is new and allows a lawyer to relinquish a license to practice law. Under the old rules, a lawyer's choice was limited to active or inactive status. A practice developed in which the Attorney Licensing Office allowed lawyers to resign, subject to agreeing they might be required to go through the entire admission process to return to active status, including the bar exam. Neither former Administrative Order No. 41 nor the Rules of Admission allowed such a practice. This amendment provides lawyers with a tool to relinquish a license, defines who is eligible to relinquish a license, and sets out the consequences of relinquishment of a license.

New § 13 carries over the language of former § 8 without substantive change.

New § 14 carries over the language of former § 9 without substantive change.

New § 15 carries over the language of former § 11 without substantive change.

New § 16 carries over the language of former § 13 without substantive change.

New § 17 carries over the language of former § 14 without substantive change.

Former § 13A, which allowed government attorneys seeking admission without examination to practice pending completion of a

three-month clerkship, has been removed because attorneys are no longer required to complete a three-month clerkship prior to admission.

2. That this order, as amended, will become effective on May 15, 2017. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. §1, as amended.

Done in chambers at Montpelier, Vermont this 13th day of March, 2017.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Rule 6.1. Voluntary Pro Bono Publico Service.

Vermont Court Rules

Vermont Rules of Professional Conduct

Public Service

As amended through July 14, 2017

Rule 6.1. Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means; or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

- (b) provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Note:

Comment

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The Vermont Supreme Court urges all lawyers to provide a minimum of 50 hours of pro bono services annually. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render, on average per year, the number of hours set forth in this rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as divorce and family law matters.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this rule.

[12] The responsibility set forth in this rule is not intended to be enforced through disciplinary process.

Reporter's Notes-2009 Amendment

V.R.P.C. 6.1 is amended to conform to the changes in the Model Rule. In Vermont Comment [1], "Vermont Supreme Court" is substituted for "American Bar Association," emphasizing the importance that the Court attaches to pro bono service, and the parentheses have been removed from the number "50" in the rule, reflecting adoption of that minimum service goal. The added sentence at the end of Comment [9] restores language omitted without explanation when the Vermont rule was adopted.

The ABA Reporter's Explanation is as follows:

TEXT:

The Commission has added a sentence at the beginning of the Rule to give greater prominence to the proposition that every lawyer has a professional responsibility to provide legal services to persons unable to pay. The point is [also] made in . . . Comment [1].

COMMENT:

[11] This new Comment calls upon law firms to act reasonably to enable all lawyers in the firm to provide the pro bono legal services called for by the Rule.

Pro Bono & Low Bono Programs

Project Name	Contact/Intake	Legal Issues Covered	Counties Served	Type of Service	Notes
ACLU of Vermont	www.acluvt.org 802-223-6304	Individual rights & liberties	Statewide	*Website information *In-Court representation on selected cases	
Caledonia Co. Legal Clinic	802-748-6600	No limitation	Caledonia Essex	*Legal advice clinic -- 20 minute sessions	Clinics held Jan, Mar, May, July, Sept. & Nov. on the 3 rd Friday from 1-4PM at the Caledonia Court House in St. Johnsbury Call contact # for appointment
Chittenden Co. Bar Small Claims Clinic		Small Claims Collection Defense	Chittenden	*Legal clinic to prep litigants and explain small claims process	Limited to those with a pending case in small claim court. Clinics held on the first Tuesday of each month from 2-4PM at 32 Cherry St., Burlington.
Chittenden Rent Escrow Clinic		Landlord/tenant	Chittenden	Legal advice and advocacy clinic	Clinics are held every other Tuesday morning at court. Tenants are eligible to visit with an attorney at the clinic on the day their rent escrow hearing is to be heard.

