

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: William Cobb, Esq.
PRB File Nos. 2020-99 & 2020-103

POST-HEARING ORDER

The merits hearing in the above matter was held on October 15, 2021 and November 1, 2021. This order addresses two issues: first, Disciplinary Counsel’s request to seal portions of the record in this matter and, secondly, a schedule for the parties to file proposed findings of fact and conclusions of law for the Hearing Panel’s consideration.

On October 5, 2021 – ten days before the first day of the scheduled merits hearing in the above matter – Disciplinary Counsel filed a Motion for Protective Order with the Hearing Panel. The motion consisted of two requests: first, a request that Disciplinary Counsel be allowed to submit into evidence, for the public record, certain documents in redacted form. The proposed redactions relate to a juvenile proceeding. In accordance with Rule 9(a)(2)(D) of the Vermont Rules for Public Access to Court Records (“Access to Court Records Rules”), Disciplinary Counsel submitted both a proposed set of redacted exhibits and an unredacted set of the exhibits, under seal, for the Panel’s evaluation of the redactions and for the Panel’s confidential consideration of the unredacted exhibits in this proceeding.

Secondly, Disciplinary Counsel requested that the Panel provide for the confidentiality of witness testimony that might reveal confidential information related to the juvenile proceeding. Because the merits hearing was scheduled to be held remotely in this proceeding and public access to the hearing was to be afforded through a “livestream” on the Judiciary’s Youtube channel, the motion requested that testimony which would reveal confidential information “not be broadcast” during the livestream.

The potentially confidential information was not identified with specificity in the motion. Disciplinary Counsel stated only that certain witnesses “might” be required as a result of questioning to disclose information related to the juvenile proceeding. For two of the four witnesses identified, the motion stated that the witness might be required to “disclose some (minimal) information about that proceeding.”

In addition, Respondent has separately offered into evidence in this proceeding one exhibit containing redactions.¹ Those proffered redactions pertain to the same juvenile proceeding.

As a result of these submissions, the Panel is called upon to determine whether the redactions made to the exhibits by the parties are appropriate and, in addition, to what extent a transcript of the merits hearing, which contains the testimony of witnesses, should be redacted to protect similar confidential information.

The Access to Court Records Rules apply to “the Vermont Judiciary, or any component” and, therefore, apply in this proceeding. Vt. Pub. Acc. Ct. Rec. Rule 1. They are intended to “protect the confidentiality of case information where such confidentiality is required by statute, rule, or court order. They must be liberally construed to implement these policies.” *Id.* When seeking approval for the sealing or redaction of information contained in court records, a moving party bears the burden of demonstrating that “the least restrictive means have been employed to preserve the presumption of openness and to protect the specific interests found to justify sealing of the record.” Access to Court Rules, Rule 9(a)(2)(4); *see also id.*, Rule 2(e) (requiring that “[t]o the extent reasonably practicable, restriction of access to confidential information is implemented in a manner that does not restrict access to any portion of the record that is not

¹ Respondent initially submitted redacted versions of three exhibits: Respondent’s Exhibits A, B, and C (and redacted copies Aa, Bb, and Cc). Before the conclusion of the merits hearing, Respondent withdrew his request for redaction of Exhibits B and C, and Disciplinary Counsel did not oppose admission of those unredacted exhibits.

confidential.”). Moreover, “[p]arties cannot seal all or a portion of a case record by mere stipulation. A court order is required.” *Id.*, Rule 9(b).

Rule 6(b)(12) provides, in pertinent part, that “[t]he public does not have access to the following judicial-branch case records: *** “[r]ecords from a juvenile proceeding that are filed with the court or admitted into evidence in a divorce or parentage proceeding.” Various statutes provide further guidance. 33 V.S.A. § 5110 declares juvenile proceedings to be confidential and broadly prohibits “any person” from giving any “publicity” regarding a juvenile proceeding except with the consent of the child, the child’s guardian ad litem, and the child’s parent, guardian, or custodian.” 33 V.S.A. 5117(a) further provides as a general rule, subject to specified exceptions, that court files relating to a juvenile proceeding “shall not be open to public inspection nor their contents disclosed to the public by any person.” *See also* 33 V.S.A. § 5118 (recognizing as a general rule that “records of juveniles maintained by the Family Division of the Superior Court should be kept confidential”).

Against this legal background, the Panel has reviewed the redacted exhibits proposed by Disciplinary Counsel (Exhibits DC-1a, DC-2a, DC-3 Redacted, DC-4 Redacted, DC-7 Redacted, DC-8 Redacted, and DC-19a) and Respondent (Exhibit A.a). The Panel finds that the information redacted from Disciplinary Counsel’s exhibits and Respondent’s exhibit would identify information from a juvenile proceeding; that no reasonable alternative to the sealing exists; and that the redactions have been appropriately tailored so that the least restrictive means have been employed to preserve the presumption of openness and to protect the confidentiality of the juvenile proceeding. Accordingly, the unredacted copies of those exhibits shall remain under seal. The redacted copies of those exhibits shall be available for public access.

