STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

SUPPLEMENTAL MEMORANDUM OF LAW ON DISCOVERY SANCTIONS

Navah C. Spero, Esq., Specially Assigned Disciplinary Counsel ("Special Disciplinary Counsel") in this matter, supplements her request for sanctions as follows:

Procedural Background

On April 14, 2021, this Hearing Panel issued a scheduling order requiring the parties to exchange all documents no later than June 25, 2021. Special Disciplinary Counsel issued discovery requests and Respondent late filed his written responses to discovery on July 7, 2021, but did not provide any documents. Special Disciplinary Counsel filed a Request to Resolve Discovery Dispute on July 16, 2021.

On August 9, 2021, the Hearing Panel issued an order requiring Special Disciplinary Counsel to revise her requests, Respondent to timely respond to those revisions, and the parties to meet and confer on discovery. Special Disciplinary Counsel complied with the Panel's order but Respondent did not. Respondent did not produce any revised responses to the discovery requests or any documents.

Special Disciplinary Counsel filed a request for sanctions on September 1, 2021. On September 28, 2021, the Hearing Panel issued its Order Regarding Discovery Dispute, Request for Sanctions, and Request to Extend Scheduling Order ("September 28 Order"). In that order, the Hearing Panel granted the request for sanctions in part, precluding Respondent from using as evidence at the hearing any documents that were not previously provided to Special Disciplinary

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76 St. Paul Street
Post Office Box 369
Burlington, Vermont 05402-0369

Counsel. The panel denied without prejudice Special Disciplinary Counsel's request to preclude Respondent from relying on certain defenses set forth in his Answer to Petition for Misconduct ("Answer"). The panel invited Special Disciplinary Counsel to "file a supplemental memorandum of law requesting that Respondent be barred from presenting a specific defense or defenses in this proceeding based on Respondent's non-compliance with one or more of Disciplinary Counsel's specific revised requests for production the responses to which Disciplinary Counsel maintains are incomplete or otherwise deficient."

This memorandum supplements Special Disciplinary Counsel's request for sanctions. At the request of the Panel Chair, Special Disciplinary Counsel is also providing an update on whether Respondent has produced anything further in discovery. The answer is no. He has not further supplemented his written discovery responses, nor has he provided any additional documents.

Argument

The Hearing Panel must have the authority to sanction attorney Respondents that refuse to comply with the discovery process. September 28 Order at 3. The discovery sanctions found in the Vermont Rules of Civil Procedure are a helpful guide for appropriate sanctions. Rule 37(b)(2)(B) provides that a court can refuse to "allow the disobedient party to support or oppose designated claims or defenses."

Prohibiting Respondent from presenting certain defenses where he has failed to comply with his discovery obligations is the appropriate sanction here. Respondent is not seeking the ultimate sanction permitted by Rule 37 – dismissal of claims or default judgment against the disobedient party. "[N]o special findings of bad faith or prejudice, or exhaustion of lesser sanctions, are required for anything less than the ultimate sanctions of dismissal or default."

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State v. Howe Cleaners, Inc., 2010 VT 70, ¶ 22. The preclusion of a defense is a proportional discovery sanction that is a "neutralizing evidentiary remedy" as a result of a violation of a court's discovery order. *Id.* at ¶ 20. As set forth in more detail below as it relates to each count of the Petition of Misconduct ("Petition"), Respondent should be prohibited from presenting certain defenses as a neutralizing remedy because he refused to participate in discovery.

Throughout his discovery responses, Respondent asserted that he had already produced all of the responsive documents to Special Disciplinary Counsel, either as part of her investigation or as part of an audit. Special Disciplinary Counsel did not conduct any of the audits, so Respondent did not provide those documents to her as part of that process. As part of the investigation, Respondent provided some documents – approximately 700 pages, mostly consisting of court filings. However, as described more fully in the Request to Resolve Discovery Dispute it is not possibly that Respondent has provided all documents in his possession because there are e-mails and other documents he must certainly possess. Request to Resolve Discovery Dispute, Exhibit 4. Special Disciplinary Counsel does not detail this in response to the dozens of times he asserts this, but notes this here as a general matter for the Hearing Panel's consideration.

I. COUNT I: THE HEARING PANEL SHOULD NOT ALLOW RESPONDENT TO ASSERT THAT HE SPOKE TO G.A. ABOUT THE MOTION FOR JUDGMENT ON THE PLEADINGS PRIOR TO RESPONDENT ALLOWING THE COURT TO GRANT THE MOTION AS UNOPPOSED.

Count I alleges that Respondent violated V.R.Pr.C. 1.2 and 1.4 when he chose not to respond to a motion for judgment on the pleadings without discussing the matter with G.A. and obtaining his permission to allow one count of his complaint to be dismissed. Respondent received a motion for judgment on the pleadings on October 15, 2018 seeking judgment on count

two of the complaint, which alleged violation of the covenant of good faith and fair dealing. Petition, Count I. On October 23 and 26, 2018, Respondent's office e-mailed G.A. to tell him that Respondent would not work on responding to this motion or a simultaneously filed motion for summary judgment until G.A. had a zero balance on his account. Petition, ¶ 39. A response to the motion for judgment on the pleadings was due November 1, 2018. Neither of the e-mails communicating to G.A. that he needed to bring his account balance explained the merits of the motion for judgment on the pleadings. According to G.A., no one from Mr. Watts' office communicated to him regarding the merits of count two, the strategic considerations of allowing that claim to be dismissed, or the substance of the motion for judgment on the pleadings. G.A. was never asked about the dismissal of count two of his complaint and he never consented to its dismissal. Petition, ¶¶ 46, 48.

In response to this allegations, Respondent assert that G.A. gave him permission on more than one occasion to dismiss count two. Answer to Petition of Misconduct ("Answer"), Count I, ¶ 45. Respondent claims he first warned G.A. that this type of motion was possible in June 2018 at some depositions. Answer, ¶ 45. Then, at a deposition Respondent claims occurred on October 26, 2017, Respondent purportedly explained the motion for judgment on the pleadings to G.A. in person. Answer, Count I. According to Respondent, during that meeting he explained the claim lacked sufficient evidence and would drive up costs. Answer, Count I and ¶ 45. Respondent asserts that G.A. agreed to drop the claim at that time. *Id.* Respondent claims G.A. then telephoned with more questions on November 1, 2018 – the date the opposition was due – and Respondent again walked him through the analysis. *Id.* According to Respondent, G.A. again agreed to drop the claim. *Id.* Finally, Respondent asserts that G.A. called again and

"besieged" Respondent's paralegal multiple times with inquiries about this and the pending summary judgment motion and demanded repeat explanations to his wife. *Id.*

The discovery requests at issue for Count I are:[1]

6. Request: Produce all phone records for You, Your Firm, and any other phone You used to communicate with clients from August 2017 through April 2019. To address the confidentiality of all other clients besides G.A., the records may be redacted to remove all but the last four digits of the other clients' phone numbers.

   Response: Objection – the request as not relevant to the allegations of the Petition, proportional to the needs of the matters under consideration helpful to the panel in its deliberations and constitutes an invasion of privacy and secure proprietary information. Further, Respondent's firm has not retained phone bills or statements because payments are made online without paper statements.

12. Request: Produce all Documents to support Your claim made in response to Counts I and IV of the Petition that G.A. "besieged one of the firm's paralegals multiple times with inquiries about the matter and the summary judgment process and demanded the paralegal provide the same explanations to his wife."

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

15. Request: Produce all notices of depositions for G.A. or any other Documents setting forth the date of G.A.'s deposition.

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

16. Request: Produce all written communications between G.A. or G.A.'s wife on the one hand and any Person at Your Firm on the other hand.

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

[1] These discovery requests are the revised discovery requests Special Disciplinary Counsel served on Respondent by letter dated August 13, 2021. Because Respondent did not submit any responses to these requests, the responses are the same as what he provided on July 7, 2021.

17. Request: Produce all written communications from You or any Person at Your Firm to any other Person at Your Firm related to G.A.'s case.

[No response provided.]

18. Request: Produce all written communications between You or any Person at Your Firm with any third-party related to the motion for judgment on the pleadings filed in G.A.'s case and G.A.'s retainer.

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

27. Request: Produce all Documents related to Your statements in response to paragraph 45 of the Petition, including any notes of conversations and e-mails with any Person related to those factual assertions.

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

Each of these requests is directed at various aspects of the defense raised by Respondent. First, Respondent claims that he communicated verbally with G.A. two times about the motion for judgment on the pleadings and received his consent to dismiss count two on both occasions. Respondent also claims his paralegal spoke to G.A.'s wife. Respondent claims two of these conversations occurred by phone and one occurred in person at G.A.'s deposition.

Request 6 seeks phone records to investigate whether these two telephone calls occurred. Request 27 seeks all records related to the assertions contained in paragraph 45 of the answer, which include the telephone calls that allegedly occurred on November 1, 2018. G.A. and his wife both will testify they did not speak to Respondent on the phone about dismissing count two and certainly never gave permission to allow the claim to be dismissed. Special Disciplinary Counsel has subpoenaed the phone records, but has not yet received any responsive documents.[2]

[2] Special Disciplinary Counsel will update the panel with any response from the phone companies at issue.

As the phone companies' customer, Respondent had access to these record without the need for a subpoena. Because Mr. Watts refused to cooperate, it is not possible to confirm or further prove whether Respondent or any one from his office did in fact speak to G.A. or his wife about these issues in October 2018. The Hearing Panel should therefore preclude him from arguing that Respondent and his office spoke to G.A. and/or his wife about this issue.

Respondent had ample opportunity to obtain these records on his own at any time since they were first requested during the investigation stage of the proceeding. *See* July 14, 2020 letter re G.A. (Exhibit 1); *see also* August 6, 2020 letter following up (Exhibit 2). He chose not to. There is no evidence in the documents that have been produced indicating that Respondent spoke to G.A. or his wife about the merits of the motion for judgment on the pleadings. Absent documents produced by Respondent, he should not be permitted to rely on the defense. Otherwise, it is he said/he said, with one side hamstrung in its investigation.

Request 12 seeks all documents that support Respondent's assertion that G.A. "besieged" one of the paralegals at Respondent's firm. These statements by Respondent are clearly an attempt to make G.A. look bad and undermine his credibility, as they are not relevant to the question of whether Respondent informed G.A. of the consequences of failing to respond to the motion for judgment on the pleadings. Respondent provided some e-mails as part of the investigation in this matter, and none of them are evidence of Respondent "besieging" anyone or otherwise treating anyone poorly. To the extent the panel will consider testimony on this issue,[3]

[3] Special Disciplinary Counsel will file a motion in limine on this defense since suggestions that G.A. was rude or did not behave will with Respondent's staff do not justify violations of the Rules of Professional Conduct. However, unless such a motion is granted by the Hearing Panel, this remains one of Respondent's defenses.

Special Disciplinary Counsel has been deprived of the opportunity to review e-mails that would prove or disprove such an allegation and allow for additional investigation.

Likewise, request 16 seeks to investigate this assertion by asking for all written communication between Respondent's office and G.A. and/or his wife. Request 17 seeks all internal communications between members of Respondent's firm, which would show whether Respondent's paralegal forwarded such communications to Respondent or discussed G.A.'s behavior internally. Without these documents, the allegations of G.A.'s poor behavior are unsupported by any documents. Respondent would be the only witness to the allegations. The requested information is needed to assess the credibility of Respondent's assertions in his Answer. Because he deprived Special Disciplinary Counsel access to this discovery, Respondent should not be allowed to present this defense.

Requests 15 and 18 are targeted to a specific aspect of Respondent's defense to Count I. Respondent asserts that the motion for judgment on the pleadings was filed on October 15, 2017 and that he spoke to G.A. about the motion for judgment on the pleadings at G.A.'s deposition on October 26, 2017. Answer, Count I. This is factually impossible – according to e-mails previously provided by Respondent and the Court's docket, the Motion for Judgment on the Pleadings was filed on October 15, 2018 – one year later. *See* October 15, 2018 e-mail chain (Exhibit 3). Based on information provided by G.A., his deposition took place in October 2017, one year before the motion for judgment on the pleadings was ever filed. *See* cover of G.A. Dep., dated October 26, 2017 (Exhibit 4). That would make it impossible for Respondent to have spoken to G.A. about the motion at G.A.'s deposition.

