STATE OF VERMONT
BEFORE THE PROFESSIONAL RESPONSIBILITY BOARD

In Re THOMAS MELONE, (Thomas Melone, Respondent)	PRB File No. 25-120

SPECIAL MOTION TO STRIKE UNDER 12 V.S.A. § 1041, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, MOTION FOR A MORE DEFINITE STATEMENT

Respondent THOMAS MELONE ("Respondent") moves to strike the Petition for Misconduct (the "Complaint" or "Petition") filed by Michael Hanley pursuant to Vermont's anti-SLAPP law, 12 V.S.A. § 1041, because even if Mr. Hanley had authority to bring such the Complaint under Administrative Order No. 9 (which he does not, *see Melone v. Hanley*, 25-AP-366 (VT filed October 23, 2025)), the Petition must be stricken pursuant to Vermont's anti-SLAPP law, 12 V.S.A. § 1041. In the alternative, Respondent moves to dismiss the Complaint for failure to state a claim under V.R.C.P. 12(b)(6), or, in the alternative, for a more definite statement. Respondent requests a pre-hearing conference as provided by Vt. A.O. 9 Rule 20.E. Respondent incorporates the attached Verified Complaint for Extraordinary Relief filed with the Vermont Supreme Court and docketed as Case 25-AP-366 (the "Verified Complaint"). *See* Attachment 1. As a verified complaint, it is considered an affidavit for consideration in a 12 V.S.A. §1041 motion to strike.

INTRODUCTION

Mr. Melone has been a vocal and unpopular critic of the Public Utility Commission ("PUC"), its commissioners, other administrative agencies, and the Town of Bennington, among others, mounting many challenges to, and publicly commenting on, their actions. The Vermont Superior Court has referred to Mr. Melone as a "climate warrior[] who would subject anything in

[his] path to the broad sweep of [his] scythe, leaving the path open for all other solar developers." *Otter Creek Solar LLC v. Vermont Pub. Util. Comm'n*, docket 99-1-20-cncv (Vt. Super. November 16, 2021) at *7. Mr. Melone is admitted to practice in Vermont as well as seven other States—California, New York, New Jersey, Massachusetts, Pennsylvania, Florida and Connecticut. There has never been an ethics complaint filed against him in any of those other seven jurisdictions. But in Vermont, taking a page right out of certain fossil fuel company playbooks, persons or their representatives use the Bar complaint process as an avenue to litigate against him. *See* Marcoux, Shannon, *Are Sanctions the New SLAPP? Analyzing Oil Companies' Weaponization of Ethics Accusations Against Human Rights Attorneys*, 52 Envtl. L. 217, 236 (2022).

As revealed in the Petition, there is nothing of the stuff of a typical disciplinary proceedings—stealing funds, lying to courts, missing deadlines without cause, committing crimes, drug abuse or the like. Instead, Mr. Hanley seeks to have the hearing panel act as a tribunal of original jurisdiction deciding, *inter alia*, under a clear and convincing evidence standard, the merits of the various suits, statements and positions taken by Mr. Melone that Mr. Hanley takes offense with respect to. In other words, the Hanley Petition is looking to engage in a sprawling litigation that is unprecedented in ethics complaints.

Mr. Hanley's direct assault on Mr. Melone's First Amendment rights constitutes a SLAPP action under 12 V.S.A. §1041, violates the *Noerr-Pennington* doctrine, and constitutes an unabashed retaliation for Mr. Melone's exercise of his First Amendment rights. "'There is no question,' the Supreme Court has said, 'that speech critical of the exercise of the State's power lies at the very center of the First Amendment.'" *Velez v. Levy*, 401 F.3d 75 (2d Cir. 2005) quoting *Gentile v. State Bar of Nev*., 501 U.S. 1030, 1034, 111 S. Ct. 2720 (1991).

And some of Mr. Hanley's charges *prima facie* have no purpose other than to chill Mr. Melone's First Amendment rights because they contradict express Second Circuit precedent. For example, in *Revson v. Cinque & Cinque*, 221 F.3d 71, 81 (2d Cir. 2000), the Second Circuit held "the threat of a civil RICO claim [is not] a threat to bring criminal charges" within the meaning of New York's equivalent attorney disciplinary rule. As the Second Circuit held, if Mr. Hanley's

position in Count I were correct then "no attorney could ever threaten to bring a civil RICO suit without violating the ethical rules." *Id.*

All of the Counts that Mr. Hanley presents are based upon Mr. Melone essentially acting *pro se.* In other words, none are based upon Mr. Melone representing a third-party client. Thus, as a general matter the Vermont Disciplinary Rules that he alleges have been violated simply do not apply in the first place on their own terms. *See, e.g.*, Rule 3.3, Comment [1]: "This rule governs the conduct of a lawyer *who is representing a client* in the proceedings of a tribunal."; Rule 4.1: "*In the course of representing a client* a lawyer shall not knowingly make a false statement of material fact or law to a third person."; Rule 4.2: "*In representing a client*, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter." Rule 4.4: "(a) *In representing a client*, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person."

In a recent amicus brief filed with the Third Circuit, in *Greenberg v. Lehocky*, Case 22-1733, ECF 71 at p. 10, the Pacific Legal Foundation wrote:

> State bars are marred by a sad past of abusing bar regulations to engage in Comstock crusades against bar members with unpopular views. Indeed, some have argued that the entire array of various barriers to entry thrown up by bars over the years exists to curate homogeneity of culture and thought: "[T]he established bar adopted educational requirements, standards of admission, and 'canons of ethics' designed to maintain a predominantly native-born, white, Anglo-Saxon, Protestant monopoly of the legal profession." citing Monroe H. Freedman, *Understanding Lawyers' Ethics* (1990); see also Marcoux, Shannon, *Are Sanctions the New SLAPP? Analyzing Oil Companies' Weaponization of Ethics Accusations Against Human Rights Attorneys*, 52 Envtl. L. 217, 236 (2022) ("Attorney licensing and disciplinary procedures have been used in racist, sexist, xenophobic, and classist ways for more than a century.") Broad discretion granted by flexible and vague bar regulations offer regulators opportunity to control bar membership to better align with their own ideological visions.

As it stands now, the Petition is unmeritorious, is a shotgun or puzzle pleading lacking the clarity required by due process and VT. A.O. 9 Rule 13.D(1)(b), and is brought to target Mr. Melone's lawful exercise of his First Amendment rights and to unlawfully chill the future exercise of his First Amendment rights. Disciplinary proceedings should not be used to punish unpopular

speech, nor punish meritorious legal or factual positions, nor an attorney that may be unpopular in Vermont.

The unmeritorious nature of the Petition is pervasive. The Petition's lack of merit and clarity reaches a crescendo in para. 136 in which it is alleged that "[o]ver course of many years in a variety of forums, including but not limited to the Vermont Public Utility Commission, the Vermont Superior Court, the Vermont Supreme Court and the United States Court of Appeals, Thomas Melone persistently and deliberately violated the Rules of Professional Conduct." Nowhere does the Petition refer to any specific case or any specific position or document or claim in its laundry list of "a variety of forums." And those non-specific allegations are wrapped into a claimed violation of Rule 8.4(d), which itself is vague and has been regularly criticized and circumscribed by courts across the United States, as discussed in the Verified Complaint.

There is little doubt that Mr. Melone's frequent litigation involving renewable energy development and challenges to, and criticisms of, administrative agencies and municipalities offend some, including apparently Attorney Hanley. As Attorney Merrill Bent stated in her complaint that started this process: "This behavior is not normal." Mr. Melone concedes the level of criticisms and litigation may not fit within the "normal" range for attorneys in Vermont. But each action is on solid ground and no violation of any rule of conduct occurred. And regardless there is no numerical limit under the First Amendment proscribing the number of times an American citizen can exercise his rights to free speech and to petition the government.

Every count in the Petition is based upon "the exercise, in connection with a public issue, of [Mr. Melone's] right to freedom of speech or to petition the government for redress of grievances under the U.S. or Vermont Constitution." 12 V.S.A. § 1041(a). Every Count in the Petition faults Mr. Melone in one way or another for written statements filed with public officials in connection with the exercise of Mr. Melone's right to free speech and/or in connection with his rights to petition the government. As the Petition falls directly within the category of abusive actions subject to the anti-SLAPP law, the Panel should strike the Petition.

The Petition applies broad use of the vague notions of undignified and discourteous, degrading and disrupting, conduct prejudicial to the administration of justice, what constitutes threatening, what constitutes lack of candor, disrespect, among others. Mr. Hanley has targeted, violated, and chilled Mr. Melone's rights to free speech and to petition. *See, e.g., Cerame v. Slack*, 123 F.4th 72 (2d Cir. 2024). Mr. Hanley's charges *prima facie* have no purpose other than to chill Mr. Melone's First Amendment rights. That is shown by their unmeritorious nature. For example, Mr. Hanley's lead charge, Count I, is based upon an assertion that is directly contrary to express Second Circuit precedent. In *Revson v. Cinque & Cinque*, 221 F.3d 71, 81 (2d Cir. 2000), the Second Circuit held "the threat of a civil RICO claim [is not] a threat to bring criminal charges" within the meaning of New York's equivalent attorney disciplinary rule of Vermont's Rule 4.5, which is foundation of Petition Count I. As the Second Circuit held, if Hanley's position were correct then "no attorney could ever threaten to bring a civil RICO suit without violating the ethical rules." *Id.* And in the case of Count I, because a violation of Rule 3.3, of course, requires that the statement made actually be false, Mr. Hanley seeks to have the hearing panel adjudicate those civil RICO claims which would involve over a dozen subpoenas to witnesses from Bennington County.

Mr. Hanley's Petition also seeks to *re-litigate* or originally litigate other disputes, cases and rulings under the clear and convincing standard applicable here, such as (i) the controversy at issue in the Vermont Supreme Court's decision in *In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, No. 23-AP-346, 2024 VT 58, *see* Count III, (ii) PUC hearing officer rulings in two pending cases before the PUC, *see* Count IV, (iii) a dispute that was settled with the Town of Bennington, *see* Count V, (iv) use of disciplinary complaints during the middle of litigation and First Amendment rights to disclose such activity, *see* Count VI, (v) the constitutional limits of RPC 4.2 in the face of the First Amendment's right to communicate with government officials, *see* Count VII, and (vi) the real doozy of seeking to litigate or re-litigate all the still unspecified cases referred to by Mr. Hanley in Count VIII possibly going back a decade or more.[1]

[1] Count II, while unmeritorious in its own right, does not seek to re-litigate anything but does exactly what Mr. Hanley seems to be trying to avoid by his use of pseudonyms —bringing the actions of two citizens of Bennington in a bankruptcy proceeding back into the public eye.

As further discussed herein, all of Mr. Hanley's charges are unmeritorious in their own right, seek to litigate or re-litigate issues that are not the stuff for disciplinary complaints, and expressly and unlawfully target Mr. Melone's First Amendment rights.

FACTUAL BACKGROUND

A. THE BENT COMPLAINT.

Michael Hanley filed the Petition against Thomas Melone on September 26, 2025. The Petition was the product of a complaint (the "Bent Complaint") filed by Attorney, and Chair of the Judicial Conduct Board, Merrill Bent, who represents the Town of Bennington. The Bent Complaint accused Mr. Melone of *specific* violations of the Vermont Rules of Professional Conduct based upon *specific* conduct.

Taking a page right out of certain fossil fuel company playbooks, the Bent Complaint was filed against Mr. Melone during the middle of adversarial litigation proceedings and was entirely targeted at my exercise of the First Amendment rights to free speech and to petition the government.[2] Ms. Bent concedes that fact in her complaint, stating that it was filed as a result of an email Mr. Melone sent to her on March 4, 2025. On March 4, 2025, Bent wrote to me: "Tom, you may not contact a represented party about the subject of litigation in which you are the attorney of record. Your email of March 1, 2025 crossed the line because it was a threat concerning litigation. It had no mention of your alleged environmental concerns. DO NOT DO IT AGAIN." Mr. Melone responded on March 4: "Merrill, I do not need your permission to contact public officials. Our right to do so is guaranteed by the free speech and right to petition clauses of the First Amendment to the United States Constitution."

The March 1, 2025, email that Bent claims "crossed the line," citing the *Restatement (Third) of the Law Governing Lawyers* (the ***"Restatement"***) 101(b), *see* **Exhibit 2 to the Verified Complaint**, was entitled "*PLH Public Comment On Motions Filed In Environmental Court*," sent to Bent, the members of the Bennington Select and the Bennington Town Manager. In the Bent

[2] *See* Marcoux, Shannon, *Are Sanctions the New SLAPP? Analyzing Oil Companies' Weaponization of Ethics Accusations Against Human Rights Attorneys*, 52 Envtl. L. 217, 236 (2022).

Complaint, she asserted that sending the March 1, 2025, email violated Rule 4.1(a) and Rule 4.2. If this were California, for example, there would be no question to address because the California Rules of Professional Conduct 4.2(c)(2) enshrines Mr. Melone's First Amendment rights by expressly excluding from the coverage of the Rule *any and all* "communications with a public official, board, committee, or body"—exactly what Bent (and now Hanley) targeted. The Bent PRB complaint also asserted that Mr. Melone violated Rule 3.1 by filing an appeal with the Environmental Court, and that Mr. Melone violated Rule 4.4(a) and Rule 8.4(d) by purportedly using the "legal system to influence the outcome" of PUC proceedings. Those were Attorney Bent's alleged violations.

The PRB provided Mr. Melone notice of the Bent Complaint and a copy of the Bent Complaint and asked for a response. Mr. Melone filed a timely response with the PRB addressing each specific violation alleged. The screening counsel then moved the Bent Complaint to the next step, which is further investigation. Attorney Michael Hanley was assigned by the Chair of the PRB to be disciplinary counsel to conduct the investigation. But there is no provision of A.O. No. 9 that authorizes Michael Hanley to act as disciplinary counsel. Nevertheless, Mr. Melone fully cooperated with Mr. Hanley's investigation and filed a response addressing the violations alleged in the Bent Complaint.

B. IRREGULARITIES IN THE PETITION FOR MISCONDUCT.

The first irregularity in the Petition is that it was presented under Vermont's old rules. While the relevant current rules may not have made any relevant substantive changes as they relate to the Petition against Mr. Melone, it is odd to say the least that the person bringing charges under the Rules did not know the current rules under which to bring the charges. Note that as part of the caption on page 1 of the Petition, A.O. 9, Rule 11(D)(1)(b) is referenced. In the first paragraph of the Petition A.O. 9, Rule 11(D)(3) is referenced. Those are references to the old rules. Current Rule 11 is entitled "Grounds for Discipline." One might initially dismiss such erroneous references, but in an email exchange with Mr. Melone, Attorney Hanley confirmed that he was

working from the wrong rules. *See* **Exhibit 3 to the Verified Complaint**. Attorney Hanley's irregularities continued with the filing of the Petition.

ARGUMENT

I. THE COMPLAINT ARISES FROM MR. MELONE'S EXERCISE OF HIS FIRST AMENDMENT RIGHTS TO PARTICIPATE IN PROCEEDINGS BEFORE THE PUC, VARIOUS COURTS AND THE PRB AND SHOULD BE STRICKEN UNDER VERMONT'S ANTI-SLAPP STATUTE.

Under Vermont's anti-SLAPP statute, a SLAPP action is "an action arising from defendant's exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the U.S. or Vermont Constitution." 12 V.S.A. § 1041(a).

The statute defines such an exercise to include:

> (1) any written or oral statement made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;
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> (2) any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;
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> (3) any written or oral statement concerning an issue of public interest made in a public forum or a place open to the public; or
>
> (4) any other statement or conduct concerning a public issue or an issue of public interest that furthers the exercise of the constitutional right of freedom of speech or the constitutional right to petition the government for redress of grievances.
>
> 12 V.S.A. § 1041(i).

The statute authorizes the defendant in an alleged SLAPP action to bring a special motion to strike within sixty days after the filing of the complaint. *Id.* § 1041(b). The Complaint was filed on September 26, 2025. The motion is decided on the "pleadings and supporting and opposing affidavits," *id.* § 1041(e)(2), and must be granted unless the complainant shows that "the defendant's exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law" and "the defendant's acts caused actual injury to the plaintiff." *Id.* § 1041(e)(1)(A), (B). Vermont's anti-SLAPP statute was "based primarily on the language of California's 1992 statute, but also contains language from the

Massachusetts statute." *Felis v. Downs Rachlin Martin PLLC*, 2015 VT 129 at P31.

The Panel must first determine whether the Complaint is a SLAPP action under the statute. The issues are whether the complaint "ar[ose] from" Mr. Melone's exercise of his rights of free speech and to petition, and whether Mr. Melone's exercise of those rights was "connect[ed] with a public issue." 12 V.S.A. § 1041(a). The threshold criterion that "must be met in any motion to strike under the anti-SLAPP statute, regardless of the type of activity," is that the activity giving rise to the complaint occur "in connection with a public issue." *Felis v. Downs Rachlin Martin PLLC*, 2015 VT 129 at P52. The circumstances here meet that requirement.

A. ALL THE COUNTS "ARISE FROM" FROM MR. MELONE'S EXERCISE OF HIS RIGHTS OF FREE SPEECH AND TO PETITION.

Count I arises from a filing that Mr. Melone made with the Vermont Public Utility Commission on January 10, 2025 (attached as **Exhibit 1 to the Verified Complaint**), involving the proposed Apple Hill Solar facility in Bennington. Count I arises from comments that are critical of the Town of Bennington.

Count II arises from Mr. Melone's right to use evidence to impeach the credibility of a potential witness in a PUC proceeding involving the proposed Chelsea Solar facility in Bennington. And his right to free speech to provide his opinion of why a party dropped out of that PUC proceeding to counter vitriolic comments made by others in connection with that same PUC proceeding, when that became an issue in involving the proposed Apple Hill Solar facility in Bennington.

Count III arises from testimony that Mr. Melone gave in a PUC proceeding involving alleged site preparation for the proposed Apple Hill and Chelsea Solar facilities in Bennington.

Count IV arises from public comments that Mr. Melone filed with two Vermont Legislative committees that were considering amendments to a statute under which solar energy facilities receive contracts to purchase the electricity they generate.

Count V arises from Mr. Melone's exercise of his right to petition to challenge the Town's financial and other involvement in what is known as the Benn High project, which the Petition

alleges "redevelopment of the former high school was a priority for the Town."

Count VI arises from Mr. Melone's response to PRB screening counsel, and complains of what Mr. Melone said in his response.

Count VII arises Mr. Melone's "communications with officials and employees of the Town of Bennington" that disclosed Mr. Melone's response to PRB screening counsel to "officials and employees of the Town of Bennington."

Count VIII does not refer to specific allegations of conduct (which itself requires Count VIII's dismissal), but what is clear is that Count VIII arises from Mr. Melone's exercise of his First Amendment rights to free speech and to petition the government.

B. ALL COUNTS INVOLVED MR. MELONE'S EXERCISE OF HIS FIRST AMENDMENT RIGHTS IN CONNECTION WITH A PUBLIC ISSUE.

Counts I-IV and VI, VII and VIII all arise in one way or another from the very public issue of the Apple Hill and Chelsea Solar facilities. The underlying PUC proceedings occurred in connection with a set of solar projects that have been hotly contested, producing multiple appeals to the Vermont Supreme Court, litigation in the federal courts and the Federal Energy Regulatory Commission, and litigation in State courts. The proposed solar facilities have received copious and ongoing media coverage and commentary. A search of the VT Digger website results in **56** articles referencing Allco. The criterion in the PUC proceedings themselves include consideration of impacts to the Town and the County of Bennington, making the project, almost by definition, a public issue. The solar facilities also involve the very public issues of climate change and the Public Utility Commission adhering to federal law, as well as State law, of course. Counts I-VIII also all arise in one way or another from the very public issue of the Bennington Town Plan. *See, e.g.*, Bennington Banner, June 20, 2025—*Select Board should adopt valid town plan*.[3]

[3] https://www.benningtonbanner.com/opinion/letter-select-board-should-adopt-valid-town-plan/article_7333d6e8-7a4f-45ff-aec6-2aac183c6052.html. "When the Bennington Select Board voted to support the Apple Hill solar projects in return for Allco's pledge to drop its challenge to the BennHi redevelopment, our Town leaders evidently decided "on advice of counsel" that they were not in a viable position to defend their previous contention that the Bennington Town Plan disallowed the solar projects. This capitulation gives credibility to the argument that the Town Plan has legally expired and is no longer an active document. State law proclaims that all plans

Count III also arises from testimony that Mr. Melone gave as an individual in a PUC proceeding involving the land where the proposed solar facilities are proposed to be located. *See*, 12 V.S.A. § 1041(i)(1) (providing that the anti-SLAPP law applies to "any written or oral statement made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.")

Count IV also arises from the public issue of the Legislature considering amendments to a statute related to solar facilities. *See*, 12 V.S.A. § 1041(i)(2) (providing that the anti-SLAPP law applies to "any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.")

Other than certain actions brought by the executive branch or involving certain health issues, the statute contains no limitation on the types of actions to which it may apply, for "the nature or form of the action is not what is critical but rather that is against a person who has exercised certain rights." *Equilon Enters. v. Consumer Cause, Inc*., 52 P.3d 685, 689 (Cal. 2002) (affirming dismissal of suit for declaratory and injunctive relief pursuant to anti-SLAPP statute). This prosecution appears to be a case of first impression in which the PRB has sought discipline for political speech and the exercise of the right to petition. The intent of the anti-SLAPP legislation is to protect the right in Vermont to exercise the rights of free speech in connection with public issues. The legislative intent of the anti-SLAPP law is to protect against a chilling effect on constitutional rights. The threat of disciplinary action for political speech chills Mr. Melone's exercise of the rights of free speech in connection with public issues. The threat of disciplinary

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expire after eight years unless readopted, which means the 2015 plan expired in 2023. The Select Board has amended the town plan several times, but a review of past minutes makes it clear that it has never voted to re-adopt the plan. The specious assertion that the Bennington County Regional Commission could somehow adopt the plan on the Town's behalf vastly oversteps the statutes which limit the role of a Regional Planning Commission to "Review and Consultation", and stipulate that only the legislative body of a municipality can adopt, or re-adopt, a plan and that an amendment in itself does not extend its expiration date. The failure to re-adopt the Town Plan in a timely, lawful manner has left Bennington vulnerable to a multitude of legal challenges and casts an unfortunate shadow over not just the BennHi project, but numerous other initiatives as well. I urge the current board to address this situation openly, honestly, and transparently and take the proper steps to adopt a valid Town Plan as expeditiously as possible."

action for the petitioning activity referenced in the Petition—petitioning activity where none of the tribunals concluded disciplinary sanctions of any sort were appropriate—chills Mr. Melone's exercise of the rights to petition in connection with public issues.

In *Comm'n for Lawyer Discipline v. Rosales*, 577 S.W.3d 305 (Tex. App. 2019), Texas determined that its Texas Citizens Participation Act ("TCPA"), in its version at that time, applied to attorney disciplinary proceedings.[4] As in Vermont, the Texas legislation was passed to "encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government." *Id*. at 310 (citing Tex. Civ. Prac. & Rem. Code § 27.002). TCPA permits a person to move for dismissal if there is evidence that an action "'is based on, relates to, or is in response to the party's exercise of' one of the enumerated rights." *Id*. The lawyer regulatory body, the Commission for Lawyer Discipline, asserted that "lawyer-discipline actions" were exempt from TCPA. *Id*. at 311. This argument was rejected.

First, the *Rosales* court noted that while TCPA included exemptions for governmental entities such as "the attorney general, a district attorney, a criminal district attorney or a county attorney," TCPA did not include Chief Disciplinary Counsel. *Id*. Second, the *Rosales* court determined that any "immunity invoked by the Commission does not bar application of the TCPA" to disciplinary prosecution. *Id*. at 314. Third, the *Rosales* court held that the "Commission's petition sought affirmative legal relief against [the attorney]" and therefore, the "disciplinary suit" fell under "TCPA's broad definition of "'legal action.'" *Id*. at 315. Accordingly, Texas determined that disciplinary proceedings were not exempt from TCPA. *Id*. As the *Rosales* court noted, "if the Legislature had intended to exempt lawyer-discipline enforcement actions…, it could have included text to that effect." *Id*. at 312. Fourth , 12 V.S.A. § 1041 does not set out any grounds for immunity. Fifth, 12 V.S.A. § 1041 broadly applies to any action. It does not exclude quasi-judicial or quasi-criminal proceedings and instead encompasses almost every type of legal action seeking

[4] After this decision, "the [Texas] legislature amended the TCPA to provide that the [TCPA] does not apply to 'a disciplinary action or disciplinary proceeding brought under [the State Bar Act] or the Texas Rules of Disciplinary Procedure.'" *Rosales v. Comm'n for Lawyer Discipline*, No. 03-18-00725-CV, 2020 WL 1934815, at *1 n.1 (Tex. App. April 22, 2020); Tex. Civ. Prac. & Rem. Code § 27.010(a)(10).

some kind of remedy, injunction, or penalty, including the disciplinary action filed against Mr. Melone.

II. ALL COUNTS ARE FRIVOLOUS AND FAIL TO STATE A CLAIM FOR A VIOLATION OF ANY DISCIPLINARY RULE.

For the reasons explained in the Verified Complaint filed with the Supreme Court which are incorporated herein by reference, all counts are frivolous and failure to state a claim for a violation of any disciplinary rule.

A. COUNT I IS UNMERITORIOUS.

The subject matter of Count I was not included in the Bent Complaint. Attorney Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond. Count I is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

The filing referred to in Count I was made on January 10, 2025, and is attached as **Exhibit 5 to the Verified Complaint**. The filing was made in response to the Department of Public Service's and the Town of Bennington's statements seeking to assert collateral estoppel to stop the new petition for a certificate of public good for the Apple Hill Solar project. The January 10 filing described differences between the project in PUC docket 8454 and the new petition in case 24-3517.

1. The Claim That Rule 3.5(d) Was Violated Is Frivolous.

Vt. RPC 3.5(d) states: "A lawyer shall not … engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal."

The Rule's Comment [4] states: "The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics."

First of all, the Petition does not specify how the statements made in the filing were "undignified or discourteous conduct." Nor does the Petition specify how the statements were "degrading or disrupting to a tribunal." Without such an explanation, the charge is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

Second, a violation of Rule 3.5(d) requires that the alleged undignified or discourteous conduct be directed "toward the tribunal" itself. *Grievance Adm'r v. Fieger*, 476 Mich. 231, 719 N.W.2d 123, 145 (Mich. 2006). Here, none of Melone's comments criticized the PUC or were directed at the PUC or any of its commissioners or the hearing officer. Rather the statements were criticisms of, and statement regarding, the Town of Bennington and its officials. In *Fieger*, for example, the attorney was held to have violated Rule 3.5 where he made derogatory remarks on radio show *about judges* that were presiding on one of his cases and the case was still pending, *see*, 476 Mich. at 236-237:

> Mr. Fieger called these same judges "three jackass Court of Appeals judges." When another person involved in the broadcast used the word "innuendo," Mr. Fieger stated, "I know the only thing that's in their endo should be a large, you know, plunger about the size of, you know, my fist." Finally, Mr. Fieger said, "They say under their name, `Court of Appeals Judge,' so anybody that votes for them, they've changed their name from, you know, Adolf Hitler and Goebbels, and I think — what was Hitler's — Eva Braun, I think it was, is now Judge Markey, she's on the Court of Appeals."

Likewise, in *In re: Lorin Duckman, Esq*., PRB File No 2005.087, Decision No. 103, it was found that an attorney violated Rule 3.5(d) after Judge Toor found the attorney in criminal contempt because of "direct refusal of the court's order, along with [his] angry, confrontational, and disrespectful manner . . . made it impossible to proceed with the case, evidenced an utterly inappropriate manner for a lawyer to use *in the courtroom towards a judge*, and constituted contempt of court." (Emphasis added.)

Here, none of Melone's comments criticized the PUC or were directed at the PUC or any of its commissioners or the hearing officer. Therefore, no violation of Rule 3.5(d) occurred.

Third, paragraphs 6-8 in the January 10, 2025, filing are fully protected by the First Amendment to the United States Constitution. Paragraphs 6-8 are criticisms of the government of the Town of Bennington. "'There is no question,' the Supreme Court has said, 'that speech

critical of the exercise of the State's power lies at the very center of the First Amendment.'" *Velez v. Levy*, 401 F.3d 75 (2d Cir. 2005) quoting *Gentile v. State Bar of Nev*., 501 U.S. 1030, 1034, 111 S. Ct. 2720 (1991). As a result, no violation of Rule 3.5(d) could have occurred.

2. The Claim That Rule 3.3 Was Violated Is Frivolous.

Vt. RPC 3.3(a) entitled "Candor Toward The Tribunal" states "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

The Hanley Petition states that the quoted statements in filings violated "Rule 4.3 [*sic*] in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of law and fact."

a. Melone Was Not Representing "a client" so no violation could have occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer *who is representing a client in the proceedings of a tribunal*. See Rule 1.0(m) for the definition of 'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.)

Melone was not representing a client. Much of the Petition relies on a foundational premise that is unsupported, *i.e*., that Melone was representing a "client," in his dealings with the PUC. For example, Vt. Prof. Cond. Rule 3.3 (*see* Count I(b)), Count III(b), which applies only when "a lawyer [] is representing a client in the proceedings of a tribunal." *See* Rule 3.3, Cmt. [1].")

The PUC has expressly rejected the proposition that Melone is representing a client in proceedings before the PUC. In an Order dated June 11, 2021, Case No. 20-1611-INV, *Investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2),* (which Order has been previously notified to Attorney Hanley), the PUC stated that "[w]e agree with Mr. Melone that as the sole proprietor and director of the various corporate entities named as respondents in this investigation, he is essentially proceeding in a *pro se* capacity,

and we will not forbid him from doing so." *Id*. at 3. The PUC did not leave it there. Rather the PUC (which is empowered by statute to adopt its own rules) expressly rejected contrary authority. *See id*. at 3:

> We observe that an exception to the "pro se exception" to Rule 3.7 cited by Allco is stated at footnote 11 in *O'Neil v. Bargen* and cites to *Gasoline Expwy., Inc, v Sun Oil Co.*, 64 A.D.2d 647, 648 (1979), for the proposition that an attorney who is a sole shareholder in a corporation, by doing business in corporate form, has waived her right to represent her corporation "pro se." This exception was not unanimously accepted by the Court in *Gasoline Expressway* or introduced and litigated by the parties here. We note this exception to the pro se exception does not exist in Rule 3.7 but does exist in case law. *The cited cases are not binding on us and we will not rely on these cases as precedent here.*

(Emphasis added.)

In other words, all of the Petition's allegations that rely on Melone representing "a client" before the PUC are unmeritorious as a matter of law. Self-representation is simply not "representing a client," nor will an average or even sophisticated reader of these words equate the two situations. *See In re Haley*, 126 P.3d 1262, 1267, 1272 (Wash. 2006) (majority and concurring opinions referencing definitions and authorities). Rather, this is an "ingenious bit of legal fiction." *Haley*, at p. 1272 (Sanders, J., concurring). Further, this approach to construing the rule's language renders the phrase "in representing a client" surplusage, contrary to a basic canon of construction.[5]

b. Mr. Hanley's allegation that Melone Made false statements of law and fact is unmeritorious.

First, Mr. Hanley alleges that Melone made false statements of law and fact, but he offers no specificity as to what statement of fact were purportedly knowingly false, and offers no specificity as to what statements of law were purportedly false. Without such an explanation, the charge is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

Second, a violation of Rule 3.3, of course, requires that the statement actually be false. As such, Mr. Hanley's charges will of necessity require Mr. Melone to present in a public forum all the evidence that support Mr. Melone's assertions made in the PUC filing on which Count I is

[5] *See* "Surplusage canon," BLACK'S LAW DICTIONARY (11th ed. 2019) ("if possible, every word and every provision in a legal instrument is to be given effect"), citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012) ("it is no more the court's function to revise by subtraction than by addition").

based, and require many depositions of Bennington officials and others that would be required if Count I eventually goes to a hearing and is not dismissed or withdrawn.

Third, knowingly making false statements is a higher threshold than making statements in bad faith in the context of sanctions against attorneys. The Second Circuit's precedent on its bad faith standard in regards to attorney sanctions is instructive because Mr. Hanley has produced no evidence that he can even come close to meeting that standard. *See, e.g., Revson v. Cinque & Cinque, P.C.*, 221 F.3d 71, 78-82 (2d Cir. 2000) (reversing award of sanctions despite vexatious conduct of counsel, including speaking to news reporter concerning a fraud claim against defendants with the intent to tarnish opponent's reputation; threatening to bring civil RICO claim against opposing attorney; referring to opposing counsel as a "snake"; and writing letter to opposing counsel threatening to attack his reputation with the "legal equivalent of a proctology exam"). While "bad faith may be inferred where the action is completely without merit," *In re 60 East 80th Street Equities, Inc.*, 218 F.3d 109, 116 (2d Cir. 2000), "the court's factual findings of bad faith must be characterized by a high degree of specificity." *Milltex Industrial Corp. v. Jacquard Lace Co*., 55 F.3d 34, 38 (2d Cir. 1995) (internal quotation marks and citation omitted). *See, e.g., Chong v. Kwo Shin Chang*, 599 F. App'x 18 (2d Cir. 2015) *20 ("While it is true that '[b]ad faith can be inferred when the actions taken are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose,' *id*. (internal quotation marks omitted), the court's determination that 'there was absolutely no merit to the claims asserted' is not sufficient. [citation]. The standard requires "clear evidence that (1) the offending party's claims were entirely meritless and (2) the party acted for improper purposes." *Revson v. Cinque & Cinque, PC*, 221 F.3d 71, 79 (2d Cir. 2000) (internal quotation marks omitted). The court's only findings are that: "third-party plaintiffs failed to introduce evidence sufficient to support even a prima facie" claim; the "failure[] of proof [was] . . . powerful evidence of the fact that the complaint was meritless from the start;" and "[t]his obvious lack of merit gives rise to precisely the inference that . . . the third-party complaint was filed solely to pressure plaintiffs into

withdrawing meritorious FLSA and NYLL claims." [citation]. These findings collapse the relevant standard into a single requirement that the court find the claims baseless.")

3. The Claim That Rule 4.5 Was Violated Is Unmeritorious.

Vt. Rule 4.5 entitled "Threatening criminal prosecution," states: "A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter."

Petition paragraph 119 asserts that the statements in the PUC filing of January 10, 2025, constituted "threatening to present criminal charges in order to obtain advantage in a civil manner." That is simply counterfactual. There is nothing that supports Hanley's assertion.

First, a *civil* RICO action is a *civil* matter, it is not a criminal matter *as a matter of law*. Mr. Melone was not threatening criminal charges, and never stated or implied anything of the sort. Mr. Hanley's allegations against Mr. Melone are based upon his misunderstanding of *civil* RICO versus a criminal RICO claim (the latter of which Mr. Melone could not bring in any case).

Second, other jurisdictions that have the same rule as Vermont make it clear that exposing conduct or threatening to expose conduct in a civil litigation that might also be criminal conduct is not threatening criminal action in violation of the Rule. *See, e.g., J.B.B. Inv. Partners Ltd. v. Fair*, 37 Cal. App. 5th 1, 249 Cal. Rptr. 3d 368 (2019) *14-15 ("The July 4 offer did not involve a violation of former rule 5-100. As the plain language of Russo's e-mail makes clear, even when mentioning Bernie Madoff and Ponzi schemes, Russo was threatening to expose Fair's alleged fraud in civil litigation if the parties did not settle, not by either expressly or impliedly threatening him with criminal charges 'to obtain an advantage in a civil dispute' (Rules Prof. Conduct, former rule 5-100(A)).") And unlike *J.B.B. Inv. Partners Ltd.* where an actual threat was made, here Mr. Melone did not make any threats of criminal charges or ask the Town to take any action.

Third, if Hanley's view of civil RICO were correct, then every lawyer that is involved on behalf of a plaintiff in a civil case where a civil RICO claim were viable would likely be violating Rule 4.5. That certainly is not the law as the Second Circuit has expressly held.

Fourth, the Second Circuit has expressly held that Mr. Hanley's position is wrong. In *Revson v. Cinque & Cinque*, 221 F.3d 71, 81 (2d Cir. 2000), the Second Circuit held "the threat of a civil RICO claim [is not] a threat to bring criminal charges" within the meaning of New York's equivalent attorney disciplinary rule. *See also, id*. ("Although Burstein's draft letter mentioned that use of the mails to perpetrate billing frauds had led to the criminal conviction of other attorneys, every viable RICO claim, whether civil or criminal, by definition involves some allegation of criminal conduct, *see* 18 U.S.C. §§ 1961-1964. If the district court's view were correct, no attorney could ever threaten to bring a civil RICO suit without violating the ethical rules.")

Fifth, California Rule 3.10 entitled "Threatening Criminal, Administrative, or Disciplinary Charges" is similar to Vermont's. It provides "(a) A lawyer shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute." Comment [2] makes clear that the "*rule does not apply to a threat to bring a civil action*." And a civil RICO claim is what was mentioned in Mr. Melone's filing.

