STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

REPLY IN SUPPORT OF MOTION FOR SANCTIONS

Navah C. Spero, Esq., Specially Assigned Disciplinary Counsel ("Special Disciplinary Counsel") in this matter, replies in support of her Supplemental Memorandum of Law on Discovery Sanctions ("Supplemental Memorandum") as follows:

Introduction

Respondent does not provide a legally or factually substantive opposition to Special Disciplinary Counsel's Supplemental Memorandum. Nothing in his Response to Disciplinary Counsel's Motion for Sanctions ("Response") explains why he has not complied with discovery. Nothing in the Response makes a legal argument for why the Panel should not sanction Respondent by prohibiting him from using certain defenses. Instead, Respondent attempts to obfuscate the factual and procedural history of this matter in an effort to confuse the Panel because he cannot prevail on the merits

In his Response, Respondent reveals for the first time that he had a digital copy of both J.H.'s and G.A.'s files and chose not to share them with Special Disciplinary Counsel. He also states that he has reviewed more e-mails than he has produced. For example, there are e-mails listed on Exhibits 1 and 2 that have never been produced in this matter. This information that can only lead to the conclusion that his lack of compliance was in bad faith and willful.

Some of the defenses Respondent intends to rely on depend on documents he has chosen not to provide, such as e-mails and pleadings. His other defenses cannot be fully probed at a

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hearing because Special Disciplinary Counsel has not had a fair opportunity to explore the truthfulness of those. The Panel should not allow Respondent to rely on those defenses.

Procedural Background

The Procedural Background is more fully set forth in the Supplemental Memorandum.

Argument

Before addressing each Count individually, Special Disciplinary Counsel must highlight three issues raised by the Response that are sufficient to justify the sanction of precluding the presentation of his defenses. Those four issues raise the question of whether Respondent's actions rise to the level of "bad faith" and prejudice to the opposing party that would justify even graver sanctions. *See John v. Med. Ctr. Hosp. of Vt., Inc.*, 136 Vt. 517, 519 (1978).

First, Respondent has alternately asserted that he has no additional documents to produce, *see* Response to Counsel's Request to Resolve Discovery Dispute at 1, July 22, 2021, and that he is gathering documents and will produce them shortly, *see* Respondent's Reply to Disciplinary Counsel's Motion, Memorandum and Response at 3, September 7, 2021. The Response again claims that Respondent has no additional documents. Response, 1. However, this is directly contradicted by Exhibit 1 to the Response, which states that Watts Law Firm maintained J.H.'s file in the "Cloud." Response, Exhibit 1. Respondent therefore has digital copies of everything in J.H.'s file – correspondence, memoranda, exhibits, filings and e-mails. Yet, he refused Special Disciplinary Counsel's request for pleadings and e-mails related to certain defenses. *See* Supplemental Memorandum, Requests 28, 31, 32, 33, 35 (seeking court-approved discovery schedules, communications regarding extensions, and communications related to discovery

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disputes), 36 (seeking notices of depositions, subpoenas, and e-mails related to scheduling depositions), 37, and 38. These relate to Counts V and VI.

Second, in Exhibit 1 to the Response, Respondent states that on April 2, 2021, he provided G.A. and his wife with access to "a Google Drive with all files: affidavits, documents from the AG's office, documents client separately provided to [Watts Law Firm], a complete billing file, a complete correspondence file, deposition transcripts, discovery productions from both parties, and all pleadings." Response, Exhibit 1. He did not provide these documents to Special Disciplinary Counsel in response to discovery requests she served only six weeks after April 2, 2021. Respondent could have provided Special Disciplinary Counsel with a link to that Google drive to provide complete response to requests 15 and 27, which relate to Count I. Since the "complete correspondence file" likely included e-mails,[1] the Google drive link would have addressed requests 12, 13, 14, 16, and 17, as well, which relate to Counts I and IV.

Third, Respondent conceded he did not provide all e-mails in his possession. First, as explained further in Section VII, Respondent has not provided all of the documents listed on his Exhibits 1 and 2 to the Response. Second, Respondent notes that the series of e-mail exchanges he provided for April 2, 2018 and April 4, 2018 are "an accurate representation of most of the client's communications with the paralegal." Response at 4. Respondent must have reviewed other e-mail communications to make that representation to the Hearing Panel, yet he refuses to provide those additional e-mails. These e-mails relate, at a minimum, to Counts I and IV.

[1] There is every reason to believe that Respondent retained access to all of his e-mails regardless of whether they were provided to G.A. in April. Special Disciplinary Counsel has asserted Respondent's continued access to old e-mails on numerous occasions, most recently in the Supplemental Memorandum, on page 3. Respondent has never claimed that he lost access to his e-mails, does not retain his e-mails, or otherwise cannot access e-mails for either client. Respondent has raised many other defenses to his failure to provide discovery, but his choice not to assert a lack of access is itself an admission.

Respondent asserts that if he gave the documents to his former clients, that should satisfy his obligation. He is incorrect. Special Disciplinary Counsel does not have all documents in the possession of the complaining witnesses. Nor should the Panel place the burden on them to search through their files and do the work Respondent was obligated to do. The complaining witnesses are not subject to discovery. The fact that Respondent gave these documents to G.A. or J.H. further justifies sanctions because it shows he has the documents and is willfully refusing to provide them to Special Disciplinary Counsel to pursue this matter.

I. COUNT I: RESPONDENT CHOSE NOT TO PROVIDE SPECIAL DISCIPLINARY COUNSEL WITH DOCUMENTS RELEVANT TO HIS DEFENSE TO COUNT I, AND THEREFORE IT SHOULD BE PRECLUDED.

Count I alleges that Respondent violated V.R.Pr.C. 1.2 and 1.4 when, without speaking to his client G.A., Respondent allowed one count of G.A.'s complaint to be dismissed by choosing not to respond to a motion for judgment on the pleadings. Respondent confirms in his Response that he intends to argue that he "he advised former client 'G.A.' that he wanted to remove the 'Good Faith and Fair Dealing' claim from the case." Response, 2. Respondent argues that it is radical to preclude him from asserting this factual defense related to a verbal conversation because he refused to produce documents.

