

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In re: Norman Watts, Esq.  
PRB File Nos. 2019-102 & 2020-011

**ORDER REGARDING MOTION TO RESOLVE DISCOVERY DISPUTE**

Disciplinary Counsel has filed a motion seeking resolution of a discovery dispute. She maintains that Respondent's responses to requests for production of documents are insufficient. Respondent attempts to clarify certain responses, maintains that some of the requests are overly burdensome or seek information that is not relevant or protected, and otherwise claims that he has already provided all responsive documents or that he is in the process of doing so.

After having reviewed the parties' submissions, the Hearing Panel Chair concludes that both parties' positions are deficient in certain respects and, therefore, has decided to order the parties to reconsider the discovery requests and responses, in accordance with the guidance set forth below; to meet and confer once again in an attempt to resolve or reduce the scope of their differences; and then, if necessary, to resubmit any remaining discovery dispute, in accordance with the guidance set forth below.

Administrative Order 9, Rule 19(B)(1) allows parties to make "reasonable requests for production of nonprivileged documents and evidence relevant to the charges or to respondent." Disciplinary Counsel served a set of requests for production consisting of 40 discrete requests. She has moved to compel discovery on 37 responses. Although some or all of these requests may, in fact, be reasonable and calculated to lead to admissible evidence, the grounds that have been submitted by Disciplinary Counsel – as part of a chart submitted as an appendix to the motion – either do not address relevancy issues or are summary in nature without a specific reference to the issues in this proceeding. Given the sprawling nature of the petition in this proceeding – consisting of 7 separate counts and 90 allegations – Disciplinary Counsel must

more specifically explain the relevancy of each request and otherwise explain why it is reasonably framed. Finally, some of the requests to compel may be moot at this point. For example, Respondent has indicated that phone records were subpoenaed. Disciplinary Counsel should reconsider each request to compel with this guidance in mind and advise Respondent of any revisions to the requests for production that are the subject of the motion to compel.

Following this re-examination by Disciplinary Counsel and notification of any revisions, the Chair expects Respondent to revise his responses to the requests for production. As currently framed, Respondent's responses are not proper. If an objection is presented by Respondent based on relevancy, the justification for the objection needs to be stated with specificity so that the Chair can evaluate it against the pleadings. This was not done adequately in either the responses or Respondent's opposition memo.

In addition, in the absence of an objection, Respondent must answer by affirmatively stating whether any responsive documents exist (within Respondent's possession, custody, or control) and by providing a reasonable description of the responsive documents. A failure to so state is an evasive answer. Along these lines, Respondent may not respond that he has "already produced all such materials." The purpose of a request for production is, first, to obtain document from an opposing party and, secondly, to ascertain what documents have been previously produced (through prior informal discovery) and/or are now being produced. A proper response must either state that no responsive documents exist or, alternatively, must identify with a reasonable description, the documents that have been produced and/or that are being produced.

Even assuming Respondent previously produced some documents, Respondent must provide a statement to that effect and a reasonable description of the documents that were produced previously. Moreover, even assuming documents were previously produced, the response must state whether any additional responsive documents exist and, if so, a description

of those additional documents being produced must be provided. So-called "Bates Stamp" numbering is one option for description; another possibility is a description of the source of the documents and number of pages produced for each item; there may be other types of description that will suffice. The sufficiency of the description should be discussed among the parties and Respondent should attempt to meet reasonable requests by Disciplinary Counsel for description. In any event, whether or not the parties are able to resolve their differences, Respondent must revise his responses to the requests for production to meet these basic requirements. He is currently not in compliance.

In addition, the opposition memo submitted by Respondent is insufficient. Any objection based on privilege or proprietary information must be briefed fully. Likewise, any objection based on an assertion that the request could not lead to the production of admissible evidence or that it is unduly burdensome must be briefed.

In accordance with this guidance, the parties are hereby ORDERED to reconsider their respective requests and responses and then to meet and confer on the following schedule: Disciplinary Counsel shall advise Respondent of any modifications to the requests for production within 5 business days of the issuance of this Order; Respondent shall provide revised responses to the requests within 10 business days of the issuance of this Order; the parties shall schedule a meet-and-confer session to take place no later than 15 days following the issuance of this Order. If any dispute remains following the meet-and-confer session, Disciplinary Counsel may resubmit the remaining dispute for resolution, with a copy of Respondent's revised responses to the requests and a legal memorandum. Respondent shall file any opposition within 5 business days.

Dated: August 9, 2021

Hearing Panel No. 9

By: Karl C. Anderson  
Karl C. Anderson, Esq., Chair

Mary Jo Stegert  
Hearing Panel  
Counsel