STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Norman E. Watts, Esq.
PRB File Nos. 102-2019, 011-2020

RESPONDENT'S REPLY IN SUPPORT OF MOTION FOR DISMISSAL OR ALTERNATIVELY FOR A NEW HEARING

NOW COMES the Respondent, Norman E. Watts, and respectfully submits this Reply in support of his motion for dismissal or alternatively for a new hearing. SDC's Opposition is dated August 22, 2023.

1. Special Assigned Disciplinary Counsel Admits to Violation of the Duty to Supplement Discovery

It would have been easier to address the Opposition if SDC could have eased up on the relentless aggression and accusations, and for a change present in a manner that is consistent with the dignity and responsibility expected of the duty entrusted to her as disciplinary counsel. SDC does not appear to believe that as a representative of the PRB her conduct should be above the standard expected of counsel in litigated matters. If this Panel continues to tolerate and excuse repeated transgressions by SDC, the integrity and credibility of this proceeding will be in question as well as compliance with due process requirements to provide the Respondent with a fair process.

Embedded in the barrage of irrelevant accusations against the Respondent, is the admission by SDC on page 3 of the Opposition that she had not produced her text messages. "It [the 6/1/23 production] did not include text messages with G.A., J.H. and G.A.'s attorney. They were *accidentally* omitted from the production." Opposition, p.3, emphasis added. If the SDC was held at a minimum to the standard of conduct

expected of all counsel, this admission would have been accompanied with an apology, an explanation, accountability, and all supported by an affidavit. This admission would not have been buried on page 3 of the Opposition and would have been front, center and transparent. The explanation would have addressed the fact that SDC certainly knew that G.A.'s text to her on 6/9/23 was not produced, and yet she did not disclose it. Indeed, SDC did not disclose it until Disciplinary Counsel, her boss, disclosed it in response to a subpoena

The other assertion in the Opposition that SDC on June 1, 2023, produced 350 pages of the emails with the complainants, cannot be confirmed by the Respondent. He did not receive an email production. He assumed the production was forthcoming and unfortunately lost track while preparing for the hearing. The assertion by SDC that 350 pages were produced on June 1, 2023, is not supported by an affidavit, explanation or other proof.

In SDC's Opposition dated May 12, 2023, to the Respondent's motion to continue the merit hearing, SDC claimed the matter was trial ready since January 2022: "This matter has been in a trial posture since January 2022, when the parties had completed all necessary pre-hearing filings under the then-operative schedule." Opposition 5/12/23. SDC also stated, "[t]he volume of discovery in this case is not that significant . . . . Special Disciplinary Counsel has only produced 845 pages of documents." *Id.* p.4.

Yet, SDC now discloses that on June 1, 2023 (3 business days before the start of the hearing on 6/7), she produced 350 pages of emails. In other words, three business

days before the start of the hearing, SDC produced another 41% of the total number of pages she had produced over the previous two years from May 27, 2021, when Respondent propounded his discovery request. And it just so happened that the production on June 1, 2023, followed the issuance of a subpoena to SDC on May 18, 2023. And as demonstrated in Respondent's motion, SDC's boss, the disciplinary counsel, was not yet ready to produce anything by June 1, 2023. How is that SDC supposedly produced the very same emails that her superior was not ready to provide in response to a subpoena? It certainly appears that SDC produced nothing on June 2, 2023, and is not being candid with the Panel.

With conduct by SDC that clearly has the appearance of bad faith discovery by her, there is again no explanation and no affidavit. She "accidently" failed to produce the text messages but why did she wait till June 1, 2023, and after the issuance of a subpoena to produce numerous emails that she was required to produce much earlier. The double-standard and expectation of favoritism by SDC is grossly manifest. As briefed in the Respondent's renewed motion for continuance, the due process balance in a setting like here with the prosecution and this Panel both serving the PRB, can be disrupted when the roles are mixed and the Panel becomes a defender of the prosecutor. *See Withrow v. Larkin,* 421 U.S. 35, 95 S. Ct. 1456 (1975); *In re Crushed Rock*, 150 Vt. 613, 617-19, 557 A.2d 84, 87 (1988).

