

The fourth rejection occurred on 11/23/21. This time Counsel changed her rationale for rejecting Respondent's request to depose her expert witness – because the deadline for taking depositions had expired. (Exhibit 4).

The fifth rejection occurred on 2/1 – 2/2/22, when Respondent agreed to permit Counsel to take the paralegal's deposition – even though the deposition deadline had expired. (Exhibit 5).

Discussion

The most compelling reason to grant Respondent's motion is that an expert witness deposition will retain the fairness balance between the parties and eliminate the current disadvantage to Respondent, as he will be forced to participate in the merits hearing without any information about the expert's opinion.

Granting Respondent's motion will also significantly reduce the time required for the expert presentation at the merits hearing.

The third reason to grant Respondent's motion is that Counsel's prohibition of an expert witness deposition is that the civil rules forbid such conduct. V.R.C.P. 26 (d):

(d)Sequence and Timing of Discovery. Unless a Superior Judge upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

Moreover, refusing such a deposition opportunity gives the disadvantaged party the opportunity to file a motion to compel the deposition.

Counsel's prohibition is, at best, evasive and contrary to the rule. Under the circumstances, a motion to compel the deposition permits the Panel to restore a balance in the proceeding in the interest of justice. The proper remedy for the rule violation is that

the disadvantaged party may apply for an order mandating a deposition. Otherwise, Counsel has an unfair advantage in the proceeding. It constitutes significant prejudice to Respondent's defense case.

The merits hearing has not been scheduled. Adding the deposition of Counsel's expert witness will not unnecessarily delay this proceeding. But failure to grant the motion to compel will render an unfair advantage to Special Disciplinary Counsel and her cause and lengthen the hearing itself.

Finally, a strong reason for granting Respondent's Motion to Compel is that he agreed to Counsel taking a deposition of one of his fact witnesses – after the deadline that Counsel cited had expired – as a good faith gesture of cooperation. In actuality, Counsel waived her "expired deadline" argument.

Conclusion

For the foregoing reasons, the Respondent urges the Panel to grant his motion to compel the deposition of Counsel's expert witness.

Rule 37 Certificate

Respondent attempted to confer about the discovery issue on at least five occasions – in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution. The consultations between counsel did not resolve the discovery issue.

Respondent files this certificate, subject to the obligations of Rule 11, that he conferred or has attempted to confer with Counsel in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Panel and has been unable to reach such an agreement. V.R.Civ.P. 37(a)(1) & (3).

Respectfully submitted on this 8th day of February, 2022.



Norman E. Watts, Esq., Respondent
Watts Law Firm, PC
info@wattslawvt.com

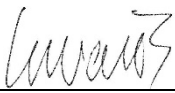
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he made service of ***Respondent's Motion to Compel Expert Deposition, Memorandum of Support***, and ***Exhibits 1 – 5*** via email upon the following parties:

Navah C. Spero, Esq.
Gravel & Shea PC
nspero@gravelshea.com

Merrick Grutchfield
Court Administrator's Office
Professional Responsibility Program
merrick.grutchfield@vermont.gov

DATED: February 8, 2022.



Norman E. Watts, Esq.
Watts Law Firm, PC
info@wattslawvt.com

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

LIST OF WITNESSES AND PERSONS
HAVING KNOWLEDGE OF RELEVANT FACTS

Specially Appointed Disciplinary Counsel, Navah C. Spero ("Special Disciplinary Counsel"), identifies the following witnesses and persons having knowledge of relevant facts.

Witnesses

1. Norman Watts, Esq.
2. Michelle Kainen, Esq., CPA
3. Gary Alibozek
4. Sharyn Alibozek
5. Judy Hiramoto

Expert Witness

1. Herbert Ogden, Esq. (resume attached)

Persons Having Knowledge of Relevant Facts

1. Margaux Reckard
2. Andrew Maass, Esq.
3. Jonathan Persky, Esq.

Dated: Burlington, Vermont
June 4, 2021

/s/ Navah C. Spero

Navah C. Spero, Esq.
Gravel & Shea PC
76 St. Paul Street, 7th Floor, P.O. Box 369
Burlington, VT 05402-0369
(802) 658-0220
nspero@gravelshea.com
Specially Appointed Counsel



Norman Watts <nwatts@wattslawvt.com>

PRP RESPONSES

Navah C. Spero <nspero@gravelshea.com>
To: Norman Watts <nwatts@wattslawvt.com>

Thu, Jul 8, 2021 at 2:40 PM

Hi Norman,

Are you available to talk this evening. I'm available after 7pm. We'll need about a half hour to discuss all of the issues. I'm also available on Sunday from 12:30-3pm. If neither of those times work, let's set a time for Monday afternoon.

