

**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 REQUEST FOR
DISQUALIFICATION AND REMOVAL OF SPECIALLY ASSIGNED
DISCIPLINARY COUNSEL**

NOW COMES the Respondent Norman E. Watts, by and through his counsel, Kaveh S. Shahi, Esq., of the firm of Cleary Shahi & Aicher, P.C., and respectfully offers this Reply in support of the request that the Specially Assigned Disciplinary Counsel be disqualified for violation of Rules of Conduct and reported for investigation. The purpose of this Reply is to respond to the written opposition submitted by Special Counsel on May 25, 2023.

1. **Procedure/Standard for Recusal of Specially Assigned Disciplinary Counsel**

The Opposition asserts “Respondent identified no legal standard in Vermont to disqualify and remove disciplinary counsel.” Opposition, p.3. The Opposition adds that “[a] review of Vermont law did not reveal any case law or rule on the matter.” *Id.*

It is correct that the Respondent’s request for removal of Specially Assigned Counsel did not address the procedural standards and a separate motion disqualification was not filed. As a matter before an adjudicatory body, however, a party’s obligation to the continued involvement of counsel is to raise a timely objection. *Weaver v. Weaver*, 2018 VT 56, ¶ 5 n.4, 207 Vt. 564, 568, 191 A.3d 978, 981. A motion is not required and such a procedure has not been specified in the applicable rules. An objection has been raised.

As for the standard to be applied by this Panel, the courts are guided by the Rules of Professional conduct but may “bring to bear considerations beyond those applicable in a disciplinary proceeding, and ... are not bound by the requirements of those rules in the disciplinary context.” *In re L.H.*, 2018 VT 4, ¶16, 206 Vt. 596, 182 A.3d 612; *see also Weaver v. Weaver*, 2018 VT 56, ¶ 5 n.4, 207 Vt. 564, 568, 191 A.3d 978, 981. Thus for example:

Although the Rules of Professional Conduct “do not expressly state that a lawyer should avoid the appearance of impropriety,” we have recognized that the concept “pervades the Rules and embodies their spirit.” *Stowell v. Bennett*, 169 Vt. 630, 632, 739 A.2d 1210, 1212 (1999) (mem.) (quotation omitted).

In re L.H., 2018 VT 4, ¶ 23 n.7, 206 Vt. 596, 609, 182 A.3d 612, 620. The function of a court or an adjudicatory panel relative to a disqualification objection is not to determine whether a violation of the rules of conduct has occurred or to adjudicate the complaint.

2. The Panel Should Reject the Proposed Double Standard for Special Counsel and Other Lawyers

The Opposition could have apologized for a response written in a manner that was read as a challenge to the truthfulness of counsel’s position that he needs more time. Assuming a factual basis existed, the Opposition could have argued, for example, that several other attorneys were available to handle the hearing with the amount of time afforded, and therefore the issue was not the veracity of the undersigned’s position, but the availability of counsel to represent the Respondent. Such an approach would have lowered the temperature, shown respect and regard for the important responsibility entrusted to

disciplinary counsel, and allowed this matter to move forward without this particular controversy persisting.

Instead the Opposition essentially repeats the accusations and asks the Panel to establish an “argument” exception to all the rules of conduct raised by undersigned. The complaints regarding Special Counsel’s conduct directed at undersigned should follow the process utilized for any member of the bar, and the Panel should reject the invitation to create a double standard for disciplinary counsel. Perhaps a different panel and ultimately the Supreme Court will allow an “argument” exception and if so, everyone’s conduct can be so guided and informed. Hopefully, the dignity and respect needed for the judicial system and its credibility with the public demands more.

As for the complaint that Special Counsel’s conduct was discriminatory, the Opposition would have a standard based on the explicit use of prejudicial language. The undersigned has been called in the past by derogatory names such as “towel head” or “terrorist,” and certainly Special Counsel did not use such explicit language. If Special Counsel’s interpretation of the anti-discriminatory rule is adopted by this Panel and ultimately the Supreme Court, Vermont can be known for essentially nullifying Rule 8.4. Rarely will a lawyer be so crude to discriminate openly and explicitly. Under the standard advocated by Special Counsel, the cause of civil rights and prevention of discriminatory practice at the bar can revert to 50 years ago.

The bias and discriminatory prejudice here can be found not only in the disproportionate accusations directed at the undersigned compared to the Respondent but also the disrespectful and debasing tone of the accusations. There is no need for Special

Counsel to explicitly say “these people” should be disbelieved. The vehement and highly personal nature of the accusations suffice. The appeal is to the discriminatory screening of the undersigned and his simple request for additional time. If there is no disparate treatment and this is only a matter of the Special Counsel consistently making false and baseless accusations against all lawyers, then the undersigned withdraws the complaint of discriminatory conduct, but asks this Panel whether the privilege of prosecuting before it should be in the hands of a lawyer with such an approach to the practice of law.

The question before the Panel is not whether Special Counsel’s conduct violated the Rules of Conduct but whether to allow the continued prosecution of a disciplinary matter with the necessary credibility and regard for the Rule of Law that it must embody. The dire warnings about the impact of Special Counsel’s disqualification are misplaced. If the rules are followed by all, there is no need to be concerned about the impact on the “program” or the ability of panels to function. Special Counsel is not above the law.

Dated this 26th day of May, 2023.

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