

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Norman Watts  
PRB File Nos. 2019-102 and 2020-011

OPPOSITION TO MOTION TO COMPEL EXPERT  
DEPOSITION AND MEMORANDUM IN SUPPORT

Navah C. Spero, Esq., Specially Assigned Disciplinary Counsel (“Special Disciplinary Counsel”) in this matter, opposes Respondent’s Motion to Compel Expert Deposition and Memorandum in Support (“Motion to Compel”) as follows:

Introduction

Respondent has not fulfilled his discovery obligations, unnecessarily prolonging this proceeding. Now he seeks to compel a deposition, even though the deadline for taking depositions, as set forth by the Hearing Panel in its April 14, 2021 Scheduling Order, passed six months ago on July 30, 2021. Special Disciplinary Counsel opposes this request because a deposition of an expert witness at this juncture would be untimely and prejudicial, and Respondent fails to articulate a reason for the extreme delay in filing this motion.

Procedural Background

The Procedural Background of this matter is critical to placing Respondent’s request in context.

On April 14, 2021, this Hearing Panel issued a six month scheduling order (“Scheduling Order”) that called for this matter to be ready for trial by October 2021. On June 4, 2021, Special Disciplinary Counsel timely identified Herbert Ogden, Esq. as her expert in this matter. Because he had a conflict, Special Disciplinary Counsel substituted Alison Bell, Esq. (“Attorney Bell”) on July 9, 2021.

The Scheduling Order required the parties to exchange all documents no later than June 25, 2021. Special Disciplinary Counsel and Respondent timely issued discovery requests, but only Special Disciplinary Counsel provided timely responses. Respondent provided his written responses to discovery ten days late, on July 7, 2021, but did not provide any documents. After meeting and conferring, and waiting for Respondent to consider producing documents, Special Disciplinary Counsel filed a Request to Resolve Discovery Dispute on July 16, 2021.

The Scheduling Order required all discovery, including all depositions, to be complete no later than July 30, 2021. Respondent first asked to take the deposition of Special Disciplinary Counsel's expert on July 7, 2021.<sup>1</sup> This was the same day Respondent transmitted his deficient discovery responses and was deferring any discussion of the deficiencies in his discovery production. *See* Watts-Spero E-mail Chain (Exhibit A). Because he had not provided complete discovery responses – discovery Special Disciplinary Counsel's expert, Attorney Bell, would need to review – Special Disciplinary Counsel did not agree to a date.

On August 5, 2021, Respondent asked when he could schedule Attorney Bell's deposition, in light of his busy fall schedule. Motion to Compel, Exhibit 3. Special Disciplinary Counsel responded by informing Respondent that the scheduling was up to him – as soon as he provided the documents he had been promising, the deposition could be scheduled. *Id.* It is important to note that during this time period, Respondent was claiming he had additional

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<sup>1</sup> Respondent asserts in the Motion to Compel that he first asked to take Special Disciplinary Counsel's expert's Deposition on June 4, 2021, the date an expert was disclosed. Motion to Compel, 1. Special Disciplinary Counsel has no record of an e-mail exchange or telephone call with Respondent on that date. It is not clear to Special Disciplinary Counsel where the language quoted in the Motion to Compel, as it relates to an alleged discussion on June 4, 2021, comes from.

documents to produce. *See, e.g.*, Respondent’s Notice to the Panel, August 30, 2021; Request to Resolve Discovery Dispute, July 16, 2021, at 1.

On August 9, 2021, the Hearing Panel issued an order requiring Special Disciplinary Counsel and Respondent to further revise their discovery filings and meet and confer. Special Disciplinary Counsel complied with the Hearing Panel’s order but Respondent did not. Special Disciplinary Counsel filed her first request for sanctions on September 1, 2021.

On September 28, 2021, the Hearing Panel issued its Order Regarding Discovery Dispute, Request for Sanctions, and Request to Extend Scheduling Order (“September 28 Order”). In the September 28 Order, the Hearing Panel granted the request for sanctions, in part. The Hearing Panel permitted Special Disciplinary Counsel to file a supplemental request for sanctions to justify her request to bar Respondent from presenting specific defenses due to his refusal to produce documents. Special Disciplinary Counsel filed her Supplemental Memorandum of law on Discovery Sanctions on October 15, 2021 (“Supplemental Sanctions Request”). That request has been fully briefed and is pending before the Hearing Panel.