4. The Claim That Rule 8.4(d) Was Violated Is Frivolous.

The discussion of Rule 8.4(d) for all Counts is *infra.*

B. COUNT II IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

The subject matter of Count II was not included in the Bent Complaint. Attorney Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond.

1. The Claim That Rule 4.5 Was Violated Is Unmeritorious.

Vt. Rule 4.5 entitled "Threatening criminal prosecution," states: "A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter."

Petition paragraph 121 asserts that Mr. Melone's communications with ML and DG constituted "threatening to present criminal charges in order to obtain advantage in a civil manner." There is nothing that supports Mr. Hanley's assertion.

First, Hanley does not provide with any specificity what communication or communications purportedly threatened to present criminal charges in order to obtain advantage in a civil manner. Without that specificity, the charge is unmeritorious on its face and violates Vt. A.O. 9 Rule 13.D(1)(b).

Second, Count II provides another good example of how Attorney Hanley's violations of Vt. A.O. 9 Rule 13A have harmed not only Mr. Melone, but the persons identified as "ML/DG". This *sua sponte* Count would have been able to be dispensed with if Attorney Hanley provided the notice to Mr. Melone that is required by Vt. A.O. 9 Rule 13A, or if Mr. Melone were permitted to contest the allegations at the probable cause hearing. The very people that Attorney Hanley seems to want to not identify—ML/DG—would now be brought back into the public eye.

Third, there is a single communication from Mr. Melone, *see* Pet. ¶55, that occurred while Mr. Melone and ML/DG were in the Petition's words "opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good." Pet. ¶50. In the May 3, 2024 email, Mr. Melone said "I do want you to be aware that we will be asking about it in your depositions." Pet. ¶52. No criminal charges were threatened there.

On May 10, 2024, ML/DG withdrew as parties to the PUC proceeding. In fact, when ML & DG's attorney called Mr. Melone to discuss that email and the real estate documents, Mr. Melone made it expressly clear to him that the documents were only going to be used for *impeachment purposes* when they testified. Failing to report assets and sale proceeds from those assets in a federal bankruptcy proceeding involves conduct that has been characterized by the Vermont Supreme Court as involving dishonesty, fraud, deceit or misrepresentation. *See*, *In re Palmisano*, 165 Vt. 593, 595 (1996) (Failing to "disclose the receipt of [a $10,000 payment] to the bankruptcy court [was] conduct involving dishonesty, fraud, deceit or misrepresentation." Mr. Melone made it perfectly clear that Mr. Melone would not be reporting the documents to any authorities that might have jurisdiction to take action against ML/DG, and that Mr. Melone was

not making any threats of criminal action. And, here Mr. Melone did not make any threats or ask ML/DG to take any action.

And at that point, the criminal statute of limitations had expired so criminal charges could not be brought or threatened in any event. After that conversation with their attorney, Mr. Melone emailed the attorney to ask whether Mr. Melone should be directing all contact to him, or whether Mr. Melone should contact ML/DG directly. He stated that Mr. Melone should contact ML/DG directly.

Petition para. 56 notes that ML/DG withdrew from the PUC proceeding. What it fails to state is that ML withdrew and filed a written statement that misrepresented why they were withdrawing in order to disparage Mr. Melone. Mr. Melone did not take any action to correct the vitriolic statements against him in her withdrawal. But when those statements were in some form or another later being used to disparage Mr. Melone in comments by the Town, Mr. Melone made the additional communication to ML/DG recited in Petition para. 57. That communication did not threaten anything either. And even though as stated in para. 58 ML/DG took no action, Mr. Melone still did nothing in response. But when the Town and then the Vermont Department of Public Service made additional comments at the PUC re-iterating in some form or another the disparaging statements made by ML/DG in their withdrawal, Mr. Melone felt that it was time to set the record straight. That is what led to the filing referred to in Petition para. 59. But neither that filing nor any other filing or communication threatened criminal proceedings, or asked ML/DG to take any action under threat. And ML/DG had already withdrawn from opposition so there was no advantage to have been gained in a civil proceeding in which they were a party in any event.

And Mr. Melone's filing setting the record straight is expressly permitted as explained by the *Restatement* §109 dealing with "An Advocate's Public Comment on Pending Litigation" ("a lawyer may in any event make a statement that is reasonably necessary to mitigate the impact on the lawyer's client of substantial, undue, and prejudicial publicity recently initiated by one other than the lawyer or the lawyer's client.") And all relate to Mr. Melone's exercise of his First Amendment rights to free speech and his right to petition the government.

C. COUNT III IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

The subject matter of Count III was not included in the Bent Complaint filed with the PRB. Attorney Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond.

Although not stated, this Count appears to be based solely on paragraphs 56-60 and is based entirely on the Vermont Supreme Court's opinion in In *In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, No. 23-AP-346, 2024 VT 58. *See*, Pet. ¶57 ("the Vermont Supreme Court said that even though the Public Utility Commission had issued a Temporary Restraining Order prohibiting site-preparation 'developer continued to conduct site clearing activities the following day until the sheriff arrived and ordered all work to cease.'"), Pet. ¶58 ("the Vermont Supreme Court said that 'the PUC also found developer's claims that site preparation was done solely for unrelated farming purposes to be not credible given that developer knew that it did not have a Certificate of Public Good, that it was required to have one, that it needed to clear trees for site preparation, and that clearing had already been denied by the PUC.'"), Pet. ¶59 ("the Vermont Supreme Court said that "the PUC concluded that developer's failure to comply with its regulatory obligations harm the credibility and integrity of the process, resulting in harm to the statutory scheme and potential harm to public safety and welfare, the environment, and utility customers.'").

Paradoxically, Mr. Hanley's claim in Count III is based upon the conclusion that Mr. Melone is acting *pro se*. In other words, the claim attributes the site preparation to Mr. Melone, which removes it from the Rule in the first place.

1. The Claim That Rule 3.5(d) Was Violated Is Unmeritorious.

Vt. RPC 3.5(d) states: "A lawyer shall not … engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal." The Rule's Comment [4] states: "The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should

avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics."

First of all, the Petition does not specify how either the purported "site preparation without a Certificate of Public Good" or Mr. Melone's purported "'not credible' testimony" were "undignified or discourteous conduct." Nor does the Petition specify how those were "degrading or disrupting to a tribunal." Without such an explanation, the charge is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

Second, a violation of Rule 3.5(d) requires that the alleged undignified or discourteous conduct be directed "toward the tribunal" itself. *Grievance Adm'r v. Fieger*, 476 Mich. 231, 719 N.W.2d 123, 145 (Mich. 2006). Here, none of Mr. Melone's purported "site preparation without a Certificate of Public Good" or Mr. Melone's purported "'not credible' testimony" criticized the PUC or were directed at the PUC or any of its commissioners or the hearing officer.

Third, Mr. Melone's testimony as an individual is fully protected by the First Amendment and the *Noerr-Pennington* doctrine.

2. The Claim That Rule 3.3 Was Violated Is Unmeritorious.

Vt. RPC 3.3(a) entitled "Candor Toward The Tribunal" states "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

The Hanley Petition states that Mr. Melone's purported "'not credible' testimony" violated "Rule 4.3 [*sic*] in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of law and fact."

a. Melone Was Not Representing "a client" so no violation could have occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer *who is representing a client in the proceedings of a tribunal*. See Rule 1.0(m) for the definition of 'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding

conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.)

As stated above, the PUC has expressly rejected the proposition that Mr. Melone is representing a client in proceedings before the PUC, and did so in this same case referenced by Hanley in Count III. *See*, Order dated June 11, 2021, Case No. 20-1611-INV, *Investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2), supra*.

And even if the PUC hadn't expressly ruled that Mr. Melone was acting *pro se*, Count III is based entirely on the premise that *when* one of Mr. Melone's company's act, it is really Mr. Melone acting individually.

b. Hanley's allegation that Mr. Melone Made false statements of law and fact is unmeritorious.

First, Mr. Hanley alleges that Mr. Melone made false statements of law and fact, but he offers no specificity as to what statement of fact were purportedly knowingly false, and offers no specificity as to what statements of law were purportedly false. Without such an explanation, the charge is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b). Mr. Hanley references Mr. Melone's purported "'not credible' testimony" but does not even bother to read that testimony or cite to it, showing prima facie how unmeritorious Mr. Hanley's claim is.

Second, Mr. Hanley offers no evidence (because there is none) that Mr. Melone's purported "'not credible' testimony" was knowingly false.

Third, Mr. Melone testified: "PLH's clearing activities are site preparation for its farming activities." Direct Testimony of Thomas Melone, December 3, 2020 ("Melone DT"), page 9, *In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, No. 23-AP-346, PC-529. Melone's testimony was uncontradicted. The clearing was specifically *not* part of a plan by anyone to sell renewable energy generated by the proposed facilities or for the construction of those facilities. The solar facilities may never be built but the agricultural uses would continue regardless of the existence or non-existence of the solar facilities. *Id*. PC-528. The testimony on that point is clear:

> None of the site work is being undertaken in preparation for an electric generation facility or the construction of an electric generation facility. As I also explained at the TRO hearing, the site preparation for the farming use is more expensive and more involved than clearing and site preparation for a solar project. For example, in the case of a solar project, tree stumps do not need to be removed unless they end up being in the way of a post for the support racking of the modules. Clearing for PLH's farming use, however, requires that all the stumps be removed, which can more than double the cost of clearing.
>
> Melone DT, page 9-10, PC-529-530.

After that case in 2020, Mr. Melone had to abandon the plan to have sheep business stationed at Bennington to serve other solar arrays throughout New England. As an alternative, Mr. Melone set up that business in Connecticut which stands today at roughly 125 head of sheep.

D. COUNT IV IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

The subject matter of Count IV was not included in the Bent Complaint. Attorney Mr. Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond. Count IV is unmeritorious. Count IV also plainly shows that the Petition seeks to retaliate against and target the exercise of Mr. Melone's First Amendment rights and in doing so seeks to chill the future exercise of those rights. Although not specified, the paragraphs of the Petition on which Count IV appears to be based are paragraphs 70 through 82.

1. The Claim That Rule 3.5(b)(1) was violated is unmeritorious.

On March 24, 2025, Thomas Melone sent an email to the members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy. The focus of the email (the "Legislative Email") was to provide a counterpoint to Chair McNamara's testimony before the House Committee that singled out Thomas Melone (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program.

In response to Chair McNamara having been copied on the email, on April 21, 2025, the PUC clerk issued a memorandum stating that the Legislative Email constitutes a prohibited ex parte contact pursuant to PUC Rule 2.201(E). The memorandum also requested that the parties to

the PUC proceedings provide comments related to the Legislative Email and specifically whether Commission Rule 2.201(E)(4) (i.e., potential sanctions) was implicated.

Rule 3.5 provides: "A lawyer shall not: ...(b) communicate ex parte (1) with a judge or other person acting in a judicial or quasi-judicial capacity in a pending or impending adversary proceeding, unless authorized to do so by the Code of Judicial Conduct, by other law, or by court order."—Amended June 17, 2009, eff. Sept. 1, 2009.

Rule Comment [2] states that "[d]uring a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges or masters, unless authorized to do so under the terms of the Code of Judicial Conduct or by other law or court order.

The "Introductory Reporter's Note—2009 Amendments" to the VRPC states that "[t]he Vermont Rules of Professional Conduct are amended to incorporate comprehensive and significant changes to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA House of Delegates in 2001-2003." The Introductory Reporter's Note states that "the American Law Institute's Restatement of the Law Governing Lawyers, a comprehensive statement and analysis of the entire legal framework governing the legal profession and the practice of law that can serve as a guide to understanding and application of the principles underlying the Model Rules."

The *Restatement* §113, "Improperly Influencing a Judicial Officer," states: "(1) A lawyer may not knowingly communicate ex parte with a judicial officer before whom a proceeding is pending concerning the matter, except as authorized by law."

a. Melone's Copying McNamara Was Not An *Ex Parte* Communication. Ex Parte Communications Require Secrecy And Melone's Communications With the Vermont Legislative Committees Were Public And Widely Available.

The rationale for the rule regarding ex parte communication is stated in the *Restatement* § 113, Comment b:

> Rationale. Ex parte communication with a judicial official before whom a matter is pending violates the right of the opposing party to a fair hearing and may

> constitute a violation of the due-process rights of the absent party. ***A communication made secretly may not withstand scrutiny.*** Ex parte communication also threatens to embarrass the parties' relationship with the judicial officer, requiring the officer either improperly to acquiesce in the conduct or to make a censorious response.

(Emphasis added).

Mr. Melone's copying Mr. McNamara was not an ex parte communication or a prohibited ex parte communication because it was not secret. Ex Parte communications require secrecy and Mr. Melone's communications with the Vermont Legislative Committees were public and widely available, and intended by Mr. Melone to be widely disseminated. To be sure, there are other "parties" in the proceedings before the PUC (all of which were governmental), and Mr. Melone did not file the comments in those proceedings because, *inter alia*, (i) Mr. McNamara's testimony before Legislative committees was not a quasi-judicial function but purely a lobbying effort by Mr. McNamara for Legislative committees to adopt his—the executive branch's—position, and (ii) the subject matter of the email did not involve an issue presenting before the PUC in either proceeding.

b. Melone's Copying McNamara Was Not An *Ex Parte* Communication Because It Was Not From A Lawyer Representing A Client, McNamara Was Not Acting In A Judicial Capacity, And The Written Communication Was Timely Sent To Other Parties.

Restatement § 113, Comment, c explains what are the requirements for a prohibited ex parte communication:

> Prohibited ex parte communications. An ex parte communication is one that concerns the matter, that is between a lawyer **representing a client** and a **judicial officer**, and that occurs outside of the presence and without the consent of other parties to the litigation or their representatives. ***A written communication to a judicial officer with a copy sent timely to opposing parties or their lawyers is not ex parte.***

(Emphasis added.)

i. **Mr. Melone Was Not Representing A Client.**

Mr. Melone's email to the Legislative Committees was from him individually. And for the reasons discussed above, Mr. Melone acts in a *pro se* capacity before the PUC. As a result, no

violation of Rule 3.5(b)(1) could have occurred because Mr. Melone was not "a lawyer representing a client."

ii. **McNamara Was Not Acting In A Quasi-Judicial Capacity.**

Rule 3.5(b)(1) can only apply when the recipient is "acting in a judicial or quasi-judicial capacity." Mr. McNamara was not acting in a quasi-judicial capacity because he was testifying as a member of the executive branch regarding legislative and policy issues. As a result, no violation of Rule 3.5(b)(1) could have occurred because Mr. McNamara was not acting in a quais-judicial capacity.

iii. **The Melone Email was timely sent to opposing parties or their lawyers.**

"A written communication to a judicial officer with a copy sent timely to opposing parties or their lawyers is not ex parte." *Restatement* § 113, Comment c. The Melone Email was timely sent to opposing parties or their lawyers. McNamara filed the email on April 21, 2025. That dissemination was "timely" under the *Restatement* because nothing of relevant consequence occurred in either PUC docket between March 14, 2025 and April 21, 2025. Prior that time, Mr. McNamara (and maybe others) also sent the email to various recipients. Attached as **Exhibit 6 to the Verified Complaint** are redacted emails produced by the PUC in response to a public records request. Almost all information other than the Melone email is redacted. Mr. Melone will need to issue a subpoena to Mr. McNamara for testimony and for the unredacted copies of the documents in Exhibit 6.

iv. **The Matter of The Legislative Email Was Not A Matter Before The PUC**.

The *Restatement* §113 states: "(1) A lawyer may not knowingly communicate ex parte with a judicial officer before whom a proceeding is pending *concerning the matter*, except as authorized by law." (Emphasis added.) The subject of the Legislative email was not a matter before the PUC in CPG cases then pending.

c. The PUC Has Its Own Ex Parte Rules Which Were Not Violated.

i. **The email plainly does not constitute an *ex parte* communication under rule 2.201(e)(1).**

On June 17, 2025, the hearing officers in the PUC cases ruled (the "Ex Parte Order") that copying Chair McNamara on the Legislative Email constituted a prohibited *ex parte* communication under the PUC's rules. Instead of relying on *the PUC's rules*, the hearing officers turned to Black's Law Dictionary. While the definition in Black's Law Dictionary certainly *could have* been adopted by the PUC in its rules, the PUC *did not*. Rather the PUC adopted a unique set of rules regarding *ex parte* communications.

PUC Rule 2.201(E)(1) prohibits *the Commission from communicating* with parties (not the other way around). *See, id*. ("Prohibited communications … the Commission may not communicate, directly or indirectly, in connection with any issue of fact with any party or any person, or in connection with any issue of law with any party or any employee, agent, or representative of any party, unless …"). The Legislative Email was not a communication *by* the PUC *to* a party. It thus does not constitute an "*ex parte*" communication under Rule 2.201(E)(1). That conclusion is reinforced by the plain language of Rule 2.201(E)(4) which separately addresses communications *by parties*.

The *Ex Parte* Order also erroneously held that "Commission Rule 2.201(E)(4) prohibits a person or party from communicating ex parte with the Commission." The plain language of Rule 2.201(E)(4) prohibits a person or party from communicating *ex parte* with the PUC, *if and only if*, it is intended "to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding." That did not happen. And once the April 21, 2025, Clerk memorandum was issued, Mr. Melone filed a statement confirming that Mr. Melone would not seek, and never intended the email to be a basis of disqualification of Mr. McNamara. *See* **Exhibit 7 to the Verified Complaint**.

ii. **The *ex parte* order also misunderstood Melone's argument regarding Chair McNamara's potential participation in a final decision in both PUC cases.**

The *Ex Parte* Order assumes that Chair McNamara would participate in a final decision on the petitions in the PUC cases. But as far as Mr. Melone is aware, Chair McNamara only

participated in one ruling, and that was in docket 23-0249, which is the procedural order issued on November 8, 2024. Docket 23-0249 was filed on January 25, 2023.

30 V.S.A. §3(e) requires "[w]hen a Commission member who hears all or a substantial part of a case retires from office before the case is completed, the member shall remain a member of the Commission for the purpose of concluding and deciding the case, and signing the findings, orders, decrees, and judgments. A retiring chair shall also remain a member for the purpose of certifying questions of law if appeal is taken." The issue is whether the proceedings in case 23-0249 that occurred while Anthony Roisman was the chair constitute a "substantial part" of the case. If they do (which Mr. Melone contends they do), then Anthony Z. Roisman and not Edward McNamara would be the commission member that is required to see case 23-0249 to its conclusion. For that reason *too*, Rule 2.201(E) would not apply in case 23-0249.

For case 24-3517, Edward McNamara's recent testimony to the House Committee relating to his participation while at the Department of Service circa 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES, raises serious questions regarding whether Mr. McNamara can participate in either of the above-captioned cases due to bias.

iii. **The *ex parte order* violates Mr. Melone's First Amendment rights.**

Mr. Melone has an absolute constitutional right under the First Amendment's freedom of speech and freedom of petition clauses to communicate with public officials. And it is those communications with public officials that the *Ex Parte* Order holds is prohibited. The Legislative Email is fully protected by the First Amendment. *See, Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010). Speech such as the Legislative Email on public issues and petitions to the government, "occupies the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995). The *Ex Parte*

Order's holding that any part of that communication is subject potential punishment violates Mr. Melone's First Amendment rights.

E. COUNT V IS UNMERITORIOUS.

Mr. Melone is the sole member and president of PLH Vineyard Sky LLC, which is the legal titleholder to, and taxpayer for, several parcels of land in Bennington, Vermont. One parcel owned by PLH is a 27.8-acre parcel on Stocklee Lane in Bennington, #051-015-69479, which is hydrologically connected to the "Benn High" project that is the subject of the Bent Complaint. Other parcels include a 27-acre parcel on Willow Road #051-015-65401, a 5.63-acre parcel on Apple Hill Road #051-015-70059, a 27-acre on Rice Lane #051-015-65100, an 8.6-acre parcel on Rice Lane #051-015-65130, and a 40.6-acre parcel on Rice Lane #051-015-65104.

Earlier this year, three new cases were filed involving the Town of Bennington. One was an open meeting law complaint in Vermont Superior Court, another was a complaint in Vermont Superior Court for injunctive relief to prevent municipal waste against the Town of Bennington related to the "Benn High" project (which is the main focus of the Bent Complaint) and another was in Federal District Court seeking to obtain a declaratory judgment that the Bennington Town Plan expired on October 6, 2023 (another issue that is a focus of the Bent Complaint as it relates to her claims that Mr. Melone pointed out to public officials that she had a potential conflict).

As discussed above, PLH Vineyard Sky LLC also owns a 28-acre parcel on Stocklee Lane in Bennington, which is hydrologically connected to the "Benn High" project that is a focus of the Bent Complaint and the Petition. The expert declaration filed with the Environmental Court with the opposition to Ms. Bent's motion to dismiss (a similar declaration was filed in the new suit in Superior Court) shows the environmental connection because the Benn High project and our parcel on Stocklee Lane in Bennington.

The Environmental Court dismissed the appeal that was filed with respect to the Bennington select board's approval of the Benn High project and using millions of dollars of taxpayer and other funds as part of the Town's participation. A motion for reconsideration was filed with respect to the Environmental Court's dismissal, which was denied. Both the appeal, the

motion for reconsideration and the new complaint in the Civil Division detail the environmental issues presented by the Benn High project.

1. The Claim That Rule 3.1 Was Violated is Unmeritorious.

Hanley claims that Melone violated Rule 3.1 "in that Thomas Melone brought or caused to be brought a legal proceeding in the Environmental Division when there was no basis in law to assert that it had subject matter jurisdiction over the matter."

Rule 3.1 provides: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not unmeritorious, which includes a good faith argument for an extension, modification or reversal of existing law." Comment [2] to the Rule states: "The filing of an action or defense or similar action taken for a client is not unmeritorious merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not unmeritorious even though the lawyer believes that the client's position ultimately will not prevail."

a. Melone had good faith arguments in support of the filings in the Environmental Division.

The substantive claims against the Town were valid, but where complete relief can be obtained is unclear, and Mr. Melone did not want to be on the receiving end of a Supreme Court opinion (as in *Monkton* discussed below) where the Supreme Court said that you can't say that you had no ability to get relief in the Environmental Court because you didn't go there first. And in the old cases referred to by Bent (Civil: Docket No. 78-1-18, ED: Docket Nos. 20-2-18 Vtec and 21-2-18 Vtec) (which the Town settled), Mr. Melone used external counsel, PF+C Law in Burlington. They had difficulty making heads or tails of the gray area of exactly which claims against municipalities belong in the Environmental Division versus the Civil Division, both part of one Superior Court.

PLH appealed to the Environmental Court and then to the Vermont Supreme Court because an important jurisdictional question is at stake and one left open by the Vermont Supreme Court's opinion in *Gould v. Town of Monkton*, 2016 VT 84, which is are there some claims against a municipality that a person is "left without a remedy," *id*. at ¶12, under Vermont law. *See also, id*. at ¶13 ("First, the record does not show that landowner has no remedy in the Environmental Division. Landowner did not appeal the denial of his permit application and challenge the validity of the statute in the context of that appeal. Second, he did not actually bring a declaratory judgment action in the Environmental Division, so his presumptions about what the Environmental Division would do are merely speculative. They do not support his claim that he has no forum to challenge Monkton's compliance with 24 V.S.A. ch. 117.") What that language from *Monkton* means to Mr. Melone is that a litigant needs to first go to the Environmental Court (or else risk losing the claim for failure to first go to the Environmental Court) and see what the Environmental Court does, then appeal that to the Vermont Supreme Court, and then file as Mr. Melone did, a suit in the Superior Court, Civil Division, because the Environmental Division has no guidance on transferring cases between divisions, even though that guidance is supposed to exist.

Mr. Melone wasn't alone in expressing concerns regarding the "Benn High" project that had gone quickly from a $20 million alleged cost to a $55 million. For example, at a hearing on February 27, 2025, before the Vermont House's Committee on Corrections and Institutions, https://www.youtube.com/watch?v=5d8ZS5eNtPc, the developer had its hand out for yet another $1 million grant for the State of Vermont. *See*, SmartTranscript of HCI-2025-02-27-10:25 AM. Chair Alice Emmons observed that "You're already getting a lot of state help."

Bennington Representative Mary Morrisey expressed not only her amazement at the purported cost of the project but also expressed the concern regarding the "100 children" in the basement. When Rep. Morrisey asked Zak Hale (the developer) to explain the high cost for the housing units compared to a project in Barre, VT, that the House Committee also heard testimony on that day, Hale was evasive, simply stating that it's a complicated project:

> So, Zach, this is Mary Morrissey from Bennington. Could you explain how the project for my colleagues, how the project went from twenty million to now the fifty five million? And I was kind of amazed when I saw that Barry was doing seventy nine units for four million dollar project, and ours is thirty nine or forty units. And we're in a main part of what you're presenting is the housing. Yes. There's other pieces within it, but how did we get there? And for the first time, and I've asked this for the last year and a half or longer, all of these grants, and you finally have a sheet with them on it. So I'm I'm pleased to see that. But could you explain to the committee that is seriously looking at this because these were three highlighted projects that have some real concerns. I also one of the things that was stated when the governor presented his budget was the Meals on Wheels. And we were told, I think it was just two weeks ago, that that's off the off the project now. And I would like to know what the cost per unit for the apartments now is at because there's a lot of questions out there, and I'm being asked every day by constituents. So maybe you can certainly shed a light for my committee members.
> ***
> [Zach Hale]: Yeah. Thanks, Mary. So I think when it comes to the cost, I I understand it's a lot, and it did go from twenty to to fifty five. I have been very persistent to this process. And each time I run into an issue, I I have not given up, and I've found ways to get it like, overcome it. And other developers have looked at this project many like, a dozen, and they've run into the same challenges, and they've went and found other projects to pursue.

After not receiving an answer to her question, Rep. Morrisey stated her serious concerns regarding children: "I'm still of great concern with one hundred and some students or children in the basement of that building." Hale evaded that question as well.

Rep. Troy Headrick also expressed concern with the cost: "I'm just trying to, in my head, rationalize the the cost and but I'm still stuck on." Another project that presented at the same HCI hearing was in Brattleboro for 28 housing units at a cost of $320,000 per unit:

> [Chloe Leary]: We're estimating nine million for this first phase. Yes.
> [Shawn Sweeney]: And how many houses that get does that get us?
> [Chloe Leary]: That's twenty eight units. So average three hundred and twenty thousand dollars per unit, three twenty one. And that's just don't, you know, don't that's our back of the envelope. We are you know, we're in the process of we're this we're talking modular construction, and we are right now getting quotes from two manufacturers. So, you know, that give or take some percentage, but, yeah, that's that's where we

In contrast, as Rep. Headrick observed, the Benn High project is multiple times more expensive:

> [Troy Headrick]: And that's one point three million dollars per housing unit. I mean, taking out the fact that we're doing other stuff, but if we're just only talking about the cost of housing, we divide that fifty five by thirty nine. I know there's other things in there, but

2. The Claim that there Was a Rule 3.3(a)(l) Violation is Unmeritorious.

Vt. RPC 3.3(a) entitled "Candor Toward The Tribunal" states "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

The Hanley Petition states that Mr. Melone violated making false statements of law regarding the subject matter jurisdiction of the Environmental Division.

a. Melone had good faith arguments in support of the filings in the Environmental Division.

As stated above in response to the claimed violation of Rule 3.1, the substantive claims against the Town were valid, but where complete relief can be obtained is unclear, and Mr. Melone did not want to be on the receiving end of a Supreme Court opinion (as in *Monkton*) where the Vermont Supreme Court said that you can't say that you had no ability to get relief in the Environmental Court because you didn't go there first. And because there is only one Superior Court, *see* 4 V.S.A. Ch. 3, 4 V.S.A. § 30, and "[t]he Supreme Court ***shall*** promulgate rules, subject to review by the Legislative Committee on Judicial Rules under 12 V.S.A. chapter 1, that establish criteria for the transfer of cases between divisions," it makes sense that the Supreme Court in *Monkton* would say that a litigant needs to go to the Environmental Division first. (Emphasis added.) And it is far from clear that Rule 3.3 could be applied when a lawsuit is filed in one division versus another division, when at least one of the divisions would have jurisdiction, and there is supposed to be a mechanism to transfer the suit to a different division.

b. Mr. Melone Was Not Representing "a client" so no violation could have occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer *who is representing a client in the proceedings of a tribunal*. See Rule 1.0(m) for the definition of 'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.)

Mr. Melone was not representing a client. Much of the Petition relies on a foundational premise that is unsupported, *i.e*., that Melone was representing a "client," in his dealings with the

PUC. For example, Vt. Prof. Cond. Rule 3.3 (*see* Count I(b)), Count III(b), which applies only when "a lawyer [] is representing a client in the proceedings of a tribunal." *See* Rule 3.3, Cmt. [1].")

3. The Claim That there was a Rule 4.4(a) Violation Is Utterly Unmeritorious.

Mr. Hanley alleges that Mr. Melone's challenges to the Benn High project "used means and methods that had no substantial purpose other than to delay or burden a third person, the Bennington High developer."

Rule 4.4 states: "(a) *In representing a client*, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person."

a. The Substantial Purpose was to Avoid Municipal Waste and Negative Environmental Impacts.

As discussed above, there were numerous substantial purposes for filing the Benn High litigation. Not least of which was the purposes of avoiding negative environmental impacts to Mr. Melone's Stocklee Lane property and avoiding municipal waste of taxpayer funds. As discussed above, Mr. Melone was not the only interested person expressing doubt over the project.

b. The "Bennington High developer" is not a third person under the Rule.

In both of Attorney Bent's motions filed in Superior Court in the suit filed for municipal waste, Attorney Bent included a "common interest" agreement between the Town and the developer. That common interest agreement removes the Benn High developer as a third person. "Case law, as well as the comments to other Model Rules such as 4.1, reflect that a 'third person,' is someone other than the parties and the court." *In the Matter of Disbarment of Rogers*, 60 V.I. 293, 304 (V.I. 2013). The common interest agreement effectively makes the Benn High developer a party.

c. Mr. Melone was not representing a client under the Rule.

Rule 4.4(a) provides that "[i]n representing *a client*, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a *third person* . . . ." (Emphasis added.)

This rule mirrors Rule 4.4 of the American Bar Association's Model Rules of Professional Conduct. The comment on the model rule states:

> Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

Model Rules of Pro. Conduct Rule 4.4 annot., comment 1 (Am. Bar Ass'n 2023).

In one of Mr. Melone's cases heard by the Vermont Supreme Court, the Vermont Supreme Court held that there was no meaningful difference between a shareholder and a wholly owned company. That conclusion is equally applicable here, because under the Vermont Supreme Court's rationale Mr. Melone is the actor and is thus not representing a client. In *In re Investigation to Review Avoided Costs*, 2020 VT 103, 213 Vt. 542, 251 A.3d 525, the Court held that:

> there is no meaningful distinction in this case between NextEra and Boulevard Associates. As many authorities in other contexts have recognized, a parent company has full control of its wholly owned subsidiaries. *See, e.g., Copperweld Corp. v. Indep. Tube Corp*., 467 U.S. 752, 771-72, 104 S. Ct. 2731, 81 L. Ed. 2d 628 (1984) (observing in context of Sherman Act that "the coordinated activity of a parent and its wholly owned subsidiary must be viewed as that of a single enterprise" among other reasons because "the parent may assert full control at any moment if the subsidiary fails to act in the parent's best interests*"); VFB LLC v. Campbell Soup Co*., 482 F.3d 624, 635 (3d Cir. 2007) ("[A] wholly-owned subsidiary has only one shareholder: the parent. There is only one substantive interest to be protected, and hence no divided loyalty of the subsidiary's directors … ." (quotation omitted)); *Cont'l Distilling Corp. v. Old Charter Distillery Co*., 188 F.2d 614, 620, 88 U.S. App. D.C. 73, 1951 Dec. Comm'r Pat. 20 (D.C. Cir. 1950) ("A court of equity, in order to do justice, does not hesitate to disregard a corporate entity and to recognize that all the assets of a solvent wholly owned subsidiary are equitably owned by the parent corporation.").
>
> [*P31] NextEra submitted official documentation proving that it and Boulevard Associates are wholly owned subsidiaries of the parent company. As wholly owned subsidiaries of the parent company, NextEra and Boulevard Associates serve one master and will do as the parent company directs. They are like "a multiple team of horses drawing a vehicle under the control of a single driver." *Copperweld*, 467 U.S. at 771.

The Vermont Supreme Court's rationale as applied here means that Mr. Melone is the actor and is thus not representing a client.

F. COUNT VI IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

The subject matter of Count VI was not included in the Bent Complaint filed with the PRB. Attorney Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond.

1. The Claim That Rule 3.3(a)(l) was violated is unmeritorious.

Vt. RPC 3.3(a) entitled "Candor Toward The Tribunal" states "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

Hanley alleges that Melone's statement in his response to Screening Counsel "specifically that Ms. Bent was liable for defamation per se," violated Rule 3.3(a)(l) because "he knew or should have known that Rule 12 of The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement* provides that communications to the Program, hearing committees or disciplinary counsel relating to lawyer misconduct are absolutely privileged and no lawsuit predicated thereon may be instituted against any complainant or witness."

a. Mr. Melone Was Not Representing "a client" so no violation could have occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer *who is representing a client* in the proceedings of a tribunal. See Rule 1.0(m) for the definition of 'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.) Melone was not representing a client in his response to Screening Counsel. Therefore no violation occurred.

b. Screening Counsel Is Not A Tribunal So No Violation Could Have Occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer who is representing a client *in the proceedings of a tribunal*. See Rule 1.0(m) for the definition of

'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.) Screening Counsel is not a "tribunal."

RPC 1.0(m) states that a ''Tribunal''

> denotes a court and all ancillary court proceedings such as depositions and hearings before a referee or master, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Screening Counsel is plainly not a "tribunal." He or she is not "acting in an adjudicative capacity." Hanley's claim is utterly unmeritorious.

c. *ABA Model Rule 12* is not an enforceable standard.

Count VI is based upon an *alleged violation of ABA Model Rule 12*, which appears nowhere in A.O. 9. Charging Mr. Melone with a violation of an ABA Model Rule is *utterly* unmeritorious. ABA model rules can be useful in interpreting and applying State and Federal rules but the ABA model rules are not enforceable rules. Attorney Hanley does not allege that Vermont has implemented ABA Rule 12.

d. Hanley's accusations of false statements are unmeritorious.

As Mr. Melone noted in his response to Screening Counsel, his view is that Attorney Bent's tactical response and use of the bar complaint process is defamation *per se*. Bent accused Mr. Melone of knowingly engaging in a "pattern of misconduct and unethical tactics [that] seriously calls into question [my] fitness to practice law." Defamation *per se* is defamation that imputes a person is unable to perform or lacks integrity in performing her or his employment duties. And here that is exactly what Ms. Bent imputed, indeed she went beyond that and *expressly* said that. The possibility of immunity for Ms. Bent would be an affirmative defense that Ms. Bent would have to assert and prove, including that she did not make any similar comments to anyone at any time.

Immunity in cases like this one, where the complainant files a complaint in the middle of adversarial proceedings targeting lawful communications with government officials is not free from doubt. *See, e.g., Morgan v. Botts*, 348 S.W.3d 599, 612 (Ky. 2011) (Scott, J. dissenting):

> Bar complaints have the potential to devastate an attorney's reputation—the lifeblood of any lawyer's practice. In fact, one's reputation, be it that of a lawyer or not, is so precious in this Commonwealth that the term is enshrined in Section Fourteen of the Kentucky Constitution, a provision that commands:
> All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.
> (Emphasis added.)
>
> Today, in broad strokes, the majority concludes that the judicial statements privilege "encompasses the act of filing the complaint, so as to bar [a] claim for 'misuse of the attorney discipline process' and 'reckless filing of a Bar complaint.'" Given the fact that the right to recover for one's reputation is secured in our Constitution, I simply cannot agree.

Vermont's Constitution, Article 4, is similar to Kentucky's:

> Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; comformably to the laws.

But unless and until Vt. A.O. 9 is amended to conform to ABA Model Rule 12, Mr. Hanley's claim that Mr. Melone made false statements is unmeritorious.

And there is no Rule that prevents the attorney subject to complaint from disclosure.[6] A.O. 9 Rule 16 (Access to Disciplinary Information) lays out restrictions on the PRB's ability to disclose information. A.O. 9 Rule 16F(1)(b) also makes it clear that any information must be disclosed if a "person to which the attorney has submitted a waiver of confidentiality" requests it. A.O. 9 Rule 16F(1)(b) makes no sense under Hanley's allegations because Mr. Melone can clearly waive his own confidentiality.

[6] "Rule 16. Access to Disciplinary Information, Reporter's Notes—First 2011 Amendment …This amendment allows complainants and respondents to disclose to anyone if a complaint had been filed, and the disposition, if any, of the complaint. This is consistent with steps other states have taken."

2. The Claim That Rule 4.4(a) was violated is unmeritorious.

Rule 4.4(a) provides: "(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person."

