STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

AMENDED PETITION OF MISCONDUCT

Pursuant to the finding of probable cause dated February 1, 2021, Specially Assigned Disciplinary Counsel formally charges Norman Watts, Esq. ("Mr. Watts" or "Respondent"), pursuant to A.O. 9, Rule 11(D)(1)(b), with the following violations of the Vermont Rules of Professional Conduct.

**NOTICE TO RESPONDENT: This is a formal Petition of Misconduct. Pursuant to A.O. 9, Rule 11(D)(3), you are required to file an Answer within 20 days after service of the petition to the Professional Responsibility Program, 109 State St., Montpelier, VT 05609, with a copy to Special Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.**

Count I

On October 15, 2018, Norman Watts, a licensed Vermont attorney who represented G.A. in a matter before the Rutland Civil Division, received a motion for judgment on the pleadings for one count of G.A.'s three-count complaint. In violation of Vermont Rules of Professional Conduct 1.2 and 1.4, Norman Watts did not 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.

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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 1.15(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.

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).

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).

Count V

During the course of his representation of J.H., Mr. Watts, a licensed Vermont attorney, inappropriately charged J.H. for $~~3,400~~1,900 in fees he had previously agreed to discount and



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$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.

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).

Count VII

Norman Watts, a licensed Vermont attorney, 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.

Facts Alleged in Support of Petition

1. Respondent is an attorney licensed to practice law in Vermont. He was admitted to the Vermont bar in 1987. He is the sole officer and director of Watts Law Firm, P.C.

2. The misconduct alleged in this Petition arises out of the representation of two separate clients.

First Audit

3. Mr. Watts was audited in 2018 by Michelle Kainen, Esq. The First Audit covered a period from November 1, 2017 to October 31, 2018, and uncovered a number of violations of V.R.Pr.C. 1.15 and 1.15A.

4. During the course of the First Audit, Ms. Kainen found that Mr. Watts lacked an IOLTA accounting system that satisfied many aspects of the Rules of Professional Conduct, including appropriate record keeping, monthly reconciliation of accounts, and segregation of client funds from Mr. Watts' funds.

5. On February 21, 2019, Mr. Watts signed the 2019 Stipulation, in which he admitted to various violations of the Rules of Professional Conduct and agreed to change his practices going forward. *See* Exhibit 1. Mr. Watts ultimately received a public reprimand. *See* Decision No. 224, *In Re Norman Watts, Esq.*, PRB File No. 2019-006 (PRB 2019).

6. Ms. Kainen conducted a second audit of Mr. Watts in August and September of 2020 ("Second Audit"). Ms. Kainen concluded that Mr. Watts was still not in compliance with Rules 1.15A(a)(1), (2) and (4). Specifically, he failed to (1) maintain documentation of each transaction in his IOLTA account, (2) maintain ledger cards for each client showing the property held for each client and a running account balance, and (3) timely reconcile his account each month.

Client G.A.

*Engagement Letter and Retainer: Rules 1.15(a), (c), (d), 1.15A and 8.4(c)*

7. Respondent represented G.A., who was a plaintiff alleging age discrimination in employment against a multi-national company. Mr. Watts filed a three-count complaint in the Rutland Civil Division on G.A.'s behalf.

8. G.A. signed an engagement letter on August 1, 2017. The terms of the engagement letter provided that G.A. would provide a $2,500 retainer that Mr. Watts would hold in a client trust account during the representation, and then return it to G.A. at the end of the representation, minus outstanding fees.

9. G.A. provided Mr. Watts a $2,500 retainer in August 2017.

10. In violation of Rule 1.15(a) and (c), Mr. Watts did not place and keep the retainer in his IOLTA account during the representation, and instead intermingled the retainer with Mr. Watts' operating funds.

11. The Professional Responsibility Board had previously determined that Mr. Watts' violated the Rules when he placed client retainers in his operating account while the representation was ongoing and the funds were not yet earned.

12. After the Professional Responsibility Board issued its decision, Mr. Watts did not return G.A.'s retainer to his IOLTA account.