Because both parties pre-filed exhibits with the Panel, including exhibits in both redacted and unredacted form that were not subsequently offered into evidence by the parties, it is necessary to clarify what will constitute the documentary evidence in this matter in the event of

review by the Supreme Court. Accordingly, the parties will be directed to resubmit their final exhibits (those admitted into evidence), identifying them as such in their submittal, and providing separate electronic files – one for the approved redacted exhibits and all admitted exhibits for which no redaction was proposed (which will be available to the public going forward) and a separate file for unredacted copies of those exhibits that have been admitted in redacted form, which shall remain under seal.

The Panel must also consider the extent to which portions of the transcript of this proceeding – which would as a general rule be available under the Access to Court Records Rules if requested by a member of the public – should also be redacted to protect information pertaining to the juvenile proceeding. During the presentation of evidence at the merits hearing on October 15, 2021 Disciplinary Counsel requested that the public access “livestream” be suspended at the outset of various portions of her examinations of three witnesses – Attorney Lawrence Myer, Attorney Kathryn Kennedy, and Respondent William Cobb. The Panel granted this request as a provisional order, subject to the Panel’s review, following the completion of the subject testimony, of the questions posed and information divulged during the examinations.

The Panel having considered the scope of the questions posed and answers provided during the examination of the witnesses on October 15, 2021,² the Panel has determined that the testimony given by the witnesses during the “closed” portion of the hearing included substantial amounts of material that is not entitled to protection under Rule 6(b)(12). In order to effectuate the public’s right of access to the proceedings, the Panel will issue an order that requires Disciplinary Counsel to obtain a transcript of the October 15, 2021 and to submit for the Panel’s consideration proposed redactions of the transcript that are consistent with the obligation under

² The testimony of witnesses that was the subject of Disciplinary Counsel’s motion for protective order was completed on the first day of the merits hearing – October 15. There were no requests to “close” the hearing to the public during the second day of the merits hearing.

Rule 9(a)(4) to employ “the least restrictive means . . . to preserve the presumption of openness and to protect the specific interests found to justify sealing of the record.” Access to Court Rules, Rule 9(a)(2)(4). The Panel shall review the proposed redactions and issue a ruling.

ORDER

It is hereby ORDERED as follows:

1. The redacted copies of the following exhibits admitted into evidence during the merits hearing are approved by the Panel and shall be available to the public: Disciplinary Counsel’s Exhibits DC-1a, DC-2a, DC-3 Redacted, DC-4 Redacted, DC-7 Redacted, DC-8 Redacted, and DC-19a; and Respondent’s Exhibit A.a;

2. Within 14 days of this order, the parties shall file their final exhibits (those admitted into evidence during the merits hearing), identifying them as such in their submittal, and providing separate electronic files – one for the approved redacted exhibits and all admitted exhibits for which no redaction was proposed (which will be available to the public going forward) and a separate electronic file containing the unredacted exhibits that have been admitted in redacted form, which shall remain under seal. Following this submission, the parties’ pre-hearing filing of exhibits shall be excluded from the record;

3. Disciplinary Counsel shall promptly order a copy of the transcript of the October 15, 2021 merits hearing. Upon receipt of the transcript, Disciplinary Counsel shall notify the Panel of the date of its receipt. No later than 45 days after receipt of the transcript Disciplinary Counsel shall submit to the Panel (1) an unredacted copy of the transcript under seal; and (2) a proposed redacted copy of the transcript for purposes of meeting her burden to demonstrate that “the least restrictive means have been employed to preserve the presumption of openness and to


protect the specific interests found to justify sealing of the record.” Access to Court Rules, Rule 9(a)(2)(4).³ The Panel will review the proposed redactions and issue a ruling.

4. No later than 45 days after Disciplinary Counsel’s receipt of the transcript the parties shall file any proposed findings of fact and conclusions of law (or legal memorandum) for the Panel’s consideration.

Dated: November 4, 2021

Hearing Panel No. 1

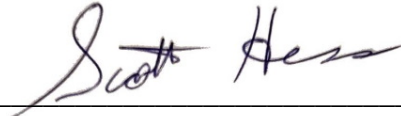
By:



Anthony N. L. Iarrapino, Esq., Chair



James W. Murdoch, Esq.



Scott Hess, Public Member

³ Respondent indicated at the conclusion of the merits hearing that he takes no position with respect to redaction of the transcript.