No other in-person meetings between G.A. and Respondent or depositions occurred in October 2018. *See* October 2018 Billing Statement (Exhibit 5). Since Respondent chose not to

provide any documents responsive to these requests – the notice of deposition for the deposition where this conversation took place, the transcript for the referenced deposition, or even an e-mail exchange with opposing counsel fixing the date of some October 2018 deposition – he should be precluded from arguing that he spoke to G.A. about the motion for judgment on the pleadings at a deposition when all evidence in Special Disciplinary Counsel's hands points to that being impossible.

In its September 28 Order, the Court asked Special Disciplinary Counsel to address for each defense why preclusion of the defense is the appropriate sanction. For Count I, Respondent's defense boils down to his claim that he received G.A.'s permission to dismiss count two of his complaint. Because no such permission was ever given and Respondent refused to provide any discovery in support of this defense, Special Disciplinary Counsel is left proving a negative – that a thing that did not occur, actually did not occur. To allow Respondent to use this defense, is to give him the benefit of his failure to comply with discovery – the absence of documents will make this a battle of credibility. Alternatively, it will just be a waste of the Hearing Panel's time. The Hearing Panel should preclude him from doing so.

II. COUNTS II AND III: THE HEARING PANEL SHOULD PROHIBIT RESPONDENT FROM ASSERTING AS A DEFENSE THAT HE COMPLIED WITH THE PRIOR STIPULATION HE ENTERED INTO BY MODIFYING HIS ACCOUNTING PRACTICES.

Counts II and III of the Petition allege that Respondent violated V.R.Pr.C. 1.15 and 1.15A by failing to keep G.A.'s retainer in his IOLTA account, failing to properly account for G.A.'s retainer on a ledger card, failing to reconcile his accounts each month, comingling his funds with G.A.'s funds, and failing to timely return the retainers for G.A. and J.H. at the conclusion of the representations. Petition, Counts II, III. As it relates to J.H.'s retainer,

Respondent also deducted expenses from her retainer without her permission, even though the retainer did not allow for that. Petition, ¶ 87.

Respondent was audited by the Professional Responsibility Program in 2018. Michelle Kainen, Esq., MSA served as the auditor. The audit period covered November 1, 2017 through October 31, 2018 ("First Audit"), and looked at Respondent's accounting practices, management of client funds and the retainers deposited in Respondent's accounts during that time period. On February 21, 2019, Respondent stipulated to the rule violations found in the First Audit. Petition, Exhibit 1. The Hearing Panel issued a decision in Respondent's first case on April 18, 2019. In it, the Hearing Panel noted Respondent's accounting system "was fundamentally deficient and resulted in numerous violations of Rules 1.15 and 1.15A." PRB No. 2019-006, Hearing Panel Decision No. 224, 12-13, April 18, 2019 ("2019 Decision"). Counts II and III of this proceeding allege subsequent violations of these same rules for many of the same reasons – failure to keep ledger cards, comingling funds, failure to account for funds, and failure to reconcile accounts. Counts II and III allege additional violations that directly affected two clients by failing to return to them the retainers Respondent was holding.

Respondent admits to the facts alleged in Counts II and III, but attempts to mitigate this admission – and the potential sanction against him – by asserting that all of these allegations are covered by the prior professional responsibility sanction he received in the 2019 Decision, and that he has since fixed all of the issues and is "substantially in compliance with the terms of the stipulation." Answer, Count II and Count III; ¶¶ 4, 6, 8.[4] Respondent further asserts that his

[4] The language Respondent quoted in the answer is taken out of context from a letter from Ms. Kainen related to a second audit performed in September 2020 ("Second Audit"). The Second Audit was initiated due to Respondent having a check returned for insufficient funds in July 2020.

failure to return G.A.'s retainer cannot be a violation of the 2019 Decision or 2019 Stipulation because it is not referenced as a violation in the September 2020 letter from the auditor. *Id.* at ¶ 8. He argues that he was not required to put G.A.'s retainer back in his trust account after the First Audit because the retainer was deposited before the First Audit occurred. *Id.* at ¶ 23. Respondent then claims that he contacted G.A. about his retainer after the representation ended. *Id.* at ¶ 24.[5] Finally, Respondent claims that J.H.'s retainer allowed him to deduct unpaid fees and expenses from the retainer at the end of the representation. *Id.* at ¶ 87.

The discovery requests at issue for Counts II and III are:

8. Request: Produce all Documents related to any financial transaction You undertook in Your trust account or operating account any time after You received the December 19, 2018 letter written by Michelle Kainen, Esq., CPA, regarding the audit of Your trust account to correct or respond to the issues identified in the December 19, 2018 letter.

   Response: The Respondent overhauled the firm's accounting practices by eliminating the refundable retainers that had been offered to clients prior to the Kainen audit. Thus, no client funds were received into the trust account after that date – as noted in Ms. Kainen's letter, which is in evidence. Any remaining client funds were returned to the clients. No client lost any money nor did Respondent keep any such funds.

9. Request: To the extent not already produced in response to Request 8, produce all Documents related to any financial transaction You undertook in Your trust account and operating account any time after You signed the February 21, 2019 Stipulation of Facts and Jointly Proposed Conclusions of Law in PRB File No. 2019-006 to correct or respond to the issues identified therein.

   Response: Please refer to Response 8.

11. Request: Produce all Documents that show that any retainer You received from 2015 through 2019 was placed in Your trust account and held there for the duration of the litigation.

[5] Although he does not elaborate on this phone call in the Answer, he asserts in a letter to Special Disciplinary Counsel that he could not get clear instruction from G.A. to return the retainer, which is why it was not promptly returned. Letter from Respondent to Special Disciplinary Counsel, dated July 24, 2020 (without enclosures) (Exhibit 6).

Response: Objection - The Respondent already been produced the requested materials to Counsel as part of the Kainen audit documentation, the settlement and the conclusion of the 2019-006 matter.

23. Request: 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 [*sic*] all such materials to Counsel pursuant to her investigation, including all the billing and payment records and related emails.

38. Request: Produce all Documents related to Your assertion in response to paragraph 87 of the Petition that "The engagement letter the client agreed to provide for the deduction of expenses from the retainer at the conclusion of the representation."

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

39. Request: Please produce any policies, rules, intra-office memoranda or related Documents created in response to the audit conducted by Michelle Kainen, Esq., CPA in 2018. This includes all e-mails or other intra-office communications related to any changes in policies.

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

These requests are tailored to address the defenses raised by Respondent and sanctions that may be appropriate under these two counts. Respondent admits to the core of the allegations in Counts II and III. However, Respondent tries to deflect responsibility for these violations of the Rules by arguing he did everything he was supposed to do after the 2019 Stipulation and asserting that the 2019 Stipulation, First Audit or the Second Audit of his accounts shield him from responsibility for this wrongdoing.

Both retainers were deposited outside of the First Audit period. J.H.'s retainer was returned to her in August 2017 before the start of the First Audit. G.A. provided Respondent

with a retainer in August 2017, before the start of the First Audit period. G.A. terminated Respondent's representation of him in March 2019, and the retainer was returned in August 2020. Both of those dates are after the First Audit. The auditor was not aware of G.A.'s retainer because it had already been removed from Respondent's IOLTA account by late 2018, and it is therefore not discussed in the First Audit report.

As part of his defense, Respondent claims he took steps to cure the issues raised by the First Audit and the 2019 Decision. Answer, Count II and Count III ("After the sanction, the practice was revised and not repeated since."); Answer, ¶ 4 ("[R]espondent adopted measures to bring practices into compliance, as discussed below at paragraph 6."). Respondent has provided no evidence that he took steps to ensure that all of his accounts were in compliance with the Rules of Professional Conduct, the 2019 Stipulation or the 2019 Decision. Instead, it appears that he altered his practice of how he accepted retainers by labeling them as earned funds in the engagement letter on a going forward basis. Respondent took no steps to fix any of the broad deficiencies identified in the First Audit and the 2019 Decision, unless the auditor specifically pointed them out. In other words, he did not look at any retainers he accepted prior to November 1, 2017 to determine whether they should be returned to his IOLTA account. He did not create ledger cards for those clients for whom he held retainers in February 2019, unless the auditor had pointed out the deficiency and created the ledger cards herself.

Turning to the relevant document requests, requests 8, 9 and 39 ask for documents, including account statements and internal policy documents, related to any changes Respondent made after the First Audit. These three requests go to the heart of one of Respondent's defenses. They ask precisely for documents that show that Respondent made any changes to his accounting practices to address the issues raised in the First Audit and the 2019 Decision. Respondent chose

not to respond to this request and he did not provide these documents as part of Special Disciplinary Counsel's investigation. What is apparent from the sequence of facts surrounding G.A.'s retainer is that Respondent did nothing to ensure that he was properly handling client retainers that either pre- or post-dated the time period of the First Audit. G.A.'s retainer is one such retainer, but question 8 seeks information about any other clients whose accounts might have been in the same position. This evidence is relevant to the application of ABA Standards for Imposing Lawyer Discipline ("ABA Standards"), § 9.22(c), whether there is a pattern of misconduct. Without this evidence, it is not possible for Special Disciplinary Counsel to fully probe whether this aggravating factor should apply.[6]

In request 11, Special Disciplinary Counsel also asked for Respondent's financial documents to determine whether *any* retainers were kept in Respondent's Trust account during the relevant time period. This is related both to Respondent's defense that he complied with the First Audit's findings and the 2019 Decision by making appropriate changes, and to the sanctions factor of whether this affected multiple clients. *Id.*

Request 23 seeks all documents showing that anyone from Respondent's office spoke to G.A. or his wife about their retainer. This request specifically addressed the point raised in paragraph 24 of the Answer. G.A. and his wife are certain they did not speak to Respondent or his office about the retainer, but Respondent claims he did.

Finally, request 38 relates to a specific defense raised by Respondent in paragraph 87 of his Answer. He states that J.H.'s engagement letter permitted him to deduct expenses before

[6] The question of how to handle this sanctions factor will need to be addressed if the Hearing Panel ultimately finds that a violation of Count II or Count III. Special Disciplinary Counsel has been denied the discovery she would need to ascertain the application of this aggravating factor. However, this memorandum is focused on Respondent's defenses and Special Disciplinary Counsel is not seeking a ruling on this issue at this time.

returning the retainer. It does not say that. It states: "If we decide to proceed with legal action, the retainer will be maintained as a credit on your account throughout the lawsuit process. It is refundable out of the net proceeds of a settlement or jury determination." *See* Engagement letter (Exhibit 7). If Respondent refuses to provide any evidence to support this contention, in the form of written documents or communications modifying or interpreting the retainer, he should not be permitted to raise the defense at the hearing. The documents he has provided thus far simply do not support his claim.

Respondent should be precluded from raising the defenses to Counts II and III listed above. He has refused to provide Special Disciplinary Counsel with any documents that support these defenses. From the documents he has provided, Respondent took absolutely no steps to fix the misconduct found in the First Audit and 2019 Decision unless he was specifically directed to take action by the auditor or the hearing panel. He did not apply what he should have learned from his reprimand to his other clients to ensure he was safeguarding the property he had entrusted to them and complying with the Rules of Professional Conduct. The Hearing Panel should not permit Respondent to assert this defense because his lack of production is prejudicial to Special Disciplinary Counsel.

III. COUNT IV: RESPONDENT SHOULD BE PRECLUDED FROM ASSERTING THAT G.A. HARASSED HIS PARALEGAL OR WAS DEMEANING TO HER BECAUSE HE REFUSES TO PROVIDE DOCUMENTS RELATED TO THE DEFENSE.

