

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

SUR-REPLY TO RESPONDENT’S REPLY IN SUPPORT OF
MOTION FOR DISMISSAL OR ALTERNATIVELY FOR A NEW HEARING

Navah C. Spero, Esq., Specially Assigned Disciplinary Counsel (“Special Disciplinary Counsel”) in this matter, files this 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”) to address three arguments presented for this time in the Reply brief, as follows:

Argument

Special Disciplinary Counsel submits this sur-reply to address three new issues, raised for the first time in Respondent’s Reply in Support of Motion to Dismiss or for a New Hearing. Respondent incorrectly asserts in his Reply that Special Disciplinary Counsel did not produce 350 pages of additional discovery on June 1, 2023 and asserts without legal support that she failed to provide a required privilege log. Special Disciplinary Counsel also addresses the due process case law cited for the first time in the Reply brief.

First, on June 1, 2023 at 4:18 p.m., Special Disciplinary Counsel’s office sent an email to Respondent containing supplemental discovery. Aff. of Bachand, Sept. 13, 2023 (“Bachand Aff.”), ¶ 2; Exhibit 1. The e-mail stated it contained “supplemental discovery responses” and contained a link to a share file that Respondent could use to access the documents. *Id.*

Approximately half of the production was of two transcripts, and the other half was a total of 70 e-mails. *Id.* at ¶ 4. Special Disciplinary Counsel’s office did not receive a bounce back response indicating the e-mail did not transmit. *Id.* at ¶ 5. Special Disciplinary Counsel’s office sent the

e-mail to nwatts@wattslawvt.com, and copied Mr. Watts' paralegal at mreckard@wattslawvt.com. *Id.* at ¶ 2. These are the e-mail addresses at which Special Disciplinary Counsel's office had consistently contacted Mr. Watts, and it is the address Mr. Watts used to file documents with the Hearing Panel. *See, e.g.*, e-mail from Watts to Grutchfield (Exhibit 4); Bachand Aff., ¶ 3. In other words, Special Disciplinary Counsel has proof that these documents were served and no evidence to support that they did not arrive in Respondent's and his paralegal's mailbox on June 1, 2023.

Second, Respondent incorrectly asserts Special Disciplinary Counsel was required to provide a privilege log under the applicable discovery rules. Motion to Dismiss or for a New Hearing at 4. Respondent has failed – yet again – to cite to any rule or law that supports the claim that he was entitled to a privilege log. Presumably, Respondent is relying on V.R.C.P. 26(b)(6)(A), which requires a party asserting privilege to describe the nature of the documents that were not produced to enable the opposing party to assess whether the privilege applies. Critically, pursuant to A.O. 9 Rule 19(B), that Civil rule does *not* apply to discovery in this disciplinary proceeding. “Discovery proceedings under these Rules are not subject to the Vermont Rules of Civil Procedure regarding discovery except those relating to depositions and subpoenas.” A.O. 9, Rule 19(B). Had Respondent ever requested a privilege log, Special Disciplinary Counsel would have considered the request, but he did not. Third, in the Motion to Dismiss or for a New Trial respondent failed to support his due process argument with any case law or set out a specific standard for the Hearing Panel to consider. Special Disciplinary Counsel addressed that in her Opposition. In his reply, Respondent now cites to two cases, but

still fails to articulate the appropriate standard and why the facts here justify the wholesale dismissal of the case or dismissal of certain counts.¹

Both of the cases Respondent cites are irrelevant to the legal issues presented here. The first case, *Withrow v. Larkin*, dealt with two legal issues, both centered around whether the decision maker was unbiased. 421 U.S. 35, 43-59 (1975). That is not the issue in this case since the allegations against Special Disciplinary Counsel are irrelevant to any bias by the Hearing Panel itself. In addition, because it is a federal case, this case does not apply to the Vermont Constitution.

Likewise, *In re Crushed Rock* was an appeal asserting that the Environmental Board could not be an unbiased decisionmaker because it had prejudged an issue by referring the appellant for a revocation proceeding and had violated Chapter II, § 28 of the Vermont Constitution. 150 Vt. 613 (1988). The Court rejected the substance of the first argument and held the second argument was inapplicable because Chapter II, § 29 of Vermont Constitution did not apply to the Environmental Board. *Id.* at 89-90. Neither case even touches on Respondent's actual argument here, this the alleged actions of Special Disciplinary Counsel justify dismissal or a new hearing.

Finally, it is worth noting that with an additional five weeks to consider the text messages and e-mails produced by Disciplinary Counsel in the legal malpractice case against him, *see*

¹ Respondent's initial request sought dismissal of the entire case or a new hearing. Motion to Dismiss or for a New Hearing at 9 ("The only remedy that can correct the abusive overreach of SDC is dismissal of not only the Alibozek complaint but also Hiramoto as there must have been numerous communications that were also not disclosed."). Respondent now seeks the dismissal of only two charges, although it is unclear which two out of the seven Respondent seeks to dismiss. *See* Reply in Support of Motion to Dismiss or for a New Hearing at 6 ("This hearing was so tainted and prejudiced by SDC's conduct that the only proper remedy is the dismissal of both charges.").

Bachand Aff., ¶¶ 6-7,² Respondent has not found a single other document related to either complainant that he felt needed to come to the attention of the Hearing Panel before ruling on the pending motion.

Conclusion

The Panel should deny the First Motion for Dismissal or New Hearing and the Motion to Dismiss or for a New Hearing in their entirety. In the alternative, the Panel should strike both of these motions because they are procedurally improper and without support in fact or law.

Dated: September 13, 2023

/s/ Navah C. Spero
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² Special Disciplinary Counsel has included all of the text messages she accidentally omitted from the June 1, 2023 production as Exhibit 2 to the Bachand Affidavit. The text messages sent after the hearing had started are attached as Exhibit 3 to the Bachand Affidavit.

Navah C. Spero

From: Norman Watts <nwatts@wattslawvt.com>
Sent: Tuesday, June 6, 2023 5:23 PM
To: Grutchfield, Merrick; Navah C. Spero; Wendy W. Chen
Subject: Re: PRB Nos. 2019-102 and 2020-011 - Watts - Joint Motion Modifying Exh Lists
Attachments: PRB HEARING EXHIBIT LIST NW Nos. 2019-102 and 2020-011- Watts - R's Exhibit List - 21-1203 (1).docx; PRB HEARING EXHIBIT LIST NW Nos. 2019-102 and 2020-011- Watts - R's Exhibit List - 21-1203 (1) (1).docx

Thank you for the notice.

I am transmitting here Respondent's Exhibit List and Supplemental Exhibit List for the Panel.

NW

 PRB FINAL HEARING - R'S SUPP EXHIBIT LIST 6-6-2... 

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On Tue, Jun 6, 2023 at 5:08 PM Grutchfield, Merrick <Merrick.Grutchfield@vermont.gov> wrote:

PRB Nos. 2019-102 and 2020-011 – (In re Norman Watts, respondent)

Dear Parties,

The Hearing Panel has granted the Joint Motion re Modification of Exhibit lists.

Thank you,



Merrick Grutchfield

Merrick Grutchfield

Program Administrator

Court Administrator's Office

Vermont Professional Responsibility Program

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