Special Disciplinary Counsel has sought and received two extensions of the discovery schedule in this matter. The first was filed on September 1, 2021 and sought an extension of certain deadlines to address the delays created by the extended discovery dispute between the parties. That request was granted in the September 28 Order. The second was filed on November 3, 2021 because Special Disciplinary Counsel’s mother had passed away, and she sought a three week extension of certain deadlines.

Prior to his February 8, 2022 filing, Respondent never asked to extend the discovery schedule in this matter. Nor did he supplement any of Special Disciplinary Counsel’s requests to extend the schedule with his own requests.

Attorney Bell has been retained to offer an opinion related to Count VI of the Petition of Misconduct. *See* Special Disciplinary Counsel List of Witnesses for Trial, December 10, 2021 (“SDC Witness List”). As it relates to Count VI, the Supplemental Sanctions Request asked the Hearing panel to preclude Respondent from asserting that his estimates to J.H. were made in good faith based on his years of experience as an attorney. The support for this request is that Special Disciplinary Counsel asked Respondent to produce documents from all of his hourly employment litigation cases in the prior ten years to show whether he had provided estimates, how much each case had cost the client, and at what phase of litigation the case had resolved. Supplemental Sanctions Request, § V. These documents would have permitted Special Disciplinary Counsel to probe whether Respondent’s years of experience supported his defense. He refused to do so, claiming in his discovery responses that he returned files to his clients. This explanation omitted that he kept a cloud copy of each file – a copy he still has not produced.<sup>2</sup>

Respondent also asserted as a defense to Count VI that J.H.’s case was more expensive than predicted in the estimates because the estimates were based on a smaller number of witnesses participating in the case. *Id.* Special Disciplinary Counsel has asked the Hearing Panel to preclude this defense because Respondent has refused to produce witness lists or all communications with J.H. regarding potential witnesses. *Id.*

### Argument

The Hearing Panel should deny the Motion to Compel because Respondent’s request is more than six months late and he does not provide an adequate explanation for such a long delay.

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<sup>2</sup> Respondent disclosed in his response to the Supplemental Sanctions Request that he maintains all client files in the cloud. Response To Disciplinary Counsel’s Motion for Sanctions, Ex. 1, at 2 (noting “J.H. had access to [Watt’s Law Firm’s] Cloud file”); *id.* at 3 (noting that Respondent gave G.A. “access to a Google Drive with all files”) (emphasis in original).

Vermont Rule of Civil Procedure 6 provides that a request to extend time that is filed before a deadline expires must be supported by good cause, whereas a request to extend a deadline that is filed after a deadline expires requires the movant to show excusable neglect. V.R.C.P. 6(b); *see* A.O. 9, Rule 20(B) (adopting the Vermont Rules of Civil Procedure, except as otherwise provided). “[T]he determination [of excusable neglect] is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. . . [t]he factors include the danger of prejudice to the [opposing party], 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.” *Clark v. Baker*, 2016 VT 42, ¶ 18 (internal quotations and citations omitted).

Here, Respondent fails to even articulate this standard, let alone assert the facts and circumstances to satisfy it.

**I. RESPONDENT’S REQUEST TO COMPEL ATTORNEY BELL’S DEPOSITION IS SIX MONTHS LATE AND HE DOES NOT PROVIDE AN ADEQUATE REASON FOR THE LONG DELAY.**

Respondent has moved to compel Attorney Bell’s deposition long after the expiration of the July 30, 2021 deadline for taking depositions and the close of discovery. The Motion to Compel does not provide any explanation for the six-month delay in filing this motion, likely because it is impossible to justify. Respondent never followed the procedural steps necessary to timely force a deposition of Attorney Bell.