Count IV alleges that Respondent engaged in improper fee collection practices by threatening to immediately stop working on G.A.'s cases absent immediate payment, in violation of V.R.Pr.C. 1.4 and 8.4(c). Petition, Count IV. These threats pressured G.A. into making payments under the belief that if he failed to do so, he would lose his case immediately. Respondent achieved this result by choosing not to explain the process of a lawyer's withdrawal

from a case in Vermont and stating explicitly that specific time sensitive work on G.A.'s case would stop absent immediate payment.

Respondent admits that he told G.A. he might withdraw if G.A. repeatedly failed to pay, but denies that anything about the communication was improper. As a defense, he asserts that G.A. contacted Respondent's paralegal many times by phone to ask for explanations of the litigation process, that G.A. "besieged" Respondent's paralegal about this matter, that Respondent's paralegal received 30 emails per week from G.A., that G.A. was "demeaning and condescending" to Respondent's paralegal, and that G.A.'s allegedly poor behavior "colored" Respondent's attempts to collect on his fees. Answer, Count IV. In addition, Respondent asserts later in his answer that he informed G.A. that his communication on May 30, 2018 was that G.A.'s "his pattern of delayed payments might cause postponement of activities that would cause the balance to increase; that the remedy would be withdrawal." Answer, ¶ 36.

The discovery requests at issue for Count IV are:

12. Request: Produce all Documents to support Your claim made in response to Counts I and IV of the Petition that G.A. "besieged one of the firm's paralegals multiple times with inquiries about the matter and the summary judgment process and demanded the paralegal provide the same explanations to his wife."

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

13. Request: Produce all Documents related to Your assertion in response to Count IV that G.A. "contacted Respondent and the firm's paralegal multiple times by telephone, seeking explanations of each step in the litigation process."

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

14. Request: Produce any Documents related to Your assertion in response to Count IV that G.A. was "demeaning and condescending to the paralegal, a female."

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

16. Request: Produce all written communications between G.A. or G.A.'s wife on the one hand and any Person at Your Firm on the other hand.

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

17. Request: Produce all written communications from You or any Person at Your Firm to any other Person at Your Firm related to G.A.'s case.

[No response provided.]

26. Request: Produce all Documents related to Your statement in response to paragraph 36 of the Petition that You "advised the client that his pattern of delayed payments might cause postponement of activities that would cause the balance to increase; that the remedy would be withdrawal."

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

Special Disciplinary Counsel asks the Hearing Panel to preclude Respondent from offering as a defense to his improper collections efforts that (1) G.A. behaved poorly toward his staff or (2) Respondent had any discussion about the payment of bills or his threatened withdrawal as G.A.'s attorney beyond what was included in the produced e-mails. This would include oral testimony to the effect that there were additional discussion about the withdrawal process or the outstanding bills.

As discussed above in response to Count I, Respondent again attacks G.A. personally, in an attempt to attack his credibility by asserting that he conducted a campaign of harassment and poor treatment of Respondent's paralegal. None of the e-mails provided by Respondent thus far support such an assertion. Notably, Respondent's paralegal is not listed as a witness for the evidentiary hearing. Special Disciplinary Counsel will challenge the reliance of this defense in a subsequent motion *in limine*.

Special Disciplinary Counsel served discovery requests seeking more information about these defenses. Specifically, questions 12-14 seek documents related to the assertions that G.A. contacted Respondent's paralegal 30 times per week and treated her poorly. Likewise, request 16 seeks all communications between G.A. and his wife on the one hand and Respondent's firm. This request casts a broader net to ensure that all support, or lack thereof, for Respondent's defenses is ferreted out. Request 17 asked for internal communications at Respondent's firm, to capture Respondent's e-mails with his staff regarding these same issues. If G.A. had treated staff poorly, one would expect the staff to forward the inappropriate communications to each other or Respondent or alert them of that fact by e-mail.

Finally, in request 26 Special Disciplinary Counsel asked for all documents related to Respondent's assertions in response to paragraph 36 of the Petition. Paragraph 36 states that 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." In response, Respondent states that this is a mischaracterization: "Respondent advised the client that his pattern of delayed payments might cause postponement of activities that would cause the balance to increase; that the remedy would be withdrawal." That is not what is contained in the e-mails from May 30, 2018 that Respondent produced. *See* May 30, 2018 e-mail chain (Exhibit 8). However, it is clear from those e-mails that there are a number of other communications from that day that Respondent did not provide to Special Disciplinary Counsel. *Id.* (G.A. writing at 12:49 P.M. "I'm sorry I sent so many msg today. I understand [Respondent] sent [my wife] an email today saying that he's never had a client like 'me'. . . he must have ccd [the wrong address] because I never got it.").

It would be prejudicial to Special Disciplinary Counsel to allow Respondent to assert that he had certain discussions about billing and explained certain things to G.A. if he refuses to

provide those documents. Nothing in the documents produced by Special Disciplinary Counsel provide evidence for the idea that Respondent had a lengthy explanatory discussion with G.A. about the process of withdrawal or the increased expense it could cause. Even though the Hearing Panel has already precluded Respondent from admitting in to evidence these e-mails that were not produced to Special Disciplinary Counsel, he should also be prohibited from raising this defense in the first place.

Respondent was provided with many opportunities to produce documents that would support these defenses to Count IV. He could have produce documents in the seventeen days since the September 28 Order stating the Hearing Panel would consider the sanction of precluding some of his defenses. He chose not to. He retains other defenses to Count IV where the documents have been fully produced. Special Disciplinary Counsel will be prejudiced if she is forced to argue about oral or written discussions, where she was not provided with all responsive discover in the matter. It will also waste time at the evidentiary hearing on an unnecessary he said/she said.

IV. COUNT V: RESPONDENT FAILED TO PROVIDE ANY DOCUMENTS TO SUPPORT HIS DEFENSES THAT THESE SPECIFIC FEES WERE REASONABLE AND THESE SPECIFIC EXPENSES WERE JUSTIFIED; THEREFORE THE HEARING PANEL SHOULD EXCLUDE THOSE DEFENSES.

Count V alleges that Respondent violated V.R.Pr.C. 1.4 and 8.4(c) by improperly charging J.H. for $3,400 in legal fees and more than $1,200 in expenses. The $3,400 in fees is made up of two components. First, early in the case, Respondent agreed not to charge for travel time to depositions and the mediation. Petition, ¶ 74. When J.H. reminded him of this commitment he agreed that he had mistakenly charged her for the time. *See* July 9, 2015 e-mail (Exhibit 9). In his Answer, Respondent claims that he only agreed not to charge for travel to

California, where J.H. lived. However, there is no evidence to support this limitation of Respondent's offer.

Second, later in the case, Respondent failed to seek an extension of the discovery deadline and the defendant refused to respond to certain discovery requests served after the court-ordered deadline expired. Respondent then filed a motion with the Court to compel compliance. The court denied that request because the deadline had expired. J.H. asked for a discount on that motions practice because it had been caused by Respondent's failure to manage the schedule. Respondent agreed by e-mail to reduce the bill by 50% or $650. *See* June 6-7, 2016 e-mail exchange (Exhibit 10). Four months later he rescinded that offer for no reason other than that he felt he had been generous. *Id.* In his Answer, Respondent states as his defense that he never offered the discount. Answer, ¶ 78. Further, he asserts that there was considerable ambiguity around the close of discovery and therefore the discount was unnecessary. *Id.* at ¶ 77.

Turning to the more than $1,200 in expenses, these expenses were charged to J.H. for the travel required for out of state depositions taken by Respondent. Respondent travelled to Boston, Rochester, NY, and Amherst, MA to take depositions. Petition, ¶ 80. In all three locations he stayed at luxury hotels. *Id.* Respondent stayed an unnecessary third night in Boston – something he had planned before he left Vermont. *See* August 10, 2015 Dartmouth Coach receipts (Exhibit 11).[7] In Rochester and Boston, he charged unreasonably expensive meals to his hotel. Petition, ¶ 80. In Boston, he charged a flat rate of $100 per day for food, for three days. *See* Revised August 2015 Billing Statement (Exhibit 12). In Rochester, he charged $82 for food but only had

[7] Based on the court reporter invoices, the depositions took place in Boston on August 12 and 13, 2015. The Dartmouth Coach receipt shows that Respondent planned to arrive in Boston August 11 and stay until the morning of August 15. Presumably Respondent remained in Boston on August 14 and 15 for personal reasons.

a single receipt for $27.77. As a defense, Respondent asserts that the hotels were not luxury hotels, they were the only hotels available when he made his reservation, he stayed three nights because the last Dartmouth Bus had already departed when the depositions ended, and the food expenses did not require receipts because they were reasonable.

The discovery requests at issue for Count V are:

19. Request: Produce the underlying, contemporaneous timekeeper records and/or expense records for the $1,215.09 set forth in the response to Count V.

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

20. Request: Produce all Documents related Your claim in response to Count V that "The $3,400 charge was at a discounted rate."

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

34. Request: Produce all Documents related to Your assertion in response to paragraph 24 of the Petition that "Respondent indicated he would not charge for travel to the two west coast conferences with the client, not travel to depositions, the mediation or other in-state events."

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

35. Request: Produce all Documents related to the allegations in paragraphs 78 and 79 of the Petition.

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

36. Request: For those depositions that occurred in Boston, MA, Amherst, MA and Rochester, NY, produce all notices of depositions, subpoenas and e-mails scheduling the time and date of those depositions.

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

37. Request: Produce all Documents related to Your assertions in response to the allegations in paragraph 80 of the Petition that "a) The hotels were not 'luxury,' they were the only facilities available at the time; respondent was forced to stay an extra night because the return coach had already departed Boston; b) There were no charges for 'unreasonable amounts' for food and no charges at all for alcohol; hence receipts were not required."

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

Each of these requests is tailored to address a different defense to Count V. First, requests 19 and 20 ask for any other internal firm documentation for the $3,400 in attorney's fees and the more than $1,200 in expenses. These requests are tailored to the amounts at issue in the Petition. They seek any other documents that would provide information about how these items were calculated. Respondent previously provided J.H.'s billing file, which included some bills and receipts for the expenses. However, not all expenses have receipts in the file and the underlying timekeeper records for the fees were not produced. Without these documents, Special Disciplinary Counsel is deprived of the opportunity to investigate the details of these particular charges.

Request 34 asks for documents to support Respondent's assertion that he only agreed to discount travel to the west coast, not travel within Vermont. Special Disciplinary Counsel has documents showing that Respondent agreed not to charge for any travel time in Vermont. She does not have any documents that support his assertion that the agreement was limited to travel to California. It would be unfair for Respondent to be able to raise this defense without having provided any documents to support it.

The same is true of Respondent's defense for his failure to provide the 50% discount on his time for the improperly handled discovery schedule. Respondent's defense is that he never

offered the discount – something directly contradicted by the e-mails exchanged by J.H. and Respondent – and that there was no need for a discount because the end of discovery was ambiguous. Answer, ¶¶ 77-79. Request 35 asks for all of the documents to support these assertions. Respondent provided none. Without additional documents to support the vague claim that the end of discovery was ambiguous or that the discount Respondent clearly offered was never offered, Special Disciplinary Counsel cannot properly investigate the assertions.

Requests 36 and 37 are targeted to the overcharging of more than $1,200 in expenses. Respondent's first defense is that the only hotels available in all three locations at the time he booked them were these expensive luxury hotels. This is an easily investigated assertion, but Special Disciplinary Counsel needs to know when the dates for the depositions were scheduled to test their veracity. Depending on when the parties and deponents finalized dates for the depositions, Special Disciplinary Counsel could subpoena those hotels for records of their prices from that time period. Special Disciplinary Counsel has been unable to do that because she lacks the information she requested in requests 36 and 37. Request 36 asks specifically for that scheduling information. Request 37 asks for all other documents relevant to that defense. The Hearing Panel should not allow Respondent to assert a generalized defense about all these trips when he refuses to provide any documentation that would facilitate the investigation of that defense.