Hanley claims that Melone violated Rule 4.4(a) in that Melone's "claim to Screening Counsel Straus that Ms. Bent had verbally accosted an employee of her law firm, his threats to sue Ms. Bent for defamation per se, his disclosure of Ms. Bent's complaint to officials, agents and employees of the Town of Bennington and his claim in in the Public Utility Commission that Ms. Bent violated the Rules of Professional Conduct" "showed disrespect for Ms. Bent's rights and he used means that had no substantial purpose other than to embarrass, delay, or burden Ms. Bent."

a. Mr. Melone Was Not Representing "a client" so no violation could have occurred.

Rule 4.4 expressly applies only "[i]n representing a client." Melone was not representing a client in his response to Screening Counsel. Therefore no violation occurred. And Mr. Melone did not claim that Bent was the one that accosted Lindsey Ralph. The response to Screening Counsel specifically states: "I do not have direct information as to which of the four partners was accused of the abusive behavior."

b. There is no prohibition on Mr. Melone disclosing a complaint against him.

There is no Rule that prevents the attorney subject to complaint from disclosure.[7] A.O. 9 Rule 16 (Access to Disciplinary Information) lays out restrictions on the PRB's ability to disclose information. A.O. 9 Rule 16F(1)(b) also makes it clear that any information must be disclosed if a "person to which the attorney has submitted a waiver of confidentiality" requests it. A.O. 9 Rule 16F(1)(b) makes no sense under Hanley's allegations because Mr. Melone can clearly waive his own confidentiality.

[7] "Rule 16. Access to Disciplinary Information, Reporter's Notes—First 2011 Amendment … This amendment allows complainants and respondents to disclose to anyone if a complaint had been filed, and the disposition, if any, of the complaint. This is consistent with steps other states have taken."

c. There Was No Violation of Rule 4.4(a) From Melone's Statements Regarding Bent's Ongoing Representation of The Town and Select Board Members.

The filing dated January 29, 2025, discusses the representation of Merrill Bent of the Town and the individual Select Board members too. *See* **Exhibit 8 to the Verified Complaint**. As the statements made in the January 29, 2025, filing make clear, the notion that Mr. Melone "had no substantial purpose other than to embarrass, delay, or burden Ms. Bent" is unmeritorious. Exhibit 8 lays out the case under the New York and Vermont rules. And Hanley does not challenge any part of the case that Mr. Melone set forth in that filing. And by not challenging the particulars of Mr. Melone's statements, Mr. Hanley has conceded that there was a conflict, a valid ethical issue raised, and that Mr. Melone's disclosures were valid whose purpose was to inform the relevant recipients of the issue. And not reporting these was not a violation of Rule 8.3 in Mr. Melone's view.

d. Ms. Bent is not a "third person" under the Rule.

Bent is not a "third person" under the Rule. "Case law, as well as the comments to other Model Rules such as 4.1, reflect that a 'third person,' is someone other than the parties and the court." *In the Matter of Disbarment of Rogers*, 60 V.I. 293, 304 (V.I. 2013). Because Bent was either acting on her own or on behalf of the Town, she is not a third person under the Rule. Thus for that reason as well there could be no violation.

G. COUNT VII IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

Count VII is unmeritorious.

1. Mr. Hanley is alleging that the Town was behind the Bent Complaint against Mr. Melone.

First of all, Hanley's Rule 4.2 claim makes no sense. Hanley alleges that "Thomas Melone knew or should have known that Rule 4.2 bars a lawyer from communicating with a person represented by counsel." Hanley's claim is that certain of Melone's (but unspecified) communications with also unspecified "officials and employees of the Town of Bennington"

violated Rule 4.2 "in that Thomas Melone's communications were not limited to Town officials who had authority to take or to recommend action in connection with Ms. Bent's complaint to the Professional Responsibility Program, as there was no Town official who had authority to take or recommend action in connection with Ms. Bent's complaint."

In other words, Hanley is alleging that the Town was behind the Bent Complaint against Melone and that Bent is the attorney representing the Town in that endeavor. That contradicts Hanley's other positions that the complaint is made by Bent alone.

Second, it is entirely unclear what of Mr. Melone's communication that Mr. Hanley is referencing in Count VII. And for that reason alone, Count VII is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

Third, if Mr. Hanley is referring to Mr. Melone's response to Screening Counsel as the communication that is at issue in Count VII, then as explained in the discussion of Count VI, there is nothing that prevents Mr. Melone from disclosing that the Bent Complaint was filed, or Mr. Melone's response.

2. None of Mr. Melone's communications with the Town on any subject violated Rule 4.2, and all are protected by the First Amendment.

Rule 4.2, *Communication with Person Represented by Counsel*, provides: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."

First of all, the statements that the Petition complains about were public comments made by Mr. Melone to the government and public officials. It was not a statement made "in the course of representing a client." Thus, Rule 4.2 is entirely inapplicable.

Second, Comment 4 to Vt. Prof. Cond. Rule 4.2 states that "Parties to a matter may communicate directly with each, other and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make." Likewise, ABA Model Rules of Professional Conduct 4.2, Comment 4, states: "*Parties to a matter may communicate*

directly with each other." (Emphasis added.) Thus, anyway Mr. Melone's public communications are viewed, because he is the client the communications are not limited by the Rule.

Third, as a property owner of multiple properties in Bennington and taxpayer in Bennington, Mr. Melone (as owner and president of PLH Vineyard Sky LLC) has an absolute constitutional right under the First Amendment's freedom of speech and freedom of petition clauses to communicate with public officials. And it is Mr. Melone's communications with public officials that the Bent Complaint and the Petition take issue with. Rule 4.2 Comment [5] recognizes this right when it states: "Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government." And communication with *the government* is exactly what the Petition targets. All the communications complained of are public communications and comments to government officials.

California Rules of Professional Conduct 4.2(c)(2), for example, enshrines those First Amendment rights by expressly excluding from the coverage of the Rule any and all "communications with a public official, board, committee, or body."

Mr. Melone's public statements made to the Bennington Select Board are fully protected by the First Amendment. *See, Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010). Speech such as Mr. Melone's on public issues and petitions to the government, "occupies the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995).

While the First Amendment implications of restricting attorney communications with government officials under rules similar to Vermont's Rule 4.2 has not been directly addressed by a Vermont court, as the court in *Nicita v. Holladay*, No. 3:19-cv-01960-YY, 2023 U.S. Dist. LEXIS 223822 (D. Or. Jan. 18, 2023) recently noted, there was no reason to decide the constitutional limitations because, as here, the rationale for Rule 4.2 would not apply anyway. The court stated:

> Plaintiff's communications to date have not created one of the problems that RPC 4.2 was designed to prevent. One of the primary purposes of the rule against

> contacting a represented party is to "prevent injurious disclosures" or "statements which, through ambiguous use of language, may not accurately or fairly reflect the client's position." *Sierra Pac. Indus*., 759 F. Supp. 2d at 1211 (quoting *Continental Ins. Co. v. Superior Court*, 32 Cal. App. 4th 94, 112, 37 Cal. Rptr. 2d 843 (1995); *see also* Stephen M. Sinaiko, *Ex Parte Communication and the Corporate Adversary: A New Approach*, 66 N.Y.U. L. REV. 1456, 1471 (1991) ("An important reason why the ethical rules bar ex parte communication is because statements made by the uncounseled party to an opposing attorney might be offered against that party as admissions in court, thereby seriously damaging her case."). Defendants have not identified any prejudice that has resulted from plaintiff's communications with various city officials; there is no evidence that plaintiff has attempted to gather evidence in the form of statements from any of the officials, has harassed or threatened the officials, or has otherwise attempted to engage with the officials outside of their work roles. See Cardinale, 2020 U.S. Dist. LEXIS 99686, 2020 WL 3046396, at *7 (denying motion for "no contact" order under Georgia's RPC 4.2 because the city did not allege plaintiff's contact with city officials had resulted in prejudice); United States v. Sierra Pac. Indus., 759 F. Supp. 2d 1206, 1213 (E.D. Cal. 2010), amended, 857 F. Supp. 2d 975 (E.D. Cal. 2011) (finding that California rule against contacting represented parties was violated where "evidence gathering, not seeking governmental redress, was the point of" the contacts).

Moreover, the policy concerns driving Rule 4.2 are less acute when the "represented party" includes public officials acting on behalf of a government agency. As explained by the Utah State Bar Ethics Advisory Committee:

> [A] governmental agency is free to instruct its employees that they should refer contacts from private parties' attorneys to a designated agency attorney. . . . If a government agency believes its employees are susceptible to the evils of overreaching attorneys, they may instruct them to refer all matters in dispute to the designated agency counsel. A corollary point is that government entities should be deemed to be able to look after their own interests. The usual application of Rule 4.2 is to protect a private party from an overreaching attorney who tries to bring undue influence or pressure on the party in the absence of that person's attorney. It is hard to see how this public-policy consideration applies to the very government that ostensibly serves the people in general and has access to the most powerful of mechanisms in dealing with the citizenry.

See Utah State Bar EAOC Opinion No. 115R (1994) (available at https://www.utahbar.org/wp-content/uploads/2022/12/1994-115R.pdf); *see also* Washington D.C. Bar Ethics Opinion 280 (1998) (available at https://dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-280) ("[G]overnment officials generally are presumed to be sufficiently capable of resisting legal or policy arguments that are not proper and genuinely persuasive. Moreover, government officials, by virtue of their experience and expertise, should be

competent to decide whether to engage in such discussions with opposing counsel without seeking legal advice or having a lawyer present.").

And here, Mr. Melone copied Merrill Bent as a courtesy on all public comment communications with Town public officials.

Fourth, even if the statements were otherwise covered by the Rule (which they are not), because Mr. Melone is representing his own wholly owned private companies, he is essentially proceeding *pro se*, for the reasons discussed above.

Thus, even if Mr. Melone's communications were not protected by the First Amendment (which they are) and even if the statements were otherwise covered by the Rule (which they are not), Rule 4.2 would not apply here anyway.

H. THE CLAIM IN COUNTS I-VIII THAT RULE 8.4(D) WAS VIOLATED IS UNMERITORIOUS.

Count VIII is what Mr. Hanley's Petition was building towards—taking individual events and wrapping them up in one count under Rule 8.4(d) in order to shut down and retaliate against the exercise of Mr. Melone's First Amendment rights, under a provision of the RPC that is vague and has been roundly criticized.

First, in respect to Count VIII, Mr. Hanley does not state how "[o]ver course of many years in a variety of forums, including but not limited to the Vermont Public Utility Commission, the Vermont Superior Court, the Vermont Supreme Court and the United States Court of Appeals, Thomas Melone persistently and deliberately violated the Rules of Professional Conduct and persistently induced his son, Michael Melone, to violate the Rules of Professional Conduct." Without such an explanation, the charge is utterly unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b). Mr. Hanley's repeated assertions in Counts I-VII of a Rule 8.4(d) violation are also unmeritorious. In Counts I-V, Mr. Hanley does not even bother to attempt connect the dots and explain how the conduct alleged in those Counts were "prejudicial to the administration of justice."

In Counts VI and VII, Mr. Hanley claims that Rule 8.4(d) was violated because he asserts that Mr. Melone was "attempting to harass or intimidate a complaining witness, Ms. Bent," but it

is unclear which of Mr. Hanley's list of four in Count VI is what he claims was an attempt to harass or intimidate a complaining witness. It could not have been the statements "in the Public Utility Commission that Ms. Bent violated the Rules of Professional Conduct" because that filing occurred in January 2025, and Bent's complaint was filed in March 2025. Mr. Hanley also does not explain what "rights" of "Ms. Bent" were "disrespected, or even explain how "disrespect[ing]" those unspecified rights could remotely constitute engaging "in conduct that is prejudicial to the administration of justice." Additionally as noted above, Mr. Melone did not claim that Ms. Bent was the one that accosted Lindsey Ralph. The response to Screening Counsel specifically states: "I do not have direct information as to which of the four partners was accused of the abusive behavior." And Mr. Melone had an absolute First Amendment right and right under Vt. A.O. 9 to "disclos[e] Ms. Bent's complaint to officials, agents and employees of the Town of Bennington." After all, Ms. Bent's complaint was filed in the middle of litigation. Bennington officials and the public at large should know that government lawyers, taking a page right out of certain fossil fuel company playbooks, were using the Bar complaint process as an avenue to litigate against Melone to retaliate and chill the exercise of Melone's First Amendment rights. *See* Marcoux, Shannon, *Are Sanctions the New SLAPP? Analyzing Oil Companies' Weaponization of Ethics Accusations Against Human Rights Attorneys*, 52 Envtl. L. 217, 236 (2022).

Second, Rule 8.4(d) requires conduct that has some potentially altering impact. *See, e.g., Fla. Bar v. Martinez*, 412 So. 3d 731, 736 (Fla. 2025) ("Martinez's act in deleting the contents on the drive was prejudicial to the administration of justice because the contents of the drive were relevant to Silverberg's civil case against Martinez.")

Here, Mr. Hanley does not state how any of the unspecified actions in Counts I-VIII by Mr. Melone had an altering impact on any of those unidentified cases in an alleged "variety of forums" in the case of Count VIII, or in any of the other places in the case of the other Counts. Thus, the only violation that occurred is Mr. Hanley's violation of Vt. A.O. 9 Rule 13.D(1)(b).

Third, the Pennsylvania Supreme Court recently held that a violation of Rule 8.4(d) can *only* be found if another rule is violated. *See, Off. of Disciplinary Couns. v. Anonymous Atty*., 327 A.3d 192, 204-205 (2024):

> Rule 8.4(d) can be triggered by the violation of any of the Rules so long as a violation prejudiced the administration of justice. A violation of Rule 8.4(d) must be charged in conjunction with another Rule violation and a Rule 8.4(d) violation cannot be found if a lawyer has not otherwise engaged in conduct prohibited by the Rules. This aligns with a review of our jurisprudence, as we have not uncovered a case where an attorney was disciplined solely based on a Rule 8.4(d) violation.

Here, there is no other violation so Rule 8.4(d) cannot be violated either.

Fourth, regardless, Rule 8.4(d) is unconstitutionally vague. The phrase "prejudicial to the administration of justice" is undefined and vague. "[V]ague[] and ambigu[ous]" provisions "are not appropriate as ethics standards." *In re Supreme Court Advisory Comm. on Prof'l Ethics Opinion No. 697*, 188 N.J. 549, 911 A.2d 51, 59 (N.J. 2006)). "If attorneys' violations of ethical rules are to have implications for litigation, as well as their own disciplinary status, the standards against which their conduct is to be measured should be consistent and clear." *Miano v. AC & R Adver., Inc*., 148 F.R.D. 68, 83 (S.D.N.Y. 1993) (emphasis added). "Whether certain conduct 'reflects on an attorney's fitness to practice law,'…is much more vague — and subject to a much wider array of inconsistent applications — than simply determining whether conduct 'involv[es] dishonesty, fraud, deceit or misrepresentation,' Rule 8.4(c)." *In re PRB Docket No. 2007-046*, 2009 VT 115, P38 (*Reiber, C.J., concurring in part and dissenting in part*).

Likewise, in *O'Brien v. Superior Court*, 105 Conn. App. 774, 794, 939 A.2d 1223 & n.22 (2008), the court observed that "[a]cademic commentators have identified a serious problem in the open textured provisions of rule 8.4(4). . . . '[Subsection 4] rais[ing] the specter of a disciplinary authority creating new offenses by common law, and perhaps harassing an unpopular lawyer through selective enforcement.'" (quoting 2 G. Hazard & W. Hodes, at § 65.6). That observation of the Connecticut Appellate Court is quite relevant here.

Recently, the Connecticut Supreme Court observed that "[u]nlike Rule 8.4's other subsections that set forth prohibitions of specific conduct, Rule 8.4(d) is the only type of

professional misconduct within the Rule where the consequence defines the violation. While the other provisions of Rule 8.4 consider specifically enumerated acts to be professional misconduct, Rule 8.4(d) only considers 'conduct' to be professional misconduct when the action results in prejudice to the administration of justice. Thus, the Rule focuses on the effect of the conduct to determine whether it is a Rule 8.4(d) violation, rather than merely the conduct itself. While this might suggest that language of Rule 8.4(d) can be read broadly, it is critical to highlight that the provision does not state that it is misconduct for a lawyer to engage in **any** conduct that is prejudicial to the administration of justice." *Off. of Disciplinary Couns. v. Anonymous Atty*., 327 A.3d 192, 203-204 (Conn. 2024) (emphasis in original).

The Connecticut Supreme Court further explained that the alleged conduct must be at *a minimum dishonest use of the legal system* when "an attorney actually undermines proceedings through deception," which is *certainly not* the case here:

> Our case law establishes that the misconduct contemplated by Rule 8.4(d) arises when there is an attempt to interfere with the administration of justice through misrepresentation or other dishonest misuse of the legal system for improper means, when an attorney actually undermines proceedings through deception, or when an attorney's conduct in violation of the Rules of Professional Conduct otherwise obstructs the court's functions in administering justice. The case of *ODC v. Baldwin*, 657 Pa. 339, 225 A.3d 817 (Pa. 2020) provides the most apt illustration of this lattermost category, when the conduct of an attorney directly prevents justice from being administered, even when the conduct was not dishonest or deceitful.

Off. of Disciplinary Couns. v. Anonymous Atty., 327 A.3d 192, 205 (Conn. 2024).

No violation of Rule 8.4(d) occurred.

All in all, Attorney Hanley's charges of violations of Rule 8.4(d) (like all his other charges) are not only unmeritorious, but an unabashed attempt to sanction Mr. Melone for the exercise of his First Amendment rights and to chill the exercise by Mr. Melone in the future of his First Amendment rights. All fail to state a claim for a violation of a disciplinary rule and all should be dismissed.

III. ALL THE COUNTS ARE VAGUE AND FAIL TO CONNECT SPECIFIC CONDUCT TO SPECIFIC PURPORTED VIOLATIONS.

A "petition of misconduct [must be] sufficiently clear to inform respondent of the alleged

misconduct and the rules alleged to have been violated." The Petition fails to meet that standard. Rather, the Petition is what courts call a shotgun or puzzle pleading which is a pleading that contains "multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1321-22 (11th Cir. 2015).

Shotgun pleadings also refer to those that are "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *See Croons v. N.Y. State Office of Mental Health*, 18 F. Supp. 3d 193, 199 (N.D.N.Y. 2014) (describing "fourteen causes of action . . . incorporat[ing] all of the factual allegations preceding it as well as adopting all of the allegations of each preceding count" making it "virtually impossible to know which allegations of fact were intended to support which claim(s) for relief"). *See also, Digilytic Int'l FZE v. Alchemy Fin., Inc*., 2022 U.S. Dist. LEXIS 57765 (S.D.N.Y. Mar. 29, 2022) at *13-14:

> Shotgun pleadings are those which incorporate by reference the previous paragraphs of allegations and merely recite the elements of each claim, leaving defendants and the court to parse out which facts apply to which claim. *See Sec. & Exch. Comm'n v. See ThruEquity, LLC,* No. 18 Civ. 10374 (LLS), 2019 U.S. Dist. LEXIS 71997, 2019 WL 1998027, at *3 (S.D.N.Y. Apr. 26, 2019). Puzzle pleadings are those that include lengthy block quotes followed by pro forma statements that the quotes are false, a type of pleading that courts have found fails to state a claim as insufficiently particular. *See Constr. Laborers Pension Tr. for S. California v. CBS Corp.*, 433 F. Supp. 3d 515, 530 (S.D.N.Y. 2020).

The Petition is a paradigm of a shotgun or puzzle pleading making it impossible for the Melone to "parse out which facts apply to which claim," and making it "virtually impossible to know which allegations of fact were intended to support which claim(s) for relief."

Petition is also a paradigm of a "puzzle" pleading because as here, Mr. Hanley references quotes "followed by pro forma statements that the quotes are false," which as the Southern District of New York has "fail[] to state a claim as insufficiently particular."

There are eight counts in the Petition and each count incorporates every paragraph that went before it. Each count is based upon separate events and it is impossible which allegation(s)

of the first 113 paragraphs apply to each Count.

A good example of the lack of clarity for all Counts is Count II which incorporates all of the first 113 allegations of the Petition, yet it is focused on what is alleged to be a violation of Rule 4.5 by alleging Melone was "threatening to present criminal charges in order to obtain advantage in a civil manner (*sic*), his companies applications for Certificate of Public Goods (*sic*)." Surely all 113 allegations that it incorporates are not relevant to the allegations in Count II. But in order for Mr. Melone to be able to properly respond the petition needs to be clear, and incorporating all 113 paragraphs makes it totally unclear what allegations relate to Count II. Count II charges a violation of Vt. Rule 4.5, but Mr. Hanley does not provide with any specificity what communication or communications purportedly threatened to present criminal charges in order to obtain advantage in a civil manner, and what advantage could be gained when the parties ML/DG were not a party to the alleged civil matter when most of the communications occurred. Mr. Hanley also fails to even attempt to explain how criminal action could be threatened when at the time of the communications, the criminal statute of limitations (on a bankruptcy concluded in April 2018) had expired so criminal charges could not be brought or threatened in any event.

Count II also provides a stark example of lack of clarity on the Petition's catch-all allegation at the tail end of every count—an alleged violation of Rule 8.4(d)—"conduct prejudicial to the administration of justice." *See* paragraphs 115(d), 117(b), 119(c), 120(b), 123(d), 125(d), and 130(b). In none of Counts I-VII does the Petition make clear the factual basis and how those facts allegedly resulted in "conduct prejudicial to the administration of justice."

Count I charges a violation of Rule 3.5(d), but the Petition does not specify how the statements made in the filing were "undignified or discourteous conduct." Nor does the Petition specify how the statements were "degrading or disrupting to a tribunal." Without such an explanation, the charge is vague and requires a more definite statement. Count I also charges a violation of Vt. RPC 3.3(a), but the Petition does not connect the dots of specific conduct to the charge. Mr. Hanley alleges that Mr. Melone made false statements of law and fact, but he offers no specificity as to what statement of fact were purportedly knowingly false, and offers no

specificity as to what statements of law were purportedly false, nor a purported explanation of why he charges that they were false. Without such an explanation, the charge is vague and requires a more definite statement. Count I also charges a violation of Vt. Rule 4.5. While that charge is, as discussed above, utterly frivolous under Second Circuit precedent, Mr. Hanley also does not specify what specific statements constitute a threat of criminal action. Nor does Mr. Hanley offer a justification for his claim that those unspecified statements were used to gain an advantage in a civil matter. Without such an explanation, the charge is vague and requires a more definite statement.

Count III charges a violation Vt. RPC 3.5(d), but Mr. Hanley's claim in Count III is based upon the conclusion that Mr. Melone is acting pro se. In other words, the claim attributes the site preparation to Mr. Melone, which removes it from the Rule in the first place. The Petition does not specify how either the purported "site preparation without a Certificate of Public Good" (which occurred outside of any proceeding, or Mr. Melone's purported "'not credible' testimony" (which is fully immune and protected by *Noerr-Pennington*) were "undignified or discourteous conduct." Nor does the Petition specify how those were "degrading or disrupting to a tribunal." Without such an explanation, the charge is vague and requires a more definite statement. Count III also charges a violation of Vt. RPC 3.3(a). Mr. Hanley alleges that Mr. Melone made false statements of law and fact, but he offers no specificity as to what statement of fact were purportedly knowingly false, and offers no specificity as to what statements of law were purportedly false. Without such an explanation, the charge is vague and requires a more definite statement.

Count IV charges a violation of Rule 3.5(b)(1) for an alleged ex parte communication to PUC Chair Edward McNamara, a communication that the PUC hearing officers already determined require no imposition of sanctions even if it were a prohibited ex parte communication. Mr. Hanley makes no effort to explain how the copying of Mr. McNamara on communications with Legislative committees on a public issue rises to the level of attorney discipline, when Mr. McNamara was acting in an executive capacity, the communication was widely available, it was timely disclosed to all parties and did not necessarily involve a matter at issue in the current PUC

proceedings involving the Bennington solar projects. Without such an explanation, the charge is vague and requires a more definite statement.

Count V charges violations of Rule 3.1, Rule 3.3(a)(l) and Rule 4.4(a) in conclusory fashion. The Petition fails to connect the dots of what conduct is connected to the alleged violations. Without such an explanation, the charge is vague and requires a more definite statement.

Count VI charges violations Rule 3.3(a)(l) and Rule 4.4(a). The Petition fails to connect the dots of what conduct is connected to the alleged violations. Without such an explanation, the charge is vague and requires a more definite statement.

Count VII charges a violation of Rule 4.2. The claim makes no sense. Hanley alleges that "Thomas Melone knew or should have known that Rule 4.2 bars a lawyer from communicating with a person represented by counsel." Hanley's claim is that certain of Melone's (but unspecified) communications with also unspecified "officials and employees of the Town of Bennington" violated Rule 4.2 "in that Thomas Melone's communications were not limited to Town officials who had authority to take or to recommend action in connection with Ms. Bent's complaint to the Professional Responsibility Program, as there was no Town official who had authority to take or recommend action in connection with Ms. Bent's complaint." It is entirely unclear what of Mr. Melone's communication that Mr. Hanley is referencing in Count VII. The Petition fails to connect the dots of what conduct is connected to the alleged violations. Without such an explanation, the charge is vague and requires a more definite statement.

Count VIII is a count dedicated solely to an alleged violation of Rule 8.4(d) but yet only makes vague and conclusory allegations that "[o]ver the course of many years in a variety of forums" respondent has allegedly persistently and deliberately "violated the Rules of Professional Conduct." The Count does not let Mr. Melone know which purported acts and violations are being alleged, nor does it offer a scintilla of explanation as to how the unspecified conduct violations resulted in "conduct prejudicial to the administration of justice." Counts I-VII also tag on a charge of violating Rule 8.4(d) as well. Just like Count VIII, Mr. Hanley does not specify the conduct

that allegedly violated Rule 8.4(d), nor how the unspecified conduct even could come close to being "prejudicial to the administration of justice." Rule 8.4(d) requires conduct that has some potentially altering impact. *See, e.g., Fla. Bar v. Martinez*, 412 So. 3d 731, 736 (Fla. 2025) ("Martinez's act in deleting the contents on the drive was prejudicial to the administration of justice because the contents of the drive were relevant to Silverberg's civil case against Martinez.")

Here, Mr. Hanley does not state how any of the unspecified actions in Counts I-VIII by Mr. Melone had an altering impact on any of those unidentified cases in an alleged "variety of forums" in the case of Count VIII, or in any of the other places in the case of the other Counts. Thus, the only violation that occurred is Mr. Hanley's violation of Vt. A.O. 9 Rule 13.D(1)(b).

CONCLUSION

All in all, Attorney Hanley's charges of violations of Rule 8.4(d) (like all his other charges) are not only unmeritorious, but an unabashed attempt to sanction Mr. Melone for the exercise of his First Amendment rights and to chill the exercise by Mr. Melone in the future of his First Amendment rights.

For the reasons stated above, the Petition should be struck and alternatively dismissed in its entirety. In the alternative, the Petition must be revised to clearly and unambiguously connect specific conduct to alleged specific violations.

Mr. Melone's answer to the specific paragraphs of the Petition are attached as **Attachment 2**.

Dated: October 27, 2025

Respectfully submitted,
/s/Thomas Melone
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ATTACHMENT 1

IN THE SUPREME COURT OF THE STATE OF VERMONT

Thomas Melone, Petitioner

v.

Michael Hanley, Respondent

(In Re: Thomas Melone PRB 25-120)

VERIFIED COMPLAINT FOR EXTRAORDINARY RELIEF

Thomas Melone petitions this Court to vacate the petition for misconduct filed against him on September 26, 2025, with the Professional Responsibility Board ("**PRB**") *see* **Exhibit 1** (the "**Petition**"). While the Petition is unmeritorious and a direct assault on Mr. Melone's First Amendment rights, Thomas Melone requests that this Court strike the Petition at this stage on two grounds. *First*, the Petition is fatally flawed because it results directly from a paradigmatic violation of Administrative Order No. 9 authorizing the appointment of disciplinary counsel. The person who signed and presented the Petition, Michael Hanley, was invalidly appointed to his position. Because of that fundamental defect, the Petition is a nullity and must be dismissed.

Second, the Petition is fatally flawed because it is the product of multiple facial violations by Michael Hanley of Administrative Order No. 9 and Melone's rights to due process under the Vermont and United States Constitutions. A future appeal from a hearing panel decision would be an inadequate remedy for Michael Hanley's violations because even if the hearing panel would have jurisdiction to consider all the issues presented herein (which petitioner contends it would not). Neither Mr. Melone nor the various witnesses that are implicated in, and would be necessary to defend against, Michael Hanley's allegations (which are many from the Town of Bennington, PUC Chair Edward McNamara and others stretching back more than a decade related to prior controversies) and whose testimony would be required at any panel hearing, should have to go through the process when Mr. Hanley's lack of authority and violations that are plain on their face.

Pursuant to the Vermont Rules of Appellate Procedure, this Court may grant extraordinary relief "where there is no adequate remedy under [the] rules or by appeal, or through proceedings for extraordinary relief in the superior court." V.R.A.P. 21(a)(2).

The rule abolishes the extraordinary writs of certiorari, mandamus, prohibition, and quo warranto, and provides that relief that would have been available pursuant to those writs is only available as provided in Rule 21. V.R.A.P. 21(b). Parties may commence an action for extraordinary relief by presenting a complaint to this Court.

INTRODUCTION

As it stands now, the Petition is unmeritorious, is a shotgun or puzzle pleading lacking the clarity required by due process and VT. A.O. 9 Rule 13.D(1)(b), and is brought to target Mr. Melone's lawful exercise of his First Amendment rights and to unlawfully chill the future exercise of his First Amendment rights. Disciplinary proceedings should not be used to punish unpopular speech, nor punish meritorious legal or factual positions, nor an attorney that may be unpopular in Vermont. Yet that is what the Petition seeks to do. Here there is nothing of the stuff of a typical disciplinary proceedings—stealing funds, lying to courts, missing deadlines without cause, committing crimes or the like.

The unmeritorious nature of the Petition is pervasive. The Petition's lack of merit and clarity reaches a crescendo in para. 136 in which it is alleged that "[o]ver course of many years in a variety of forums, including but not limited to the Vermont Public Utility Commission, the Vermont Superior Court, the Vermont Supreme Court and the United States Court of Appeals, Thomas Melone persistently and deliberately violated the Rules of Professional Conduct." Nowhere does the Petition refer to any specific case or any specific position or document or claim in its laundry list of "a variety of forums." And those non-specific allegations are wrapped into a claimed violation of Rule 8.4(d), which itself is vague and has been regularly criticized and circumscribed by courts across the United States, as discussed below.

There is little doubt that Mr. Melone's frequent litigation involving renewable energy development and challenges to, and criticisms of, administrative agencies and municipalities offend some, including apparently Attorney Hanley. As Attorney Merrill Bent stated in her complaint that started this process: "This behavior is not normal." Mr. Melone concedes the level of criticisms and litigation may not fit within the "normal" range for attorneys in Vermont. But each action is on solid ground and no violation of any rule of conduct occurred. And regardless there is no numerical limit under the First Amendment proscribing the number of times an American citizen can exercise his rights to free speech and to petition the government.

Hanley *sua sponte* expanded his investigation far beyond the assertions made in the original complaint filed by Judicial Conduct Board Chair Merrill Bent (the "**Bent Complaint**") and then applied a broad use of the vague notions of undignified and discourteous, degrading and disrupting, conduct prejudicial to the administration of justice, what constitutes threatening, what constitutes lack of candor, disrespect, among others. Mr. Hanley has targeted, violated, and chilled Mr. Melone's rights to free speech and to petition. *See, e.g., Cerame v. Slack*, 123 F.4th 72 (2d Cir. 2024). "'There is no question,' the Supreme Court has said, 'that speech critical of the exercise of the State's power lies at the very center of the First Amendment.'" *Velez v. Levy*, 401 F.3d 75 (2d Cir. 2005) quoting *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034, 111 S. Ct. 2720 (1991).

Mr. Hanley's charges *prima facie* have no purpose other than to chill Mr. Melone's First Amendment rights. That is shown by their unmeritorious nature. For example, Mr. Hanley's lead charge, Count I, is based upon an assertion that is directly contrary to express Second Circuit precedent. In *Revson v. Cinque & Cinque*, 221 F.3d 71, 81 (2d Cir. 2000), the Second Circuit held "the threat of a civil RICO claim [is not] a threat to bring criminal charges" within the meaning of New York's equivalent attorney disciplinary rule of Vermont's Rule 4.5, which is foundation of Petition Count I. As the Second Circuit held, if Hanley's position were correct then "no attorney could ever threaten to bring a civil RICO suit without violating the ethical rules." *Id. And in the case of Count I,* Mr. Hanley seeks to have the hearing panel adjudicate those civil RICO claims which would involve over a dozen subpoenas to witnesses from Bennington County.

Mr. Hanley's Petition also seeks to *re-litigate* or originally litigate other disputes, cases and rulings under the clear and convincing standard applicable here, such as (i) the controversy at issue in this Court's decision in *In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, No. 23-AP-346, 2024 VT 58, *see* Count III, (ii) Public Utility Commission ("**PUC**") hearing officer rulings in two pending cases before the PUC, *see* Count IV, (iii) a dispute that was settled with the Town of Bennington, *see* Count V, (iv) use of disciplinary complaints during the middle of litigation and First Amendment rights to disclose such activity, *see* Count VI, (v) the constitutional limits of RPC 4.2 in the face of the First Amendment's right to communicate with government officials, *see* Count

VII, and (vi) the real doozy of seeking to litigate or re-litigate all the still unspecified cases referred to by Mr. Hanley in Count VIII possibly going back a decade or more.[1]

As further discussed herein, all of Mr. Hanley's charges are unmeritorious in their own right, seek to litigate or re-litigate issues that are not the stuff for disciplinary complaints, and expressly and unlawfully target Mr. Melone's First Amendment rights.

I. FACTUAL BACKGROUND.

A. THE BENT COMPLAINT.

Michael Hanley filed the Petition against Thomas Melone on September 26, 2025. The Petition was the product of a complaint filed by Attorney, and Chair of the Judicial Conduct Board, Merrill Bent, who represents the Town of Bennington. The Bent Complaint accused Melone of *specific* violations of the Vermont Rules of Professional Conduct based upon *specific* conduct.

Taking a page right out of certain fossil fuel company playbooks, the Bent Complaint was filed against Mr. Melone during the middle of adversarial litigation proceedings and was entirely targeted at my exercise of the First Amendment rights to free speech and to petition the government.[2] Ms. Bent concedes that fact in her complaint, stating that it was filed as a result of an email Mr. Melone sent to her on March 4, 2025. On March 4, 2025, Bent wrote to me: "Tom, you may not contact a represented party about the subject of litigation in which you are the attorney of record. Your email of March 1, 2025 crossed the line because it was a threat concerning litigation. It had no mention of your alleged environmental concerns. DO NOT DO IT AGAIN." Mr. Melone responded on March 4: "Merrill, I do not need your permission to contact public officials. Our right to do so is guaranteed by the free speech and right to petition clauses of the First Amendment to the United States Constitution."

The March 1, 2025, email that Bent claims "crossed the line," citing the *Restatement (Third) of the Law Governing Lawyers* (the *"**Restatement**"*) 101(b), *see*

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[1] Count II, while unmeritorious in its own right, does not seek to re-litigate anything but does exactly what Mr. Hanley complains of—bringing the actions of two citizens of Bennington in a bankruptcy proceeding back into the public eye.

[2] *See* Marcoux, Shannon, *Are Sanctions the New SLAPP? Analyzing Oil Companies' Weaponization of Ethics Accusations Against Human Rights Attorneys*, 52 Envtl. L. 217, 236 (2022).

Exhibit 2, was entitled "*PLH Public Comment On Motions Filed In Environmental Court*," sent to Bent, the members of the Bennington Select and the Bennington Town Manager. In the Bent Complaint, she asserted that sending the March 1, 2025, email violated Rule 4.1(a) and Rule 4.2. If this were California, for example, there would be no question to address because the California Rules of Professional Conduct 4.2(c)(2) enshrines Mr. Melone's First Amendment rights by expressly excluding from the coverage of the Rule *any and all* "communications with a public official, board, committee, or body"—exactly what Bent (and now Hanley) targeted. The Bent PRB complaint also asserted that Mr. Melone violated Rule 3.1 by filing an appeal with the Environmental Court, and that Mr. Melone violated Rule 4.4(a) and Rule 8.4(d) by purportedly using the "legal system to influence the outcome" of PUC proceedings. Those were Attorney Bent's alleged violations.

The PRB provided Mr. Melone notice of the Bent Complaint and a copy of the Bent Complaint and asked for a response. Mr. Melone filed a timely response with the PRB addressing each specific violation alleged. The screening counsel then moved the Bent Complaint to the next step, which is further investigation. Attorney Michael Hanley was assigned by the Chair of the PRB to be disciplinary counsel to conduct the investigation. But there is no provision of A.O. No. 9 that authorizes Michael Hanley to act as disciplinary counsel. Nevertheless, Mr. Melone fully cooperated with Hanley's investigation and filed a response addressing the violations alleged in Bent's complaint.

