

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

**ORDER DENYING RESPONDENT’S RENEWED MOTION FOR CONTINUANCE OF
MERITS HEARING AND REQUEST FOR REMOVAL OF SPECIALLY ASSIGNED
DISCIPLINARY COUNSEL**

Respondent filed a motion to continue the merits hearing in this matter on May 9, 2023. He filed a request to disqualify Disciplinary Counsel on May 15, 2023. The Hearing Panel denied the motion and request in an Order dated May 30, 2023 (“May 30 Order”). Respondent filed the instant renewed motion on June 2, 2023 (“Renewed Motion”).

The Hearing Panel agrees with Respondent’s position that he is entitled to a fair disciplinary process. For the reasons set forth below, due process does not warrant continuance of the merits hearing or removal of Disciplinary Counsel, however.

I. Continuance of Merits Hearing

Respondent argued that the Hearing Panel has been “particularly harsh in its rulings regarding deadlines and matters of timing with prejudice resulting,” Renewed Motion at 5, and its “insistence on the harsh enforcement of the disclosure deadlines and other housekeeping type deadlines, has jeopardized the entire fairness and constitutionality of the adjudicatory process.” *Id.* at 6. Respondent argued that holding the merits hearing as scheduled (June 7, 8, and 9, 2023) would effectively deprive him of the right to counsel and the opportunity to be ready for the hearing, and therefore violates his due process rights. *Id.* at 6.

Respondent has had more than two years to obtain counsel and prepare for the merits hearing in this matter. He has had more than two months since the hearing was scheduled to obtain counsel and prepare for the hearing. He has not explained why he waited until recently to obtain counsel and access relevant emails in preparation for the hearing. The Panel has given

Respondent numerous extensions to meet deadlines in this matter. *See, e.g.*, orders dated April 14, 2021, August 23, 2021, November 5, 2021, January 26, 2023). Indeed, Respondent has noted, “the Panel has been lenient with the schedule in this proceeding, which Respondent appreciates.” Respondent’s Motion for Extension of Time to Submit Revised Responses to Requests for Production at 1 (August 18, 2021). In an Order dated January 26, 2023, the Panel warned the parties that additional extensions would only be granted in extraordinary circumstances, given the delays that had already occurred.

In support of the Renewed Motion, Respondent stated in an Affidavit dated June 2, 2023, that he only recently accessed upward of 1,000 emails relevant to this matter after consulting with an IT specialist, and that the emails are too numerous for him to review to properly prepare for the merits hearing as scheduled. Respondent argued that the emails are likely relevant, and he should therefore be allowed time to “fully understand and absorb” them. Renewed Motion at 5-6. He failed, however, to explain why he waited until recently to consult with an IT specialist in order to fully respond to Disciplinary Counsel’s discovery requests and comply with the Hearing Panel’s orders dated September 28, 2021 and January 26, 2023.

The emails have been in Respondent’s possession, custody, or control for the entirety of this two-plus-year-long proceeding. He had an obligation to produce them. *See* A.O. 9, Rule 11 (“Discipline may be imposed for... [v]iolation of any rule or order of a hearing panel”). While unfortunate, the position in which Respondent finds himself is of his own doing. Respondent has had every opportunity over a two-year period to access, review, and produce the emails. Fairness does not require further accommodation of Respondent’s decision to wait until recently to access emails he had an obligation to access and produce long ago. *See* Orders dated September 28, 2021, January 26, 2023.

II. Disqualification of Disciplinary Counsel

Respondent asked the Hearing Panel to reconsider removing Navah C. Spero, Esq. as Disciplinary Counsel in this matter. In his Renewed Motion, Respondent did not address the bases for the Panel's initial decision to deny his request for disqualification, as laid out in its May 30 Order. Rather, he raised new arguments. First, he argued that the Vermont Supreme Court's Administrative Order No. 9 requires her removal. Second, he argued that, because Gravel & Shea, Attorney Spero's employer, has an employment law practice in Vermont, and Respondent has an employment law practice in Vermont, allowing her to prosecute a disciplinary complaint against Respondent is "tantamount to a license to put the competition and/or adversary out of business." Finally, Respondent's counsel also argued that the Hearing Panel infringed upon Respondent's due process rights by impermissibly screening and investigating a complaint against Attorney Spero.

Administrative Order No. 9 does not require Attorney Spero's removal as Disciplinary Counsel in this matter. In its entirety, Rule 20(J) provides:

Complaints Against Panel Members or Staff of the Professional Responsibility Program. If a complaint is filed against a member of a hearing panel, no member of that hearing panel shall participate in disposition of that complaint. If a complaint is filed against screening counsel, bar counsel or disciplinary counsel, the Board shall appoint substitute counsel to serve in that lawyer's place on that matter. If a complaint is filed against a member of the Board, neither screening counsel, bar counsel nor disciplinary counsel shall process the complaint; the complaint will be sent to the chair of one of the hearing panels, who shall appoint special counsel to handle the complaint consistent with these rules. The hearing panel chair who appoints special counsel shall not thereafter participate in any disciplinary proceedings brought by the special counsel.

A.O. 9, Rule 20(J) (2022).¹ A reading of the full provision demonstrates that Rule 20(J) requires the Professional Responsibility Board to appoint substitute disciplinary counsel only in a matter in which the disciplinary counsel is the subject of the complaint.