13. G.A. lost his case at the summary judgment phase. Mr. Watts withdrew as G.A.'s attorney on March 13, 2019.

14. Mr. Watts provided Specially Assigned Disciplinary Counsel with an excel spreadsheet for G.A. and represented that it, along with a PDF of additional billing documents, included all of G.A.'s billing information.

15. This spreadsheet stated that there was a $954.98 outstanding invoice balance in G.A.'s account when the representation ended.

16. The spreadsheet and billing file had no record of the retainer being transferred to the operating account, hiding the fact that this had occurred in August 2017.

17. As of July 2020, Mr. Watts was unaware that he had not returned G.A.'s retainer at the end of the representation.

18. Mr. Watts failed to maintain the records required by the Rules, which would have informed him that he failed to return the retainer.

19. Mr. Watts failed to return the retainer for seventeen more months, until August 2020.

20. Mr. Watts only returned the retainer after Specially Assigned Disciplinary Counsel questioned him about the matter.

21. Mr. Watts first represented to Specially Assigned Disciplinary Counsel that all but $954.98 of G.A.'s retainer was still in his IOLTA account.

22. Mr. Watts' statement regarding his IOLTA account cannot be true based on Ms. Kainen's audit.

23. During the Second Audit, Ms. Kainen found that Mr. Watts had not re-created his IOLTA account, meaning that he did not return to the IOLTA account the retainers clients provided to him prior to the First Audit that he was still holding.

24. Mr. Watts and his office never contacted G.A. about returning the retainer after the representation ended.

25. Mr. Watts and his office did not issue G.A. a check prior to August 5, 2020.

26. On July 24, 2020 Mr. Watts stated in writing that he had returned the retainer to G.A., minus the balance of $954.98.

27. This was false. Mr. Watts had not yet written a check to G.A. as of July 24, 2020.

28. On August 6, 2020, two weeks after stating he had returned the funds to G.A., Mr. Watts finally wrote a check to G.A.

29. G.A. did not receive a check until August 31, 2020, almost eighteen months after the representation ended.

*Collection Efforts: Rules 1.4 and 8.4(c)*

30. Mr. Watts' invoices and engagement letter required payment within ten days.

31. G.A. did not always pay Mr. Watts's invoices within those ten days, but made regular payments.

32. During the representation, G.A. communicated to Mr. Watts and others in his office that paying the invoices was a significant financial stress on his family.

33. Mr. Watts engaged in a pattern of collection efforts that included, on at least three occasions, threatening to immediately stop representing G.A. at critical junctures in his case if invoices were not paid in full

34. First, on March 27, 2018, Mr. Watts threatened to withdraw from the case and immediately stop scheduling depositions if G.A. did not pay in full by April 10, 2018.

35. G.A. paid the February bill shortly after Mr. Watts's threatening e-mail.

36. Then, on May 30, 2018, Mr. Watts threatened to immediately resign from the representation and cancel the scheduled depositions if G.A. did not pay immediately. G.A. paid the outstanding amount.

37. On October 15, 2018, the defendant had filed two dispositive motions. Mr. Watts forwarded the motions to G.A. that day, and told G.A. that he would not start working on G.A.'s response until G.A. paid the outstanding balance, and that his claims would be dismissed if no response was filed

38. Following this e-mail, G.A. sent another check, but an outstanding balance of $2,580.98 remained.

39. On October 23, 2018, Mr. Watts' paralegal sent an e-mail to G.A. stating that Mr. Watts' office would not devote any time to preparing the opposition to the two motions until G.A. had a zero balance on his account.

40. A response to the motion for judgment on the pleadings was due on November 1, 2018 and a response to the motion for summary judgment was due on November 19, 2018.

41. On October 26, 2018, Mr. Watts still had not begun work on oppositions to these two dispositive motions. Mr. Watts e-mailed G.A. and told him that he would not spend any more time on G.A.'s case without additional payment.