Special Disciplinary Counsel's request is not radical for three reasons. First, as set forth above, Respondent's failure to provide those documents is willful. Second, Respondent has made various assertions about the timing and locations of the discussions related to the effective dismissal of count two, many of which contradict each other or are impossible. These assertions could be investigated with documents, because the documents can establish the truthfulness or untruthfulness of Respondent's purported timeline for these discussions.

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For example, Respondent has claimed he discussed with G.A. the pending motion for judgment on the pleadings at G.A.'s deposition. But G.A.'s deposition occurred one year prior to the filing of that motion. Respondent has claimed discussions occurred after other depositions because G.A.'s case was not going well. According to the billing records, all of the depositions predate the filing of the motion for judgment on the pleadings by months. Special Disciplinary Counsel sought many documents that could definitively prove or disprove Respondent's timeline. Respondent has refused to provide the deposition transcripts, e-mails setting deposition dates or deposition notices/subpoenas that would fix the deposition dates. Furthermore, the transcripts would allow Special Disciplinary Counsel to probe the veracity of Respondent's defense, which is primarily that the deposition testimony revealed that G.A.'s case was so bad there was no other choice but to dismiss count two.

Respondent describes five different conversations – three after depositions and two by telephone. He has not provided a single piece of paper related to those discussions. In today's age, it is impossible to imagine there is no e-mail that ever referenced even one of these five discussions, especially where Respondent asserts G.A. was e-mailing constantly. For example, there is no e-mail asking to discuss the motion or thanking Respondent for the discussion, or even asking to follow up.

Yet, Respondent still intends to assert that these conversations occurred at these times. If Respondent is permitted to assert as his defense that G.A. gave him permission twice to dismiss count two, Special Disciplinary Counsel will not be armed with all of the documents relevant to this defense. Respondent should not be permitted to have this type of advantage at a final hearing.

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II. COUNTS II & III: RESPONDENT SHOULD BE PRECLUDED FROM ARGUING THAT HE COMPLIED WITH THE PROFESSIONAL RESPONSIBILITY BOARD'S 2019 DECISION BECAUSE HE DID NOT PRODUCE RELEVANT DOCUMENTS.[2]

Counts II and III of the Petition allege that Respondent violated V.R.Pr.C. 1.15 and 1.15A by failing to keep G.A.'s retainer in his IOLTA account, failing to properly account for G.A.'s retainer on a ledger card, failing to reconcile his accounts each month, comingling his funds with G.A.'s funds, and failing to timely return the retainers for G.A. and J.H. at the conclusion of the representations. Petition, Counts II, III. Respondent raises a number of defenses in his Answer, but does not address them all in his Response. *Compare* Supplemental Memorandum at 10-11 *with* Response at 3-4. To the extent Respondent did not address Special Disciplinary Counsel's argument in his Response, Special Disciplinary Counsel will not address it in this Reply.

In the Response, Respondent focuses on the fact that he cooperated with prior audits, which covered "most of the time period from November 1, 2017, to July 31, 2020." Respondent argues that Special Disciplinary Counsel should not need documents for the 2015-2019 period because of these audits, and therefore sanctions are inappropriate. A timeline and explanation of Ms. Kainen's audits will greatly assist in evaluating this defense, which misapprehends the claims against Respondent and his professional obligations.

Timeline of relevant events:

[2] The labeling of the sections for both the Supplemental Memorandum and the Response is confusing. Special Disciplinary Counsel grouped the sanctions related to Counts II and III together because of the similarity of the underlying facts for each count. This made the Roman Numerals in the Supplemental Memorandum inconsistent with the counts. Respondent's Response then mislabels the counts to which he is responding. Count I of the Response responds to Count I. Count II of the Response addresses both Counts II and III. Count III of the Response is actually a response to Count IV. The section of the Response addressing Counts IV and V addresses Count V. The section of the Response labeled Count VI addresses Count VII. Count VI is not addressed. Special Disciplinary Counsel apologizes for her role in this confusion.

- May 13, 2014 – J.H. executed engagement letter with Respondent
- June 26, 2014 – J.H. paid retainer of $5,000
- May 9, 2017 – Representation of J.H. ends
- August 4, 2017 – G.A. executed engagement letter
- August 14 and 18, 2017 – G.A. paid retainer of $2,500
- September 9, 2017 – Respondent returns $2,720 portion of J.H. retainer
- November 1, 2017-October 31, 2018 – First Audit period - $8.93 in Watts' IOLTA Account as of November 1, 2017
- December 19, 2018 – Date of First Audit Report from Ms. Kainen
- December 1, 2018-July 31, 2020 – Second Audit period
- February 22, 2019 – Disciplinary Counsel/Watts Stipulation filed for First PRB Matter
- March 13, 2019 – Respondent withdraws as counsel for G.A.
- April 18, 2019 – Decision in *In re Norman Watts*, No. 2019-151, First PRB matter
- September 16, 2020 – Date of Second Audit Report from Ms. Kainen
- March 18, 2021 – This matter was filed

As noted by Respondent, the audits in this matter were not triggered by the conduct related to retainers at issue in this case. The first audit discovered that Respondent did not observe any formalities required by the Rules of Professional Conduct. The second audit was the result of on overdrawn account, and uncovered that Respondent still was not observing the requirements of Rules 1.15 and 1.15A as it relates to record keeping. The auditor did not look into the specific issue of the retainers in this case because, as set forth above, both of the retainers were remitted to Respondent *prior to* the first audit period.

