STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

MOTION *IN LIMINE* TO EXCLUDE TESTIMONY
ABOUT G.A.'S ALLEGED BEHAVIOR TOWARD RESPONDENT'S PARALEGAL

Navah C. Spero, Esq., Specially Assigned Disciplinary Counsel ("Special Disciplinary Counsel") in this matter, moves this court *in limine* to preclude Respondent from testifying that G.A. harassed, besieged, or acted in a way that was condescending, rude or demeaning to Respondent or anyone working in his office as a defense to claims set forth in the Petition of Misconduct ("Petition"). In Support Special Disciplinary Counsel states as follows:

Procedural Background

Special Disciplinary Counsel filed the Petition in this matter on March 18, 2021. Respondent filed his Answer to Petition of Misconduct ("Answer") on May 19, 2021. The first count of the Petition alleges that Respondent violated V.R.Pr.C. 1.2 and 1.4 when he chose not to respond to a motion for judgment on the pleadings on count two of G.A.'s complaint, thereby allowing it to be dismissed, without discussing the matter with G.A.. In response to Count I, Respondent asserts he did speak to G.A. about not responding to the motion for judgment on the pleadings. He further asserts that "The client also besieged one of the firm's paralegals multiple times with inquiries about the matter and the summary judgment process and demanded the paralegal provide the same explanations to his wife." This latter assertion is at issue in this motion.

Count IV of the Petition alleges that Respondent violated V.R.Pr.C. 1.4 and 8.4(c) by inappropriately pressuring G.A. to pay outstanding invoices by threatening to immediately

gravel & shea | ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
76 St. Paul Street
Post Office Box 369
Burlington, Vermont 05402-0369

withdraw from G.A.'s case in a way that would prejudice G.A.'s case. Respondent failed to explain to G.A. the withdrawal process attorneys are required to follow. In his Answer, Respondent denies these allegations, in part. While he concedes that he never described the withdrawal process, he asserts that the e-mails his office sent did not apply inappropriate pressure. As a further defense, Respondent asserts that some of his and his paralegal's responses to G.A. may have been colored by G.A.'s "insults, disruptions and annoyances." Respondent further asserts that G.A. "besieged one of the firm's paralegals multiple times with inquiries about the matter and the summary judgment process and demanded the paralegal provide the same explanations to his wife," and "was consistently demeaning and condescending to the paralegal, a female." Answer at 2. Respondent's assertions related to G.A.'s behavior as it relates to Count IV are also at issue in this motion.

As part of her Supplemental Memorandum of Law on Sanctions, Special Disciplinary Counsel asked the Hearing Panel to preclude Respondent from offering these two defenses because he failed to produce all documents related to the defenses, including all e-mails between G.A. and Respondent's paralegal that would show the context of and provide the ability to challenge these defenses. Supp. Mem. of Law on Sanctions at 3-9, 15-19, Oct. 15, 2021. The Hearing Panel need not consider this Motion in Limine if it decides to preclude these defenses as a discovery sanction.

Relief Requested

Special Disciplinary Counsel asks the Hearing Panel to preclude Respondent from asserting as a defense to allegations of professional misconduct that his client, G.A., interacted inappropriately with either Respondent or one of his paralegals.

Argument

The Vermont Rules of Evidence apply to disciplinary proceedings. A.O. 9, Rule 20.B. Under the Rules of Evidence only evidence that is relevant to a matter shall be admitted, and irrelevant evidence shall be excluded. V.R.E. 402. Even if evidence is relevant, it may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice[.]" V.R.E. 403. "The effect of Rules 402 and 403 together is to give the trial court broad discretion in the admission and exclusion of evidence, except as otherwise expressly provided." V.R.E. 402, Reporter's Note.

Here, any evidence that G.A. "besieged" anyone or behaved in a way that was rude, harassing, or condescending should be excluded from the final hearing in this matter because, even if true, this behavior is not relevant. Evidence is only 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. To determine whether a fact is "of consequence," it is critical to look at the elements of the relevant rule violations that are alleged in the Petition.

Count I alleges a violation of V.R.Pr.C. 1.2(a) and 1.4 because Respondent failed to talk with G.A. before taking action that was akin to settling part of his case. To establish this claim, Special Disciplinary Counsel will have to prove that Respondent was either required to obtain G.A.'s permission to dismiss count two pursuant to V.R.Pr.C. 1.2(a) or alternatively, prior to making the decision, Respondent was required to keep G.A. reasonably informed of the potential decision, consult with G.A. about the decision, and sufficiently explain matters to G.A. to allow him to make an informed decision pursuant to V.R.Pr.C. 1.4. Factually, Special Disciplinary Counsel will have to prove that Respondent allowed count two to be dismissed and he did not

communicate with G.A. about the possibility and consequences of dismissing count two prior to doing so.

For purposes of this analysis, Special Disciplinary Counsel will assume that Respondent can prove the facts underlying his purported defense, as alleged in his Answer – a significant assumption based on the state of the evidence. Any alleged besieging, rude or demeaning behavior or harassment by G.A. is not "of consequence" to the legal and factual questions at issue for Count I. It cannot be a defense to a failure to communicate that the client was hard to talk to, annoying, difficult, obnoxious, rude or anything similar.

The alleged misconduct in Count IV is improper billing collection practices that violate V.R.Pr.C. 1.4 and 8.4(c). The key elements of this claim are that (1) Respondent was required to keep G.A. reasonably informed about his case and provide sufficient explanations to allow him to make informed decisions under Rule 1.4, (2) Respondent threatened to withdraw immediately if G.A. did not make immediate payment on his outstanding fees, and (3) by failing to explain the process for withdrawal to G.A., Respondent misrepresented that his withdrawal would be immediate and would prejudice G.A.'s case.

As with Count I above, a client's demeaning, besieging, rude, harassing or condescending behavior are simply not relevant, or "of consequence," to the question of whether a lawyer violated the Rules by threatening to immediately withdraw from a case, absent full payment of outstanding fees. A lawyer is not allowed to withhold from the client material information about the attorney withdrawal process and use the threat of withdrawal is a cudgel to force a client to pay fees, even if the client is behaving poorly himself.

Furthermore, even if the Hearing Panel finds that there is some limited relevance of these types of assertions, it is highly prejudicial to Special Disciplinary Counsel's case to allow

Respondent to assert that G.A. is rude, harassing, demeaning, condescending or anything similar. The purpose of these allegations is to prejudice the Hearing Panel against G.A. and make him less credible. These arguments therefore should be barred under V.R.E. 403 because any limited relevance would be outweighed by the prejudice.

Conclusion

Special Disciplinary Counsel asks the Hearing Panel to preclude Respondent from asserting as a defense to allegations of professional misconduct that his client, G.A., interacted inappropriately with either Respondent or one of his paralegals. This evidence is irrelevant to the asserted misconduct.

Dated: Burlington, Vermont
December 3, 2021

/s/ Navah C. Spero

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