

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Norman E. Watts

PRP File Nos. 2019-102 and 2020-011

ANSWER TO PETITION OF MISCONDUCT

Count I

The allegation is false. The defense motion was filed on 10/15/17. Respondent explained to the client, at the time of his deposition on 10/26/17, that the GFFD claim would not survive the motion to dismiss because adequate evidence had not been discovered to support it – contrary to his earlier reports. The client was reluctant to drop the claim but after I informed him that to oppose the motion was futile and would drive up his costs, her relented. When he inquired again, by telephone, we reviewed the factors and he concurred. If the client misunderstood the explanations it was not a result of Respondent’s good faith attempts to explain it. The client also besieged one of the firm’s paralegals multiple times with inquiries about the matter and the summary judgment process and demanded the paralegal provide the same explanations to his wife.

Count II

The allegations are true. They were oversights that occurred during a period of intense litigation demands and inadequate bookkeeping practice. It was the same practice encompassed in the 2017-2019 PRP sanction. After the sanction, the practice was revised and not repeated since.

Count III

The allegations are true and occurred during the same period as Count II, above, and it was the same practice as encompassed in the 2017-2019 PRP sanction. After the sanction, the practice was revised and not repeated since.

#### Count IV

The allegations are false in part and true in part. The client was frequently slow in paying his hourly payment obligation. Respondent advised the client that he might resign/withdraw if his failure to pay became repetitious. Respondent did not describe the withdrawal process. There was no “inappropriate pressure,” simply a clear and reasonable advisory under the circumstances. Again, the client contacted Respondent and the firm’s paralegal multiple times by telephone, seeking explanations of each step in the litigation process. If the client misunderstood the explanations it was not a result of Respondent’s good faith attempts to explain it. The client also besieged one of the firm’s paralegals multiple times with inquiries about the matter and the summary judgment process and demanded the paralegal provide the same explanations to his wife. The client’s multiple contacts were unnecessary given the extensive explanations provided but were disruptive and annoying. The firm’s paralegal received 30 emails each week from the client; each required a response, adding to the expenses of the case. The client was consistently demeaning and condescending to the paralegal, a female. Some of the results of the client’s insults, disruptions and annoyances may have colored respondent’s attempts to collect legal fees in a timely manner.

#### Count V

The allegations are false. All fees charged to the client were reasonably based on the time devoted to the case. The client repeatedly and unexpectedly demanded that

respondent include case citations into pleadings, requiring him to review them to determine their applicability and persuasiveness. And the defense was slow to produce discovery requests – both factors required more time. The \$3,400 charge was at a discounted rate. The \$1,215.09 charge was fully documented according to time devoted to the case.

#### Count VI

The allegation is false. All estimates were based on years of litigation experience in the employment field. It is impossible to express absolutely accurate forecasts given the special circumstances that emerged with the case including the client's repeated and unforeseen demands that respondent include additional case citations in the pleadings, requiring respondent to review them to determine their applicability and persuasiveness.

#### Count VII

The allegations are false. Respondent's statements to counsel were based on his best recollections – he had not consulted the record when counsel inquired by telephone. After reviewing the record, it became clear he had placed the retainer in the trust account and later transferred it to the operating account. Respondent's statements were not intentional lies as counsel portrays them. It would make no sense to lie to counsel given the documentation in her possession or that she could acquire during her investigation. Such an act would have intensified counsel's efforts. As indicated in counsel's Supporting Allegation No. 17, below, respondent did not attempt to mislead counsel; he had not closely tracked the transactions.

## Responses to Supporting Allegations

1. The allegation is true.
2. The allegation is true.
3. The allegation is true.
4. The allegation is true. It is important to note that the audit period was November 2017 to October 31, and 2018. After the auditor advised respondent that his accounting approach was irregular, a sanction was imposed in February 2020 and respondent adopted measures to bring practices into compliance, as discussed below at paragraph 6.
5. The allegation is true.
6. The allegation is partially true. But it omits part of the audit findings concerning respondent's compliance with the February 19, 2020 stipulation. The auditor observed that respondent "is substantially in compliance with this term of the stipulation" and that respondent "made some strides in the management of his IOLTA" but had not reached full compliance with the ledger card feature of the requirement.
7. The allegation is true.
8. The allegation is true. But it is noted that the client engagement occurred prior to the 2020 stipulation and the related financial aspects were not in violation and were not cited as a violation in the second audit.
9. The allegation is true.
10. The allegation is true. Prior to the audit, the respondent reasoned that preparation, service and filing of the complaint and summons as well as the

related discovery requests consumed the retainer and the funds would be returned to the client through the netting-out process with hourly fees and costs at the conclusion of the representation. The retainer was ultimately returned to the client.