Special Disciplinary Counsel received helpful information from Ms. Kainen related to both audits, including documents to support Respondent's continued noncompliance with Rules 1.15 and 1.15A. But this information was not sufficient. First, neither audit looked at what Respondent did with all of the retainers he collected prior to November 1, 2017. If Respondent seeks to argue that he complied in every way with the 2019 Decision, Special Disciplinary Counsel is entitled to investigate whether he did so for all active clients at that time, and if not, how many clients were affected. Second, these audits did not provide all information relevant to Respondent's main defense to Count III – that he complied with his first Professional

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Responsibility Board sanction and changed his methods. For example, the production of informal or formal policies and communications from Respondent to his staff regarding any necessary changes to record-keeping. Third, the time period after July 2020 is not covered by any audit, and Respondent has refused to provide any documents at all – to anyone – related to that time period.

G.A.'s case shows that there were retainers that fell through the cracks of both audits because neither audit uncovered that Respondent failed to return G.A.'s retainer at all, even though the representation terminated during November 1, 2017, to July 31, 2020 time period. This is because it appears that Respondent did not make ledger cards or replace retainers in his IOLTA account for any client who provided a retainer before November 1, 2017. Many of Special Disciplinary Counsel's discovery requests were oriented toward discovering whether other clients suffered the same fate as J.H. and G.A. as it relates to Count II – did Respondent fail to timely return their retainer, and in J.H.'s case, use his failure to return funds as leverage to negotiate over a fee dispute? Questions 8, 9 and 11 are geared toward this inquiry.

Respondent knows that neither audit dealt with this issue because he has read both of Ms. Kainen's reports (attached here as Exhibits 1 and 2), and G.A. is not mentioned in them. Special Disciplinary Counsel also sought information from the 2015-19 time period to establish whether there are multiple offenses in this same category as part of sanctions discovery. *See* ABA Standards for Imposing Lawyer Discipline, §9.22(c).

If Respondent wants to argue he did everything possible to comply with the 2019 Decision, he should have provided relevant documents as part of discovery. Since he did not, he should not be able to make that assertion.

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III. COUNT IV: RESPONDENT HAS CONCEDED THAT HE DID NOT PRODUCE ALL RELEVANT E-MAILS IN HIS POSSESSION AND SHOULD BE PRECLUDED FROM ASSERTING THAT G.A. HARASSED HIS PARALEGAL BECAUSE HE HAS CHERRY-PICKED THE AVAILABLE EVIDENCE.

Count IV alleges that Respondent engaged in inappropriate fee collection practices by threatening G.A. with the dismissal or loss of his case if he did not pay promptly. In an attempt to distract from the e-mails that establish these inappropriate actions, Respondent claims as a defense that G.A. harassed and belittled his paralegal.[3] Special Disciplinary Counsel has already argued that this defense is irrelevant, and will file a motion *in limine* in the coming weeks.

Putting aside the relevance argument, this defense requires Respondent to produce all e-mails because it seeks to establish a pattern of behavior that occurred over e-mail. The context of all of the e-mail communications is critical to any investigation of this defense. Respondent chose not to provide all e-mails between his paralegal and G.A., even though he has e-mails on his server from this time period. He has already produced a selection to Special Disciplinary Counsel. He has never provided an explanation for why he cannot produce all of them.

Two examples of the prejudice this has caused Special Disciplinary Counsel are as follows. First, it is clear that Respondent intends to offer verbal evidence beyond what is included in the e-mails he provided. In the Response, Respondent claims G.A. called his paralegal "kiddo" but Special Disciplinary Counsel has never seen any such e-mail.

Second, Respondent asserts there were regularly dozens of e-mails per day, but produced approximately 30 pages of e-mail exchanges from the eighteen-month representation. The April 4, 2018 e-mail chain he referenced in the Response contains only nine e-mails from G.A., as part

[3] Respondent also argued that there were additional phone discussions about billing and the process for attorney withdrawal. *See* Supplemental Memorandum at 17-19. Respondent did not address that argument in the Response, and it is therefore not addressed here.

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of a back and forth exchange with Respondent's paralegal, in which she writes almost as many e-mails. In other words, an e-mail discussion.

In case the panel had any doubt that there are more e-mails Respondent has reviewed, but not produced, he boldly claims in his Response that "[t]his series of exchanges in April 2018 is an *accurate representation* of most of the client's communications with the paralegal." Response at 4 (emphasis added). This is not a proper way to present evidence or a defense. Additionally, Section VII, *infra*, sets forth the specific e-mails identified by Respondent as relevant, but did not produce. Special Disciplinary sought these e-mails in Requests 12, 13, 14, 16, 17. Respondent chose not to produce them. He should be precluded from presenting this defense.

IV. COUNT V: RESPONDENT'S DEFENSES TO THE UNREASONABLE FEES AND EXPENSES HE CHARGED J.H. SHOULD BE PRECLUDED BECAUSE HE CHOSE NOT TO PRODUCE E-MAILS AND DOCUMENTS.

Count V addresses (1) specific legal fees Respondent agreed to discount but then did not actually provide the discount and (2) specific expenses that were not reasonably charged or are unsupported by documentation. As part of his defense, Respondent argues against the facts laid out in the Petition of Misconduct, but has not provided any documents in discovery or otherwise to support his defenses.

In the Response, Respondent argues that Special Disciplinary Counsel is "second-guessing" Respondent's legal strategy. This is incorrect. As it relates to legal fees, the allegation is that Respondent agreed to a discount and then reneged. Respondent's defense that he never agreed to the discount is simply not supported by any documents. If he had wanted to rely on e-mail that showed a modification of the prior e-mail agreement, Respondent needed to produce documents. In light of his failure to produce all documents related to these allegations (e.g. all communications between Respondent and J.H. regarding the agreement not to charge for

travel contained in request 34 and the communications about the discount related to the discovery schedule motions practice in request 35), he should not be permitted to assert defenses from his inaccurate memory.

As it relates to expenses, Special Disciplinary Counsel has been extremely prejudiced. For example, Respondent has argued that he only stayed at the luxury hotels in the three cities he traveled to because in each of those instances they were the only lodgings available by the time the depositions were scheduled. This defense depends heavily on exactly when the depositions were scheduled for each city. Respondent has not produced a single document providing that answer. Special Disciplinary Counsel prepared subpoenas to other hotels in the areas of these depositions but was unable to complete them because she needed the dates when the depositions were scheduled. Respondent has this information in his possession. He chose not to provide it. He should not be permitted to assert this defense where Special Disciplinary Counsel's investigation has been directly hampered by Respondent's withholding of documents we now know are actually in his possession.

