

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Carolyn Adams
PRB File No. 2020-064

Disciplinary Counsel's Opposition to Respondent's Motion to Consolidate or Stay

On May 17, 2021, Respondent filed a motion seeking to consolidate the above-referenced disciplinary docket with two other unrelated disciplinary matters that were closed on May 29, 2019 and February 4, 2020 by Supreme Court Order. *See* Attached Supreme Court Entry Orders *In Re Adams*, Docket Nos. 2020-002 and 2019-152. In the alternative, Respondent seeks to stay the instant PRB Docket No., 2020-064 until a hearing panel rules on her motion for relief from two orders in the same closed dockets. Both requests must be denied, and Docket 2020-064 should go forward independently in accordance with its scheduling order.

I. Consolidating the closed disciplinary docket with the current pending docket would not serve any objective under V.R.C.P. 42.

As Respondent's motion states, a panel "may" consolidate matters which "involve common questions of law or fact." V.R.C.P. 42(a). The objectives of the rule are based in efficiency. The rule aims to "avoid piecemeal trial of related matters when the parties have failed to take advantage of other provisions . . . permitting free joinder of claims and parties." V.R.C.P. 42(a) Reporter's notes.

Here, the present pending discipline does not involve common questions of law or fact with the matters Respondent seeks to reopen. The old, closed matters involved the testimony of a client whose bankruptcy hearing Respondent missed and evidence involving Respondent's compliance with the sanction that resulted from that violation. *See* PRB Decision Nos. 225 and 225-A. To consider the motion to reopen, the reviewing body will need to review the records of

those decisions and those hearings in conjunction with ordinary procedural rules governing jurisdiction, waiver, and appeal. Costs or delays associated with that review would not be minimized by consolidating that action with the current, unrelated pending disciplinary matter.

Likewise, the current pending disciplinary matter does not “depend[] upon the disposition of the Motion for Relief in the predicate matters” as Respondent claims. In the current pending disciplinary matter, Respondent is charged with (1) failing to take steps to comply with her rule-based obligations set out in A.O. 9, Rule 23 (renumbered as A.O. 9, Rule 27 on April 1, 2021); (2) trust accounting violations; and (3) charging an unreasonable fee. There is no overlapping evidence or legal questions arising from the old matters applicable to the current ones set out above. Respondent’s failure to charge a reasonable fee occurred fully independently from the prior disciplinary matters. Likewise, Respondent’s duties to maintain a proper trust accounting system and duty to comply with A.O. 9 obligations exist independently from any prior discipline. That the evidence from those violations may be tied to a period during which a trustee was appointed as a result of prior discipline does not render that evidence overlapping or “unlawful,” even assuming Respondent’s motion to reopen is successful. Just because Respondent may again seek to defend the instant charges by introducing mitigating evidence of a health condition does not mean that the matters overlap.

Respondent had ample opportunity to timely attack the bases for the two previous judgments at two separate hearings and two opportunities for appeal. She could have raised all of the arguments and introduced all of the evidence she now raises, but failed to do so.

Respondent was not “punished for having a disability” in the old disciplinary matters as she claims. Rather, the record shows that Respondent put on evidence of her mental health

condition, which the panel considered in both proceedings. In the first matter, PRB Decision No. 225 at pages 3-4, the panel expressly found:

Respondent suffers from periodic bouts of depression and anxiety. She has periodically sought treatment and counseling. She attributes her failure to attend the July 20 court appearance to a bout of depression and anxiety. . . . Respondent maintains she “was not functioning well that week” and was depressed because her deceased parents’ wedding anniversary was on July 20.

The panel applied these findings in its sanctions analysis, concluding that Respondent’s mental state in carrying out the rule violations found was one of negligence in part because of her “personal emotional problems.” PRB Decision No. 225 at 9. Further, it credited Respondent’s mental health situation as a mitigating factor. *Id.* at 13.

In the second matter, the panel again assigned mitigating weight in its sanctions analysis for Respondent’s mental health status. PRB Decision No. 225-A at 24. That panel further expressly considered whether there was evidence that Respondent suffered from mental disability and concluded there was not. *Id.* at 24 n.8. The panel further found:

Respondent has now failed to file timely answers in two consecutive disciplinary proceedings, only to appear at the last possible minute in both proceedings and attempt to contest the charges. This conduct is deeply troubling – it amounts to a serious disregard of established legal process, not unlike failing to appear at a scheduled hearing.

Id. at 26. If Respondent disagreed with these findings, believed there were errors of law, or otherwise felt that her rights were violated, she had an opportunity to file a timely appeal, which the Court would have considered rather than simply reviewing the record and determining the matter was closed. *See* A.O. 9, Rule 13.D(5)(c) and 13.E; *Lary v. Goldsborough*, Nos. 2010–467, 2011–121, 2012 WL 386740, at *5 (Vt. 2012) (explaining that issues not raised on appeal were waived in connection with motion to reopen divorce matter).

II. Further delay of the merits hearing in the matter will prejudice the ability to prove the matter as charged.

The current disciplinary matter should not be stayed and must go forward in accordance with the scheduling order that issued nearly six months ago. Some of the conduct underlying the current pending disciplinary matter dates back to 2018 and 2019. The rest of the conduct occurred more than a year ago. To put on evidence of the charges, witnesses will be called to testify to their memories of the facts and circumstances. The longer period of time that goes by, the greater risk that witness' memory may be adversely affected and this will prejudice the ability to meet the burden of proof.

In addition, the evidence is expected to show that client MS paid Respondent \$2,400 in 2018 and that this fee was unreasonable. One available component of a sanctions order is a request for reimbursement of fees. *See* A.O. 9, Rule 15.A(7). In the event the panel finds the burden of proof is met on that charge, reimbursement of fees will be requested as part of the sanction. The longer the hearing is delayed in this matter, the greater prejudice to MS, who continues to be denied the opportunity to receive reimbursement, or the opportunity to apply to the Vermont Bar Association's client compensation fund, which would also require a finding that the fee collected was unreasonable.

Conclusion

Respondent has not shown any reason why unrelated, closed disciplinary matters with no overlapping issues or evidence should be consolidated with the current pending disciplinary action. Granting any request to stay the current action would prejudice the ability to prove the case and the ability of the complaining witness to obtain timely reimbursement of an unreasonable fee. The panel should therefore proceed in accordance with the original scheduling

order as issued on January 28, 2021 such that the matter will be trial-ready as of June 1, 2021.

DATED: May 26, 2021

Respectfully submitted,



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