

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

SUPPLEMENTAL MEMORANDUM TO RESOLVE
DISCOVERY DISPUTE RELATED TO DOCUMENT REQUEST 5

Navah C. Spero, Esq., Specially Assigned Disciplinary Counsel (“Special Disciplinary Counsel”) files this memorandum to supplements her Request to Resolve Discovery Dispute, specifically as it relates to Request 5:

Introduction

While the scope of the Parties’ discovery disputes is not fully known, there is one issue that is currently ripe for resolution: whether Special Disciplinary Counsel is entitled to a response to document request 5, which seeks “documents sufficient to identify Your compensation from Your Firm for the years 2014-2020.” Respondent has asserted that discovery related to sanctions is not appropriate at this time. Special Disciplinary Counsel has requested this discovery consistent with the Hearing Panel’s April 14, 2021 scheduling order, which required that all discovery, including sanctions discovery, would be completed by July 30, 2021. *Id.* at ¶ 7. Special Disciplinary Counsel asks the Hearing Panel to resolve this dispute to determine whether this information must be produced at this time.

The background information for this dispute can be found in Special Disciplinary Counsel’s Request to Resolve Discovery Dispute, dated July 16, 2021, and Opposition to Notice to the Panel, dated September 1, 2021. Those filings are incorporated herein.

Argument

In Vermont, a hearing panel considers evidence of the substance of a disciplinary violation and the potential sanctions at one hearing, unless the panel decides to bifurcate the proceeding. A.O. 9, Rule 13.D(5); *see also, In re Fink*, 2011 VT 42, ¶ 32. In *Fink*, the hearing panel told respondent it would bifurcate the proceeding but then did not, holding one hearing on the alleged violations and the sanctions. The Vermont Supreme Court affirmed the use of a joint hearing and held that while the panel should have bifurcated only because it told respondent it would do so, there was no harm to respondent. This proceeding has not been bifurcated, and no request for bifurcation is pending.

On April 14, 2021, the Hearing Panel ordered that all discovery, including sanctions discovery should be completed at the same time, and no later than July 30, 2021. Ruling on Motion for Extension of Time and Scheduling Order, ¶ 7. Special Disciplinary Counsel included a number of questions in her requests to produce that sought discovery on sanctions related matters. Request 5 was one of them. This request was narrowly tailored to seek information related to sanctions, and specifically to ABA Standards for Imposing Lawyer Discipline, § 9.22(b): whether the Respondent has a “dishonest or selfish motive.” Information sufficient to show Respondent’s personal income during the six year time period would reveal whether he had a selfish motive of increasing his own income during the time period in which he was inappropriately handling client retainers.

Respondent has argued that because there is not yet a finding of misconduct, discovery related to sanctions is inappropriate. This argument must fail where, as here, the hearing on the merits of the Petition of Misconduct and any potential sanction will be joined. There will not be another opportunity to conduct sanctions-related discovery.

Special Disciplinary Counsel asks the Hearing Panel to find that Request 5 is appropriate,
and order Respondent to respond to it promptly.

Dated: Burlington, Vermont
September 1, 2021

/s/ Navah C. Spero
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CERTIFICATE OF SERVICE

I, Navah C. Spero, Esq., certify that, on September 1, 2021, I caused to be served my Supplemental Memorandum to Resolve Discovery Dispute Related to Document Request 5 as follows:

Via E-mail

Norman Watts, Esq.
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Dated: Burlington, Vermont
September 1, 2021

/s/ Navah C. Spero

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