Unknown to Mr. Melone until after the fact, Hanley prepared and presented to a probable cause hearing panel a petition for misconduct against Mr. Melone that included claimed violations of which Mr. Melone was neither given notice nor an opportunity to respond to. That presentation was based upon a proposed petition, an affidavit of Michael Hanley and a memorandum prepared by Hanley. None of those documents have been provided to Mr. Melone even though Mr. Melone has requested them multiple times. Mr. Melone was provided no notice of the proceeding before the probable cause hearing panel and no opportunity to contest the probable cause issue. The probable cause hearing is the last stage of the process before the process and file become publicly available and is intended to be a substantive check on overzealous regulators, and not a

rubber-stamp. The probable cause hearing also adds an imprimatur to the charges as the case moves to the next stage.

B. IRREGULARITIES IN THE PETITION FOR MISCONDUCT.

The first irregularity in the Petition is that it was presented under Vermont's old rules. While the relevant current rules may not have made any relevant substantive changes as they relate to the Petition against Mr. Melone, it is odd to say the least that the person bringing charges under the Rules did not know the current rules under which to bring the charges. Note that as part of the caption on page 1 of the Petition, A.O. 9, Rule 11(D)(1)(b) is referenced. In the first paragraph of the Petition A.O. 9, Rule 11(D)(3) is referenced. Those are references to the old rules. Current Rule 11 is entitled "Grounds for Discipline." One might initially dismiss such erroneous references, but in an email exchange with Mr. Melone, Attorney Hanley confirmed that he was working from the wrong rules. *See* **Exhibit 3**. Attorney Hanley's irregularities continued with the filing of the Petition. Attorney Hanley claimed that he mailed the Petition to Mr. Melone on September 5, 2025. Mr. Melone requested that Attorney Hanley send him the following documents presented to the Probable Cause hearing panel: "the proposed Petition of Misconduct, the Affidavit of the Michael F. Hanley, Conflict Disciplinary Counsel, and the Memorandum of Law." Mr. Melone also asked Attorney Hanley to "send me the USPS receipt for the mailing of the petition to me." Long story short, it turns out that Attorney Hanley did not file the Petition prior to attempting to serve the Petition, and only filed it on September 26, 2025, after Mr. Melone learned that a hearing panel had not been assigned because the Petition has not been filed. *See*, **Exhibit 4**.

ARGUMENT

I. MICHAEL HANLEY HAS NO AUTHORITY TO INVESTIGATE, PRESENT CHARGES TO A PROBABLE CAUSE HEARING PANEL OR FILE THE PETITION.

In a May 20, 2025, letter to Mr. Melone, Merrick Grutchfield stated that "Disciplinary Counsel has a conflict with the complaint made against you. The Chair of the Professional Responsibility Board has assigned Michael Hanley, Esq. to serve as Conflict Disciplinary Counsel." In an October 14, 2025, email to Melone, Merrick Grutchfield stated that the appointment of Michael Hanley was done under color of authority of "Policy Number 22 [which] allows for the PRB Chair to name an alternate if Disciplinary Counsel has a conflict. AO 9 refers to the appointment of Disciplinary

Counsel, versus the appointment of an alternate if Disciplinary Counsel has a conflict." *See* Policy 22 ("*22. When bar counsel, disciplinary counsel, screening counsel or any member of a hearing panel has a conflict or is otherwise disqualified or unable to serve, the Board Chair shall appoint an alternate.")*

Without a provision in Vt. A.O. 9 sanctioning such policies (which there is none), those policies cannot create authority that does not otherwise exist. Vt. A.O. 9, Rule 9 vests *only in* "Disciplinary Counsel" the authority to "administer[] the disciplinary program; investigate[] and litigate[] all disciplinary and disability matters; and select[] and recommend[] for appointment investigative staff pursuant to Administrative Order 3." Current Disciplinary Counsel is Attorney Jon Alexander.

Likewise, Vt. A.O. 9 Rule 13A authorizes only Disciplinary Counsel Jon Alexander to conduct investigations. Vt. A.O. 9 Rule 13B authorizes only Disciplinary Counsel Jon Alexander to "initiate formal disciplinary or disability proceedings." Vt. A.O. 9 Rule 13C authorizes only Disciplinary Counsel Jon Alexander to present a formal complaint to a probable cause hearing panel. Vt. A.O. 9 Rule 13D(1)(b) authorizes only Disciplinary Counsel Jon Alexander to present a formal complaint of misconduct.

A.O. No. 9, Rule 2 states that Disciplinary Counsel must be appointed by the Court Administrator "[f]ollowing consultation with the Board, and subject to Court approval." This Court did not approve Attorney Hanley's appointment for this matter following consultation between the PRB and the Court Administrator. Nor could it without amending A.O. No. 9, in the first place.

The text of A.O. No. 9 establishes a clear framework for the appointment of Disciplinary Counsel, and limits the prosecution of misconduct to the duly appointed Disciplinary Counsel, here Attorney Jon Alexander.

Where Vt. A.O. 9 intends to vest power in the Chair of the board to do something, it expressly so provides. *See, e.g*., Rule 14A ("The Chair of the Board appoints standing hearing panels as required.") Vt. A.O. 9 does not vest the Chair with the authority to appoint an alternative disciplinary counsel. In other words, nothing in Vt. A.O. 9 vests in the Chair the authority to create different or supplemental rules applicable to whom is empowered to conduct investigations, present charges to a probable cause hearing panel, file formal charges, or pursue those formal charges. Nor does anything in the Vermont Constitution provide such authority. CHAPTER II. Section 30 provides that "The Supreme Court shall have administrative control of … disciplinary authority concerning

all …attorneys at law in the State." The lack of Hanley's authority is reinforced by Rule 20J, which addresses the limited situations in which appointment of alternative personnel is authorized, none of which authorize Hanley to do anything in this case.

The unlawful appointment of Michael Hanley renders his purported official actions void *ab initio*. The Petition against Mr. Melone that Mr. Hanley alone signed and filed is thus a nullity and should be dismissed. Dismissal of the Petition is warranted because Mr. Hanley was not lawfully exercising governmental authority when he investigated, presented and signed the Petition. When a court determines that a government actor exercised "power that the actor did not lawfully possess," including because he was not "properly *appointed*," that ruling renders his past actions "void." *Collins v. Yellen*, 594 U.S. 220, 257-58 (2021) (emphasis added); *see id.* at 258 (citing cases). With an improper appointment, the officer at issue cannot "lawfully exercise the statutory power of his office at all in light of the rule that an officer must be properly appointed before he can legally act as an officer." *Id.* at 266 (Thomas, J., concurring). And any "[a]ttempts to do so are void." *Id.* at 283 (Gorsuch, J., concurring in part).

In light of these principles, the United States Supreme Court has invalidated judgments issued or reviewed by an improperly appointed adjudicator. In *Ryder v. United States*, 515 U.S. 177 (1995), for instance, the United States Supreme Court "reversed" the court-martial conviction of a defendant after he successfully challenged the appointment of the intermediate appellate judges who reviewed his case. *Id.* at 188. Likewise, in *Lucia v. SEC*, 585 U.S. 237 (2018), the United States Supreme Court set aside an agency adjudication "tainted with an appointments violation," making clear that a decision of an improperly appointed official cannot stand. *Id.* at 251.

Similarly, in *United States v. Trump*, 740 F. Supp. 3d 1245 (S.D. Fla. 2024), the court applied these principles when dismissing an indictment because of a defect in the appointment of the prosecutor who secured the charges. The court reasoned that "[i]nvalidation follows directly from the government actor's lack of authority to take the challenged action in the first place." *Id.* at 1302-03.

Declining to dismiss the Petition would leave Mr. Melone with no remedy for his timely and successful challenge to Mr. Hanley's unauthorized appointment. The fundamental error here thus allows a presumption that Mr. Melone was prejudiced, "and any inquiry into harmless error would [require] unguided speculation." *Bank of Nova Scotia*, 487 U.S. at 257. That Mr. Melone was prejudiced is reinforced by the

unmeritoriousness of the Petition's claims and their targeting Mr. Melone's First Amendment rights to free speech and the right to petition, which are discussed further below.

That Mr. Melone is prejudiced is also shown by the necessity for dragging nearly two dozen witnesses from Bennington, the PUC and other places in order to litigate the issues presented by the Petition.

Here, this Court should dismiss the Petition because of Mr. Hanley's unlawful appointment. When Mr. Hanley investigated Mr. Melone and presented and filed the Petition in this case, he was exercising power that he "did not lawfully possess." *Collins*, 594 U.S. at 258. It was no different than if a private citizen went before a probable cause hearing panel and purported to authorize the issuance of the Petition. Thus, the Petition is "void" and a nullity. *See id.* at 258. It should therefore be dismissed.

II. MR. HANLEY HAS VIOLATED VT. A.O. 9 RULE 13.A AND VT. A.O. 9 RULE 13.D(1)(B).

The Petition presents eight counts. All of the Counts that Hanley presents are based upon Mr. Melone acting *pro se* and not based upon representing a third-party client. Thus, as a general matter the Rules that he alleges have been violated simply do not apply in the first place. Regardless, as it stands now, the Petition is unmeritorious, is a shotgun or puzzle pleading lacking the clarity required by due process and VT. A.O. 9 Rule 13.D(1)(b), and is brought to target Mr. Melone's exercise of his First Amendment rights and chill the future exercise of his First Amendment rights.

A. MR. HANLEY HAS VIOLATED VT. A.O. 9 RULE 13.A.

Vt. A.O. 9 Rule 13.A, *Disciplinary and Disability Proceedings*, provides that "Disciplinary counsel must provide respondent with a copy of the complaint *or otherwise notify respondent in writing of the substance of the matter under investigation*." (Emphasis added). Attorney Hanley violated Vt. A.O. 9 Rule 13.A because he presented alleged violations to a probable cause hearing panel and in the Petition that were not in, and went far beyond, the alleged violations in the Bent Complaint. That deprived Mr. Melone of his ability to respond to the new violations that were presented *sua sponte* by Attorney Hanley after his investigation. After the investigation is completed "[f]airness requires that no recommendation adverse to the respondent be made without providing him or her an opportunity to be heard." Commentary to ABA Rule 11 of the *ABA Model Rules for Lawyer Disciplinary Enforcement.*

Additionally, by excluding Mr. Melone's participation in the probable cause hearing, Mr. Melone was further denied his right to be heard and contest the basis for those *new* alleged violations prior to the case becoming public. Excluding Mr. Melone from the probable cause hearing panel also violated his due process rights because it allowed Attorney Hanley to present a one-sided, incomplete and unbalanced case to the probable cause hearing panel based, among other things, a deficient investigation.

To be sure, Mr. Melone received a copy of the Bent Complaint, and he responded to the *specific* allegations and *specific* alleged rule violations. Bent's *specific* complaints made it into the Petition as Counts V and VII. In other words, Counts I-IV, VI and VIII *were not previously noticed to Mr. Melone* as the basis for possible disciplinary action. The failure to provide notice and an opportunity to respond violated the prior notice requirement of Vt. A.O. 9 Rule 13.A, and violated his other due process rights by, *inter alia*, failing to provide an opportunity to respond, both to disciplinary counsel and the probable cause hearing panel. The result was the presentation of wholly unmeritorious allegations and, at least with respect to the probable cause hearing panel, it was impossible for the panel to serve as a check on excessive regulatory action, thus violating his due process rights in that additional way.

B. MR. HANLEY'S SHOTGUN PLEADING HAS VIOLATED THE REQUIREMENT OF VT. A.O. 9 RULE 13.D(1)(B) THAT THE PETITION MUST BE "SUFFICIENTLY CLEAR TO INFORM RESPONDENT OF THE ALLEGED MISCONDUCT AND THE RULES ALLEGED TO HAVE BEEN VIOLATED."

Vt. A.O. 9 Rule 13.D(1)(b) requires that a "petition of misconduct [must be] sufficiently clear to inform respondent of the alleged misconduct and the rules alleged to have been violated."

The Petition fails to meet that standard. Rather, the Petition is what courts call a shotgun or puzzle pleading which is a pleading that contains "multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1321-22 (11th Cir. 2015).

Shotgun pleadings also refer to those that are "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *See Croons v. N.Y. State Office of Mental Health*, 18 F. Supp. 3d 193, 199 (N.D.N.Y. 2014)

(describing "fourteen causes of action . . . incorporat[ing] all of the factual allegations preceding it as well as adopting all of the allegations of each preceding count" making it "virtually impossible to know which allegations of fact were intended to support which claim(s) for relief"). *See also, Digilytic Int'l FZE v. Alchemy Fin., Inc*., 2022 U.S. Dist. LEXIS 57765 (S.D.N.Y. Mar. 29, 2022) at *13-14:

> Shotgun pleadings are those which incorporate by reference the previous paragraphs of allegations and merely recite the elements of each claim, leaving defendants and the court to parse out which facts apply to which claim. *See Sec. & Exch. Comm'n v. See ThruEquity, LLC,* No. 18 Civ. 10374 (LLS), 2019 U.S. Dist. LEXIS 71997, 2019 WL 1998027, at *3 (S.D.N.Y. Apr. 26, 2019). Puzzle pleadings are those that include lengthy block quotes followed by pro forma statements that the quotes are false, a type of pleading that courts have found fails to state a claim as insufficiently particular. *See Constr. Laborers Pension Tr. for S. California v. CBS Corp.*, 433 F. Supp. 3d 515, 530 (S.D.N.Y. 2020).

The Petition is a paradigm of a shotgun or puzzle pleading making it impossible for Mr. Melone to "parse out which facts apply to which claim," and making it "virtually impossible to know which allegations of fact were intended to support which claim(s) for relief." The Petition is also a paradigm of a "puzzle" pleading because as here, Mr. Hanley references quotes "followed by pro forma statements that the quotes are false," which as the Southern District of New York has "fail[] to state a claim as insufficiently particular."

There are eight counts in the Petition and each count incorporates every paragraph that went before it. Each count is based upon separate events and it is impossible which allegation(s) of the first 113 paragraphs apply to each Count. Vt. A.O. 9 Rule 13.D(1)(b) requires that the Petition be "sufficiently clear to inform respondent of the alleged misconduct and the rules alleged to have been violated." And it is a requirement of due process that the allegations must be sufficiently clear to allow Mr. Melone to respond. The Petition does not meet those standards, and should be dismissed.

III. EACH COUNT IN THE PETITION IS UNMERITORIOUS AND TARGETS MR. MELONE'S FIRST AMENDMENT RIGHTS.

A. COUNT I IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

The subject matter of Count I was not included in the Bent Complaint. Attorney Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond. Count I is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

The filing referred to in Count I was made on January 10, 2025, and is attached as **Exhibit 5**. The filing was made in response to the Department of Public Service's and the Town of Bennington's statements seeking to assert collateral estoppel to stop the new petition for a certificate of public good for the Apple Hill Solar project. The January 10 filing described differences between the project in PUC docket 8454 and the new petition in case 24-3517.

1. The Claim That Rule 3.5(d) Was Violated Is Frivolous.

Vt. RPC 3.5(d) states: "A lawyer shall not … engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal."

The Rule's Comment [4] states: "The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics."

First of all, the Petition does not specify how the statements made in the filing were "undignified or discourteous conduct." Nor does the Petition specify how the statements were "degrading or disrupting to a tribunal." Without such an explanation, the charge is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

Second, a violation of Rule 3.5(d) requires that the alleged undignified or discourteous conduct be directed "toward the tribunal" itself. *Grievance Adm'r v. Fieger*, 476 Mich. 231, 719 N.W.2d 123, 145 (Mich. 2006). Here, none of Melone's comments criticized the PUC or were directed at the PUC or any of its commissioners or the hearing officer. Rather the statements were criticisms of, and statement regarding, the Town of Bennington and its officials. In *Fieger*, for example, the attorney was held to have violated Rule 3.5 where he made derogatory remarks on radio show *about judges* that were presiding on one of his cases and the case was still pending, *see*, 476 Mich. at 236-237.

Likewise, in *In re: Lorin Duckman, Esq*., PRB File No 2005.087, Decision No. 103, it was found that an attorney violated Rule 3.5(d) after Judge Toor found the attorney in criminal contempt because of "direct refusal of the court's order, along with [his] angry, confrontational, and disrespectful manner . . . made it impossible to proceed with the case, evidenced an utterly inappropriate manner for a lawyer to use *in the courtroom towards a judge*, and constituted contempt of court." (Emphasis added.)

Here, none of Melone's comments criticized the PUC or were directed at the PUC or any of its commissioners or the hearing officer. Therefore, no violation of Rule 3.5(d) occurred.

Third, paragraphs 6-8 in the January 10, 2025, filing are fully protected by the First Amendment to the United States Constitution. Paragraphs 6-8 are criticisms of the government of the Town of Bennington. "'There is no question,' the Supreme Court has said, 'that speech critical of the exercise of the State's power lies at the very center of the First Amendment.'" *Velez v. Levy*, 401 F.3d 75 (2d Cir. 2005) quoting *Gentile v. State Bar of Nev*., 501 U.S. 1030, 1034, 111 S. Ct. 2720 (1991). As a result, no violation of Rule 3.5(d) could have occurred.

2. The Claim That Rule 3.3 Was Violated Is Frivolous.

Vt. RPC 3.3(a) entitled "Candor Toward The Tribunal" states "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

The Hanley Petition states that the quoted statements in filings violated "Rule 4.3 [*sic*] in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of law and fact."

a. Melone Was Not Representing "a client" so no violation could have occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer *who is representing a client in the proceedings of a tribunal*. See Rule 1.0(m) for the definition of 'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.)

Melone was not representing a client. Much of the Petition relies on a foundational premise that is unsupported, *i.e*., that Melone was representing a "client," in his dealings with the PUC. For example, Vt. Prof. Cond. Rule 3.3 (*see* Count I(b)), Count III(b), which

applies only when "a lawyer [] is representing a client in the proceedings of a tribunal." *See* Rule 3.3, Cmt. [1].")

The PUC has expressly rejected the proposition that Melone is representing a client in proceedings before the PUC. In an Order dated June 11, 2021, Case No. 20-1611-INV, *Investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2),* (which Order has been previously notified to Attorney Hanley), the PUC stated that "[w]e agree with Mr. Melone that as the sole proprietor and director of the various corporate entities named as respondents in this investigation, he is essentially proceeding in a *pro se* capacity, and we will not forbid him from doing so." *Id*. at 3. The PUC did not leave it there. Rather the PUC (which is empowered by statute to adopt its own rules) expressly rejected contrary authority. *See id*. at 3:

> We observe that an exception to the "pro se exception" to Rule 3.7 cited by Allco is stated at footnote 11 in *O'Neil v. Bargen* and cites to *Gasoline Expwy., Inc, v Sun Oil Co.*, 64 A.D.2d 647, 648 (1979), for the proposition that an attorney who is a sole shareholder in a corporation, by doing business in corporate form, has waived her right to represent her corporation "pro se." This exception was not unanimously accepted by the Court in *Gasoline Expressway* or introduced and litigated by the parties here. We note this exception to the pro se exception does not exist in Rule 3.7 but does exist in case law. *The cited cases are not binding on us and we will not rely on these cases as precedent here*.

(Emphasis added.)

In other words, all of the Petition's allegations that rely on Melone representing "a client" before the PUC are unmeritorious as a matter of law. Self-representation is simply not "representing a client," nor will an average or even sophisticated reader of these words equate the two situations. *See In re Haley*, 126 P.3d 1262, 1267, 1272 (Wash. 2006) (majority and concurring opinions referencing definitions and authorities). Rather, this is an "ingenious bit of legal fiction." *Haley*, at p. 1272 (Sanders, J., concurring). Further, this

approach to construing the rule's language renders the phrase "in representing a client" surplusage, contrary to a basic canon of construction.[3]

b. Mr. Hanley's allegation that Melone Made false statements of law and fact is unmeritorious.

First, Mr. Hanley alleges that Melone made false statements of law and fact, but he offers no specificity as to what statement of fact were purportedly knowingly false, and offers no specificity as to what statements of law were purportedly false. Without such an explanation, the charge is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

Second, a violation of Rule 3.3, of course, requires that the statement actually be false. As such, Mr. Hanley's charges will of necessity require Mr. Melone to present in a public forum all the evidence that support Mr. Melone's assertions made in the PUC filing on which Count I is based, and require many depositions of Bennington officials and others that would be required if Count I eventually goes to a hearing and is not dismissed or withdrawn.

Third, knowingly making false statements is a higher threshold than making statements in bad faith in the context of sanctions against attorneys. The Second Circuit's precedent on its bad faith standard in regards to attorney sanctions is instructive because Mr. Hanley has produced no evidence that he can even come close to meeting that standard. *See, e.g., Revson v. Cinque & Cinque, P.C.*, 221 F.3d 71, 78-82 (2d Cir. 2000) (reversing award of sanctions despite vexatious conduct of counsel, including speaking to news reporter concerning a fraud claim against defendants with the intent to tarnish opponent's reputation; threatening to bring civil RICO claim against opposing attorney; referring to opposing counsel as a "snake"; and writing letter to opposing counsel threatening to attack his reputation with the "legal equivalent of a proctology exam"). While "bad faith may be inferred where the action is completely without merit," *In re 60 East 80th Street Equities, Inc.*, 218 F.3d 109, 116 (2d Cir. 2000), "the court's factual findings of bad faith must be characterized by a high degree of specificity." *Milltex Industrial Corp. v. Jacquard Lace*

[3] *See* "Surplusage canon," BLACK'S LAW DICTIONARY (11th ed. 2019) ("if possible, every word and every provision in a legal instrument is to be given effect"), citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012) ("it is no more the court's function to revise by subtraction than by addition").

Co., 55 F.3d 34, 38 (2d Cir. 1995) (internal quotation marks and citation omitted). *See, e.g., Chong v. Kwo Shin Chang*, 599 F. App'x 18 (2d Cir. 2015) *20 ("While it is true that '[b]ad faith can be inferred when the actions taken are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose,' *id*. (internal quotation marks omitted), the court's determination that 'there was absolutely no merit to the claims asserted' is not sufficient. [citation]. The standard requires "clear evidence that (1) the offending party's claims were entirely meritless and (2) the party acted for improper purposes." *Revson v. Cinque & Cinque, PC*, 221 F.3d 71, 79 (2d Cir. 2000) (internal quotation marks omitted). The court's only findings are that: "third-party plaintiffs failed to introduce evidence sufficient to support even a prima facie" claim; the "failure[] of proof [was] . . . powerful evidence of the fact that the complaint was meritless from the start;" and "[t]his obvious lack of merit gives rise to precisely the inference that . . . the third-party complaint was filed solely to pressure plaintiffs into withdrawing meritorious FLSA and NYLL claims." [citation]. These findings collapse the relevant standard into a single requirement that the court find the claims baseless.")

3. The Claim That Rule 4.5 Was Violated Is Unmeritorious.

Vt. Rule 4.5 entitled "Threatening criminal prosecution," states: "A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter."

Petition paragraph 119 asserts that the statements in the PUC filing of January 10, 2025, constituted "threatening to present criminal charges in order to obtain advantage in a civil manner." That is simply counterfactual. There is nothing that supports Hanley's assertion.

First, a *civil* RICO action is a *civil* matter, it is not a criminal matter *as a matter of law*. Mr. Melone was not threatening criminal charges, and never stated or implied anything of the sort. Mr. Hanley's allegations against Mr. Melone are based upon his misunderstanding of *civil* RICO versus a criminal RICO claim (the latter of which Mr. Melone could not bring in any case).

Second, other jurisdictions that have the same rule as Vermont make it clear that exposing conduct or threatening to expose conduct in a civil litigation that might also be criminal conduct is not threatening criminal action in violation of the Rule. *See, e.g., J.B.B. Inv. Partners Ltd. v. Fair*, 37 Cal. App. 5th 1, 249 Cal. Rptr. 3d 368 (2019) *14-15 ("The July 4 offer did not involve a violation of former rule 5-100. As the plain language of

Russo's e-mail makes clear, even when mentioning Bernie Madoff and Ponzi schemes, Russo was threatening to expose Fair's alleged fraud in civil litigation if the parties did not settle, not by either expressly or impliedly threatening him with criminal charges 'to obtain an advantage in a civil dispute' (Rules Prof. Conduct, former rule 5-100(A)).") And unlike *J.B.B. Inv. Partners Ltd.* where an actual threat was made, here Mr. Melone did not make any threats of criminal charges or ask the Town to take any action.

Third, if Hanley's view of civil RICO were correct, then every lawyer that is involved on behalf of a plaintiff in a civil case where a civil RICO claim were viable would likely be violating Rule 4.5. That certainly is not the law as the Second Circuit has expressly held.

Fourth, the Second Circuit has expressly held that Mr. Hanley's position is wrong. In *Revson v. Cinque & Cinque*, 221 F.3d 71, 81 (2d Cir. 2000), the Second Circuit held "the threat of a civil RICO claim [is not] a threat to bring criminal charges" within the meaning of New York's equivalent attorney disciplinary rule. *See also, id*. ("Although Burstein's draft letter mentioned that use of the mails to perpetrate billing frauds had led to the criminal conviction of other attorneys, every viable RICO claim, whether civil or criminal, by definition involves some allegation of criminal conduct, *see* 18 U.S.C. §§ 1961-1964. If the district court's view were correct, no attorney could ever threaten to bring a civil RICO suit without violating the ethical rules.")

Fifth, California Rule 3.10 entitled "Threatening Criminal, Administrative, or Disciplinary Charges" is similar to Vermont's. It provides "(a) A lawyer shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute." Comment [2] makes clear that the "*rule does not apply to a threat to bring a civil action*." And a civil RICO claim is what was mentioned in Mr. Melone's filing.

4. The Claim That Rule 8.4(d) Was Violated Is Frivolous.

The discussion of Rule 8.4(d) for all Counts is *infra.*

B. COUNT II IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

The subject matter of Count II was not included in the Bent Complaint. Attorney Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond.

1. The Claim That Rule 4.5 Was Violated Is Unmeritorious.

Vt. Rule 4.5 entitled "Threatening criminal prosecution," states: "A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter."

Petition paragraph 121 asserts that Mr. Melone's communications with ML and DG constituted "threatening to present criminal charges in order to obtain advantage in a civil manner." There is nothing that supports Mr. Hanley's assertion.

First, Hanley does not provide with any specificity what communication or communications purportedly threatened to present criminal charges in order to obtain advantage in a civil manner. Without that specificity, the charge is unmeritorious on its face and violates Vt. A.O. 9 Rule 13.D(1)(b).

Second, Count II provides another good example of how Attorney Hanley's violations of Vt. A.O. 9 Rule 13A have harmed not only Mr. Melone, but the persons identified as "ML/DG". This *sua sponte* Count would have been able to be dispensed with if Attorney Hanley provided the notice to Mr. Melone that is required by Vt. A.O. 9 Rule 13A, or if Mr. Melone were permitted to contest the allegations at the probable cause hearing. The very people that Attorney Hanley seems to want to not identify—ML/DG—would now be brought back into the public eye.

Third, there is a single communication from Mr. Melone, *see* Pet. ¶55, that occurred while Mr. Melone and ML/DG were in the Petition's words "opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good." Pet. ¶50. In the May 3, 2024 email, Mr. Melone said "I do want you to be aware that we will be asking about it in your depositions." Pet. ¶52. No criminal charges were threatened there.

On May 10, 2024, ML/DG withdrew as parties to the PUC proceeding. In fact, when ML & DG's attorney called Mr. Melone to discuss that email and the real estate documents, Mr. Melone made it expressly clear to him that the documents were only going to be used for *impeachment purposes* when they testified. Failing to report assets and sale proceeds from those assets in a federal bankruptcy proceeding involves conduct that has been characterized by this Court as involving dishonesty, fraud, deceit or misrepresentation. *See*, *In re Palmisano*, 165 Vt. 593, 595 (1996) (Failing to "disclose the receipt of [a $10,000 payment] to the bankruptcy court [was] conduct involving dishonesty, fraud, deceit or misrepresentation." Mr. Melone made it perfectly clear that Mr. Melone would not be

reporting the documents to any authorities that might have jurisdiction to take action against ML/DG, and that Mr. Melone was not making any threats of criminal action. And, here Mr. Melone did not make any threats or ask ML/DG to take any action.

And at that point, the criminal statute of limitations had expired so criminal charges could not be brought or threatened in any event. After that conversation with their attorney, Mr. Melone emailed the attorney to ask whether Mr. Melone should be directing all contact to him, or whether Mr. Melone should contact ML/DG directly. He stated that Mr. Melone should contact ML/DG directly.

Petition para. 56 notes that ML/DG withdrew from the PUC proceeding. What it fails to state is that ML withdrew and filed a written statement that misrepresented why they were withdrawing in order to disparage Mr. Melone. Mr. Melone did not take any action to correct the vitriolic statements against him in her withdrawal. But when those statements were in some form or another later being used to disparage Mr. Melone in comments by the Town, Mr. Melone made the additional communication to ML/DG recited in Petition para. 57. That communication did not threaten anything either. And even though as stated in para. 58 ML/DG took no action, Mr. Melone still did nothing in response. But when the Town and then the Vermont Department of Public Service made additional comments at the PUC re-iterating in some form or another the disparaging statements made by ML/DG in their withdrawal, Mr. Melone felt that it was time to set the record straight. That is what led to the filing referred to in Petition para. 59. But neither that filing nor any other filing or communication threatened criminal proceedings, or asked ML/DG to take any action under threat. And ML/DG had already withdrawn from opposition so there was no advantage to have been gained in a civil proceeding in which they were a party in any event.

And Mr. Melone's filing setting the record straight is expressly permitted as explained by the *Restatement* §109 dealing with "An Advocate's Public Comment on Pending Litigation" ("a lawyer may in any event make a statement that is reasonably necessary to mitigate the impact on the lawyer's client of substantial, undue, and prejudicial publicity recently initiated by one other than the lawyer or the lawyer's client.") And all relate to Mr. Melone's exercise of his First Amendment rights to free speech and his right to petition the government.

C. COUNT III IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

The subject matter of Count III was not included in the Bent Complaint filed with the PRB. Attorney Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond.

Although not stated, this Count appears to be based solely on paragraphs 56-60 and is based entirely on this Court's opinion in In *In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, No. 23-AP-346, 2024 VT 58. *See*, Pet. ¶57 ("the Vermont Supreme Court said that even though the Public Utility Commission had issued a Temporary Restraining Order prohibiting site-preparation 'developer continued to conduct site clearing activities the following day until the sheriff arrived and ordered all work to cease.'"), Pet. ¶58 ("the Vermont Supreme Court said that 'the PUC also found developer's claims that site preparation was done solely for unrelated farming purposes to be not credible given that developer knew that it did not have a Certificate of Public Good, that it was required to have one, that it needed to clear trees for site preparation, and that clearing had already been denied by the PUC.'"), Pet. ¶59 ("the Vermont Supreme Court said that "the PUC concluded that developer's failure to comply with its regulatory obligations harm the credibility and integrity of the process, resulting in harm to the statutory scheme and potential harm to public safety and welfare, the environment, and utility customers.'").

Paradoxically, Mr. Hanley's claim in Count III is based upon the conclusion that Mr. Melone is acting *pro se*. In other words, the claim attributes the site preparation to Mr. Melone, which removes it from the Rule in the first place.

1. The Claim That Rule 3.5(d) Was Violated Is Unmeritorious.

Vt. RPC 3.5(d) states: "A lawyer shall not … engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal." The Rule's Comment [4] states: "The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics."

First of all, the Petition does not specify how either the purported "site preparation without a Certificate of Public Good" or Mr. Melone's purported "'not credible' testimony" were "undignified or discourteous conduct." Nor does the Petition specify how those were "degrading or disrupting to a tribunal." Without such an explanation, the charge is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

Second, a violation of Rule 3.5(d) requires that the alleged undignified or discourteous conduct be directed "toward the tribunal" itself. *Grievance Adm'r v. Fieger*, 476 Mich. 231, 719 N.W.2d 123, 145 (Mich. 2006). Here, none of Mr. Melone's purported "site preparation without a Certificate of Public Good" or Mr. Melone's purported "'not credible' testimony" criticized the PUC or were directed at the PUC or any of its commissioners or the hearing officer.

Third, Mr. Melone's testimony as an individual is fully protected by the First Amendment and the *Noerr-Pennington* doctrine.

2. The Claim That Rule 3.3 Was Violated Is Unmeritorious.

Vt. RPC 3.3(a) entitled "Candor Toward The Tribunal" states "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

The Hanley Petition states that Mr. Melone's purported "'not credible' testimony" violated "Rule 4.3 [*sic*] in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of law and fact."

a. Melone Was Not Representing "a client" so no violation could have occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer *who is representing a client in the proceedings of a tribunal*. See Rule 1.0(m) for the definition of 'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.)

As stated above, the PUC has expressly rejected the proposition that Mr. Melone is representing a client in proceedings before the PUC, and did so in this same case referenced by Hanley in Count III. *See*, Order dated June 11, 2021, Case No. 20-1611-INV, *Investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether the petitioner initiated site*

preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2), supra.

And even if the PUC hadn't expressly ruled that Mr. Melone was acting *pro se*, Count III is based entirely on the premise that *when* one of Mr. Melone's company's act, it is really Mr. Melone acting individually.

b. Hanley's allegation that Mr. Melone Made false statements of law and fact is unmeritorious.

First, Mr. Hanley alleges that Mr. Melone made false statements of law and fact, but he offers no specificity as to what statement of fact were purportedly knowingly false, and offers no specificity as to what statements of law were purportedly false. Without such an explanation, the charge is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b). Mr. Hanley references Mr. Melone's purported "'not credible' testimony" but does not even bother to read that testimony or cite to it, showing prima facie how unmeritorious Mr. Hanley's claim is.

Second, Mr. Hanley offers no evidence (because there is none) that Mr. Melone's purported "'not credible' testimony" was knowingly false.

Third, Mr. Melone testified: "PLH's clearing activities are site preparation for its farming activities." Direct Testimony of Thomas Melone, December 3, 2020 ("Melone DT"), page 9, *In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, No. 23-AP-346, PC-529. Melone's testimony was uncontradicted. The clearing was specifically *not* part of a plan by anyone to sell renewable energy generated by the proposed facilities or for the construction of those facilities. The solar facilities may never be built but the agricultural uses would continue regardless of the existence or non-existence of the solar facilities. *Id*. PC-528. The testimony on that point is clear:

> None of the site work is being undertaken in preparation for an electric generation facility or the construction of an electric generation facility. As I also explained at the TRO hearing, the site preparation for the farming use is more expensive and more involved than clearing and site preparation for a solar project. For example, in the case of a solar project, tree stumps do not need to be removed unless they end up being in the way of a post for the support racking of the modules. Clearing for PLH's farming use, however, requires that all the stumps be removed, which can more than double the cost of clearing.

Melone DT, page 9-10, PC-529-530.

After that case in 2020, Mr. Melone abandoned the plan to have sheep business stationed at Bennington to serve other solar arrays, and set up that business in Connecticut which stands today at roughly 125 head of sheep.

D. COUNT IV IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

The subject matter of Count IV was not included in the Bent Complaint. Attorney Mr. Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond. Count IV is unmeritorious. Count IV also plainly shows that the Petition seeks to retaliate against and target the exercise of Mr. Melone's First Amendment rights and in doing so seeks to chill the future exercise of those rights. Although not specified, the paragraphs of the Petition on which Count IV appears to be based are paragraphs 70 through 82.

1. The Claim That Rule 3.5(b)(1) was violated is unmeritorious.

On March 24, 2025, Thomas Melone sent an email to the members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy. The focus of the email (the "Legislative Email") was to provide a counterpoint to Chair McNamara's testimony before the House Committee that singled out Thomas Melone (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program.

In response to Chair McNamara having been copied on the email, on April 21, 2025, the PUC issued a memorandum stating that the Legislative Email constitutes a prohibited ex parte contact pursuant to PUC Rule 2.201(E). The memorandum also requested that the parties to the PUC proceedings provide comments related to the Legislative Email and specifically whether Commission Rule 2.201(E)(4) (i.e., potential sanctions) was implicated.

Rule 3.5 provides: "A lawyer shall not: ...(b) communicate ex parte (1) with a judge or other person acting in a judicial or quasi-judicial capacity in a pending or impending adversary proceeding, unless authorized to do so by the Code of Judicial Conduct, by other law, or by court order."—Amended June 17, 2009, eff. Sept. 1, 2009.

Rule Comment [2] states that "[d]uring a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges or

masters, unless authorized to do so under the terms of the Code of Judicial Conduct or by other law or court order.

The "Introductory Reporter's Note—2009 Amendments" to the VRPC states that "[t]he Vermont Rules of Professional Conduct are amended to incorporate comprehensive and significant changes to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA House of Delegates in 2001-2003." The Introductory Reporter's Note states that "the American Law Institute's Restatement of the Law Governing Lawyers, a comprehensive statement and analysis of the entire legal framework governing the legal profession and the practice of law that can serve as a guide to understanding and application of the principles underlying the Model Rules."