The remaining issues related to Count V are set forth in the memorandum for sanctions and will not be set forth here again since Respondent did not address them in his Response.

V. COUNT VI.

Respondent does not address Count VI in his Response, so Special Disciplinary Counsel will rely on her Supplemental Memorandum.

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VI. COUNT VII: RESPONDENT HAS NOT PRODUCED DOCUMENTS RELATED TO HIS INTENT AND THEREFORE CANNOT ARGUE HIS ADMITTEDLY FALSE STATEMENTS WERE UNINTENTIONAL.

Finally, it is undisputed that Respondent provided Special Disciplinary Counsel with untruthful information during the course of the investigation on more than one occasion. The only question the Panel will need to consider is Respondent's intent in making those statements.

The first set of false statements occurred when Respondent provided a spreadsheet titled "Complete Billing File" and represented to Special Disciplinary Counsel that it was the full billing file. The Complete Billing File showed that Respondent still held G.A.'s $2,500 retainer and did not reflect any transfer or reduction of the funds. Three months later, Respondent told Special Disciplinary Counsel in a letter that G.A.'s retainer had been in his IOLTA account until it was time to deduct the outstanding balance of fees remaining after the representation ended. Supplemental Memorandum, Exhibit 6. Respondent has produced no documents reflecting the transfer of the retainer or payment of expenses from the retainer. Respondent does not address this allegation in his Response, which relates to Request 10. However, Special Disciplinary Counsel must highlight that without understanding exactly what happened to those retainer funds – i.e., what Respondent did with those funds and at exactly what time – it is difficult to prove his intent. Respondent's refusal to participate in discovery – and the many misrepresentations he has made during the discovery process – should not be permitted to aid in his defense of this allegation.

As it relates to the second false representation – that Respondent had returned G.A.'s retainer when in fact he had not – Respondent's opposition to the request for sanctions is based on a wholesale misrepresentation of the facts at issue. Respondent asserts that he made a misstatement during his interview with Special Disciplinary Counsel about the retainer, but that he corrected it when he looked at his records. Response, 6. This is not what Special

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Disciplinary Counsel has alleged, nor is it what happened. During his interview on July 2, 2020, Respondent stated that he had not returned the retainer to G.A. Special Disciplinary Counsel requested follow up information in a letter. On July 24, 2020, Respondent provided a letter in response to that request and stated that since Special Disciplinary Counsel had raised the issue at the interview "we have remitted G.A. a refund of the retainer, minus the $954.98 balance." Supplemental Memorandum, Exhibit 6. That statement in the letter was not true, and is the false statement at issue in the Petition of Misconduct.

It cannot be disputed that the letter contains a false statement. To establish Respondent's intent, Special Disciplinary Counsel asked for all of the documents Respondent consulted when he drafted the July 24, 2020 letter that contained a self-serving misstatement of fact. *See* Request 24. Respondent provided nothing, which greatly interfered with Special Disciplinary Counsel's ability to probe Respondent's state of mind when he made such an obvious misstatement during the course of an investigation. As a result, the Panel should prohibit him from presenting as a defense that he did not intent to mislead Special Disciplinary Counsel.

Respondent said in the July 24 letter that he had requested from his bank a record of the original deposit of the retainer and would produce it. He never did. Special Disciplinary Counsel asked in Request 10 for that document and all others related to the transfer of the deposit and never received anything. These are documents that were not part of Ms. Kainen's audits. *See* Exhibit 1 at 2, n.1 (First Audit Letter) (noting that as of November 1, 2017 – three months after G.A.'s retainer was deposited – there was $8.93 in Respondent's IOLTA account). The absence of these documents showing a trail of what happened to G.A.'s retainer hamstrung Special Disciplinary Counsel's ability to fully investigate this matter.

VII. SPECIAL DISCIPLINARY COUNSEL HAS NOT RECEIVED ALL OF THE DOCUMENTS LISTED ON EXHIBITS 1 AND 2 TO THE RESPONSE.

To support his Response, Respondent attached two exhibits. Exhibit 1 purports to be a "List of Documents Transmitted to Disciplinary Counsel & Related Communications." The purpose of this list appears to be to show the Panel how many documents Respondent has provided. On this list, the following documents were not ever provided to Special Disciplinary Counsel:

1. J.H.

    a. 11/22/19 – Norman E. Watts, Esq. ("NW") and Margaux Reckard ("MR") e-mail discussion re: Spero's 11/11 letter
    b. 7/15/20 – MR & NW e-mails re: 7/14/20 ltr
    c. 6/3/21 – Affidavit of Garth Dunkel w/ supporting memo from 9/13/16

2. G.A.

    a. 7/15/20 – MR & NW e-mails re: Spero's 7/14/20 ltr
    b. 7/24/20 – MR & NW e-mails re: response to Spero's ltr
    c. 8/13/20 – NW & MR e-mails re: Spero's 8/6/20 ltr
    d. 8/24 – 8/26/20 – NW & G.A.'s wife ("S.A.") e-mails re: return of retainer
    e. 9/4/20 – S.A. confirms receipt of check
    f. 3/23/21 & 3/24/21 – MR & NW e-mails re: S.A.'s request for file
    g. 4/1/21 – MR & NW e-mails re: G.A.'S delinquency in billing chronology; MR creates a chronology of client's complete billing history
    h. 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.
    i. 7/19/21 & 7/20/21 – MR & NW e-mails re: file provided to G.A. & S.A.
    j. 10/18/21 – NW & MR e-mails re: e-mails and other documents provided to Spero for G.A. & J.H.

