STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

Decision No. 257

Respondent C. Robert Manby, Jr., Esq, was suspended from the practice of law for one year, commencing November 27, 2023. Pursuant to Rule 26(D) of Administrative Order No. 9, he filed a motion for reinstatement on August 27, 2024.

The undersigned Hearing Panel held a remote hearing to consider Respondent's reinstatement on November 6, 2024. Respondent participated in the hearing. Respondent and two witnesses, John P. Riley, Esq., and Daniel F. Grossman, Esq., testified in support of his reinstatement. Opposing Respondent's reinstatement, Disciplinary Counsel Jon Alexander, Esq., also participated in the hearing but did not call any witnesses.

Respondent filed a pre-hearing memorandum of law in support of his reinstatement on October 6, 2024. Disciplinary Counsel filed a pre-hearing memorandum of law in opposition to Respondent's reinstatement on October 30, 2024. Respondent filed post-hearing proposed findings of fact and conclusions of law on November 13, 2024.

The Hearing Panel is issuing this Decision within 90 days after Respondent filed his motion for reinstatement pursuant to Rule 26(D) of Administrative Order No. 9.

FINDINGS OF FACT

In a decision dated October 7, 2022, a hearing panel of the Professional Responsibility Board suspended Respondent from the practice of law for five months for violating Rule 1.1, Rule 1.4(b), and Rule 1.14(a) of the Vermont Rules of Professional Conduct in the course of representing E.M., an elderly client with dementia, in estate planning matters. The hearing panel cited as examples of Respondent's misconduct that – despite knowing the changes E.M.'s son J.M. requested to her estate plan would solely benefit him – Respondent relied exclusively on J.M.'s assurances that E.M. was fully competent, never once spoke with E.M. without J.M. present, never sought or received more than one-word answers from E.M., took direction from J.M. without consulting with E.M., never discussed the disadvantageous consequences of the changes J.M. requested to E.M.'s estate plan with her, met with E.M. in a parking lot only a few blocks from her home for a document signing, and accepted a cash gift from J.M.

On August 4, 2023, the Supreme Court of Vermont, on its own motion, held that Respondent's professional misconduct warranted a one-year suspension because he knowingly violated the most fundamental duties he owed to his client. He violated his duty under Rule 1.1 to competently represent E.M., his duty under Rule 1.4 to communicate directly with E.M. to allow her to make informed decisions, and his duty under Rule 1.14 to maintain a normal client-lawyer relationship with E.M. as far as reasonably possible despite her diminished capacity. The Supreme Court noted that Respondent's failure to discover E.M.'s lack of capacity was a natural consequence of his failure to carry out these basic duties.

During his suspension, Respondent reflected extensively on the errors he made in representing E.M. He takes responsibility for those errors. He is remorseful for the harm he caused E.M. and her family. If faced with the same situation, he would not rely on J.M.'s

representations about her capacity and estate planning goals. Rather, he would seek a doctor's note about her competency. He would also discuss her goals in an open-ended manner directly with her and her alone. Had he done so, he likely would have discovered her lack of capacity and may have declined to represent her.

Over the course of his suspension, Respondent came to understand that, even if he receives a doctor's note that a client is competent, he still has underlying duties of communication and competent representation that require him to take steps to determine for himself whether the client's capacity is diminished, and to the extent the client has limitations, to communicate with the client to determine whether and how he can competently represent them.

John Riley, Esq., has been a licensed attorney in Vermont since 1984. He worked with Respondent many times over many years on residential and commercial real estate transactions in Washington County. He found Respondent was reliably prepared, organized, and responsive. He felt Respondent conducted himself with the utmost integrity in all of their encounters. Overall, he believed Respondent was a knowledgeable and competent lawyer.

In preparation for the reinstatement hearing, Respondent met with Mr. Riley on November 4, 2024. Respondent expressed remorse for the conduct that resulted in his suspension. Respondent also expressed an understanding that he made a significant mistake in failing to independently verify E.M.'s cognitive ability. Respondent expressed a desire to provide legal services to former clients who sought his assistance, although he had no plans to reopen his law office, should his license to practice law be reinstated. Mr. Riley has no reservations recommending Respondent be reinstated to practice law in Vermont.

Daniel Grossman, Esq., obtained his license to practice law in Vermont in 1980; he retired in June 2023. He met Respondent in college more than 50 years ago. They both attended

Vermont Law School. They both practiced law, including real estate, commercial lending, and municipal law, in the same Upper Valley community. Mr. Grossman frequently represented commercial real estate buyers seeking loans from banks that Respondent represented. At times, they also worked on matters involving municipalities, including Hartford and White River Junction. Respondent sometimes referred clients to Mr. Grossman for estate planning services. Mr. Grossman considered Respondent one of the most competent lawyers in the area. He found him trustworthy, responsive, and well informed about the law.

While the disciplinary proceedings leading to his suspension were pending, Respondent spoke to Mr. Grossman about referring clients to him if he were suspended, explaining that he drafted a deed for E.M. at J.M.'s request and had her sign the deed in a parking lot after only minimal communications with her. Respondent told Mr. Riley that he made a mistake doing that.