The *Restatement* §113, "Improperly Influencing a Judicial Officer," states: "(1) A lawyer may not knowingly communicate ex parte with a judicial officer before whom a proceeding is pending concerning the matter, except as authorized by law."

a. Melone's Copying McNamara Was Not An *Ex Parte* Communication. Ex Parte Communications Require Secrecy And Melone's Communications With the Vermont Legislative Committees Were Public And Widely Available.

The rationale for the rule regarding ex parte communication is stated in the *Restatement* § 113, Comment b:

> Rationale. Ex parte communication with a judicial official before whom a matter is pending violates the right of the opposing party to a fair hearing and may constitute a violation of the due-process rights of the absent party. ***A communication made secretly may not withstand scrutiny.*** Ex parte communication also threatens to embarrass the parties' relationship with the judicial officer, requiring the officer either improperly to acquiesce in the conduct or to make a censorious response.

(Emphasis added).

Mr. Melone's copying Mr. McNamara was not an ex parte communication or a prohibited ex parte communication because it was not secret. Ex Parte communications require secrecy and Mr. Melone's communications with the Vermont Legislative Committees were public and widely available, and intended by Mr. Melone to be widely disseminated. To be sure, there are other "parties" in the proceedings before the PUC (all of which were governmental), and Mr. Melone did not file the comments in those proceedings because, *inter alia*, (i) Mr. McNamara's testimony before Legislative

committees was not a quasi-judicial function but purely a lobbying effort by Mr. McNamara for Legislative committees to adopt his—the executive branch's—position, and (ii) the subject matter of the email did not involve an issue presenting before the PUC in either proceeding.

b. Melone's Copying McNamara Was Not An *Ex Parte* Communication Because It Was Not From A Lawyer Representing A Client, McNamara Was Not Acting In A Judicial Capacity, And The Written Communication Was Timely Sent To Other Parties.

Restatement § 113, Comment, c explains what are the requirements for a prohibited ex parte communication:

> Prohibited ex parte communications. An ex parte communication is one that concerns the matter, that is between a lawyer **representing a client** and a **judicial officer**, and that occurs outside of the presence and without the consent of other parties to the litigation or their representatives. ***A written communication to a judicial officer with a copy sent timely to opposing parties or their lawyers is not ex parte.***
>
> (Emphasis added.)

i. **Mr. Melone Was Not Representing A Client.**

Mr. Melone's email to the Legislative Committees was from him individually. And for the reasons discussed above, Mr. Melone acts in a *pro se* capacity before the PUC. As a result, no violation of Rule 3.5(b)(1) could have occurred because Mr. Melone was not "a lawyer representing a client."

ii. **McNamara Was Not Acting In A Quasi-Judicial Capacity.**

Rule 3.5(b)(1) can only apply when the recipient is "acting in a judicial or quasi-judicial capacity." Mr. McNamara was not acting in a quasi-judicial capacity because he was testifying as a member of the executive branch regarding legislative and policy issues. As a result, no violation of Rule 3.5(b)(1) could have occurred because Mr. McNamara was not acting in a quais-judicial capacity.

iii. **The Melone Email was timely sent to opposing parties or their lawyers.**

"A written communication to a judicial officer with a copy sent timely to opposing parties or their lawyers is not ex parte." *Restatement* § 113, Comment c. The Melone Email was timely sent to opposing parties or their lawyers. McNamara filed the email on April 21, 2025. That dissemination was "timely" under the *Restatement* because nothing

of relevant consequence occurred in either PUC docket between March 14, 2025 and April 21, 2025. Prior that time, Mr. McNamara (and maybe others) also sent the email to various recipients. Attached as **Exhibit 6** are redacted emails produced by the PUC in response to a public records request. Almost all information of than the Melone email is redacted. Mr. Melone will need to issue a subpoena to Mr. McNamara for testimony and for the unredacted copies of the documents in Exhibit 6.

iv. **The Matter of The Legislative Email Was Not A Matter Before The PUC**.

The *Restatement* §113 states: "(1) A lawyer may not knowingly communicate ex parte with a judicial officer before whom a proceeding is pending *concerning the matter*, except as authorized by law." (Emphasis added.) The subject of the Legislative email was not a matter before the PUC in CPG cases then pending.

c. The PUC Has Its Own Ex Parte Rules Which Were Not Violated.

i. **The email plainly does not constitute an *ex parte* communication under rule 2.201(e)(1).**

On June 17, 2025, the hearing officers in the PUC cases ruled (the "Ex Parte Order") that copying Chair McNamara on the Legislative Email constituted a prohibited *ex parte* communication under the PUC's rules. Instead of relying on *the PUC's rules*, the hearing officers turned to Black's Law Dictionary. While the definition in Black's Law Dictionary certainly *could have* been adopted by the PUC in its rules, the PUC *did not*. Rather the PUC adopted a unique set of rules regarding *ex parte* communications.

PUC Rule 2.201(E)(1) prohibits *the Commission from communicating* with parties (not the other way around). *See, id*. ("Prohibited communications … the Commission may not communicate, directly or indirectly, in connection with any issue of fact with any party or any person, or in connection with any issue of law with any party or any employee, agent, or representative of any party, unless …"). The Legislative Email was not a communication *by* the PUC *to* a party. It thus does not constitute an "*ex parte*" communication under Rule 2.201(E)(1). That conclusion is reinforced by the plain language of Rule 2.201(E)(4) which separately addresses communications *by parties*.

The *Ex Parte* Order also erroneously held that "Commission Rule 2.201(E)(4) prohibits a person or party from communicating ex parte with the Commission." The plain language of Rule 2.201(E)(4) prohibits a person or party from communicating *ex parte* with the PUC, *if and only if*, it is intended "to cause or potentially cause the disqualification

of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding." That did not happen. And once the April 21, 2025, Clerk memorandum was issued, Mr. Melone filed a statement confirming that Mr. Melone would not seek, and never intended the email to be a basis of disqualification of Mr. McNamara. *See* **Exhibit 7**.

ii. **The *ex parte* order also misunderstood Melone's argument regarding Chair McNamara's potential participation in a final decision in both PUC cases.**

The *Ex Parte* Order assumes that Chair McNamara would participate in a final decision on the petitions in the PUC cases. But as far as Mr. Melone is aware, Chair McNamara only participated in one ruling, and that was in docket 23-0249, which is the procedural order issued on November 8, 2024. Docket 23-0249 was filed on January 25, 2023.

30 V.S.A. §3(e) requires "[w]hen a Commission member who hears all or a substantial part of a case retires from office before the case is completed, the member shall remain a member of the Commission for the purpose of concluding and deciding the case, and signing the findings, orders, decrees, and judgments. A retiring chair shall also remain a member for the purpose of certifying questions of law if appeal is taken." The issue is whether the proceedings in case 23-0249 that occurred while Anthony Roisman was the chair constitute a "substantial part" of the case. If they do (which Mr. Melone contends they do), then Anthony Z. Roisman and not Edward McNamara would be the commission member that is required to see case 23-0249 to its conclusion. For that reason *too*, Rule 2.201(E) would not apply in case 23-0249.

For case 24-3517, Edward McNamara's recent testimony to the House Committee relating to his participation while at the Department of Service circa 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES, raises serious questions regarding whether Mr. McNamara can participate in either of the above-captioned cases due to bias.

iii. **The *ex parte order* violates Mr. Melone's First Amendment rights.**

Mr. Melone has an absolute constitutional right under the First Amendment's freedom of speech and freedom of petition clauses to communicate with public officials. And it is those communications with public officials that the *Ex Parte* Order holds is

prohibited. The Legislative Email is fully protected by the First Amendment. *See, Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010). Speech such as the Legislative Email on public issues and petitions to the government, "occupies the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995). The *Ex Parte* Order's holding that any part of that communication is subject potential punishment violates Mr. Melone's First Amendment rights.

E. COUNT V IS UNMERITORIOUS.

Mr. Melone is the sole member and president of PLH Vineyard Sky LLC, which is the legal titleholder to, and taxpayer for, several parcels of land in Bennington, Vermont. One parcel owned by PLH is a 27.8-acre parcel on Stocklee Lane in Bennington, #051-015-69479, which is hydrologically connected to the "Benn High" project that is the subject of the Bent Complaint. Other parcels include a 27-acre parcel on Willow Road #051-015-65401, a 5.63-acre parcel on Apple Hill Road #051-015-70059, a 27-acre on Rice Lane #051-015-65100, an 8.6-acre parcel on Rice Lane #051-015-65130, and a 40.6-acre parcel on Rice Lane #051-015-65104.

Earlier this year, three new cases were filed involving the Town of Bennington. One was an open meeting law complaint in Vermont Superior Court, another was a complaint in Vermont Superior Court for injunctive relief to prevent municipal waste against the Town of Bennington related to the "Benn High" project (which is the main focus of the Bent Complaint) and another was in Federal District Court seeking to obtain a declaratory judgment that the Bennington Town Plan expired on October 6, 2023 (another issue that is a focus of the Bent Complaint as it relates to her claims that Mr. Melone pointed out to public officials that she had a potential conflict).

As discussed above, PLH Vineyard Sky LLC also owns a 28-acre parcel on Stocklee Lane in Bennington, which is hydrologically connected to the "Benn High" project that is a focus of the Bent Complaint and the Petition. The expert declaration filed with the Environmental Court with the opposition to Ms. Bent's motion to dismiss (a similar declaration was filed in the new suit in Superior Court) shows the environmental connection because the Benn High project and our parcel on Stocklee Lane in Bennington.

The Environmental Court dismissed the appeal that was filed with respect to the Bennington select board's approval of the Benn High project and using millions of dollars of taxpayer and other funds as part of the Town's participation. A motion for

reconsideration was filed with respect to the Environmental Court's dismissal, which was denied. Both the appeal, the motion for reconsideration and the new complaint in the Civil Division detail the environmental issues presented by the Benn High project.

1. The Claim That Rule 3.1 Was Violated is Unmeritorious.

Hanley claims that Melone violated Rule 3.1 "in that Thomas Melone brought or caused to be brought a legal proceeding in the Environmental Division when there was no basis in law to assert that it had subject matter jurisdiction over the matter."

Rule 3.1 provides: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not unmeritorious, which includes a good faith argument for an extension, modification or reversal of existing law." Comment [2] to the Rule states: "The filing of an action or defense or similar action taken for a client is not unmeritorious merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not unmeritorious even though the lawyer believes that the client's position ultimately will not prevail."

a. Melone had good faith arguments in support of the filings in the Environmental Division.

The substantive claims against the Town were valid, but where complete relief can be obtained is unclear, and Mr. Melone did not want to be on the receiving end of a Supreme Court opinion (as in *Monkton*) where the Supreme Court said that you can't say that you had no ability to get relief in the Environmental Court because you didn't go there first. And in the old cases referred to by Bent (Civil: Docket No. 78-1-18, ED: Docket Nos. 20-2-18 Vtec and 21-2-18 Vtec) (which the Town settled), Mr. Melone used external counsel, PF+C Law in Burlington. They had difficulty making heads or tails of the gray area of exactly which claims against municipalities belong in the Environmental Division versus the Civil Division, both part of one Superior Court.

PLH appealed to the Environmental Court and then to this Court because an important jurisdictional question is at stake and one left open by this Court's opinion in *Gould v. Town of Monkton*, 2016 VT 84, which is are there some claims against a municipality that a person is "left without a remedy," *id*. at ¶12, under Vermont law. *See*

also, id. at ¶13 ("First, the record does not show that landowner has no remedy in the Environmental Division. Landowner did not appeal the denial of his permit application and challenge the validity of the statute in the context of that appeal. Second, he did not actually bring a declaratory judgment action in the Environmental Division, so his presumptions about what the Environmental Division would do are merely speculative. They do not support his claim that he has no forum to challenge Monkton's compliance with 24 V.S.A. ch. 117.") What that language from *Monkton* means to Mr. Melone is that a litigant needs to first go to the Environmental Court (or else risk losing the claim for failure to first go to the Environmental Court) and see what the Environmental Court does, then appeal that to the Vermont Supreme Court, and then file as Mr. Melone did, a suit in the Superior Court, Civil Division, because the Environmental Division has no guidance on transferring cases between divisions, even though that guidance is supposed to exist.

Mr. Melone wasn't alone in expressing concerns regarding the "Benn High" project that had gone quickly from a $20 million alleged cost to a $55 million. For example, at a hearing on February 27, 2025, before the Vermont House's Committee on Corrections and Institutions, https://www.youtube.com/watch?v=5d8ZS5eNtPc, the developer had its hand out for yet another $1 million grant for the State of Vermont. *See*, SmartTranscript of HCI-2025-02-27-10:25 AM. Chair Alice Emmons observed that "You're already getting a lot of state help."

Bennington Representative Mary Morrisey expressed not only her amazement at the purported cost of the project but also expressed the concern regarding the "100 children" in the basement. When Rep. Morrisey asked Zak Hale (the developer) to explain the high cost for the housing units compared to a project in Barre, VT, that the House Committee also heard testimony on that day, Hale was evasive, simply stating that it's a complicated project:

> So, Zach, this is Mary Morrissey from Bennington. Could you explain how the project for my colleagues, how the project went from twenty million to now the fifty five million? And I was kind of amazed when I saw that Barry was doing seventy nine units for four million dollar project, and ours is thirty nine or forty units. And we're in a main part of what you're presenting is the housing. Yes. There's other pieces within it, but how did we get there? And for the first time, and I've asked this for the last year and a half or longer, all of these grants, and you finally have a sheet with them on it. So

I'm I'm pleased to see that. But could you explain to the committee that is seriously looking at this because these were three highlighted projects that have some real concerns. I also one of the things that was stated when the governor presented his budget was the Meals on Wheels. And we were told, I think it was just two weeks ago, that that's off the off the project now. And I would like to know what the cost per unit for the apartments now is at because there's a lot of questions out there, and I'm being asked every day by constituents. So maybe you can certainly shed a light for my committee members.

***

[Zach Hale]: Yeah. Thanks, Mary. So I think when it comes to the cost, I I understand it's a lot, and it did go from twenty to to fifty five. I have been very persistent to this process. And each time I run into an issue, I I have not given up, and I've found ways to get it like, overcome it. And other developers have looked at this project many like, a dozen, and they've run into the same challenges, and they've went and found other projects to pursue.

After not receiving an answer to her question, Rep. Morrisey stated her serious concerns regarding children: "I'm still of great concern with one hundred and some students or children in the basement of that building." Hale evaded that question as well.

Rep. Troy Headrick also expressed concern with the cost: "I'm just trying to, in my head, rationalize the the cost and but I'm still stuck on." Another project that presented at the same HCI hearing was in Brattleboro for 28 housing units at a cost of $320,000 per unit:

[Chloe Leary]: We're estimating nine million for this first phase. Yes.

[Shawn Sweeney]: And how many houses that get does that get us?

[Chloe Leary]: That's twenty eight units. So average three hundred and twenty thousand dollars per unit, three twenty one. And that's just don't, you know, don't that's our back of the envelope. We are you know, we're in the process of we're this we're talking modular construction, and we are right now getting quotes from two manufacturers. So, you know, that give or take some percentage, but, yeah, that's that's where we

In contrast, as Rep. Headrick observed, the Benn High project is multiple times more expensive:

> [Troy Headrick]: And that's one point three million dollars per housing unit. I mean, taking out the fact that we're doing other stuff, but if we're just only talking about the cost of housing, we divide that fifty five by thirty nine. I know there's other things in there, but

2. The Claim that there Was a Rule 3.3(a)(l) Violation is Unmeritorious.

Vt. RPC 3.3(a) entitled "Candor Toward The Tribunal" states "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

The Hanley Petition states that Mr. Melone violated making false statements of law regarding the subject matter jurisdiction of the Environmental Division.

a. Melone had good faith arguments in support of the filings in the Environmental Division.

As stated above in response to the claimed violation of Rule 3.1, the substantive claims against the Town were valid, but where complete relief can be obtained is unclear, and Mr. Melone did not want to be on the receiving end of a Supreme Court opinion (as in *Monkton*) where this Court said that you can't say that you had no ability to get relief in the Environmental Court because you didn't go there first. And because there is only one Superior Court, *see* 4 V.S.A. Ch. 3, 4 V.S.A. § 30, and "[t]he Supreme Court ***shall*** promulgate rules, subject to review by the Legislative Committee on Judicial Rules under 12 V.S.A. chapter 1, that establish criteria for the transfer of cases between divisions," it makes sense that the Supreme Court in *Monkton* would say that a litigant needs to go to the Environmental Division first. (Emphasis added.) And it is far from clear that Rule 3.3 could be applied when a lawsuit is filed in one division versus another division, when at least one of the divisions would have jurisdiction, and there is supposed to be a mechanism to transfer the suit to a different division.

b. Mr. Melone Was Not Representing "a client" so no violation could have occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer *who is representing a client in the proceedings of a tribunal*. See Rule 1.0(m) for the definition of 'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding

conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.)

Mr. Melone was not representing a client. Much of the Petition relies on a foundational premise that is unsupported, *i.e*., that Melone was representing a "client," in his dealings with the PUC. For example, Vt. Prof. Cond. Rule 3.3 (*see* Count I(b)), Count III(b), which applies only when "a lawyer [] is representing a client in the proceedings of a tribunal." *See* Rule 3.3, Cmt. [1]."

3. The Claim That there was a Rule 4.4(a) Violation Is Utterly Unmeritorious.

Mr. Hanley alleges that Mr. Melone's challenges to the Benn High project "used means and methods that had no substantial purpose other than to delay or burden a third person, the Bennington High developer."

Rule 4.4 states: "(a) *In representing a client*, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person."

a. The "Bennington High developer" is not a third person under the Rule.

In both of Attorney Bent's motions filed in Superior Court in the suit filed for municipal waste, Attorney Bent included a "common interest" agreement between the Town and the developer. That common interest agreement removes the Benn High developer as a third person. "Case law, as well as the comments to other Model Rules such as 4.1, reflect that a 'third person,' is someone other than the parties and the court." *In the Matter of Disbarment of Rogers*, 60 V.I. 293, 304 (V.I. 2013). The common interest agreement effectively makes the Benn High developer a party.

b. Mr. Melone was not representing a client under the Rule.

Rule 4.4(a) provides that "[i]n representing *a client*, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a *third person* . . . ." (Emphasis added.)

This rule mirrors Rule 4.4 of the American Bar Association's Model Rules of Professional Conduct. The comment on the model rule states:

> Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of

> obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.
>
> Model Rules of Pro. Conduct Rule 4.4 annot., comment 1 (Am. Bar Ass'n 2023).

In one of Mr. Melone's cases heard by this Court, this Court held that there was no meaningful difference between a shareholder and a wholly owned company. That conclusion is equally applicable here, because under this Court's rationale Mr. Melone is the actor and is thus not representing a client. In *In re Investigation to Review Avoided Costs*, 2020 VT 103, 213 Vt. 542, 251 A.3d 525, the Court held that:

> there is no meaningful distinction in this case between NextEra and Boulevard Associates. As many authorities in other contexts have recognized, a parent company has full control of its wholly owned subsidiaries. *See, e.g., Copperweld Corp. v. Indep. Tube Corp*., 467 U.S. 752, 771-72, 104 S. Ct. 2731, 81 L. Ed. 2d 628 (1984) (observing in context of Sherman Act that "the coordinated activity of a parent and its wholly owned subsidiary must be viewed as that of a single enterprise" among other reasons because "the parent may assert full control at any moment if the subsidiary fails to act in the parent's best interests*"); VFB LLC v. Campbell Soup Co*., 482 F.3d 624, 635 (3d Cir. 2007) ("[A] wholly-owned subsidiary has only one shareholder: the parent. There is only one substantive interest to be protected, and hence no divided loyalty of the subsidiary's directors … ." (quotation omitted)); *Cont'l Distilling Corp. v. Old Charter Distillery Co*., 188 F.2d 614, 620, 88 U.S. App. D.C. 73, 1951 Dec. Comm'r Pat. 20 (D.C. Cir. 1950) ("A court of equity, in order to do justice, does not hesitate to disregard a corporate entity and to recognize that all the assets of a solvent wholly owned subsidiary are equitably owned by the parent corporation.").
>
> [*P31] NextEra submitted official documentation proving that it and Boulevard Associates are wholly owned subsidiaries of the parent company. As wholly owned subsidiaries of the parent company, NextEra and Boulevard Associates serve one master and will do as the parent company directs. They are like "a multiple team of horses drawing a vehicle under the control of a single driver." *Copperweld*, 467 U.S. at 771.

This Court's rationale as applied here means that Mr. Melone is the actor and is thus not representing a client.

F. COUNT VI IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

The subject matter of Count VI was not included in the Bent Complaint filed with the PRB. Attorney Hanley decided to present this on his own without allowing Mr. Melone the opportunity to respond.

1. The Claim That Rule 3.3(a)(l) was violated is unmeritorious.

Vt. RPC 3.3(a) entitled "Candor Toward The Tribunal" states "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

Hanley alleges that Melone's statement in his response to Screening Counsel "specifically that Ms. Bent was liable for defamation per se," violated Rule 3.3(a)(l) because "he knew or should have known that Rule 12 of The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement* provides that communications to the Program, hearing committees or disciplinary counsel relating to lawyer misconduct are absolutely privileged and no lawsuit predicated thereon may be instituted against any complainant or witness."

a. Mr. Melone Was Not Representing "a client" so no violation could have occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer *who is representing a client* in the proceedings of a tribunal. See Rule 1.0(m) for the definition of 'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.) Melone was not representing a client in his response to Screening Counsel. Therefore no violation occurred.

b. Screening Counsel Is Not A Tribunal So No Violation Could Have Occurred.

Comment [1] to the Rule states: "This rule governs the conduct of a lawyer who is representing a client *in the proceedings of a tribunal*. See Rule 1.0(m) for the definition of 'tribunal.' It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." (Emphasis added.) Screening Counsel is not a "tribunal."

RPC 1.0(m) states that a ‘‘Tribunal’’

> denotes a court and all ancillary court proceedings such as depositions and hearings before a referee or master, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Screening Counsel is plainly not a "tribunal." He or she is not "acting in an adjudicative capacity." Hanley's claim is utterly unmeritorious.

c. *ABA Model Rule 12* is not an enforceable standard.

Count VI is based upon an *alleged violation of ABA Model Rule 12*, which appears nowhere in A.O. 9. Charging Mr. Melone with a violation of an ABA Model Rule is *utterly* unmeritorious. ABA model rules can be useful in interpreting and applying State and Federal rules but the ABA model rules are not enforceable rules. Attorney Hanley does not allege that Vermont has implemented ABA Rule 12.

d. Hanley's accusations of false statements are unmeritorious.

As Mr. Melone noted in his response to Screening Counsel, his view is that Attorney Bent's tactical response and use of the bar complaint process is defamation *per se*. Bent accused Mr. Melone of knowingly engaging in a "pattern of misconduct and unethical tactics [that] seriously calls into question [my] fitness to practice law." Defamation *per se* is defamation that imputes a person is unable to perform or lacks integrity in performing her or his employment duties. And here that is exactly what Ms. Bent imputed, indeed she went beyond that and *expressly* said that. The possibility of immunity for Ms. Bent would be an affirmative defense that Ms. Bent would have to assert and prove, including that she did not make any similar comments to anyone at any time.

Immunity in cases like this one, where the complainant files a complaint in the middle of adversarial proceedings targeting lawful communications with government officials is not free from doubt. *See, e.g., Morgan v. Botts*, 348 S.W.3d 599, 612 (Ky. 2011) (Scott, J. dissenting):

> Bar complaints have the potential to devastate an attorney's reputation—the lifeblood of any lawyer's practice. In fact, one's reputation, be it that of

> a lawyer or not, is so precious in this Commonwealth that the term is enshrined in Section Fourteen of the Kentucky Constitution, a provision that commands:
>
> All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.
>
> (Emphasis added.)
>
> Today, in broad strokes, the majority concludes that the judicial statements privilege "encompasses the act of filing the complaint, so as to bar [a] claim for 'misuse of the attorney discipline process' and 'reckless filing of a Bar complaint.'" Given the fact that the right to recover for one's reputation is secured in our Constitution, I simply cannot agree.

Vermont's Constitution, Article 4, is similar to Kentucky's:

> Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; comformably to the laws.

But unless and until Vt. A.O. 9 is amended to conform to ABA Model Rule 12, Mr. Hanley's claim that Mr. Melone made false statements is unmeritorious.

And there is no Rule that prevents the attorney subject to complaint from disclosure.[4] A.O. 9 Rule 16 (Access to Disciplinary Information) lays out restrictions on the PRB's ability to disclose information. A.O. 9 Rule 16F(1)(b) also makes it clear that any information must be disclosed if a "person to which the attorney has submitted a waiver of confidentiality" requests it. A.O. 9 Rule 16F(1)(b) makes no sense under Hanley's allegations because Mr. Melone can clearly waive his own confidentiality.

[4] "Rule 16. Access to Disciplinary Information, Reporter's Notes—First 2011 Amendment …This amendment allows complainants and respondents to disclose to anyone if a complaint had been filed, and the disposition, if any, of the complaint. This is consistent with steps other states have taken."

2. The Claim That Rule 4.4(a) was violated is unmeritorious.

Rule 4.4(a) provides: "(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person."

Hanley claims that Melone violated Rule 4.4(a) in that Melone's "claim to Screening Counsel Straus that Ms. Bent had verbally accosted an employee of her law firm, his threats to sue Ms. Bent for defamation per se, his disclosure of Ms. Bent's complaint to officials, agents and employees of the Town of Bennington and his claim in in the Public Utility Commission that Ms. Bent violated the Rules of Professional Conduct" "showed disrespect for Ms. Bent's rights and he used means that had no substantial purpose other than to embarrass, delay, or burden Ms. Bent."

a. Mr. Melone Was Not Representing "a client" so no violation could have occurred.

Rule 4.4 expressly applies only "[i]n representing a client." Melone was not representing a client in his response to Screening Counsel. Therefore no violation occurred. And Mr. Melone did not claim that Bent was the one that accosted Lindsey Ralph. The response to Screening Counsel specifically states: "I do not have direct information as to which of the four partners was accused of the abusive behavior."

b. There is no prohibition on Mr. Melone disclosing a complaint against him.

There is no Rule that prevents the attorney subject to complaint from disclosure.[5] A.O. 9 Rule 16 (Access to Disciplinary Information) lays out restrictions on the PRB's ability to disclose information. A.O. 9 Rule 16F(1)(b) also makes it clear that any information must be disclosed if a "person to which the attorney has submitted a waiver of confidentiality" requests it. A.O. 9 Rule 16F(1)(b) makes no sense under Hanley's allegations because Mr. Melone can clearly waive his own confidentiality.

[5] "Rule 16. Access to Disciplinary Information, Reporter's Notes—First 2011 Amendment … This amendment allows complainants and respondents to disclose to anyone if a complaint had been filed, and the disposition, if any, of the complaint. This is consistent with steps other states have taken."

c. There Was No Violation of Rule 4.4(a) From Melone's Statements Regarding Bent's Ongoing Representation of The Town and Select Board Members.

The filing dated January 29, 2025, discusses the representation of Merrill Bent of the Town and the individual Select Board members too. *See* **Exhibit 8**. As the statements made in the January 29, 2025, filing make clear, the notion that Mr. Melone "had no substantial purpose other than to embarrass, delay, or burden Ms. Bent" is unmeritorious. Exhibit 8 lays out the case under the New York and Vermont rules. And Hanley does not challenge any part of the case that Mr. Melone set forth in that filing. And by not challenging the particulars of Mr. Melone's statements, Mr. Hanley has conceded that there was a conflict, a valid ethical issue raised, and that Mr. Melone's disclosures were valid whose purpose was to inform the relevant recipients of the issue. And not reporting these was not a violation of Rule 8.3 in Mr. Melone's view.

d. Ms. Bent is not a "third person" under the Rule.

Bent is not a "third person" under the Rule. "Case law, as well as the comments to other Model Rules such as 4.1, reflect that a 'third person,' is someone other than the parties and the court." *In the Matter of Disbarment of Rogers*, 60 V.I. 293, 304 (V.I. 2013). Because Bent was either acting on her own or on behalf of the Town, she is not a third person under the Rule. Thus for that reason as well there could be no violation.

G. COUNT VII IS UNMERITORIOUS AND WAS NOT THE SUBJECT OF THE BENT COMPLAINT.

Count VII is unmeritorious.

1. Mr. Hanley is alleging that the Town was behind the Bent Complaint against Mr. Melone.

First of all, Hanley's Rule 4.2 claim makes no sense. Hanley alleges that "Thomas Melone knew or should have known that Rule 4.2 bars a lawyer from communicating with a person represented by counsel." Hanley's claim is that certain of Melone's (but unspecified) communications with also unspecified "officials and employees of the Town of Bennington" violated Rule 4.2 "in that Thomas Melone's communications were not limited to Town officials who had authority to take or to recommend action in connection with Ms. Bent's complaint to the Professional Responsibility Program, as there was no Town official who had authority to take or recommend action in connection with Ms. Bent's complaint."

In other words, Hanley is alleging that the Town was behind the Bent Complaint against Melone and that Bent is the attorney representing the Town in that endeavor. That contradicts Hanley's other positions that the complaint is made by Bent alone.

Second, it is entirely unclear what of Mr. Melone's communication that Mr. Hanley is referencing in Count VII. And for that reason alone, Count VII is unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b).

Third, if Mr. Hanley is referring to Mr. Melone's response to Screening Counsel as the communication that is at issue in Count VII, then as explained in the discussion of Count VI, there is nothing that prevents Mr. Melone from disclosing that the Bent Complaint was filed, or Mr. Melone's response.

2. None of Mr. Melone's communications with the Town on any subject violated Rule 4.2, and all are protected by the First Amendment.

Rule 4.2, *Communication with Person Represented by Counsel*, provides: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."

First of all, the statements that the Petition complains about were public comments made by Mr. Melone to the government and public officials. It was not a statement made "in the course of representing a client." Thus, Rule 4.2 is entirely inapplicable.

Second, Comment 4 to Vt. Prof. Cond. Rule 4.2 states that "Parties to a matter may communicate directly with each, other and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make." Likewise, ABA Model Rules of Professional Conduct 4.2, Comment 4, states: "*Parties to a matter may communicate directly with each other*." (Emphasis added.) Thus, anyway Mr. Melone's public communications are viewed, because he is the client the communications are not limited by the Rule.

Third, as a property owner of multiple properties in Bennington and taxpayer in Bennington, Mr. Melone (as owner and president of PLH Vineyard Sky LLC) has an absolute constitutional right under the First Amendment's freedom of speech and freedom of petition clauses to communicate with public officials. And it is Mr. Melone's communications with public officials that the Bent Complaint and the Petition take issue with. Rule 4.2 Comment [5] recognizes this right when it states: "Communications

authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government." And communication with *the government* is exactly what the Petition targets. All the communications complained of are public communications and comments to government officials.

California Rules of Professional Conduct 4.2(c)(2), for example, enshrines those First Amendment rights by expressly excluding from the coverage of the Rule any and all "communications with a public official, board, committee, or body."

Mr. Melone's public statements made to the Bennington Select Board are fully protected by the First Amendment. *See, Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010). Speech such as Mr. Melone's on public issues and petitions to the government, "occupies the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995).

While the First Amendment implications of restricting attorney communications with government officials under rules similar to Vermont's Rule 4.2 has not been directly addressed by a Vermont court, as the court in *Nicita v. Holladay*, No. 3:19-cv-01960-YY, 2023 U.S. Dist. LEXIS 223822 (D. Or. Jan. 18, 2023) recently noted, there was no reason to decide the constitutional limitations because, as here, the rationale for Rule 4.2 would not apply anyway. The court stated:

> Plaintiff's communications to date have not created one of the problems that RPC 4.2 was designed to prevent. One of the primary purposes of the rule against contacting a represented party is to "prevent injurious disclosures" or "statements which, through ambiguous use of language, may not accurately or fairly reflect the client's position." *Sierra Pac. Indus*., 759 F. Supp. 2d at 1211 (quoting *Continental Ins. Co. v. Superior Court*, 32 Cal. App. 4th 94, 112, 37 Cal. Rptr. 2d 843 (1995); *see also* Stephen M. Sinaiko, *Ex Parte Communication and the Corporate Adversary: A New Approach*, 66 N.Y.U. L. REV. 1456, 1471 (1991) ("An important reason why the ethical rules bar ex parte communication is because statements made by the uncounseled party to an opposing attorney might be offered against that party as admissions in court, thereby seriously damaging her case."). Defendants have not identified any prejudice that has resulted from plaintiff's communications with various city officials; there is no evidence

> that plaintiff has attempted to gather evidence in the form of statements from any of the officials, has harassed or threatened the officials, or has otherwise attempted to engage with the officials outside of their work roles. See Cardinale, 2020 U.S. Dist. LEXIS 99686, 2020 WL 3046396, at *7 (denying motion for "no contact" order under Georgia's RPC 4.2 because the city did not allege plaintiff's contact with city officials had resulted in prejudice); United States v. Sierra Pac. Indus., 759 F. Supp. 2d 1206, 1213 (E.D. Cal. 2010), amended, 857 F. Supp. 2d 975 (E.D. Cal. 2011) (finding that California rule against contacting represented parties was violated where "evidence gathering, not seeking governmental redress, was the point of" the contacts).

Moreover, the policy concerns driving Rule 4.2 are less acute when the "represented party" includes public officials acting on behalf of a government agency. As explained by the Utah State Bar Ethics Advisory Committee:

> [A] governmental agency is free to instruct its employees that they should refer contacts from private parties' attorneys to a designated agency attorney. . . . If a government agency believes its employees are susceptible to the evils of overreaching attorneys, they may instruct them to refer all matters in dispute to the designated agency counsel. A corollary point is that government entities should be deemed to be able to look after their own interests. The usual application of Rule 4.2 is to protect a private party from an overreaching attorney who tries to bring undue influence or pressure on the party in the absence of that person's attorney. It is hard to see how this public-policy consideration applies to the very government that ostensibly serves the people in general and has access to the most powerful of mechanisms in dealing with the citizenry.

See Utah State Bar EAOC Opinion No. 115R (1994) (available at https://www.utahbar.org/wp-content/uploads/2022/12/1994-115R.pdf); *see also* Washington D.C. Bar Ethics Opinion 280 (1998) (available at https://dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-280) ("[G]overnment officials generally are presumed to be sufficiently capable of resisting legal or policy arguments that are not proper and genuinely persuasive. Moreover, government officials, by virtue of their experience and expertise, should be competent to decide whether to

engage in such discussions with opposing counsel without seeking legal advice or having a lawyer present.").

And here, Mr. Melone copied Merrill Bent as a courtesy on all public comment communications with Town public officials.

Fourth, even if the statements were otherwise covered by the Rule (which they are not), because Mr. Melone is representing his own wholly owned private companies, he is essentially proceeding *pro se*, for the reasons discussed above.

Thus, even if Mr. Melone's communications were not protected by the First Amendment (which they are) and even if the statements were otherwise covered by the Rule (which they are not), Rule 4.2 would not apply here anyway.

H. THE CLAIM IN COUNTS I-VIII THAT RULE 8.4(D) WAS VIOLATED IS UNMERITORIOUS.

Count VIII is what Mr. Hanley's Petition was building towards—taking individual events and wrapping them up in one count under Rule 8.4(d) in order to shut down and retaliate against the exercise of Mr. Melone's First Amendment rights, under a provision of the RPC that is vague and has been roundly criticized.

First, in respect to Count VIII, Mr. Hanley does not state how "[o]ver course of many years in a variety of forums, including but not limited to the Vermont Public Utility Commission, the Vermont Superior Court, the Vermont Supreme Court and the United States Court of Appeals, Thomas Melone persistently and deliberately violated the Rules of Professional Conduct and persistently induced his son, Michael Melone, to violate the Rules of Professional Conduct." Without such an explanation, the charge is utterly unmeritorious and violates Vt. A.O. 9 Rule 13.D(1)(b). Mr. Hanley's repeated assertions in Counts I-VII of a Rule 8.4(d) violation are also unmeritorious. In Counts I-V, Mr. Hanley does not even bother to attempt connect the dots and explain how the conduct alleged in those Counts were "prejudicial to the administration of justice."