Respondent's next defense – that he "was forced" to stay an extra night because the last coach had left – is factually contradicted by documents already in Special Disciplinary Counsel's possession. However, Respondent failed to produce any documents that would support this assertion, including the deposition transcripts to show when the depositions ended. Without Respondent's disclosure of all documents in his possession, Special Disciplinary Counsel is

hamstrung in her ability to properly address this defense. While she will take the time at the evidentiary hearing to prove that Respondent is not being truthful when he claims he was forced to stay in Boston an extra night, it is a waste of time when it is likely that the production of the deposition transcripts would have shown that this was not correct.

Request 37 also addresses Respondent's defenses as it relates to the overcharged food expenses. Respondent claims the food expenses are reasonable and therefore do not require receipts. He has produced no documents to support this assertion. Without such documentation, it is impossible for Special Disciplinary Counsel to further investigate this defense. She only has four receipts for food – two that are facially unreasonable from meals at the luxury hotels Respondent stayed in, one that contains a charge for alcohol, and one for $4.38. If there are additional receipts or credit card statements that would support the amounts charged by Respondent, they should have been produced. Without them, Respondent can make unsupported and untrue claims as a defense to Count V. The Hearing Panel should not allow Respondent to raise these defenses.

The allegations in Count V of the Petition set forth a claim that Respondent engaged in a pattern of overcharging his client, either by refusing to give discounts he had previously promised or charging unreasonable amounts for travel and food. These were real dollars paid by a real client who Respondent knew was funding the litigation with loans. All of the information that would appropriately raise a defense to Count V is in Respondent's hands. He has chosen not to lift a finger to produce any information to help himself. As a result, Special Disciplinary Counsel should not be put in a position to have to defend against phantom defenses, where she has lacked the ability to investigate each claim thoroughly. This is especially true in Count V because it is made up of multiple smaller claims and lots of details, which creates a challenge for

addressing each defense. Special Disciplinary Counsel will still be required to meet her burden of proof as to Count V.

V. COUNT VI: THE HEARING PANEL SHOULD PRECLUDE ALL DEFENSES BASED ON RESPONDENT'S EXPERIENCE AS AN ATTORNEY, J.H.'S BEHAVIOR, CALCULATIONS RESPONDENT MADE FOR THE ESTIMATES AND ASSERTIONS THAT THE EXPERT HAD AGREED NOT TO CHARGE J.H.

Count VI of the Petition focuses on the grossly inaccurate estimates Respondent provided to J.H. It alleges that Respondent provided four estimates to J.H. Petition, Count VI. These estimates were not supported by any calculations and were not made in good faith, in violation of V.R.Pr.C. 1.4, 1.5 and 8.4(c). They were created for the purpose of keeping J.H. as a client and inducing her to continue to pay fees. Respondent's communications with J.H. were not honest and did not include all information necessary for J.H. to make an informed decision about the cost of the representation.

Respondent asserts a number of defenses to Count VI. His primary defense is that the estimates were made in good faith and "based on years of litigation experience in the employment field." Answer, Count VI, ¶ 57. He further asserts that J.H.'s actions added to the costs of the case because she insisted on additional depositions, conducted her own legal research and then insisted those cases be included in filings. *Id.*, ¶ 54. Respondent also claims he made calculations for each estimate. *Id.*, ¶ 55. Finally, Respondent asserts that the expert did not charge for his fees, so he did not include that in his estimate. *Id*., ¶ 67.

Special Disciplinary Counsel sent the following discovery requests to gather more information about these defenses:

> 21. Request: 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 – 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. Request: Produce all Documents related to any estimates of legal fees and expenses You have made in other hourly employment litigation cases.

Response: 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.

29. Request: Produce all Documents related to the calculations You created, per Your response to paragraph 55 of the Petition.

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

30. Request: Produce all Documents related to any estimate of fees and expenses You provided to J.H., including Documents related to any calculations You made and Documents You relied on in creating the estimates.

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

31. Request: Produce any list of witnesses You created during the course of J.H.'s case and the date that list was created.

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

32. Request: Produce all Documents related to the decision to retain an expert in J.H.'s case, including communications between You and J.H. regarding the cost of an expert.

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

33. Request: Produce all Documents related to Your assertion in response to paragraph 67 of the Petition that the expert retained by You for J.H.'s case would not charge for his services.

<u>Response</u>: Objection - The Respondent already produce [*sic*] all such materials to Counsel pursuant to her investigation, including all the communications and voluminous amounts of emails.

Special Disciplinary Counsel issued requests 21 and 22 to gather more information about Respondent's defense that the estimates were made in good faith based on years of litigation experience. Request 21 asks for documents sufficient to show the amount of fees Respondent charged each hourly client since 2010 and the phase of litigation at which the client's case was resolved. This information would allow Special Disciplinary Counsel to investigate Respondent's defense that the estimates were based on his years of experience litigating employment cases. As an illustration, the second estimate stated that it would cost $17,900 in attorney's fees through summary judgment. Petition, ¶ 59. If Respondent had prior cases that settled post-summary judgment where the client had paid him no more than $17,900 in fees through summary judgment, that would support his defense. But, if all of Respondent's hourly clients spent amounts that well exceeded $17,900 to get through summary judgment, that would seriously undermine his defense. Because Respondent refused to provide any documents, Special Disciplinary Counsel has been deprived of the ability to probe this defense. She does not even know whether Respondent had many clients who paid him on an hourly basis.

The same is trust of request 22, which asks for all documents related to legal fee estimates Respondent has made in other cases. These documents would be probative of whether Respondent is making individualized calculations for his estimates and making them in good faith. For example, if all of the estimates are the same or nearly the same, this will indicate the estimates are not in good faith because the cases could not all be identical (number of witnesses, number of defendants, complexity, quantity of anticipated documents, etc.).

Requests 29 and 30 ask for all of documents related to the calculations Respondent claims he made and the estimates generally. Respondent previously stated in his interview that he did not make any calculations. Now, in his Answer, he claims he did. Answer, ¶ 55. Respondent has never provided any documents showing any calculations. Such documents would be helpful in evaluating the defense that these estimates were made based on calculations he performed using the specifics of this case, in good faith. However, without such documents, Special Disciplinary Counsel has been unable to evaluate the defense, which at this point consists of Respondent's contradicting assertions, and no more.

Request 31 seeks witness lists from J.H.'s case, and deals with a specific aspect of Respondent's defense, namely that the estimates were made based on an assumption that there would be a certain number of witnesses. Answer, ¶ 54. Two of Respondent's estimates state the number of witnesses used in the calculation. *See* May 5, 2014 Estimate (Exhibit 13); *see also* February 10, 2015 Estimate (Exhibit 14). The May 2014 estimate included four deposition witnesses and it is appears that the February 2015 estimate includes 10 witnesses. The production of witness lists from various points in the case would help evaluate the veracity of Respondent's assertion that the number of witnesses changed significantly, the timing of those changes, and whether the increase in number is something Respondent should have known at the start of the case.

Respondent asserts in his Answer that he did not include any expense for the expert witness in his estimate because the expert had agreed not to charge J.H. Answer, ¶ 67. This defense responds to the fact that the February 10, 2015 estimate did not include the cost of the expert, even though Respondent had already retained one. Exhibit 14. Requests 32 and 33 seek documents to investigate this assertion and the timing of the retention of the expert. The only

document Special Disciplinary Counsel has received on this point came from Respondent's billing file and showed an invoice that was sent to J.H. for the expert's time. See Harvey invoice (Exhibit 15). In other words, the only evidence is that the expert charged J.H. for his services. Respondent should not be permitted to assert as his defense that the expert agreed not to charge for his services when he refuses to provide additional documents to support that assertion. Otherwise, it is a poor use of Special Disciplinary Counsel's and the Hearing Panel's time.

Count VI addresses four different estimates made by Respondent, and the misleading nature of those estimates. Respondent's defenses to Count VI are varied, but primarily rely on his experience as an employment attorney and alleged demands made by J.H. that increased the costs of the case. These are defenses that could have been fully explored through discovery. But Respondent has prevented that effort, and should not be permitted to raise these defenses in the absence of producing discovery on these issues. Respondent will still be able to challenge the allegations in Count VI primarily by requiring Special Disciplinary Counsel to meet her burden of proof.

VI. COUNT VII: THE HEARING PANEL SHOULD NOT PERMIT RESPONDENT TO ASSERT THAT HIS FALSE STATEMENTS TO DISCIPLINARY COUNSEL WERE ACCIDENTAL BECAUSE HE HAS FAILED TO PROVIDE THE DOCUMENTS TO SUPPORT THAT ASSERTION.

Count VII alleges that Respondent violated V.R.Pr.C. 8.1(c) by knowingly making false statements to Special Disciplinary Counsel during the course of the investigation. The first false statement is related to the handling of G.A.'s retainer. Respondent gave Special Disciplinary Counsel a spreadsheet titled "Complete Billing File." Petition, ¶ 14. His assistant provided it to Special Disciplinary Counsel and stated it was the "full billing file." *See* March 20, 2020 e-mail (Exhibit 16). The spreadsheet did not show that the retainer had ever been removed from

Respondent's IOLTA account. A few months later, after he had time to review his file, Respondent told Special Disciplinary Counsel in a letter that G.A.'s retainer was placed in his IOLTA account when he received it and then transferred out of the account "at some point" in time to allow Respondent to deduct the outstanding balance of fees remaining after the representation ended. Exhibit 6. These statements were made to lead Special Disciplinary Counsel to believe that Respondent held the retainer in his IOLTA account until after the representation ended.

Both the spreadsheet and the letter provided false information. When Respondent's accounts were audited both in 2018 and 2020, it was clear that the retainer had been removed from the IOLTA account prior to November 1, 2017, the beginning of the First Audit time period. The First Audit revealed that Respondent has less than $10 in his IOLTA Account at the beginning of that time period. Respondent has never produced any documents showing the transfer of G.A.'s retainer from the IOLTA account. He never corrected this false statement. *See* V.R.Pr.C. 8.1(a)-(b) and comment 1.

The second false statement Respondent made during the investigation is in his July 24, 2020 letter, where he claimed that he already returned G.A.'s retainer to him at the time the letter was written. This statement was false, as the retainer was not returned for another two weeks.

As a defense to these allegations, Respondent asserts that each statement was not intentionally false. As it relates to the first claim regarding when the retainer was transferred out of his IOLTA, he asserts that the information was in his billing records all along, that he was not trying to hide it, and therefore providing the spreadsheet and stating that it was the complete or full billing file was not meant to be misleading. Answer, ¶ 16.

For the second claim, Respondent's defense is that he had not looked at the file closely so his statements about the return of the retainer were unintentionally false based on a faulty recollection. Answer, ¶ 26.

Respondent asserts as a general defense to both claims that "[i]t would make no sense to lie to counsel given the documentation in her possession or that she could acquire during her investigation." Answer, Count VII. This defense appears to touch on the materiality requirement. This assertion is important here because Respondent's actions in the course of discovery have specifically deprived Special Disciplinary Counsel from properly investigating Respondent's defenses by obtaining the documents during her investigation she would need to probe many of Respondent's assertions.

The following requests relate to Respondent's defenses to Count VII:

10. Request: Produce all Documents related to G.A.'s retainer, including without limitation Documents reflecting where it was deposited, Documents reflecting any transfer of the retainer funds at any time, Documents reflecting Your record-keeping for those funds, and Documents reflecting Your return of the retainer funds to G.A. in 2020.

    Response: Objection - The documents have already been produced to Counsel as part of the Kainen audit documentation, the settlement and the conclusion of the PRB 2019-006 matter.

24. Request: 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 - Respondent reviewed correspondence with G.A. that has already been produced to Counsel and spoke with the client, as observed in the referenced letter.

It is undisputed that Respondent made statements that were incorrect in the course of the investigation. Respondent does not assert that the statements he made were actually true. Instead, he asserts that the false statements he made during the investigation were inadvertent or the result of not having looked at his files closely enough.

