

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

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

SURREPLY IN OPPOSITION TO MOTION TO COMPEL

Navah C. Spero, Esq., Specially Assigned Disciplinary Counsel (“Special Disciplinary Counsel”) in this matter, submits this surreply in opposition to Respondent’s Motion to Compel Expert Deposition and Memorandum in Support (“Motion to Compel”) as follows:

Argument

Special Disciplinary Counsel submits this surreply to address a new issue, raised for the first time in Respondent’s Reply to Counsel’s Opposition to His Motion to Compel a Deposition of Counsel’s Substitute Expert (“Reply”).<sup>1</sup> Respondent asserts in his Reply that the delays in this case should be attributed to Special Disciplinary Counsel, not him. Specifically, he claims (1) that he had previously provided a full set of documents to Special Disciplinary Counsel, (2) that “by 6/25/21, Respondent believed he had completed full and complete document production in his possession” [sic], Reply, at 3, and (3) that it was Special Disciplinary Counsel who delayed this matter because her requests for documents were overly broad. In addition, Respondent notes he produced additional documents on March 8, 2022, after he filed his Motion to Compel, because of an “internal miscommunication.” See Reply, at 3, n.1.

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<sup>1</sup> Special Disciplinary Counsel disagrees with other arguments contained in the Reply, but they were previously addressed in the Opposition to the Motion to Compel.

Respondent's assertions are incorrect or misleading in a number of ways. They are insufficient to justify his six months late request to depose Special Disciplinary Counsel's expert. The delays in this case have been due to Respondent's decision not to timely participate in discovery in good faith. There is no equitable basis for granting his delayed request to depose Attorney Bell.

First, Respondent has never provided a full production of responsive documents. Special Disciplinary Counsel has been asserting since July 16, 2021 that Respondent has additional documents in his possession that are responsive to her discovery requests and that Respondent is choosing not to produce them. Respondent's production of 360 pages of documents on March 8, 2022 proves her point. In other words, despite Special Disciplinary Counsel's request to compel documents on July 16, 2021, the meet and confer telephone calls that took place in July and August 2021, and the two separate requests for sanctions, Respondent either intentionally withheld documents or never checked to confirm he had produced everything.

Of course, this production is not all of the documents Special Disciplinary Counsel requested.<sup>2</sup> For example, Respondent has not produced any other billing records for his hourly fee cases, asserting that he found the request for ten years of material too burdensome. Reply, at 3. Except, that was not the basis for his objection and choice not to produce the documents when he responded to Special Disciplinary Counsel's Requests to Produce on July 7, 2021. At that time he objected because the request for hourly billing information was "beyond the scope of the Petition and delves into client files no longer in the firm's possession or control as our practice is to return all files to the clients at the conclusion of each case." Response to Disciplinary

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<sup>2</sup> Nor should the Hearing Panel consider these new documents at a final merits hearing, pursuant to the Hearing Panel's Sanctions Order, dated September 28, 2022.

Counsel's Requests to Produce, July 7, 2021, ¶ 21 (excerpt attached as Exhibit A). Had the objection been to the number of years or scope of the documents, the parties could have negotiated. Instead, the objection claimed the document were not in Respondent's possession.

Since he made that assertion, Respondent has conceded that he retains a digital copy of all files. *See* Response to Disciplinary Counsel's Motion for Sanctions, Ex. 1, at 2 (noting "J.H. had access to [Watt's Law Firm's] Cloud file"); *id.* at 3 (noting that Respondent gave G.A. "access to a Google Drive with all files") (emphasis in original). Respondent's paralegal, Margaux Reckard, recently testified at her deposition that this practice dates back to at least 2015 and includes client payment records. Dep. of Reckard, March 2, 2021, at 55:3-12 (all client payment records are kept in a digital file), 115:6-116:20 (digital files are maintained in Google Drive since prior to 2015). (Deposition excerpts attached as Exhibit B.) Simply put, Respondent has these digital records in his possession but *still* has not produced them.

Second, Respondent did not believe he had produced all documents by June 25, 2021, as claimed in the Reply. For one thing, he did not produce his discovery responses until July 7, 2021. For another, he claimed in subsequent pleadings he was still reviewing files to determine if another production was appropriate. *See e.g.*, Respondent's Notice to the Panel, August 30, 2021.