42. At all times, Mr. Watts knew that he could not immediately withdraw from any active case under V.R.C.P. 79.1 and V.R.Pr.C. 1.16. Mr. Watts also knew that even if he moved to withdraw from the case, he remained obligated to represent G.A. until the court granted the motion to withdraw.

43. Respondent knowingly chose to omit the following from all of these communications related to the outstanding fees: that if he did file a request to withdraw as G.A.'s attorney, G.A. would have an opportunity to oppose the motion; that Mr. Watts would remain as G.A.'s lawyer until the court decided the motion; that Mr. Watts had an ethical obligation to continue to represent him until the court ruled on the motion; and that Mr. Watts had an ethical duty to ensure that his withdrawal did not negatively prejudice G.A.'s case.

*Failure to Respond to Motion for Judgment on the Pleadings: Rules 1.2 and 1.4*

44. The defendant in G.A.'s case filed a motion for judgment on the pleadings on count two of the complaint. Count two alleged a breach of the implied covenant of good faith and fair dealing.

45. Neither Mr. Watts, nor anyone from his office contacted G.A. at any time to discuss whether or not to respond to the motion for judgment on the pleadings, and the fact that choosing not to respond would result in dismissal of count two.

46. Neither Mr. Watts, nor anyone from his office communicated with G.A. regarding the merits of his claims under count two.

47. Neither Mr. Watts, nor anyone from his office communicated to G.A. that even though G.A. paid his outstanding fees, Mr. Watts would not file an opposition to the motion and would allow count two to be dismissed.

48. G.A. never consented to allowing count two to be dismissed.

49. Mr. Watts failed to respond to the defendant's motion for judgment on the pleadings, and the court dismissed count two.

50. G.A. only understood that count two was dismissed after the court entered its decision on November 27, 2018.

Client J.H.

51. Mr. Watts represented J.H., a plaintiff alleging race and national origin discrimination in employment against an educational institution before the United States District Court for the District of Vermont.

52. J.H. alleged that after working for defendant for eight years, she had been denied a long-term employment contract. During her years, J.H. received three reviews and was denied a long-term contract and terminated after her fourth and final review.

53. Mr. Watts filed the complaint in J.H.'s case on July 3, 2014.

*Fee and Expense Estimates: Rules 1.4, 1.5 and 8.4(c)*

54. J.H. was concerned about the cost of the litigation. At J.H.'s request, Mr. Watts provided her with estimates of attorney's fees and costs for the whole case on four separate occasions. Each of the four estimates significantly and materially underestimated the cost to take the case through summary judgment and/or trial.

55. Mr. Watts did not complete any calculations to come up with each of the estimates.

56. Mr. Watts provided the first estimate on April 28, 2014, two months before a complaint was filed and before J.H. signed the engagement letter. In this informal estimate, Mr. Watts informed J.H. that he had previously pursued discrimination cases for $12,000-15,000 and did not expect expenses for the whole case to exceed $1,000, including filing fees and deposition transcripts.

57. This estimate was made in bad faith and Mr. Watts used misleading language in the e-mail.

58. On May 5, 2014, Mr. Watts provided a second, more formal cost estimate, broken down into five phases of litigation.

59. Mr. Watts estimated that it would cost $17,900 to take the case through summary judgment, and a total of $28,150 to litigate through trial, expenses included.

60. This second estimate was made in bad faith.

61. The costs for each of the phases were significantly and materially underestimated, based on what Mr. Watts already knew about the case.

62. The next day, May 6, 2014, Mr. Watts e-mailed J.H. and told her that the estimate he had provided was likely a maximum.

63. Mr. Watts' May 6, 2014 e-mail was materially misleading about the potential costs of the litigation.

64. Mr. Watts provided a third estimate on February 10, 2015. The third estimate provided that it would cost an additional $26,850 to get through trial, in addition to the $22,574.41 already spent. Specifically, the estimate provided that it would require an additional $17,500 to get through summary judgment.

