

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

MOTION TO EXTEND DISCOVERY DEADLINE

Respondent requests a ten (10) day extension to depose Disciplinary Counsel's expert as follows:

1. The scheduling order required deposition to be completed by March 15, 2021.
2. Disciplinary Counsel identified Dr. Peter Gunther as an expert witness ("witness") in this matter.
3. On January 29, 2021, Dr. Gunther agreed to waive formal service of a subpoena for production of information relating to this matter.
4. After the January 29, 2021 phone call, Respondent's counsel sent a follow up email confirming the agreement for production of information. See Email attached as Exhibit 1.
5. On February 2, 2021, the witness was sent a subpoena via email.
6. Despite the witness' promise to comply, nothing was produced.
7. Respondent's counsel called the witness' office several times. The witness' office did not answer and counsel left messages on the witness' voicemail.
8. On February 25, 2021, the witness was served the subpoena by the Chittenden Sheriff's Department. See Return of Service attached as Exhibit 2.
9. On March 2, 2021, (without copying or directly emailing Respondent's counsel) Attorney Kurt Hughes emailed Disciplinary Counsel stating that his clients would help facilitate the authorization of the records. See Email attached as Exhibit 3.
10. On March 3, 2021, (again without copying or directly emailing Respondent's counsel) the

witness' counsel, Attorney Whitman Smith, emailed Disciplinary Counsel stating that the CHBC's standard authorization form was required to release the records. See Exhibit 3.


11. On March 6, 2021, Disciplinary Counsel kindly forwarded Respondent's counsel the March 2, 2021 and March 3, 2021 emails regarding the necessary release form. See Exhibit 3.
12. Respondent should not be required to depose the witness without the witness' data.^{1 2}
13. The delay in obtaining this information was not caused by the Respondent.
14. No prejudice will occur if this extension is granted.

WHEREFORE Respondent requests that he be allowed ten (10) days following production of the information requested to depose the witness and that the witness be ORDERED to produce the information by March 19, 2021.

Dated: March 10, 2021

C. ROBERT MANBY JR.

By:


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SO ORDERED

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

DATED: _____

¹ V.R.E. 702 If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

² V.R.E. 703 The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.