Respondent did not subpoena Attorney Bell for a deposition prior to July 30, 2021, even though Special Disciplinary Counsel had told Respondent at least once, on July 12, 2021, that she would not agree to a deposition. *See* A.O. 9, Rule 19(A)(2) (empowering a respondent to subpoena any deponent once a petition for misconduct is filed). Moreover, prior to the July 31,

2021 deadline for taking depositions set by the Scheduling Order, Respondent did not file a motion to extend.

When Respondent asked Special Disciplinary Counsel to set a date for the deposition in August and November 2021, she again declined. Respondent chose not to file a motion to compel then, either.

If Respondent did not want to issue a subpoena or move to compel, he could have asked to extend the Discovery Schedule. On September 1, 2021, Special Disciplinary Counsel moved to extend paragraphs 8-11 of the Discovery Schedule due to the long delays caused by Respondent's refusal to produce documents. This request did not include the deadline for taking depositions, found in paragraphs six and seven. Respondent filed a response to that request on September 7, 2021, consenting to the extension. He did not, however, simultaneously seek an extension of time to take an expert deposition. At this point in time, Special Disciplinary Counsel had already told Respondent at least twice that she would not permit him to take Attorney Bell's deposition.

When Respondent next asked Special Disciplinary Counsel to take Attorney Bell's deposition, on November 23, 2021, it was clear Respondent would not be producing any additional documents. Special Disciplinary Counsel declined to make Attorney Bell available because the time for taking depositions had passed by almost four months.

For more than two months after his November 23, 2021 request to take Attorney Bell's deposition, Respondent did nothing. He sat on his hands, and waited until February 8, 2021 to file the Motion to Compel.

It is not clear why Respondent decided to wait until February 8 to file his motion, but the timing is likely linked to Special Disciplinary Counsel's request to take the deposition of Margaux Reckard, a paralegal at Respondent's office. Respondent opens his Motion to Compel

by pointing to his cooperation in the scheduling of that deposition for February 28, 2022. Respondent argues that “a strong reason” for granting the Motion to Compel is that he has cooperated with Special Disciplinary Counsel’s request for Ms. Reckard’s deposition, and Special Disciplinary Counsel should have given him the same courtesy. Motion to Compel, 3. Respondent’s reliance on his cooperation in scheduling Ms. Reckard’s deposition is misplaced.

First, this argument is wholly unrelated to the excusable neglect factors. Second, Special Disciplinary Counsel is taking Ms. Reckard’s deposition at this late date because Respondent did not identify her as a witness who will testify at the merits hearing until December 3, 2021. Respondent filed his witness list on June 4, 2021. In it, he identified Ms. Reckard as a person with knowledge, but not as a witness he intended to call at the final hearing. As a result, Special Disciplinary Counsel did not depose her. Respondent was obligated to supplement his witness list, without request, as soon as he knew he would call Ms. Reckard as a witness at the merits hearing. A.O. 9, Rule 19(B)(1). On December 3, 2021, the parties filed their list of witnesses for trial. For the first time, Respondent identified Ms. Reckard as a hearing witness.

On January 20, 2022, Special Disciplinary Counsel asked Respondent if he would consent to the taking of Ms. Reckard’s deposition. Spero-Watts January 20, 2022 E-mail chain (Exhibit B). Special Disciplinary Counsel informed Respondent that if he did not, she would seek to exclude Ms. Reckard from the hearing because she was not properly identified. *Id.* Respondent consented. *Id.* In other words, Respondent did not agree to Ms. Reckard’s deposition as a matter of courtesy, he did so because he knew he identified her late and he risked having her stricken as a witness if he did not agree.

Respondent relies on V.R.C.P. 26(d) to argue that Special Disciplinary Counsel acted inappropriately in refusing to schedule Attorney Bell’s deposition. This argument fails for two reasons. First, V.R.C.P. 26(d) does not apply to disciplinary proceedings. *See* A.O. 9, Rule

19(B)(3) (“Discovery proceedings under these rules are not subject to the Vermont Rules of Civil Procedure regarding discovery except those relating to depositions and subpoenas.”). Second, the remedy in a disciplinary proceeding for a violation of the principle set forth in Rule 26(d) is either to timely file a motion to resolve a discovery dispute under A.O. 9, Rule 19(B)(2), or to simply issue a subpoena under A.O. 9, Rule 19(A)(2) and force Special Disciplinary Counsel to seek to quash the subpoena. Respondent chose neither path.

