

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: C. Robert Manby Jr.
PRB File No. 2019-089

RESPONSE TO PETITION OF MISCONDUCT

Respondent, C. Robert Manby Jr., hereby responds to Disciplinary Counsel's Petition Of Misconduct. For convenience of the Hearing Panel and Disciplinary Counsel, each alleged violation and alleged supporting fact has been reproduced before the response.

RESPONSE TO ALLEGED VIOLATIONS

Count 1 of 3

In 2015 and 2016, C. Robert Manby Jr., a licensed Vermont attorney, failed to maintain a normal client-lawyer relationship with 91-year-old client EM who was a client with diminished capacity; to wit: accepted client EM's son's representations about EM's wishes without inquiring with EM directly or consulting with her about her own wishes, objectives, and concerns, in violation of Vermont Rule of Professional Conduct 1.14(a).

Response: Respondent denies that he violated V.R.Pr.C. 1.14(a).

Respondent admits that he believed JJM when "JJM represented to [him] that EM had no issues regarding her competency or mental capacity [and] that she was feeble but doing okay and able to understand who she is and what was going on" Facts at ¶ 8. If EM had any diagnosis of dementia or Alzheimers "Respondent was not aware of these diagnoses and relied on his own observations and JJM's specific representations and [sic] to him that EM had the capacity to understand the transactions she was conducting and what EM's wishes were." Facts at ¶ 38.

Respondent denies the allegation that he did not inquire of EM “directly about her own wishes, objectives, and concerns” because “Respondent conversed with EM by opening the passenger door of the car so Respondent, while squatting outside the car, could have a face to face meeting with EM.” Facts at ¶ 22. And “Respondent did explain the effect of each document generally to EM and when he asked her if she understood, and she stated “yes” [Respondent] then watched her sign them and notarized the signatures, after taking her acknowledgement.” Facts at ¶¶ 22 and 23.

Count 2 of 3

In 2015 and 2016, C. Robert Manby Jr., a licensed Vermont attorney, failed to provide competent representation to EM; to wit: failed to meet with her privately and discuss with her what her objectives and concerns were in arranging her estate and failed to advise her of possible consequences of property transfers to JJM in violation of Vermont Rule of Professional Conduct 1.1 .

Response: Admit Respondent negligently violated V.R.Pr.C. 1.1. by failing to privately meet with EM for discussions regarding EM’s objectives, concerns and to fully advise EM of possible consequences of property transfers to JJM.

Count 3 of 3

In 2015 and 2016, C. Robert Manby Jr., a licensed Vermont attorney, failed to adequately communicate with his client EM; to wit: drafted, and/or presented to EM for signature multiple documents affecting EM’s interest in her own assets without explaining the documents to her or the possible consequences to the extent reasonably necessary to permit her to make informed decisions, in violation of Vermont Rule of Professional Conduct 1.4(b).

Response: Admit Respondent did explain the effect of each document generally to EM and when he asked EM if she understood, and EM stated “yes,” Respondent negligently violated V.R.Pr.C. 1.4(b) by failing to adequately communicate with EM regarding the possible consequences of the documents to the extent reasonably necessary to permit her to make informed decisions.

RESPONSE TO ALLEGED FACTS

1. Respondent was admitted to practice law in Vermont in 1980.

Response: Admit.

2. He maintains a solo general practice in White River Junction.

Response: Admit.

3. Respondent first met JJM approximately 30 years ago and thereafter worked with JMM in connection with multiple real estate transactions involving the real estate brokering firm where JJM was employed.

Response: Admit.

4. Respondent’s contact with JJM after those transactions included representation in the purchase and subsequent sale of JJM’s residence in Strafford, VT; sale of a business in White River Junction, VT, and several other minor matters, all occurring approximately 20 years ago.

Response: Admit.

5. After the sale of JJM’s home, Respondent did not speak to JJM again until February 2015, when JJM contacted him requesting help with arranging his elderly mother’s (EM) affairs.

Response: Admit.