Many of the listed documents appear to be internal e-mails between Respondent and his paralegal, MR. It is not clear why they are included on this list, but to the extent they were responsive to Special Disciplinary Counsel's requests – either before or after the Petition of Misconduct was filed – they were never provided.

Exhibit 2 also lists e-mails about G.A.'s billing that Respondent chose not to provide to Special Disciplinary Counsel. Exhibit 2 purports to be a "Chronology of Delinquency on the G.A. Account." Exhibit 2 states that the list describes instances where Respondent or his firm "communicated with client [G.A.] about his account balance, and for each date, includes the balance due. All e-mails 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." The following e-mails were never produced:

1. 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."
2. 10/31/18 – Plaintiff's First Requests to Admit filed - $2,516.98 balance.
3. 11/13/[18] – Plaintiff's Motion to Extend Time to File SJM Reply ($2,516.98 balance).
4. 11/23/18 – Plaintiff's Opposition to SJM filed ($1,516.98 balance).

In addition, Respondent asserts that there are no responses to two e-mails – one on March 21, 2018 and a chain from April 4, 2018. Special Disciplinary Counsel is unable to confirm this since she has not received all e-mails from Respondent.

This is a list of documents that Respondent has clearly reviewed and sees as relevant to this case, but never produced to Special Disciplinary Counsel. These documents further underscore Respondent's bad faith refusal to comply with discovery in this case. The sanction of precluding certain of Respondent's defenses is appropriate here precisely because Respondent has lists of documents he deems to be relevant to this case and plans to use in his defense that he chose not to provide to Special Disciplinary Counsel.

Conclusion

Respondent chose not to participate in discovery in this case. He chose not to produce the complaining witnesses' case files, e-mails within his possession, bank records within his

possession, his notes, records of retainers he received, and other documents. It is clear from his responses that Respondent has many of these documents. It is not sufficient that he be limited in which documents he presents at the final hearing because Respondent should not be permitted to create a universe of documents in which to present his defenses while documents that would further contradict his poorly supported defenses have been withheld from the investigation.

Dated: Burlington, Vermont
November 23, 2021

/s/ Navah C. Spero

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December 19, 2018

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By email: sarah.katz@vermont.gov

Re: Compliance audit report for Norman Watts
Audit Period November 1, 2017 – October 31, 2018

Dear Sarah:

On December 19, 2018 I examined the records of Attorney Norman Watts' ("Attorney") compliance with Rules 1.15 through 1.15B of the Vermont Rules of Professional Conduct during the period of November 1, 2017 through October 31, 2018. This report has been prepared solely for the use of the Vermont Professional Responsibility Program.

AUDIT OVERVIEW AND PROCEDURES

Attorney Watts maintains a single client trust account ("IOLTA") at People's United Bank. The account is clearly identified as a client trust account. Attorney is the only individual with the authority to access the IOLTA or to authorize transactions. He does not write or maintain paper checks. He entirely relies on online banking to make disbursements and most deposits. He initiates all disbursements himself. He uses his banking app on his mobile phone for deposits under $10,000. Deposits in excess of $10,000 are prepared by Attorney and delivered to the bank either by Attorney or his assistant. Throughout the examination, Attorney and his assistant were cooperative and forthcoming.

Attorney does not maintain a check register for his IOLTA, instead relying entirely on his bank's online transaction history. Attorney downloads the transaction history. In most instances,

EXHIBIT
1

Attorney's assistant makes a notation on the transaction history attributing transactions to specific clients. This transaction history does not allow Attorney to track or obtain a report showing deposits/disbursements on a client-by-client basis. Attorney does not maintain client trust ledger cards showing deposits, disbursements or running balances for each client.

At my request, Attorney was able to download and print bank statements for each month during the audit period, but he does not reconcile his client trust account to the bank statements.

In order to determine the status of client funds for the audit period, it was necessary to construct records for the audit period from the transaction history, and then reconcile those transactions to the monthly bank statements.[1] I was then able to generate ledger cards for clients who had activity during the audit period. Exhibit A summarizes the status of the client funds, as of October 31, 2018.[2] Detailed findings are discussed below:

RULE 1.15(a)(1) – SAFEKEEPING PROPERTY

A lawyer shall deposit legal fees and expenses that have been paid in advance into an account in which funds are held that are in the lawyer's possession.

In several instances during the audit period, Attorney deposited client funds directly into his operating account and then transferred those funds over to his IOLTA. Those transactions are reflected in the table below:

Date	Client	Amount	Notes
1/11/2018	Kicklighter	$9,846.87	Total received was $15,000. Amount transferred from operating account was less Attorney's fee.
3/2/2018	Main, Amy Beth	$249,750.00	"Total settlement" transferred from operating.
4/23/2018	Young, Robin	$2,500.00	Transfer of funds originally deposited into operating
6/27/2018	Sabin, Sandra	$2,500.00	Transfer of funds originally deposited into operating

[1] In order to construct these records, certain assumptions were made. According to the bank statement, the balance at the beginning of the audit period was $8.93. Given the scope of this audit, this was presumed to be Attorney funds, but could very well have been funds remaining from an earlier client transaction.
[2] Exhibit A does not reflect client trust deficiencies which may have existed prior to the audit period.

RULE 1.15(C) – NONREFUNDABLE FEES

Attorney's practice is to obtain an advance in the amount of $2,500.00 from clients at the start of representation, which is refunded to clients if a settlement is received. In most instances during the audit period, the advance funds were deposited directly into the IOLTA, then transferred to the operating account shortly thereafter.

Each client receives a written fee agreement describing the treatment of the advance. At the start of the audit period Attorney's fee agreements stated, "…we require a retainer of $2,500.00 which we will hold in our client trust account during the representation." (Exhibit B). Attorney's practice of transferring these funds into his operating account at the start of the case was not consistent with this representation. During the audit period, Attorney revised his fee agreement to state that the $2,500.00 is "considered earned on receipt." (Exhibit C).

