

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

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

**RESPONDENT'S RESPONSE TO DISCIPLINARY COUNSEL'S  
MOTION FOR SANCTIONS**

Introduction

Disciplinary Counsel (“DC”) in these two matters requested two sanctions against the Respondent – 1) that he be precluded from offering into evidence any document that has not already been provided to the DC during the investigation or discovery and 2) that he be precluded from relying on any defense delineated in his Answer for which he failed to provide an adequate response to a request for production of documents.

Respondent contends that he produced all the documentation in his possession to DC and that his responses were adequate and thorough in view of the documents and contentions already presented.

The DC also requested gross income documentation for a six-year period to determine whether he acted with dishonest or selfish motive in the law firm’s accounting process.

Respondent emphasizes that he did not “refuse” to produce documentation; he has produced every item in his possession pursuant to the DC’s requests. The dispute concentrates on the organization of the information. DC demands that Respondent organize the documentation according to her charges.

The Chair ruled that Respondent’s production delays warrant sanctions:

- 1) That Respondent is precluded from offering into evidence any document not produced.
- 2) That Respondent's motives will be evaluated and given the appropriate additional weight of an "aggravating factor" in determining the ultimate sanction against him – if any.

The Chair rejected the DC's request that Respondent be precluded from relying on any defense he delineated in his Answer. The Chair also cited the DC's presentation as inadequate to support her claims about Respondent's motives in "refusing" to produce documents.

The DC filed an additional memorandum again insisting on sanctions that the Chair already denied, speculating that there must be other documents that Respondent has not produced. Speculation does not justify sanctions.

Instead, the Respondent produces here a list of documents he produced beginning in 2019 with the initial complaint and the audits. The multiplicity of documents do not accompany this memorandum as they are in the DC's possession and will leave the presentation of them for the hearing – unless the Chair prefers to review them earlier.

COUNT I.

The DC's new request for sanctions, contained in a 34-page memo, repeats her prior request to preclude Respondent from asserting a factual truth – that he advised former client "G.A." that he wanted to remove the "Good Faith and Fair Dealing" claim from the case. It is a radical request that is unrelated to the alleged delays in document productions. The Respondent objects and notes that the decision cited, *State v. Howe Cleaners Inc*, 2020 VT 70, does not justify the sanction in the context of this proceeding.

The subject discussion was verbal with the client – no phone records or deposition transcripts will contain the information sought.

Respondent conveyed the facts to the DC – that the client and Respondent discussed the issue at conferences that occurred after several depositions and by telephone. The request is similar to other requests in that they are impossible to produce because they never existed.

As the attached list conveys, the Respondent produced all the documents in his possession that the DC requested. (Exhibit 1). There are no others. The DC's attempts to justify sanctions based on the absence of documents that do not exist should be evaluated in this context.

The DC's requests for sanctions are not justified and should not be implemented.

## COUNT II. IOLTA AUDITS

The DC desires to audit Respondent's IOLTA accounting documents from 2015 to 2019 based on the notion that he may have failed to return retainers to clients. The request ignores the fact that the program appointed Michelle Kainen, Esq, CPA, to perform the same function – twice. Her findings covered most of the period from November 1, 2017, to July 31, 2020. As the result of her audits, the Respondent abandoned the refundable retainer practice. Hence, there was no suspicion of ineptitude or skullduggery prior to November 2017 nor after July 2020. The audits were assigned because of inept depositing practices, not purposeful retention of client funds.

Accordingly, there is no basis for the DC's request to route through four years of transactions that have, for the most part, been audited and a sanction leveled against Respondent for the accounting practices.

The DC requests a sanction that would preclude Respondent from asserting facts about the previous audits and the reform he made to the practices. It would mislead the Panel to rely on false evidence.

### COUNT III.

Similarly, it would be inappropriate to preclude Respondent from asserting a plain fact – that client G.A. harassed the firm’s paralegal.

Client G.A. harassed the firm’s paralegal, emailing her dozens of times per day about his case, demanding her personal cell phone number, referring to her as “kiddo” and sending accusatory messages to her about the firm. As indicated in an April 2, 2018 email that client G.A. sent to the firm’s paralegal (and which was provided to the DC on March 20, 2020), client G.A. demanded that all information related to his lawsuit be conveyed to him, and then also separately to his wife, who was not a party to the lawsuit. He reiterated this request several times throughout the course of the suit, and the firm’s paralegal reminded him that as an hourly client, if he expected her to email them both, then call each of them separately, he would be liable for those billable legal services. On April 4, 2018, after the firm’s paralegal reiterated for a second time the firm’s billing/payment process and offered installment payments to the client, client G.A. emailed her five times (provided on March 20, 2020 to the DC), including accusatory and condescending messages. This series of exchanges in April 2018 is an accurate representation of most of the client’s communications with the paralegal.

The information the DC requested is contained in the responsive documentation that Respondent provided as identified in the attached list. (Exhibits 1 & 2).