6. Specifically, JJM asked Respondent to help EM arrange for a deed that would transfer

title to EM's house, discuss EM's bank accounts, and learn about what the options and possibilities might be to avoid probate.

Response: Admit.

7. On February 17, 2015, Respondent met with JJM at his office to further discuss the issues. EM was not present.

Response: Admit.

8. At the time, EM was 91 years old and JJM was living with her in her Burlington home. When asked by Respondent, JJM represented to Respondent that EM had no issues regarding her competency or mental capacity. JJM represented to Respondent that she was feeble but doing okay and able to understand who she is and what was going on.

Response: Admit.

9. Contrary to JJM's representation to Respondent, EM had been in cognitive decline since around 2010 and had been diagnosed with Alzheimer's disease in 2014.

Response: Respondent has insufficient information to admit or deny this alleged fact. Admit, however, that if EM had been in cognitive decline and diagnosed with Alzheimer's disease, Respondent was unaware of it. He did not have information or knowledge contrary to the representations of JJM that EM had no issues regarding her competency or mental capacity.

10. Without speaking to EM or consulting with her directly, Respondent agreed he would represent EM in connection with the transfer of interest in her home, believing he would be working to achieve EM's objective which seemed to be aligned with JJM's objective.

Response: Admit.

11. At the February 2015 meeting, JJM told Respondent that he had a power of attorney over EM's affairs dated 2011 but he did not have it with him. JJM spoke with Respondent at

the meeting about EM's checking account, car, life insurance policy, and real estate.

Response: Admit.

12. Respondent asked JJM to send him a copy of the power of attorney, but Respondent did not receive a copy until September 22, 2015.

Response: Admit.

13. Respondent's notes from the February 17, 2015 meeting with JJM indicate that JJM's objective was that all of EM's assets would go to JJM. There were no specific notes explaining that this was EM's objective.

Response: Deny.

14. Respondent was aware that EM had other children who visited her regularly. On several occasions, JJM represented to Respondent that his sisters, PS and GW caused EM repeated annoyance and distress in their visits. Respondent never inquired of EM about her perspective on PS and GW's visits.

Response: Admit.

15. JJM specifically wanted Respondent to draft a deed that would change the ownership of EM's residence to a form of ownership that included JJM. Respondent and JJM discussed possible types of changes in the form of ownership and how some might impact EM's eligibility for long-term care funding through Medicaid, though not in great detail.

Response: Admit that JJM represented that EM wanted the deed changed, otherwise denied.

16. On April 17, 2015 Respondent and JJM spoke by telephone and JJM asked Respondent to prepare a joint tenancy with right of survivorship deed from EM to EM and me.

Response: Admit.

17. Respondent was aware this type of deed would potentially affect EM's eligibility for long-

term care funding through Medicaid and was a transfer of a major asset to JJM.

Respondent did not contact EM or otherwise consult with her independently regarding the options available to her and possible financial consequences.

Response: Admit.

18. Respondent was told by JJM that EM's long-term care plans were to remain in her home and have JJM care for her, although he did not discuss this with her directly and never asked what EM's plans were in the event JJM became unable to care for EM.

Response: Admit.

19. Shortly after the April 17, 2015 phone call with JJM and without speaking directly to EM (the client), Respondent prepared a draft deed and cover letter addressed to JJM and sent it to JJM on April 21, 2015. The deed conveyed EM's home to EM and JJM jointly, as requested by JJM.

Response: Admit.

20. On June 25, 2015, Respondent drove from White River Junction to Burlington where he met EM for the first time and communicated with her for the first time. In the parking lot of her church, she signed the deed Respondent had prepared conveying her ownership of her Burlington home to both her and JJM as joint tenants with right of survivorship.

Response: Admit.

21. On the same day, JJM asked Respondent to notarize two additional documents.

Respondent watched EM sign the documents, took her acknowledgements and notarized EM's signature on a Key Bank form requesting total payout liquidation to JJM from an IRA valued at approximately \$14,000 and a Declaration of Trust listing JJM as the sole beneficiary.

