

**STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM**

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

**RESPONDENT'S REPLY IN SUPPORT OF MOTION FOR CONTINUANCE
OF MERITS HEARING; REQUEST FOR DISQUALIFICATION AND
REMOVAL OF SPECIALLY ASSIGNED DISCIPLINARY COUNSEL**

NOW COMES the Respondent, Norman E. Watts, by and through his counsel, Kaveh S. Shahi, Esq., of the firm of Cleary Shahi & Aicher, P.C., and respectfully offers this Reply in support of the motion for the continuance of the merits hearing currently scheduled for June 7-9, 2023. Further, the Respondent requests that the Specially Assigned Disciplinary Counsel be disqualified for violation of Rules of Conduct and reported for investigation.

A. **The Rules of Professional Conduct Prohibit a Lawyer from Making False Statements, Falsely/Recklessly Questioning the Integrity of a Judge, and Engaging in Discriminatory Conduct**

The Vermont Bar Association has adopted Guidelines for professional conduct and courtesy by lawyers which in relevant part state:

Guidelines of Professional Courtesy

In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the legal system.

A lawyer should act with candor, diligence and utmost respect.

A lawyer should act with courtesy and cooperation, which are necessary for the efficient administration of our system of laws.

A lawyer should act with personal dignity and professional integrity.

Lawyers should treat each other, their clients, the opposing parties, the courts, and members of the public with courtesy and civility and conduct themselves in a professional manner at all times.

Effective advocacy does not require antagonistic or obnoxious behavior. Lawyers should adhere to the higher standard of conduct which judges, fellow attorneys, clients, and the public may rightfully expect.

Vermont Rules of Professional Conduct, Rule 8.1, provides in relevant part that “[a] lawyer . . . in connection with a disciplinary matter, shall not (a) knowingly make a false statement of material fact” Similarly, Rule 8.4(c) prohibits a lawyer from engaging in “[c]onduct involving dishonesty, fraud, deceit or misrepresentation.”

Rule 8.2 addresses a lawyer’s conduct relative to the integrity of a judge:

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge,

Misconduct under Rule 8.4 provides that a lawyer shall not:

- (a) violate or attempt to violate the rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (g) discriminate against any individual because of his or her race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth or age, or against a qualified handicapped individual, in hiring, promoting or otherwise determining the conditions of employment of that individual.

B. The Opposition Prepared by Specially Assigned Disciplinary Counsel Has Violated the Above Rules

The Opposition submitted by the Specially Assigned Counsel contains three sections, two of which (II and III) are devoted to an attack on the undersigned identified as

Attorney Shahi or Shari. Putting aside the typo of the undersigned's name, the sections in the Opposition directed at the undersigned are disrespectful and false *ad hominem* attacks. In a few months, the undersigned will have practiced for 40 years as a person of ethnicity in a profession long perceived as reserved for the privileged few – usually white men. The messaging that he should be disbelieved, disrespected, and discredited because of his ethnicity is not new, but certainly considerably less so over the past 10-15 years. Thankfully much progress has been made at the bar with the growing inclusion of “others,” including but not limited to gender and racial parity to mirror the changes in society at large. Still, it took some 45 years from the passage of the Civil Rights Act in 1964 to 2009 for the Vermont Rules of Professional Conduct to be amended to prohibit in Rule 8.4(g) discrimination by lawyers.

Vermont bar at its core has been home for a long time to professionalism and respectful behavior by its members. Like many other bar members, the Respondent and the undersigned often have been on the opposite sides in hotly litigated matters. Yet mutual respect was always there, and attorney Watts has been a pillar of utmost professionalism in dealing with the undersigned. It was without hesitation that the undersigned agreed to represent attorney Watts in this matter, but subject to the reservation that in accord with the rules of conduct, the undersigned have sufficient time to properly prepare.

The undersigned does not know the Specially Assigned Counsel, and as best as memory serves, has not had any dealings with her in the past. The undersigned cannot speak directly to her motivation but circumstantially it is noteworthy that her Opposition has one page about attorney Watt's timing on hiring counsel (fair game), and four pages to

berate the undersigned (baseless, false, and discriminatory). Attorney Watts and undersigned are both older lawyers with many similarities, but one notable difference at play here with the Opposition: one is white with European Christian heritage, and the other is of color with Middle Eastern heritage from a predominantly Muslim region.

It is profoundly disappointing, especially in the context of a disciplinary matter which should demand not only compliance with the applicable rules of conduct by counsel but behavior *well above* the standard acceptable in other adjudicatory bodies, for bar counsel to accuse opposing counsel of essentially lying to the panel. And to raise the stakes this high and violate so many rules of conduct in the process of opposing a one-page motion for a continuance demonstrates a complete absence of judgment on the part of the Specially Assigned Counsel.