Assuming without deciding that Respondent’s counsel’s request for disqualification in this matter constitutes a “complaint” for Professional Responsibility Program purposes,² Respondent is the subject of the complaint in this matter; Attorney Spero is not. Rule 20(J) states that if a complaint is filed against a member of a hearing panel, that hearing panel cannot “participate in disposition of *that complaint*” (emphasis added). Rule 20(J) states that if a complaint is filed against a disciplinary counsel, the Board must “appoint substitute counsel to serve in that lawyer’s place on *that matter*.” Respondent’s interpretation of the provision would lead to absurd results. It would allow a lawyer who is the subject of a disciplinary proceeding to delay or derail the proceeding indefinitely simply by filing a complaint against the disciplinary counsel or a member of the hearing panel *ad infinitum*. The purpose of the provision is clearly to avoid the conflict of interest that would arise from a disciplinary counsel or panel member prosecuting or deciding a complaint about their own professional conduct. No such conflict exists here.

Respondent has not established a disqualifying conflict of interest based on the overlapping litigation practice areas between Attorney Spero’s employer and Respondent that warrants her removal as Disciplinary Counsel in this matter. Notably, Respondent has not

¹ Respondent cited a prior version of A.O. 9, Rule 20(J).

² See Vermont Judiciary “Brochure Outlining the Professional Responsibility Program,” No. 11 (accessed at <https://www.vermontjudiciary.org/sites/default/files/documents/Brochure%20-%204.1.21%20Revision.pdf> on June 4, 2023) (“Complaints Against Bar Counsel, Disciplinary Counsel and Screening Counsel. The Program assigns conflict counsel to review complaints that are filed against Bar Counsel, Disciplinary Counsel and Screening Counsel. Mail complaints against Bar Counsel or Disciplinary Counsel to: Merrick Grutchfield, Program Administrator[,] VT Supreme Court Professional Responsibility Board[,] 109 State Street[,] Montpelier, VT 05609-0701.

alleged specific facts indicating that Attorney Spero or her co-counsel engage in the same practice areas as Respondent. He has not alleged specific facts indicating Attorney Spero or her co-counsel have ever been involved in matter in which Respondent was also involved. He has not alleged specific facts indicating Attorney Spero or her co-counsel has a direct personal or financial interest in obtaining any particular outcome in this matter. Rather, he merely contended that “the notion that competitors and/or rivals can be pitted against each other in a disciplinary matter... is constitutionally offensive.” Renewed Motion at 4-5. A conflict of interest “may not be theoretical or speculative, but must have some basis in fact.” *Wright v. State*, 158 Ga.App. 494, 280 S.E.2d 896 (1981) (affirming conviction where two co-defendants were represented by the same lawyer on grounds “any alleged conflict is purely speculative”) (internal citation omitted).

Finally, the Hearing Panel did not screen, investigate, and adjudicate a complaint that Attorney Spero violated the Vermont Rules of Professional Conduct. Respondent filed a motion for her disqualification, and the Panel had an obligation to rule on his motion. The Panel necessarily addressed the allegations Respondent’s counsel Kaveh S. Shahi, Esq., raised about her potential violations, but it ultimately found that Respondent’s counsel failed to establish that she demonstrated such bias against him (Attorney Shahi) personally that Respondent would be deprived of a fair and impartial hearing. *See* May 30 Order at 10. As Respondent’s counsel himself recognized during the pre-merits-hearing conference on May 24, 2023, regardless of what the Panel decided about Attorney Spero’s continued involvement in this matter, he has a right to file a complaint about her conduct with the Professional Responsibility Program.

Moreover, the cases Respondent cited do not support his argument that the Professional Responsibility Board, the hearing panel, screening counsel, bar counsel, and disciplinary counsel

are actors who are “part of the same government organ,” and “when the actors mix their roles,” they are not entitled to a presumption of honesty and integrity to overcome the structural risk of bias. The U.S. Supreme Court in *Winthrow v. Larkin* held that arguing that combining investigative and adjudicative functions “necessarily creates an unconstitutional risk of bias... has a much more difficult burden of persuasion to carry,” noting the Court had “squarely rejected” such claims before. 421 US 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). Similarly, the Vermont Supreme Court in *In re Crushed Rock, Inc.* held, “As is *Winthrow*, the mere fact that the Board initiated the proceeding after determining that there was sufficient cause to believe that the permit-holder had violated the permit would not create an unacceptable risk of bias to overcome the presumption of honesty and integrity. *See also In re Desautels Real Estate, Inc.*, 42 Vt. 326, 333-34, 457 A.2d 1361, 1364-65 (1982) (rejecting argument that board cannot be ‘investigators, prosecutors, and judges’).” 150 Vt. 613, 617, 557 A.2d 84 (1988) (quotation and citation in original). Like his interpretation of A.O. 9, Rule 20(J), Respondent’s position that when a hearing panel considers and rules on a respondent’s motion to disqualify a disciplinary counsel for alleged professional misconduct in a disciplinary proceeding, the panel can no longer preside over the proceeding would also lead to absurd results, allowing any respondent to indefinitely evade accountability.

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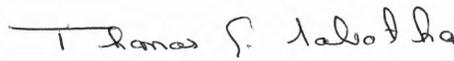
Having considered the Respondent's submissions and the records on file in this matter, the Hearing Panel hereby ORDERS that Respondent's Renewed Motion for Continuance of Merits Hearing and Request for Removal of Specially Assigned Disciplinary Counsel; Motion for Reconsideration, dated June 2, 2023, is DENIED.

Dated June 5, 2023.

Hearing Panel No. 9

By: 
Karl C. Anderson, Esq., Chair

By: 
Eric A. Johnson, Esq.

By: 
Thomas J. Sabotka, Public Member