Request 10 asks for all documents related to the handling of G.A.'s retainer. These documents would help evaluate Respondent's defense that any false statements were unintentional. Respondent has refused to give Special Disciplinary Counsel those documents that would show exactly what happened to the retainer. If, for example, these documents showed that G.A.'s retainer was in fact returned to the IOLTA account after the 2019 Decision but then moved at a later date by someone else in Respondent's office, it would support Respondent's assertion that his statement was just a mistake. If the documents showed the retainer was never placed in the IOLTA account, it would tend to show the falsehood as is knowingly.

Without all documents showing the exact transfers of G.A.'s retainer, it is impossible for Special Disciplinary Counsel to probe Respondent's defense that he did not mean to misrepresent the timing of the transfer of G.A.'s retainer. Without those documents, it is unclear where he deposited the retainer, whether he or someone else moved the retainer, the date it was removed from the IOLTA account, to which account it was removed, whether there were any communications with anyone at his firm about transferring the retainer and whether there was any accounting at all of that transfer. Respondent should not be able to assert that he provided false information unintentionally, when he chooses not to provide Special Disciplinary Counsel with any of the discovery she requested to probe the veracity of that claim.

Request 24 relates specifically to the false statements made in the July 24, 2020 letter regarding the return of G.A.'s retainer. That letter responded to Special Disciplinary Counsel's letter seeking additional information after her interview of Respondent on approximately June 30 and July 2, 2020. The letter from Respondent stated: "Since you reminded me about the outstanding balance [during the interview], we have remitted [G.A.] a refund for the retainer, minus the $954.98 balance (or $1,545.02)." Exhibit 6. This statement was false. Respondent

now claims in his answer that he "he had not closely tracked or reviewed the transactions" when he wrote the letter. He again states that it would make no sense to mislead Special Disciplinary Counsel "as she would receive all the relevant documentation." Answer, ¶ 26.

Special Disciplinary Counsel has not received all of the relevant documentation. Without knowing what documents Respondent reviewed prior to sending the July 24 letter, it is difficult to probe the veracity of this statement, other than to question Respondent on his memory. It had only been three weeks since Special Disciplinary Counsel's interview of Respondent caused him to look into the matter of G.A.'s retainer in the first place. It is hard to believe that he could not remember whether he himself had written a check to G.A. in those three weeks. Respondent should not be able to assert that his false statement was unintentional while not providing any discovery that provides information about his state of mind and the information in his possession at the time he wrote the false statements.

A key question in any allegation of false statements is the state of mind of the person making the statements. The statements at issue in Count VII are not negligently false statements. They are knowingly false statements based on all of the evidence available to Special Disciplinary Counsel. Had Respondent wanted to prove they were negligently made, he could have provided documents to support that assertion. He should not be permitted to present that argument at the hearing without having made those disclosures.

Conclusion

Special Disciplinary Counsel asks the Hearing Panel to preclude Respond from asserting the defenses set forth above because he has refused to provide any discovery in this proceeding. Special Disciplinary Counsel will raise at a separate time the prejudice to her sanctions case caused by this lack of production.

Dated: Burlington, Vermont
October 15, 2021

/s/ Navah C. Spero

Navah C. Spero, Esq.
Gravel & Shea PC
76 St. Paul Street, 7th Floor, P.O. Box 369
Burlington, VT 05402-0369
(802) 658-0220
nspero@gravelshea.com
Special Disciplinary Counsel

gravel & shea | ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

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

Telephone 802.658.0220
Facsimile 802.658.1456
www.gravelshea.com

July 14, 2020

Navah C. Spero
Shareholder
nspero@gravelshea.com

E-MAIL

Norman Watts, Esq.
Watts Law Firm, PC
19 Central Street, # 1005
Woodstock, VT 05091

Re: PRB File No. 2020-011

Dear Norman:

Following up on our interview in the above referenced matter, please provide the following additional materials:

- A bank record reflecting the receipt of and current status of the retainer paid by [redacted] G.A. [redacted], including the type of account it is currently held in.
- Phone, e-mail or other similar record reflecting your office's last communication with G.A. [redacted] about their retainer or any fees you claim are outstanding.
- The full bill for October 2018.
- All copies and versions of the client intake form and any notes or e-mails related to the intake form for G.A. [redacted]

During the interview, there were two questions that required further review of the file. Specifically, please provide responses to the following two questions:

- Please explain why you chose not to file a response to the Motion for Judgment on the Pleadings to dismiss Count II, Breach of the Implied Covenant of Good Faith and Fair Dealing.
- Please explain why you chose not to file the [redacted] and [redacted] affidavits. In your response, please explain who each of them were in the context of the case.

Please provide your response no later than July 21, 2020.

Very truly yours,

GRAVEL & SHEA PC

Navah C. Spero

NCS:lbb

EXHIBIT
1

gravel & shea | ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

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

Telephone 802.658.0220
Facsimile 802.658.1456
www.gravelshea.com

Navah C. Spero
Shareholder
nspero@gravelshea.com

August 6, 2020

E-MAIL

Norman Watts, Esq.
Watts Law Firm, PC
19 Central Street, # 1005
Woodstock, VT 05091

Re: PRB File No. 2020-011

Dear Norman:

A few follow up questions to your letter of July 24, 2020.

First, you stated in your letter that you have remitted $1,545.02 to G.A. [redacted] sometime prior to your July 24 letter. Can you send me the record of that payment to G.A. [redacted]? If any communication was provided with that payment, please provide that, as well.

Second, please send me a phone record and file notation reflecting the two phone conversations you refer to on page 1 of your letter, the first one occurring immediately after the Court ruled against G.A. [redacted] on the summary judgment motion and the second conversation with G.A. [redacted] sometime thereafter.

Third, please provide documentation of the transfer of G.A. [redacted]'s retainer funds from your trust account to your operating account that you reference in your July 24 letter. That documentation should include a bank statement, a bank form showing the transfer and entries on your account ledgers.

Fourth, in your letter you state "The issue was also encompassed in the 2019 PRB audit that resulted in sanctions." Which issue specifically are you referring to?

Fifth, please provide me your current standard engagement letter.

Sixth, please disclose all dates upon which you reconciled your trust account(s) since February 2019 and show me the record of that reconciliation that includes all elements listed in V.R.P.C. 1.15A(a).

EXHIBIT
2

Please provide these documents no later than August 14, 2020.

Very truly yours,

GRAVEL & SHEA PC

Navah C. Spero

NCS:lbb

Gmail by Google

Margaux Reckard <mreckard@wattslawvt.com>

G.A. [redacted] v. [redacted] - Motion for Judgment on the Pleadings [Count Two] and Motion for Partial Summary Judgment

2 messages

[redacted]

3 attachments

[redacted]'s Motion for Judgment on the Pleadings on Count Two 4pgs.pdf
134K

[redacted]'s Motion for Partial Summary Judgment.pdf
217K

[redacted]'s Statement of Undisputed Material Facts in Support of Partial Motion for Summary Judgment.pdf
2322K

Norman Watts <nwatts@wattslawvt.com> Mon, Oct 15, 2018 at 1:37 PM
To: G.A. [redacted], Margaux Reckard <mreckard@wattslawvt.com>

G.A. - [redacted] filed motions to dismiss the case (attached). I haven't reviewed them yet. If unanswered, the claims will be dismissed.
We must prepare opposition to these motions immediately.
Unfortunately, once again, your account is in arrears, this time by $5,021.73. So we are unable to prepare the oppositions until you account is current.
NW

Norman E. Watts, Esq.
Watts Law Firm PC
Civil Litigation
19 Central Street/PO Box 270
Woodstock VT 05091-0270
802-457-1020

EXHIBIT
3

[Quoted text hidden]

3 attachments

[redacted]'s Motion for Judgment on the Pleadings on Count Two 4pgs.pdf
134K

[redacted]'s Motion for Partial Summary Judgment.pdf
217K

[redacted]'s Statement of Undisputed Material Facts in Support of Partial Motion for Summary Judgment.pdf
2322K

STATE OF VERMONT CIVIL DIVISION

SUPERIOR COURT
RUTLAND UNIT

G.A. [redacted]

-vs-

[redacted]

Docket No.: [redacted]

D E P O S I T I O N
of
G.A. [redacted]

taken on the 26th of October, 2017, at 10:09 a.m., at Watts Law Firm, P.C., 19 Central St., Woodstock, Vermont.

Lisa Hindes-Moody, Court Reporter
Kate Cone, Videographer
Also Present: [redacted]
(Via phone)

APPEARANCES:
NORMAN E. WATTS, Esquire, of the firm of Watts Law Firm, P.C., 19 Central St., Woodstock, Vermont 05091, on behalf of the Plaintiff.

[redacted]

EXHIBIT
4

WATTS LAW FIRM
A Professional Corporation

Norman E. Watts, Esq.

Admitted:
Vermont
District of Columbia

Margaux Reckard, Paralegal
Teo Zagar, Paralegal

Website: WattsLawVT.com
Email: info@wattslawvt.com

19 Central Street
P. O. Box 270
Woodstock VT 05091-0270
Telephone: 802-457-1020
Fax: 802-432-1074

November 9, 2018
(Transmitted via email to G.A. [redacted])

G.A. [redacted]

STATEMENT FOR LEGAL SERVICES

For services and expenses incurred in connection with lawsuit for the month of October 2018

Services:

6.1 Hours of Attorney Time (@ $300/hr).....	$ 1,830.00
5.1 Hours of Paralegal Time (@ $60/hr).....	$ 306.00
Total.....	$ 2,136.00

Total Current Charges.....	$ 2,136.00
Previous Balance (10/15/18)	$ 2,580.98
Payments (10/26/18 check).....	$ 2,200.00
Net Previous Balance.....	$ 380.98
Total Balance/Balance Due.....	**$ 2,516.98**

Net: 10 Days **[Major Credit Cards Accepted]** **Thank You!**

EXHIBIT
5

WATTS LAW FIRM PC

CLIENT BILLING RECORD

CLIENT: G.A. [redacted] **| PROVIDER: N.WATTS, Esq.**

PERIOD: OCTOBER 2018

Date	Client	Action	Time
10/26/18	G.A.	Email to client re sjm & status	.1
10/30/18	G.A.	Review deft's discov responses; Prepare Requests to Admit for deft's response	.6
10/31/18	G.A.	Review deft's sjm package; research legal points in deft's sjmemo; emails with client; prepare plntf's statement to sjm & dismissal motion	5.4
Oct. 2018	G.A.	**Legal Services for One Month**	**6.1 hrs**

WATTS LAW FIRM PC

CLIENT BILLING RECORD

CLIENT: G.A. [redacted]

PROVIDER: MARGAUX RECKARD, PARALEGAL

PERIOD: OCT. 2018

Date	Client	Action	Time
10/10 & 10/11/18	G.A. [redacted]	Emails w/ client re: [redacted] Coord. re: affid.	.25
10/15/18	G.A. [redacted]	Org. & Comm. to client of SJM filings	.2
10/17/18	G.A. [redacted]	Conversations w/ G.A. [redacted] re: SJM	.25
10/23/18 – 10/24/18	G.A. [redacted]	Emails w/ client re: SJM	.2
10/30/18	G.A. [redacted]	Emails w/ client re: [redacted] affids	.2
10/31/18	G.A. [redacted]	Consultation w/ [redacted] revising affid.	.5
10/31/18	G.A. [redacted]	Proof & prep of SJM Stmt of Facts w/ client suggestions; Proof/prep/transmittal of Admits to defense	3.5
Oct. 2018	G.A. [redacted]	**Paralegal Services for One Month**	**5.1 Hrs**

WATTS LAW FIRM
A Professional Corporation

Norman E. Watts, Esq.

Admitted:
Vermont
District of Columbia

Margaux Reckard, Paralegal

Website: WattsLawVT.com
Email: info@wattslawvt.com

19 Central Street
P. O. Box 270
Woodstock VT 05091-0270
Telephone: 802-457-1020
Fax: 802-432-1074

July 24, 2020

VIA EMAIL ONLY

Navah C. Spero, Esq.
Gravel & Shea, PC
76 St. Paul Street
PO Box 369
Burlington, VT 05402-0369
nspero@gravelshea.com

Re: PRB File No. 2020-011 (G.A.)

