

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

**In Re: C. Robert Manby, Jr., Esq.**  
**PRB File No. 032-2025**

**DISCIPLINARY COUNSEL'S OPPOSITION TO  
RESPONDENT'S MOTION FOR REINSTATEMENT**

NOW COMES the Office of Disciplinary Counsel and, pursuant to A.O. 9, Rule 26 and the Hearing Panel's Order dated September 24, 2024, hereby opposes Respondent Manby's August 27th Motion for Reinstatement After Suspension. In support hereof, Disciplinary Counsel offers the following Memorandum of Law and appended Exhibit 1.

**MEMORANDUM OF LAW**

Respondent Manby has not met the demanding legal standard for reinstatement to the practice of law. Respondent's submissions in support of his reinstatement indicate that he (1) does not understand or acknowledge the full extent of his misconduct; (2) seeks to minimize his culpability for that misconduct; and (3) offers no evidence that he has meaningfully rehabilitated his professional practices and judgment to avoid a reoccurrence of misconduct. Respondent has also candidly admitted to Disciplinary Counsel that, due to his serious health difficulties, he has neither the present ability nor the intention to resume the practice of law, but only seeks reinstatement so that he may retire "in good standing." Given Respondent's self-interested motive and his acknowledged unfitness, reinstatement would do a disservice to the public's confidence in the integrity of the bar. Respondent's Motion for Reinstatement After Suspension should be denied.

**I. Legal Standard for Reinstatement**

Rule 26 of the Supreme Court's Administrative Order No. 9, Permanent Rules Governing Establishment and Operation of the Professional Responsibility Program ("A.O. 9") provides

that before an attorney suspended for six months or longer may resume the practice of law, he or she must submit a motion or petition to the Professional Responsibility Board (“PRB”) seeking reinstatement to active practice. A.O. 9, Rule 26(B), (D). At a subsequent hearing before a PRB Hearing Panel:

the respondent-attorney shall have the burden of demonstrating by clear and convincing evidence that the respondent has the moral qualifications, competency, and learning required for admission to practice law in the state, and the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest and that the respondent-attorney has been rehabilitated.

*Id.*, Rule 26(D); *see also In re Hunter*, 167 Vt. 219, 228, 704 A.2d 1154, 1159 (1997) (noting above A.O. 9 standards for reinstatement from suspension).

Because of the Supreme Court’s “duty . . . to shield the public” from attorney misconduct “and the concomitant responsibility to do all possible to maintain public confidence in the practicing Bar, [its] responses to petitions for reinstatement are thereby necessarily restricted.” *Petition of Harrington*, 134 Vt. 549, 552, 367 A.2d 161, 163 (1976). Reinstatement may not be granted merely out of “sympathetic concern for a truly repentant former member of the profession” or a belief that “a sufficient, or more than sufficient, penalty has already been exacted for his misbehavior.” *Id.* Moreover, “the right to practice law is not a reward for good behavior,” and an attorney seeking reinstatement must instead convincingly demonstrate that he or she “is fit to carry on the duties and responsibilities of the practice of law without supervision.” *In re Milne*, 134 Vt. 416, 417, 365 A.2d 133, 133 (1976).

## **II. Argument**

### **A. Respondent Has Not Demonstrated that His Professional Judgment and Practices Have Been Rehabilitated Sufficiently to Merit Reinstatement.**

“The most important inquiry in reinstatement cases is whether the petitioner has

‘demonstrated sufficient rehabilitation in character and conduct.’” *Stewart v. Mississippi Bar*, 84 So. 3d 9, 13 (Miss. 2011) (citation omitted); *cf. In re Reinstatement of Sand*, 951 N.W.2d 918, 922 (Minn. 2020) (“In determining whether an attorney should be reinstated, proof of moral change ‘is the most important factor’” (citation omitted)). “However, repentance and rehabilitation are not the same. Rehabilitation, the most important consideration in reinstatement proceedings, is a matter of one’s ‘return’ to a beneficial, constructive and trustworthy role. Repentance is a matter of contrition and regret.” *In re Wigoda*, 395 N.E.2d 571, 574 (Ill. 1979). In seeking reinstatement, Respondent Manby has belatedly expressed remorse for his misconduct,<sup>1</sup> but has not shown that he has rehabilitated the poor professional judgment that led to his misconduct, or adopted sound professional practices for competently representing and adequately communicating with elderly clients when he is approached for estate planning services by their potentially interested adult children.