RULE 1.15(f)(1) – COLLECTED FUNDS

An attorney shall not disburse unless funds are "collected". Collection of funds is governed by 12 C.F.R. part 229 (2018) (Regulation CC). When funds are deemed "collected" varies based upon the nature of the instrument. Unless a check is drawn on an account where the Attorney's IOLTA is maintained, funds from deposited checks are not available, at a minimum, until the second business day following the deposit. Rule 1.15(g)(4) permits an Attorney to disburse funds that do not constitute collected funds if it is a check that does not exceed $1,000. The below table identifies funds that were paid by checks in excess of $1,000 and were disbursed in less than two business days, although it was not determined whether any of these checks were drawn from accounts at the same bank where Attorney maintains his IOLTA:

Date Deposited	Date Disbursed	Details	Amount	Client
11/15/2017	11/16/2017	"Mobile Check Deposit"	$2,500.00	Ruth Hunter
12/19/2017	12/20/2017	"Mobile Check Deposit"	$5,000.00	Okemo Realty Inc
12/22/2017	12/26/2017	"Mobile Check Deposit"	$1,200.00	S. Nadeau
12/27/2017	12/28/2017	Check #1497	$2,500.00	Carol Lighthall
1/10/2018	1/11/2018	"Mobile Check Deposit"	$2,500.00	Robin Lawson
4/25/2018	4/25/2018	"Mobile Check Deposit"	$2,500.00	Greg Weisel

It is noted that none of these checks were returned as uncollectable.

Rule 1.15(f)(2) USE OF MONEY HELD IN TRUST.

An attorney shall not use, endanger or encumber money held in trust for a client for the purpose of carrying out the business of another client. As previously stated, Attorney does not maintain individual client ledger cards. Attorney has no concise method of determining whether or not a client has funds in the IOLTA at any particular time. During the audit period, Attorney withdrew funds without first determining whether or not he had previously withdrawn those funds. Exhibit A reflects a number of clients with negative balances at the conclusion of the audit period. These negative balances resulted in the use of one client's money to carry out the business of another client. Those transactions are detailed below:

- Rubino, Gray and McCarty matters

Attorney's assistant demonstrated that Attorney had received $2,500.00 from each of these clients prior to the audit period. It is not clear what happened to those funds, because there was not sufficient money in the IOLTA to account for their funds at the start of the audit period. However, Attorney withdrew $2,500 for each of them during January, 2018. This resulted in negative trust account balances for these three clients in the amount of $2,500.00 each. There were sufficient funds from other clients in the IOLTA at that time to avoid overdrafts.

- Kicklighter matter

Attorney received a settlement for this client on or about January 11, 2018 in the amount of $15,000. These funds were deposited directly into the Attorney's operating account. Attorney's fee was deducted and $9,846.87 was transferred into the IOLTA. On February 9, 2018 Attorney disbursed $12,346.87 to the client, which was intended to represent the balance of the settlement funds, plus the return of the $2,500 advance the client had previous paid. However, the advance was no longer in the IOLTA. This resulted in a negative trust account balance for this client of $2,500.00. There were sufficient funds from other clients in the IOLTA at that time to avoid an overdraft.

- Main matter

A review of this client's activity during the audit period revealed that on or about March 2, 2018, Attorney received a settlement for this client. This settlement was deposited directly into Attorney's operating account. He then transferred $249,750 to his IOLTA. Also, on March 2nd, he transferred $83,250.00 back to his operating account as his one-third fee. On March 8, 2018 he disbursed $165,989.61 to the client, leaving a balance of $510.39 in trust for this client. On March 16, 2018, Attorney transferred another $480.00 into his operating account from the IOLTA. Attorney's assistant explained that this was to cover additional expenses for this client

that had not previously been accounted for. This left a balance of $30.39 in trust for this client. On April 17, 2018 Attorney disbursed another $2,500.00 to the client from the IOLTA, as a refund of the retainer she had previously paid, but the retainer funds were no longer in the IOLTA. This resulted in a negative trust account balance for this client of $2,469.61. These transactions are reflected on Exhibit D. There were sufficient funds from other clients in the IOLTA at the time to avoid an overdraft.

- Thorpe matter

This client is included in this category, not because there is a negative trust balance, but because this client's funds were largely the reason that the above transactions did not result in an overdraft, although what occurred in this case is not entirely clear. What is clear is that Attorney received a settlement in the amount of $45,000 on January 12, 2018 which was deposited directly into the IOLTA. Between January 16, 2018 and February 13, 2018 Attorney made sixteen separate transfers from the IOLTA into his operating account from these funds, totaling $32,000. This left $13,000 in the IOLTA for this client. These transactions are set forth on Exhibit E. There is a note on the transaction history which states "total to client: $32,325 on 3/5/18". It is not clear how those funds were paid because there is no disbursement from the IOLTA in that amount. The settlement statement for this account does not match the IOLTA activity. (Exhibits E and F). Further investigation into this matter was beyond the scope of this engagement.

- ORI

On December 19, 2017 Attorney deposited $5,000 from the client into the IOLTA. The notation on the transaction history states "ORI advance Adler". Attorney explained that Adler was the expert being retained for this client. On December 20, 2017 Attorney transferred $5,000 from his trust account into his operating account, thereby depleting ORI's funds in the IOLTA. The notation on the transaction history states, "ORI Adler Retainer – transfer to operating acct". On June 27, 2018 Attorney wrote a check to Adler & McCabe (the expert's firm) for $2,500.00 from the IOLTA. This resulted in a negative trust account balance for this client of $2,500.00. At the time this check was written, the total balance in the IOLTA was $9.32. This transaction resulted in an overdraft to the IOLTA. Attorney's bank did not pay the check when it was presented and it was returned for non-sufficient funds.

- Bank Charges ("Watts Admin")

As previously stated, the audit period began with $8.93 attributable to Attorney funds in the IOLTA. I assigned these to an account entitled "Watts Admin". On March 8, 2018, Attorney incurred a $30.00 fee for an outgoing wire transfer. On July 24, 2018 Attorney incurred a $15.00 fee for an incoming wire transfer. Attorney did not have sufficient funds in the account to cover the wire transfer fees and did not subsequently deposit additional funds into the account to cover these fees. This resulted in a negative balance in the Watts Admin account of $36.07. There were sufficient client funds in the IOLTA to avoid an overdraft.