Community Restorative Justice Center	802-748-2977	No limitation	Caledonia	*Legal advice clinic – 30 minute sessions	Clinics held on the 1 st Monday of every month from 6-8 PM at 1249 Main St., St. Johnsbury Call contact # for appointment
Consumer Assistance Program	800-649-2424 802-656-3183 www.uvm.edu/~cap/	Consumer complaints against business or state government, debt collection, fraud, ID theft,	Statewide	*Website information *On-line complaint form	CAP is run by Vermont Attorney General and UVM
County Low Bono Projects	www.vtlawhelp.org 1-800-889-2047	Landlord/tenant Foreclosure defense Collections defense Adult Inv. guardianship Child Support Contempt Defense PACA	Addison Bennington Franklin Grand Isle Orange Rutland Washington Windham Windsor	*In-court representation by private attorneys	Clients must be low income; eligibility screening done at intake
Disability Rights Vermont	www.disabilityrightsvt.org 800-834-7890	Disabilities Mental Health Issues	Statewide	*Website information *Referrals	*Investigates complaints of abuse, neglect and rights violations
Environmental Division Free Legal Clinic	802-951-1740	Environmental	Statewide	*Legal Advice clinic-30 minute sessions	Second Thursday afternoon of each month at 32 Cherry St., Burlington; call contact # for appointment.

Have Justice-Will Travel	877-496-8100 http://www.havejusticewilltravel.org	Domestic violence, relief from abuse orders, domestic relations matters	Statewide	*Website information *Phone advice * In court representation	Support for victims of domestic violence
Pride Center of Vermont	802-860-7812 www.pridecentervt.org	LGBT, trans issues, adoption, general legal	Statewide	*Legal Advice clinic—30 minute sessions	Third Tuesday of every month from 6-8PM at 255 South Champlain St. in Burlington. To insure appointment time call Safespace at 802-863-0003.
Safeline, Inc.	800-639-7233 http://www.orgsites.com/vt/safeline1	Domestic violence Sexual violence	Orange Windsor (northern)	*Legal advocacy	Crisis support, safety planning, legal advocacy and referrals
So. Royalton Legal Clinic	802-831-1500 smee@vermontlaw.edu	Bankruptcy, Children's rights Domestic violence Housing Immigration Family law Landlord/tenant Social Security Disability Wills Veterans Issues	Statewide for Immigration; Orange Windsor Washington (by court appointment only)	*Full in-court representation	To apply for legal services, call or e-mail contacts.
Steps to End Domestic Violence	802-658-1996 www.stepsvt.org	Domestic violence	Chittenden	*Legal Advice clinic—30 minute sessions	Monday afternoons from 4:30 to 6PM; call contact # for appointment
VBA Modest Means Project	www.vtlawhelp.org	Civil and Family – no criminal	Statewide	*Referral to private attorney who will limit fees to no more	On-line intake at www.vtlawhelp.org ; click on Modest Means Panel on home page, right

				than \$75 per hour	hand side. Clients must be of moderate means and willing to pay some reduced legal fees.
Vermont Judiciary	www.vermontjudiciary.org	Civil, Family and Criminal	Statewide	*Website information * Court forms	Self-help center has forms, court rules, state statutes and information
Vermont Law Help	1-800-889-2047 www.vtlawhelp.org	Civil and family – no criminal	Statewide	*Website information *Limited over-the-phone Legal Advice and referral *Form prep *Limited in-court representation in selected cases	Clients must be low income or senior citizens
Vermont Free Legal Answers	www.vt.freelegalanswers.org	Civil and Family—no criminal	Statewide	*On-line legal advice from VT volunteer attorney	Clients must be low income; eligibility screening on-line at intake. Click on contact link to sign up
Vermont Network Against Domestic and Sexual Violence	www.vtnetwork.org 802-223-1302 X 113	Domestic and sexual violence	Statewide	*Legal Advice Clinic *In-Court representation *Referrals	Website has links to local shelters and help programs throughout Vermont

Low Bono Opportunities:

Get \$\$\$ and Experience while Doing Good

Victims of Crime Act

The VBA has a federal VOCA grant to pay you \$60/hour for up to 10 hours assisting clients in legal matters relating to their victimization. Cases include custody and divorce, partition actions, assisting with evictions, collections defense, estate planning, and much more.