Response: Admit.

22. Respondent had a brief and direct conversation with EM about the meaning of these documents while JJM was seated next to her in the car. Respondent conversed with EM by opening the passenger door of the car so Respondent, while squatting outside the car, could have a face to face meeting with EM. During this face to face discussion with EM her back was to JJM. Respondent did not meet or converse with her alone or otherwise attempt to help her make informed decisions or explore whether she was subject to any undue influence by JJM in transferring him these assets.

Response: Admit.

23. Respondent did explain the effect of each document generally to EM and when he asked her if she understood, and she stated “yes.” EM did not speak many other words other than “yes.” He then watched her sign them and notarized the signatures, after taking her acknowledgement.

Response: Admit.

24. At no time did Respondent ask EM any general questions along the lines of what her intentions were.

Response: Admit that Respondent, in explaining the specific effect of each document to EM, confirming that the document was her specific intent, did not ask EM general questions concerning her intentions.

25. On September 29, 2015, EM and JJM met with Respondent in White River Junction. At JJM’s representation that it was EM’s wish, Respondent had prepared a new deed conveying EM’s remaining shared interest in her home to JJM and a new durable power of attorney giving durable power of attorney to JJM. EM signed the new deed and the new power of attorney and Respondent notarized both signatures.

Response: Admit.

26. A few days before the September meeting with EM and JJM to obtain signatures on the second deed and the new durable power of attorney, Respondent received a fax from JJM with a copy of the 2011 existing power of attorney. He did not specifically review the scope of the change relative to the new power of attorney with EM or meet with her outside the presence of JJM.

Response: Admit.

27. The 2011 power of attorney naming JJM gave JJM authority to sign EM's name on all documents that required her signature and carry out banking transactions to pay EM's bills and legal obligations but did not give JJM authority to retain an attorney for EM for the specific purpose of transferring title to EM's real property.

Response: Admit.

28. On February 4, 2016, Respondent witnessed EM's signature on an advanced directive on health care. He did not meet with EM outside JJM's presence to ask her questions aimed at assessing whether she understood the effect of the document.

Response: Admit.

29. In early 2016, JJM asked Respondent for some advice on how to revoke an earlier power of attorney. Based upon Respondent's advice, JJM prepared a letter from EM to his sister PS, which revoked a previous durable power of attorney EM had granted to PS in 2009. On March 20, 2016, Respondent met briefly with EM and JJM and he notarized EM's signature on the letter (drafted by JJM with advice from Respondent) revoking PS's power of attorney. Respondent generally explained the effect of the letter, but he did not meet with EM outside JJM's presence to ask her questions aimed at assessing whether she understood the effect of the document or its relationship to other documents he had prepared for her signature in February, September and June of the previous year.

Response: Admit.

30. EM had an existing last will and testament. Respondent never obtained or reviewed a copy of the will or discussed with EM whether any of the changes to her estate planning were related in any way to the content of her will.

Response: Admit.

31. PS received notice of the revocation of the power of attorney in the mail around April 15, 2016. This caused PS alarm because she was aware her mother EM had been diagnosed with dementia and Alzheimer's, and PS did not believe EM had sufficient cognitive functioning to understand what the revocation meant. PS's perceptions and beliefs about EM's capacity were based upon her almost daily visits with EM and upon her accompanying EM to her doctors' appointments.

Response: Deny. This alleged "Fact" is irrelevant, inadmissible hearsay, inadmissible opinion and should be struck from the Petition of Misconduct.

32. PS contacted her sister GW, and together they looked into the matter and learned of the deed transferring EM's interest in her residence to JJM and that JJM's name had been added to EM's bank accounts.

Response: Deny. This alleged "Fact" is irrelevant and should be struck from the Petition of Misconduct.

33. PS and GW then sought legal help, initiated a guardianship action, were appointed emergency temporary guardians of EM on April 27, 2016 and co-guardians by order dated June 14, 2016.

Response: Deny. This alleged "Fact" is irrelevant, inadmissible hearsay and should be struck from the Petition of Misconduct.

