

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

UNOPPOSED MOTION
TO RECONSIDER HEARING PANEL NO. 2'S
RULING ON RESPONDENT'S MOTION TO RECUSE AND TO STRIKE

Respondent moves for reconsideration, in part, of the panel's Ruling on Respondent's Motion to Recuse and to Strike ("Ruling").

The Ruling states that Disciplinary Counsel's "petition is nothing more than a set of allegations, and it is the prerogative of Disciplinary Counsel to assemble the allegations contained therein. Issues of proof are separate from the allegations in a petition." R 5,6. Because " ...the Vermont Rules of Civil Procedure and the Vermont Rules of Evidence apply in discipline and disability cases."¹ Disciplinary Counsel's allegation of facts are in the nature of a Complaint. Respondent, as the Ruling states, "is free to deny any allegation." R,6. But that is not correct. Respondent must admit an allegation if true.² Where Respondent has admitted an allegation, that becomes the law of the case.³

Respondent has admitted all necessary facts supporting Count 2 of 3, conceding that he 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.

Respondent has also admitted all necessary facts supporting Count 3 of 3 conceding that he negligently violated V.R.Pr.C. 1.4(b) by failing to adequately communicate with EM regarding the possible consequences of the documents he explained to her to the extent reasonably necessary to permit her to make informed decisions.

¹ A.O. 9 Rule 16.B

² V.R.C.P. 8(b)

³ The admission, by the answer, of a fact alleged in the complaint, is a judicial admission, and binding and conclusive. *Oakes v. Buckman*, 87 Vt. 187, 190, [***8] 88 A. 736; *Brown v. Aitken*, *supra*; *Salisbury v. Button*, 97 Vt. 9, 11, 121 A. 435. *Barber v. Chase*, 101 Vt. 343, 350, 143 A. 302, 304 (1928)

No further proof is necessary as to Counts 2 or 3. On these two counts, the parties agree to limit the evidence to the issue of sanctions.

The only allegation remaining is Count 1, alleging Respondent “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 V.R.Pr.C. 1.14(a).”

WHEREFORE, Respondent request the Panel rule as follows:

1. Disciplinary Counsel’s burden is satisfied on Counts 2 and 3. No further evidence on Counts 2 and 3 is necessary.
2. Discovery may continue related to Count 1.

Respondent has Disciplinary Counsel’s assent to inform Hearing Panel 2 that Disciplinary Counsel has reviewed this motion and does not oppose Hearing Panel 2 granting this motion.

Dated at Rutland, Vermont, October 20, 2020.

C. ROBERT MANBY JR.

By:



Harry R. Ryan, Esq., Bar # 1106
FACEY GOSS & MCPHEE, P.C.
71 Allen St., Ste. 401 / P.O. Box 578
Rutland, VT 05702
(802) 236-2129
hryan@fgmvt.com

DATED October _____, 2020

SO ORDERED

Hearing Panel 2

By: _____
James A. Valente, Esq., Chair