

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Stuart Jay Robinson, Esq.
PRB File No. 2021-099

RULING ON MOTION TO DISMISS PETITION IN PRB FILE NO. 2021-099

On or about May 28, 2021, Disciplinary Counsel filed a petition of misconduct alleging that Respondent, Stuart Jay Robinson, Esq., made various statements in violation of Rules 8.2 and 3.5(d) of the Vermont Rules of Professional Conduct. This is the second petition of misconduct filed against Respondent. A separate petition of misconduct was previously filed in 2020 alleging that Respondent, Stuart Jay Robinson, Esq., “presented, participated in presenting, or threatened to present criminal charges in order to obtain an advantage in a civil matter . . . in violation of Vermont Rule of Professional Conduct 4.5.” Petition, 12/11/20 (First Petition), at 2. Following the filing of the Second Petition, the Hearing Panel issued an amended scheduling order governing both proceedings. *See* Order, 7/12/21.

On August 6, 2021, Respondent filed a motion to dismiss the Second Petition.¹ The Hearing Panel addresses the various arguments presented by Respondent as follows:

1. Respondent argues that the absence of a certificate of service from Disciplinary Counsel representing that the Petition was served on Respondent is grounds for dismissal. While conceding that a certificate was not filed, Disciplinary Counsel maintains that he promptly served the Second Petition on the attorney who was representing Respondent at the time in connection with the First Petition.² And Respondent does not dispute that assertion. Moreover, the record includes an acknowledgment by Respondent of the Second Petition. On June 8, 2021,

¹ On February 23, 2021, the Hearing Panel denied Respondent’s motion to dismiss the First Petition.

² That attorney subsequently moved to withdraw as counsel and was granted leave to withdraw. Respondent is now representing himself in these proceedings.

the parties filed a proposed stipulation requesting an amended scheduling order that would govern both the First Petition and Second Petition, including an “extension of time to respond to new charges (File No. 2021-099).” In response to the request, the Hearing Panel granted an extension of time – to August 6, 2021 – for Respondent to file his answer in response to the Second Petition. Coincidentally, Respondent filed his motion to dismiss on August 6, 2021.

Under these circumstances, dismissal would not be appropriate. Respondent acknowledged service of the petition through his entry into a proposed stipulation with Disciplinary Counsel. In addition, he has taken advantage of the extension of time that was granted in the amended scheduling order and, accordingly, has waived any objection to service.

2. Respondent received a communication in February 2021 from Bar Counsel indicating that a referral was being made to Disciplinary Counsel for investigation with respect to the subject matter that ultimately led to Disciplinary Counsel’s filing of the Second Petition in late May 2021. Respondent argues that the communication from Bar Counsel did not constitute a “complaint” and that under A.O. 9 he had to be presented with a complaint setting forth any and all violations and afforded an opportunity to respond to the complaint before a referral could be made to Disciplinary Counsel. While the provisions of A.O. 9 contemplate that complaints filed by the public against lawyers will be screened by Bar Counsel, *see* A.O. 9, Rule 12(A), they do not preclude Bar Counsel from initiating a referral based on potential misconduct that has come to the attention of Bar Counsel by other means. Nor do those provisions mandate that Bar Counsel contact the subject attorney. Any such contact is discretionary. *See* A.O. 9, Rule 12(A) (“[Bar Counsel] may contact the subject attorney [in the course of determining whether to refer a matter to Disciplinary Counsel for formal investigation.]”). While Bar Counsel contacted Respondent as a courtesy to let him know that the matter was being referred to Disciplinary Counsel, there was no obligation to await a response from Respondent before referring the matter.

Respondent cites to a series of provisions addressing the filing and processing of complaints that appear in a “brochure” made available to the public by the Professional Responsibility Board (PRB). But the brochure is specifically designed to provide guidance to members of the public who might wish to file a complaint. “Please review this material before filing a complaint.” *See* Brochure, available at <https://www.vermontjudiciary.org/sites/default/files/documents/Brochure%20-%204.1.21%20Revision.pdf>. In sum, Bar Counsel did not have to receive a complaint from the public or generate a list of possible violations or afford Respondent an opportunity to respond to a complaint before referring the matter to Disciplinary Counsel.

3. Respondent argues that Special Disciplinary Counsel Edward Adrian can no longer prosecute the charges in the First and Second Petitions because Respondent has filed an ethics complaint against him with the PRB. Respondent provides no support for his argument.

Rule 16(J) of A.O. 9 states as follows:

If a complaint is filed against a member of a hearing panel, no member of that hearing panel shall participate in disposition of that complaint. *If a complaint is filed against bar counsel or disciplinary counsel, the [Professional Responsibility] Board shall appoint substitute counsel to serve in that lawyer’s place on that matter.* If a complaint is filed against a member of the Board, neither bar counsel nor disciplinary counsel shall process the complaint; the complaint will be sent to the chair of one of the hearing panels, who shall appoint special counsel to handle the complaint consistent with these rules. The hearing panel chair who appoints special counsel shall not thereafter participate in any disciplinary proceedings brought by the special counsel.

A.O. 9, Rule 16(J) (emphasis added).

