

**STATE OF VERMONT
PROFESSIONALLY RESPONSIBILITY PROGRAM**

In re: Stuart Jay Robinson
PRB Docket No. 2020-007

**RESPONSE TO RESPONDENT'S V.R.C.P. 12(b)(6) MOTION TO
DISMISS**

NOW COMES, Special Disciplinary Counsel Edward G. Adrian, and hereby responds to *Respondent's* [sic] *Stuart Jay Robinson's Motion to Dismiss the Petition of Misconduct for Alleged Violation of V.t.* [sic] *R. Prof. Cond 4.5 Filed by the Professional Responsibility Program, P.R.B.* [sic] *File No. 2020-007 In re: Stuart Jay Robinson Pursuant to the* [sic] *V.R.C.P. Rules* [sic] *12(b)(6) ("Motion to Dismiss")* and further avers as follows:

I. RESPONDENT'S MOTION TO DISMISS FAILS TO COMPLY WITH RULE 12(b)(6) AND MUST BE DENIED

On December 30, 2020, the Respondent, Attorney Stuart Robertson, filed the above referenced *Motion to Dismiss* pursuant to V.R.C.P. 12(b)(6). Professional Responsibility proceedings are governed by Vermont Supreme Court A.O. 9. In turn, A.O. 9 Rule 16(B) provides that "[e]xcept as otherwise provided in these rules, the Vermont Rules of Civil Procedure and the Vermont Rules of Evidence apply in discipline and disability cases." V.R.C.P. 12(b)(6) ("failure to state a claim upon which relief can be granted") is a defense by motion that is required to be filed prior to the filing of an answer. Specifically V.R.C.P. 12(b) provides that "[a] motion making any of these defenses shall be made before pleading if a further pleading is permitted."

The undersigned has been able to find only a solitary Vermont Superior



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Court case discussing the issue of V.R.C.P. 12(b) motions being filed prior to responsive pleadings. In *Osier v. City of Burlington* 2012 WL 4757245 at 8, Jeffrey Crawford, Superior Court Judge, (2012) opined that:

It is true that a Rule 12(b) motion must generally be made “before pleading if a further pleading is permitted.” V.R.C.P. 12(b) “A strict interpretation of the timing provision's language leads to the conclusion that the district judge must deny any Rule 12(b) motion made after a responsive pleading is interposed as being too late.” 5C Wright, Miller, Kane & Marcus, Federal Practice and Procedure: Civil 3d § 1361 (WL updated Apr. 2012).

The Respondent in the above captioned matter filed his Answer¹ to the December 11, 2020 *Petition of Misconduct* on December 30, 2020, contemporaneously with his *Motion to Dismiss*. The Respondent has thus failed to comply with the requirements of V.R.C.P. 12(b) and his *Motion to Dismiss* must be denied.

II. THE RESPONDENT’S *MOTION TO DISMISS* FAILS TO MEET THE STANDARD REQUIRED OF DISMISSAL MOTIONS

The Vermont Supreme Court has set forth the law of Rule 12(b)(6)

Motions as follows:

In *Colby*, we held that plaintiffs face a “low threshold for withstanding a 12(b)(6) motion to dismiss.” 2008 VT 20, ¶ 8, 184 Vt. 1, 955 A.2d 1082. We have since stated that it is an “exceedingly low” threshold and that “[m]otions to dismiss for failure to state a claim are disfavored and should be rarely granted.” *Bock*, 2008 VT 81, ¶ 4, 184 Vt. 575, 959 A.2d 990. As we stated in *Bock*, “[d]ismissal under Rule 12(b)(6) is proper *only* when it is beyond doubt that there exist no facts or circumstances [,] consistent with the complaint[,] that would

¹ The Respondent calls his Answer “*Respondent’s*, [sic] *Rabbi Stuart Jay Robinson, Esq.*, [sic] *Response in Opposition to the P.R.P. [sic] Petition for Misconduct pursuant to A.O. 9, Rule 11(D)(3)* [the process for filing an Answer], and requests this *Petition be dismissed, expunged and that no disciplinary action be taken against the Respondent.*”



entitle the plaintiff to relief.” *Id.* (emphasis added). *Prive v. Vermont Asbestos Group*, 2010 VT 2, ¶ 14.