There is no excuse for Respondent’s six-month delay in seeking to compel Attorney Bell’s deposition. Respondent does not provide an explanation for the delay in the Motion to Compel. Nor could he – the cause of the delay in this case is Respondent’s refusal to comply with the discovery process. He now has waited more than six months after the discovery deadline passed to compel a deposition. The Hearing Panel should not reward Respondent for his defiance of the Hearing Panel’s Scheduling Order with an extension of time. He has not acted in good faith in seeking this extension, and the delay itself was entirely within his control. *See Clark*, 2016 VT 42 at ¶ 18.

## II. THE HEARING PANEL SHOULD DENY THE MOTION TO COMPEL BECAUSE IT IS PREJUDICIAL TO SPECIAL DISCIPLINARY COUNSEL.

The parties are in the middle of a discovery dispute, where Special Disciplinary Counsel is seeking additional sanctions against Respondent. The crux of the pending request for sanctions is that Respondent has prejudiced Special Disciplinary Counsel by asserting factually novel defenses to the allegations in the Petition for Misconduct that Special Disciplinary Counsel cannot probe because Respondent chose not to produce any discovery.

Special Disciplinary Counsel identified Attorney Bell as an expert to provide her opinion on whether Respondent’s estimates of legal fees and expenses were unreasonable, as set forth in Count VI of the Petition for Misconduct. *See* SDC Witness List. A written explanation of her



opinion has already been provided – it will not be a surprise to Respondent. *Id.* Because Respondent has not produced any documents in discovery, Attorney Bell has not been able to review any documents that would evaluate his defenses and likely avenues of examining her: alleged calculations he made, estimates Respondent created for other clients, or information about the costs of his other hourly cases.

Attorney Bell has formed her opinion based on the information available to Special Disciplinary Counsel through her pre-petition investigation. If the Hearing Panel allows Respondent to depose Attorney Bell, he will gain an unfair advantage at the final hearing because he will have been permitted to probe her opinions, while Special Disciplinary Counsel has not been able to probe Respondent’s defenses to Count VI. For example, at Attorney Bell’s deposition, Respondent could present hypotheticals based on information solely in his possession that he has refused to produce. Attorney Bell will not have had the ability to review all documents in Respondent’s possession relevant to her analysis to properly consider such a hypothetical.

In the Motion to Compel, Respondent argues that he needs Attorney Bell’s deposition to “restore a balance in the proceedings in the interest of justice.” Motion to Compel, 2. This argument is divorced from the reality of this case, where Respondent has declined to produce any documents, including documents he has admitted are in his possession. In arguing that his own failure to timely notice a deposition or raise a discovery dispute is unfair, Respondent is ignoring the prior eleven months of this proceeding. The Hearing Panel should disregard this argument.

### III. A DEPOSITION OF ATTORNEY BELL WILL FURTHER DELAY THIS PROCEEDING.

The parties in this matter filed their final pre-trial pleadings on December 10, 2021. They are awaiting rulings on the sanctions issue and a Motion *in Limine*, but are otherwise ready to

proceed to a final hearing. By the time the Hearing Panel rules on this filing, it will presumably be ready to schedule a final hearing. Scheduling an expert deposition will delay that hearing.

The complaining witnesses in this matter have already suffered significant delays due to the pandemic, Respondent's delay in responding to requests for information during the investigation, and the discovery disputes in this matter. Their complaints were filed in 2019 and 2020. The Petition of Misconduct was filed on March 18, 2021. Respondent has delayed this proceeding every step of the way – he sought an extension to file his answer, he was late responding to discovery, and he declined to produce any documents, causing months of delays litigating the issue of sanctions.

Special Disciplinary Counsel seeks a final hearing in this matter as soon as feasible to address the significant allegations of wrong-doing in this case. Both the complaining witnesses and the public need this matter resolved.