### **1. Legal Standard for Proof of Rehabilitation.**

In Vermont, “[t]o determine whether a suspended attorney has been rehabilitated, the Hearing Panel considers the underlying causes of the suspension and ‘evaluate[s] whether, at the time of the petition for reinstatement, the attorney had sufficient understanding of his situation and had made the necessary changes to assure the Panel both that he had been rehabilitated and that when faced with similar situations upon return to practice, the attorney would not revert to prior behavior.’” *In re Cobb*, PRB File No. 001-2024, Decision No. 256 at 13 (Mar. 7, 2024)

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<sup>1</sup> The Supreme Court found that, during the disciplinary proceedings, “respondent failed to show remorse by not acknowledging the wrongful nature of his conduct and arguing that E.M.’s family did not suffer harm.” *In re Manby*, 2023 VT 45, ¶ 56 (2023).

(quoting *In re Neisner*, PRB File No. 138-2011, Decision No. 139 (Mar. 30, 2011)). Stated differently, “[p]roving rehabilitation is a two-step process. First, the applicant must identify the weakness or weaknesses that caused the misconduct. Second, the applicant must ‘demonstrate that he [or she] has overcome those weaknesses.’” *In re Johnson*, 298 P.3d 904, 906–07 (Ariz. 2013).<sup>2</sup>

Thus, to conclude that an attorney seeking reinstatement has been “fully rehabilitated,” the Hearing Panel will “need[] to be assured that Respondent understands and recognizes what led to his [professional ethical] violations . . . that he has truly changed his ways, and that his attitude toward the practice of law has changed.” *In re Blais*, PRB File No. 010-2010, Decision No. 58 at 6 (Oct. 1, 2003). In contrast, reinstatement is not appropriate when the attorney offers “no evidence” to aid the Hearing Panel “‘in better understanding the causes’ of the conduct at issue nor any evidence ‘that such circumstances, whether internal or external, have been addressed in a way that would make less likely the potential for a recurrence of this behavior.’” *In re Burgess*, 169 Vt. 533, 725 A.2d 302, 303 (1999) (citation omitted).

In this case, Respondent accurately observes that to achieve complete rehabilitation, “[o]ne needs to know and understand not only what was done wrong and why, but also what behaviors need to change to prevent reoccurrence.” Oct. 6, 2024 Respondent Memo. in Support of Pet. For Reinstatement (“Respondent Memo.”) at 4. However, for several reasons, Respondent Manby has not met his own standard for rehabilitation.

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<sup>2</sup> See also *Goff v. People*, 35 P.3d 487, 496 (Colo. O.P.D.J. 2000) (reasoning that when attorney’s “misconduct raises serious questions regarding his professional judgment . . . [r]ehabilitation requires proof establishing that [attorney] has, in some way, altered the manner in which he exercises his judgment.”).

## 2. Respondent Does Not Acknowledge His Failures to Competently Represent and Adequately Communicate With His Client E.M.

Initially, Respondent appears to misunderstand (or is unwilling to admit) the full extent of what he did wrong. Respondent asserts that the “linchpin” of his misconduct was his failure to exercise “independent professional judgment” in assessing the mental competence of E.M. *See id* at 4-5; *see also* Sept. 25, 2024 Email: Manby to Alexander at 1, copy attached as **Exhibit 1** (“Despite how I was actually charged, I see my most serious transgression as my failure to exercise independent legal judgment, and it was malpractice as charged.”). Instead, Respondent claims that he “gullibly accepted” the representations of J.M., client E.M.’s son and a former client of Respondent, that his mother “had no cognitive issues . . . had her presence of mind and knew what she was doing and what she wanted” regarding changes to her estate plan that “would directly benefit JM” while doing “nothing to confirm JM’s representations of EM’s cognitive competence.” Respondent Memo. at 4-5. The Supreme Court affirmed the hearing panel’s conclusion that this failure by Respondent “to at least attempt to assess his client’s competence in a reasonable way” violated Vermont Rule of Professional Conduct 1.14(a). *In re Manby*, 2023 VT 45, ¶¶ 15-16 (2023).

