

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Norman E. Watts, Esq.  
PRB File Nos. 102-2019, 011-2020

**ORDER GRANTING RESPONDENT'S MOTION TO COMPEL EXPERT DEPOSITION, DENYING SPECIAL DISCIPLINARY COUNSEL'S MOTION FOR SANCTIONS AND SUPPLEMENTAL MEMORANDUM OF LAW ON DISCOVERY SANCTIONS, GRANTING SPECIAL DISCIPLINARY COUNSEL'S MOTION IN LIMINE TO EXCLUDE TESTIMONY ABOUT GA'S ALLEGED BEHAVIOR TOWARD RESPONDENT'S PARALEGAL, AND GRANTING SPECIAL DISCIPLINARY COUNSEL'S MOTION TO AMEND PETITION OF MISCONDUCT**

**1. Respondent's Motion to Compel Expert Deposition**

On February 8, 2022, Respondent filed a motion to compel the deposition of Special Disciplinary Counsel's expert witness, Allison Bell, Esq. Disciplinary Counsel opposed the motion in a February 23, 2022, filing on grounds the discovery deadline set by this Hearing Panel on April 14, 2021 – July 30, 2021 – had long passed.

Disciplinary Counsel identified Herb Ogden, Esq., as her expert witness on June 4, 2021. Respondent advised Disciplinary Counsel he wanted to depose her expert witness on July 7, 2021, suggesting July 23 or July 27 for the deposition. On July 8, 2021, Disciplinary Counsel responded that Mr. Ogden had a conflict, and she planned to substitute Allison Bell, Esq., as her expert witness. Respondent consented to the substitution. Disciplinary Counsel did not specifically address his deposition request. Respondent reiterated his deposition request on August 5, 2021, accusing Disciplinary Counsel of refusing to permit him to depose Ms. Bell. Disciplinary Counsel responded shortly thereafter, indicating she would only cooperate with scheduling the deposition after he produced outstanding discovery. On November 23, 2021, Respondent reminded Disciplinary Counsel he wanted to depose Ms. Bell. Disciplinary Counsel declined to agree on a deposition date in light of the parties' ongoing discovery dispute. To date,

Respondent has not sought extension of the discovery deadline or issued Ms. Bell a deposition subpoena. Rather, he filed a motion to compel her deposition.

Although the Vermont Rules of Civil Procedure generally apply in disciplinary proceedings, they do not apply to discovery, except regarding depositions and subpoenas. *See* A.O. 9, Rules 19(B)(3), 20(B). Disciplinary Counsel refused Respondent's repeated requests to schedule a deposition of her expert witness, the first of which was made several weeks before the July 30, 2021, discovery deadline, on grounds he had not produced documents responsive to her discovery requests. Respondent's failure to produce discovery is not grounds for delaying or precluding him from deposing Disciplinary Counsel's expert witness. *See* A.O. 9, Rule 19(B) (Parties "may take depositions and shall comply with reasonable requests for production of [relevant evidence].")

Nonetheless, the proper course of action for Respondent to follow was to issue Ms. Bell a deposition subpoena, pursuant to A.O. 9, Rule 19(A)(2). He did not do so. Rather, he waited until February 8, 2022, to file a motion to compel her deposition. The totality of the circumstances, including the broad scope of the parties' discovery disputes and the frequent extension of deadlines in this matter, warrants permitting Respondent to depose Ms. Bell.

During this period, the parties engaged with the Hearing Panel to address their discovery disputes. In its Order dated August 9, 2021, the Hearing Panel directed the parties to reexamine their respective positions and meet and confer before seeking its assistance again. The parties complied, but disputes requiring the Hearing Panel's intervention remained. In its Order dated September 28, 2021, the Hearing Panel addressed some of the discovery disputes and extended certain pre-hearing deadlines by 45 days. Because neither party requested an extension of the discovery deadline, however, it remained July 30, 2021. Disciplinary Counsel's Motion for

Sanctions and Supplemental Memorandum of Law on Discovery Sanctions remains pending and will be addressed in this Order.