Dear Navah:

I am responding below to your July 14, 2020 letter requesting several additional items related to the above-referenced matter.

Documents

1) A bank record reflecting the receipt of and current status of the retainer paid by Mr. G.A. , including the type of account it is currently held in.

When the litigation ended with the SJM decision, I spoke with G.A. by phone about the status of his account, indicating that he owed Watts Law Firm a balance of $954. I asked him if he wished to deduct the amount from his retainer and send him the balance. He wanted to discuss with his wife. I never heard back from him, though I did speak to S.A. about the outstanding balance/retainer refund. She also did not provide an answer to my question about how they preferred to net out the balance. I tried to reach her again, but she did not return my call, and we were at a standoff.

At some point, I transferred the amount to the operating account to deduct the expenses so at least that portion was settled.

Since you reminded me about the outstanding balance, we have remitted Mr. G.A. a refund for the retainer, minus the $954.98 balance (or $1,545.02). The issue was also encompassed in the 2019 PRB audit that resulted in sanctions.

A copy of G.A. ' retainer checks are enclosed with this letter, deposited August 17 and August 18, 2017. Unfortunately, we do not have a bank record reflecting the deposits because our bank's online record only goes back eighteen months; I have ordered the deposit record.

EXHIBIT
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2) Phone, e-mail or other similar record reflecting your office's last communication with G.A. about their retainer or any fees you claim are outstanding.

We have record of a reminder to G.A. in March 2018 that the retainer could not be used to offset costs. Please refer to the enclosed March 27, 2018 email.

Our final communication with them regarding outstanding fees is also enclosed (please refer to the February 12, 2019 email).

3) The full bill for October 2018

We have provided this to you previously, but the bill and the accompanying notice to the client is also enclosed here.

4) All copies and versions of the client intake form and any notes or e-mails related to the intake form for G.A. .

G.A. contacted us twice – once in 2015, when our firm was too busy to take on additional cases, and again in 2017 after G.A. had been handling his matter *pro se*. All related documents, per your request, are enclosed herewith.

Other Requests

5) Please explain why you chose not to file a response to the Motion for Judgment on the Pleadings to dismiss Count II, Breach of the Implied Covenant of Good Faith and Fair Dealing.

To sustain a GFFD claim, a plaintiff is required to produce evidence of the defendant's bad faith conduct, here, in the promotion decision by interviewers who were fellow machinists. The client alleged that defendant always preserved the ballots interviewers completed. That was key evidence to defendant's bad faith conduct. No such documentary evidence was produced in discovery, contradicting the client's claim that the evidence was contained in the actual ballots that were always retained in defendant's records. But the ballots were not produced and defendant's witnessed described that 1) It did not always retain the ballots, there was no uniform practice, and, anyway, 2) it had misplaced or discarded the ballots in this instance long before the lawsuit was filed. Absent the ballots, we had only plaintiff's allegations against the defendant's multiple testimonies that there was no set practice concerning ballot retention.

Further, the claim requires different conduct than the evidence supporting the implied contract claim, making the ballots especially necessary because there was no other evidence of bad faith conduct – again, contrary to the plaintiff's claim that there was a management conspiracy to prevent his promotion.

Hence, the claim was unsupportable. To defend it, I concluded, would only impinge the client's credibility with the court. It was my judgment call not to oppose the dismissal of the GFFD claim.

6) Please explain why you chose not to file the [redacted] affidavits. In your response, please explain who each of them were in the context of the case.

Concerning my decision not to include the [redacted] affidavits with our defense to the SJM, the key issue in the claims before the court, implied employment contract and age discrimination, were unrelated to the plaintiff's competence. The individuals who submitted the affidavits were only able to support the plaintiff's competence as a machinist. Plaintiff's competence was not an issue in the SJM process.

The defendant's witnesses testified, for the most part, that he was competent and it left the decision up to the interviewers, not management's, evaluations of his competence. Hence, the affidavits were not relevant or material to the claims to be evaluated by the court. It was my judgment that the affidavits were useless and, perhaps, distracting to the central issues.

You have my email address should you wish to discuss any of these items further. Thank you.

Sincerely,

Norman E. Watts, Esq.

NEW:mr

Enclosures:

1. G.A. – Retainer Fee Payments
2a. Email re: retainer, 3/27/18
2b. Email re: outstanding expenses, 2/12/19
3. G.A. October 2018 billing statement & email, 11/9/18
4. G.A. – 2015 & 2017 intakes

WATTS LAW FIRM
A Professional Corporation

Norman E. Watts, Esq.

Admitted:

Vermont
District of Columbia

Stefan Ricci, Esq., Of Counsel
Jennifer Meagher, Law Clerk

Website: WattsLawFirmPC.org

Email: WattsLawFirmPC@gmail.com

19 Central Street
P. O. Box 270
Woodstock VT 05091-0270
Telephone: 802-457-1020
Fax: 802-438-1030
Toll Free: 800-544-8555

May 12, 2014

(Transmitted via email to J.H. [redacted])

J.H. [redacted]

Re: J.H. [redacted]

Dear J.H. :

We appreciate your selecting this firm to prosecute your lawsuit against [redacted] for discrimination and retaliation. Based on your reports to date, it appears you have a solid basis for the lawsuit and for acquiring a monetary award from your former employer.

As we discussed, we are primarily plaintiff's counsel, seeking remedies for individuals who have been disadvantaged by arrogant employers, partners or others. A summary of our experience is provided on our website (address above).

Naturally, you must compensate the firm at our standard hourly rate, $250 per hour for attorney services and $60 per hour for law clerk services, when billed each month, plus reasonable litigation expenses. The fee arrangement does not encompass an appeal or retrial of the case. We accept major credit cards. For your convenience, a credit authorization is attached.

In addition, you will be responsible for litigation expenses that must be paid as they are incurred. Expenses include filing fee ($262.50 for state court), deposition costs, travel and related activities. They may also include cost of an expert, if one is necessary. We will notify you prior to committing to such expenses so that you may advance the funds. These expenses are spread out over the year or so of the litigation.

As we also discussed, in order for us to conclude our legal research, a $5,000 retainer is required, representing your initial investment in the case. The retainer ensures that we will immediately begin our investigation into the potential claims we discussed, prepare a legal complaint for the court and serve it upon [redacted]. We will also launch discovery efforts, interview witnesses, research new legal precedents and be available for consultations at mutual convenience.

If we decide not to pursue the action, the balance of the retainer will be refunded to

EXHIBIT
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you, after deduction for the time devoted to the legal research. If we decide to proceed with legal action, the retainer will be maintained as a credit on your account throughout the lawsuit process. It is refundable out of the net proceeds of a settlement or jury determination.

If you decide to proceed, please confirm your decision below by dating and signing the original letter and returning it to us with your retainer or signed credit authorization form. Your signature on the returned letter signifies that you agree to these terms. Please understand that the signed letter becomes an **Agreement for Legal Services**.

In addition to the financial and procedural requirements outlined herein, by signing this letter, you agree to cooperate fully with our efforts on your behalf. Your cooperation includes providing us with all documents and related materials concerning the circumstances of your employment and including your W-2's ~~and tax returns for the previous three years.~~ jmh

In return for the fee compensation enumerated above, we agree to devote our best professional efforts to your case. Although it appears you have a strong case, based on your initial reports, in litigation there are **no guarantees**. But we do believe you have a reasonable probability of succeeding.

Either of us may terminate this Agreement unless judgment has been rendered or a settlement has been achieved. In those instances, this agreement and the fee arrangements are binding. Otherwise, if termination occurs, other than after judgment or settlement, you must pay for the services provided up to the point of termination, at our standard hourly rate, reimburse us for expenses to date and pay for extra services and/or expenses required to transfer the matter to another attorney or back to you if you chose to pursue the matter *pro se*. If either event occurs, we will certainly release your files in an orderly manner as you direct, assuming your account with the firm is current.

You deserve a remedy. We look forward to working with you. If you have questions, please telephone or send me an email. Thank you.

Sincerely,

Norman E. Watts

NEW:se

FOREGOING AGREED:

(Please date and sign)

Date May 13, 2014

Acceptance:

J.H. [redacted]

[redacted]

[redacted]3839

Social Security Number

No more

Margaux Reckard <mreckard@wattslawvt.com> Wed, May 30, 2018 at 2:16 PM
To: G.A. [redacted]

Thank you, G.A.! I appreciate your patience today.

On Wed, May 30, 2018 at 2:05 PM, G.A. [redacted] wrote:
> S.A. just informed me that $3,600 , consisting of two different checks are in the mail. The remaining amount Will be sent from this weeks paycheck or if our income tax returns come on. Ty
>
> Always a pleasure- sincerely,
> G.A. Sent from my iPhone
>
> On May 30, 2018, at 1:27 PM, Margaux Reckard <mreckard@wattslawvt.com> wrote:
>
>> G.A.:
>>
>> Do not misunderstand me or Norman. Despite the fact that you still work for [redacted], the process of communication that we must follow for requesting these deponents is through counsel -- and as you know, we don't know what conversations [redacted] is having with [redacted].
>>
>> Our concern is that you are delinquent on your billing -- and while we wait for defense to give us final word on when the requested deponents are available, we are notifying you that you should bring your account up to date so that we can continue to represent you and pursue these depositions.
>>
>> Thank you for your understanding,
>> Margaux
>>
>> On Wed, May 30, 2018 at 1:14 PM, G.A. [redacted] wrote:
>>> It seems like you guys are buying into some of [redacted] lies. There's nobody on the off shift that we requested deposition? That's a blatant lie? I don't think there's a conspiracy, I just think four yrs is a long time to drag a loyal employee through this crap without coming clean.
>>>
>>> Always a pleasure- sincerely,
>>> G.A. Sent from my iPhone
>>>
>>> On May 30, 2018, at 12:52 PM, Margaux Reckard <mreckard@wattslawvt.com> wrote:
>>>
>>>> G.A.,
>>>>
>>>> I'm not concerned about you sending me emails -- Norman was simply clarifying the deposition scheduling, including that we cannot depose any of the witnesses until your account is current. I'll forward you the email.
>>>>
>>>> Please don't think that you are bothering me -- it's my job to communicate to Norman that you are feeling anxious about [redacted]s delay. It's also my job to make sure that your account is current. Both exist at the same time; I hope you'll understand.
>>>>
>>>> Thanks for touching base,
>>>> Margaux
>>>>
>>>> On Wed, May 30, 2018 at 12:49 PM, G.A. [redacted] wrote:
>>>>> I'm sorry I sent so many msg today. I understand nw sent S.A. an email today saying that he's never had a client like " me"....he must have ccd wrong address, because I never got it. I won't send any more msg, I promise. It's been almost 4 yrs for me and a lot of lost money. Ty
>>>>>
>>>>> Always a pleasure- sincerely,
>>>>> G.A. Sent from my iPhone
>>>>
>>>> --
>>>> Margaux Reckard
>>>> Paralegal
>>>> Watts Law Firm, PC
>>>> PO Box 270
>>>> Woodstock, VT 05091
>>>> 802 457-1020

--
Margaux Reckard

EXHIBIT
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Paralegal
Watts Law Firm, PC
PO Box 270
Woodstock, VT 05091
802 457-1020

--

Margaux Reckard
Paralegal
Watts Law Firm, PC
PO Box 270
Woodstock, VT 05091
802 457-1020

Gmail by Google

Margaux Reckard <mreckard@wattslawvt.com>

Re: STATEMENT OF JULY 2, 2015

Norman Watts <nwatts@wattslawvt.com> Thu, Jul 9, 2015 at 10:11 AM
To: J.H. [redacted], Margaux Reckard <mreckard@wattslawvt.com>

J.H. - You are correct about my commitment not to charge for commute time. It's unprecedented so I forgot about it. The commutes were:

ENE - 1.5 x 2 = 3 hrs.
Depos - 45mins x 2 x 2 = 3 hrs.
You may deduct 6 x $250 = $1500.

Thanks for reminding me.

