STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Norman E. Watts

PRP File Nos. 2019-102 and 2020-011

RESPONDENT'S PROPOSED FINDING OF FACTS AND CONCLUSIONS OF LAW

At the commencement of the proceeding, Respondent renewed his objections to moving ahead without representation, his motion for a continuance and for removal of the SDC, as requested and continuing. Respondent also questioned the process that led to Attorney Villegas appointment.

(Transcript referenced are "T" for Day 1 (6/6/23); "T/2" (6/7/23 and "T/3" for 6/8/23).

COUNT I

The SDC alleges that Respondent failed to communicate his intention to permit the good faith and fair dealing count in the Alibozek Complaint (Count 3) to be dismissed on the defendant's motion for judgment on the pleadings, thereby violating AO. 1.2 and 1.4.]

Proposed Finding of Fact

The defense motion for Judgment on the Pleadings as to count II was filed on

10/15/18. The motion was promptly forwarded by email to the client on that day, 10/15/18. Ex. 27. The relatively short motion explains clearly to any reader that the cause of action for the breach of the covenant of good faith and fair dealing (GFFD) fails because the law requires an alleged factual basis separate from the breach of contract. Respondent had explained to the client, at several deposition sessions in October 2017, that the GFFD claim would not survive a motion challenge. The legal explanation was that facts supporting the same as the eventual motion, namely, GFFD claim must be separate from and additional to those undergirding the Breach of Implied Contract of Employment claim and no such evidence had been disgorged. (T/3 174, 186).

Alibozek was reluctant to drop the claim, but after Respondent informed him that to oppose the motion was futile and would drive up his costs, he agreed. When he inquired again several times, by telephone, Respondent reviewed the factors and he seemed to understand. If he misunderstood, it was not a result of Respondent's good faith attempts to explain it. (*Id.*). Complainant Alibozek admitted that discussions about the case occurred during intermissions and the conclusions of various depositions. (T/2@58-59, T/3@174, 186). Alibozek's wife, Sharon testified that she did not recall discussing the matter, but even if it occurred she probably did not understand it. (T@108-9 & T/2@73).

There is no evidence that the client expressed concern or protested the missing opposition to the GFFD claim when he received the summary judgment papers prior to submission. The Alibozeks were quite involved and engaged in the GE litigation, and they were vocal about the issues. The absence of inquiry or questioning by Mr. Alibozek about not

having been provided with an opposition draft or filing is consistent with the Respondent's recollection that Mr. Alibozek understood he did not wish to incur the cost of preparing an opposition that had no chance.

Respondent testified that he did his best to keep the Complainant informed. (T/3@178. He denied misleading the Complainant. (T@178/3).

Proposed Conclusions of Law

Disciplinary Counsel alleges that Respondent's conduct violated Rule 1.2 AND 1.4 of the Vermont Rules of Professional Conduct. Disciplinary Counsel bears the burden of proof, see A.O. 9, Rule 20(D), and must prove a violation by the standard of "clear and convincing" evidence. *Id.,* Rule 20(C). "[T]he clear-and-convincing-evidence standard represents a very demanding measure of proof. Although something less than proof beyond a reasonable doubt, it is substantially more rigorous than the mere preponderance standard usually applied in the civil context, and is generally said to require proof that the existence of the contested fact is 'highly probable' rather than merely more probable than not." *In re NH.,* 168 Vt. 508, 512, 724 A.2d 467, 469-70 (1998).

The Amended Petition of Misconduct does not refer to a subsection of Rule 1.2 or 1.4. It alleges violation of both rules by failing to "communicate to G.A. the significance of the motion or that he would not respond to the motion on G.A.'s behalf, thereby allowing one count of the G.A.'s complaint to be dismissed without G.A.'s knowledge or consent." Petition, p.1.

The only subsection of Rule 1.2 that refers to any required (shall) consultation with a client is subparagraph (a):

> (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Mr. Alibozek's objective in the GE suit was to prevail and be awarded money damages. Mr. Alibozek was not keen on or committed to one cause of action versus another. The theories of recovery or causes of action were the legal technicalities and details that were left to the Respondent and his professional judgment. There was implicit authority for the Respondent to effectively drop count II (GFFD) by not having the Client incur fees to prepare a meritless opposition. The motion was promptly sent to Mr. Alibozek. The motion very much communicated its purpose and that it sought the dismissal of count II. Although there was implicit authority in litigation to manage the various causes of action, it should be noted that to the extent there is a factual dispute between the parties regarding earlier discussions about the developments in discovery and impact on the causes of action, it is not clear and convincing evidence for the required proof.