11. The allegation is false. The G.A. client engagement occurred in August 2017 - prior to the 2020 stipulation. As described in paragraph 10, the retainer had been exhausted in the discovery process. It was refunded out of respondent's operating account.
12. The allegation is false. The G.A. representation existed from August 2017 until March 2019 – prior to the 2020 stipulation. As described in paragraph 10, the retainer was exhausted in the discovery process. It was refunded out of respondent's operating account.
13. The allegation is true.
14. The allegation is true.
15. The allegation is true.
16. The allegation is false. There was no sinister attempt to hide the transaction; it was clearly recorded in respondent's financial records, as the audit established.
17. The allegation is true.
18. The allegation is true.
19. The allegation is true.
20. The allegation is true.
21. The allegation is true.

22. The allegation is true. As indicated in counsel's Supporting Allegation No. 17, respondent did not attempt to mislead counsel; he had not closely tracked the transactions.
23. The allegation is true in describing the auditor's report but counsel's interpretation is false; the G.A. representation ended in March 2019 and the J.H. representation ended in April 2017 – almost a year before the second audit report.
24. The allegation is false. Respondent spoke with the client, indicating that the retainer would be refunded as a result of the final accounting; respondent mistakenly thought there was a greater balance in the billing account.
25. The allegation is true.
26. The allegation is true. As indicated in counsel's Supporting Allegation No. 17, respondent did not attempt to mislead counsel, he had not closely tracked or reviewed the transactions at the time. It would make no sense to deliberately mislead counsel as she would receive all the relevant documentation. Rather, it was respondent's recollection that was inaccurate.
27. The allegation is true. As indicated in counsel's Supporting Allegation No. 17, respondent did not attempt to mislead counsel, he had not closely tracked or reviewed the transactions at the time.
28. The allegation is true. As indicated in counsel's Supporting Allegation No. 17, respondent did not attempt to mislead counsel, he had not closely tracked the transactions.
29. The allegation is true. As indicated in counsel's Supporting Allegation No. 17, respondent did not attempt to mislead counsel, he had not closely tracked the transactions.

30. The allegation is false concerning retained funds; it is true concerning client payments.
31. The allegation is partially true. The client paid regularly for some of the representation period; at other times his payments were delayed. When client fell significantly behind the first time, after a reminder, he assured respondent that his son had won the lottery and he would bring the payments current for the remainder of the case. That did not happen. He continued in arrears for the duration of the representation. Respondent returned the balance of his retainer funds after the representation concluded.
32. The allegation is true.
33. The allegation is false. There was no “pattern” concerning collections, *per se*; when the client fell behind respondent reminded him about his contractual payment obligation. On one occasion respondent indicated the client’s balance was considerably behind, that the remedy is to discontinue the suit or withdrawal in favor of new counsel – the client’s choice.
34. The allegation is true. The communication was a straightforward advisory, not expressed in the tone of a “threat.”
35. The allegation is true. Nevertheless, the client’s tardiness continued and became a pattern – as in this instance – the April payment was for services rendered in January and prior.
36. The allegation is false as written. Respondent advised the client that his pattern of delayed payments might cause postponement of activities that would cause the balance to increase; that the remedy would be withdrawal. Respondent’s actions

appeared to be the only way to encourage the client to pay his contractual obligation for services previously rendered in a timely manner.

37. The allegation is true.

38. The allegation is true.

39. The allegation is true.

40. The allegation is true.

41. The allegation is true.

42. The allegation is true.

43. The allegation is true. The parties had not yet had the full discussion concerning the withdrawal process.

44. The allegation is true.

45. The allegation is false. On June 28, 2018, at the conclusion of two depositions in Rutland, client and respondent discussed the next steps in the litigation. Respondent advised that there would probably be two or three more depositions and defendant would probably file a summary judgment motion. Respondent explained the process. He advised client that there was minimal evidence supporting the age or contract claims at that point, making dismissal a real prospect. The client remained positive; he was especially eager about witness testimony in upcoming depositions.

On July 26, 2018, after three more depositions of witnesses who the client promised would be favorable, respondent reminded client of the prospect of the defense filing a summary judgment motion and that the evidence so far was “thin,” especially evidence of the co-worker balloting on his petition for a promotion.



The defendant's promotion selection process involved interviews of candidates for an open position. Management selected a group of co-workers to interview the candidates for a preference vote by the group. The client advised the respondent, on many occasions, that the witnesses would verify that he had won the balloting but that management had promoted a younger co-worker instead of him. He averred that even if management did not verify his assertion, other co-workers would do so because he was popular among his peers. And, he advised, we could demand the paper ballots to prove our case because the defendant always kept them secure as historical records.

Based on deposition testimony, the client was not popular among co-workers, he was ridiculed as disorganized and untrained on the newest equipment technology; he did not win the balloting; rather he was last in the voting. This testimony arose from management's witnesses as well as those the client professed were friendly. And, finally, management did not retain ballots in the selection process as a regular practice.

Naturally, respondent was quite frustrated by the discovery results, especially that they had directly contradicted his contentions expressed throughout the process.

When defendant filed its summary judgment motion, on October 15, 2018, it also file a Rule 12(c) motion against our claim for breach of the covenant of good faith and fair dealing.