Re: The 6/26 telephone conf, the actual time devoted to the call was .9 for me b/c I reviewed the file and documents related to the topic of the conf.
Re: The ENE statements, I do not find where you were double billed. Even if your were, it is often necessary to review such important communications more than once.

It is ok to transmit payment on 7/15.

NW

Norman E. Watts, Esq.
Civil Litigation
Watts Law Firm PC
19 Central Street/PO Box 270
Woodstock VT 05091-0270
802-457-1020

[SP3]

On Tue, Jul 7, 2015 at 2:33 PM, J.H. [redacted] wrote:

> Norman,
>
> June was a busy month. Could I ask you some questions about the statement I received?
>
> It's not clear to me whether I am billed for your commute time to ENE and depositions. When we had a telephone conference on February 28, 2015, you mentioned (in regards to possibly obtaining affidavits) that you would charge me for mileage, but not your commute time. Could you please clarify your policy regarding legal fees for commutes?

EXHIBIT 9

Plaintiff's ENE statement – I sent you my statement on the morning of June 1 that you read while at Dinse. I don't think I should be billed twice.

June 26 telephone call – I logged .75 minutes instead of .9 as stated. You don't need to make an adjustment for this, but for future calls we'll confirm time during the phone call. (I got into the habit of keeping time with Anne Weils, and then sending her a check for the consultation to save her the work of billing me.)

If it's okay with you, I'll pay the firm on July 15. I usually get your statements on the 5th, and pay the firm ten days later since this is past the credit card statement closing date. (Otherwise I'll be billed by the credit card within a few days.)

Thank you for your consideration,

J.H.

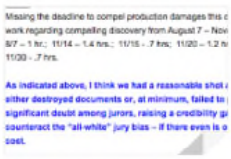
J.H. [redacted] 6/6/16

to Norman

Norman,

Here is a reminder about credit for $650.00 regarding document production cited from your email of 2/21/2016.

Thanks,
J.H.



Missing the deadline to compel production damages this c
work regarding compelling discovery from August 7 – Nov
8/7 – 1 hr.; 11/14 – 1.4 hrs.; 11/15 - .7 hrs; 11/20 – 1.2 h
11/20 - .7 hrs.

As indicated above, I think we had a reasonable shot
either destroyed documents or, at minimum, failed to
significant doubt among jurors, raising a credibility ga
counteract the "all-white" jury bias – if there even is a
cost.

Norman Watts <nwatts@wattslawvt.com> 6/7/16

to me

J.H. - I've been quite generous with credits even where I was required to pay extra for housing and meals. But I think this request is unreasonable.
Concerning the discovery, I reasonably believed that the parties had breached the internal deadlines and discovery could proceed so long as we did not violate the trial ready deadline. It is a practice here in VT and elsewhere. I expressed this view in the hearing.
Frankly, I think Judge Reiss was truly unreasonable in her ruling. (As with her decision-making in the entire case). But it's her discretion and the appellate won't overrule her.
Further, we had no understanding that you would engage in such extensive work nor that there would be a reverse compensation formula.
I am sorry but this is my belief based on general litigation practice.

J.H. [redacted] 6/7/16

to Norman

Norman,

I sincerely hope that the three clients whose summary judgments you were working on at the time the motion to extend was due fared better than me.

EXHIBIT

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Missing the deadline to compel production damages this case – I'm asking that you credit me with $1,300.00 for work regarding compelling discovery from August 7 – November 30:
8/7 – 1 hr.; 11/14 – 1.4 hrs.; 11/15 - .7 hrs; 11/20 – 1.2 hrs.; 11/29 - .2 hrs.,
11/30 - .7 hrs.

As indicated above, I think we had a reasonable shot at succeeding and we made the point that GC has either destroyed documents or, at minimum, failed to properly maintain them. In my view, this will create significant doubt among jurors, raising a credibility gap for GC – a significant disadvantage at trial. It will counteract the "all-white" jury bias – if there even is one. Nevertheless, I will agree to credit ½ have the cost.

Gmail by Google

Garth Dunkel <garthdunkel@wattslawvt.com>

Your Dartmouth Coach Online Ticket Order 3102973

1 message

Dartmouth Coach Online Ticketing <ticketsales@dartmouthcoach.com> Mon, Aug 10, 2015 at 10:45 AM
Reply-To: Dartmouth Coach Online Ticketing <ticketsales@dartmouthcoach.com>
To: info@wattslawvt.com

Thank you for purchasing your travel tickets online.

Your order information is printed below for your records. Your tickets will not be usable until the effective date of travel you chose.

You ***must*** print your boarding pass and present it to the driver. A valid boarding pass will have a bar code in the left margin.

Please use this link to print out your boarding pass and itinerary:
https://webstore.dartmouthcoach.com/?o=3102973&h=x95VAxu3LQOVRcbf0kkUTIZ2do5UUzGO

Billing Information
NORMAN WATTS
PO Box 270
Woodstock, VT 05089

Phone: --
Mobile: --
E-mail address: info@wattslawvt.com

Order Number: 3102973
Order Processed By: Dartmouth Coach (800-637-0123)
Payment Type: Credit Card Online (MasterCard ****-****-****-4937)
Authorization Code: 05241B
Message: This transaction has been approved.
AVS: N

Product	Cost
NORMAN WATTS's ticket **One Way, Adult**: A fee will be charged for any refundable ticket. Tickets purchased online for New London NH are non-refundable. From Boston / South Station, MA to Lebanon, NH Departing on 08/15/2015 11:30 AM, DMC 4	$33.00

EXHIBIT
11

Gmail by Google

Garth Dunkel <garthdunkel@wattslawvt.com>

Your Dartmouth Coach Online Ticket Order 3102955

1 message

Dartmouth Coach Online Ticketing <ticketsales@dartmouthcoach.com> Mon, Aug 10, 2015 at 10:39 AM
Reply-To: Dartmouth Coach Online Ticketing <ticketsales@dartmouthcoach.com>
To: wattslawfirmpc@gmail.com

Thank you for purchasing your travel tickets online.

Your order information is printed below for your records. Your tickets will not be usable until the effective date of travel you chose.

You ***must*** print your boarding pass and present it to the driver. A valid boarding pass will have a bar code in the left margin.

Please use this link to print out your boarding pass and itinerary:
https://webstore.dartmouthcoach.com/?o=3102955&h=x95VAxu3KQOVRcbf0kkUTIZ2do5UUzGO

Billing Information
NORMAN WATTS
PO Box 270
Woodstock, VT 05091

Phone: --
Mobile: --
E-mail address: wattslawfirmpc@gmail.com

Order Number: 3102955
Order Processed By: Dartmouth Coach (800-637-0123)
Payment Type: Credit Card Online (MasterCard ****-****-****-4937)
Authorization Code: 07855B
Message: This transaction has been approved.
AVS: Z

Product	Cost
NORMAN WATTS's ticket **One Way, Adult**: A fee will be charged for any refundable ticket. Tickets purchased online for New London NH are non-refundable. From Lebanon, NH to Boston / South Station, MA Departing on 08/11/2015 03:20 PM, DMC 11	$33.00

WATTS LAW FIRM
A Professional Corporation

Norman E. Watts, Esq.

Admitted:
Vermont
District of Columbia

Stefan Ricci, Esq., Of Counsel
Anthony Roisman, Esq., Of Counsel
Margaux Reckard, Paralegal
Garth Dunkel, Paralegal

Website: WattsLawVT.com
Email: info@wattslawvt.com

19 Central Street
P. O. Box 270
Woodstock VT 05091-0270
Telephone: 802-457-1020
Fax: 802-432-1074

September 14th , 2015
(Transmitted via email to: J.H. [redacted])

J.H. [redacted]

STATEMENT FOR LEGAL SERVICES

For services and expenses incurred in connection with employment lawsuit August 2015-REVISED

Services:

33.5 Hours Attorney Time ($250/hr)..... $ 8,300.00
39.25 Hours Paralegal Time-Garth ($25/hr).....$981.25
10.00 Hours Paralegal Time-Margaux ($25/hr).$250.00
Total..... $ 9,531.25

Expenses:

Boston:

WONG Associates Court Reporters Invoice ([redacted] including fees) ..... $ 1,421.20
Dartmouth Bus Fare (to & from Boston)..... $ 66.00
Boston Hotel expense ($ 452.08 x three night stay) ..... $ 1,356.24
Meals ($100 per day x three days) ..... $ 300.00
Parking expense ..... $ 12.00

Rochester:

Mileage to & from Manchester, NH (98 miles x 2 = 196 x 57. cents per mile) ..... $ 112.70
Airfare expense ..... $ 593.15
Rochester Hotel expense ..... $ 259.00
Taxi expense ($30, $30, $8)..... $ 68.00
Meals ..... $ 82.00

EXHIBIT
12

Parking Garage expense ..... $ 31.00

Printing for depositions exhibits:

[redacted] depo (575 pages x .20/page)..... $ 115.00
[redacted] (244 pages x .20/page) ..... $ 48.80
[redacted] (344 pages x .20/page) ..... $ 66.80
[redacted] (393 pages x .20/page) ..... $ 78.60

Transcripts:

Deposition of [redacted] ..... $ 971. 75
Deposition of [redacted] ..... $ 884.40

Total..... $ 6,466.64

Total Current Charges.....$ 15,997.89

Previous Balance..... $ 3,775.50

Payments..... $ 3,775.50

Net Previous Balance..... $ 0.00

Total Balance/Balance Due..... $ 15,997.89

CLIENT SERVICES RECORD/INVOICE

CLIENT: J.H.

PROVIDER: N. WATTS

AUGUST 2015

DATE	CLIENT	ACTION	TIME
8/2/15	J.H.	Review depo outline (20pp) & exhibits from JH	1.2
8/3/15	J.H.	Review JH outlines for week's depositions	2.4
8/4/15	J.H.	Review new docts from JH & message re student performance; Depositions @ Montpelier (not including travel time)	9.2
8/5/15	J.H.	Depositions @ Montpelier (not including travel time); JH comments re depo, etc. (7pp)	7.6
8/6/15	J.H.	JH comments re (4pp) & (8pp) depos; Scheduling emails w/def counsel & JH	.7
8/7/15	J.H.	Review def counsel discovery letter again & JH analysis of productions & def counsel response; email to JH re same; also review file/docts for next week's depositions; review docts from JH for Harvey; review JH depo notes for ; review comp rev to prep list of criticisms; review depo; JH comments re depo (17pp), depo exhibit index	2.2
8/8/15	J.H.	Review JH depo draft (35pp)	1.3
8/9/15	J.H.	Review JH *Poste mortem* email	.1
8/10/15	J.H.	Review/revise depo outlines & exhibits for this week's depos & exhibits – revised (12pp), (14pp) &; JH comp. rev. for dep; JH emails w/rebuttals & review rebuttals (4@27pp)	3.4
8/11/15	J.H.	Depo prep; review JH's revised depo outline (37pp) & exhibits; further depo prep en route to Boston (travel time not billed); JH emails re scheduling, union response to grievance & witness change	2.4
8/17/15	J.H.	Review depo draft from JH; docts for P.Harvey	.8
8/19/15	J.H.	Emails w/def counsel re Rochester depo of & w/Harvey re deft's payment of depo fee, inquire of def counsel	.4
8/20/15	J.H.	Emails w/def counsel re sched for depo; emails w/P.Harvey & def counsel re depo fee	.4
8/23/15	J.H.	Review draft outline from JH (14pp) + exhibits	.8
8/30/15	J.H.	Review misc exhibits from JH including bio, org chart, etc.	.6
August 2015	J.H.	**Legal Services for One Month**	**33.5 Hrs.**

WATTS LAW FIRM, PC

CLIENT STATEMENT FOR PARALEGAL SERVICES

CLIENT: J.H. [redacted]