County Low Bono Representations

The Vermont Bar Foundation funds the VBA's Low Bono projects in 9 counties. You can receive \$60 an hour for 3-6 hours helping low income clients in landlord/tenant, foreclosure, collections defense, child support contempt defense, post adoption contact agreements and adult involuntary guardianship cases. Training programs for free CLE credits are available through the VBA.

Sign up to gain experience, build your practice, rake-in good karma points, make some money and help a vulnerable population.

Lawyer Name: _____

E-mail/phone: _____

Yes, I am interested in VOCA or Low Bono cases in these counties: (Circle one or more): Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orange, Orleans, Rutland, Washington, Windham. Windsor.

Yes, I would take VOCA or Low Bono cases in these legal subject areas:

For more information contact Mary Ashcroft at mashcroft@vtbar.org or Lalitha Mailwaganam at lalitha@vtbar.org. Tel: 802-223-2020

Pro Bono Clinics: Rent Escrow Training Middlebury, VT – April 2017

Presenters:

Jessica Radbord, Staff Attorney

Vermont Legal Aid

jradbord@vtlegalaid.org – 802-383-2208

Angela Zaikowski, Esq.

Bennett & Zaikowski, PC

angela@bz-attorneys.com – 802-985-2533

Maggie Frye, Staff Attorney

Legal Services Law Line of Vermont, Inc.

mfrye@lawlinevt.org – 802-383-2113

Topics for Today

- I. The Importance of Representation for Low to Moderate Income Tenants
- II. Landlord-Tenant Law in Vermont
 - Laws that Apply
 - Special Situations:
 - Mobile Home Parks
 - Subsidized Housing
 - Basics of LL-Tenant Law
- III. The Eviction Process
- IV. Make the Case Go Away: Motions to Dismiss
- V. Rent Into Court
- VI. Answers & Counterclaims
- VII. Settlements
- VIII. Motions for Default / Going to Trial

The Importance of Representation for Low to Moderate Income Tenants

- It is hard to find affordable housing.
 - 47.5% of Vermont renters are cost-burdened.
 - Vermonters need to work 88 hours per week at minimum wage to afford a two bedroom apartment as a *statewide average*. Assuming a 40 hour week, a renter would need to earn \$21.13/hour to rent an apartment affordably.
 - Subsidized housing is very limited
 - The VSHA waitlist for rental assistance is over 5 years.
- It is hard to find any housing at all.
 - VT's vacancy rate is only 3%.
 - It's even more challenging to find accessible housing.

The Importance of Representation for Low to Moderate Income Tenants

- Many rentals are in poor condition.
 - 74% of rentals are pre-1978
 - Inefficient heating and limited insulation, grandfathered code requirements, lead paint, etc.
- Tenants face screening barriers.
 - Credit, eviction history, criminal background checks.
- An eviction can easily result in homelessness, and tenants are often unaware of their rights and unable to negotiate for themselves.

Landlord-Tenant Law in Vermont

Laws that Apply

- Residential Rental Agreements Act, 9 V.S.A Chapter 137, §§ 4451-4469a
- Ejectment, 12 V.S.A. Chapter 169, §§ 4761-4859
- Consumer Protection Act, 9 V.S.A. Chapter 63, §§ 2453, 2461
- Habitability-Related:
 - VDH:
 - Rental Housing Health Code
 - Vermont Lead Poisoning Law, 18 V.S.A. Chapter 38, §§ 1759-1761
 - Dep't of Public Safety Rules
 - Electrical Safety
 - Plumbing, Fire & Building Safety Code
 - ANR Rules: Wastewater System and Potable Water Supply
 - EPA Federal Lead Paint Rules:
 - Lead Paint Real Estate Notification and Disclosure Rule, 40 C.F.R. Part 745, subpart F
 - Lead Paint Renovation, Repair and Painting, 40 C.F.R. Part 745.80
 - Agency of Agriculture: Pesticide Regulations, 6 V.S.A. Chapter 87