The undersigned has worked too long and too hard in promoting the Rule of Law to allow this type of abusive behavior, especially by a lawyer charged with the enforcement of the rules of conduct. The discriminatory pitch by Special Counsel that a person of color/ethnicity should be disbelieved must be soundly and unequivocally rejected by this panel. The disqualification and removal of Special Counsel will send the message that the job of regulating other lawyers requires respectful, dignified and nondiscriminatory behavior.

1. **False Statement: "Attorney Shahi has Sufficient Time to Prepare" Opp. p.3.**

This is a plainly false statement in the Opposition. The undersigned has a full-time litigation practice with the expected demands and responsibilities that follow. If he had

sufficient time to prepare for this hearing, he would not have filed the motion for continuance. The audacity to simply declare that the undersigned has sufficient time to prepare without knowing his schedule and commitments shows complete lack of respect. One can certainly debate whether a given amount of time is sufficient for a hypothetical lawyer to prepare for a hearing, and that is fair game. But the ad hominem nature of leveling a false accusation specific to another lawyer underscores the Special Counsel's disregard for the above quoted Guidelines and the Rules of Conduct.

2. **False Statement: "Attorney Shahi's familiarity with this matter should obviate the need to continue the June 7 trial date." Opp. p.3**

This is another plainly false statement in the Opposition. The undersigned has a very limited understanding of "this matter" through the defense of a legal malpractice suit brought by Mr. Alibozek against attorney Watts, *Alibozek v. Watts*, Windsor Superior, No. 22-cv-00493. The discovery in that malpractice claim included some questions by the plaintiff about this PRB matter which had to be addressed. However, a legal malpractice is a tort claim for money damages with elements and evidence that may overlap some with a misconduct PRB charge but otherwise is governed by a different body of laws. Plaintiff is required to prove the standard of care, breach, causation and damages, and to do so before a jury. The defense of a legal malpractice suit does not usually concern itself with the bread and butter of disciplinary counsel dealing with client complaints about a lawyer's failure to promptly return a call or answer an email.

Special Counsel has not spoken with the undersigned about the actual level of his familiarity with "this matter." The Opposition comes with exhibit 3, an excerpt of

defendant's interrogatory answers in the Alibozek malpractice case. These interrogatory answers have not been publicly filed, and Special Counsel would have obtained a copy from either Mr. Alibozek or his counsel. Putting aside the potential issues with coordination of the prosecution of conduct charges with a civil suit for financial gain, Special Counsel did not disclose to the panel that discovery in the malpractice case has not yet proceeded to any depositions and that the undersigned has alerted Mr. Alibozek's counsel several times in writing that her misguided discovery efforts will not be an excuse to dodge a forthcoming motion for summary judgment. The suggestion by Special Counsel that "this matter" has been fully explored in the discovery process of a legal malpractice case which itself has been mired in marginal and irrelevant matters, is false and misleading.

The Opposition also points to the fact that the undersigned was listed some two years ago as an expert witness in this case. Exhibit 2. Special Counsel, however, is fully aware that the undersigned will not be testifying as an expert witness in this matter. The undersigned was asked by attorney Watts at some point if he could be an expert witness in a PRB matter involving the handling of client trust funds, and it was readily concluded that an expert witness was not needed for what appeared to be a factually frivolous charge. The undersigned was not retained as an expert and did not review anything. Had Specially Assigned Counsel bothered to call the undersigned before accusing him of lying, she would have been properly informed.

On a scale of 0 to 10, the undersigned's current familiarity with "this matter" is at 2-3. The statement by Special Counsel that the undersigned is sufficiently familiar with this matter so as not to require preparation, is plainly false, and once again a message that

a Mr. Shahi or Shari should not be believed when he claims he needs time to prepare. No other lawyer with the undersigned's seniority would be so recklessly accused, but the Special Counsel's underlying theme is that "these people" should not be believed.

3. **False Statement: "More recently, the Hearing Panel can assume that Attorney Shahi re-reviewed the general facts and circumstances of this case before agreeing to enter a limited appearance on behalf of Mr. Watts." Opp. p.3**

Not only it is patently false to state, as Special Counsel has, that the undersigned had reviewed the general facts and circumstances of "this case" at some point but it is doubly false to say that those were "re-reviewed" before agreeing to enter a limited appearance here. As stated repeatedly, the very reason for a limited notice of appearance was to seek time to become educated about the case and be properly prepared. To be sure this panel can deny the motion for continuance for reasons that have nothing to do with the credibility of the lawyer who represents he needs time to prepare. The overwhelming need by the Specially Assigned Counsel however to escalate a simple procedural issue by accusing the undersigned of being untruthful should now be at the forefront of this panel's concern while charged with regulating the conduct of counsel. The persistent and entirely needless messaging that a discriminatory filter should be used to find Shahi/Shari as not truthful, is an insult to the process at hand and violation of Rules of Conduct.