Third, any claim that a failure to produce documents was due to a miscommunication is, at best, misleading. Respondent has a capable paralegal working with him, and he chose not to timely provide her with Special Disciplinary Counsel's Requests to Produce or ask for her help with the discovery motions practice. Ms. Reckard testified that she typically assisted Respondent with discovery productions. Dep. of Reckard, 11:16-25 ("I assist with all stages of discovery including drafting discovery responses with the client, you know, preparing documents for production."). She also assisted in producing documents during the investigation, *id.* at

114:10-12, and she reviewed documents for the Exhibit lists filed in December, *id.* at 113:4-11. Yet, Respondent never asked her to gather documents to respond to Special Disciplinary Counsel's Request for Documents. *Id.* at 48:24-49:18 (agreeing that not all documents related to Mr. Alibozek were produced and stating she did not see the document requests until recently), 113:21-24 ("Norman did not send [the document requests] to me until recently."), 115:2-5 (Ms. Reckard was unaware that no documents were provided by Respondent in discovery). Ms. Reckard was a full time employee of Respondent's firm at this time, and was not out on leave. *Id.* at 113:12-20.

Respondent did not miscommunicate with his paralegal – he simply chose not to ask her to assist him. The Hearing Panel can only guess why he did not ask his capable paralegal to help with this discovery production, when Ms. Reckard was already familiar with the matter.

Respondent is solely responsible for the delays in this case. His attempts to obfuscate the time line or confuse the Hearing Panel about how this matter has proceeded should not be mistaken for facts that would justify the six month delay in filing his Motion to Compel.

### Conclusion

The Hearing Panel should deny Respondent's request to compel a deposition of Special Disciplinary Counsel's expert witness. The request is untimely.

Dated: Burlington, Vermont  
March 23, 2022

/s/ Navah C. Spero

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STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITH PROGRAM

In Re: Norman E. Watts

PRB File Nos. 2019-102 and 2020-011

Respondent's Productions Pursuant to Requests to Produce

1. Produce any and all Documents related to instances in which You were notified by a professional responsibility regulatory body that a complaint was filed against You.

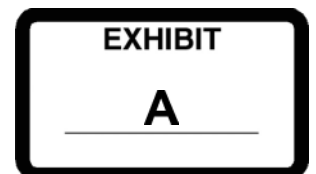
**Response: Objection – The Respondent has already produced all such materials to Counsel pursuant to her investigation.**

2. Produce any and all Documents related to incidents in which You were notified by a professional responsibility regulatory body that a complaint was filed against You.

**Response: Response: Objection – The Respondent has already produced all such materials to Counsel pursuant to her investigation.**

3. Produce any and all Documents related to personal or emotional problems that contributed to or caused the violations of the Vermont Rules of Professional Conduct as alleged in the Petition.

**Response: Objection – Respondent denies he violated the Vermont Rules of Professional Conduct as alleged in the Petition; without waiving, None.**



**Response: Objection – The Respondent has already produced all such materials to Counsel pursuant to her investigation, including all the billing and payment records.**

21. For each hourly employment litigation case You have worked on since 2010, produce Documents sufficient to show the total amount of legal fees You charged for each case and the phase of litigation at which each case was resolved.

**Response: Objection - Objection – The request is for eleven years of information that is beyond the scope of the Petition and delves into client files no longer in the firm’s possession or control as our practice is to return all files to the clients at the conclusion of each case.**

22. Produce all Documents related to any estimates of legal fees and expenses You have made in other hourly employment litigation cases.

**Response: Objection - Objection – The request is for eleven years of information that is beyond the scope of the Petition and delves into client files no longer in the firm’s possession or control as our practice is to return all files to the clients at the conclusion of each case.**

23. Produce all Documents supporting Your contention in response to Paragraph 24 of the Petition that You or anyone from the Firm spoke to G.A. about his retainer after Your representation of G.A. ended.

**Response: Objection – The Respondent already produce all such materials to Counsel pursuant to her investigation, including all the billing and payment records and related emails.**

24. Produce all Documents You reviewed or consulted prior to stating in Your July 24, 2020 letter that You had already returned G.A.’s retainer to him.

**Response: Objection - The Respondent already produce all such materials to Counsel pursuant to her investigation, including all the communications and voluminous amounts of emails.**

40.If you retain a testifying expert, please produce for each testifying expert: their resume or C.V., their file for this matter, all documents reflecting assumptions made for purposes of arriving at an opinion; all documents the expert relied on in forming an opinion and the expert's file.

**Response: Respondent has not retained a testifying expert.**

Dated: Quechee, Vermont on this July 7, 2021.