2. <u>SDC Failed to Produce a Significant Number of Communications with Complainant Alibozek</u>

The Respondent cannot reach any conclusions about SDC's assertions about the supposed completeness of her email production without having received them, and with

so many redactions and emails withheld by the production made by the office of Disciplinary Counsel. SDC's repeated assertion that the Respondent did not challenge her objections is yet another baseless accusation when SDC did not provide a privilege log as required under the rules. Exhibit 1 attached to the Opposition as SDC's supplemental response on June 1, 2023, does not have a privilege log or refer to one. Without a proper privilege log, the Respondent was not in a position to challenge SDC's objections.

If this Panel is not satisfied that SDC's last minute supposed production and admitted non-production did not result in an unfair hearing, and requires the Respondent to reconstruct the hearing by the analysis of the information withheld by SDC, the Respondent requires at a minimum six months to do so including necessary motions to be filed with the Panel and/or courts to determine the validity of the objections for the material redacted and withheld from production.

3. SDC Promoted False Testimony at Panel Hearing

The testimony and the record as reviewed in Respondent's motion speaks for itself and need not be repeated. SDC's explanation on behalf of G.A. fails to account for the false testimony that there was no communication about the dismissal of Count II for breach of the covenant of good faith and fair dealing. And when during the hearing before this panel, SDC received G.A.'s text message to indicate otherwise, she did not disclose it to the Panel or the Respondent. And the nature of the communication by G.A. to Ms. Recard is still unknown. SDC violated Rule 3.3.

The Respondent was prejudiced by G.A.'s false testimony that could not be challenged. It is noteworthy that G.A.'s text message on 6/9/23 to SDC referred to "when Watts dismissed count 2." If as G.A. maintains he was not aware of the Respondent's intention to effectively dismiss count 2 by not opposing GE's motion, G.A. would have reflected on the only fact that he was aware of, *namely,* the Court ruling that granted GE's motion for judgment on the pleadings. G.A. would not have parlayed the Court ruling to the language of dismissal by the Respondent. In other words, the very language used by G.A. in his supposed communication with Ms. Recard in 2018 supports the Respondent's version of the facts and G.A.'s understanding that count 2 could not be maintained.

It is patently unfair for the SDC to fail to produce key information and sit back to demand that the Respondent must prove impact on the outcome of the case when the issue of credibility is key. Respondent's strategy and cross-examination are informed by the evidence. When some 41% of SDC's production of emails was supposedly made three business days before the start of the hearing, and she never produced the text messages, the prejudice is self-evident.

4. Dismissal Is Required for Violation of the Respondent's Due Process Rights

As briefed in Respondent's renewed motion for continuance, he is entitled to due process protection and a fair process. *Withrow v. Larkin*, 421 U.S. 35, 46-47, 95 S. Ct. 1456, 1464 (1975); *In re Crushed Rock*, 150 Vt. 613, 617-19, 557 A.2d 84, 87

(1988). This is also reflected in the protections afforded under Vermont Constitution. Chapter I, Article 4 of the Vermont Constitution provides:

> Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; conformably to the laws.

Further, Chapter II, § 28 states that the "Courts of Justice shall be open for the trial of all causes proper for their cognizance; and justice shall be therein impartially administered, without corruption or unnecessary delay."

This Panel severely sanctioned the Respondent for every shortcoming in his discovery efforts. Yet, this Panel is asked to look the other way for the gross and prejudicial violations by SDC. SDC not only violated the rules of procedure but also the rules of professional conduct by failing to disclose to the Panel and Respondent that a key witness had contradicted his testimony by a text message he sent her two days later during the course of the hearing. This hearing was so tainted and prejudiced by SDC's conduct that the only proper remedy is the dismissal of both charges.

CONCLUSION

For the foregoing reasons, the Respondent urges the Panel to dismiss the Complaints or, in the alternative, Order a New Hearing in these matters.

Date: September 6, 2023 /s/ Norman E. Watts

Respondent

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITIIES PROGRAM

In re: Norman E. Watts

PRP File Nos. 2019-102 and 2020-011

Certificate of Service

RESPONDENT certifies that he sent the following to Special Disciplinary Counsel, Navah C. Spro, Esq. electronically at nspero@gravelshea.com:

Respondent's Motion to Dismiss or Order a New Hearing.

Dated: September 6, 2023 /s/ Norman E. Watts

Respondent