Please be advised that Herb Ogden had a conflict and Alison Bell will be replacing him as the expert. I'll be filing a motion to substitute. Please let me know if you'll consent to the motion.

Best,
Navah

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Norman Watts <nwatts@wattslawvt.com>

PRB Nos. 2019-102 and 2020-011 -Watts

2 messages

Norman Watts <nwatts@wattslawvt.com>

Thu, Aug 5, 2021 at 11:36 AM

To: "Navah C. Spero" <nspero@gravelshea.com>

Navah - Your refusal to permit me to take your expert's deposition is seriously disadvantageous to me because my schedule for client events is filling up through September and into October, making it difficult to make time for the expert deposition, especially in view of the board's schedule for this matter concluded depositions July 30..
Please reconsider.
NW

Norman E. Watts, Esq.
Watts Law Firm PC
Civil Litigation
P.O.Box 270
176 Waterman Hill Road - Suite 4
Quechee VT 05059-0270
T - 802-457-1020
F - 802-369-2172

Navah C. Spero <nspero@gravelshea.com>

Thu, Aug 5, 2021 at 12:37 PM

To: Norman Watts <nwatts@wattslawvt.com>

Hi Norman,

Whether we proceed promptly to depositions or wait for the panel's decision is in your hands. If you choose to produce these client's files and the other documents I've asked for, we can move along at a pretty quick pace. If you choose not to, then we will have to wait.

Best,

Navah

Navah C. Spero (she/her) | *Shareholder*



Norman Watts <nwatts@wattslawvt.com>

PRB Matter

Norman Watts <nwatts@wattslawvt.com>

Tue, Nov 23, 2021 at 11:18 AM

To: "Navah C. Spero" <nspero@gravelshea.com>, Margaux Reckard <mreckard@wattslawvt.com>

Navah - I agree to the use and authentication of the pleadings and docket sheets we provided. I will use the same pleadings; if I intend more, will advise you.

VZ Ac # is 386686185.

The exchange date I suggest is 12/1/21.

Reminder: I request to depose your expert.

NW

Norman E. Watts, Esq.
Watts Law Firm PC
Civil Litigation
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Norman Watts <nwatts@wattslawvt.com>

PRB SCHEDULING

Norman Watts <nwatts@wattslawvt.com>
To: "Navah C. Spero" <nspero@gravelshea.com>

Tue, Feb 1, 2022 at 2:51 PM

Navah - Margaux remains on the west coast with her family as her return flight was cancelled; she is tentatively booked on a flight on Friday.

If we held her deposition on 2/7 as you requested, I could not attend because my schedule is booked solid with a medical appointment and depositions -- previously committed -- through now and the tentative hearing dates.

So I am inquiring if you would agree to requesting a one week postponement of the hearing until 3/1/22 so that you may depos Margaux? That week is clear for the 4 days for the hearing.

The short postponement would permit me to avoid postponement of previously-committed medical appointment and the depositions during the week of 2/21.

Please consider this proposal.

Thank you.

NW

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Civil Litigation
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Norman Watts <nwatts@wattslawvt.com>

PRB SCHEDULING

Norman Watts <nwatts@wattslawvt.com>
To: "Navah C. Spero" <nspero@gravelshea.com>

Wed, Feb 2, 2022 at 4:59 PM

2/28/22 is good - confirmed.
And, yes, I will coord w/Margaux. You sending Zoom invite?

Norman E. Watts, Esq.
Watts Law Firm PC
Civil Litigation
P.O.Box 270
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