This matter was originally on track for a trial in October of 2021. *See* Scheduling Order, ¶ 11. Respondent should not be permitted to further delay this case by obtaining an expert deposition he could have sought to compel in July, August or even November 2021.

#### IV. RESPONDENT'S SO-CALLED RULE 37 CERTIFICATE IS INACCURATE.

Vermont Rule of Civil Procedure 37 does not apply to this proceeding, *see* A.O. 9, Rule 19(B)(3), and it is not the rule that requires parties in civil disputes to meet and confer; that is V.R.C.P. 26(h). However, even if the parties were required to meet and confer about this dispute, Respondent did not properly do so. Respondent and Special Disciplinary Counsel have not spoken on the phone about this issue since July 12, 2021 – more than six months ago, and only a few brief e-mails have been exchanged since then.

Conclusion

Vermont Rule of Civil Procedure 6 requires the Hearing Panel to deny Respondent's Motion to Compel. There is no equitable basis for allowing Respondent to take Attorney Bell's deposition at this very late date. The request is more than six months late because Respondent chose not to take any timely action. A deposition of Attorney Bell will reward Respondent for his delays and bad faith conduct of discovery throughout this proceeding and further delay justice for the complaining witnesses.

Dated: Burlington, Vermont  
February 23, 2022

/s/ Navah C. Spero

Navah C. Spero, Esq.  
Gravel & Shea PC  
76 St. Paul Street, 7<sup>th</sup> Floor, P.O. Box 369  
Burlington, VT 05402-0369  
(802) 658-0220  
nspero@gravelshea.com  
Special Disciplinary Counsel

## Navah C. Spero

---

**From:** Navah C. Spero  
**Sent:** Friday, July 9, 2021 10:08 AM  
**To:** 'Norman Watts'  
**Subject:** RE: PRP RESPONSES

Norman,

You're not taking your obligation to provide me with documents seriously. You were ten days late responding to discovery, even though you actually did not provide a single new document. In your responses, you made representations that you provided me documents when you in fact have not. You also refused to answer some questions. Now you are making it very difficult to schedule a discussion about your non-responses. I'm not obligated to confer with you before filing with the Panel, but I'd like to do so before I let the Panel know that you have stated you provided me with documents in the past when you have not. I will be preparing a motion for the Panel's consideration over the weekend and plan to file on Monday. I cannot delay the filing any longer. I'm available at 215-292-4692 if you'd like to talk before then.

Best,  
Navah

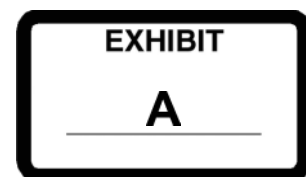
**From:** Norman Watts  
**Sent:** Friday, July 9, 2021 9:12 AM  
**To:** Navah C. Spero  
**Subject:** Re: PRP RESPONSES

We are traveling in Maine this weekend and will not be available -  
so, Monday afternoon is best.  
NW

**Norman E. Watts, Esq.**  
**Watts Law Firm PC**  
**Civil Litigation**  
**P.O.Box 270**  
**176 Waterman Hill Road - Suite 4**  
**Quechee VT 05059-0270**  
**T - 802-457-1020**  
**F - 802-369-2172**

On Thu, Jul 8, 2021 at 9:39 PM Navah C. Spero <[nspero@gravelshea.com](mailto:nspero@gravelshea.com)> wrote:

Thank you. How about Sunday?



Sent from my Android

---

**From:** Norman Watts <[nwatts@wattslawvt.com](mailto:nwatts@wattslawvt.com)>

**Sent:** Thursday, July 8, 2021 5:45:10 PM

**To:** Navah C. Spero <[nspero@gravelshea.com](mailto:nspero@gravelshea.com)>

**Subject:** Re: PRP RESPONSES

I do consent to the substitution. We are out this evening until after 9pm.  
NW

**Norman E. Watts, Esq.**

**Watts Law Firm PC**

**Civil Litigation**

**P.O.Box 270**

**176 Waterman Hill Road - Suite 4**

**Quechee VT 05059-0270**

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On Thu, Jul 8, 2021 at 2:40 PM Navah C. Spero <[nspero@gravelshea.com](mailto:nspero@gravelshea.com)> wrote:

Hi Norman,

Are you available to talk this evening. I'm available after 7pm. We'll need about a half hour to discuss all of the issues. I'm also available on Sunday from 12:30-3pm. If neither of those times work, let's set a time for Monday afternoon.