However, Respondent does not acknowledge in his reinstatement filings that he also independently violated his duty of competence under Rule 1.1 “by failing to use methods and procedures meeting the standards of competent practitioners, such as meeting with and giving E.M. an opportunity to privately consult with him; determining what her wishes were and ensuring that the proposed plan served her wishes; and discussing long-term care considerations given her age and frail health.” *Id.* ¶ 19. Likewise, Respondent does not concede, in seeking reinstatement, that he violated his duty of communication under Rule 1.4(b) “because he

communicated almost exclusively with a third party [J.M.] rather than the client, and E.M. did not engage intelligently in any decision about her estate plan.” *Id.* ¶ 20.

On appeal, Respondent argued that any alleged failure by him to adequately assess E.M.’s cognitive abilities could not, as a matter of due process, be charged as independent violations of his duties of competence and communication. *See id.* ¶¶ 28, 29. However, the Supreme Court observed that Respondent “misunderstands the relevant allegations” and takes “an overly narrow view of the petition of misconduct and the panel’s decision.” *Id.* Instead, the Supreme Court explained that Respondent would have breached his duties of competence and communication even if E.M. had full mental capacity. *See id.* ¶ 47 (“[R]espondent’s actions (or lack thereof) would have violated Rules 1.1 and 1.4(b) with respect to even the most fully-functioning, sophisticated estate-planning client.”).

The Supreme Court agreed with the hearing panel’s determination that “‘it is not necessary to establish’ whether E.M. had capacity to conclude that respondent incompetently represented her in violation of Rule 1.1” because Respondent overlooked his “‘essential duty to his client . . . to determine that the estate plan he was crafting reflected EM’s wishes.’” *Id.* ¶ 28. Likewise, “the panel did not conclude that he violated Rule 1.4(b) because E.M. was cognitively impaired or because of his failure to discover that impairment. Instead, the panel’s findings about E.M.’s cognitive limitations illuminated the shocking extent of respondent’s failure to communicate with her.” *Id.* ¶ 30. In the Supreme Court’s view, “respondent’s conduct would have fallen short of the Rule 1.4(b) standard for any client . . . .” *Id.*

However, just as he maintained on appeal, Respondent apparently still believes that the only thing he did wrong was failing to assess E.M.’s mental competence. Respondent’s incomplete and self-serving understanding of his misconduct militates against any finding that he

has rehabilitated the flawed professional judgment that led him to harm his client E.M. and others.

**3. Respondent Seeks to Minimize His Culpable State of Mind in Violating His Duties to E.M.**

Respondent also offers an exculpatory explanation for why he violated his duties to E.M. that conflicts with the conclusions of the hearing panel and Supreme Court. Respondent suggests that his primary error was to have “gullibly accepted JM’s word about EM’s mental status.” Respondent Memo. at 5. In his correspondence to Disciplinary Counsel, Respondent claims that although he “was too stupid and trusting to recognize it at the time, [J.M.] was playing me. I believe he knew the truth, willfully concealed it, and chose the occasions for my brief meetings with his mother to coincide with her more lucid times . . . .” Sept. 25, 2024 Email: Manby to Alexander at 2, **Ex. 1**. This credulousness, Respondent maintains, “was malpractice as charged” and led to “a horribly sloppy error.” *Id.*

Respondent evidently believes that the fundamental reason why he violated his ethical duties to E.M. was because he was too easily deceived by the duplicitous J.M., implying that he too, like E.M., was one of J.M.’s victims. Respondent therefore suggests that his resulting violations of Rules of Professional Conduct 1.1, 1.4 and 1.14 were inadvertent and, at worst, negligence – the same argument rejected by the Supreme Court. *See Manby*, 2023 VT 45, ¶ 51 (dismissing Respondent’s claim that hearing panel “was bound to accept and adopt his admissions to the petition of misconduct, specifically, that he negligently (but not knowingly) violated Rules 1.1 and 1.4(b) . . . even if the evidence would show a more-culpable state of mind.”).