Landlord-Tenant Law in Vermont

Special Situations

- Different laws and regulations apply for some special situations.
- **Subsidized Housing** (Feb. 2017, many subsidy programs are frozen/suspended or otherwise not available due to uncertain funding futures).
 - Public Housing
 - Section 202/811 Elderly/Disabled
 - Project-Based Section 8
 - Section 8 New Construction, Substantial Rehab, Moderate Rehab, Mod Rehab SRO
 - CoC Permanent Supportive Housing
 - RD 515/521, HOME, CDBG, LIHTC

Landlord-Tenant Law in Vermont

Special Situations

- Tenant-Based Subsidies
 - Federal: Section 8 Housing Choice Vouchers, Family Unification Voucher, VASH vouchers (veterans), Shelter+Care vouchers.
 - State: Vermont Rental Subsidy (currently not available)
- Mobile Home Parks, 10 V.S.A. Chapter 163, §§ 6236-37 – There are some significant differences for MH park rules from Title 9 landlord/tenant rental situations

Landlord-Tenant Law in Vermont

Basics of Landlord-Tenant Law

- Tenant: A person, entitled under a rental agreement, whether in writing or oral, to possession of a residential dwelling to the exclusion of others. 9 V.S.A. § 4451(9).
 - Unlawful subleasing and expedited process under Title 12§ 4853b. (Unlawful occupant; expedited hearing.)
- Tenant retains possession until one of three things happens:
 - The tenant surrenders possession voluntarily to the LL at the end of the rental agreement.
 - The landlord uses legal steps to end the rental agreement, 9 V.S.A. § 4467, and gets a court order for possession, 12 V.S.A. § 4854.
 - The tenant abandons the property, 9 V.S.A. § 4462:
 - Reasonable person would think unit is no longer occupied full-time;
 - Rent is not current; AND
 - LL tried to find out tenant's intentions.
- Self-help eviction, either by denying access or cutting off utilities, is unlawful. 9 V.S.A. § 4463.

Basics of Landlord-Tenant Law

- Tenant Obligations:
 - Pay rent without demand or notice. 9 V.S.A. § 4455(a)
 - Not to disturb other tenant's peaceful enjoyment of the property
 - Not to damage property or create a code violation. 9 V.S.A. § 4456.
 - Not to unreasonably deny LL access to the unit. 9 V.S.A. § 4460.
 - Comply with other terms of the rental agreement.
 - Vacate the unit upon lawful termination of the tenancy.

Landlord-Tenant Law in Vermont

Basics of Landlord-Tenant Law

- Tenant Rights:
 - To be free from discrimination based on protected categories. Discrimination in Public Accommodations Act, 9 VSA Ch. 139.
 - To have the LL make repairs to defective conditions within a reasonable period of time. 9 V.S.A. § 4458.
 - To be free from retaliation if she complains about defective conditions. 9 V.S.A. § 4465.
 - To have exclusive use and possession of the rental unit.
 - To be treated with good faith and fair dealing by the LL.

The Eviction Process

Steps in an Eviction Case

- Notice of termination of tenancy
- Summons and Complaint
 - Motion for Rent Escrow
- Motion to Dismiss (tenant)
 - Motion Opposing Rent Escrow
- Rent Escrow Hearing
 - Hearing on MTD
- Answer (and counterclaims)
- Status conferences, discovery
- Trial

Making the Case Go Away: Motions to Dismiss

12(b)(1) Arguments

- Notice Problems:
 - No notice to quit.
 - Or basis alleged in complaint is different from NTQ.
 - NTQ did not provide adequate time
 - NTQ does not provide right to redeem
 - Redemption amount includes anything other than rent.
 - For cause notice that is insufficiently specific.
 - If the NTQ is sent by a debt collector, it did not include FDCPA advisory.
 - Subsidized housing: Notice didn't comply with fed regs.
- Standing Problems:
 - Plaintiff is not legal owner/owner rep.
 - Plaintiff is an unregistered corporation or company
 - Plaintiff is trying to evict tenant from the wrong address.

