STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Stuart Jay Robinson)
PRB File No. 2021-099)

OPPOSITION TO MOTION TO DISMISS

NOW COMES Special Disciplinary Counsel and hereby opposes Respondent Stuart Jay Robinson's *Motion to Dismiss* filed August 6, 2021, as follows:

1. Although difficult to decipher fully, Respondent's *Motion to Dismiss* appears to be premised on several primary arguments: (1) Special Disciplinary Counsel failed to file a certificate of service attesting that the *Petition of Misconduct* was served on Respondent's counsel; (2) Special Disciplinary Counsel "intentionally did not file the required Complaint PR[B] No. 2021-099" in order to "prohibit" Respondent "from addressing the specific facts"; (3) Respondent filed a PRB complaint regarding Special Disciplinary Counsel, so "he should have been immediately withdrawn from PRB No. 2020-007 [and] PRB No. 2021-099" or the proceedings "should be dismissed" due to his "continual participation when he is under investigation"; (4) Special Disciplinary Counsel "knowingly and intentionally and deceitfully" obtained Respondent's personal medical records because "[h]e knew at the time of his request that they were not needed"; and (5) Special Disciplinary Counsel has "constantly harassed" Respondent—apparently by prosecuting PRB No. 2020-007 and PRB No. 2021-099—because the underlying facts of Brown v. State (Docket No. 473-5-15 Cncv) establish that no disciplinary action should be maintained against Respondent. *Motion to Dismiss*, pp. 1-3.

2. Respondent's first argument regarding a failure to file a certificate of service regarding the *Petition of Misconduct* provides no basis for granting the *Motion to Dismiss*. On May 28, 2021, Special Disciplinary Counsel provided that *Petition of Misconduct* to Respondent's counsel, Attorney William Gagnon. Special Disciplinary Counsel and Attorney Gagnon proceeded to have numerous communications regarding the *Petition of Misconduct*, including agreeing to a scheduling order and a *Stipulated Motion to Amend Scheduling Order*. Therefore, it is undisputed that Respondent and his counsel received the *Petition of Misconduct*. Certificates of service are used to prove to the Court that copies of pleadings, motions, and discovery requests have been mailed or delivered to the other parties in a lawsuit. Here, where there is no dispute that Respondent and his counsel received the *Petition of Misconduct*, a failure to file a certificate of service—which does not affect Respondent's rights—provides no basis for dismissing this matter.

3. Respondent's second argument is equally unavailing. He argues that Special Disciplinary Counsel did not file the *Petition of Misconduct* to commence this matter, or perhaps that the *Petition of Misconduct* did not include "all counts." *Motion to Dismiss*, p. 2. This argument is without basis because, in fact, Special Disciplinary Counsel ***did*** file the *Petition of Misconduct*. As for the fact that "the Probable Cause Affidavit has 3 Counts, while the Petition for Misconduct only has 2 Counts," this does not "need[] to be corrected." Id. at p. 3. Simply put, the *Notice of Probable Cause* decision found probable cause for two of three counts, and those counts were incorporated into the *Petition of Misconduct*. There was no need or even basis for including a third count that had

no probable cause. Accordingly, Respondent's second argument provides no basis for dismissing this action.

4. Respondent's third argument—which argues that Special Disciplinary Counsel "should have been immediately withdrawn from PRB No. 2020-007 [and] PRB No. 2021-099" or the proceedings "should be dismissed" because Respondent filed a PRB complaint against him—is wholly without basis. *Motion to Dismiss*, p. 2. Here, Respondent provides no supporting precedent for his contentions that Special Disciplinary Counsel must be recused or that the PRB actions against him must be dismissed, all because he made his own PRB complaint against Special Disciplinary Counsel. Moreover, no such precedent appears to exist. Indeed, if such a rule or practice were to exist, then it would effectively negate the entire disciplinary system because a respondent could simply force the recusal of disciplinary counsel or force the dismissal of any action merely by filing his or her own PRB complaint. Given the wholly unreasonable and dysfunctional results that would ensue, this Board should not credit such an argument.