/s/ Norman E. Watts

Norman E. Watts, Esq.  
Respondent  
Watts Law Firm PC  
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STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

IN RE: NORMAN WATTS  
PRB File Nos. 2019-102 and 2020-011

Deposition of Margaux Reckard  
held via Zoom  
on February 28, 2022  
beginning at 10 a.m.

A P P E A R A N C E S

WATTS LAW FIRM, P.C.

19 Central Street, P.O. Box 270  
Woodstock, VT 05091-0270

BY: NORMAN E. WATTS, ESQUIRE

GRAVEL & SHEA, PC

76 St. Paul Street, P.O. Box 369  
Burlington, VT 05402-0369

BY: NAVAH C. SPERO, ESQUIRE

Special Disciplinary Counsel

Also present:

Alyssa Bachand, Gravel & Shea

Zach Dayno, Gravel & Shea

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EXHIBIT

B



1 Q. So tell me about your role as a paralegal. I  
2 want to know everything that you do in Norman's office,  
3 and if you need me to put a time frame around that because  
4 things have changed, let me know. But I'm assuming that  
5 things have been pretty constant.

6 So the question is, what are your job  
7 responsibilities as a paralegal for Norman?

8 A. Would you mind putting a time frame on that?  
9 Because --

10 Q. Sure.

11 A. I can't answer that, because it has changed  
12 over the years.

13 Q. Okay. Tell me around when did the job  
14 responsibilities change?

15 A. They have changed several times.

16 Q. Okay. Let's start with now. What are your  
17 job responsibilities right now?

18 A. I assist with all stages of the litigation  
19 process. We are primarily a litigation firm. So I help,  
20 you know, in reviewing client documents to prepare the  
21 complaint. All the court filings. I assist with all  
22 stages of discovery including drafting discovery responses  
23 with the client, you know, preparing documents for  
24 production. Deposition preparation. All the usual stages  
25 of discovery.

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1 in a row. I told Norman that that was a common practice.

2 I also recall telling Norman a few times when  
3 Mr. Alibozek called me kiddo. And I found it  
4 unprofessional. And I told -- and I told Mr. Alibozek,  
5 like, at the time that I found it unprofessional, and then  
6 I repeated that to Norman.

7 That's what I recall about that conversation.

8 Q. Is it your view that you -- that Watts Law  
9 Firm has produced to me every communication between you  
10 and Gary Alibozek that you found to be offensive?

11 A. I don't know.

12 Q. What do you mean you don't know?

13 A. I don't know every single document that we  
14 have produced to you.

15 Q. You're the person who has gathered all those  
16 documents; right?

17 A. I can speak -- yes and no. Because I have not  
18 been involved in every aspect of this process. I'm just  
19 an employee. So I don't know if Norman has provided to  
20 you other documents or forwarded you other emails --

21 Q. Okay.

22 A. -- that I haven't assembled. So I feel that I  
23 don't want to speculate about that.

24 Q. Based on the documents that you put together,  
25 is it your perspective or your position, that you gathered

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1 all of the emails that you found to be troubling from Gary  
2 Alibozek, and you put them together as part of a package  
3 to produce?

4 A. No.

5 Q. Okay. So you didn't gather all the emails.  
6 Why not?

7 A. I don't recall receiving a request from you to  
8 produce all of the emails that I found to be disrespectful  
9 from Mr. Alibozek, so I did not assemble a packet of those  
10 to produce.

11 Q. Did you look at the discovery requests in this  
12 case?

13 A. I did not see the discovery requests in this  
14 case until recently.

15 Q. Okay. So you were not involved in putting  
16 together discovery responses for the formal discovery that  
17 was issued once the petition was filed?

18 A. That's correct.

19 MS. SPERO: All right. Let's take a  
20 break here. I probably need about 10 minutes. We  
21 will regroup at 11:25.

22 (Recess was taken.)

23 MS. SPERO: All right. Everybody  
24 ready?

25 MR. WATTS: Yes.

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1 A. Yes.

2 Q. How did you do that?

3 A. I kept a file with their bills and with their  
4 payments.

5 Q. What -- what do you mean you kept a file?  
6 What kind of file?

7 A. A digital folder with a copy of the invoice  
8 and then a copy of their payments. So if they paid for  
9 credit card -- by credit card, I would keep a credit card  
10 receipt. If they paid by check, Norman would scan a copy  
11 of the check that he deposited. Because I don't deposit  
12 checks. And I would keep that on their file.

13 Q. Okay. Michelle Kainen's audit findings were  
14 issued on December 19 of 2018. So it sounds like this  
15 spreadsheet was created sometime between when you got back  
16 in early 2018 and December of 2018; is that fair to say?