Making the Case Go Away: Motions to Dismiss

12(b)(6) Arguments

- No cause:
 - During the initial term of a written lease, no cause is not legally permissible unless otherwise stated.
- Nonpayment of rent:
 - Rent is not owed.
 - Habitability
 - Proof of payment
- For cause:
 - Cause alleged is actually permissible under the terms of the lease.
 - Cause alleged is impermissible under lease, but lease clause is invalid because it violates Vermont law.

Other 12(b) Arguments

- 12(b)(3): LL files in a county other than the county of the rental unit.
- 12(b)(4)
 - Landlord failed to attach a copy of the written lease
 - Subsidized housing: Landlord failed to attach copies of all appropriate lease addendums
- 12(b)(5): Tenant was not served with S&C.

Rent Into Court: Pleadings

- The Motion: LL may file a motion for a rent escrow order. 9 V.S.A. § 4853a
 - The motion must include an affidavit of support.
 - Can be filed at any time.
- Memo in Opposition, Rule 78(b).
 - Must include supporting affidavit.
 - Arguments:
 - MTD must be decided first.
 - Premises not worth rent owed: Warranty of habitability.
 - Tenant doesn't have access to premises: Illegal eviction.

Rent Into Court: Hearing and Process

- Rent Escrow Hearing
 - Rent can be ordered from earlier of the date of filing or date of service.
 - Negotiate date of first payment and date of monthly payments.
- Negotiations
 - Repayment agreements
 - If client has secured alternative housing, waiver of arrearage and neutral reference in exchange for writ.
- Payment of rent into court and consequences of failure to pay.
 - Issuance of 5 day writ of possession for failure to pay.

Answers and Counterclaims

- Answer deadline: 20 days post-service or 10 days post-RIC hearing.
- Counterclaims:
 - Habitability: LL had actual notice of a defective condition that is a material threat to health and safety and failed to make repairs within a reasonable period of time.
 - Consumer Protection Act: Landlord knew of defective conditions at the time the tenant leased the unit but failed to disclose them.
 - Terry v. O'Brien: Includes defects “of which they should have been aware.”

Answers and Counterclaims

- Counterclaims, cont.
 - Trespass: Compensation for any damages incurred and for costs related to raising the claim. 12 V.S.A. § 4920. With actual notice to LL and/or a Notice Against Trespass, can seek triple damages. 12 V.S.A. § 4923.
 - Negligence: Personal injury, property damage.
 - Illegal eviction: Denial of access to all or part of the premises, utility shut-offs.
 - Intentional infliction of emotional distress: Outrageous conduct with the intent to cause distress (or reckless disregard) that causes distress.
 - Retaliation: Changing terms of tenancy after notice of habitability complaints. 9 V.S.A. § 4465(a).

Settlements

- Tenant wants to stay:
 - No cause: Why does the LL really want the tenant out, and can we make the LL feel better about continuing the tenancy?
 - Cause:
 - Would a reasonable accommodation cure the violation?
 - If the tenant cures the violation, will the LL be satisfied?
 - Nonpayment:
 - Community resources:
 - See Resource page in the Manual
 - Client can call 2-1-1 for other referrals
 - Repayment Agreements

Settlements

- Tenant wants to leave
 - Tenants chances of finding another apartment while subject to eviction are slim.
 - Negotiate for:
 - Waiver of rent arrearages
 - Good/neutral reference
 - Disposition of security deposit
 - No issuance of writ unless client fails to move out by date certain
 - Disposition of any abandoned property/garbage
 - Statement that the client is not voluntarily surrendering housing and is doing so only to minimize court costs and fees and to enhance likelihood of securing housing in the future.

Motions for Default / Going to Trial

- Motion for Default: General course of action for nonpayment or no cause with no defenses.
- Trial:
 - Costly. Time-consuming. Avoid if possible!
 - If you have viable counterclaims:
 - Be sure to seek fees for counterclaims.
 - May be reasonable to switch to a contingency fee retainer, particularly if there are negligence claims likely to be covered by insurance.

