

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Norman Watts
PRB File Nos. 2019-102 and 2020-011

MOTION FOR PERMISSION TO FILE A SUR-REPLY

Navah C. Spero, Esq., Specially Assigned Disciplinary Counsel (“Special Disciplinary Counsel”) in this matter, moves this Hearing Panel to permit her to file a sur-reply in opposition to Respondent’s Reply in Support of Motion for Dismissal or Alternatively for a New Hearing (“Motion to Dismiss or for a New Hearing”) as follows:

Argument

On August 2, 2023, Respondent filed Respondent’s Motion to Dismiss or for a New Hearing.

On August 2, 2023, Special Disciplinary Counsel filed a motion requesting additional time to respond to Respondent’s motion believing that a response was due within 14 days. Motion to Extend Response Time to Motion for Dismissal or Alternatively for a New Hearing, August 2, 2023 (“Motion to Extend Time”).

On August 7, 2023, the Panel issued an order denying the Motion to Extend Time filed by Special Disciplinary Counsel as moot (“Panel August 7 Order”). In that Order, the Panel stated that Respondent could file a reply to Special Disciplinary Counsel’s opposition, but that “[n]either party may file a sur-reply or additional memoranda” in response. *Id.*, p. 2. The Hearing Panel noted that it has discretion to allow a party to file a sur-reply but that no sur-reply was warranted at that time. *Id.*

On August 22, 2023, Special Disciplinary Counsel opposed Respondent's Motion to Dismiss or for a New Hearing, noting that Respondent failed to cite any rule or law that supported his request while requesting the Panel to strike Respondent's motion.

Subsequently, on September 6, 2023, Respondent filed a Reply in Support of Motion to Dismiss or for a New Hearing. Respondent raised three new arguments not included in his original Motion. Specifically, Respondent alleges a new fact – that he never received the June 1, 2023 production of e-mails which was sent to his e-mail address. Secondly, he argues he was entitled to a privilege log. And, third, Respondent cited case law in support of his due process argument.

Special Disciplinary Counsel moves the Hearing Panel for permission to file a sur-reply in opposition to the Motion to Dismiss or for a New Hearing to address these arguments, raised for the first time in Respondent's Reply brief. *See*, V.R.C.P. 7 (b)(4). It is settled Vermont law that when a party raises an argument for the first time in a reply brief, the opposing party is entitled to a sur-reply. *Id.*; *see In re Champlain Parkway Wetland Cu Determination Time Extension Cud No. 2010-125*, Docket No. 123-10-16 Vtec, 2017 Vt. Super. LEXIS 37, *5 (Vt. Env. Ct. April 14, 2017) (“However, when new issues are raised in a reply, the opposing party may be entitled to file a sur-reply.”) (citing *Meulrath v. Fisher*, No. 3-1-07 Wmcv, n.3 (Vt. Super. Ct. Jul. 16, 2008)). Special Disciplinary Counsel seeks permission to file a sur-reply to respond to these new arguments.

Conclusion

Based on the foregoing, Special Disciplinary Counsel asks the Hearing Panel to consider the attached sur-reply.

Dated: September 13, 2023

/s/ Navah C. Spero

Navah C. Spero, Esq.

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CERTIFICATE OF SERVICE

I, Navah C. Spero, certify that, on September 13, 2023, I caused to be served Specially Assigned Disciplinary Counsel's Motion for Permission to File a Sur-Reply, Sur-Reply to Respondent's Reply in Support of Motion for Dismissal or Alternatively for a New Hearing, and Affidavit of Alyssa M. Bachand as follows:

Via E-mail

Norman Watts, Esq.
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Dated: September 13, 2023

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