As for Rule 1.4, the Petition, as noted above, fails to specify a subsection that was allegedly violated. Rule 1.4(a) requires in general terms that a lawyer engage in communications with the Client but provides no specifics that would apply to the situation here. The Comment offers the following relative to litigation:

> In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

The Comment requires consultation on tactical litigation decisions that are likely to result in significant expense or injure or coerce others. The decision not to oppose the motion for dismissal of count II (GFFD) did not qualify. Indeed, it reduced expenses for the client.

Parenthetically, although GE's motion for judgment on the pleadings at the time filed raised the argument that a separate factual basis was not alleged, once the Court granted summary judgment as to Count I, implied contract as a matter of law, there could be no Count II for GFFD because the law is very clear that the implied covenant of good faith and fair dealing requires the existence of a contract in the first place. See e.g. *Murphy v. Patriot Ins. Co.*, 2014 VT 96, ¶ 13, 197 Vt. 438, 443, 106 A.3d 911, 915-16 ("Our rejection of an independent tort duty on the part of the insurer's agent in *Hamill* was thus predicated in part on a recognition that the relationship between insurer and insured is fundamentally contractual, 'defined and governed' by the coverage provisions in the insurance policy and the covenant of good faith and fair dealing implied therein."); *Durkee v. Rutland Mental Health Servs., Inc.,* 2008 Vt. Super. LEXIS 45, *29 ("Plaintiff cannot maintain her claim for breach of the implied covenant of good faith and fair dealing absent evidence that an express term of the contract was also breached.").

Ultimately there was no decision to be made by Mr. Alibozek. Nor was he injured by the dismissal of count II as the GFFD claim could not have existed with the dismissal on summary judgement of Count I for breach of contract. The summary judgement motion was opposed by the Respondent with extensive participation and contribution by the Alibozeks. The Court's dismissal of count I was a matter of law within the purview of the Court's determination of whether an implied contract existed.

The interplay of Rules 1.2 and 1.4 demonstrates that the Respondent's decision not to spend the client's funds to prepare a frivolous opposition was appropriate and not a matter for informed consent. This count should be dismissed.

Count II

Norman Watts, a licensed Vermont attorney executed engagement letters with G.A. and J.H. providing that each of their retainers would be returned upon the conclusion of the case. In violation of Vermont Rule of Professional Conduct 1.5(d), when the representation ended for G.A. on or around March 13, 2019, Mr. Watts failed to return G.A.'s retainer to him for seventeen months thereafter, and when J.H.'s representation ended on or around May 9, 2017, Mr. Watts failed to return J.H.'s retainer for four months thereafter.]

Proposed Finding of Fact

During the period after the two cases were dismissed, Respondent was preoccupied with an extremely busy solo law practice. Respondent fully intended to refund the net retainer balances, after deducting outstanding fees and/or expenses. Respondent agrees retainer was not returned immediately after the case conclusion (T/3@175). When the Complainants

inquired about the refunds, Respondent wanted to verify the proper amounts were accurate. During the period, the law firm's participants were working remotely, a fact that caused some delay. (T@175). The remote practice caused some disconnect and the delay was regrettable but, ultimately, the retainers were returned. (T@107 &T2@15).

While Respondent returned the clients' retainers, he did not do so "promptly" as the Rule 1.15(d) requires. The Respondent contends that he wanted to make sure he returned the retainers in the exact amount required and that the clients agreed. He contends that process took time because of the remote nature of his law practice but also it was somewhat difficult to deal with the clients during the process. The sums involved were not significant. Nevertheless, the time periods involved, 4 months in one case and 17 months in another are not "prompt."

Proposed Conclusions of Law

While Respondent returned the clients' retainers, he did not do so "promptly" as Rule 1.15(d) requires. The appropriate sanction for this conduct is a warning to Respondent.

Count III

Norman Watts, a licensed Vermont attorney, did not keep G.A.'s retainer in his trust account, failed to properly account for it on a ledger card, and failed to reconcile his accounts each month, thereby leading him to co-mingle the retainer with his operating funds in violation of Vermont Rules of Professional Conduct 1.15 and 1.15A(a).

