

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: Jason R. Tiballi, Esq.
PRB File No. 2020-084

RULING ON PARTIES' PROPOSED STIPULATION OF FACTS

Disciplinary Counsel and Respondent, Jason R. Tiballi, Esq., have requested that the Hearing Panel accept a stipulation of facts dated September 30, 2020 and jointly proposed conclusions of law to resolve this matter. The parties also filed separate legal memoranda on or about October 23, 2020 regarding an appropriate sanction. In his memorandum, Respondent requests an opportunity to present to the panel, in addition to the proposed stipulation, further evidence on the issue of an appropriate sanction. This matter concerns the client trust accounting provisions of the Rules of Professional Conduct.

Under Administrative Order 9, Disciplinary Counsel can initiate a disciplinary proceeding by filing a petition of misconduct or by filing a stipulation of facts. *See* A.O. 9, Rule 11(D)(1). Rule 11(D)(5) provides further that:

[w]here proceedings have been initiated by stipulated facts, the hearing panel shall review the stipulation and either: (i) reject the stipulation, in which case the parties may amend and resubmit it, or disciplinary counsel may reinstitute proceedings by filing a petition of misconduct in accordance with this rule; or (ii) accept the stipulation and adopt it as its own findings of fact, although the panel may take further evidence on the issue of sanctions.

A.O. 9, Rule 11(D)(5)(a).

The Panel has decided to reject the proposed stipulation because it does not provide the panel with a sufficient statement of stipulated facts which could be used to make findings of fact in the panel's decision. In an attempt to establish the core facts in this proceeding, the stipulation refers *generally* to an attached report written by an accountant who conducted a client trust

account “compliance examination” of respondent’s records on behalf of the Professional Responsibility Program. *See* Stipulation, ¶ 7 (citing the report); ¶ 9 (stating generally that the report “identifies three areas of noncompliance . . .”). In essence, the parties are asking the panel to derive statements of fact from a document attached to the stipulation. The panel declines to do so for several reasons.

To begin with, Rule 11(D)(5)(ii) does not call for the panel to derive facts from a separate document. Rather, it calls for the parties to present an express statement of stipulated facts which, if accepted, will be adopted “as [the panel’s] own findings of fact.” Specific facts must be presented within the four corners of the stipulation. The rule does not contemplate the submission of a separate document from which a panel extracts facts.

The procedure that applies when a proceeding is initiated with a stipulation of facts stands in contrast to the process for determining the facts when a proceeding has been initiated with a petition of misconduct. When a petition of misconduct is filed, an evidentiary hearing is held on the merits of the petition. Evidence is presented during the hearing, which can include documentary evidence, and the panel makes findings based on the evidence. Initiation of a proceeding with a stipulation stands in contrast and requires a unified statement of facts for the panel’s review.

Moreover, in the context of the current case, it bears noting that the accountant’s report is summary in nature and generally lacking in factual detail. This is not to find any fault with the report; the purpose of a compliance examination, prepared by an accountant, is to alert the Professional Responsibility Program to problems with the trust accounting system, not to make findings of fact for a hearing panel. It is incumbent on Disciplinary Counsel to flesh out and present a developed set of stipulated facts for adjudication – whether by submission of a

stipulation or by filing a petition and proceeding to a hearing. The audit report is too general in nature to suffice.

Finally, Respondent's statement in the stipulation that "he agrees that the findings set forth in the [accountant's] report are *generally* accurate," Stipulation, ¶ 8 (emphasis added), would not in any event provide a sufficient basis for the panel to conclude that factual statements in the report are, in fact, stipulated, and it only further illustrates the problem with failing to set forth a developed statement of facts within the four corners of the stipulation. The parties must submit a clear and unequivocal statement of facts to the panel if they wish to proceed under Rule 11(D)(5)(a). A respondent's qualified statement of "general accuracy" does not suffice.

In connection with Respondent's "general accuracy" equivocation, it is noteworthy that the memorandum of law submitted by Respondent *subsequent to* submission of the stipulation of facts contains a significantly more detailed representation of the basic factual circumstances underlying this matter than the audit report sets forth. *See* Respondent's Sanctions Memorandum, 10/23/20, at 1-4. This disconnect in the factual presentation to the panel suggests that the parties either did not spend enough time and effort developing an agreed-upon stipulation of facts or, alternatively, were unable to reach agreement on various underlying facts – in which case Disciplinary Counsel could and should have simply filed a petition of misconduct to bring this matter forward.

In sum, while the panel appreciates the parties' willingness to explore the possibility of submitting a stipulation in this case, the stipulation submitted is deficient. The parties may wish to renew their efforts and submit a more detailed amended stipulation for the panel's review. Alternatively, if the parties are unable to reach agreement, Disciplinary Counsel can initiate a disciplinary proceeding by filing a petition of misconduct.

ORDER

The parties' Stipulation of Facts is rejected. Under Rule 11(D)(5)(a)(i), the parties may reinstitute this proceeding by resubmitting an amended stipulation for the panel's consideration or, alternatively, Disciplinary Counsel may file a petition of misconduct.

Dated: December 11, 2020

Hearing Panel No. 9

By:  _____
Karl C. Anderson, Esq., Chair

By:  _____
M. Kate Thomas, Esq.

By:  _____
Thomas J. Sabotka, Public Member