THANK YOU!

- Please consider volunteering at the clinic!
- Any questions can be directed to Maggie Frye or Angele Court at Law Line
- We appreciate your interest and hope to see you volunteer. Sign up with the court clerk and to get information about upcoming rent escrow days.

**VERMONT VOLUNTEER
LAWYERS PROJECT**

Name _____

Firm _____

Address _____

Phone _____

Fax _____

E- Mail _____

**E- Mail me information on how I can join
the VVLP**

Call me to discuss pro bono opportunities

Send me a client in need of legal assistance.

I will consider a referral from

_____ **County.**

**I will consider a referral for clients with
legal needs in the following areas:**

- | | |
|---|---|
| <input type="checkbox"/> landlord/tenant | <input type="checkbox"/> divorce |
| <input type="checkbox"/> employment | <input type="checkbox"/> foreclosure |
| <input type="checkbox"/> child custody | <input type="checkbox"/> wills |
| <input type="checkbox"/> real property | <input type="checkbox"/> support |
| <input type="checkbox"/> estates | <input type="checkbox"/> bankruptcy |
| <input type="checkbox"/> relief from abuse | <input type="checkbox"/> income tax |
| <input type="checkbox"/> contract dispute | <input type="checkbox"/> consumer |
| <input type="checkbox"/> guardianship | <input type="checkbox"/> torts |
| <input type="checkbox"/> small claims | <input type="checkbox"/> education |
| <input type="checkbox"/> property disputes | <input type="checkbox"/> state tax |

Vermont Volunteer Lawyers Project
274 North Winooski Avenue
Burlington, VT 05401 800-639-8857
acourt@lawlinevt.org
www.lawlinevt.org/vvlp.html

WHAT IS THE VERMONT VOLUNTEER LAWYERS PROJECT?

The Vermont Volunteer Lawyers Project (VVLP) was established on Law Day, May 1, 1984, as a cooperative effort of the Vermont Bar Association and Vermont Legal Aid, Inc. The Project's administrative unit is located in Burlington. The expense of operating the program is borne by Legal Services Law Line of Vermont, Inc..

The purpose of the Project is to enlist the aid of Vermont's private practitioners in the delivery of pro bono civil legal services to low-income clients. Due to significantly reduced funding, Legal Services Law Line alone is not able to address all of the legal needs of the state's substantial indigent population.

The Project cannot overemphasize the need for more Volunteer Lawyers. Project staff initially screen clients for financial eligibility and legal merit, and then refer accepted clients via phone to participating VVLP attorneys. It is always the attorney's choice whether or not to accept a particular referral. While direct representation of clients remains the biggest need and the Project's focus, VVLP has developed some alternatives, including a Mentor Program, an Advice Panel, and opportunities to help VVLP staff with referrals and community education.

An important aspect of the Project is the services offered to participating attorneys. These perquisites emphasize the advantage of doing *pro bono* work in a systematic and organized fashion designed to target the neediest clients. The Project offers the following:

- ◆ *Reimbursement for covered expenses, e.g., filing and service fees, copying costs, phone calls, transcripts, etc.*
- ◆ *Access to Legal Services Law Line of Vermont library facilities and staff specialists in relevant areas of law, as well as access to regional and national support centers which specialize in various legal areas of importance to low-income persons.*
- ◆ *Malpractice insurance for VVLP pro bono cases with coverage in the amount of \$1,000,000 per case with a maximum of \$1,000,000 per year (secondary coverage).*
- ◆ *Training materials in relevant areas, e.g., Abuse Prevention Act, child support, landlord/tenant law.*

The following comment from an appreciative VVLP client sums up the importance of the Project:

I feel without a service like the Volunteer Lawyers Project someone like myself on a limited, fixed income would be without the benefit the law can provide. I greatly thank you."