Proposed Finding of Fact

In her audit of Respondent's IOLTA, auditor Michelle Kainen, Esq., found that the Respondent had "made great strides" in his accounting practices since her 2017 audit. (T@85).

He was pursuing independent record-keeping in terms of transactions and not relying solely on bank's transactions. (T@86). She acknowledged that the practice has evolved from the hard-copy "back in the day" to electronic. Respondent's practices resulted in "improved record-keeping. (T@55).

The reforms were incomplete in that the Respondent was not consistently using ledger cards to track transactions for each client who had advanced a refundable retainer to him. And there were few monthly reconciliations of accounts with spreadsheets for recorded transactions. (T@76).

Ms. Kainen's primary concern with Respondent's accounting practices was the ambiguous nature of his engagement letters for clients connoting that once the retainers were earned the funds are no longer client property. (T@40 & 100). Funds collected under "earned on receipt" should be deposited into operating account, not in IOLTA. There was evidence of "earned" funds in Respondent's CTA but no evidence "earned" funds deposited in operating account. (T@44). Nor can funds from one client be used to cover other client's needs; there was no direct conclusions about mixing client funds in operating account, based on her work. (T@93). There was one client whose funds were not fully tracked in IOLTA (CV). Otherwise, Ms. Kainen did not seek broad information about reconciliations and had not performed an analysis of them. (T@96). She was unaware of any post-audit violations by the Respondent. (T@82).

Rule AO 1.15 informs what is in the IOLTA, connoting that once they are "earned," funds are no longer client property; attorneys must safeguard client funds until earned and transferred out of IOLTA. (T@70). The terms of the representations are established by the

parties and measured in terms of time or milestones to mark which funds are considered no longer refundable to the client. (T@84).

Ms. Kainen observed that the engagement letters were somewhat vague concerning distribution of funds from IOLTA at the conclusion of a case except that client retainer funds "will be used as an offset" against fees or expenses. (T@99).

Respondent concurred, testifying that he reformed the firm's accounting procedures to eliminate the IOLTA account from the client intake process, after the audits; while he maintained no ledger cards, per se, the electronic spreadsheets tracked client and operating funds. No client lost funds because of the accounting process and there have been no violations reported since 2019 (T/3@ 178).

Proposed Conclusions of Law

Disciplinary Counsel bears the burden of proof, see A.O. 9, Rule 20(D), and must prove a violation by the standard of "clear and convincing" evidence. *Id.*, Rule 20(C). "[T]he clear-and-convincing-evidence standard represents a very demanding measure of proof. Although something less than proof beyond a reasonable doubt, it is substantially more rigorous than the mere preponderance standard usually applied in the civil context, and is generally said to require proof that the existence of the contested fact is 'highly probable' rather than merely more probable than not." *In re NH.*, 168 Vt. 508, 512, 724 A.2d 467, 469-70.

The auditor provided evidence that Respondent did not use "ledger cards in tracking clients' funds, he had produced the electronic equivalent, and attempted to

track clients funds in the his IOLTA account. After the audits there were no funds held in the IOLTA. Accordingly, there is no evidence clients lost funds because they were assigned to his operating account as "earned" funds that covered his initial activities on their behalf – research, preparation of a complaint and discovery materials.

It should be noted that the alleged violations in this count pre-date the 2/1/19 stipulation submitted by the Respondent and approved by the PRB based on the first audit by Ms. Kainen. See paragraph 5, Amended Petition. The Respondent represented GA from August 1, 2017 to March 13, 2019 when he withdrew. *Id.* paragraphs 8, 13. The stipulation was reached by the Respondent with the understanding that it covered conduct regarding IOLTA accounting up to the date of the stipulation. The doctrine of collateral estoppel is applicable here:

> The doctrine of collateral estoppel, or issue preclusion, applies when a party seeks to relitigate a factual or legal issue previously decided in a judicial or administrative proceeding. The effect of collateral estoppel is that resolution of a specific issue, such as a factual dispute or question of law, is given the same preclusive effect as the final judgment of the court or agency. So, if a federal court has ruled against a plaintiff on the merits of an age discrimination claim, the plaintiff may be collaterally estopped from bringing a separate action under state law that turns on the same allegation of age discrimination.