5. Respondent's fourth argument similarly provides no basis for dismissal of this action. Here, Respondent alleges that—apparently in reference to PRB No. 2020-007—Special Disciplinary Counsel "knowingly and intentionally and deceitfully" obtained Respondent's personal medical records because "[h]e knew at the time of his request that they were not needed." *Motion to Dismiss*, p. 3. As a preliminary matter, this allegation is wholly without merit; PRB No. 2020-007 was continued for an extensive period of time due to Respondent's health issues, and Respondent voluntarily provided those records

as proof of those health issues. They were not somehow obtained in a "deceitful[] manner." Id. More to the point, however, they have no bearing whatsoever on the matter presently before the Board, which concerns Counts I and II of the *Petition for Misconduct*—whether Respondent made false statements about judges and whether Respondent engaged in disruptive and discourteous conduct to a tribunal.

6. Finally, Respondent's fifth argument—which cuts to the merits of this disciplinary action—is likewise unavailing. Here, Respondent appears to characterize both this action and PRB No. 2020-007 as a form of "harass[ment]" against him, and he argues that the underlying facts of Brown v. State (Docket No. 473-5-15 Cncv) make that "harass[ment]" clear. Of course, the merits of this action will be addressed further as this action proceeds. However, it deserves emphasis that the evidence against Respondent is overwhelming. While Respondent contends that his actions leading to these disciplinary proceedings were justified to establish overlooked facts of Brown v. State, the record before the trial court and the Vermont Supreme Court establish that his actions have been egregious.

7. Indeed, in order after order, the trial court consistently denied Respondent's arguments regarding the alleged "manufacturing of a false description of the motor vehicle accident which occurred on May 16, 2012, in Colchester, Vermont." *Motion to Dismiss*, p. 4. To emphasize just a few observations by the trial court—and to illustrate just how thoroughly and repeatedly the issues raised by Respondent were addressed—in response to

Respondent's *Motion to Reverse Judgment* pursuant to V.R.C.P. 60 (b)(6), the Civil Division stated:

> Plaintiff has attempted to swamp the court with a wave of filings, well beyond those allowed or contemplated by the Rules of Civil Procedure. The sheer volume and prolixity of the papers may obscure the simple, pertinent observations that compel rejection of the motion . . .

Brown v. State (Docket No. 473-5-15 Cncv), 2-5-21 Entry Regarding Motion, *previously submitted as* Exhibit C. And, most important of all, the Civil Division further stated:

> The motion fails to set forth "any [valid] reason justifying relief from the judgment." V.R.C.P. 60(b)(6). Plaintiff had a jury trial and lost; she filed post-trial motions and lost; and she filed an appeal and lost. Three strikes ought to have been enough; there is no good reason to afford Plaintiff a fourth.

Id. Similarly, in response to Respondent's *Motion to Amend Judgment*, the Civil Division held:

> The motion is DENIED. Plaintiff makes no arguments, nor alludes to any evidence, that this court has not fully and carefully considered. Plaintiff's assertion to the contrary notwithstanding, the court did carefully review his multiple submissions before issuing its February 5, 2021 Entry. The simple fact is that the materials Plaintiff submitted do not support the conclusions she would have the court draw from them.

Brown v. State (Docket No. 473-5-15 Cncv), 2-16-21 Entry Regarding Motion, *previously submitted as* Exhibit D.

8. In light of the Judiciary's repeated observations regarding Respondent's arguments in Brown v. State, he is wholly without basis to now claim that Special Disciplinary Counsel—or the Professional Responsibility

Program as a whole—somehow "know[s]" that the Judiciary somehow mishandled that case and therefore has "constantly harassed" him by pursuing this matter. *Motion to Dismiss*, p. 4. In other words, despite Respondent's repeated contentions, there is no evidence that "the Judges and other participants"—whether in the Civil Division matter or before this Board—are ignoring the "clear and convincing evidence." Id. Accordingly, Respondent's *Motion to Dismiss* should be denied, and this disciplinary action should proceed to a resolution on the merits.

Dated at Burlington, Vermont, this 20th day of August, 2020.

Edward G. Adrian