

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: C. Robert Manby, Jr., Esq.
PRB File No. 2019-089

SCHEDULING ORDER RE: SUBMISSION OF MEMORANDUM OF LAW

Disciplinary Counsel and Respondent, C. Robert Manby, Jr., Esq., have filed a proposed stipulation of facts and jointly proposed conclusions of law. The proposed stipulation of facts consists of eight pages and forty-one numbered paragraphs. Fourteen exhibits have also been submitted to the Panel for its consideration in connection with the proposed stipulation.

The proposed conclusions of law consist of one-half of one page and the following four numbered paragraphs:

1. Respondent is a licensed attorney subject to the jurisdiction of the Professional Responsibility Board. See Stipulation of Facts ¶¶ 1,2.
2. Respondent violated Vermont Rule of Professional Conduct 1.14(a). See Stipulation of Facts ¶¶ 6-30 and accompanying exhs.
3. Respondent violated Vermont Rule of Professional Conduct 1.1. See Stipulation of Facts ¶¶ 6-30 and accompanying exhs.
4. Respondent violated Vermont Rule of Professional Conduct 1.4(b). See Stipulation of Facts ¶¶ 6-30 and accompanying exhs.

Jointly Proposed Conclusions of Law, 11/27/19.

In order to decide that a violation of a Rule of Professional Conduct has occurred, the Panel must *conclude* that each of the elements of a rule in question has been satisfied under the facts presented. Whether the parties have stipulated to facts, or not, in a given case, the Panel must address each of the component elements of a pertinent rule if it is to render a decision determining that a violation has occurred.

Proposed conclusions of law are generally utilized to present argument that the legal requirements associated with a proceeding have been satisfied – or not. They typically identify the elements of a cause of action – in disciplinary proceedings, the component parts of a given rule of professional conduct – while addressing any questions of interpretation of the operative provisions, and then discuss *application* of the facts to the individual elements. Parties present their arguments as to whether the elements of the pertinent legal provisions have been met by the factual record.

Here, the proposed conclusions of law contain only ultimate conclusions that violations have occurred, with “shotgun” references to virtually the entire factual record for each of the asserted rule violations. The proposed conclusions do not explain how each of the elements of the referenced rules have been satisfied.

In light of the extensive factual record submitted and the assertion of multiple violations of the rules, Disciplinary Counsel should explain in reasonable detail, for the benefit of the hearing panel, how she contends that each of the individual elements of a given violation has been satisfied by the factual record submitted. Disciplinary Counsel bears the burden of proof in disciplinary proceedings, see A.O. 9, Rule 16(D), and therefore can reasonably be expected to explain her legal theories of the case to the hearing panel and to cite to any pertinent legal authority. The Panel will require Disciplinary Counsel to submit either a legal memorandum or revised proposed conclusions of law for that purpose. Respondent can either join in Disciplinary Counsel’s submission or not. If Respondent does not join in the submission, the Panel will allow Respondent fourteen days in which to file any response.

Accordingly, it is hereby ORDERED that Disciplinary Counsel shall submit, on or before the close of business on **January 3, 2020**, a legal memorandum or revised proposed conclusions

of law that: (1) sets forth the component elements of each of the three Rules of Professional Conduct listed in the parties' proposed conclusions of law in the above matter; and (2) identifies the specific facts in the proposed stipulation of facts that support each element of each listed rule. In the event that Respondent does not join in Disciplinary Counsel's submission, Respondent shall file any response to Disciplinary Counsel's submission on or before **January 17, 2020**. Upon the filing of Disciplinary Counsel's submission and the filing of any response to the submission by Respondent or notification that no response shall be filed by Respondent, the record shall be considered complete for purposes of calculating the 60-day time period for decision set forth in Policy No. 21.

Dated: December ¹⁶~~16~~, 2019

Hearing Panel No. 2

By:



James A. Valente, Esq., Chair