In re Stowe Club Highlands, 166 Vt. 33, 36-37, 687 A.2d 102, 104 (1996). Collateral estoppel applies not only to the issues that were decided but also those that could have been raised in the earlier litigation. *Am. Trucking Ass'ns v. Conway*, 152 Vt. 363, 370, 566 A.2d 1323, 1328 (1989)("Under this theory of estoppel, parties are barred from litigating claims or causes of action which were or should have been raised in previous litigation, *Hill v. Grandey*, 132 Vt. 460, 463, 321 A.2d 28, 30 (1974), where the parties, subject matter and

causes of action are identical or substantially identical."); *Mobbs v. Cent. V.* Ry., 150 Vt. 311, 313, 553 A.2d 1092, 1094 (1988).

Here, the parties and the issue are identical. It is unfair to have the Respondent agree and stipulate to sanctions in 2019 for a practice that covered the period of time with his fee arrangement with GA in 2017. The Respondent did not place any limitation on the first audit and Disciplinary Counsel could have included the GA fee arrangement in the first audit and the 2019 stipulation. The Respondent has addressed his practice in the stipulation and should not be subjected to additional sanctions for the same conduct.

Accordingly there is no sanction warranted for Count 3.

Count IV

Beginning in approximately March 2018 and continuing until February 2019, Norman Watts, a licensed Vermont attorney, engaged in a course of conduct to collect on G.A.'s outstanding invoice balance, whereby he repeatedly threatened to stop working on G.A.'s case absent immediate payment and inappropriately pressured G.A. into making payments by failing to explain the process of withdrawing from a case that Mr. Watts was required to follow, in violation of Vermont Rules of Professional Conduct 1.4 and 8.4(c).

Proposed Findings of Fact

There is no question that for many months of Respondent's representation of GA, the client failed to uphold his obligation to pay legal fees and expenses on a monthly basis. (T/3@176). In the final hearing, GA went through the law firm bills for each month from August 2017 thru January 2019 and agreed there were unpaid balances of $6,000, $4,500,

$1,600, $4,500, $2,200, $5,000, $2.600, $2,500 and $8,300 even though all the bills notified him that bills are payable "Net 10 days." (T/2@31-36 & R Exhibit 5).

The delinquencies contradicted GA's obligation in the engagement letter to pay the balance each month. They also negated his indication he had an "insurance policy" to cover the fees and expenses – his son won a $1 million lottery. GA also claimed he had four other avenues to pay the fees and expenses: Sale of his cattle, sale of his investment stocks, use of his income tax return and his ample compensation from work. (T/2@116). GA was in breach of the contract to pay regularly for many months throughout the representation period. (T@ 109, 121 & Exh. 5).

Towards the conclusion of the case, after the record of deficiencies had exhausted Respondent's patience, he suggested that he might withdraw from the proceeding unless GA began paying bills as originally agreed. Nevertheless, Respondent prepared and submitted the voluminous responses to the summary judgment motion. When GA finally paid the outstanding balance Respondent did not withdraw. Had he done so, he was required under the civil procedure rules to file a motion with the court and explain the process to GA.

Proposed Conclusions of Law

Despite his agreement and promises to pay monthly statements on a regular basis, GA failed to do so for most of the representation period. As a result, Respondent reminded him to make regular monthly payments. When he failed to do so, Respondent indicated he might resign from the case. He did not even take the first step to withdraw – notifying the client that he intended to file a motion to withdraw. (T@115, 126).

AO 1.4 has a number of subsections but generally it requires a lawyer to promptly inform a client about decisions or circumstances with respect to which the client's informed consent is required. The Petition does not allege which subsection of 1.4 was allegedly violated. The communications at issue here over outstanding balances, demands for payment, consequences for non-payment are not the type of communications addressed in Rule 1.4. And AO 8.4 precludes a lawyer from misconduct at the level of "serious crime," fraud, extortion or deceit, demanding a client pay his bills does not rise to these levels of criminal behavior.

Given the high burden that the disciplinary counsel must overcome, there is no infraction here.

Count V

During the course of his representation of J.H., Mr. Watts, a licensed Vermont attorney, inappropriately charged J.H. for $1,900 in fees he had previously agreed to discount and $1,215.09 in expenses that were not supported by documentation or were not reasonable, in violation of Vermont Rule of Professional Conduct 1.5.

