

**STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM**

In re: PRB File No. 045-2023

**REPORT AND RECOMMENDATION TO THE VERMONT SUPREME COURT
REGARDING RESPONDENT’S INCAPACITY**

The Hearing Panel is filing this Report and Recommendation to the Vermont Supreme Court Regarding Respondent’s Incapacity pursuant to A.O. 9, Rule 25(C).

Procedural History

On October 26, 2022, under Case No. 22-AP-278, the Vermont Supreme Court assigned a disability petition for PRB File Nos. 134-2021, 069-2022, 070-2022, and 109-2022 to a hearing panel of the Professional Responsibility Board for formal, nonpublic disability proceedings in accordance with A.O. 9, Rules 25 and 16(C).

The parties filed a Stipulation and Consent Recommendation to the Vermont Supreme Court dated April 16, 2024. On May 1, 2024, the parties filed an amended version of the Stipulation (“Amended Stipulation”) to reflect that this matter was reassigned from Hearing Panel No. 1 to Hearing Panel No. 7. In the Amended Stipulation, the parties asked the Hearing Panel to recommend to the Supreme Court that Respondent be transferred to disability inactive status indefinitely on the basis of a psychological evaluation conducted by Dr. John Holt. In the Amended Stipulation, the parties represented that Respondent’s counsel and only Respondent’s counsel reviewed the psychological evaluation, which demonstrated Respondent has a physical or mental disability that incapacitates him from the practice of law.

The Hearing Panel was unable to determine Respondent’s incapacity on the basis of the Amended Stipulation. On June 19, 2024, the Panel issued an Order (“June 19 Order”) requiring

Respondent to file a copy of portions of the psychological evaluation sufficient to show Dr. Holt's conclusion that Respondent has an incapacitating physical or mental disability no later than July 8, 2024. The Panel also requested the parties' availability for an evidentiary hearing to be held between August 12, 2024, and September 13, 2024.

On July 3, 2024, Respondent's counsel filed a Motion to Extend Time, advising the Panel that he was unsuccessful in contacting Respondent despite repeated attempts and was therefore unable to comply with the Panel's June 19 Order, as he believed he needed Respondent's explicit permission to disclose portions of the psychological evaluation. Special Disciplinary Counsel filed his Response to Motion to Extend Time on July 8, 2024. He did not oppose the requested extension and suggested the Panel schedule a status conference.

Respondent's counsel filed excerpts from the psychological evaluation on September 2, 2024, which reflected Dr. Holt's opinion that Respondent has persecutory type delusional disorder, and his delusional beliefs affect his ability to practice law. The Hearing Panel held a status conference on September 5, 2024. Special Disciplinary Counsel and Respondent's counsel participated in the conference. They described substantial difficulties communicating with Respondent, which they attributed to his psychotic disorder. They expressed that, given the nature of Respondent's psychotic disorder, a hearing requiring his participation would not be productive.

Shortly after the conference, on September 5, 2024, the Hearing Panel requested the parties file another amended stipulation that incorporated information from the evaluation and the conference. The parties expressed concern that doing so would require Respondent's participation and therefore take many months at best. The Panel indicated it would consider making a recommendation to the Supreme Court without another amended stipulation if

circumstances warranted.

At the Panel's request, Respondent's counsel provided updates regarding his attempts to contact Respondent on September 24, 2024, October 23, 2024, and November 22, 2024. He indicated that he reached out to Respondent several times, but Respondent never responded. On November 22, 2024, Special Disciplinary Counsel requested the Panel move forward with making a recommendation to the Supreme Court without another amended stipulation.

Findings of Fact

The Hearing Panel incorporates by reference the stipulated facts in paragraphs 2 through 5 of the parties' Amended Stipulation and makes the following additional findings:

- Dr. John Holt conducted a forensic psychologic evaluation in or about December 2023 and determined that Respondent suffered from persecutory type delusional disorder.
- Respondent's persecutory type delusional disorder impeded his ability to cooperate with his counsel in these disability proceedings.

Conclusions of Law

Pursuant to A.O. 9, Rule 20(C), a petition to transfer Respondent to disability inactive status must be established by clear and convincing evidence.

The Hearing Panel concludes there is clear and convincing evidence that Respondent has a mental disability, persecutory type delusional disorder, that renders him unable to assist in his defense in the disciplinary proceedings for PRB File Nos. 134-2021, 069-2022, 070-2022, and 109-2022 and incapacitates him from the practice of law. *See* A.O. 9, Rule 25(B), (C). The Panel specifically notes that, as indicated by his attorney, Respondent's failure to respond to multiple attempts to communicate with counsel amounts to a failure to cooperate in his own defense in

this matter. Therefore, based on the stipulated facts and other information the parties have presented to date, the Panel must recommend that Respondent be transferred to disability inactive status.

Recommendation

The Panel recommends the Vermont Supreme Court transfer Respondent to disability inactive status and hold the above-referenced disciplinary matters in abeyance for an indefinite period and until further order of the Court pursuant to A.O. 9, Rule 25(C).

Dated December 17, 2024.

Hearing Panel No. 7

By: *Richard R. Goldsborough*
Richard Goldsborough, Esq., Chair

By: */s/ Megan Manahan Bliss*
Megan Manahan Bliss, Esq.

By: *Karen H. Luneau*
Karen Luneau, Public Member