In Counts VI and VII, Mr. Hanley claims that Rule 8.4(d) was violated because he asserts that Mr. Melone was "attempting to harass or intimidate a complaining witness, Ms. Bent," but it is unclear which of Mr. Hanley's list of four in Count VI is what he claims was an attempt to harass or intimidate a complaining witness. It could not have been the statements "in the Public Utility Commission that Ms. Bent violated the Rules of Professional Conduct" because that filing occurred in January 2025, and Bent's complaint was filed in March 2025. Mr. Hanley also does not explain what "rights" of "Ms. Bent"

were "disrespected, or even explain how "disrespect[ing]" those unspecified rights could remotely constitute engaging "in conduct that is prejudicial to the administration of justice." Additionally as noted above, Mr. Melone did not claim that Ms. Bent was the one that accosted Lindsey Ralph. The response to Screening Counsel specifically states: "I do not have direct information as to which of the four partners was accused of the abusive behavior." And Mr. Melone had an absolute First Amendment right and right under Vt. A.O. 9 to "disclos[e] Ms. Bent's complaint to officials, agents and employees of the Town of Bennington." After all, Ms. Bent's complaint was filed in the middle of litigation. Bennington officials and the public at large should know that government lawyers, taking a page right out of certain fossil fuel company playbooks, were using the Bar complaint process as an avenue to litigate against Melone to retaliate and chill the exercise of Melone's First Amendment rights. *See* Marcoux, Shannon, *Are Sanctions the New SLAPP? Analyzing Oil Companies' Weaponization of Ethics Accusations Against Human Rights Attorneys*, 52 Envtl. L. 217, 236 (2022).

Second, Rule 8.4(d) requires conduct that has some potentially altering impact. *See, e.g., Fla. Bar v. Martinez*, 412 So. 3d 731, 736 (Fla. 2025) ("Martinez's act in deleting the contents on the drive was prejudicial to the administration of justice because the contents of the drive were relevant to Silverberg's civil case against Martinez.")

Here, Mr. Hanley does not state how any of the unspecified actions in Counts I-VIII by Mr. Melone had an altering impact on any of those unidentified cases in an alleged "variety of forums" in the case of Count VIII, or in any of the other places in the case of the other Counts. Thus, the only violation that occurred is Mr. Hanley's violation of Vt. A.O. 9 Rule 13.D(1)(b).

Third, the Pennsylvania Supreme Court recently held that a violation of Rule 8.4(d) can *only* be found if another rule is violated. *See, Off. of Disciplinary Couns. v. Anonymous Atty*., 327 A.3d 192, 204-205 (2024):

> Rule 8.4(d) can be triggered by the violation of any of the Rules so long as a violation prejudiced the administration of justice. A violation of Rule 8.4(d) must be charged in conjunction with another Rule violation and a Rule 8.4(d) violation cannot be found if a lawyer has not otherwise engaged in conduct prohibited by the Rules. This aligns with a review of our jurisprudence, as we have not uncovered a case where an attorney was disciplined solely based on a Rule 8.4(d) violation.

Here, there is no other violation so Rule 8.4(d) cannot be violated either.

Fourth, regardless, Rule 8.4(d) is unconstitutionally vague. The phrase "prejudicial to the administration of justice" is undefined and vague. "[V]ague[] and ambigu[ous]" provisions "are not appropriate as ethics standards." *In re Supreme Court Advisory Comm. on Prof'l Ethics Opinion No. 697*, 188 N.J. 549, 911 A.2d 51, 59 (N.J. 2006)). "If attorneys' violations of ethical rules are to have implications for litigation, as well as their own disciplinary status, the standards against which their conduct is to be measured should be consistent and clear." *Miano v. AC & R Adver., Inc*., 148 F.R.D. 68, 83 (S.D.N.Y. 1993) (emphasis added). "Whether certain conduct 'reflects on an attorney's fitness to practice law,'…is much more vague — and subject to a much wider array of inconsistent applications — than simply determining whether conduct 'involv[es] dishonesty, fraud, deceit or misrepresentation,' Rule 8.4(c)." *In re PRB Docket No. 2007-046*, 2009 VT 115, P38 (*Reiber, C.J., concurring in part and dissenting in part*).

Likewise, in *O'Brien v. Superior Court*, 105 Conn. App. 774, 794, 939 A.2d 1223 & n.22 (2008), the court observed that "[a]cademic commentators have identified a serious problem in the open textured provisions of rule 8.4(4). . . . '[Subsection 4] rais[ing] the specter of a disciplinary authority creating new offenses by common law, and perhaps harassing an unpopular lawyer through selective enforcement.'" (quoting 2 G. Hazard & W. Hodes, at § 65.6). That observation of the Connecticut Appellate Court is quite relevant here.

Recently, the Connecticut Supreme Court observed that "[u]nlike Rule 8.4's other subsections that set forth prohibitions of specific conduct, Rule 8.4(d) is the only type of professional misconduct within the Rule where the consequence defines the violation. While the other provisions of Rule 8.4 consider specifically enumerated acts to be professional misconduct, Rule 8.4(d) only considers 'conduct' to be professional misconduct when the action results in prejudice to the administration of justice. Thus, the Rule focuses on the effect of the conduct to determine whether it is a Rule 8.4(d) violation, rather than merely the conduct itself. While this might suggest that language of Rule 8.4(d) can be read broadly, it is critical to highlight that the provision does not state that it is misconduct for a lawyer to engage in **any** conduct that is prejudicial to the administration of justice." *Off. of Disciplinary Couns. v. Anonymous Atty*., 327 A.3d 192, 203-204 (Conn. 2024) (emphasis in original).

The Connecticut Supreme Court further explained that the alleged conduct must be at *a minimum dishonest use of the legal system* when "an attorney actually undermines proceedings through deception," which is *certainly not* the case here:

> Our case law establishes that the misconduct contemplated by Rule 8.4(d) arises when there is an attempt to interfere with the administration of justice through misrepresentation or other dishonest misuse of the legal system for improper means, when an attorney actually undermines proceedings through deception, or when an attorney's conduct in violation of the Rules of Professional Conduct otherwise obstructs the court's functions in administering justice. The case of *ODC v. Baldwin*, 657 Pa. 339, 225 A.3d 817 (Pa. 2020) provides the most apt illustration of this lattermost category, when the conduct of an attorney directly prevents justice from being administered, even when the conduct was not dishonest or deceitful.

Off. of Disciplinary Couns. v. Anonymous Atty., 327 A.3d 192, 205 (Conn. 2024).

No violation of Rule 8.4(d) occurred.

All in all, Attorney Hanley's charges of violations of Rule 8.4(d) (like all his other charges) are not only unmeritorious, but an unabashed attempt to sanction Mr. Melone for the exercise of his First Amendment rights and to chill the exercise by Mr. Melone in the future of his First Amendment rights.

DATED this 23rd day of October 2025.

Respectfully submitted,

By: */s/Thomas Melone*
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VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

BEFORE ME, the undersigned authority, on this day personally appeared Thomas Melone, who, having been by me first duly sworn, on oath says that he has read the forgoing complaint and has personal knowledge of the facts stated therein, and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

Thomas Melone

Subscribed and sworn to before me, a notary public, this 23rd day of October 2025.

Notary Public

My Commission expires:

Sept 19, 2029

JOSEPHINE KASUTO
Notary Public - State of New York
NO. 01KA6133438
Qualified in Queens County
My Commission Expires Sep 19, 2029

EXHIBIT 1

PLANTE & HANLEY, P.C.

LAWYERS
POST OFFICE BOX 708
WHITE RIVER JUNCTION, VERMONT 05001-0708

PETER P. PLANTE (1920-1996)
MICHAEL F. HANLEY*
PAUL J. PERKINS†

*Admitted in VT, NH and ME
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WWW.PLANTEHANLEY.COM

September 26, 2025

Professional Responsibility Program
Merrick Grutchfield, Program Administrator
109 State Street
Montpelier, VT 05609-0701

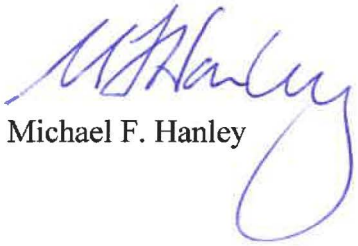
BY FIRST CLASS U.S. MAIL AND EMAIL (merrick.grutchfield@vermont.gov)

In Re: Thomas Melone; PRB File No. 25-120

Dear Merrick

I enclose the *Petition of Misconduct* and my *Certificate of Service.*

Respectfully yours,



Michael F. Hanley

MFH/shg
Enclosures
cc: Thomas M. Melone (via U.S. Mail and email)

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
PRB File No. 25-120

PETITION OF MISCONDUCT

Administrative Order 9, Rule 11(D)(1)(b)

The Petition follows a finding of probable cause on September 4, 2025.

NOTICE TO RESPONDENT: This is a formal *Petition of Misconduct.* Pursuant to Administrative Order 9, Rule 11(D)(3), you are required to file an Answer within 20 days addressed to the Professional Responsibility Program, 109 State Street, Montpelier, VT 05609, with a copy to Conflict Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

The Facts

Thomas Melone and his Various Business Organizations

1. Thomas Melone is a lawyer.
2. Thomas Melone has been a lawyer for more than 40 years.
3. Thomas Melone is licensed to practice law in Vermont.
4. Thomas Melone is also licensed to practice law in California, New York, New Jersey, Massachusetts, Pennsylvania, Florida and Connecticut.
5. Thomas Melone is the sole owner of at least 85 business organizations.
6. Many, or most, of Thomas Melone's business organizations are involved in some manner in renewable energy.
7. Business organizations owned by Thomas Melone are organized under the laws of, at least, Vermont, Connecticut, Indiana, Massachusetts, Minnesota and Delaware.

8. Thomas Melone is the sole owner of PLH Vineyard Sky, LLC ("PLH"), a Florida business organization.

9. Thomas Melone is the sole owner of Vineyard Sky Allco, Ltd. ("Vineyard Sky"), a Florida business organization.

10. Vineyard Sky is the sole owner of Allco Finance, Ltd. ("Allco"), a Florida business organization.

11. Allco is the sole owner of Apple Hill Solar, LLC ("Apple Hill"), a Vermont business organization.

12. Allco is the sole owner of Chelsea Solar, LLC ("Chelsea"), a Vermont business organization.

13. Thomas Melone controls and manages PLH, Vineyard Sky, Allco, Apple Hill and Chelsea.

Thomas Melone's Efforts to Develop
Two Solar-Electric Generation Facilities In Bennington

14. For more than a decade, Thomas Melone, PLH, Vineyard Sky, Allco, Apple Hill and Chelsea have been involved in efforts to develop solar-electric energy generation facilities on adjacent parcels on Willow Road (Chelsea) and Apple Hill Road (Apple Hill) in Bennington.

15. In 2013 and 2014, Apple Hill and Chelsea entered into two Standard Offer Contracts.

16. Standard Offer Contracts exist pursuant to 30 V.S.A. § 8005(a) apart of Vermont's Sustainably Priced Energy Enterprise Development (SPEED) Program. 30 V.S.A. §§ 8001, 8005, 8005a.

17. The Vermont Legislature created the SPEED Program to promote the rapid deployment of small renewable generation. 30 V.S.A. § 8005(a).

18. Under the SPEED Program, Vermont distribution utilities, the companies that own and maintain the wires, poles and transformers that deliver electricity from the transmission grid to homes and businesses, must buy renewable power from an eligible renewable electric energy generator at a specified price for a specified period of time.

19. To be eligible for the SPEED program, a project's proposed "plant capacity" cannot exceed 2.2 meagawatts. 30 V.S.A. § 8005a(b).

20. The 2.2 megawatt limits serves the Legislature's goal of providing support and incentives for renewable energy plants of small and moderate size distributed across the state's electric grid. 3 V.S.A. § 8001(a)(7).

21. 30 V.S.A. § 248 mandates that a project with a Standard Offer Contract must have a Certificate of Public Good (sometimes called a CPG) from the Public Utility Commission (sometimes called the PUC) before beginning site preparation, before constructing a generation facility and before selling electricity.

22. Chelsea applied for a Certificate of Public Good.

23. The Public Utility Commission denied Chelsea's petition.

24. In 2021, the Vermont Supreme Court affirmed the Public Utility Commission's denial of Chelsea's petition for a Certificate of Public Good. In re Petition of Chelsea Solar LLC, 2021 VT 27. ("We affirm the PUC's determination that the Willow Road and Apple Hil Facilities are a single plant under 30 V.S.A. § 8002(14)(14)(2014) . . . ."

25. Apple Hill applied for the statutorily required Certificate of Public Good by filing a

petition with the Public Utility Commission.

26. The Town of Bennington and neighbors of the Apple Hill facility intervened in the proceedings in the Public Utility Commission.

27. The Town of Bennington opposed Apple Hill's petition on the grounds that it violated the Town Plan.

28. Sometime later, the Town Selectboard changed its position and voted "not to oppose Apple Hill . . . ." In re Peition of Apple Hill Solar LLC, 2019 VT 64, ¶ 6.

29. In 2018, the Public Utility Commission granted Apple Hill's petition for a Certificate of Public Good.

30. Apple Hill's neighbors appealed the Public Utility Commission's grant of the Certificate of Public Good for Apple Hill to the Vermont Supreme Court.

31. In 2019, the Vermont Supreme Court reversed in part and remanded for further proceedings. Among other things, the Court found that:

> The selectboard's decision not to oppose the project as violating the Town Plan, on which the PUC heavily relied, does not necessarily mean anything. A decision not to oppose a project or assert that it violates the Town Plan does not mean the project comports with the Plan, or even that the Town has concluded that the project comports with the Plan. In fact, as the PUC recognized, the Town repeatedly emphasized in its response to petitioner's post-technical hearing brief and proposed findings that "[t]he Town has taken no position on the project overall compliance with the Town Plan." The Town could have any number of reasons for choosing not to oppose the project on these grounds, including conservation of its time and resources. That decision in no way supported the PUC's conclusion that the Town took the position that the project complied with the Town Plan.

In re Apple Hill Solar LLC, 2019 VT 64, ¶ 30.

32. After the remand, the Public Utility Commission denied Apple Hill's request for a Certificate of Public Good.

33. Apple Hill appealed.

34. In 2021, the Vermont Supreme Court reversed and remanded to the Public Utility Commission. In re Apple Hill Solar LLC, 2021 VT 69.

35. On remand, the Public Utility Commission again denied Apple Hill's petition for a Certificate of Public Good.

36. Apple Hill appealed again.

37. In 2023, the Vermont Supreme Court unanimously affirmed the decision of the Public Utility Commission. In re Petition of Apple Hill Solar LLC, 2023 VT 57, 311 A.3d 117, *motion for reargument denied*, Dec. 12, 2023, *motion to stay mandate denied*, Dec. 19, 2023.

38. In 2024, Apple Hill filed a new petition for a Certificate of Public Good in the Public Utility Commission.

39. At present, that petition is still pending.

40. Apple Hill's most recent petition is opposed by the Public Service Department, which has moved to dismiss on the grounds of collateral estoppel.

41. As of the filing of this *Petition For Misconduct*, neither Apple Hill nor Chelsea have a Certificate of Public Good.

Thomas Melone Has Acted as Counsel
For His Business Organizations in Vermont

42. Thomas Melone, and his son, Michael Melone, also a lawyer and also licensed to practice

in Vermont, have represented Thomas Melone's companies in a large number of legal proceedings in Vermont.

43. Thomas Melone has appeared on behalf of his various business organization on many occasions in the Civil and Environmental Divisions of the Vermont Superior Court, the Public Utilities Commission, the Vermont Supreme Court and the United States District Court for the District of Vermont.

44. In addition, Thomas Melone has represented his companies in appeals from the United States District Court for the District of Vermont to the United States Court of Appeals for the Second Circuit and in a *Petition for Writ of Certiorari* from the Vermont Supreme Court to the United States Supreme Court.

45. In addition to serving as an attorney for his various Vermont business organizations, Thomas Melone has testified under oath as a witness in proceedings in the Public Utility Commission.

Thomas Melone's Communications with ML and DG

46. ML and DG were opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good.

47. At some point before May 3, 2024, ML and DG filed under the Bankruptcy Act for protection from their creditors.

48. In an email to ML and DG dated May 3, 2024, Thomas Melone said that he had discovered "property [that] does not seem to have been declared on Schedule A to the bankruptcy petition."

49. In a bankruptcy case, Schedule A/B is the document where bankrupts list all real and all

personal property. Schedule A focuses on real estate, while Schedule B covers everything else, including personal belongings and financial assets.

50. Thomas Melone attached to his May 3, 2024 email a copy of a deed that conveyed real property in Florida from DG to a Florida limited liability company.

51. In the May 3, 2024 email, Thomas Melone said "I do want you to be aware that we will be asking about it in your depositions."

52. ML and DG withdrew from the proceedings in the Public Utility Commission.

53. Nonetheless, in an email dated November 20, 2024 to ML and DG, Mr. Melone said:

> I assume you have still been following the Chelsea solar case. And I understand that you were in attendance at the Planning Commission meeting that looked at the recent plan for Apple Hill solar.
>
> As you know, in your filing withdrawing from the Chelsea case you listed various reasons for withdrawing, most of which were not very nice.
>
> The Town is repeating those reasons in their filings.
>
> . . .
>
> As you also likely know, we requested the PUC to approve deposition subpoenas for you and the PUC denied that. We are appealing that decision to the Vermont Superior Court.
>
> I think the only way that the various lingering issues from your involvement can be removed is if you send letters to the PUC, the Planning Commission and the Select Board supporting both projects. This way the other parties would stop trying to get you involved, and would eliminate any need for us to depose the two of you.
>
> Please let me know if you are willing to do that.

54. ML and DG did not "send letters to the PUC, the Planning Commission and the Select

Board supporting both projects."

55. On January 12, 2025, Thomas Melone filed "Further Comments" in the proceedings in the Public Utility Commission regarding Apple Hill's application for a Certificate of Public Good accusing ML and DG of "defrauding the federal government" and defrauding ML and DG's creditors.

Thomas Melon's Site Preparation Without a Certificate of Public Good and His "Not Credible" Testimony in the Public Utility Commission

56. On August 30, 2024, in In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, 2024 VT 58, the Vermont Supreme Court affirmed the Public Utilities Commission's imposition of a $5,000 fine on various business organizations owned and controlled by Thomas Melone.

57. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that even though the Public Utility Commission had issued a Temporary Restraining Order prohibiting site-preparation "developer continued to conduct site clearing activities the following day until the sheriff arrived and ordered all work to cease."

58. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that "the PUC also found developer's claims that site preparation was done solely for unrelated farming purposes to be not credible given that developer knew that it did not have a Certificate of Public Good, that it was required to have one, that it needed to clear trees for site preparation, and that clearing had already been denied by the PUC."

59. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that "the PUC concluded that developer's failure to comply with its regulatory

obligations harm the credibility and integrity of the process, resulting in harm to the statutory scheme and potential harm to public safety and welfare, the environment, and utility customers."

60. After an unsuccessful *Petition for Writ of Certiorari* to the United States Supreme Court, at least one of the business organizations owned and controlled by Thomas Melone paid the $5,000 fine.

Thomas Melone's Filings in the Public Utility Commission

61. On January 10, 2025, in proceedings in the Public Utility Commission regarding Apple Hill's application for a Certificate of Public Good, Thomas Melone said that all but two members of the Town of Bennington Select Board were in engaged in an active "cover-up conspiracy" and committed acts of "forgery," engaged in "counterfeiting," filed "false certifications to the state and federal government in violation of criminal statutes" and filed at least one "false statement with the [Public Utility] Commission."

62. Thomas Melone told the Public Utility Commission that he was "finalizing" a complaint to be filed in the United States District Court for the District of Vermont against the Town of Bennington for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c).

63. A RICO complaint must describe "predicate acts," specific criminal offenses, that, when committed as part of a pattern, can be the basis for civil actions. "Predicate acts" are the building blocks of a RICO claim and must be linked to a criminal "enterprise" to constitute a RICO violation.

64. Mr. Melone never filed a complaint alleging "RICO" violations by the Town of

Bennington in any court.

65. On January 29, 2025, Thomas Melone alleged to the Public Utility Commission, but not to the Professional Responsibility Program, that "attorney Bent's representation [of the Town of Bennington] would be a violation of multiple rules of the Vermont and New York attorney Rules of Professional Conduct."

Thomas Melone's Email to Public Utility Commission Chair McNamara

66. On March 24, 2025, Thomas Melone sent an email to the members of the House Committee on Energy and Digital Infrastucture and the Senate Committee on Natural Resources and Energy.

67. In his March 24, 2025 email, Thomas Melone criticized Public Utility Commission Chair Ed McNamara as well as the Public Utility Commission.

68. In the March 24, 2025 email, Mr. Melone asserted that the Public Utility Commission had "weaponized and expanded" and "applied *retroactively*" [emphasis in original] what he described as the "single-plant rule" in order to deny a Certificate of Public Good to Chelsea.

69. Thomas Melone went on to say that the Public Utility Commission had made a "demonstrably *false claim*" [emphasis in original] with respect to Apple Hill and Chelsea.

70. He asserted that "[w]hat appears to matter to the PUC is political connections."

71. He asserted that "when the "single-plant" rule became an obstacle for Global Foundries' solarization of its campus, the PUC ditched the rule for them . . . ."

72. He then said: "The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco's due process and equal protection rights, is a paradigm of

arbitrariness, and is leading to even more litigation."

73. He then told the Legislative committees:

> The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.
>
> I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

74. On the same day, Thomas Melone sent a copy of his March 24, 2025 email to Public Utility Commission Chair Ed McNamara.

75. Thomas Melone did not send a copy of his March 24, 2025 email to any of the other parties in the proceedings involving Apple Hill's applications for a Certificate of Public Good.

76. On April 21, 2025, the Clerk of the Public Utility Commission issued a memorandum seeking comments on whether Mr. Melone's March 24, 2025 email violated the PUC's rule against ex parte communications.

77. Thomas Melone asserted that the Commission's ex parte rule violated his First Amendment rights.

78. On June 17, 2025, the Public Utility Commission ruled that Thomas Melone had violated the PUC's prohibition against ex parte communications with the Commission but declined to impose sanctions.

Thomas Melone's Opposition to the Bennington High Project

79. On January 28, 2025, the Bennington Select Board authorized the Town of Bennington to enter into a contract with Hale Resources, LLC regarding the development of the former

Bennington High School.

80. On February 25, 2025, Thomas Melone, knowing that the redevelopment of the former high school was a priority for the Town, and while acting as counsel for one of his business organizations, PLH, appealed Bennington's decision to enter into a contract with the developer to the Environmental Division of the Vermont Superior Court.

81. On February 27, 2025, the Town of Bennington moved to dismiss the appeal asserting that the Environmental Division lacked subject matter jurisdiction in that the appeal did not involve the granting or denial of a permit allowing land development to occur, a prerequisite for subject matter jurisdiction under 24 V.S.A. § 4471.

82. On February 28, 2025 the Environmental Division issued an entry order stating: "the court believes it lacks subject matter jurisdiction over this appeal and is prepared to dismiss the appeal sua sponte," but gave PLH until March 3, 2025 to file a response to the Bennington's *Motion to Dismiss*.

83. PLH filed at least one pleading opposing the Bennington's *Motion to Dismiss* for lack of subject matter jurisdiction.

84. On March 6, 2025, the Environmental Division dismissed PLH's appeal on the grounds that the court lacked subject matter jurisdiction.

85. At the time Thomas Malone caused PLH to appeal to the Environmental Division, Thomas Melone knew, or should have known, that the Environmental Division lacked subject matter jurisdiction.

86. Thomas Malone caused PLH to appeal the Environmental Division's dismissal of PLH's appeal to the Vermont Supreme Court.

87. Thomas Malone caused PLH to file suit against the Town of Bennington in the Vermont Superior Court, Civil Division, Chittenden Unit, alleging that Bennington's contract with the Bennington High developer was "municipal waste."

88. Thomas Melone and Michael Melone told agents and employees of the Town Bennington that PLH would withdraw the appeal from the dismissal of its action in the Environmental Division, withdraw the allegation of "municipal waste," and would not oppose the Bennington High project if the Town of Bennington withdrew its opposition to Apple Hill's petition for a Certificate of Public Good.

Merrill Bent's Complaint to the Professional Responsibility Program Regarding Thomas Melone

89. In March 2025, the Professional Responsibility Program received a written complaint from a Vermont attorney, Merrill Bent.

90. Ms. Bent alleged that both Thomas Melone and Michael Melone had, on multiple occasions, violated the Vermont Rules of Professional Conduct.

91. Ms. Bent said she had learned of the violations of the Rules while representing the Town of Bennington in (a) its opposition to Apple Hill's and Chelsea's applications for Certificates of Public Good and (b) efforts to develop the former Bennington High School.

92. In her complaint, Ms. Bent said she acted pursuant to her obligations under Rule 8.3 of the Vermont Rules of Professional Conduct.

93. Rule 8.3(a) mandates a report to the Professional Responsibility Program when a lawyer "knows that another lawyer has committed a violation of the Rules of Professional

Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

94. Screening Counsel Andrew R. Strauss reviewed Ms. Bent's report and informed Thomas Melone:

> In my judgment, the conduct which is the subject of the complaint appears to constitute misconduct that may require disciplinary sanctions. Therefore, pursuant to Rule 12.C of Administrative Order 9 [of the Vermont Supreme Court], I am referring the complaint to Disciplinary Counsel Jon T. Alexander.

Thomas Melone's Reply to Ms. Bent's Complaint

95. On April 23, 2025, Thomas Melone wrote a letter to Screening Counsel Strauss, and said "Attorney Bent's allegations are actionable defamation." Thomas Moore went on to say "the allegations in the complaint are not only meritless, but actionable defamation per se."

96. Thomas Melone then said "Bent's accusation is also actionable as a claim for false light."

97. Thomas Melone told Screening Counsel Strauss that he had heard that a paralegal who had been employed by Ms. Bent's firm had been "verbally accosted by "[Merrill Bent]." (Brackets in original.)

98. Thomas Melone's statements suggested or implied that Ms. Bent had treated at least one employee of her law firm improperly.

99. Thomas Melone then told screening counsel Strauss "I do not have direct information as to which of the four partners [in Ms. Bent's firm] was accused of abusive behaviors."

100. Thomas Melone did not tell Mr. Strauss why he had included the allegation that Ms. Bent had "verbally accosted" a female employee.

101. In his April 23, 2025 letter, Thomas Melone told Screening Counsel Strauss that Vermont

Rule of Professional Conduct 3.7 "prohibited [Ms. Bent] from representing the Bennington Select Board."

102. Thomas Melone has never filed a complaint against Ms. Bent with the Professional Responsibility Program.

Thomas Melone's Communications With Ms. Bent's Clients

103. On April 23, 2025, at a time when Ms. Bent represented the Town of Bennington, and Thomas Melone knew that Ms. Bent represented the Town of Bennington, Thomas Melone sent the following email to Ms. Bent and various elected officials and employees of the Town:

> Attached you will find the response that I submitted to the Professional Responsibility Board in response to the ethics complaint against me. I am now finalizing the defamation suit which I expect will be able to be filed next week. See excerpt attached as well.

104. Thomas Melone attached not only his April 23, 2025 letter to Screening Counsel Strauss, but also included what he called an "excerpt" from a "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights."

105. Thomas Melone was the author of the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights."

106. The "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" listed both Ms. Bent and the Town of Bennington as defendants.

107. Thomas Melone told the recipients of the email that he would file the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" in the United States District Court for the District of Vermont.

108. The "excerpt" from the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" also stated:

> Plaintiff alleges that Bent filed the PRB Complaint on behalf of the Town of Bennington.

109. The "excerpt" from Thomas Melone's "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" does not disclose how he came to the conclusion that Ms. Bent filed her complaint "on behalf of the Town of Bennington."

110. At the time Thomas Melone sent the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights," no official, agent or employee of the Town of Bennington, other than Ms. Bent, was aware that Ms. Bent had filed a confidential complaint with the Professional Responsibility Program.

111. When asked by Ms. Bent to stop communicating with officials, agents and employees of the Town of Bennington, Thomas Melone refused to do so.

112. In emails to Mr. Bent, Thomas Melone asserted that he had the right to communicate with Bennington officials and employees because of the First Amendment right to petition the government for the redress of grievances.

113. On multiple dates in 2025, Thomas Melone sent additional emails to Bennington officials and employees.

Count I
Thomas Melone's Claims in the Public Utility Commission that the Town of Bennington and its Officials, Agents and Employees Engaged in Criminal Conduct
Violation of Rules 3.5(d), 4.3, 4.5 and 8.4(d)

114. Conflict Disciplinary Counsel restates paragraphs1through 113.

115. Thomas Melone's claims in filings in the Public Utility Commission that officials and

agents of the Town of Bennington were engaged in a "cover-up conspiracy," committed acts of "forgery" and "counterfeiting, " filed "false certifications to the state and federal government in violation of criminal statutes," and filed "false statements with the [Public Utility] Commission" and Thomas Melone's claim that the Town and its officials and employees were liable to him or his business organization for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c) violated:

a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;

b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of law and fact;

c) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies' applications for Certificates of Public Good; and

d) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice

Count II
Thomas Melone's Communications with ML and DG
Violation of Rules 4.5 and 8.4(d)

116. Conflict Disciplinary Counsel restates paragraphs1through 113.

117. In his communications with ML and DG, Thomas Melone violated:

a) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies applications for Certificate of

Public Goods; and

b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.

COUNT III
Thomas Melone 's Site Preparation Without a Certificate of Public Good and His "Not Credible" Testimony in the Public Utility Commission
Violation of Rules 3.5(d), 4.3 and 8.4(d)

118. Conflict Disciplinary Counsel restates paragraphs1through 113.

119. In his company's site preparation without a Certificate of Public Good and his "not credible" testimony in the Public Utility Commission, Thomas Melone violated:

a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;

b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of fact and law; and

c) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice

Count IV
Thomas Melone's March 24, 2025 Email to
Public Utility Commission Chair Ed McNamara
Violation of Rule 3.5(b)(1)

120. Conflict Disciplinary Counsel restates paragraphs1through 113.

121. Thomas Melone's March 24, 2025 email to Public Utility Commission Chair Ed McNamara violated:

a) Rule 3.5(b)(1) in that it was an ex parte communication with a person

acting in a judicial or quasi-judicial capacity; and

b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.

Count V
Thomas Melone's Conduct With Respect to the Bennington High Project
Violation of Rules 3.1, 3.3(a)(1), 4.4(a) and 8.4(d)

122. Conflict Disciplinary Counsel restates paragraphs1through 113.

123. In the manner and means Thomas Melone used in his opposition to the Bennington High Project, Thomas Melone violated:

a) Rule 3.1 in that Thomas Melone brought or caused to be brought a legal proceeding in the Environmental Division when there was no basis in law to assert that it had subject matter jurisdiction over the matter;

b) Rule 3.3(a)(1) in that Thomas Melone demonstrated a lack of candor to both the Environmental Division and the Vermont Supreme Court by making false statements of law regarding the subject matter jurisdiction of the Environmental Division;

c) Rule 4.4(a) in that Thomas Melone used means and methods that had no substantial purpose other than to delay or burden a third person, the Bennington High developer; and

d) Rule 8.4(d) in that Thomas Melone's conduct was conduct prejudicial to the administration of justice.

Count VI
Thomas Melone's Statements to Screening Counsel Strauss with Respect to Merrill Bent's Complaint to the Professional Responsibility Program
Violation of Rules of Professional Conduct 3.3(a)(1), 4.4(a) and 8.4(d)

124. Conflict Disciplinary Counsel restates paragraphs1through 113.

125. Thomas Melone's claim to Screening Counsel Straus that Ms. Bent had verbally accosted an employee of her law firm, his threats to sue Ms. Bent for defamation *per se*, his disclosure of Ms. Bent's complaint to officials, agents and employees of the Town of Bennington and his claim in in the Public Utility Commission that Ms. Bent violated the Rules of Professional Conduct violated:

a) Rule 3.3(a)(1) in that he showed a lack of candor toward the Professional Responsibility Program by making a false statements of law, specifically that Ms. Bent was liable for defamation per se, when he knew or should have known that Rule 12 of The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement* provides that communications to the Program, hearing committees or disciplinary counsel relating to lawyer misconduct are absolutely privileged and no lawsuit predicated thereon may be instituted against any complainant or witness; and

b) Rule 4.4(a) in that they showed disrespect for Ms. Bent's rights and he used means that had no substantial purpose other than to embarrass, delay, or burden Ms. Bent; and

c) Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate a complaining witness, Ms. Bent.

Count VII
Thomas Melone's Email to Officials and Employees of the Town of Bennington
Violation of Rules 4.2 and 8.4(d)

126. Conflict Disciplinary Counsel restates paragraphs1through 113.

127. Thomas Melone knew or should have known that Administrative Order 9 expressly provides that proceedings in the Professional Responsibility Board are confidential until such time as a Hearing Panel makes a finding of probable cause.

128. Thomas Melone knew or should have known that Rule 4.2 bars a lawyer from communicating with a person represented by counsel.

129. While Rule 4.2 generally protects represented government entities from unconsented contacts by opposing counsel, there is an important exception to that "no contact" rule arising from the constitutional right to petition the government and the derivative public policy of ensuring a citizen's right of access to government decision makers. As a result, Rule 4.2 permits a lawyer representing a private party in a controversy with the government to communicate about the matter with government officials who have the authority to take or to recommend action in that matter, provided that the sole purpose of the lawyer's communication is to address a policy issue, including settling the controversy.

130. Thomas Melone's communications with officials and employees of the Town of Bennington violated:

a) Rule 4.2 in that Thomas Melone's communications were not limited to Town officials who had authority to take or to recommend action in connection with Ms. Bent's complaint to the Professional Responsibility

Program, as there was no Town official who had authority to take or recommend action in connection with Ms. Bent's complaint; and

b) Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate a complaining witness in proceeding before the Professional Responsibility Program, Ms. Bent.

Count VIII
Thomas Melone's Persistent and Deliberate
Violations of The Rules of Professional Conduct
Violation of Rule 8.4(d)

131. Conflict Disciplinary Counsel restates paragraphs1 through 113.

132. Over course of many years in a variety of forums, including but not limited to the Vermont Public Utility Commission, the Vermont Superior Court, the Vermont Supreme Court and the United States Court of Appeals, Thomas Melone persistently and deliberately violated the Rules of Professional Conduct and persistently induced his son, Michael Melone, to violate the Rules of Professional Conduct.

133. The Vermont Supreme Court stated in In Re James Weston Wright, 131 Vt. 473 (1973), that when there is a "consistent pattern . . . emerging from a series of several transactions, it seems clear that what might be in a single instance only poor judgment sans evil intent or direct motive becomes a condemnable course of conduct amounting to ethical unfitness . . . ."

134. This *Petition of Misconduct* show a consistent pattern emerging from several events of intentional misconduct that was prejudicial to the administration of justice in violation of Rule 8.4(d).

Dated: September 4, 2025

Michael F. Hanley
Conflict Disciplinary Counsel
Plante & Hanley, P.C.
Post Office Box 708
White River Junction, VT 05001
802-295-3151, Ext. 102
mfhanley@plantehanley.com

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
PRB File No. 25-120

CERTIFICATE OF SERVICE

I certify that on September 26, 2025, following a finding of probable cause, I filed a Petition of Misconduct regarding Thomas M. Melone with the Professional Responsibility Program by depositing the same in the United States Mail, postage prepaid, First Class, addressed to:

Merrick Grutchfield, Program Administrator
109 State Street
Montpelier, VT 05609-0701

and also by sending the same to her via email at:

merrick.grutchfield@vermont.gov

with copies to the Respondent via United States Mail, postage prepaid, First Class, addressed to:

Thomas M. Melone
157 Church Street, 19th floor
New Haven, CT 06510

the address shown on his last licensing statement and by email to:

Thomas.Melone@gmail.com

Dated: September 26, 2025

/s/Michael F. Hanley
Michael F. Hanley
Conflict Disciplinary Counsel

EXHIBIT 2

PLH Public Comment On Motions Filed In Environmental Court

Thomas Melone <thomas.melone@gmail.com> Sat, Mar 1, 2025 at 12:05 PM
To: Merrill Bent <Merrill@greenmtlaw.com>, Stuart Hurd <shurd@benningtonvt.org>, cadams@benningtonvt.org, thaley@benningtonvt.org, nwhite@benningtonvt.org, ewoods@benningtonvt.org, jconner@benningtonvt.org, sperrin@benningtonvt.org, jjenkins@benningtonvt.org

Hello All,

I think you should want to withdraw your motion to dismiss and ask the Court to not dismiss our appeal at this point. The quick motion and response time will only achieve what you claim that you don't want at this point.

First, even if the Court did dismiss the appeal (which I don't think it will once we highlight all the environmental connections, hydrological and otherwise, between the Benn-Hi parcel and the PLH 27-acre parcel ***on Stocklee Lane***), then we would appeal to the Vermont Supreme Court. The 1-business response deadline would alone result in reversal. See *Huminski v. Lavoie*, 173 Vt. 517 (2001) (mem.) The environmental connections are based upon the ANR Atlas, and of course, the thousands of pages of the environmental review of the Benn-Hi project.

Second, we would then file our *Taylor* suit in the civil division in Chittenden unless the Environmental Division hears them. *Taylor v. Town of Cabot*, 2017 VT 92. We will challenge the Town's actions as municipal waste as well as mounting a direct claim for a pro rata share of the "ARPA" funds, as an intended direct beneficiary of the ARPA funds. These claims will also be pressed in our response to the motion to dismiss, as well as the failed 1977 tax stabilization vote (see below).