Given the delays occasioned by the 2022 passing of Mark DiStefano, long-time counsel to the Hearing Panel, the prejudice to Disciplinary Counsel and the proceedings caused by Respondent's delay on its own is limited. Further, there is little indication Respondent's failure to force Ms. Bell's deposition before February 8, 2022, was made in bad faith. Indeed, according to Disciplinary Counsel, her deposition may have been premature until Respondent produced all outstanding discovery, or until the Hearing Panel addressed the parties' discovery disputes. Moreover, given the potential significance of the expert witness's testimony to the resolution of this matter, fairness warrants permitting the deposition. Finally, the Hearing Panel notes that this Order also requires Respondent to produce discovery requested by Disciplinary Counsel, despite the passing of the discovery deadline.

**2. Special Disciplinary Counsel's Motion for Sanctions and Supplemental Memorandum of Law on Discovery Sanctions**

Disciplinary Counsel filed a motion for discovery sanctions on September 1, 2021. In an Order dated September 28, 2021, the Hearing Panel denied without prejudice Disciplinary Counsel's request for discovery sanctions beyond precluding Respondent from offering into evidence any documents responsive to Disciplinary Counsel's discovery requests that were not produced as of the date of the Order. The Hearing Panel invited her to file a supplemental memorandum of law requesting Respondent be precluded from presenting a specific defense or defenses at hearing based on his failure to comply with a specific discovery request or requests. Accordingly, on October 15, 2021, Disciplinary Counsel filed a Supplemental Memorandum of

Law on Discovery Sanctions. Respondent opposed Disciplinary Counsel’s request for sanctions in filings dated September 7, 2021, and November 8, 2021.

The Hearing Panel appreciates Disciplinary Counsel’s efforts to provide more specificity to her requests to preclude Respondent from relying on certain defenses because of his failure to produce discovery. Disciplinary Counsel has shown the discovery requests at issue are generally reasonable and seek “nonprivileged documents and evidence relevant to the charges or respondent.” A.O. 9, Rule 19(B)(1). Disciplinary Counsel has shown Respondent has not fully complied with the requests – or asserted a specific valid objection to them. Respondent’s production of documents as part of a prior, entirely separate disciplinary proceeding does not meet his discovery obligations in this proceeding. Neither does Respondent’s provision of documents to GA and JH during his representation of them.

However, Disciplinary Counsel has not adequately demonstrated why precluding Respondent from pursuing a defense or defenses is the appropriate sanction at this time. She has not articulated why the Hearing Panel’s September 28, 2021, Order precluding Respondent from offering into evidence any document that was not already provided to Disciplinary Counsel is an inadequate sanction at this time. In addition, per the Order, the Hearing Panel will consider Respondent’s non-compliance with his discovery obligations in determining sanctions, should it determine he violated the Vermont Code of Professional Conduct.<sup>1</sup>

It appears from the parties’ pleadings that Respondent has responsive documents that he has improperly withheld from Disciplinary Counsel. In his November 8, 2021, Response to Disciplinary Counsel’s Motion for Sanctions, Respondent represented that he “produced every

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<sup>1</sup> In determining sanctions, hearing panels are guided by the *ABA Standards for Imposing Lawyer Discipline. In re Fink*, 2011 VT 42 ¶35. The *ABA Standards* consider a respondent’s “bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency” an aggravating factor warranting increased sanctions. *ABA Standards for Imposing Lawyer Discipline* (ABA 1986, amended 1992).

item in his possession pursuant to DC's requests." He listed the documents he produced to Disciplinary Counsel on Exhibit 1 to his Response. He noted, "J.H. had access to [Watts Law Firm's] Cloud file throughout the lawsuit – i.e. her complete file with the firm." He further noted that he "gave G.A. & wife S.A. access to a Google Drive with all files" (emphasis in original). Disciplinary Counsel denied receiving these complete files, and Respondent's list appears to corroborate her denial. Respondent also represented producing certain emails and documents to Disciplinary Counsel that, according to pages 14 and 15 of Disciplinary Counsel's Supplemental Memorandum of Law on Discovery Sanctions, he did not in fact produce. He must produce the documents at this time.