Proposed Findings of Fact

All fees charged to the client were reasonable based on the time devoted to the case. The client repeatedly and unexpectedly demanded that respondent include case citations into pleadings, requiring him to review them to determine their applicability and persuasiveness. And the defense was slow to produce discovery requests - both factors required more time & fees/. The $3,400 charge was at a

discounted rate. (T/2@ 131, 192, 194 & Exh 5).

There was no specific agreement between Respondent and JH concerning expenses. (T/2@197). Respondent agreed to discount some fees. (T/2@194, 231, 233). The evidence that Special Counsel presented to challenge the reasonableness of expenses included Government employee lodging rates which do not apply here and are the product of the Government's bargaining advantage with volume repeat business.

After the representation ended, the complainant telephoned the Watts Law Firm to express her satisfaction with the firm's handling of the case. (Exh.9). At the hearing she denied it, claiming that she only intended to express satisfaction to the firm's paralegal.

Complainant engaged other lawyers and expended $20,000 for their advice/counsel prior to engaging Respondent and pursued a discrimination case at the EEOC. (T/2@87, 246, 249). The case was dismissed. (*Id.*). She expressed complaints about another Vermont lawyer (BL) for legal fees with no outcome in the effort. (T/2@255). In sum, she demonstrated negative views of Vermont attorneys.

Proposed Conclusions of Law

The Respondent agrees to compensate the complainant for miscalculations in discounting billing process.. No further sanction is warranted.

Count VI

"During the course of his representation of J.H. before the United States District Court for the District of Vermont, Norman Watts, a licensed Vermont attorney, engaged in a course

of conduct surrounding the legal fee and cost estimates he provided to J.H. that violated Vermont Rules of Professional Conduct 1.4, 1.5 and 8.4(c)."

Proposed Findings of Fact

AO 1.4 concerns a lawyer's communications with a client and requires the lawyer to inform the client of decisions or circumstances requiring the client's consent and advising the client about the status of the case, *inter alia.* AO 1.5 admonishes attorneys not to make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses based on several factors. AO 8.4 defines the nature of attorney misconduct.

In analyzing Respondent's conduct the state presented an attorney expert, Alison Bell, Esq., admitted that the opinion she was presenting was her first such experience. She has never been formally qualified by a court. She did not prepare a written report for the Panel. (T/3@153). She did not consult legal treatises about expert techniques or methodologies. Rather, she relied only on her own experience in taking a limited number of cases to a jury, her own billing records and conversations with fellow partners in her law firm. She did not review all the email evidence between JH and Respondent. And she consulted only the documents provided to her by the prosecutor. (T/3@158). She admitted that she was unfamiliar with the court's deference to academic institutions in balancing the liabilities of the parties in litigation involving such institutions but she was aware that the burden of proof is the plaintiff's (T/3@ 164). She opined that "all employment cases are complicated." (T/3@161). She also observed that a demanding client with a range of needs may "run up the bills" with excessive "handholding" and communications. (T/3@164).

Ms. Bell observed that her specialty in litigation is employment law. (T/3@104). (**Note:** Ms. Bell's specialty brings her into direct competition with the Respondent who practices only in that field).

The focus of Ms. Bell's opinions concerned the cost estimates that Respondent provided to JH for her discrimination case. She stressed that she was expressing no opinions about the Respondent motivations in providing cost estimates to the client. (T/3@153, 168). She consulted with the prosecutor several times in person and by phone. T/3@166).

Ms. Bell indicated that she avoids providing clients with estimates for their legal proceedings because litigation is "highly unpredictable" and expensive. Rather, she prefers to provide them with a range of potential costs. She derived her opinion after review several of her own cases. She did not present related documents for the Panel. (T/3@108).

In terms of a formal opinion concerning Respondent's conduct in JH's case, Ms. Bell reviewed some of the case documents concerning his estimates – but not all of them. (T/3@158). Nor did she review his estimates line-by-line. (T/3@146). Some estimates were reasonable – and some were not. (T/3@120). Those that were not reasonable and were misleading in nature included several that the client requested.

Ms. Bell opined that Respondent's estimates were insufficient to inform the client, did not accurately inform her about the range of costs, were contradictory and misleading. (T/3@112). She made the conclusion by comparing her own case estimates and found Respondent's estimates to be wanting. (T/3@110).

(**Note:** Ms. Bell did not present any of her own bills that she compared to Respondent's

estimates that led to her observations).