The Vermont Supreme Court in *Taylor* adopted the rule that "taxpayers may sue to enjoin an illegal use of the moneys of a municipal corporation," citing *Massachusetts v. Mellon*, 262 U.S. 447, 486, 43 S. Ct. 597 (1923). The Court further explained, quoting *Mellon* that "[t]he interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate. It is upheld by a large number of state cases and is the rule of this court." *Taylor* at P11.

There are two claims under the taxpayer standing rule of *Taylor*.

The first claim is that the Town received nearly $3,000,000 in ARPA funds by representing to the Federal Government that the $3,000,000 was to reimburse the Town for various salaries in 2023 ***funded by Bennington taxpayers*** such as PLH. Because those funds were represented by, and only given by, the Federal Government as a reimbursement of expenses ***paid for by taxpayers***, such as PLH, those funds must be returned to the taxpayers that paid for those expenses in 2023. Even if PLH fails on that direct claim, then the second claim is giving the "ARPA" money as well as all the other money specified to Benn-Hi is "municipal waste." It's throwing good money after bad that can and should be used for another purpose. That is a claim that will make its way to a jury trial.

And on top of all that, the Select Board doesn't have the authority to agree to the Town stabilization agreement. That is municipal waste too. The 1977 Vote on which the Town is relying is void. The Town claims that it was given that authority in 1977 by the voters. But upon close examination, that claim is wrong. The alleged vote was invalid because the Town counted "absentee" ballots. But the statute limits the vote count to voters "present and voting" at the annual meeting. Absentee voters are not "present" at the annual meeting, they are by definition absent from the annual meeting. The Bennington Banner, March 2, 1977, reported that there were 3,133 votes cast and that 528 of that total were absentee ballots. That means that there were 2,605 voters "present" at the 1977 annual meeting. The Bennington Banner, March 2, 1977, also reports that the vote on the tax stabilization authorization was 1779 in favor and 866 against for a total of 2,645 votes, which is ***40 more votes*** than the number of voters that were "present" at the meeting. As a result, the entire vote result is void because the Town clearly counted absentee ballots in the vote total in violation of the statute. Moreover, because of the two-thirds requirement, those absentee ballots were of a decisive number.

As you can see, all that your motions will accomplish at this point is more litigation.

Regards

Tom

EXHIBIT 3

Gmail Thomas Melone <thomas.melone@gmail.com>

In Re Thomas Melone; 25-120

Michael F. Hanley <mfhanley@plantehanley.com> Fri, Sep 26, 2025 at 5:22 PM
To: "Grutchfield, Merrick" <merrick.grutchfield@vtcourts.gov>
Cc: Thomas Melone <thomas.melone@gmail.com>

Merrick:

Please see attached.

Mike

Michael F. Hanley

Plante & Hanley, P.C.

P.O. Box 708

White River Junction, VT 05001

802-295-3151, Ext. 102

mfhanley@plantehanley.com

2025-09-26 Grutchfield (filing Petition of Misconduct), 4908-3567-8829.1.pdf
914K

PLANTE & HANLEY, P.C.

LAWYERS
POST OFFICE BOX 708
WHITE RIVER JUNCTION, VERMONT 05001-0708

PETER P. PLANTE (1920-1996)
MICHAEL F. HANLEY*
PAUL J. PERKINS†

*Admitted in VT, NH and ME
†Admitted in VT and NH

TELEPHONE 802-295-3151
FACSIMILE 802-547-8228
MFHANLEY@PLANTEHANLEY.COM
PJPERKINS@PLANTEHANLEY.COM
WWW.PLANTEHANLEY.COM

September 26, 2025

Professional Responsibility Program
Merrick Grutchfield, Program Administrator
109 State Street
Montpelier, VT 05609-0701

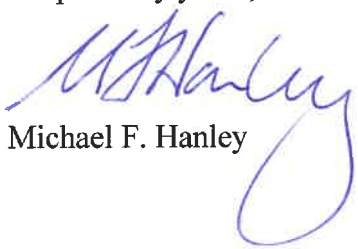
BY FIRST CLASS U.S. MAIL AND EMAIL (merrick.grutchfield@vermont.gov)

In Re: Thomas Melone; PRB File No. 25-120

Dear Merrick

I enclose the *Petition of Misconduct* and my *Certificate of Service.*

Respectfully yours,



Michael F. Hanley

MFH/shg
Enclosures
cc: Thomas M. Melone (via U.S. Mail and email)

EXHIBIT 4

Gmail Thomas Melone <thomas.melone@gmail.com>

Professional Responsibility Program

Michael F. Hanley <mfhanley@plantehanley.com> Thu, Sep 25, 2025 at 6:45 PM
To: Thomas Melone <thomas.melone@gmail.com>

I tried to access the Rules through the Lexis link on the Program's web site and encountered an "unexpected error."

However, it appears that you are correct, and I was incorrect, and what you sent me is a current copy of Rule 19.

Michael F. Hanley

Plante & Hanley, P.C.

P.O. Box 708

White River Junction, VT 05001

802-295-3151, Ext. 102

mfhanley@plantehanley.com

From: Thomas Melone <thomas.melone@gmail.com>
Sent: Thursday, September 25, 2025 6:26 PM
To: Michael F. Hanley <mfhanley@plantehanley.com>
Subject: Re: Professional Responsibility Program

Michael

this is what lexis shows as the current rule 19. are you saying that the attached is not the current rule 19?

Thomas Melone

Chief Executive Officer
Allco Renewable Energy Inc

157 Church St., 19th floor

New Haven, CT 06510

(212) 681-1120
(801) 858-8818 (fax)

On Thu, Sep 25, 2025 at 6:14 PM Michael F. Hanley <mfhanley@plantehanley.com> wrote:

> Rule 19 governs "Resignation by Attorneys Under Disciplinary Investigation." I do not believe it is relevant.
>
> I will comply with reasonable requests for production.
>
> I will NOT produce all documents in my possession related to this matter as some of them are work product.
>
> I will produce all "nonprivileged documents and evidence relevant to the charges or to respondent."

I will produce documents in the time required by the Rules.

I am not subject to subpoena.

Michael F. Hanley

Plante & Hanley, P.C.

P.O. Box 708

White River Junction, VT 05001

802-295-3151, Ext. 102

mfhanley@plantehanley.com

From: Thomas Melone <thomas.melone@gmail.com>
Sent: Thursday, September 25, 2025 4:54 PM
To: Michael F. Hanley <mfhanley@plantehanley.com>
Subject: Re: Professional Responsibility Program

I did the pdf conversion to word before I requested it from you. It wasn't great. Anyway I'll work with that.

Separately, I see that under Rule 19A(2) I am authorized to issue subpoenas and take depositions. Please let me know whether you will produce all documents in your possession related to this matter without the issuance of a subpoena.

Tom

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Inc

157 Church St., 19th floor

New Haven, CT 06510

(212) 681-1120
(801) 858-8818 (fax)

On Thu, Sep 25, 2025 at 4:41 PM Michael F. Hanley <mfhanley@plantehanley.com> wrote:

> I use both Word and WordPerfect. I wrote the Petition in WordPerfect.
>
> Word can convert the PDF document to Word. The PDF conversion will be much better than a WordPerfect conversion.
>
> Michael F. Hanley
>
> Plante & Hanley, P.C.
>
> P.O. Box 708

White River Junction, VT 05001

802-295-3151, Ext. 102

mfhanley@plantehanley.com

From: Thomas Melone <thomas.melone@gmail.com>
Sent: Thursday, September 25, 2025 3:47 PM
To: Michael F. Hanley <mfhanley@plantehanley.com>
Subject: Re: Professional Responsibility Program

Michael,

Can you please send me the word document for the petition so I can insert my responses to each paragraph of the petition.

thank you.

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Inc

157 Church St., 19th floor

New Haven, CT 06510

(212) 681-1120
(801) 858-8818 (fax)

On Thu, Sep 25, 2025 at 2:58 PM Michael F. Hanley <mfhanley@plantehanley.com> wrote:

> I have no problem with your filing an answer seven days from today, but, Rule 11(d)(3) states that only the chair of the hearing panel can grant the extension.
>
> I suggest that you file a motion. I authorize you to say that I assent to your request for an additional seven days.
>
> Michael F. Hanley
>
> Plante & Hanley, P.C.
>
> P.O. Box 708
>
> White River Junction, VT 05001
>
> 802-295-3151, Ext. 102
>
> mfhanley@plantehanley.com
>
> ---
>
> **From:** Thomas Melone <thomas.melone@gmail.com>
> **Sent:** Thursday, September 25, 2025 2:48 PM
> **To:** Michael F. Hanley <mfhanley@plantehanley.com>
> **Subject:** Re: Professional Responsibility Program
>
> Michael,
>
> I move and request an extension of 7 days from today

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Inc

157 Church St., 19th floor

New Haven, CT 06510

(212) 681-1120
(801) 858-8818 (fax)

On Thu, Sep 25, 2025 at 2:44 PM Michael F. Hanley <mfhanley@plantehanley.com> wrote:

> Rule 11(d)(3) states:
>
> If proceedings are initiated by petition, respondent shall serve his or
>
> her answer upon disciplinary counsel and file the original with the Board within 20 days
>
> after the service of the petition, **unless the time is extended by the chair of the hearing**
>
> **panel**. In the event the respondent fails to answer within the prescribed time, the
>
> charges shall be deemed admitted, unless good cause is shown.
>
> How much additional time do you request? If your request is reasonable, I will assent to a motion by you for additional time.
>
> Please let me know if you will be represented by counsel.
>
> Michael F. Hanley
>
> Plante & Hanley, P.C.
>
> P.O. Box 708
>
> White River Junction, VT 05001
>
> 802-295-3151, Ext. 102
>
> mfhanley@plantehanley.com
>
> ---
>
> **From:** Thomas Melone <thomas.melone@gmail.com>
> **Sent:** Thursday, September 25, 2025 2:34 PM
> **To:** Michael F. Hanley <mfhanley@plantehanley.com>
> **Subject:** Re: Professional Responsibility Program
>
> I just received this. I need additional time to respond
>
> Thomas Melone
> Chief Executive Officer
> Allco Renewable Energy Inc
>
> 157 Church St., 19th floor
>
> New Haven, CT 06510
>
> (212) 681-1120
> (801) 858-8818 (fax)
>
>

On Thu, Sep 25, 2025 at 2:16 PM Michael F. Hanley <mfhanley@plantehanley.com> wrote:

> Dear Mr. Melone:
>
> Pursuant to Rule 11(d)(1) I sent you a letter dated September 5, 2025 enclosing copies of a Notice of Probable Cause Decision and a Petition of Misconduct. The letter was sent to the address shown on your last licensing statement. The letter was sent by Certified Mail, Restricted Delivery, Return Receipt Requested.
>
> I enclose copies of my letter, the Notice of Probable Cause Decision, and the Petition of Misconduct.
>
> Under Rule 11(D)(3), your answer is due within 20 days of the service of the Petition.
>
> Michael F. Hanley
>
> Plante & Hanley, P.C.
>
> P.O. Box 708
>
> White River Junction, VT 05001
>
> 802-295-3151, Ext. 102
>
> mfhanley@plantehanley.com

EXHIBIT 5

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Apple Hill Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	)	Docket No. 24-3517-PET

APPLE HILL SOLAR LLC'S PRELIMINARY COMMENTS OF THE DEPARTMENT OF PUBLIC SERVICE'S MOTION TO STAY

Apple Hill Solar LLC ("AHS") will be prepared to preliminarily address the Motion to Stay of the Department of Public Service ("DPS") and the Town of Benington's comments at the scheduling conference set for January 13, 2025.

In advance of the conference, AHS provides the following preliminary comments.

1. AHS has already explained to DPS that AHS is proceeding with the petition under the assumption that it would be a merchant generator. That is the same basis on which the Commission reviewed the project initially in docket 8797, which then eventually became a project with a standard offer contract *after* the CPG was issued. There is no difference here. AHS is not seeking to rely on any waivers. If DPS needs AHS to say that in different ways or clarify testimony, AHS is happy to do so.

2. With respect to Commission Rule 5.403(A)(19), it is difficult to believe that DPS even raised that point because the existence of Chelsea Solar has such a storied history. AHS has supplemented the testimony to state that the Chelsea Solar LLC project currently before the Commission in Case 23-0249 is a project described in Rule 5.403(A)(19), and that there are no others.

3. With respect to the AHS project in docket 8454, the issue of estoppel may be interesting, after all, the Commission held that the Chelsea Solar project satisfied all the requirements for a CPG but only denied the CPG based upon a then newly announced single plant rule. If estoppel is at play then the CPG for Chelsea Solar in case 23-0249 should be summarily

granted now that the Commission denied the extension of the AHS standard offer contract. Counsel to Chelsea Solar will review the estoppel issue for that proceeding and make the appropriate motion for summary judgment.

4. As for the AHS project itself in this docket, the petition itself describes the differences that would be material from the prior one such as, for example, the smaller footprint, the removal of what the Commission referred to as a "black box," and the growth in existing vegetation.

5. Some of the players have also changed. For example, the closest neighbor to the project has filed written support for the projects. So too have other neighbors. And those neighbors spoke out in support of the project before the Town's planning commission. In fact, more than twice the number of people spoke out in favor of the Project than against it.

6. There are other differences as well, including, *inter alia*, that there is no Bennington Town Plan in effect. Thanks to the doggedness of two honest Bennington Select Board members and a number of whistleblowers, AHS has become aware that the Bennington Town Plan expired under 24 V.S.A. §4387 on October 6, 2023, eight years after its adoption. What has ensued is a multi-faceted conspiracy to cover up that fact for a variety of reasons, including reasons related to the AHS and Chelsea Solar projects. The still active cover-up conspiracy includes all of the Select Board members but the two aforementioned and other Does and has resulted, *inter alia*, in the Town fraudulently obtaining grants from various entities, including federal funds, all of which require a Town Plan to be in effect. The expiration of the Town Plan also resulted, *inter alia*, in the loss of the Downtown Designation and the Town's Bolio Amendment being *void ab initio.*

7. The cover up and overt acts include the forgery, counterfeiting and publication of official town and regional documents in violation of 13 V.S.A §1801 and §1802 and the submission of false certifications to the State and Federal government in violation of 13 V.S.A §2002 and 32 V.S.A §631(a)(9). The dramatic scope of the cover up is not surprising considering that since the expiration of the Town Plan in 2023, the Town has applied for and/or received millions of dollars in state and federal funds through grants and tax benefits as well as other types

of benefits from various programs that specifically require that a duly adopted municipal town plan be in place. The cover-up also includes filing false statements with the Commission that are based upon the existence of a Town Plan, but for which the Town knows does not exist and has not existed since October 6, 2023.

8. AHS's parent Allco Finance Limited is finalizing a complaint to be filed in Federal District Court against the Town of Bennington, its Select Board members (other than the two aforementioned), the town planner and town manager involving their conspiracy to cover-up the fact that the Town Plan expired on October 6, 2023, as well as other claims, such as breach of contract (i.e., the settlement agreement between AHS and the Town), violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.SC. § 1962(c)), injunctive and declaratory relief, and violations of civil rights. The complaint will also set the record straight on why the Mount Anthony Country Club (who the Town was and may still be working with) withdrew as an intervenor in the Chelsea Solar case.

Dated: January 10, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC
By: */s/ Thomas Melone*
Thomas Melone
Apple Hill Solar LLC
157 Church Street, 19th Floor
New Haven, CT 06510
Thomas.Melone@AllcoUS.com
212-681-1120

EXHIBIT 6

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of the "Chelsea Solar Project," a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	)	Docket No. 23-0249-PET
Petition of Apple Hill Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	)	Docket No. 24-3517-PET

RESPONSE TO MEMORANDUM ISSUED BY HOLLY R. ANDERSON, CLERK OF THE COMMISSION, DATED APRIL 21, 2025, RE "REQUEST FOR COMMENTS"

On April 21, 2025, Holly R. Anderson, Clerk of the Commission, issued a memorandum (the "Memorandum") stating as follows:

> On March 24, 2025, counsel for the Petitioner, Thomas Melone, sent an email to the members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy. Attorney Melone copied the Vermont Public Utility Commission's ("Commission") Chair Ed McNamara on the email.
>
> Based on the content of the communication and Attorney Melone's open proceedings before the Commission, this email constitutes a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E). The email has been uploaded into both cases as an attachment to this memorandum so that all parties can review the communication.
>
> The parties to each case have until May 9, 2025, to provide any comments or concerns related to Attorney Melone's communications, and specifically whether Commission Rule 2.201(E)(4) is implicated.

The Clerk's Memorandum raises several issues, which are discussed below.

I. THE MEMORANDUM CONSTITUTES A RULING MADE WITHOUT DUE PROCESS OR ANY PROCESS.

The Memorandum states: "Based on the content of the communication and Attorney Melone's open proceedings before the Commission, this email ***constitutes*** a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E)."

The Clerk has no authority to make a determination as to whether an email "constitutes a prohibited *ex parte* contact." *See*, 30 V.S.A. § 6. So that determination must have been made by someone else. I request that the Commission disclose and file into the record of each of the above-captioned proceedings exactly who concluded that the referenced email "constitutes a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E)," and the legal and factual basis for that ruling. I also request that the Commission disclose and file into the record all written communications regarding the decision that the referenced email "constitutes a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E)."

The Memorandum issued a substantive determination, which is not permitted to be made without proper due process. And here no process was provided.

Petitioners intend to timely appeal the interlocutory decision represented by the Memorandum, specifically the ruling that the referenced email "constitutes a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E)" to the Vermont Supreme Court, and the fact that such a ruling was done without any due process.

II. THE EMAIL PLAINLY DOES NOT CONSTITUTE AN *EX PARTE* COMMUNICATION UNDER RULE 2.201(E)(1).

Commission Rule 2.201(E)(1) prohibits *the Commission from communicating* with parties (not the other way around). *See, id*. ("Prohibited communications … the Commission may not communicate, directly or indirectly, in connection with any issue of fact with any party or any person, or in connection with any issue of law with any party or any employee, agent, or representative of any party, unless …"). The email to the Legislative committees was not a communication *by* the Commission *to* a party. It thus does not constitute an "*ex parte*" communication under Rule 2.201(E)(1).

III. THE MEMORANDUM MAKES NO ATTEMPT TO TIE THE EMAIL TO THESE TWO CASES, WHICH IS ANOTHER REQUIREMENT OF RULE 2.201(E).

Commission Rule 2.201(E)(1) prohibits *the Commission from communicating* with parties (not the other way around), in connection with any issue of fact or law *in the applicable contested case*. The Memorandum does even attempt to explain what issue is addressed by the Legislative email that is presented in the two above-captioned cases.

The focus of the Legislative email was to provide a counterpoint to Chair McNamara's testimony before the House Committee that singled me out (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program. The purpose of Chair McNamara's testimony was to oppose any revival of the Standard Offer program. One of the central reasons proffered by Chair McNamara for his opposition to the Standard Offer program is the litigation brought by me. But Chair McNamara omitted key facts regarding the litigation, one of which was the demonstrably false claim in the 2019 Chelsea Solar decision that formed the basis for the Commission's retroactive application of the newly created single plant rule in that 2019 decision. *See*, Melone Legislative Email of March 24, 2025:

> The PUC's new single-plant rule was applied *retroactively* to Chelsea and Apple Hill Solar (both Allco projects) based upon the demonstrably *false claim* that when the Chelsea Solar and Apple Hill Solar contracts were executed in 2013 & 2014 it was not known that both projects would require GMP to build a new line extension from GMP's nearest then existing three-phase line to the site of both projects. It was known because the 2013 Standard offer contract that was *approved by the PUC* specifically described the GMP interconnection plan that *clearly and unambiguously* stated that the "new Line" would be needed to interconnect both the Chelsea project and the Apple Hill project. ("Chelsea Solar would require significant reconductoring and addition of phases to the point of interconnection. *These would be shared with Apple Hill if constructed*.") (Emphasis added.)

Every discussion of the single-plant rule should be accompanied by the origins of the rule being based upon a demonstrably false claim made by the Commission. Despite that sordid history of the rule, the Memorandum does not state what in the Legislative email is the discussion of "any issue of fact .. [or] any issue of law," in the either of the above-captioned cases.

So query how a Legislative email regarding the Standard Offer program's renewal is an issue in either of the above-captioned cases. Likewise, in Case 24-3517, the petitioner has stated

that it is not relying on waivers related to the Standard Offer program. So again, query how a Legislative email regarding the Standard Offer program's renewal is an issue in either of the above-captioned cases.

IV. THE MEMORANDUM PRESUMES THAT CHAIR MCNAMARA WOULD PARTICIPATE IN A FINAL DECISION IN BOTH ABOVE-CAPTIONED CASES.

The Memorandum implicitly assumes that Chair McNamara would participate in a final decision on the petitions in the above-captioned cases. As far as the undersigned is aware, Chair McNamara only participated in one ruling, and that was in docket 23-0249, which is the procedural order issued on November 8, 2024. Docket 23-0249 was filed on January 25, 2023.

30 V.S.A. §3(e) requires "[w]hen a Commission member who hears all or a substantial part of a case retires from office before the case is completed, the member shall remain a member of the Commission for the purpose of concluding and deciding the case, and signing the findings, orders, decrees, and judgments. A retiring chair shall also remain a member for the purpose of certifying questions of law if appeal is taken." The issue is whether the proceedings in case 23-0249 that occurred while Anthony Roisman was the chair constitute a "substantial part" of the case. If they do (which petitioners contend they do), then Anthony Z. Roisman and not Edward M. McNamara would be the commission member that sees case 23-0249 to its conclusion. For that reason *too*, Rule 2.201(E) would not apply in case 23-0249.

For case 24-3517, Edward McNamara's recent testimony to the House Committee relating to his participation while at the Department of Service circa 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES, raises serious questions regarding whether Mr. McNamara can participate in either of the above-captioned cases.

V. THE MEMORANDUM APPEARS TO BE A TRANSPARENT ATTEMPT TO RETALIATE FOR THE EXERCISE OF FIRST AMENDMENT RIGHTS.

It would have been simple for Chair McNamara to just file the Legislative email in whatever dockets he wanted to so his receipt of the email was disclosed to whomever he wanted

to disclose it to, and leave it at that. But that wasn't enough. Instead, the Memorandum's purpose appears to be weaponizing Commission Rule 2.201(E)(4) against me and the petitioners. *See* Memorandum ("The parties to each case have until May 9, 2025, to provide any comments or concerns related to Attorney Melone's communications, and *specifically whether Commission Rule 2.201(E)(4) is implicated*.")

Examples of weaponization of the government to target speech and those that disagree with government are all over the news these days. The Memorandum's reference to Rule 2.201(E)(4) is more of the same.

Rule 2.201(E)(4) states:

> Improper communications by parties. Any person or party who, directly or through an employee, agent, or representative, communicates or attempts to communicate with the Commission on any subject so as to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding may be disqualified from later participation in the proceeding, may be dismissed as a party to the proceeding, may be held in contempt of the Commission under the Commission's powers as a court of record under 30 V.S.A. § 9, and/or may be deemed to have waived any objection to the later decision by the Commission with respect to any proceeding that is the subject of such communication.

Specifically calling out Rule 2.201(E)(4) is a threat against me and the petitioners to level some type of sanction based upon a purported violation of Rule 2.201(E)(4). While such a sanction would be devoid of factual and legal basis, the mere threat here shows bias against me and the petitioners. The petitioners will make a public records request to the Commission demanding all documents related to the Memorandum.

Specifically threatening me and the petitioners with some type of potential sanction based upon a purported violation of Rule 2.201(E)(4) from the mere receipt of the March 24, 2025, email, sent to Vermont Legislators also illustrates the procedural safeguards that have been eroded by the administrative state. Today's current state of play was unimaginable to the Framers of both the federal and state constitutions. They "could hardly have envisioned today's vast and varied [] bureaucracy and the authority administrative agencies now hold over our economic, social, and political activities." *City of Arlington v. FCC*, 569 U.S. 290, 313 (2013) (Roberts, C.J., dissenting).

See also Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U.L. REV. 1523, 1555 (2013) ("While the Framers were familiar with British ministries' and colonies' charter governments, the writings on government that Framers like Madison were familiar with did not discuss anything that even approximates the administrative state we have today.").

Unlike today's freewheeling administrative state, the first of our "nation's regulatory statutes … contain[ed] detailed and *limited* grants of authority to administrative bodies." Elena Kagan, *Presidential Administration*, 114 Harv. L. Rev. 2245, 2255 (2001) (emphasis added). Early Congresses also "fought regularly with departments on domestic and international matters" that involved the President's policy directives "being carried out by his immediate cabinet subordinates." Turley, *supra*, at 1556. But over time, "the rise of the regulatory state and the need for administrative discretion" undermined the "strict limits on congressional delegation of power" the Framers had contemplated. Erwin Chemerinsky, *A Paradox Without A Principle: A Comment on the Burger Court's Jurisprudence in Separation of Powers Cases*, 60 S. CAL. L. REV. 1083, 1107 (1987).

Today, "the administrative state has … grow[n] out of control." Peter J. Wallison, *Judicial Fortitude: The Last Chance To Rein In The Administrative State* 134 (1st ed. 2018). The Framers may have considered the legislative "the most dangerous branch," but modern agencies now make the Executive "the constitutional institution to reckon with." Jon D. Michaels, *An Enduring, Evolving Separation of Powers*, 115 Colum. L. Rev. 515, 528-29 (2015). "[T]he danger posed by the growing power of the administrative state cannot be dismissed." *City of Arlington*, 569 U.S. at 315 (Roberts, C.J., dissenting).

Like other regulatory agencies, the PUC "acts as a mini legislature, prosecutor, and court, responsible for creating substantive rules for a wide swath of industries, prosecuting violations, and levying knee-buckling penalties against private citizens." *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2202 n.8 (2020). Its rulings are appealable to the Vermont Supreme Court, but that court rarely overturns the PUC and expressly accords the PUC substantial deference (a concept that at

the Federal level has been entombed by *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369, 144 S. Ct. 2244 (2024)).

What remains then are state agencies that are antithetical to the founding principles of this Nation embodied in the United States Constitution. To them, the "accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny." *The Federalist No. 47* at 298 (James Madison) (Clinton Rossiter ed., 2003).

VI. THE EMAIL PLAINLY DOES NOT CONSTITUTE AN IMPROPER COMMUNICATION PROHIBITED UNDER RULE 2.201(E)(4).

As set forth in the Declaration of Thomas Melone attached as Exhibit 1, the email in question was in no way intended to cause the disqualification of Edward M McNamara. Neither Petitioner in the above-captioned proceedings will raise (and never intended to raise) his receipt of that email as a basis for disqualification.

Dated: May 9, 2025

Respectfully Submitted,
/s/ Thomas Melone
Thomas Melone, Esq.
Chelsea Solar LLC
Apple Hill Solar LLC
157 Church Street, 19th Floor
New Haven, CT 06510
Thomas.melone@allcous.com
212-681-1120

EXHIBIT 1

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of the "Chelsea Solar Project," a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	)	Docket No. 23-0249-PET
Petition of Apple Hill Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	)	Docket No. 24-3517-PET

DECLARATION OF THOMAS MELONE

I, Thomas Melone declares under the penalty of perjury:

1. Attached as **Exhibit A** is an email that I sent on March 24, 2025, to various members of the Vermont Legislature. I also "cc'd" Edward M. McNamara.

2. Vermont Public Utility Commission Rule 2.201(E)(4) states in pertinent part that "[a]ny person or party who … communicates or attempts to communicate with the Commission on any subject so as to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding" may be subject to various sanctions.

3. My copying Mr. McNamara was in no way done "so as to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding." Chair McNamara's testimony referenced in that email specifically referred to me (although not by name). Because I was talking about his testimony about me, I thought it appropriate to let him know that I was talking about him. Neither Petitioner in the above-captioned proceedings will raise (and never intended to raise) his receipt of that email as a basis for disqualification.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 9, 2025, at Ho-Ho-Kus, New Jersey.

/s/Thomas Melone

Thomas Melone
Allco Finance Limited
157 Church St., 19th floor, New Haven, CT 06510
Phone: (212) 681-1120
Email: Thomas.Melone@AllcoUS.com

EXHIBIT A

Standard Offer Testimony of Ed McNamara

Thomas Melone <Thomas.Melone@allcous.com> Mon, Mar 24, 2025 at 10:03 AM
To: kjames@leg.state.vt.us, scampbell@leg.state.vt.us, lsibilia@leg.state.vt.us, rbailey@leg.state.vt.us, chowland@leg.state.vt.us, bkleppner@leg.state.vt.us, cmorrow@leg.state.vt.us, msouthworth@leg.state.vt.us, dtorre@leg.state.vt.us, awatson@leg.state.vt.us, tkwilliams@leg.state.vt.us, rhardy@leg.state.vt.us, sbongartz@leg.state.vt.us, sbeck@leg.state.vt.us
Cc: ed.mcnamara@vermont.gov

Greetings Honorable Members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy,

I respectfully request that I be given equal time to testify before you via zoom to address the testimony given by PUC Chair Ed McNamara to the House Committee on February 7, 2025. https://www.goldendomevt.com/VTHouseEnergyDigitalInfra_2025-02-07_11-13.html

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I am (or more accurately my company—Allco) is the single developer that Mr. McNamara focused on in his testimony.

The Vermont Superior Court has referred to Allco as "climate warriors who would subject anything in their path to the broad sweep of their scythe, leaving the path open for all other solar developers." *Otter Creek Solar LLC v. Vermont Pub. Util. Comm'n*, docket 99-1-20-cncv (Vt. Super. November 16, 2021) at *7. Allco has a long list of *successful* litigation challenging unfair practices against small local solar projects, including in California, Connecticut, Massachusetts & Vermont.

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But the "single-plant" rule is the worst violator of them all. In his testimony, Mr. McNamara provided context that has to date been missing. As he stated, it was around 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES. Shortly thereafter, the PUC weaponized and expanded the single-plant rule by denying the CPG for the very first project awarded a contract under the Standard Offer competitive solicitation rules, which is Chelsea Solar (named after my youngest daughter—a 2015 graduate of Middlebury College).

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point of interconnection. *These would be shared with Apple Hill* if constructed.") (Emphasis added.)

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The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.

I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

Respectfully,

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th Floor
New Haven, CT 06510
(212) 681-1120
(801) 858-8818 (fax)

EXHIBIT 7

From:	Thomas Melone
To:	kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc:	McNamara, Ed
Subject:	Standard Offer Testimony of Ed McNamara
Date:	Monday, March 24, 2025 10:05:23 AM

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Chief Executive Officer
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157 Church St., 19th Floor
New Haven, CT 06510
(212) 681-1120
(801) 858-8818 (fax)

From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: [redacted]
Date: Monday, April 21, 2025 9:37:06 AM
Attachments: [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: [redacted]
To: [redacted]
Subject: [redacted]
Date: Monday, March 24, 2025 5:14:51 PM
Attachments: [redacted]

[redacted]

From: Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone
Sent: Monday, March 24, 2025 10:03 AM
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L <lsibilia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc: McNamara, Ed <Ed.McNamara@vermont.gov>
Subject: Standard Offer Testimony of Ed McNamara

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Chief Executive Officer

Allco Renewable Energy Limited

157 Church St., 19th Floor
New Haven, CT 06510
(212) 681-1120
(801) 858-8818 (fax)

From: [redacted]
To: [redacted]
Subject: [redacted]
Date: Tuesday, March 25, 2025 11:54:00 AM
Attachments: [redacted]

[redacted]

From: [redacted]
Sent: Monday, March 24, 2025 5:15 PM
To: [redacted]
Subject: [redacted]

[redacted]

[redacted]

[redacted]

From: Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone
Sent: Monday, March 24, 2025 10:03 AM
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L <lsibilia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc: McNamara, Ed <Ed.McNamara@vermont.gov>
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New Haven, CT 06510
(212) 681-1120
(801) 858-8818 (fax)

From: [redacted]
To: [redacted]
Subject: [redacted]
Date: Monday, March 24, 2025 11:00:54 AM
Attachments: [redacted]

From: Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone
Sent: Monday, March 24, 2025 10:03 AM
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L <lsibilia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
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(212) 681-1120
(801) 858-8818 (fax)

From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: [redacted]
Date: Monday, April 21, 2025 10:31:24 AM

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From: [redacted]
Sent: Monday, April 21, 2025 9:37 AM
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From: [redacted]
Sent: Monday, March 24, 2025 5:15 PM
To: [redacted]
Subject: [redacted]

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From: Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone
Sent: Monday, March 24, 2025 10:03 AM
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L <lsibilia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
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From: [redacted]
To: [redacted]
Subject: [redacted]
Date: Monday, April 14, 2025 3:41:00 PM
Attachments: [redacted]

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From: [redacted]
Sent: Monday, April 14, 2025 2:50 PM
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Sent: Monday, March 24, 2025 10:03 AM
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From: [redacted]
To: [redacted]
Subject: [redacted]
Date: Monday, April 14, 2025 2:15:45 PM
Attachments: [redacted]

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From: [redacted]
Sent: Monday, April 14, 2025 2:06 PM
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Sent: Monday, March 24, 2025 10:03 AM
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L <lsibilia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
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From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: [redacted]
Date: Monday, April 21, 2025 12:43:31 PM

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Cc: [redacted]
Subject: [redacted]
Date: Monday, April 21, 2025 12:08:28 PM
Attachments: [redacted]

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EXHIBIT 8

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Apple Hill Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of the "Apple Hill Solar Project," a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	)	Docket No. 24-3517-PET

PETITIONER'S RESPONSE TO THE TOWN OF BENNINGTON'S MOTION TO STRIKE

On January 15, 2025, the Attorney Merrill Bent, purportedly on behalf of the Town of Bennington ("Town"), filed a Motion to Strike (the "Motion") the Petitioner's January 10, 2025, and January 12, 2025 comments, that were filed by Petitioner in response to the State of Vermont's Motion to Stay and Initial Comments filed by Attorney Merrill Bent, purportedly on behalf of the Town of Bennington. Attorney Bent posits that the filings should be stricken because purportedly they involve "ad hominem attacks on members of the public who are not involved in this docket, town officials, and elected officials (who serve their community as volunteers) [and] were neither responsive nor relevant to the matters raised before the PUC." Motion at 1. Both assertions by Attorney Bent, as explained below, are false.

Attorney Bent further alleges that the filings were made for "an improper purpose in violation of Commission Rule 2.203(C)," without any evidentiary basis or even explaining what the "improper purpose" allegedly is. Motion at 1. That claim by Attorney Bent is false *too*. Then while conceding that the Petitioner's filings *are* "responsive to the issues raised by the other parties," Attorney Bent doesn't want to do any work now to respond to them. As per usual, the motion is short on facts and short on the law.

A. Attorney Bent Is Not Authorized To Speak On Behalf Of The Town of Bennington.

1. Attorney Bent's Purported Representation And Filings Violate The Vermont Open Meeting Law.

Attorney Bent states that she is acting on behalf of the Town of Bennington in this case. But there was no *public meeting* held by the Select Board that authorized Attorney Bent to file

anything in this case, nor act on behalf of the Town opposing the AHS project. The Town has held a single meeting regarding the Project in this case, at which more than twice the number of people spoke out in favor of the Project than against it.

1 V.S.A. § 312 provides:

> **Right to attend meetings of public agencies**
>
> (a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. **No resolution, rule, regulation, appointment, or formal action shall be considered binding** except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title.
>
> [Emphasis added.]
>
> ***
>
> (b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting.

Attorney Bent could only be appointed to act on behalf of the Town in this case after a duly noticed open meeting of the Select Board with her appointment being a duly noticed agenda item. *No such meeting occurred*. Nor did the Planning Commission hold any meeting listing as an agenda item the appointment of Merrill Bent. No duly noticed meeting was held by any public body in Bennington authorizing Merrill Bent to intervene on behalf of the Town.

Likewise, because Attorney Bent's filings in this case have taken definite positions *in opposition* to the Project, those too need to be authorized by the Select Board after a duly noticed open meeting of the Select Board with the AHS project being duly noticed agenda item. *No such meeting occurred*. Because properly noticed meetings never occurred, the public and taxpayers in Bennington were denied their rights to speak under the Open Meeting Law and under the First Amendment. While the landowner for the Project intends to file suit against the Town for violating the Open Meeting Law, for purposes of this case, Attorney Bent's motion to strike should be summarily denied and rejected unless Attorney Bent provides documentary evidence that was the

product of compliance with Vermont's Open Meetings Law that she is authorized to make filings on behalf of the Town and take positions in opposition to the AHS project.[1]

2. Attorney Bent's Representation Would Violate The Vermont And New York Rules of Professional Conduct.

Similarly, even if Attorney Bent's filings were properly authorized by the Select Board (which they were not), Attorney Bent's representation would be a violation of multiple rules of the Vermont and New York attorney rules of professional conduct. Attorney Bent is admitted to practice in Vermont and New York, and as such is bound by both sets of rules.

i. Merrill Bent's Purported Representation Of The Town Violates Rule 3.7.