**3. Disciplinary Counsel's Motion *in Limine* to Exclude Testimony about GA's Alleged Behavior toward Respondent's Paralegal**

On December 3, 2021, Disciplinary Counsel filed a motion *in limine* to exclude evidence at hearing that client GA behaved poorly toward Respondent's paralegal on grounds of relevance. To date, Respondent has not filed any opposition to Disciplinary Counsel's motion.

"Evidence which is not relevant is not admissible." V.R.E. 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." V.R.E. 401. The Vermont Rules of Evidence generally apply to disciplinary proceedings. A.O. 9, Rule 20(B).

Disciplinary counsel has shown that whether GA besieged or was rude or demeaning to Respondent's paralegal is wholly without consequence to the determination of whether Respondent violated V.R.Pr.C. 1.2(a) and 1.4 by allowing a claim in GA's lawsuit to be dismissed on the pleadings unopposed without communicating with GA sufficiently to allow GA to make an informed decision about the claim. Disciplinary Counsel has also shown that whether

GA besieged or was rude or demeaning to Respondent's paralegal is wholly without consequence to the determination of whether Respondent violated V.R.Pr.C. 1.4 and 8.4(c) by threatening to withdraw from representation if GA did not immediately pay all outstanding charges without explaining the process for withdrawal.

**4. Special Disciplinary Counsel's Motion to Amend Petition of Misconduct**

Disciplinary Counsel timely filed a Motion to Amend the Petition of Misconduct on December 10, 2021. She sought to amend Count V of the Petition to reflect that Respondent overcharged client JH \$1,900 in fees and not \$3,400 in fees, based on her review of existing and new evidence. To date, Respondent has not filed any opposition to the motion. Disciplinary Counsel's amendment of the Petition to conform to the evidence is appropriate.

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Based upon the submissions of the parties, it is hereby ORDERED:


1. Respondent's Motion to Compel Expert Deposition dated February 8, 2022, is GRANTED. Respondent may complete the deposition of Alison Bell, Esq., no later than thirty (30) days after entry of this Order. Absent extraordinary circumstances, no further extensions will be granted.
2. Special Disciplinary Counsel's Motion for Sanctions dated September 1, 2021, and Supplemental Memorandum of Law on Discovery Sanctions dated October 15, 2021, are DENIED without prejudice. Respondent is ORDERED to produce all documents stored electronically in the "Cloud" or "Google Drive" with respect to this matter and all documents identified on page 14 and 15 of Disciplinary Counsel's Reply in Support of Motion for Sanctions no later than fourteen (14) days after entry of this Order. Respondent remains precluded from offering into

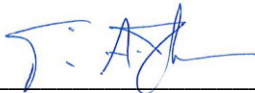
evidence any document that was not already provided in response to requests for production by Disciplinary Counsel during the course of the investigation that preceded the charges or in discovery up to the date of the Hearing Panel's September 28, 2021 Order. Should Respondent fail to comply with this Order, Disciplinary Counsel may file a motion for additional sanctions no later than thirty (30) days after entry of this Order; Respondent may file a response no later than fourteen (14) days thereafter. Should Respondent be found to have violated any of the Vermont Rules of Professional Conduct, his non-compliance with discovery obligations will be considered in determining sanctions.


3. Disciplinary Counsel's Motion *in Limine* to Exclude Testimony about GA's Alleged Behavior toward Respondent's Paralegal is GRANTED. Respondent is precluded from offering testimony or other evidence of GA's alleged improper behavior toward Respondent's paralegal as a defense to the claims set forth in the Petition of Misconduct.
4. Special Disciplinary Counsel's Motion to Amend Petition of Misconduct dated December 10, 2021, is GRANTED.

Dated January 26, 2023.

Hearing Panel No. 9

By:   
Karl C. Anderson, Esq., Chair

By:   
Eric A. Johnson, Esq.

By:   
Thomas J. Sabotka, Public Member