She indicated that Respondent's First estimate was "not completely impossible" because it might be a five-day trial but unrealistic because it was unclear what expenses were covered. (T/3@ 167). Nor was it clear whether it included the mediation and witness depositions are typically longer than one hour. (T/3@111, 118-119). She noted that the estimates are based on the volume of documentation and Respondent's estimates are not clear about the impact of documentation, (T/3@125). Naturally, in any case that settles early at mediation the expense would be far less than the estimate. (T/3@161).

The second estimate was also unclear as to whether it included all required discovery efforts and she was not sure whether the estimate was provided before or after the engagement letter. It was "theoretically possible" but depended on the number of documents to be reviewed; but it was "mathematically impossible" depending on the amount of documentation in the case. (T/3@124 & 126).

Respondent's third estimate, a revision of a prior one, was the "closest reasonable estimate" and "doable" for a mediator's fee and a motion to compel "could be done" for the figure provided but, overall was "off by a factor of 10-/15. (T/3@128, 135, 138 & 143).

The fourth estimate, concerning Respondent's projected work on the SJM was "inherently unreasonable" because she "has never achieved" the work in less than 20 hours. (T/3@131). She observed that individual attorneys do work at a different pace. (T/3@159).

Ms. Bell referenced a "fifth estimate" by indicating that Respondent should have reconsidered his estimates concerning reimbursements of expenses in the litigation because

they are not guaranteed. As such the third and fifth estimates were "inherently misleading." (T/3@ 144-145).

According to Ms. Bell, Respondent's trial estimates were a "better ballpark" than the other estimates but still insufficient to fully inform the client. (T/3@`150).

[**Note**: The Panel denied the Respondent an opportunity to depose the expert, thus precluding him from an opportunity to understand her opinion and adequately prepare for the hearing. He was at a distinct disadvantage in cross examining her].

After the representation ended, the complainant telephoned the Watts Law Firm to express her satisfaction with the firm's handling of the case. (Exh.9). At the hearing she denied it, claiming that she only intended to express satisfaction to the firm's paralegal.

Proposed Conclusions of Law

The SDC charges Respondent with violations of VRPC 1.4, 1.5 and 8.4(c). In support, the SDC alleges that Respondent's estimates for pursuing legal action for Judy Hiramoto were inaccurate if not misleading.

It is noteworthy that the state's expert witness did not refer to the rules, *per so,* but relied on her own experiences as a litigator and opinions of unidentified colleagues.

Concerning Rule 8.4(c), it is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The SDC specifically claims that Respondent provided cost estimates for Ms. Hiramoto that were deficient and, in retrospect, misleading. But there is no claim that Respondent deliberately misled the client about prospective litigation costs. Absent intentional misrepresentation by the Respondent, he did not violate Rule 8.4(c).

Concerning Rule 1.4, there is no evidence that Respondent failed to inform the client of any decision or circumstance with respect to which the client's informed consent is required or reasonably consult with her about how her objectives were to be accomplished or the status of the case. The rules advise that "Adequacy of communication depends in part on the kind of advice or assistance that is involved."

Respondent provided cost estimates that he believed, at the time, were reasonable given the circumstance and, in each case, the estimates did not anticipate the defendant's conduct in discovery. He warned Ms. Hiramoto that costs could rise should the defendant prove to be difficult in discovery, an observation that proved to be true. The notions of misrepresentation, fraud or deceit apply to representations of fact, not opinions. See *PH W. Dover Prop. v. Lalancette Eng'rs*, 2015 VT 48, ¶ 12, 199 Vt. 1, 6, 120 A.3d 1135, 1139 ("We have distinguished statements of fact from statements of opinion in the consumer-fraud context, holding that misrepresentations of the former may constitute fraud while misrepresentations of the latter cannot.").

Rule 1.5 advises that (a) A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. There is no claim that Respondent violated the provision.

Nor is there evidence that the hourly rate Respondent charged Ms. Hiramoto. exceeded the standard rate charged by Vermont attorneys. Nor did he fail to keep the client reasonably informed about the status of the matter.

Thus, the Panel concludes that the Respondent did not violate Rules 1.4, 1.5 or 8.4(c).