Rule 1.15A(a)(1) – DOCUMENTATION

An attorney shall maintain a system showing all receipts and disbursements with appropriate documentation of the source of the receipts and the nature of the disbursements. During the audit period, four separate transactions could not be connected to any particular client or matter. On December 27, 2017 a transfer from the operating account in the amount of $300.00 was made into the IOLTA, but there was no notation to indicate the client or purpose. On December 29, 2017 those funds were transferred back to the operating account. Attorney's assistant stated that the initial transfer was in error and the subsequent transfer was a reversal of that error.

On February 9, 2018, Attorney transferred $2,000 from the IOLTA to his operating account. On February 28, 2018, Attorney transferred $1,000 from the IOLTA to his operating account. There was no notation to indicate the client or purpose associated with either of these transactions. I asked Attorney and his assistant about these transactions but neither could determine the purpose of these transfers.

Rule 1.15A(a)(1) and (2) – RECORDS

An attorney shall maintain a record for each client or person for whom property is held, which shows all receipts and disbursements, and carries a running account balance for each client. Attorney does not maintain individual trust account records for each client showing all receipts and disbursements or that carries a running balance.

Rule 1.15A(a)(3) - NOTIFICATION

An attorney shall provide timely notice to the client of all receipts and disbursements. As previously stated, in the Thorpe matter Attorney made sixteen separate transfers from his IOLTA into his operating account on behalf of that client. None of those transfers are reflected on the settlement statement provided to the client (Exhibits E and F).

Rule 1.15A(a)(4) – TIMELY RECONCILIATION

An attorney shall perform a monthly reconciliation of all accounts and maintain a single source for identification of all accounts maintained under this rule. As previously stated, Attorney does not reconcile the IOLTA or maintain a single-source document.

CONCLUSION

In my opinion, the foregoing constitutes material noncompliance with the requirements during the period of November 1, 2017 – October 31, 2018.

Sincerely,

Michelle Kainen

Michelle Kainen, MSA
Attorney at Law

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September 16, 2020

Sarah Katz
Disciplinary Counsel
VT Professional Responsibility Program
32 Cherry Street, Suite 213
Burlington, VT 05401

Re: Compliance audit report for Norman Watts
Audit Period December 1, 2018 – July 31, 2020

Dear Sarah:

I examined the records of Attorney Norman Watts ("Attorney") and his compliance with Rules 1.15A(a) of the Vermont Rules of Professional Conduct during the period of December 1, 2018 through July 31, 2020, as well as his compliance with the stipulation entered into with the Vermont Professional Responsibility Program. This report has been prepared solely for the use of the Vermont Professional Responsibility Program.

AUDIT OVERVIEW AND PROCEDURES

This compliance audit was requested after Attorney had a check returned for non-sufficient funds in July, 2020. Later in July, prior to commencement of the audit, Attorney had a second check returned for non-sufficient funds.

This is the second compliance audit I have conducted for this attorney. Due to the COVID-19 pandemic, Attorney requested that I conduct the audit virtually. After having difficulty obtaining the requested documents from Attorney, I scheduled a meeting with Attorney via Zoom, which occurred on September 2, 2020.

Attorney Watts maintains a single client trust account ("IOLTA") at People's United Bank. The account is clearly identified as a client trust account. Attorney is the only individual with the

EXHIBIT
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authority to access the IOLTA or to authorize transactions. He does not write or maintain paper checks. He relies entirely on online banking to make disbursements. He initiates all disbursements himself and notes the client's name in the memo, so that the bank statements reflect which client each disbursement is associated with. Attorney does not utilize pre-printed deposit slips for the account, instead using blank deposit slips when he takes the deposit to the bank.

Attorney routinely maintains less than $100.00 of his own funds in the account to cover potential fees. He uses a transaction spreadsheet he created to track deposits, disbursements and the running balance for the account.

Attorney's IOLTA account has relatively little activity. During the twenty-month audit period, there were a total of 31 transactions, with several months showing no account activity at all.

NON-SUFFICIENT FUNDS TRANSACTIONS

As previously stated, Attorney had two "bounced checks" during the month of July, 2020. Attorney explained that these transactions were both the result of error while using his online banking app on his mobile phone. He intended for those checks to be written from his operating account, but accidentally selected the IOLTA account instead (both are connected to the same app). Attorney deposited money in the account to replenish the account in both instances. There were no client funds in the account at the time that either of these transactions occurred. The only money in the account at that time was the $50.00 Attorney maintains to cover fees.

Attorney's explanation is credible and there is no evidence that client property was endangered at the time of these transactions. We discussed the peril that his reliance on the online banking app creates. He seemed receptive to removing his IOLTA account from his online banking app.

Rule 1.15A(a)(1) – DOCUMENTATION

An attorney shall maintain a system showing all receipts and disbursements from the account or accounts with appropriate entries identifying the source of the receipts and the nature of the disbursements.

Attorney's record-keeping shows improvement since the first audit. He now maintains a basic transaction spreadsheet, although it does not mirror all account activity on the bank statements. The month of January, 2020 was missing entirely from Attorney's transaction spreadsheet. Additionally, a comparison of the transaction spreadsheet with the bank statements revealed four unusual transactions during May, 2019. Two of the transactions were reflected on the transaction spreadsheet, but lacked identifying information. The other two transactions did not appear on the transaction spreadsheet at all. These transactions, plus an associated service charge, are as follows:

Date	Amount	Description
5/14/19	$124,200.00	deposit
5/15/19	$124,200.00	debit memo for item deposited 2019-05-14
5/17/19	$124,200.00	credit memo
5/17/19	$124,200.00	return deposit item debit
5/17/19	$15.00	service charge for return deposit item debit

Attorney's transaction spreadsheet only reflected the 5/14/19 and 5/15/19 set of transactions, plus the service charge on 5/17/19. The only notation on his spreadsheet described these transactions as "bank error".

