

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

**ORDER DENYING RESPONDENT'S REQUEST FOR ORDER PERMITTING
DEPOSITION OF DISCIPLINARY COUNSEL'S EXPERT WITNESS**

On April 10, 2023, Respondent filed a motion requesting permission to depose Disciplinary Counsel's expert witness, Allison Bell, Esq. Disciplinary Counsel filed her opposition to the motion on April 24, 2023. The Hearing Panel held a remote hearing on Respondent's motion on May 1, 2023. Both parties appeared at the hearing.

In an Order dated January 26, 2023, the Panel granted Respondent's motion to compel the deposition of Disciplinary Counsel's expert witness after discovery closed on July 30, 2021, and permitted him to complete the deposition within 30 days, or by February 25, 2023. The January 26 Order stated, "Absent extraordinary circumstances, no further extensions will be granted."

After entry of January 23 Order, the parties conferred. The first date available for Respondent, Disciplinary Counsel, and her expert witness was March 10, 2023. The parties agreed to the March 10 deposition date.¹ On February 21, 2023, Respondent emailed Disciplinary Counsel about postponing the deposition until April 2023. That day, Disciplinary Counsel replied that she would not agree to such a postponement, noting that both she and the witness were holding March 10, 2023, for the deposition. Respondent replied, "Good enough for me." On March 3, 2023, Respondent emailed Disciplinary Counsel, "Given that the Panel will not hear these cases until late May at the earliest, I am postponing attorney Bell's deposition, now scheduled for 3/10. I have several deadlines to meet next week and they will distract from my preparation for Ms. Bell's deposition. She deserves my full attention." Disciplinary Counsel replied that she would not agree to an indefinite extension for the witness's deposition. The March 10 deposition did not take place.

¹ On February 8, 2023, Respondent filed a motion to extend the time permitted to take Disciplinary Counsel's expert witness from February 25, 2023, to March 30, 2023. He represented in the motion that Disciplinary Counsel stipulated to the extension. In opposing the instant motion, Disciplinary Counsel stated that she only agreed to an extension to March 10, 2023. Due to a clerical error, the February 8 motion did not reach the Hearing Panel until April 26, 2023. The February 8 motion is moot and will not be decided.

On March 24, 2023, the parties were notified that a merits hearing was scheduled to begin June 7, 2023. On March 28, 2023, Respondent sent Disciplinary Counsel a subpoena to depose her expert witness on April 28, 2023. Disciplinary Counsel did not accept the subpoena. Respondent did not serve the subpoena on the witness.

In written submissions and at hearing, Respondent stated that he asked to postpone the March 10 deposition because he had many deadlines to meet for his clients and did not feel he had adequate time to prepare for the deposition. He indicated that he assumed Disciplinary Counsel would agree to a postponement as a professional courtesy. He expressed that the expert witness's deposition was important for his defense and urged the Panel to permit him to take the deposition out of fairness.

In written submissions and at hearing, Disciplinary Counsel argued that Respondent did not demonstrate "extraordinary circumstances" for his failure to complete the expert witness's deposition by the agreed-upon date of March 10, 2023, as required by the January 23 Order. She also argued that Respondent did not demonstrate "excusable neglect" for such failure, as required by the Vermont Rules of Civil Procedure because he filed it after the agreed-upon date of March 10, 2023. V.R.C.P. 6(b)(1)(B) ("When an act may or must be done within a specified time, the court may, for good cause, extend the time... on motion made after the time has expired if the party failed to act because of excusable neglect."); A.O. 9, Rules 19(B)(3), 20(B).

Disciplinary Counsel is correct. The fact that Respondent faced a number of deadlines for his clients the week before the March 10 deposition is not extraordinary. There is no indication that any of the deadlines were unanticipated; indeed, Respondent sought to postpone the deposition until April 2023 as early as February 21, 2023, and on that day, Disciplinary Counsel declined to agree to an extension. At that point, Respondent had more than two weeks to prepare for a March 10 deposition. The fact that he chose to do otherwise does not constitute "excusable neglect."

The excusable neglect standard is a high one met "only in rare cases." *In re Town of Killington*, 2003 VT 87A, ¶ 17, 176 Vt. 60, 838 A.2d 98; *see also Clark v. Baker*, 2016 VT 42, ¶ 19, 201 Vt. 610, 146 A.3d 327. Relevant factors include "the danger of prejudice to the [nonmovant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Killington*, 2003 VT 87A, ¶ 17 (quoting *Pioneer Investment*

Services Company v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395, 113 S.Ct. 1490 (1993)). The most important factor is the reason for the delay and whether it was within the moving party's control. *Clark*, 2016 VT 42, ¶ 19; *Killington*, 2003 VT 87A, ¶ 16.

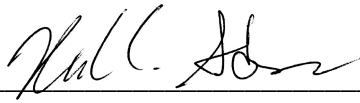
Here, Respondent sought an extension of time to depose Disciplinary Counsel's expert witness to accommodate the routine demands of his legal practice. He provided no rationale for waiting to seek such an extension until more than four weeks after the agreed-upon deposition date of March 10, 2023. The timing of the deposition, as well as the timing of the instant motion, were entirely within Respondent's control. Busy or not, Respondent has a professional obligation to cooperate with disciplinary proceedings. V.R.Pr.C. 8.1(b), 8.4(d); *see also In re Hongisto*, 2010 VT 51, ¶ 2, 188 Vt. 553, 998 A.2d 1065 (noting that hearing panel denied motion to dismiss complaint on grounds the respondent's personal problems did not excuse her obligation to cooperate with disciplinary investigations"); *Clark*, 2016 VT 42, ¶ 21 ("The fact that counsel was juggling the responsibilities of being a legislator and those of conducting a private practice of law as a sole practitioner cannot establish excusable neglect."). Moreover, this matter is five weeks from the merits hearing, and permitting Respondent to depose the witness at this time could prejudice Disciplinary Counsel's ability to otherwise prepare for the merits hearing and risk further delay in the proceedings. Accordingly, Respondent has not met the excusable neglect standard.


* * *


Having considered the parties' submissions and arguments at hearing, the Hearing Panel hereby ORDERS that Respondent's Request for Order Permitting Deposition of Disciplinary Counsel's Expert Witness dated April 10, 2023, is DENIED.

Dated May 3, 2023.

Hearing Panel No. 9

By: 
Karl C. Anderson, Esq., Chair

By: 
Eric A. Johnson, Esq.

By: 
Thomas J. Sabotka, Public Member