Count VII

SDC alleges that Respondent lied in the course of Specially Appointed Disciplinary Counsel's investigation in the following ways: (1) by stating that he had placed G.A.'s retainer into his IOLTA account and then had transferred a portion into his operating account after the representation ended in 2019, when the retainer was never in the IOLTA account for more than two weeks; and (2) informing Specially Appointed Disciplinary Counsel that a check representing reimbursement of G.A.'s retainer had been sent to G.A. prior to July 24, 2020, when he knew that had not occurred, and the first time he attempted to return G.A.'s retainer was almost two weeks later on August 6, 2020.

Proposed Findings of Fact

The Respondent was aware the PRB investigation had begun when the prosecutor interviewed him. It would be a comprehensive delve into his IOLTA accounting and the procedures concerning the return of clients' retainers. Without verifying his records, he indicated to the prosecutor that he thought he had returned the two retainers yet. He did not knowingly make a false statement of material fact to the SDC. It was a lost memory in terms of time and distance. (T3@134). He was not aware that the client's retainers had not been

returned when the prosecutor interviewed him pursuant to the investigation. (T/3@29). There was an extended time between the interview and the two cases concluding. The testimony is reasonable given the remote nature of his law firm's communications.

There could be no benefit to deliberately misleading the prosecutor because her investigation was in its early stages and the truth would emerge. His answer was a mistake – not a deliberate attempt to mislead the SDC.

Rule 8.4 deals with "professional misconduct" in criminal conduct, "serious crimes," and "illegal conduct." Examples of such conduct include at attorney:

- engaging in sexual conduct with a client in a divorce proceeding;
- secretly invested in a client's property in dealing with a *pro se* third party;
- charging an exorbitant contingency significant fee for little work;
- removing a settlement check from a firm for herself and deleting the transaction for the firm's computer;
- falsely denying he recorded a telephone discussion.

These case decisions call into question the attorney's fitness to practice law. (Reporter's Notes 2009 amendments).

Deliberately misleading the prosecutor in an investigation would be such a violation. The Panel concludes that the Respondent did not intend to mislead the prosecutor and does not impose a sanction for the conduct under the circumstances.

Conclusion

The Respondent notes that the prosecutor presented the above charges as well as a series of allegations. He observes that the allegations were adequately encompassed in the hearing and testimony to which he has responded above. Hence, is not undertaking individual responses to the individual allegations here.

It is important to note that the complainants were clearly angry with the substantive outcome of their cases – dismissal at summary judgment stage. For example, JH angrily replied to a question at the hearing that Respondent "didn't do any work (on the SJM process or appeal)" to advance the case when the billing statements of record provided ample evidence of significant work on her case. (T/2@216).

Likewise, GA exploded at Respondent's paralegal when she asked him for his insights into the response to the summary judgment motion, a process the law firm always pursued to acquire valuable factual insights and to include the client in the process. (T@129).

It is apparent that the clients' anger at losing – and possibly the delayed retainer returns, flowed over to their biased testimony at the hearing with various condemnations of Respondent that, for the most part were not a reflection on his substantive performance in the case or the SJM process – as reflected in the pleadings and the billing records that the clients paid.

While the Respondent apologizes to the Panel for actions that he took that caused the Panel and PRB staff to engage in the lengthy process, he has presented his responses to the claimants' challenges and the prosecutor's and her expert's interpretation of the claims in a

truthful and accurate manner.

He has practiced law for 36 years. He carries a heavy load of clients. He has devoted his practice to representing clients who have been disadvantaged in the workplace. An eye-opening experience in college when he worked for the U. S. House of Representatives Education and Labor Committee led him to the field.

In the hearing he articulated his recollections of the events that occurred as far in the past as nine years ago, in an accurate manner. He appeals to the Panel for understanding, fairness and leniency.

As indicated, the Respondent protested this hearing process based upon the motions that Attorney Shahi filed on his behalf before the hearing began.

Dated: July 24, 2023.

___/s/ Norman Watts_____

Norman E. Watts, Esq.
Respondent

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITIES BOARD

In re: Norman E. Watts

PRP File Nos. 2019-102 and 2020-011

RESPONDENT hereby certifies that he sent the following pleadings to the Special Disciplinary Counsel of Professional Responsibility Board, Navah C. Spero, Esq., electronically at Gravel Shea.com:

- Proposed Findings and Conclusions
- Motion to Dismiss or Alternatively for a New Hearing and Ten Exhibits

Dated July 24, 2023

/s/ Norman E. Watts

Norman E. Watts

Respondent