Instead, the Supreme Court endorsed the hearing panel’s conclusion “that respondent committed all three of the violations knowingly,” not negligently. *Id.* ¶ 49. This mental state

determination was amply supported by “numerous suspicious circumstances, all of which respondent knew of, and any one of which should have alerted respondent to the fact that E.M. was not making informed, rational decisions and prompted him to inquire further.” *Id.* ¶ 50. “All of these findings supported that respondent was ‘aware of the circumstances that formed the basis for the violation[s]’ and thus knowingly transgressed the relevant rules.” *Id.* (citation omitted). Respondent’s continuing insistence that he was duped by J.M. into negligently violating his duties to E.M. implicitly rejects the Supreme Court’s assessment of his knowing culpability and therefore indicates that his rehabilitation is not yet complete.

**4. Respondent’s Single Intended Change to His Professional Practices Is Not Sufficient to Reliably Avoid Recurrence of His Misconduct.**

Respondent has not demonstrated his rehabilitation because he does not fully understand “what behaviors need to change to prevent reoccurrence” of his failure to competently represent and adequately communicate with elderly clients when retained by their adult children. Respondent Memo. at 4. Respondent claims that, if reinstated, he will henceforth adhere to his supposedly regular practice “in other similar situations when an adult child was inquiring on behalf of an elderly parent” for estate planning services. *Id.* at 5. “That is, to politely but firmly explain that if the parent was not well enough to inquire on their own, under those circumstances Respondent would need to have an assurance as to the parent’s competence and capacity -- preferably in writing from a physician who was familiar with the parent.” *Id.*; *see also* Sept. 25, 2024 Email: Manby to Alexander at 2, **Ex. 1** (noting that his “practice habit” when approached by an unfamiliar person “seeking an attorney for an elder parent” would be to request “a letter from the parent’s doctor stating that that the person in question was not having any cognitive problems and was oriented to time, place and circumstance.”).

Respondent’s sole intended change to his professional practices is clearly insufficient to

assure the Hearing Panel that “when faced with similar situations upon return to practice, the attorney would not revert to prior behavior.” *In re Cobb*, Decision No. 256 at 13 (citation omitted). Receiving a letter from an elderly client’s physician attesting to her mental competency does not adequately assure an attorney that estate planning changes requested by an adult child of the client are necessarily understood and truly wanted by that client.<sup>3</sup> According to the Supreme Court in *In re Manby*, only direct and detailed attorney-client communication can fulfill this essential obligation of the estate planning attorney. Respondent does not seem to have grasped this central holding.

Specifically, a competent estate planning lawyer should directly (and sometimes privately) “discuss with a client the natural objects of their bounty and the nature and extent of their estate,” as well as their estate-related “wishes, objectives, and concerns,” rather than rely on a potentially self-interested adult child’s representations as to their parent’s wishes, or the client’s one-word answers. *See Manby*, 2023 VT 45, ¶¶ 17-18, 27-28. Likewise, a lawyer should attempt to discuss “other estate planning options” with the client beyond those requested by the client’s adult child and explain “the advantages or disadvantages” of these approaches. *Id.* ¶ 7. In addition, the lawyer should engage the elderly client in conversation to determine whether they understand legal documents that change their estate plan, as well as obtain or review with the client their prior estate planning documents *See id.* ¶¶ 9, 11.

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<sup>3</sup> It is also questionable whether exclusive reliance on a treating physician’s opinion as to an elderly client’s competency at some point in the past would necessarily fulfill Respondent’s Rule 1.14 duty to “make a reasonable effort to assess” the client’s present “cognitive abilities.” *Manby*, 2023 VT 45, ¶ 18. The Supreme Court observed that “[r]elying solely on the word of a third party” such as a relative “without conversing directly with the client does not constitute a reasonable effort” to assess a client’s capacity. *Id.* ¶ 36. This same concern also applies, albeit to a lesser degree, to a medical opinion that, by its very nature, is limited to the client’s condition on a particular day or days in the past.

However, Respondent still does not recognize the need to rigorously follow any of these practices with respect to elderly estate planning clients and their adult children, independent of any mental competency concerns. It seems possible that if Respondent were to receive a physician's letter confirming an elderly client's cognitive capacity, Respondent would see no ethical prohibition in then relying upon an adult child's representations concerning the client's estate planning wishes in lieu of direct discussions with the client on this topic. However, in focusing exclusively on a physician assessment of client mental competency, Respondent avoids addressing how he would correct the more fundamental competence and client communication deficiencies in his estate planning practice identified by the hearing panel and Supreme Court. Accordingly, Respondent has not shown that he has been rehabilitated and that reinstatement is appropriate.