34. The order regarding temporary guardianship found that JJM had cut off his sisters'

access to EM in mid April and that another family member who had seen EM reported that she was unkempt and smelled badly.

Response: Deny. This alleged “Fact” is inadmissible hearsay, irrelevant and should be struck from the Petition of Misconduct.

35. The order of guardianship found that, based upon the evaluation by William D. Nash, Ph.D who visited EM in her home on May 6, 2016, EM could not identify the name of her son or any of her children and was not oriented in any sphere. As of May 6, 2016, William D. Nash concluded it was apparent that EM required help of a guardian for management of her personal, medical and financial affairs.

Response: Deny. This alleged “Fact” is irrelevant, inadmissible hearsay, and should be struck from the Petition of Misconduct.

36. Dr. Nash’s report further noted that EM’s medical records showed mental decline and onset of Alzheimer’s disease beginning around 2010.

Response: Deny. This alleged “Fact” is irrelevant, inadmissible hearsay, and should be struck from the Petition of Misconduct.

37. EM’s medical records show that as early as 2009 she displayed signs of moderate impairment and that by November 3, 2014, she was described as not oriented and displaying advanced cognitive decline.

Response: Deny. This alleged “Fact” is irrelevant, inadmissible hearsay, and should be struck from the Petition of Misconduct.

38. Respondent was not aware of these diagnoses and relied on his own observations and JJM’s specific representations and to him that EM had the capacity to understand the transactions she was conducting and what EM’s wishes were.

Response: Admit that if EM had any diagnosis of dementia or Alzheimer’s

“Respondent was not aware of these diagnoses and relied on his own observations and JJM’s specific representations and [sic] to him that EM had the capacity to understand the transactions she was conducting and what EM’s wishes were.”

39. Following the appointment of PS and GW as EM’s guardians, the probate court revoked the advanced directive for healthcare dated February 4, 2016 on the basis that there was clear and convincing evidence that EM lacked the capacity to understand the nature of the document she signed.

Response: Deny. This alleged “Fact” is inadmissible hearsay, irrelevant, and should be struck from the Petition of Misconduct.

40. On August 22, 2016, the Family Division issued a Temporary Relief from Exploitation Order against JJM, with a finding that JJM had exploited EM and ordering him to refrain from further exploitation and to turn over financial documents in his possession.

Response: Deny. This alleged “Fact” is inadmissible hearsay, irrelevant and should be struck from the Petition of Misconduct.

41. On May 2, 2016, adult protective services investigator Walter Decker went to EM’s residence to interview her. Decker observed that EM was awake but not verbal and not oriented enough to engage in dialogue.

Response: Deny. This alleged “Fact” is inadmissible hearsay, irrelevant, and should be struck from the Petition of Misconduct.

42. All billing, attorney correspondence and communication about the transactions involving EM’s assets and health care directive were handled between Respondent and JJM without any private consultation between Respondent and EM at any time.

Response: Admit.

ADDITIONAL OR AFFIRMATIVE DEFENSES

Respondent's additional or affirmative defenses to the allegation that Respondent violated V.R.Pr.C. 1.14 (a) and alleged Facts in support of the Petition of Misconduct related to the violation of V.R.Pr.C. 1.14 (a).

- 1. Count 1 of 3, that Respondent violated V.R.Pr.C. 1.14(a), fails to state a claim against Respondent under the Facts alleged in the Petition of Misconduct.**
- 2. Alleged diagnoses or conditions of EM, of which Respondent was unaware, cannot be a basis for a claim or finding that Respondent violated V.R.Pr.C. 1.14(a).**
- 3. Failure of mutuality precludes admission of any ruling, finding, order or other reference to judicial proceeding to which Respondent was not a party, including those alleged in ¶¶ 33, 34, 35, 39, 40.**
- 4. Respondent reserves the right to assert additional defenses that may become apparent during discovery.**

Dated: August 25, 2020

C. ROBERT MANBY JR.

By:



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