17 A. Yes.

18 Q. Okay. At that time how did you know that the  
19 Alibozeks had paid a \$2,500 retainer?

20 A. I -- I don't remember. I would have -- I  
21 would have checked with Norman. I would have checked the  
22 billing file. That's what I would do now to verify that.

23 Q. Okay. Did -- were you involved in returning  
24 Gary Alibozek's retainer to him?

25 A. No.

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1 Q. Like 18 months ago is what you're talking  
2 about? Or even more.

3 A. Yes. 2020.

4 Q. So you haven't reviewed these since 2020?

5 A. I also reviewed them when we sent you the  
6 proposed exhibits in December of 2021, because Norman  
7 asked me to redact all the client names.

8 Q. Did you -- so you helped -- you helped Norman  
9 put together a list of exhibits that were filed in  
10 December of 2021. Correct?

11 A. Yes.

12 Q. Again, I'm not looking for you to disclose any  
13 personal -- you don't have to give me any details, but  
14 between June of 2021 and December of 2021, were you  
15 employed full time at Watts Law Firm?

16 A. Yes.

17 Q. Was there any period of time where you were  
18 out on some kind of extended leave beyond a typical  
19 vacation?

20 A. No.

21 Q. I asked you earlier about discovery requests.  
22 And you said that you did not assist in responding to  
23 those discovery requests. Why didn't you?

24 A. Norman did not send them to me until recently.

25 Q. In reviewing them, do you think that there are  
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1 additional documents that could have been respond -- that  
2 could have been produced that would have been responsive  
3 to the requests?

4 A. I don't know, because I didn't assist in  
5 responding to the first request. So I don't know fully  
6 what documents he provided to you -- the official list of  
7 requests; right? Request to Produce. I did not assist in  
8 responding to those.

9 Q. Oh.

10 A. I assisted in responding to your letters. So  
11 I don't know what documents were produced responsive to  
12 those requests.

13 Q. No documents were produced responsive to those  
14 requests. So the only things that have been produced are  
15 documents that you helped gather during the investigation  
16 part of the -- of this case.

17 So with that assumption in mind, looking over  
18 that list of questions, are there documents that you're  
19 aware of that could have been produced, that were  
20 responsive, but had not previously produced, that were not  
21 produced?

22 A. I have not looked over that request  
23 extensively. So I don't know -- I don't know all of the  
24 requests. So -- I don't know how to answer that because  
25 I'm not super familiar with the document because I've only

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1 really seen it once.

2 Q. Okay. When you looked at that document, were  
3 you aware at the time you looked at it that no documents  
4 had been provided in response to that?

5 A. No. I didn't know that.

6 Q. How do you maintain client files?

7 A. I have a folder, a digital folder for every  
8 client.

9 Q. What goes in the digital folder?

10 A. There are lots of sub folders. So there is  
11 billing folder. And there is a folder for deposition  
12 transcripts. And there is a sub folder for documents that  
13 they have provided to us. There is a folder for documents  
14 that we have produced in the course of discovery. There  
15 are documents -- there is another folder with documents  
16 that the defense has produced in the course of discovery.

17 Q. I assume there is a folder for pleadings?

18 A. Yes.

19 Q. Is there a folder for emails that are relevant  
20 to the case?

21 A. I save my emails in -- I think we discussed  
22 this process, that I have a folder within my email for  
23 each of -- for each client.

24 Q. You don't have a separate folder in the  
25 digital folder that's on the computer?

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1           A.       That has all of the emails, no. I did not  
2 have a separate folder for that on my computer. Or in the  
3 cloud.

4           Q.       Where do you -- so you said that each file --  
5 each client has a digital file.

6                   Where is that digital file kept?

7           A.       In Google Drive.

8           Q.       Okay. So how long have -- has Watts Law Firm  
9 been using Google Drive to maintain its client files?

10          A.       Since before I was hired.

11          Q.       So every client's file is maintained digitally  
12 in the cloud going back to at least 2013; is that correct?

13          A.       I was hired in 2015.

14          Q.       I'm sorry. 2015.

15          A.       I don't know.

16          Q.       Let's do -- I'm sorry. I messed up the date.  
17 2015.

18                   Does every client have a digital cloud file  
19 since you started in 2015 to your knowledge?

20          A.       Yes. And there may have been some paper files  
21 for clients when I started. I am not familiar with all of  
22 the systems that were in place prior to adopting Google  
23 Drive.

24          Q.       Does -- do you know if Norman is in the  
25 practice of deleting his emails from the Gmail Business  
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