**B. Respondent Has Admitted That He Has No Desire or Physical Ability to Resume Active Practice.**

In his correspondence with Disciplinary Counsel, Respondent volunteered that, due to a serious hearing loss and ongoing treatment for cancer, "I have no present intention (or ability) to resume an active law practice." Sept. 25, 2024 Email: Manby to Alexander at 1, **Ex. 1** Instead, Respondent represents that he only seeks reinstatement so he can retire from the practice of law "in good standing," by either surrendering his law license or choosing inactive status shortly after reinstatement to active practice. *See id.* at 1-2.

Respondent's admission that he is medically incapable of resuming the practice of law and has no present interest in doing so counsels against his reinstatement. Although Respondent's current physical incapacity is unrelated to the reasons for his disciplinary suspension, the Hearing Panel must broadly ensure that reinstatement "will be neither detrimental to the integrity and standing of the bar . . . nor subversive of the public interest" in all

respects. A.O. 9, Rule 26(D). When an attorney is admittedly not “fit to carry on the duties and responsibilities of the practice of law” for whatever reason, *In re Milne*, 134 Vt. at 417, 365 A.2d at 133, reinstatement would likely lower the public’s confidence in the bar and needlessly create a risk that clients would be harmed should Respondent change his mind and resume active practice before being able to do so competently. Moreover, reinstatement to active practice of an attorney who no longer wishes or is able to practice law, but only seeks the reputational benefits and personal satisfaction of retiring “in good standing,” would diminish the integrity of the bar and not serve the public interest.

**CONCLUSION**

For the reasons stated above, the Office of Disciplinary Counsel respectfully requests that Respondent Manby’s Motion for Reinstatement After Suspension be denied.

Dated at Burlington, Vermont this 30th day of October 2024.

OFFICE OF DISCIPLINARY COUNSEL

*/s/ Jon T. Alexander*

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STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

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**PRB File No. 032-2025**

**DISCIPLINARY COUNSEL'S OPPOSITION TO  
RESPONDENT'S MOTION FOR REINSTATEMENT**

**EXHIBIT 1**

**From:** [Robert Manby](#)  
**To:** [Alexander, Jon](#)  
**Subject:** Re: PRB-032-2025/ deposition  
**Date:** Wednesday, September 25, 2024 1:59:15 PM

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**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Jon-

This is a bit complicated for me . I guess there is no privilege for me to claim, but much of what follows is private, and I would appreciate it if it remained that way, to the extent you are able. I am 75, and my children came relatively late in my life. The first marriage of any my children is that of eldest daughter on October 12; big show, as you may know or imagine. Given the pending wedding, I will be much challenged to comply with the Order of the Panel for a Memo by 10/9, but will try to file it timely-there wont be much "law" to it-more facts and circumstances. Though it may change depending on how things seem to be going, I plan no witnesses or exhibits at the hearing.

As for depo, the later the better so I will choose the 16th, and will come to you in Burlington-11 AM or after please if that works for you. I will need some accommodation. I had sudden complete hearing loss in right ear a year ago-last September; left ear was bad already, and another sudden loss occurred to that left ear in February 2024. Complete silence-stone deaf. This has been completely disorienting. I had a cochlear implant in one 'ear' a couple of months back. It was activated about a month ago. I was told it would take a while for my brain to re-map. I am still unable to reliably understand all speech. I get snatches. At the deposition, would you please provide some real-time transcription device so I am sure I understand what you are asking. I will need the same accommodation at the hearing 11/6.

I have cancer-lymphoma. It (2 types actually)was diagnosed a tad more than 4 years ago.