Please be advised that Herb Ogden had a conflict and Alison Bell will be replacing him as the expert. I'll be filing a motion to substitute. Please let me know if you'll consent to the motion.

Best,  
Navah

**From:** Norman Watts <[nwatts@wattslawvt.com](mailto:nwatts@wattslawvt.com)>

**Sent:** Wednesday, July 7, 2021 4:07 PM

To: Navah C. Spero <[nspero@gravelshea.com](mailto:nspero@gravelshea.com)>

Subject: Re: PRP RESPONSES

I have depositions all day tomorrow and Friday. If there is a break of any length I will call you; otherwise, Monday afternoon will have to suffice.

I would like to take your expert's deposition - perhaps 7/23 or 27?

NW

**Norman E. Watts, Esq.**

**Watts Law Firm PC**

**Civil Litigation**

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On Wed, Jul 7, 2021 at 4:02 PM Navah C. Spero <[nspero@gravelshea.com](mailto:nspero@gravelshea.com)> wrote:

Hi Norman,

Thank you for sending these over. Do you have time to discuss them tomorrow? There are a number of deficiencies. I'm free any time after 10am.

Best,  
Navah



**Navah C. Spero** (she/her) | *Shareholder*  
**Gravel & Shea PC**

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**From:** Norman Watts <[nwatts@wattslawvt.com](mailto:nwatts@wattslawvt.com)>  
**Sent:** Wednesday, July 7, 2021 2:40 PM  
**To:** Navah C. Spero <[nspero@gravelshea.com](mailto:nspero@gravelshea.com)>  
**Subject:** PRP RESPONSES

Attached with certificate. Thanks for you patience.

NW

**Norman E. Watts, Esq.**

**Watts Law Firm PC**

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## Navah C. Spero

---

**From:** Norman Watts <nwatts@wattslawvt.com>  
**Sent:** Friday, January 21, 2022 10:09 AM  
**To:** Navah C. Spero  
**Subject:** Re: Margaux Reckard Deposition

**Categories:** Saved to DM, #1744413

Navah - Margaux is on the west coast tending to her family after a tragedy occurred. She plans to return by 2/1/22. Her first week back is already crowded with obligations but the following week might be possible, beginning with 2/8/22.

Again, I would lie to depose your expert witness. 2/9/22 would work for me.

NW

**Norman E. Watts, Esq.**  
**Watts Law Firm PC**  
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On Thu, Jan 20, 2022 at 10:19 AM Navah C. Spero <[nspero@gravelshea.com](mailto:nspero@gravelshea.com)> wrote:

Hi Norman,

You recently identified Margaux Reckard as a witness at the upcoming hearing. She was not identified as a witness in your original witness disclosure. Since you plan to have her testify at the hearing, I'd like to depose her first. Please let me know if you will agree to that. If not, I'll raise the issue with the panel and ask to strike her as a witness.

**EXHIBIT**

**B**

Best,  
Navah



**Navah C. Spero** (she/her) | *Shareholder*  
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STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Norman Watts  
PRB File Nos. 2019-102 and 2020-011

CERTIFICATE OF SERVICE

I, Navah C. Spero, Esq., certify that, on February 23, 2022, I caused to be served my  
Opposition to Motion to Compel Expert Deposition and Memorandum in Support as follows:

Via E-mail

Norman Watts, Esq.  
Watts Law Firm, PC  
P.O. Box 270  
Quechee, VT 05059  
[nwatts@wattslawvt.com](mailto:nwatts@wattslawvt.com)

Dated: Burlington, Vermont  
February 23, 2022

/s/ Navah C. Spero

Navah C. Spero, Esq.  
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