As respondent worked through the evidence to oppose the motions, it became clear that the covenant claims would not prevail because it was based on the same evidence as the contract claim and client's contention that he won the balloting and

the retained ballots the other two claims. Based on the evidence, these were false claims. There was no way the covenant claim would prevail. Hence, it was futile to oppose it and increase defendant's financial obligation. A covenant claim must have a different and more egregious basis than the facts supporting the breach of contract claim. We could not fulfill that requirement either.

On November 1, 2018, respondent advised client that, absent that evidence the claim would fail and, possibly tarnish the contract claim also. Respondent advised client that the best approach was to withdraw the covenant claim because it was the weakest claim – a genuine loser. Ultimately, no witness verified the client's information provided to respondent and there was no documentation supporting the claim. The age discrimination claim would remain viable as a remedy at that point. Client agreed with that course of action. It was a professional judgment decision based on experience and knowledge of the law. At the client's request, respondent also explained the move to his wife.

46. The allegation is false as described in respondent's response to allegation 45, above.

47. The allegation is false as described in respondent's response to allegation 45, above.

48. The allegation is false as described in response to allegation 45, above.

49. The allegation is true as described in respondent's response to allegation 45, above.

50. The allegation is false as described in respondent's response to allegation 45, above.

51. The allegation is true as described in a September 13, 2016 memorandum provided by a firm paralegal at the conclusion of the JH case in which JH spontaneously expresses her satisfaction with the legal services she received, expressing no complaints whatsoever.
52. The allegation is true.
53. The allegation is true.
54. The allegation is false in part and true in part. It is true that respondent provided estimates to the client that proved to be deficient. There were significant unforeseen efforts required in discovery, as is often the case, especially with the client insisting on additional depositions during the litigation, paper discovery and the client performing her own legal research and insisting the cases she disgorged be included in pleadings, causing additional time for respondent to evaluate them. For example, the initial evaluation was \$28,000. It is a fair estimate for a plaintiff's discrimination claim.
55. The allegation is false. Respondent performed calculations for all estimates provide to client.
56. The allegation is true.
57. The allegation is false. There is no evidence of the claim nor did the client express that view. Respondent's informal estimate was prepared in good faith based on experience and professional judgment.
58. The allegation is true.
59. The allegation is true.

60. The allegation is false. There is no evidence of the claim nor did the client express that view. Respondent estimate was prepared in good faith based on experience and professional judgment.
61. The allegation is true - that the estimates were low. In each case, there were unforeseen expenses and costs, most of which the client approved by telephone; for example, respondent recommended that our team should consider an expert witness to opine about the defendant's conduct towards the client, indicating that it might cost as much as \$5,000. Client approved the suggestion despite it being previously unforeseen and not included in prior estimates.
62. The allegation is true.
63. The allegation is false in the implication that the estimate was deliberately misleading.
64. The allegation is true. The estimate was respondent's best approximation at the time based on experience and judgment.
65. The allegation is false, Respondent believe the factors counsel describes occurred in the past and would not recur – and they did not. But the client insisted on several depositions that were not initially agreed to and respondent had not planned on.
66. The allegation is true. Respondent was aware that unforeseen factors had complicated the case and caused overages.
67. The allegation is false, Respondent had learned that the expert would not charge client for his services.

68. The allegation is false. There is no evidence of the claim nor did the client express that view. Respondent estimate was prepared in good faith based on experience and professional judgment.
69. The allegation is false. Respondent believed the factors described by counsel were in the past and would not recur – and they did not.
70. The allegation is true.
71. The allegation is false. As there was no jury selection, pretrial pleadings or even a trial or other trial-related events, there is no evidence respondent’s estimates were underestimated as charged; it is merely counsel’s speculation.
72. The allegation is true.
73. The allegation is false.
74. The allegation is false. Respondent indicated he would not charge for travel to the two west coast conferences with the client, not travel to depositions, the mediation or other in-state events.
75. The allegation is true – Respondent’s oversight.
76. The allegation is false.
77. The allegation is false. First, under the civil rules, “discovery documents” are not “filed” with the court. Second, as the court’s decision indicates, there was considerable confusion about the close of discovery, discovery requests and the deadlines; ultimately, the court refused to grant plaintiff’s request for documents previously requested.
78. The allegation is false.
79. The allegation is false.

80. The allegation is false. a) The hotels were not “luxury,” they were the only facilities available at the time; respondent was forced to stay an extra night because the return coach had already departed Boston; b) There were no charges for “unreasonable amounts” for food and no charges at all for alcohol; hence receipts were not required.
81. The allegation is false.
82. The allegation is true.
83. The allegation is true.
84. The allegation is true.
85. The allegation is true.
86. The allegation is true.
87. The allegation is false. The engagement letter the client agreed to provided for the deduction of expenses from the retainer at the conclusion of the representation.
88. The allegation is true.
89. The allegation is true.
90. The allegation is true. Respondent and the client did not agree on the remaining balances for several months.

Dated at Quechee, Vermont on May 19, 2021.

Respectfully submitted,

Respondent



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