Respondent met with Mr. Grossman in September or October 2024, as well as a few days before the reinstatement hearing. During these meetings, Respondent expressed that he would never again place his trust in someone in J.M.'s position, that he would never again fail to meet with a client alone under similar circumstances, and that he would never again have a client sign documents after only asking them leading questions. Respondent also expressed that, if faced with similar circumstances, he would obtain a doctor's note regarding the client's competence. Mr. Grossman did not take that to mean Respondent would not also communicate directly with the client about their wishes.

Respondent has cancer. Respondent also has a hearing impairment, for which he received a cochlear implant in late summer 2024. He was able to communicate effectively with his witnesses to prepare them to testify at the reinstatement hearing. He was able to communicate effectively and participate fully in the half-day reinstatement hearing.

Respondent does not plan to practice law on a full-time basis if his license is reinstated. Rather, he plans to maintain a limited practice largely focused on providing legal services to former clients who contact him for assistance. In anticipation of returning to practice, Respondent has registered to attend a continuing legal education seminar about bankruptcy law.

CONCLUSIONS OF LAW

Respondent bears "the burden of demonstrating by clear and convincing evidence that [he] 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 [he] has been rehabilitated." A.O. 9, Rule 26(D).

The Hearing Panel concludes that Respondent is a moral, competent, and knowledgeable attorney. Both of Respondent's witnesses, with whom he had long professional relationships, gave largely uncontroverted testimony supporting this conclusion. Their testimony, as well as Respondent's testimony and conduct during the hearing, also demonstrate that his cancer and hearing loss do not diminish his ability to practice law.

The Hearing Panel further concludes that Respondent has been rehabilitated. To determine whether a suspended attorney has been rehabilitated, the 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 Neisner*, PRB Decision No. 139 (March 30, 2011), approved by Supreme Court Entry

Order No. 11-127 (April 5, 2011); *see also In re Lichtenberg*, PRB Decision No. 1 (December 3, 1999), approved by Supreme Court Entry Order No. 99-533 (January 5, 2000).

Respondent has a sufficient understanding of his situation and has changed his mindset and approach to representing clients, including those with diminished capacity. He would not repeat his mistakes if he were reinstated and faced a similar situation. He understands that he should have spoken with E.M. privately and in greater depth over the course of representation, so he could assess her competency and ensure he was carrying out her wishes. He is remorseful for his misconduct and recognizes the harm it caused E.M. and her family.

Critically, Respondent understands that he has ultimate responsibility for assessing a client's competency and that he has a duty to provide competent representation to and communicate thoroughly with any client, regardless of capacity or competency. *See* Transcript of November 6, 2024, Reinstatement Hearing ("Hrg. Tr.") at 76:6-10 ("… every attorney has a duty all the time to assess for themselves what has happened, and you can't do it unless you have a much more detailed interaction with the client. Not just in estate planning matters, but any matter."); Hrg. Tr. at 91:17-19 ("You have to look for yourself. And that is a systemic change. It's not a mechanical, oh, I got a letter from a doctor. I'm all set now. It is not it at all."); Hrg. Tr. at 93:22-94:1 ("And part of the rehabilitation is recognizing that this is nobody's fault but mine. And I had the last clear chance to prevent it by following the rules for communication that I should have followed in the first place and failed to. That's the change that has occurred and will continue to occur…"). Respondent has therefore committed to communicating with clients in a manner that allows him to assess their capacity and ensure they make informed decisions, including by talking to them alone and asking them open-ended questions about their

circumstances and goals, in addition to potentially obtaining a medical opinion about their competency.

Finally, the Hearing Panel concludes that Respondent's reinstatement would not be detrimental to the integrity of the bar or to the public interest. Respondent committed serious violations of the Vermont Rules of Professional Conduct, for which he was appropriately sanctioned with a one-year suspension. Respondent spent his suspension reflecting on his misconduct and committing to making changes so he will never again engage in similar misconduct.[1] He seeks a return to limited practice, so he can use his experience to help former clients. Respondent's witnesses, both experienced Vermont attorneys, gave largely uncontroverted testimony supporting the conclusion that his return to practice would not reflect poorly on the bar and would serve the public interest.

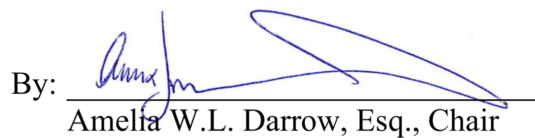
[1] Respondent testified that he might have declined to represent E.M. had he known she was not competent and may in the future decline to represent a client if he determines they are not competent. We find that while it is appropriate for a lawyer to understand and practice within the limits of their knowledge and abilities, it is not appropriate for a lawyer to simply refuse to represent a client with diminished capacity or to take a doctor's note or any third party's opinion in lieu of a lawyer's own judgment and determination of a client's capacity to engage in the legal work at hand.

ORDER

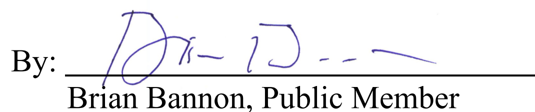
Based upon the evidence in the record and the submissions of the parties, the Hearing Panel hereby GRANTS Respondent's Motion for Reinstatement. C. Robert Manby, Jr., Esq., is reinstated to the practice of law in Vermont at the conclusion of his one-year suspension.

Dated 11/25/2024.

Hearing Panel No. 2

By: 
Amelia W.L. Darrow, Esq., Chair

By: /s/ Mimi Brill
Mimi Brill, Esq.

By: 
Brian Bannon, Public Member