Twelve rounds of chemo followed. One variety killed, hopefully; the other not curable. Chemotoxic reactions caused my perfectly good heart to suffer irreversible collapse of LAD artery and missing-in-action immune system allowed lung infection that is not going to go away. Cancer had been quiet for almost two years, but two months ago it decided to have another run at me and tumors grow. Treatment is tbd, likely more chemo at some point, but has not commenced. I was useless to assist in the later stages of the original disciplinary proceeding. I guess this sounds like whining, but everyone has their bag of rocks to carry about and I accept my circumstances as gracefully as I am able and am thankful for every day. All that said, I may need to briefly pause the depo or the hearing to medicate or catch my breath and wits, and if hospital appointments arise at DHMC that can't be rescheduled I may have to ask for a scheduling change. I hope not, since I want this over with.

I have rigidly observed the suspension conditions since 11/27/23. I have closed my office in WRJct. As of the cancer onset I stopped taking on any new matters that might be of unknown duration because I did not want to start what I might be unable to finish. During 2023 I concentrated on finishing some long-tail matters and doing transaction work for a long-standing bank client.

Though I hope the choice will be mine, I have no present intention (or ability) to resume an active law practice. When my license expires (if restored) next summer, I will either surrender it or figure a way to complete CLE requirements and perhaps choose inactive status, depending on my health. At that point I will have been a Vt attorney for 45 years without

blemish except for the events that led to this proceeding, and hope to leave as I began-in good standing.

I do not diminish or excuse the judgment errors that led to my disciplinary proceeding. JM, son of EM, had been well known to me many years ago because of my real estate practice; he worked for a local real estate brokerage and we had numerous personal meetings and encounters. He was also my client in several matters. I always found him completely honest and trustworthy. When he contacted me about his mother's desire to deed her house to him, I questioned him directly about her competence and capacity and health. He told me he had her power of attorney (true) and assured me that though elderly and physically very frail, she had no competence issues and saw a doctor regularly. This matched my experience with my own late mother, who at 93 was bedridden, spoke with difficulty, but had no cognitive problems. Though I was too stupid and trusting to recognize it at the time, he was playing me. I believe he knew the truth, willfully concealed it, and chose the occasions for my brief meetings with his mother to coincide with her more lucid times, because I thought she knew what she was doing when we met, though she was very frail.

Despite how I was actually charged, I see my most serious transgression as my failure to exercise independent legal judgment, and it was malpractice as charged. I should have done what was my practice habit when dealing with people with whom I was less familiar who were seeking an attorney for an elder parent; i.e., politely state that before proceeding, I needed a letter from the parent's doctor stating that that the person in question was not having any cognitive problems and was oriented to time, place and circumstance. That probably would have ended the matter on the spot. That was a horribly sloppy error and judgment lapse that resulted in emotional pain and stress for EM's daughters. I deserved discipline as an example to the public and as a cautionary tale to the Bar of the State of Vermont. Trust, maybe, but verify independently. At great price, I submit I am completely rehabilitated and certainly pose no future threat. I have served my suspension faithfully and hope to have my license reinstated so I can depart in good standing.

Sorry for the length here, and thank you for your attention. Please let me know about my requests for help with my hearing problems at depo and the Panel hearing. I do not expect a copy of this email to be available to the public as part of the PRB file.

Rob Manby  
Sent from my iPad

On Sep 25, 2024, at 9:31 AM, Alexander, Jon <Jon.Alexander@vtcourts.gov> wrote:

Hi Rob-

I'd like to take your deposition in mid-October after you've filed your reinstatement brief. The dates I'm looking at are 10/10, 10/11, 10/14, 10/15 or 10/16. Please let me know which one works best for you and where you'd like to do it – somewhere around White River or at the Costello Courthouse in Burlington.

Thanks, Jon

[<image001.jpg>](#)

Jon T. Alexander

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STATE OF VERMONT  
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**In Re: C. Robert Manby, Jr., Esq.**  
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**CERTIFICATE OF SERVICE**

I certify that on October 30, 2024, Respondent C. Robert Manby, Jr., Esq. was served with Disciplinary Counsel's Opposition to Respondent's Motion for Reinstatement and supporting Exhibit 1 via email to [robert.manby@wgmlegal.com](mailto:robert.manby@wgmlegal.com) in accordance with A.O. 9, Rule 18(B) and Vermont Rule of Civil Procedure 5.

Dated at Burlington, Vermont this 30th day of October 2024.

OFFICE OF DISCIPLINARY COUNSEL

*/s/ Jon T. Alexander* \_\_\_\_\_

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