I inquired about the source of these transactions. Up to the point of my inquiry, Attorney had not been aware of the two 5/17/19 transactions in the amount of $124,200.00. He had no recollection of having engaged in transactions in this amount and could not connect the four transactions to any case or client. Attorney committed to contacting his bank to investigate these transactions.

On September 10, 2020, Attorney followed up with me after contacting his bank to inquire about this series of transactions. According to Attorney, these transactions were attempts by an unknown third-party to gain unauthorized access to Attorney's IOLTA account. Both deposits were "altered/fictitious checks" purportedly drawn on a Citibank account. These transactions were flagged by People's United's Fraud Prevention Department and each was reversed by the bank.

Attorney was not inclined to take any further action regarding this, however further inquiry is recommended to determine the extent that the account may have been compromised.

Rule 1.15A(a)(2) – RECORDS

An attorney shall maintain a record for each client or person for whom property is held, which shows all receipts and disbursements, and carries a running account balance for each client.

Prior to the audit, I requested copies of ledger cards/statements for individual clients during the audit period. The day before our Zoom meeting, Attorney provided a single "Statement of Account", which contained client trust transactions, but there was no client name on it.

During our Zoom meeting, I asked Attorney to produce individual client trust records for three clients (West, Vadnais and Silvestri), to test compliance with this rule. Following the audit, I asked Attorney to produce another client trust account record (Gray). The results are as follows:

West – Attorney did not have a ledger or transaction statement for this client. He stated that the account activity occurred during the month of the first compliance audit (December, 2018). He did not retroactively create records for transactions that occurred prior to the stipulation with the VT Professional Responsibility Program (discussed further below).

Vadnais - Attorney attributed the "Statement of Account" that he provided prior to the audit to this client. I pointed out that there was no name on the statement. He attributed this statement to Vadnais because it was in her file, and because the mediator referenced on the statement was the mediator used in that case. I referred Attorney back to his transaction spreadsheet and pointed out that none of the amounts on this statement matched-up with those on his transaction spreadsheet attributable to Vadnais. He acknowledged that. After further examination, we determined that this statement likely belonged to Silvestri. There was no transaction ledger for Vadnais for IOLTA funds.

Silvestri - In addition to the "Statement of Account" discussed above, Attorney had an actual spreadsheet with this client's name on it. It contained all expenses for this case and had a section entitled "settlement calculations". The figures in the "settlement calculations" section matched those on the transaction spreadsheet, but there were no dates or running balances.

Gray – This client's record only contained case-related expenses. There is no reference to the IOLTA transactions. The IOLTA transactions for this client occurred during January, 2020, the same month that is missing from Attorney's transaction spreadsheet. Fortunately, the transactions on the January, 2020 bank statement identified these transactions as associated with this client. Without a centrally maintained set of deposit records, entries on a transaction register or an individual client transaction ledger, that bank statement notation was the only way to readily connect those funds to any particular client.

Rule 1.15A(a)(4) – TIMELY RECONCILIATION

An attorney shall perform a monthly reconciliation of all accounts and maintain a single source for identification of all accounts maintained under this rule.

The transaction spreadsheet that Attorney provided was labeled "Client Trust Account Reconciliation". Attorney did not appear to recognize the difference between his transaction spreadsheet and a bank reconciliation.

I showed Attorney one of the reconciliations I had performed on the account. Upon seeing that, Attorney acknowledged that he does not perform reconciliations of the IOLTA account. Attorney periodically spot-checks the running balance on his transaction spreadsheet with the bank's online transaction history. He does not reconcile the individual client account balances with the register balance.

Attorney does not download or keep the monthly bank statements. Attorney's bank limits the availability of online transaction history. Attorney had to contact his bank to obtain the bank statements for the first two months of this audit period, because they were no longer available online.

COMPLIANCE WITH STIPULATION

Attorney entered into a stipulation with the VT Professional Responsibility Program following the December, 2018 compliance audit. In that stipulation he agreed undertake the following procedures in the management of IOLTA funds:

- Attorney receives an advance payment of $2,500, which is treated as "earned upon receipt" in his fee agreement. Attorney agreed to treat those funds as earned, by not depositing those funds into his IOLTA Account.

- Attorney agreed to have the check for the client's portion of any settlements or jury awards made payable directly to the client, eliminating the need for the Attorney to manage client funds.

- Attorney's lead paralegal would manage the "ledger cards" on electronic media.

Attorney provided copies of his fee agreement for several clients, which confirms that the $2,500 advance is considered "earned upon receipt". Furthermore, I reviewed each transaction during the audit period and found no instance where Attorney deposited the advance funds into the IOLTA account. Attorney is in compliance with this provision of the stipulation.

Based upon the limited number of transactions, Attorney's strategy of having settlement funds disbursed directly to the clients appears to be mostly successful. There were only three instances following the December, 2018 audit, where Attorney received settlement funds that he deposited into the IOLTA account. Taking into consideration that Attorney cannot actually control how an adversary disburses a settlement check, it appears that Attorney is substantially in compliance with this term of the stipulation.

As discussed in the section regarding Rule 1.15A(a)(2) above, Attorney's maintenance of the client ledger cards does not comply with the rule.

CONCLUSION

Attorney has made some strides in the management of his IOLTA account, but his current system does not comply with the rules regarding trust account management. Based upon the foregoing, attorney is not in compliance with Rule 1.15A(a)(1), (2) and (4).

Sincerely,

Michelle Kainen, MSA
Attorney at Law

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

CERTIFICATE OF SERVICE

I, Navah C. Spero, Esq., certify that, on November 23, 2021, I caused to be served my Reply in Support of Motion for Sanctions as follows:

Via E-mail

Norman Watts, Esq.
Watts Law Firm, PC
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nwatts@wattslawvt.com

Dated: Burlington, Vermont
November 23, 2021

/s/ Navah C. Spero
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