We conclude that Rule 16(J) was not intended to disqualify Disciplinary Counsel from handling a pending matter by virtue of a respondent filing an ethics complaint against Disciplinary Counsel. Rather, it was intended to remove Disciplinary Counsel from playing any role in the resolution of an ethics complaint filed against Disciplinary Counsel: the screening of the complaint, *see* A.O. 9, Rule

12(A); the determination of whether referral for investigation is warranted and, if so, the supervision of the investigation, *see* Rules 12(C) & 13(A); the determination of whether a misconduct charge or other action is appropriate, *see* Rule 13(B), and, assuming the filing of a charge, the actual prosecution of the charge, *see* Rule 13(D).

The language of the rule supports this conclusion. Rule 16(J) provides for appointment of substitute counsel in the specific context of “a complaint [that] is filed against . . . disciplinary counsel,” and expressly provides that substitute counsel is appointed “to serve in that lawyer’s place *on that matter.*” *Id.* (emphasis added). The appointment of substitute counsel is thus linked directly to the ethics complaint filed against Disciplinary Counsel. “That matter” – the complaint against Disciplinary Counsel – is a separate matter from the matter under consideration by this Hearing Panel in this proceeding – the two petitions of misconduct that have been filed against Respondent Robinson.

In addition, Respondent’s argument must be rejected because it would lead to irrational consequences – giving respondents a right to disqualify Disciplinary Counsel in any disciplinary proceeding and thereby disrupt the proceeding simply by filing a complaint against Disciplinary Counsel. *See, e.g., Wesco, Inc. v. Sorrell*, 2004 VT 102, ¶ 14, 177 Vt. 287, 865 A.2d 350 (2004) (courts avoid statutory interpretations that “would lead to absurd or irrational consequences.”). The Supreme Court would not have conferred a broad right on respondents to disrupt proceedings – a right that would attach in literally every pending disciplinary action – based only on an allegation of misconduct against the prosecutor. That could not logically have been the Court’s intent. The Panel is not aware of any authority – in A.O. 9 or elsewhere – that would put respondents in the position of being able to force disqualification of a prosecutor by filing an ethics complaint against him or her.

A final reason for denial of Respondent's argument is that, apart from the questions pertaining to the scope of Rule 16(J), the authority under that rule to assign substitute counsel when a complaint is filed against Disciplinary Counsel is conferred on the Professional Responsibility Board – not on any hearing panel. Rule 16(J) states that “[i]f a complaint is filed . . . *the Board* shall appoint substitute counsel” A.O. 9, Rule 16(J) (emphasis added); *see also* Rule 1 (Professional Responsibility Board to be referred to “hereafter [as] ‘Board’”). The Board and the hearing panels are different entities under A.O. 9 and their powers and duties are not co-extensive. *Compare* Rule 1 (“Professional Responsibility Board”) *and* Rule 2 (“Hearing Panels”). Therefore, the term “Board” must be given its plain meaning.

Moreover, the list of powers and duties expressly assigned to the Board include “the appointment of alternates when any member of a hearing panel, bar counsel, disciplinary counsel, or staff has a conflict or is other disqualified or unable to serve.” Rule 1(E)(1)(c). By contrast, no such authority is included in the powers and duties conferred upon the hearing panels. *See* Rule 14(C). In sum, the power to assign substitute counsel in any given case resides with the Board, not the hearing panels.³

4. Respondent argues that dismissal is required because Disciplinary Counsel sought a determination of probable cause for three counts, but only charged two counts in the Second Petition. He takes the position that the petition “needs to be corrected,” but he does not explain how. The only relevant issue, in relation to the probable cause procedure, is whether probable cause was found for the two counts that were in fact charged in the Second Petition. *See* A.O. 9, Rule 13(C) (“If the panel finds probable cause to believe that a violation has occurred, disciplinary counsel shall

³ Moreover, the Hearing Panel has received no information suggesting that the Board has appointed substitute counsel in connection with Respondent's complaint against Disciplinary Counsel.

present formal charges to a different hearing panel assigned by the chair of the Board, unless a stipulation to misconduct is earlier submitted.”). Respondent represents that the probable cause decision found probable cause for two of the three counts submitted for review and that the two approved counts were then set forth in the Second Petition. Respondent has not provided any information to the contrary.

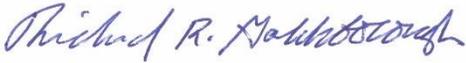
5. Respondent suggests that Disciplinary Counsel presented an improper rationale for requesting information concerning Respondent’s medical condition. Respondent does not explain why he was unable to question the alleged rationale; nor presented any authority suggesting that dismissal of the charges would be the appropriate remedy if such an allegation were proved.

Likewise, Respondent’s general assertion that Disciplinary Counsel is engaging in harassment by filing charges against him is not a sufficient basis for requesting dismissal. Respondent will have an opportunity to contest the merits of the charges at the evidentiary hearing.

Respondent’s Motion to Dismiss the Second Petition of Misconduct is hereby DENIED.

Dated this 1st day of September of 2021.

Hearing Panel No. 6

By: 
Richard R. Goldsborough, Esq., Chair


Steven A. Adler, Esq.


Nicole Junas Ravlin, Public Member