

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: C. Robert Manby Jr.  
PRB File No. 2019-089

**Disciplinary Counsel's Partial Objection to Respondent's Motion for In-Person Hearing**

Disciplinary counsel files this partial opposition to Respondent's June 14, 2021 motion in which he seeks to change his hearing scheduled for Webex to in-person. The panel should deny the motion because (1) the motion is filed well past the deadline set for this exact motion in the scheduling order; (2) Respondent has not set forth any argument or authority establishing that he is entitled to an in-person hearing.

In the alternative, disciplinary counsel does not object to counsel appearing in person if appropriate space can be located for the scheduled hearing dates and each panel member and witness is given the option to participate using remote technology.

**1. The panel should deny the out-of-time motion for in-person hearing.**

The panel's scheduling order dated January 8, 2021 expressly stated that "Any objection by a party to the hearing panel conducting the merits hearing in this matter remotely by video conferencing, together with a legal memorandum setting forth the grounds for the objection, shall be filed by April 1, 2021." Respondent later sought to enlarge all deadlines in the scheduling order by 30 days and panel granted him an additional seven days only with respect to requests for documents between the parties.

In March, Respondent again sought to extend certain dates in the scheduling order relative to discovery and was granted a limited extension. At no time has Respondent sought any extension to the deadline set for objections to a hearing using remote technology and instead waited until after the hearing notice issued with specific dates to raise objection. He cannot now file a motion

over two months late and logically expect that the panel will entertain the untimely request.

**2. Respondent has not demonstrated that he is otherwise entitled to an in-person hearing.**

Respondent's matter has been pending since 2019. At this juncture, further delays will only prejudice disciplinary counsel's opportunity to meet the burden of proof and court room availability for in-person proceedings is still highly limited for the foreseeable future. As the Court Administrator wrote in the most recent Memo to the Bar dated June 18, 2021, the Governor's state of emergency has expired, but the Judicial emergency remains in effect and will continue to evolve on its own timetable:

**IN-PERSON HEARINGS**

The judiciary will continue to use remote hearings when appropriate, including for those proceedings already scheduled for remote hearing. Temporary guidelines are being developed . . . . These will allow for a gradual expansion of in-person operations, rather than an all-at-once approach. These guidelines will take into account various building-related limitations and identify general principles. The Oversight Committees have been working on division- and docket- specific suggestions regarding which proceedings are better suited for remote proceedings and which proceedings are better suited for in-person proceedings.

In short, existing Judiciary guidelines under Judicial emergency under A.O. 49 are that PRB matters may proceed using remote technology, and updated guidelines state that already-scheduled hearings should go forward as scheduled.

While Respondent may believe that Webex hearings may involve "confusion and awkwardness," and present problems with "distributing" documents, his assertion is inconsistent with reality and current practice in State, Federal and Administrative proceedings for the past year. The judiciary's operations assistants are highly competent and capable of helping Respondent and Respondent's counsel understand how to use the platform before the hearing so

that they may use it to share their screen to display any document they wish. As to Respondent's concerns about ease of communicating with his own counsel, nothing in the panel's order prevents Respondent and his counsel from participating in the Webex hearing in the same room or requesting breaks to assist with communication.

**3. No objection to a hybrid-format in-person hearing on the dates as scheduled.**

While the current state of the law is that Respondent's hearing should go forward remotely as scheduled, I do not object to counsel and any panel member who wishes appearing in person if appropriate public space can be secured. As a matter of courtesy, I polled witnesses I intend to call regarding their own preferences and views and can convey to the panel most witnesses are fully vaccinated and prepared to testify using either Webex or in person and are comfortable doing so. One witness, however, has stated that he is not vaccinated and will not be vaccinated. If that witness is required to appear at an in-person hearing, additional safety measures will need to be put into place and his appearance could unnecessarily place courthouse staff, volunteer panelists and other witnesses waiting to testify at risk. Accordingly, even if the matter is set for an in-person hearing as scheduled, the panel should allow any witness who chooses to appear using remote technology.

Dated: June 24, 2021



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Sarah Katz, Disciplinary Counsel  
Costello Courthouse  
32 Cherry Street, Suite 213  
Burlington, Vermont 05401  
(802) 859-3001