65. At this point, Mr. Watts understood the case was more complicated than originally anticipated: it included thousands of pages of documents, Mr. Watts had retained an expert, Mr. Watts intended to take ten depositions, and the defendant was not cooperative.

66. Mr. Watts also knew that his prior estimates had been materially incorrect.

67. Among other misleading statements made in the third estimate, Mr. Watts' third estimate had no allowance for the cost of the expert, even though he had already retained one.

68. The third estimate was made in bad faith.

69. The costs for each of the phases were materially underestimated based on what Mr. Watts already knew about the case.

70. On September 19, 2015, Mr. Watts provided a fourth estimate that only covered trial costs. The total estimate for trial was a 2.5 times increase from the estimate he provided only seven months earlier as part of the third estimate.

71. The fourth estimate materially underestimated the cost of trial, including jury selection, the pre-trial memorandum and post-trial filings.

72. The case never went to trial.

*Overcharging Fees and Expenses: Rule 1.5*

73. Mr. Watts made various agreements with J.H. to adjust his fees or expenses throughout the case, but he failed to keep those agreements.

74. First, he agreed on February 25, 2015 that he would not charge for travel time. He breached that agreement by charging for travel time in the following instances:

(a) Travel to and from the mediation in Burlington (3 hours on 6/1/15).

(b) To and from three depositions in June 2015 (6 hours total on June 2, 3, and 4, 2015).

(c) To and from a meeting in New Hampshire with an expert (2 hours on 5/29/15).

75. When J.H. reminded Mr. Watts of his agreement not to charge travel time, he agreed to apply the no-travel time discount to six hours of his time. ~~He never did so.~~

76. The five hours that Respondent did not discount ~~se eleven hours~~ totaled $1,250~~2,750~~ in fees that were overcharged, per the agreement, confirmed by e-mail, between Mr. Watts and J.H.

77. Second, Mr. Watts failed to timely file certain discovery documents prior to the close of discovery and also failed to seek an extension of the schedule.

78. Because the defendants refused to respond to this late-filed discovery, Mr. Watts agreed in an e-mail to J.H. to provide a 50% discount on the time he spent on those items, for a total of $650.

79. When J.H. reminded him about the discount, he went back on his agreement and refused to provide it.

80. Third, Mr. Watts' expenses were unreasonable in a number of ways.

(a) Mr. Watts charged J.H. to stay at luxury hotels in Boston, Amherst, MA, and Rochester, NY, and on one occasion, stayed for one more night than was necessary.

(b) Mr. Watts charged unreasonable amounts for food and alcohol, and failed to properly document these expenses with receipts.

81. In total, Mr. Watts over-charged J.H. $1,361.74 in expenses that were either unsupported by any receipts or reflected expenses that were unreasonable to charge a client.

*Failure to Timely Return J.H.'s Retainer: Rule 1.15(d)*

82. On May 12, 2014, J.H. signed an engagement letter stating that J.H. would provide a $5,000 retainer that would "be maintained as a credit" on her account during the case, and that Mr. Watts would refund the retainer out of the net proceeds of a settlement or judgment.

83. Mr. Watts' representation of J.H. ended on May 9, 2017. At that time, J.H. had an outstanding balance of $1,080 from a March 2017 invoice.

84. Over the course of the next three months J.H asked for the return of her retainer more than one dozen times.

85. In June 2017, Mr. Watts sent an additional invoice for $2,280. J.H. disputed this invoice.

86. The engagement letter did not address what should happen to the retainer in the event J.H. lost.

87. J.H. did not agree that outstanding fees and expenses could be deducted from her retainer.

88. J.H. and Mr. Watts did not come to an agreement on the final amount owed.

89. On August 7, 2017, J.H. asked Mr. Watts to return whatever part of the retainer they were in agreement about.

90. Mr. Watts did not send a check returning the undisputed portion of the retainer until September 19, 2017, four months after the representation had ended and six weeks after J.H. had asked Mr. Watts to provide her with the undisputed part of the fee.

Dated: Burlington, Vermont
December 10, 2021

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