With the documents in DC's possession, it would be inappropriate to punish Respondent because the DC could not relate produced documents to her document or sanction requests.

COUNTS IV & V.

DC claims Respondent's legal fees for former client "J.H." were unreasonable. The hourly accounting documents demonstrate that the charges were appropriate and reasonable. The charges were for substantive actions taken on the client's behalf – at the rate agreed upon by the parties. The DC second-guesses Respondent's judgment on legal strategy and actions he deemed necessary to prosecute the client's claims.

The parties agreed that the client would pay for litigation-related expenses. Respondent also indicated he would not charge for travel across the country to meet with the client. He did not agree to further reduce travel expenses for all travel related to the case. The emails with the client demonstrate that the claim is preposterous in the context of the multiple out-of-state depositions the client insisted upon.

On November 11, 2019, DC requested "Complete billing records" for J.H., "including itemized monthly statements." On December 20, 2019, Respondent provided the DC with the firm's comprehensive billing records for J.H. In the same missive, Respondent provided the DC with emails with J.H. relating to estimates for damages and likelihood of success, in accordance with the DC's 11/11/19 request.

Respondent produced documents detailing the agreement and the charges attributed to legal work on the client's case. There is no justification for the sanctions the DC proposes.

COUNT VI.

DC asserted that Respondent “lied” to her in response to her questions to him. Actually, in an informal discussion, when asked whether the firm returned GA’s retainer, he indicated he “thought so,” but would check on it. The statement is not a “lie.” Knowing that the DC would request related documentation, and the Panel would want accurate information, Respondent then reviewed the documentation and concluded that the firm had not yet returned the retainer because the client provided no clear direction as to how to handle it – i.e., whether to off-set expenses against it or if he preferred a direct-pay, for tax purposes.

It is another exaggeration to justify the radical request for sanctions.

**Conclusion**

In conclusion, Respondent urges the Chair to deny the DC’s motion for sanctions.

DATED: November 8, 2021\_\_\_\_\_.

/s/Norman E. Watts, Esq.  
Norman E. Watts, Esq.  
Watts Law Firm, PC  
Respondent  
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**EXHIBIT 1: LIST OF DOCUMENTS TRANSMITTED TO DISCIPLINARY  
COUNSEL & RELATED COMMUNICATIONS**

**J.H.**

6/19/19 – Kennedy ltr re: April 2017 disciplinary complaint

7/29/19 – Watts Law Firm (“WLF”) to Katz, letter & accompanying documents:

- Exhibit 1: 7/19/19 Kennedy letter;
- Exhibit 2: SJM opposition memo;
- Exhibit 3: Opinion & Order granting SJM;
- Exhibit 4: WLF billing totals for JH, 2014 – 2017

11/11/19 – Spero to WLF requesting 1) complete billing records; 2) all SJM filings; 3) cost estimates to JH; 4) emails or memoranda estimating damages/evaluation of case.

11/22/19 – Norman E. Watts, Esq. (“NW”) and Margaux Reckard (“MR”) email discussion re: Spero’s 11/11 letter

12/20/19 – MR emails Spero all documents (including emails & bills) for 4 categories over a series of emails (*No response or acknowledgement from Spero.*):

- Complete billing file, including monthly itemized statements;
- All filings related to SJM (Memo in Opposition to SJM; Statement of Facts; COS; Exhibits 1 – 60; Docket Sheet);
- All emails (8) between WLF & JH re: estimates for damages & likelihood of success.

7/14/20 – Spero to WLF ltr requesting complete bill for 2/5/15 & all intake documents

7/15/20 – MR & NW emails re: 7/14/20 ltr

7/24/20 – WLF ltr responds w/ complete 2/5/15 bill as requested & a note that there are no intake docs (MR emailed this to Spero)

7/24/20 – MR emails Spero a follow-up letter from NW w/ appellate brief

6/3/21 – Affidavit of Garth Dunkel w/ supporting memo from 9/13/16

Watts Law Firm, P.C. PO Box 270, Quechee, VT 05059  
Phone (802) 457-1020, Fax (802) 369-2172, Email: info@wattslawvt.com

**\*Notably, J.H. had access to WLF's Cloud file throughout the lawsuit – i.e. her complete file with the firm.**

**G.A.**

1/17/20 – Spero ltr to WLF re: disciplinary complaint & requesting 8 categories of documents

2/27/20 – Spero & NW scheduling emails re: response to the complaint

3/17/20 – Spero & NW scheduling emails re: response to the complaint

3/20/20 – MR emails Spero two documents:

- All WLF emails with client regarding billing, from October 2017 to February 2019;
- Client's complete billing file (all itemized monthly statements, payments).

6/30/20 – Spero emails NW re: interview same day & requesting SJM filings

6/30/20 – MR emails Spero w/ all SJM filings + a copy of WLF's Pleading Index:

- WLF's Pleading Index for G.A. vs. G.E.;
- GE's Motion for Judgment on the Pleadings on Count Two
- GE's Motion for Partial SJ;
- GE's Statement of Facts;
- WLF's SJM Opposition Memo;
- WLF's Statement of Facts; and
- Exhibits 1 – 11 of Statement of Facts.