In turn the *Colby* Court held:

Again, in considering whether the court erred in denying plaintiff’s motion to amend for futility, we are mindful of the low threshold for withstanding a 12(b)(6) motion to dismiss. See *Levinsky v. Diamond*, 140 Vt. 595, 600–01, 442 A.2d 1277, 1280–81 (1982) (explaining that 12(b)(6) dismissal is inappropriate “unless it appears beyond doubt that there exist no circumstances or facts which the plaintiff could prove about the claim made in [her] complaint which would entitle [her] to relief”). *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 8.

Bluntly, it is difficult to discern the Respondent’s basis for his *Motion to Dismiss*.² Although difficult to discern, Respondent appears to predicate his *Motion to Dismiss* on a to-be-filed V.R.C.P. Rule 60(b)(6) Motion, regarding the alleged “falsification of facts and violation of the Judicial Conduct Canons 1-3 by Judges Toor and Mellow in both cases.” *Motion to Dismiss* at 1. On January 12, 2021, Respondent sent a copy of a V.R.C.P. Rule 60(b)(6) filed in Chittenden Superior Court, on or about January 4, 2020, in respect to the trial presided over by Judge Robert A. Mello and upheld by the Vermont Supreme Court in *Brown v. State*, 2018 VT 1.³

The trial presided over by Judge Mello was predicated on a traffic accident that the Respondent’s legal assistant was in with a Vermont State

² This appears to be a recurring issue for the Respondent. In a recent unrelated Family Court appeal to the Vermont Supreme Court wherein the Respondent was acting *pro se* the Court reasoned that the Respondent “makes numerous arguments on appeal, many of which are overlapping, difficult to decipher, or appear to rely on evidence outside the record.” *Ross v. Robertson*, Supreme Court Docket No. 2020-148 at 4 (Three Justice Panel). **Attachment 1.**
³ At the time of filing this response, the undersigned did not have the chance to fully absorb the Respondent’s V.R.C.P. 60(b)(6) Motion, filed with this panel on the same date this response was being drafted and was due. Based on a preliminary review, the Respondent’s V.R.C.P. 60(b)(6) Motion appears to be meritless and out of time. Even if the Respondent’s meritless, baseless and unfounded allegations against Judges Mello and Toor had merit [and they absolutely do not], those allegations are irrelevant regarding whether he violated Rule 4.5.

Trooper on May 16, 2012. *Brown* at ¶ 2. The lynchpin of the Respondent's claim appears to relate to a dog that may or may not have been named Otto. *Motion to Dismiss* at 3. The Vermont Supreme Court addressed the Respondent's claims concerning the dog in great detail in *Brown v. State*, 2018 VT 1 at ¶¶ 25-28. In short the issue has already been litigated *ad nauseam*.

In respect to the above captioned case, the core issue involves the contents of the March 18, 2019 letter that the Respondent sent to Dr. Backus as outlined in paragraphs 3, 6-10 of the *Petition of Misconduct*. The contents of that letter provide more than enough basis for the hearing panel to find that there are facts and circumstances which exist that support the proposition that Respondent violated Vermont Rule of Professional Conduct 4.5 ("A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter.")

CONCLUSION

WHEREFORE, because the Respondent failed to file his *Motion to Dismiss* prior to filing his answer, his motion must be **DENIED**. Even if the Respondent had sequenced his motion appropriately, because he has failed to set forth any discernable argument that would meet the high threshold for Rule 12(b)(6) motions to dismiss, his *Motion to Dismiss* must be **DENIED**.

Dated at Burlington, Vermont this 12th day of January, 2021.



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