4. **False Statement: "[A]ttorney Shahi states he will need time to prepare due to the volume of discovery." Opp. p.4**

This is yet another patently false statement in the Opposition intended to discredit the undersigned. The Hearing Panel hopefully will have read the one-page motion for continuance and can note that nowhere did the undersigned said he will need time to

prepare due to the volume of the discovery in this case. The undersigned has no idea of the volume of discovery in this case and Special Counsel is attempting to create a strawman argument to reinforce the desperate need to attack the undersigned's credibility.

5. **False Statement: "In other words, Attorney Shahi has plenty of time to prepare for a matter with a limited number of documents, where he is already intimately familiar with half of the case, and has more than four weeks to prepare for the rest."**
Opp. p.4

For reasons explained above, this is a false statement which is bolstered by the false characterization of "intimately familiar" with half of the case. As noted earlier, the legal malpractice claim by Mr. Alibozek has not been developed in discovery due to the choices made by his counsel to pursue issues that are irrelevant or marginal at best. If Special Counsel had afforded the undersigned the dignity and respect of asking first, she would have learned that he is not "intimately familiar" with any aspect of this matter.

6. **False Statement: "Attorney Shahi's Schedule Is Not a True Conflict" Opp. p. 4**

This is yet another false statement by Special Counsel. The jury draw on June 7th is a conflict with the first day of the hearing in this matter on June 7th. The disjointed argument that follows in the Opposition (section III) appears to urge that the undersigned should breach his duty of diligent representation of his client in the *Lozefski* case by having "another attorney" draw the jury. Any experienced trial lawyer knows that a jury draw is effectively the first day of trial. Not only is Special Counsel advocating for breach of the undersigned's duty to his client but also for a breach by the covering lawyer as he/she will not be as prepared by the late engagement. Special Counsel falsely states there is no true

conflict and in the process recklessly advocates for breach of conduct rules by two other lawyers.

7. Special Counsel Impugns the Integrity of the Judiciary

The Opposition states in part: “Based on the notice, it is highly unlikely that the *Lozefski* [sic] matter will even go to trial based on this draw – the Court only has only five available trial days in June (June 26 – 30) and there are three other multi-day trial matters scheduled for the same jury draw.” Opp. p.5.

Rules of Professional Conduct, Rule 8.2, provides in part:

- (a) A lawyer shall not make a statement that the lawyer knows to be *false or with reckless disregard* as to its truth or falsity concerning the qualifications or *integrity of a judge*,

Emphasis added. Special counsel’s statement in the Opposition memo quoted above is tantamount to stating that the presiding judge in *Lozefski* lacks integrity as he/she will hold a jury draw when it is likely the case will not be assigned a trial date. In other words, Special Counsel is suggesting that the Court will engage in a fraud upon the public by holding a false draw without a trial to follow. In that process the Court will have to lie, directly and indirectly, to the jury pool.

In addition to insulting the Court, the conclusion urged by Special Counsel is that the undersigned as an officer of the court and counsel to a party should disregard the jury draw on June 7th because the Court is faking it.

This is truly an outrageous statement for any member of the bar to make about a judge let alone someone charged with the enforcement of the professional rules of conduct. If this Hearing Panel wishes to maintain its credibility, it should disqualify Special Counsel

and her conduct should be reported to her superiors for investigation. The level of immaturity and recklessness displayed is truly shocking. It is apparently not enough for Special Counsel to attack the undersigned but to also savage a judicial officer by making assumptions about his/her calendar management and a fraudulent draw.

8. **False Statement: Presumably, Attorney Shahi was aware of the scheduling conflict before agreeing to represent Mr. Watts. Therefore, a decision must have been made that either one of his partners could attend the jury draw or he could move to continue the jury draw. Opp. p.5.**

The pattern of accusations that the undersigned is lying to the panel, keeps repeating and becoming more fantastical. Now, Special Counsel has the insight that the undersigned had either arranged to have a partner draw the jury or move to continue it, and is keeping these facts from the panel. The undersigned is left speechless at the bizarre and false assertions.

Conclusion

The Special Counsel cautions the panel against delay because of the exposure of the public to attorney Watts, whereas the true picture is that attorney Watts should be protected from a Special Counsel whose Opposition memo suggests she has little regard for the rules of professional conduct, the integrity of the judiciary and the truth. The false and discriminatory statements to portray the undersigned as untruthful for making a simple request for a continuance are embarrassing and shocking coming from a lawyer charged with the enforcement of the rules of professional conduct. A one-page request for continuance could have been opposed with a one-page memorandum that it is too late. Instead, the panel is exposed to a prosecuting attorney engaged in an *ad hominem*

discriminatory attack while displaying lack of respect for the rules and the judiciary. The Special Counsel cannot and should not continue in this matter. The replacement counsel and the undersigned will require additional time to prepare for a hearing.

Dated this 16th day of May, 2023.

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