6/30/20 – MR emails Spero spreadsheet of complete billing file (repeat of what was provided on 3/20/20)

7/14/20 – Spero to WLF ltr requesting 1) bank record for retainer; 2) records of last communication w/ client re: retainer & account; 3) full bill for Oct. 2018; 4) all intake docs & other non-document requests

7/15/20 – MR & NW emails re: Spero's 7/14/20 ltr

7/24/20 – MR & NW emails re: response to Spero's ltr

7/24/20 – MR emails Spero w/ letter from NW & all requested documents, including bills, emails, notes:

- G.A. Retainer Fee Payments;
- Emails w/ client re: retainer & outstanding expenses;
- Emails with client in Oct/Nov 2018;
- 2015 & 2017 WLF notes on intakes.

8/6/20 – Spero to WLF ltr requesting 1) record of retainer remittance; 2) phone records; 3) bank record of transfer of retainer funds; 4) current engagement ltr + other non-document requests



8/13/20 – NW & MR emails re: Spero's 8/6/20 ltr

8/7 – 8/18/20 – NW, MR & client emails re: return of retainer

8/24 – 8/26/20 – NW & G.A.'s wife ("S.A.") emails re: return of retainer

9/4/20 – S.A. confirms receipt of check

3/23/21 – S.A. requests complete file

3/23/21 & 3/24/21 – MR & NW emails re: S.A.'s request for file

4/1/21 – MR & NW emails re: G.A.'S delinquency in billing chronology; MR creates a chronology of client's complete billing history

4/2/21 -- **at S.A.'s request, MR gave G.A. & wife S.A. access to a Google Drive with all files:** affidavits, documents from the AG's office, documents client separately provided to WLF, a complete billing file, a complete correspondence file, deposition transcripts, discovery productions from both parties, and all pleadings.

7/19/21 & 7/20/21 – MR & NW emails re: file provided to G.A. & S.A.

10/18/21 – NW & MR emails re: emails and other documents provided to Spero for G.A. & J.H.

## **Exhibit 2: Chronology of Delinquency on the G.A. Account**

**Description:** The below chronology describes instances where Watts Law Firm, PC (“WLF”) staff communicated with client G ■ A ■ about his account balance, and for each date, includes the balance due. All emails related to outstanding balances, corresponding to each of the dates in the chronology, were produced to Disciplinary Counsel on March 20, 2020 with a copy of G.A.’s complete billing file.

- 10/13/17 – Norman Watts (“NW”) reminds client of balance, paralegal Margaux Reckard (“MR”) suggests sending installment checks, client promises sale of beef cattle to send check. (**\$6,015 balance from 9/29/17 statement**, payment made 10/19/17)
- 3/21/18 – MR reminds client of balance, suggests sending installments – no reply from client. (**\$4,245.73 balance, overdue since 2/4/18 statement**)
- 3/27/18 – Reminder that account is delinquent (**\$4,245.73 balance**). Client’s wife requests application of retainer (denied). NW suggests mediation for settlement if cannot afford legal services. (see 3/27/18 email)
- 4/4/18 – client assures MR that son will help with payments from lottery winnings, MR suggests installment payments again (**\$2,307.73 balance**)
- 4/4/18 – MR & client discuss payment plan, MR allows client to send \$250 checks as necessary to keep balance lower – he does not reply. (**\$2,307.73 balance**)
- 5/30/18 – NW reminds client of balance (“Your promises notwithstanding, your approach is a breach of contract”) (**\$4,149.73 balance, from 4/4/18 & 5/15/18 statements**). Client accuses MR of “buying into Maass’ lies.”
- 8/29/18 – MR reminds client of balance so that next statement is not too large (**\$5,021.73 balance**)
- 10/15/18 – NW notifies client unable to respond to SJM until account is current (**\$2,580.98 balance**)
- 10/17/18 – MR clarifies with client that even with payments, still have **\$2,580.98 balance**
- 10/26/18 – NW reminds client of SJM deadlines & account balance of **\$2,580.98**
- 10/31/18 – Plaintiff’s First Requests to Admit filed - **\$2,516.98 balance**
- 11/9/18 - **\$2,516.98 balance**
- 11/13/19 – Plaintiff’s Motion to Extend Time to File SJM Reply (**\$2,516.98 balance**)
- 11/23/18 – Plaintiff’s Opposition to SJM filed (**\$1,516.98 balance**)
- 12/12/18 – Client promises payment after selling cattle (**\$8,266.98 balance**)
- 1/11/19 – MR requests a description of payment plan from client (**\$5,954.98 balance**)
- 1/31/19 – NW reminds client of payment promises, delinquency, suggests finding replacement counsel (**\$4,954.98 balance**)