

**STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM**

IN RE: Carolyn Adams PRB File No. 2019-014 & 2019-015
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**RESPONDENT’S REQUEST TO PRESENT EVIDENCE &
MOTION FOR SPOILIATION REMEDY**

NOW COMES Attorney Jason J. Sawyer, by and on behalf of the Respondent, Carolyn Adams, and hereby submits this Request to Present Evidence pursuant to V.R.C.P. 78(b) on the Motion for Relief; and Motion for Spoliation Remedy pursuant to A.O. 9, Rule 20(B)(2).

While exhibits to the Motion for Relief were provided for the sake of context, there is “no genuine issue as to any material fact” and therefore no hearing may be necessary. *See* V.R.C.P. 78(b). There is no dispute about the contents of the transcript which establishes the violation of Rule 21(b) (2019). The fact that these proceedings stem from an alleged violation of two missed hearings is not at issue. It is also not at issue that the Respondent already paid a substantial penalty for the allegations deemed admitted. There are adequate undisputed facts to support vacating the judgments at issue and to enter a judgment for Respondent.

Furthermore, compliance with Rule 21(b) (2019), i.e., by referring the matter to the Court and ensuring the disciplinary proceedings were stayed, would have ensured that evidence of the Respondent’s mental state and the precise details of the evidence at the time of the allegations were captured.¹ The noncompliance with Rule 21(b) therefore destroyed evidence (or at least made

¹ Disciplinary Counsel states that the finding of negligence against Respondent did capture her mental state. The proceedings that reached these determinations were tainted by Disciplinary Counsel’s violation of Rule 21(b) and therefore not reliable.

Respondent's ability to present that evidence unreasonably difficult). This requires a sanction such as those outlined in V.R.C.P. 37(b)(2)—regardless of whether the Board here finds that compliance was Disciplinary Counsel's responsibility or the prior Board's responsibility. A fair sanction by itself should allow Ms. Adams to prevail by vacating the judgment and a dismissal or judgment entered in Respondent's favor. At a minimum, all "facts shall be taken to be established" and determination of the Motion for Relief shall proceed on the law alone. V.R.C.P. 37(b)(2); *Kronisch v. United States*, 150 F.3d 112, 130 (2d Cir. 1998) ("Assuming that a jury were to find that Gottlieb had an obligation to preserve the MKULTRA documents that he ordered to be destroyed, the jury would be entitled to draw an adverse inference against Gottlieb.") (cited by *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999) ("It has long been the rule that spoliators should not benefit from their wrongdoing") (remanding after finding that a sanction, such as an adverse inference instruction, must be considered by the trial Court.)). If a factual determination or inference sanction is not ordered, the Professional Responsibility Program should pay the cost of a forensic psychological evaluation of the Respondent for purposes of determining her mental state at the time of the allegations, throughout the course of the proceedings, and through to the present day.

To the extent that the Board disagrees that sanctions do not alleviate the need to present evidence or that evidence on the record is adequate, Respondent respectfully requests the opportunity to present the following evidence:

1. Psychological Evidence. As stated in the Motion for Relief, Respondent has formed a productive relationship with her counselor, Allison Line-Andrew LICSC. Having her testify would be destructive to that relationship and counterproductive to the wellness goals of the Professional Responsibility Program and the PRB. If a more appropriate forensic psychological evaluation

cannot be provided, then Ms. Andrews would testify where Ms. Adams's psychological state at various times is relevant.²

2. Testimony regarding out of court allegations or evidence of an inability to defend. DC Katz and Bar Counsel Kennedy may be requested (or required) to speak about what was alleged when and what inquiry was performed into the Respondent's state of wellness. The potential burden on disciplinary procedures may also be at issue, as well as the current practices of the Professional Responsibility Program to put wellness over discipline. It is possible that factual stipulations could be reached on these issues.
3. Carolyn Adams. All matters of the motion of which she has personal knowledge, including all statements made in the Motion for Relief and exhibits.
4. Work/Census reference. If the Board finds that Respondent's current fitness to practice is necessary to determine the appropriate form of relief on the Motion for Relief, then Respondent wishes to have a recent work reference, Andrew Cervini, testify where appropriate.

WHEREFORE, Respondent respectfully requests that the Board issue an appropriate remedy for the loss of evidence and allow the Respondent to present evidence as provided herein.

DATED at Burlington Vermont this 9th day of June 2021.

CAROLYN ADAMS:

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² Rule 21(b) requires only allegations of a mental health condition to be triggered, and not substantial proof of an actual condition. Disciplinary Counsel nonetheless raises how Ms. Adams appeared to DC at the time as a potential issue. Psychological evidence may also be relevant to the time that passed until a Motion for Relief was filed, and to Ms. Adams's progress over the past several years.