PROVIDER: GARTH J. DUNKEL, PARALEGAL

PERIOD: AUGUST 2015

DATE	CLIENT	ACTION	TIME
8/3/15	J.H. [redacted]	[redacted] EXHIBIT PREP/PRODUCTION	9.5 HRS
8/4/15	J.H. [redacted]	[redacted] EXHIBIT PREP/PRODUCTION	11.5 HRS
8/10/15	J.H. [redacted]	[redacted] EXHIBIT PREP/PRODUCTION	7.5 HRS
8/11/15	J.H. [redacted]	[redacted] & [redacted] EXHIBIT PREP/PRODUCTION	8 HRS
8/27/15	J.H. [redacted]	[redacted] EXHIBIT PREP/PRODUCTION	2.75 HRS
AUGUST 2015	J.H. [redacted]	**PARALEGAL SERVICES FOR ONE MONTH**	**39.25 Hrs.**

Watts Law Firm, PC
Legal Services for August 2015
Client: J.H. [redacted]

Margaux Reckard, Paralegal

Date	Client	Services	Time
8/3	J.H. [redacted]	Prep exhibits for [redacted]	6
8/4	J.H. [redacted]	Prep exhibits for [redacted]	4
August 2015	J.H. [redacted]	**Services for one month**	**10 hrs Total**

Gmail J.H. [redacted]

LAWSUIT VS [redacted]

Norman Watts <nwatts.vt@gmail.com> Mon, May 5, 2014 at 11:30 AM
To: J.H. [redacted]

J.H. - Attached is our estimate of litigation costs. Keep in mind that they will be spread over the course of the litigation, a year or more.
NW

Norman E. Watts, Esq.
Civil Litigation
Watts Law Firm PC
Woodstock VT 05091
802-457-1020

[Quoted text hidden]

J.H. [redacted].ESTIMATE OF COSTS.docx
19K

EXHIBIT
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TENTATIVE ESTIMATE OF LEGAL FEES FOR J.H. [redacted] v [redacted]

5/5/2014

FIRST PHASE – Documentary Discovery

Draft & file Complaint in state court

Draft & transmit discovery demands

Prepare plaintiff's responses to defendant's discovery demands

Legal Fees: $1,500 Expenses: $350

SECOND PHASE – Depositional Discovery

Review all documentary evidence for depositions

Defendant's deposition of plaintiff

Plaintiff's deposition of defendant's witnesses (4)

Legal Fees: $5,000 Expenses: $1,200 *

THIRD PHASE – Mediation

Review file, prepare mediation statement

Mediation

Legal Fees: $5,000 Expenses: $1,200 *

FOURTH PHASE – Dispository Motions

Legal Fees: $1,500 Expenses: $150

FIFTHE PHASE – Jury Trial

Review file

Prepare trial exhibits

Prepare witness examinations

Interview witnesses

Preliminary motions

5-day trial

Legal Fees: $10,000 Expenses: $1,000

Recap:

$ 1,500	$ 350
5,000	1,200
5,000	1,200
1,500	150
10,000	1,000
$25,000	$3,900

Total:

$28,900 **

[Note that the expenses are spread over a 1.5-2 year period]

(* Does not include long-distance travel, if required)

(**Does not include a $5,000 retainer which is refunded after fees and expenses are paid - as discussed in the engagement agreement)

Gmail J.H.

J.H. - ESTIMATE OF LEGAL FEES - REV 2-2015

3 messages

Norman Watts <nwatts.vt@gmail.com> Tue, Feb 10, 2015 at 10:38 AM
To: J.H.
Cc: Norman Watts <nwatts.vt@gmail.com>

J.H. – Revisions attached – for your review & comment. I think it is realistic based on the circumstances.

J.H. - ESTIMATE OF LEGAL FEES - REV 2-2015.docx
16K

J.H. Tue, Feb 10, 2015 at 11:55 AM
To: Norman Watts <nwatts.vt@gmail.com>

Norman,

The attachment shows the estimate of May 5, 2014 -- rather than the revised estimate.

J.H.
[Quoted text hidden]

Norman Watts <nwatts.vt@gmail.com> Tue, Feb 10, 2015 at 12:00 PM
To: J.H.

If you look the right, the new figures should be there - no?
On the attached, here, you can see them in bold. Is this copy coming thru clearly?
NW

Norman E. Watts, Esq.
Civil Litigation
Watts Law Firm PC
Woodstock VT 05091
802-457-1020

[Quoted text hidden]

J.H. - ESTIMATE OF LEGAL FEES - REV 2-2015.docx
16K

EXHIBIT
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ESTIMATE OF LEGAL FEES FOR J.H. v [redacted]

5/3/2014

FIRST PHASE – Documentary Discovery		**Revision 2/15**	
Draft & file Complaint in state court		**Legal**	**Expense**
Draft & transmit discovery demands			
Prepare plaintiff's responses to defendant's discovery demands			
Motion practice re: comparator document production (counsel conference, hearing, document review) *		**$2,500**	**500**
Legal Fees: $1,500	Expenses: $300		
SECOND PHASE – Depositional Discovery			
Review all documentary evidence for depositions			
Defendant's deposition of plaintiff			
Plaintiff's deposition of defendant's witnesses (4)		**$5,000**	**2,500**
Legal Fees: $5,000	Expenses: $500 *	**(20x250)**	**(10x250)**
THIRD PHASE – Mediation			
Review file, prepare mediation statement			
Mediation			
Legal Fees: $5,000	Expenses: $1,200 *	**$2,500**	**1,200**
FOURTH PHASE – Dispository Motions			
Legal Fees: $1,500	Expenses: $150	**$1,500**	**$150.**
		$11,500	**$4,350**
FIFTH PHASE – Jury Trial			
Review file, Prepare trial exhibits,			
Prepare witness examinations, Interview witnesses			
Preliminary motions			
5-day trial			
Legal Fees: $10,000	Expenses: $1,000	**$10,000**	**$1,000**

Recap:		Recap:	
$ 1,500	$ 300		
5,000	500		
5,000	1,200		
1,500	150		
10,000	1,000	**$11,500**	**$4,350**
$25,000	$3,150	**$10,000**	**$1,000**
Total:		**$21,500**	**$5,350**

$28,150

(* Does not include long-distance travel, if required, nor additional unforeseen discovery requirements, if any; court will reimburse legal fees & court costs with successful verdict)

Paul Harvey, Ph.D.
7 Surrey Run
Dover, NH 03820
603-781-1688

J.H.
c/o Norman E. Watts, Esq.
Watts Law Firm
Woodstock, VT 05091

Date	**Activity**	**Units**	**Rate**	**Amount**
6/1/15	Research/Deposition prep	7 hours	$25	$175.00
6/1/15	Report composition	3 hours	$250	$750.00
6/2/15	Mileage (Dover, NH-Montpellier, VT)	312 mi	$0.58	$180.96
6/2/15	Hotel – Capital Plaza, Montpellier VT	1 night	$151.07	$151.07

Total: $1,257.03

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Navah C. Spero

From: Margaux Reckard <mreckard@wattslawvt.com>
Sent: Friday, March 20, 2020 10:02 PM
To: Norman Watts
Cc: Navah C. Spero
Subject: Re: Follow Up
Attachments: G.A. - BILLING EMAILS.pdf; G.A. - COMPLETE BILLING FILE.pdf

Good evening,

I am attaching two items related to your requests for communications regarding G.A.'s account with our firm, and secondarily, his full billing file.

Both documents are bookmarked for ease of reference, but if you have questions, please let me know.

Many thanks,
Margaux

On Wed, Mar 18, 2020 at 12:24 PM Norman Watts <nwatts@wattslawvt.com> wrote:

> Navah - We are between mediations today and preparing for the next one on Friday. Everyone is working remotely, for obvious reasons, making our effort somewhat more complicated than usual.
>
> My interim response to your letter is below. I personally searched my entire email record back to the time of the
>
> engagement letter. And we have searched through the remaining files from the case. The results:
>
> 1. G.A. engagement letter is attached.
>
> 2. My search of our case records reveals no email or other communications with the client about the
> engagement letter or around the time the engagement letter was issued. We met prior to issuing the letter and
> I explained the elements of a lawsuit and or relationship – all refined in the letter itself.
>
> 3. We have some correspondence related to the summary judgment proceeding itself which we will forward to you by the end of the week. Our communications with the client were predominately telephonic.
>
> 4. We have no documents regarding my evaluations(s) of the strengths and weaknesses of the case or the client's chances of success. Any such communications were telephonic.

EXHIBIT
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5. We have no estimates or quotes related to the overall cost of the case, including any e-mails relaying estimates or quotes. Such communications were telephonic or in person at the initial office conference.

6. Communications about the client's late payments or fee disputes during the representation will be forwarded to you by the end of the week.

7. We will send you the monthly statements and related communications sent to the client, if any, by the end of this week.

8. I am not aware of any other documents that will assist your investigation.

We are undertaking a second search of all materials related to the representation. The results of

that additional search will be provided to you by the end of the week along with those mentioned above.

Regards,
NW

Norman E. Watts, Esq.
Watts Law Firm PC
Civil Litigation
19 Central Street/PO Box 270
Woodstock VT 05091-0270
802-457-1020

On Tue, Mar 17, 2020 at 10:00 AM Navah C. Spero <nspero@gravelshea.com> wrote:

> Thank you.
>
> **From:** Norman Watts <nwatts@wattslawvt.com>
> **Sent:** Tuesday, March 17, 2020 9:49 AM
> **To:** Navah C. Spero <nspero@gravelshea.com>; Margaux Reckard <mreckard@wattslawvt.com>
> **Subject:** Re: Follow Up
>
> I'm in a mediation today so I can't review the final submission but will do so tomorrow.
>
> NW
>
> **Norman E. Watts, Esq.**

Watts Law Firm PC

Civil Litigation

19 Central Street/PO Box 270

Woodstock VT 05091-0270

802-457-1020

On Tue, Mar 17, 2020 at 9:41 AM Navah C. Spero <nspero@gravelshea.com> wrote:

> Hi Norman,
>
> Your documents were due on Friday and I haven't yet seen any documents. Are they on their way?
>
> Best,
> Navah
>
> **From:** Norman Watts <nwatts@wattslawvt.com>
> **Sent:** Thursday, February 27, 2020 10:50 AM
> **To:** Navah C. Spero <nspero@gravelshea.com>
> **Subject:** Re: Follow Up
>
> Appreciate your concurrence.
>
> NW
>
> **Norman E. Watts, Esq.**
>
> **Watts Law Firm PC**
>
> **Civil Litigation**
>
> **19 Central Street/PO Box 270**
>
> **Woodstock VT 05091-0270**
>
> **802-457-1020**
>
> On Thu, Feb 27, 2020 at 10:29 AM Navah C. Spero <nspero@gravelshea.com> wrote:
>
> > Yes, that's fine. Thank you.
> >
> > **From:** Norman Watts <nwatts@wattslawvt.com>
> > **Sent:** Thursday, February 27, 2020 10:20 AM
> > **To:** Navah C. Spero <nspero@gravelshea.com>
> > **Subject:** Re: Follow Up
> >
> > Apologies. I was traveling outside the US for 3 weeks. I am working on your requests between obligations to clients -

responding to sjm's, discovery requests, mediations, etc. We are very busy here.

May I have until 3/13/20 to complete this ponderous task?

NW

Norman E. Watts, Esq.

Watts Law Firm PC

Civil Litigation

19 Central Street/PO Box 270

Woodstock VT 05091-0270

802-457-1020

On Thu, Feb 27, 2020 at 9:58 AM Navah C. Spero <nspero@gravelshea.com> wrote:

> Hi Norman,
>
> I'm writing to follow up on the attached letter. Your deadline to file a response to the complaint was February 18, 2020. I have not received a response. Please provide a response promptly or let me know that you will not be providing one.
>
> Best,
> Navah
>
> **Navah C. Spero** | *Shareholder*
> **Gravel & Shea PC**
> 76 St. Paul Street, 7th Floor | P.O. Box 369 | Burlington, VT 05401
> T: 802-658-0220 | F: 802-658-1456
> nspero@gravelshea.com | www.gravelshea.com
> Biography | Download vCard
>
>

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Margaux Reckard, Paralegal
Watts Law Firm, PC
PO Box 270
19 Central Street
Woodstock, VT 05091
802 457-1020
fax: 802 432-1074