First, unless the Town stipulates that the Town Plan expired on October 6, 2023, Merrill Bent is a key witness and as such is disqualified from representing the Town under Vermont Rules of Professional Conduct 3.7 states:

> Rule 3.7. Lawyer as Witness
> **(a)** A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
> **(1)** the testimony relates to an uncontested issue;
> **(2)** the testimony relates to the nature and value of legal services rendered in the case; or
> **(3)** disqualification of the lawyer would work substantial hardship on the client.

And Rule 3.7 of the New York Rules of Professional Conduct which states:

> (a) A lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact unless:
> (1) the testimony relates solely to an uncontested issue; (2) the testimony relates solely to the nature and value of legal services rendered in the matter; (3) disqualification of the lawyer would work substantial hardship on the client; (4) the testimony will relate solely to a matter of formality, and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; or
> (5) the testimony is authorized by the tribunal.
>
> (b) A lawyer may not act as advocate before a tribunal in a matter if:
> (1) another lawyer in the lawyer's firm is likely to be called as a witness on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client; or (2) the lawyer is precluded from doing so by Rule 1.7 or Rule 1.9.

[1] The Town's purported intervention and filings in this case also constitute a breach of a settlement agreement dated September 14, 2018, between AHS and the Town. AHS intends to file a separate lawsuit against the Town making just that claim.

The Town Plan expired on October 6, 2023, but the story that Town Manager Stu Hurd and a majority of the Select Board have been spinning is that the adoption of the Energy Amendment in 2018 is considered a readoption to the entire Town Plan, which is clearly contrary to the *actual* facts and the law.

Nevertheless Mr. Hurd claims that he and the Select Board have a "legal opinion" to that effect presumably from the Town's only regular attorney Merrill Bent, a prolific opinion writer. *See* **Exhibit 1** which is an attached email from Hurd stating: "We believe we have sufficient documentation and a legal opinion supporting our position. *It's not a lie if one believes what one's saying*."

Mr. Hurd and a majority of the Select Board seem to also claim as part of their scheme that the Bennington County Regional Commission ("BCRC") has accepted the Town's position. But whether the BCRC "accepts" the Town's position is statutorily irrelevant, which*, inter alia*, has been confirmed by the general counsel to the grant making entity—ACCD. *See* **Exhibit 2**.

Attorney Merrill Bent can no longer advise the Select Board on issues related to the Town Plan. She has been implicated by Stu Hurd (*see* **Exhibit 1**) and at a minimum would be a key witness which prevents her representing the Select Board. As a result, under both the Vermont and New York Rule of Professional Conduct 3.7, she is prohibited from representing the Select Board.

Mr. Hurd's and a majority of the Select Board's claim also is expressly contradicted by the Select Board's certification attached as **Exhibit 3**, which correctly certifies that the last Town Plan was put in place in 2015. The certification, however, diverges from the facts when it claims that the 2015 Town Plan was still effective in 2024.[2]

[2] All grants through the Vermont Community Development Program (the "VCDP") require that the municipality certify that it has a duly adopted and has a current municipal plan in effect On August 26, 2024, Select Board members Sarah Perrin, Jeanne Jenkins, Ed Woods, Tom Haley and Jeanne Conner executed a "Resolution for VCDP Grant Application Authority", and submitted it to the VCDP in connection with the Town's planning grant for the Shires Housing Merger. The VCDP is a division within the DHCD, which in turn is a division of the Vermont Agency of Commerce and Community Development (the "ACCD"). The VCDP operates the Community Development Block Grant Program ("CDBG") of the U.S. Department of Housing and Urban

ii. Merrill Bent's Purported Representation Of The Town Violates Rule 1.7.

Attorney Merrill Bent can also no longer advise the members of the Select Board for another reason. On January 13, 2025, in a secret executive session meeting held after the scheduling conference in this case, Merrill Bent imposed a gag order on the members of the Select Board, instructing them not say anything about the Town Plan. Right off the bat, Bent's advising all *individual* seven members of the Select Board what to do and what not to do, has created a conflict under Rule 1.7 that prevents her from representing the Board or any member absent informed written consent, which does not exist.

Vermont Rules of Professional Conduct 1.7 states:

> Rule 1.7. Conflict of Interest: Current Clients
> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
> (1) the representation of one client will be directly adverse to another client; or
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
> (2) the representation is not prohibited by law;
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
> (4) each affected client gives informed consent, confirmed in writing.

New York Rule of Professional Conduct Rule 1.7, which is more restrictive than the Vermont rule states:

> CONFLICT OF INTEREST: CURRENT CLIENTS
> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:
> (1) the representation will involve the lawyer in representing differing interests; or

Development ("HUD"). VCDP provides CDBG grant funds to municipalities throughout Vermont for housing, economic development and other community development projects to benefit primarily low-to-moderate income persons.

> (2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
> (2) the representation is not prohibited by law;
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
> (4) each affected client gives informed consent, confirmed in writing.

There are multiple reasons why Merrill Bent's purported representation of the Town would violate both Vermont and New York Rule 1.7. *First*, as stated above, Bent's advising all *individual* seven members of the Select Board what to do and what not to do, has created a conflict under Rule 1.7 that prevents her from representing the Board or any member absent informed written consent, which does not exist. Second, Bent's gag order plainly violates each Select Board member's First Amendment rights. This gag order followed on the heels of action targeted at two specific Select Board members—Clark and Adams. The majority of the Select Board's efforts to quash Select Board member Clark Adams's various Facebook posts (reflected in the minutes of January 2, 2025) are improper and patently unconstitutional. Government efforts to "dictat[e] the subjects about which persons may speak," *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 784-785, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978), or to suppress protected speech are "'presumptively unconstitutional,'" *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 830, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995). And that is so regardless of whether the Government carries out the censorship itself or uses a third party "'to accomplish what . . . is constitutionally forbidden.'" *Norwood* v. *Harrison*, 413 U. S. 455, 465, 93 S. Ct. 2804, 37 L. Ed. 2d 723 (1973).

Likewise, Merrill Bent issued a written opinion dated September 4, 2024, which targeted Select Board member Nancy White. Nancy White has constantly questioned the issue of the expiration of the Town Plan. Nancy White contacted the State of Vermont directly regarding a specific grant. Merrill Bent, presumably at the urging of the majority of the Select Board issued a

written opinion targeting White, stating that Nancy White's "outreach [to the State] exceeded the authority of any single member of the Bennington Selectboard." Bent's opinion was a patently unconstitutional use of government funds to chill Nancy White's First Amendment rights. Some would say that Nancy White had a *duty* to follow her conscience and check with the State on the issues which concerned her. Substantively, Nancy White clearly had a valid basis for that contact, and a valid basis to query whether "the proper federal and or state guidelines have not been followed." Among other things, of course, without a valid Town Plan, applying for the grant was impermissible.

iii. Merrill Bent's Purported Representation Of The Town Violates Rule 1.7 and Rule 3.7 Because Of The Violations Of The Open Meeting Law.

As discussed above, *either* Merrill Bent went rogue and just intervened in the case because of close personal relationships with opponents of the project, *or* the Open Meeting Law was violated. Either way Merrill Bent is a key witness, and would have conflicting representation interest, including concerns regarding herself becoming a defendant as well as a witness. Those direct conflicts prevent Merrill Bent from representing any party in this case.

B. The Filings Did Not Contain *Ad Hominem* Attacks.

Bent conflates *ad hominem* comments with observations of the credibility of certain individuals. Observations on an individual's credibility that are based upon evidence are not *ad hominem* attacks, and that is the case here. *See, e.g., Hass & Gottlieb v. Sook Hi Lee*, 55 A.D.3d 433, 434, 866 N.Y.S.2d 72 (N.Y. App. Div. 2008) (the "remarks complained of were not ad hominem attacks, but observations of defendant's credibility.") And Bent opened the door by raising the issue of estoppel.

1. Observations on Maru and David Griffin's credibility are based upon evidence and are not *ad hominem* attacks.

As shown in AHS filing dated January 12, 2025, the Griffins failed to disclose assets in the bankruptcy case. There were at least two properties in Florida, the sale documents for which were attached to the AHS filings conclusively establishing the Griffins concealment. Hiding assets can also extend the statute of limitations on debt collection.

In AHS's filing it states: "If Leon and Griffin had no problem with defrauding the federal government through the Bankruptcy Court or creditors, the filing false testimony with the Commission would seem like a walk in the park. And that false testimony served the purposes of the core opponents of the projects and was in large part used as the basis for the Commission to deny the CPG in docket 8454." That is not an *ad hominem* attack because it is based upon incontrovertible evidence—the sale documents that bear David Griffin's signature. AHS's "remarks complained of were not ad hominem attacks, but observations of [Griffins] credibility.")

And as AHS stated, the Commission denied the CPG in case 8454 based upon the claim repeated by the Griffins and their core group on the basis that purportedly "the whole facility would be prominently visible from the golf course." *Petition of Apple Hill Solar LLC, Order Adopting Proposal For Decision On Remand And Denying Petition,* Docket 8454 (May 7, 2020) at 37. And when the Griffins sought to repeat that made up claim in case 23-0249, the petitioner sought to depose the purported "owners" of the Mount Anthony Country Club—Maru Leon and David Griffin.

Then Leon and Griffin withdrew from case 23-0249 but only after filing a long-winded tirade reciting false reasons why they were withdrawing—those statements too are relevant to, and undercut, their credibility. Then in subsequent filings, both DPS and the Town regurgitated those false premises for why Leon and Griffin purportedly withdrew. And then likewise, the Commission backed the hearing officer's backing the home team by imposing stringent limitations on petitioner's rights to discovery and due process. Those discovery orders have been appealed to the Superior Court, and the Griffins conduct in both the Bankruptcy proceeding and the long-winded tirade are relevant to that appeal and will be an issue there as well. So too will the conduct of the Town discussed in AHS's prior filings and below.

But there's more to the Griffin credibility story. The discharge received in Case 13-10693 was only for David Griffin and Maru Leon in their individual capacities. But the petition shows that many of the debts listed were actually in the name of the corporation, Down to Earth Golf Course Development, Inc. ("DTE"), the business registrant for the Mount Anthony Country Club.

No discharge was issued to the corporation. No discharge was issued either to the Griffin Family Qualified Domestic Trust, which was a clear third-party beneficiary of many of the debts. Thus, those debts appear to still be valid, still accruing interest and not discharged.

2. The Town.

The AHS filings also reference conduct by various Town personnel related to the expiration of the Town Plan—a key factor in the prior AHS case. As noted in AHS's filings and in the attached **Exhibit 1**, the Town is using Seinfeld's George Costanza defense. *See, The Rise of the Costanza Defense*, New York Times (May 6, 2016),[3] *i.e.,* "*It's not a lie if one believes what one's saying*." As discussed in AHS's filings and further below, there is plenty of evidence that whistleblowers have provided to AHS that supports the statements regarding Town personnel.

C. The Town's Motion Is So Vague That It Must Be Summarily Denied.

Pursuant to Commission Rule 2.204(E)(1)(e), the Commission may strike from any filing any redundant, immaterial, impertinent, or scandalous matter. The Town does not indicate which statements in the Responses it feels are "redundant, immaterial, impertinent, or scandalous". In fact, the Town does not even reference Rule 2.204(E)(1)(e) at all. For that reason alone, the Motion to Strike should be denied.

In typical postcard fashion, the Town's Motion to Strike summarily requests that the entirety of the Responses be stricken. The Town refuses to allege with specificity which statements it takes issue with because the Town knows that the devil is in the details. If forced to actually do the work and adhere to the confines of Rule 2.204(E)(1)(e), the Town knows it will have no success with respect to a motion to strike as none of the facts contained in the Responses are "redundant, immaterial, impertinent, or scandalous." So the Town does what it typically does, just phones it in and makes sweeping vague and ambiguous assertions and expects the other parties to do the work. The Town even concedes that some of Petitioner's allegations are responsive but refuses to identify which ones those are.

[3] https://www.nytimes.com/2016/05/07/business/dealbook/the-rise-of-the-costanza-defense.html.

Like all motions, a motion to strike must state with particularity the grounds for seeking the order. ***"[A] sweeping, indiscriminate motion to strike, without any explanation as to how or why the targeted paragraphs are immaterial or redundant, does not contain the requisite particularity or otherwise clearly show that an order to strike is warranted***." *Arias-Zeballos v. Tan*, 2006 U.S. Dist. LEXIS 78884, 2006 WL 3075528, slip op. at 10 (S.D.N.Y. 2006)(Emphasis added.) "A motion to strike must state with particularity the grounds therefor and set forth the nature of relief or type of order sought." *Credit General Ins. Co. v. Midwest Indem. Corp.* 916 F. Supp. 766, 771 (N.D. Ill. 1996) (citing 5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1380 (2d ed. 1990)). Typically, unnecessary evidentiary details in a pleading will not be stricken. *Credit General*, 916 F. Supp. 771. In moving to strike matters as irrelevant, a movant must *clearly show that the matter is outside the issues in the case and is prejudicial*. *Id.* (Emphasis added.) *Cumis Ins. Soc'y Inc. v. Peters*, 983 F. Supp. 787, 798 (N.D. Ill. 1997); *Trust Mark Life Ins. Co. v. Univ. of Chicago Hosps.*, 1996 U.S. Dist. LEXIS 1614, No. 94 C 4692, 1996 WL 68009 at *1 (N.D. Ill. Feb. 14, 1996). The Town has not made any specific arguments as to why certain matters are "redundant, immaterial, impertinent, or scandalous". They have not identified any paragraphs or pages that they take issue with. In fact, the Town's assertions are so vague and ambiguous it is difficult for AHS to even respond to the Motion. Notwithstanding, AHS will assume that Bent is referring to matters relating to (i) the Town Plan expiration and the Town's active conspiracy to cover up the expiration and (ii) the Griffins a/k/a Mount Anthony Country Club. The Griffins have been discussed above.

D. Bent's Raising Estoppel Opened The Door To AHS's Statements.

By raising the issue of estoppel Bent has introduced multiple issues on which the AHS's filings regarding the Griffins and the Town Plan are directly relevant. See, Trepanier v. Getting Organized, 155 Vt. 259, 265-266 (1990). *For one*, the issue must be the same as the one raised in the later action, and, here, the expiration of the Town Plan and the Town's actions related thereto means the issue *is different*. *Second*, there was not a full and fair opportunity to litigate the issue in the earlier action because, among other things, the PUC excluded relevant evidence, the PUC

decision was based upon evidence not in the record, and the conclusions regarding the Mount Anthony Country Club were not based upon credible evidence. *Third,* applying preclusion in the later action would not be fair. *Trepanier v. Getting Organized*, 155 Vt. 259, 265-266 (1990).

Regardless, even if Bent could meet the base requirements for preclusion (which she cannot), there are many exceptions to preclusion applicable here to which the AHS filings are directly relevant.

Exception 1. *Restatement (Second) of Judgments* §28(2)(b).[4] Preclusion is not applicable if: the "issue is one of law and [] a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the law." This exception applies here because, as argued above, the Town Plan has expired and to apply preclusion would surely be inequitable.

Exception 2. *Restatement (Second) of Judgments* §28(3). "A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts." This exception applies here because, as argued above, the PUC excluded relevant evidence and based its decision on non-credible evidence and evidence not in the record.

Exception 3. *Restatement (Second) of Judgments* §28(5). "There is a clear and convincing need for a new determination of the issue." This criterion is easily met for all the reasons set forth herein and in AHS's other filings that Bent seeks to strike.

Exception 4. AHS is entitled to attack the earlier decision when and if other parties assert preclusion. *See, Restatement (Second) of Judgments*, §80 ("When a judgment is relied upon as the basis of a claim or defense in a subsequent action, relief from the judgment may be obtained.")

The credibility of the Griffins and the Mount Anthony Country Cub testimony, and the Town's actions regarding the Town Plan are clearly relevant to the estoppel issue raised by Bent.

[4] *See, Trepanier*, 155 Vt. at 265 for the Vermont Supreme Court's endorsement of the *Restatement (Second) of Judgments* §28.

1. The Town Plan Expiration

The expiration of the Town Plan is relevant because both the Town and DPS raised the issue of estoppel. The project in Case 8454 was denied because it purportedly violated certain provisions of the Town Plan, specifically related to the Rural Conservation District. Now those provisions of the Town Plan no longer apply because there is no Town Plan as the Town Plan expired on October 6, 2023.

The Town bears the burden of establishing the elements of preclusion. *Greenberg v. Bd. of Governors of Fed. Reserve Sys.*, 968 F.2d 164, 170 (2d Cir. 1992).

Pursuant to 24 V.S.A. §4387, the 2015 Bennington Town Plan was set to expire on October 6, 2023. The town plan adoption process is laid out in 24 V.S.A. §4302, and §§4381-4387 and is formidable (due to an intervening change in the requirements of the statute) and will often take years to accomplish. Section 4387(b)(1)(A) mandates that the planning commission "engage in community outreach and involvement in updating the plan". As the time to begin the process to head off an October 6, 2023, expiration date of the 2015 Town Plan was fast approaching, the Town was actively involved in litigation with Allco and affiliates over the proposed Chelsea Solar project and the AHS project.

Fearing that Allco would insert itself into the now more onerous planning process with respect to any newly proposed Town Plan, certain Select Board and Planning Commission members (together with the town manager and town planner) hatched a scheme to buy more time, hoping that Allco would have given up by the extended schedule.

The way in which the Town attempted to do that was to claim that the 2015 Town Plan had actually been *re-adopted* in 2018 when the Town passed the Energy Amendment, such that the Town Plan would not expire in 2023 but in 2026. The obvious issue with that scheme (besides getting caught) is that the town plan adoption process in 24 V.S.A. §4302, and §§4381-4387 cannot be circumvented and nothing that was required of the Town to *re-adopt* the Town Plan was actually accomplished in 2018.

Among other things, 24 V.S.A. §4387(a) requires that re-adoption take place in accordance with 24 V.S.A. §4385 which requires public notice and two hearings as a condition precedent to duly adopting a new town plan or re-adopting an old one. The Planning Commission never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Planning Commission never voted on a re-adoption of the Town Plan. The Select Board never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Select Board never voted on a re-adoption of the Town Plan. And, of course, the requirement under §4387(b)(1)(A) that the planning commission "engage in community outreach and involvement in updating the plan" was never done because that is exactly what the players were seeking to avoid when they came up with the lie regarding the Town Plan. All that was ever done by the Town of Bennington on January 22, 2018, was pass an amendment to the Town Plan (i.e., the Energy Amendment), which was a process that was hijacked by the core opponents of the Chelsea and AHS projects.

Moreover, 24 V.S.A. §4387(b) requires the Planning Commission to take the following actions if it were adopting a Town Plan (none of which occurred):

> (A) consider the recommendations of the regional planning commission provided pursuant to subdivision 4350(c)(2) of this title;
> (B) engage in community outreach and involvement in updating the plan;
> (C) consider consistency with the goals established in section 4302 of this title;
> (D) address the required plan elements under section 4382 of this title;
> (E) evaluate the plan for internal consistency among plan elements, goals, objectives, and community standards;
> (F) address compatibility with the regional plan and the approved plans of adjoining municipalities; and
> (G) establish a program and schedule for implementing the plan.

No matter what the Energy Amendment might say, all that was accomplished by the Select Board was an adoption of the Energy *Amendment*.

And documentation provided by whistleblowers proves beyond a shadow of a doubt that the 2018 exercise of adopting the Energy *Amendment* was an *amendment only* and not a *readoption*.

Dated: January 29, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC
By: */s/ Thomas Melone*
Thomas Melone
Apple Hill Solar LLC
157 Church Street, 19th Floor
New Haven, CT 06510
Thomas.Melone@AllcoUS.com
212-681-1120

EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

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EXHIBIT 1

---------- Forwarded message ---------
From: **Stuart Hurd** <shurd@benningtonvt.org>
Date: Tue, Oct 15, 2024 at 4:44 AM
Subject: RE: Town Website
To: Joey Kulkin <jkulkin71@gmail.com>, Ned <edwardnperkins@gmail.com>

We believe we have sufficient documentation and a legal opinion supporting our position. It's not a lie if one believes what one's saying. We're moving on. Enjoy the day.

Stuart A. Hurd

Town Manager

Town of Bennington

205 South Street

PO Box 469

shurd@benningtonvt.org

From: Joey Kulkin <jkulkin71@gmail.com>
Sent: Monday, October 14, 2024 7:02 PM
To: Stuart Hurd <shurd@benningtonvt.org>; Ned <edwardnperkins@gmail.com>
Subject: Re: Town Website

Hi, Stu, you just lied to the public again about the town plan which expired on 10/6/23.

This time you said the town plan is valid in the eyes of the state.

Please produce communications from the state confirming what you just said. Because it's a lie.

We've got the documents.

You don't.

Thanks!

On Fri, Oct 11, 2024 at 3:22 PM Joey Kulkin <jkulkin71@gmail.com> wrote:

> Hi, Stu, someone from your staff replaced the cover page on the state database in recent days but it's still based on a lie.
>
> **QUESTIONS**:
>
> - On what day did a member of your staff upload the ACCD database with this new cover page?
> - Who uploaded it?
> - Who authorized this person to make the change?
>
> **REQUEST**:

EXHIBIT 2

000227

From: "Krieger, Maxwell" <Maxwell.Krieger@vermont.gov>
Date: October 18, 2024 at 4:27:43 PM EDT
To: Ned Perkins <EdwardNPerkins@gmail.com>
Subject: RE: Freedom of Information Act - Public Records Request

Ned,

As a strict caveat, the Department, nor I can offer you legal advice or interpretation of statute. If you are seeking a legal opinion you will need to consult a private attorney.

The most relevant statute is Vermont Title 24, Chapter 117.

From the Department's perspective, the short answer to your question is no. The RPC can provide technical assistance through the municipal planning process, and the RPC must ultimately receive and review the plan for conformance with the requirements of the planning statute and regional planning goals, but the municipality itself must adopt the municipal plan.

Thank you,

-Max

Maxwell I. Krieger, Esq., General Counsel

Department of Housing and Community Development

Vermont Agency of Commerce and Community Development

1 National Life Dr., Deane C. Davis Bldg, 6th Floor

Montpelier, VT 05620

(802) 522-3132

Maxwell.krieger@vermont.gov

accd.vermont.gov

From: Ned Perkins <edwardnperkins@gmail.com>
Sent: Friday, October 18, 2024 4:17 PM
To: Krieger, Maxwell <Maxwell.Krieger@vermont.gov>
Subject: RE: Freedom of Information Act - Public Records Request

Hi Max,

One more question for you –

Do the statutes authorize a Regional Planning Commission to adopt a Municipal Town Plan on the Municipality's behalf?

Thanks for your help,

Ned

Ned Perkins

2229 South Stream Road

Bennington, VT 05201

802-442-9660 (h)

802-733-7149 (c)

From: Krieger, Maxwell [mailto:Maxwell.Krieger@vermont.gov]
Sent: Tuesday, October 15, 2024 9:16 AM
To: Ned Perkins
Subject: RE: Freedom of Information Act - Public Records Request

Mr. Perkins,

The Agency is not statutorily tasked with reviewing or approving the content of the plans and bylaws submitted to the database. The Agency is solely tasked with maintaining the database with the submissions from the municipalities and regional planning commissions. The Agency relies upon the submissions and representations of the municipalities and regional planning commissions with regard to evaluating the status of bylaws or plans.

If you have specific questions about the status of a municipal plan or bylaw, the municipality itself and/or the regional planning commission would be the best resources for more information.

Thank you,

-Max

Maxwell I. Krieger, Esq., General Counsel

Department of Housing and Community Development

Vermont Agency of Commerce and Community Development

1 National Life Dr., Deane C. Davis Bldg, 6th Floor

Montpelier, VT 05620

(802) 522-3132

Maxwell.krieger@vermont.gov

accd.vermont.gov

From: Ned Perkins <edwardnperkins@gmail.com>
Sent: Tuesday, October 15, 2024 9:10 AM
To: Krieger, Maxwell <Maxwell.Krieger@vermont.gov>
Subject: RE: Freedom of Information Act - Public Records Request

Good Morning Max,

Thank you for getting back to me. I have a quick follow-up question-

Does the Agency of Housing and Community Development formally review and/or approve submissions of Town Plans or Town Plan Amendments from individual towns to the agency?

If so, please supply copies of all documents regarding the review of the Town of Bennington's January 22, 2018 Amended Bennington Town Plan.

Thanks again,

Ned

Ned Perkins

2229 South Stream Road

Bennington, VT 05201

802-442-9660 (h)

802-733-7149 (c)

From: Krieger, Maxwell [mailto:Maxwell.Krieger@vermont.gov]
Sent: Monday, October 14, 2024 10:51 AM
To: Ned Perkins
Subject: RE: Freedom of Information Act - Public Records Request

Mr. Perkins,

Attached, please find the documents submitted to the Department in 2018. At that time, the documents were sent directly via email to the DHCD Staff Person administering the database, who then uploaded them. The Commissioner did not receive the documents directly.

This concludes the Department's response,

-Max

Maxwell I. Krieger, Esq., General Counsel

Department of Housing and Community Development

Vermont Agency of Commerce and Community Development

1 National Life Dr., Deane C. Davis Bldg, 6th Floor

Montpelier, VT 05620

(802) 522-3132

Maxwell.krieger@vermont.gov

accd.vermont.gov

From: Ned Perkins <edwardnperkins@gmail.com>
Sent: Tuesday, October 8, 2024 5:12 PM
To: Krieger, Maxwell <Maxwell.Krieger@vermont.gov>
Subject: Freedom of Information Act - Public Records Request

Hello Max,

Please supply a copy of the letter and all accompanying documents sent by the Town of Bennington to the Vermont Commissioner of Housing and Community Development conveying the January 22, 2018 Amended Bennington Town Plan, per VSA 4385 which states:

"Copies of newly adopted plans and amendments shall be provided to the regional planning commission and to the Commissioner of Housing and Community Development within 30 days after adoption."

Thanks,

Ned Perkins

2229 South Stream Road

Bennington, VT 05201

802-442-9660 (h)

802-733-7149 (c)

EXHIBIT 3

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RESOLUTION FOR VCDP GRANT APPLICATION AUTHORITY

Single Applicant

WHEREAS, the Town of Bennington (hereinafter "Applicant") is applying for a Grant under the Vermont Community Development Program VCDP planning grant (PG) for Shires Housing merger ; and WHEREAS, it is necessary that an application be made and agreements be entered into with the State of Vermont.

Now, THEREFORE, BE IT RESOLVED as follows:

1. that Applicant possesses the legal authority as defined in the State Act [10 VSA §683(8)] to apply for the grant and to administer the program; and
2. that Applicant apply for a grant under the terms and conditions of said program and agree hereby to enter into Certifications and Assurances there of; and
3. the Applicant has a duly adopted and current Municipal Plan from October 6, 2015 (Date Adopted) and that the project is consistent with said plan; and
4. the Applicant has received documentation from the Regional Planning Commission that the project is consistent with the "Regional Plan; and
5. that Shannon Barsotti is hereby authorized to be Contact Person and as such to provide, on behalf of Applicant, all documents and information necessary for the completion of said application and to provide such coordination as may be necessary for said application; and
6. that (Name) Stuart Hurd Title Bennington Town Manager who is either the Chief Executive Officer (CEO), as defined by 10 VSA §683(8), or is the Town Manager, the City Manager, or the Town Administrator, is hereby designated to serve as the Municipal Authorizing Official (MAO) for the Grants Management On-line System, Intelligrants; and
7. that it is understood that, if the application is funded, the receipt of CDBG funds, as federal funds passed through the State of Vermont, may require that an audit of the Applicant be conducted under the provisions of the Single Audit Act, as amended, and that CDBG funds may be used to fund only a limited portion of the audit cost.

Passed this 26 day of August, 2024.

LEGISLATIVE BODY

[signatures]

The above resolution is a true and correct copy of the resolution as adopted at a meeting of the Legislative Body held on the 26 day of August, 2024 and duly filed in my office.

IN WITNESS WHEREOF, I hereunto set my hand this 26 day of August, 2024.

Cassandra Barbeau
Clerk

[signature]
Signature

ATTACHMENT 2

STATE OF VERMONT
BEFORE THE PROFESSIONAL RESPONSIBILITY BOARD

In Re THOMAS MELONE, (Thomas Melone, Respondent)	PRB File No. 25-120

Respondent's responses to the paragraphs in the Complaint are as follows:

1. Thomas Melone is a lawyer. **Response: This is admitted.**
2. Thomas Melone has been a lawyer for more than 40 years. **Response: This is admitted.**
3. Thomas Melone is licensed to practice law in Vermont. **Response: This is admitted.**
4. Thomas Melone is also licensed to practice law in California, New York, New Jersey, Massachusetts, Pennsylvania, Florida and Connecticut. **Response: This is admitted.**
5. Thomas Melone is the sole owner of at least 85 business organizations. **Response: This is admitted.**
6. Many, or most, of Thomas Melone's business organizations are involved in some manner in renewable energy. **Response: This is admitted.**
7. Business organizations owned by Thomas Melone are organized under the laws of, at least, Vermont, Connecticut, Indiana, Massachusetts, Minnesota and Delaware. **Response: This is admitted.**
8. Thomas Melone is the sole owner of PLH Vineyard Sky, LLC ("PLH"), a Florida business organization. **Response: This is admitted.**
9. Thomas Melone is the sole owner of Vineyard Sky Allco, Ltd. ("Vineyard Sky"), a Florida business organization. **Response: This is admitted.**
10. Vineyard Sky is the sole owner of Allco Finance, Ltd. ("Allco"), a Florida business organization. **Response: This is admitted.**
11. Allco is the sole owner of Apple Hill Solar, LLC ("Apple Hill"), a Vermont business organization. **Response: This is admitted.**
12. Allco is the sole owner of Chelsea Solar, LLC ("Chelsea"), a Vermont business organization. **Response: This is admitted.**
13. Thomas Melone controls and manages PLH, Vineyard Sky, Allco, Apple Hill and Chelsea. **Response: This is admitted.**
14. For more than a decade, Thomas Melone, PLH, Vineyard Sky, Allco, Apple Hill and Chelsea have been involved in efforts to develop solar-electric energy generation facilities on adjacent parcels on Willow Road (Chelsea) and Apple Hill Road (Apple Hill) in Bennington. **Response: This is admitted except the Chelsea and Apple Hill projects are on the same parcel.**
15. In 2013 and 2014, Apple Hill and Chelsea entered into two Standard Offer Contracts. **Response: This is admitted.**
16. Standard Offer Contracts exist pursuant to 30 V.S.A. § 8005(a) a part of Vermont's Sustainably Priced Energy Enterprise Development (SPEED) Program. 30 V.S.A. §§ 8001, 8005, 8005a. **Response: Paragraph 16 of the Petition sets forth a legal conclusion to which no answer is necessary and Respondent leaves Mr. Hanley to**

his proof. The allegation is, except as aforesaid, DENIED.

17. The Vermont Legislature created the SPEED Program to promote the rapid deployment of small renewable generation. 30 V.S.A. § 8005(a). **Response: It is admitted that one of the stated goals in the statute is promoting the rapid deployment of small renewable generation. The allegation is, except as aforesaid, DENIED.**
18. Under the SPEED Program, Vermont distribution utilities, the companies that own and maintain the wires, poles and transformers that deliver electricity from the transmission grid to homes and businesses, must buy renewable power from an eligible renewable electric energy generator at a specified price for a specified period of time. **Response: This is admitted in part. Vermont law and Federal law require certain entities to purchase the electric output from certain electric generating facilities. The allegation is, except as aforesaid, DENIED.**
19. To be eligible for the SPEED program, a project's proposed "plant capacity" cannot exceed 2.2 megawatts. 30 V.S.A. § 8005a(b). **Response: DENIED.**
20. The 2.2 megawatt limits serves the Legislature's goal of providing support and incentives for renewable energy plants of small and moderate size distributed across the state's electric grid. 3 V.S.A. § 8001(a)(7). **Response: DENIED.**
21. 30 V.S.A. § 248 mandates that a project with a Standard Offer Contract must have a Certificate of Public Good (sometimes called a CPG) from the Public Utility Commission (sometimes called the PUC) before beginning site preparation, before constructing a generation facility and before selling electricity. **Response: This is admitted in part. 30 V.S.A. § 248 mandates that generally an electric generation project must have a CPG prior to beginning site preparation for the construction of an electric generation facility. And the extent to which section 248 is enforceable is open to question after the Third Circuit's decision in *Transource Pennsylvania, LLC v. Defrank*, No. 24-1045, 2025 U.S. App. LEXIS 22972 (3rd Cir. September 5, 2025) holding that in certain circumstances a State's permitting regime for electric facilities is preempted by federal law. The allegation is, except as aforesaid, DENIED.**
22. Chelsea applied for a Certificate of Public Good. **Response: This is admitted.**
23. The Public Utility Commission denied Chelsea's petition. **Response: This is admitted to the extent the allegation refers to the CPG application in PUC docket 17-5024, otherwise DENIED.**
24. In 2021, the Vermont Supreme Court affirmed the Public Utility Commission's denial of Chelsea's petition for a Certificate of Public Good. In re Petition of Chelsea Solar LLC, 2021 VT 27. ("We affirm the PUC's determination that the Willow Road and Apple Hil (*sic*) Facilities are a single plant under 30 V.S.A. § 8002(14)(14)(*sic*) (2014)…"**'' Response: This is admitted to the extent the allegation refers to the CPG application in PUC docket 17-5024, otherwise DENIED.**
25. Apple Hill applied for the statutorily required Certificate of Public Good by filing a petition with the Public Utility Commission... **Response: This is admitted in part. Apple Hill has applied for a CPG on two occasions. 30 V.S.A. § 248 mandates that generally an electric generation project must have a CPG prior to beginning site preparation for the construction of an electric generation facility. And the extent to which section 248 is enforceable is open to question after the Third Circuit's decision in *Transource Pennsylvania, LLC v. Defrank*, No. 24-1045, 2025 U.S. App. LEXIS 22972 (3rd Cir. September 5, 2025) holding that in certain circumstances a State's permitting regime for electric facilities is preempted by federal law. The allegation is, except as aforesaid, DENIED.**
26. The Town of Bennington and neighbors of the Apple Hill facility intervened in the proceedings in the Public Utility Commission. **Response: This is admitted to the extent that the allegation refers to PUC docket 8454, the Town and refers to one former adjoining landowner, Libby Harris. The allegation is, except as aforesaid, DENIED.**
27. The Town of Bennington opposed Apple Hill's petition on the grounds that it violated

the Town Plan. **Response: DENIED.**

28. Sometime later, the Town Selectboard changed its position and voted "not to oppose Apple Hill…" In re Peition (*sic*) of Apple Hill Solar LLC, 2019 VT 64, ¶6. **Response: It is admitted that the Selectboard voted "not to oppose Apple Hill." The allegation is, except as aforesaid, DENIED.**

29. In 2018, the Public Utility Commission granted Apple Hill's petition for a Certificate of Public Good. **Response: This is admitted.**

30. Apple Hill's neighbors appealed the Public Utility Commission's grant of the Certificate of Public Good for Apple Hill to the Vermont Supreme Court. **Response: This is admitted to the extent that the allegation refers to PUC docket 8454, and one former adjoining landowner, Libby Harris. The allegation is, except as aforesaid, DENIED.**

31. In 2019, the Vermont Supreme Court reversed in part and remanded for further proceedings. Among other things, the Court found that:

> The selectboard's decision not to oppose the project as violating the Town Plan, on which the PUC heavily relied, does not necessarily mean anything. A decision not to oppose a project or assert that it violates the Town Plan does not mean the project comports with the Plan, or even that the Town has concluded that the project comports with the Plan. In fact, as the PUC recognized, the Town repeatedly emphasized in its response to petitioner's post-technical hearing brief and proposed findings that "[t]he Town has taken no position on the project overall compliance with the Town Plan." The Town could have any number of reasons for choosing not to oppose the project on these grounds, including conservation of its time and resources. That decision in no way supported the PUC's conclusion that the Town took the position that the project complied with the Town Plan.

In re Apple Hill Solar LLC, 2019 VT 64, ¶30. **Response: This is admitted.**

32. After the remand, the Public Utility Commission denied Apple Hill's request for a Certificate of Public Good. **Response: This is admitted.**

33. Apple Hill appealed. **Response: This is admitted.**

34. In 2021, the Vermont Supreme Court reversed and remanded to the Public Utility Commission. In re Apple Hill Solar LLC, 2021 VT 69. **Response: This is admitted.**

35. On remand, the Public Utility Commission again denied Apple Hill's petition for a Certificate of Public Good. **Response: This is admitted.**

36. Apple Hill appealed again. **Response: This is admitted.**

37. In 2023, the Vermont Supreme Court unanimously affirmed the decision of the Public Utility Commission. In re Petition of Apple Hill Solar LLC, 2023 VT 57, 311 A.3d 117, *motion for reargument denied,* Dec. 12, 2023, *motion to stay mandate denied,* Dec. 19, 2023. **Response: This is admitted.**

38. In 2024, Apple Hill filed a new petition for a Certificate of Public Good in the Public Utility Commission. **Response: This is admitted.**

39. At present, that petition is still pending. **Response: This is admitted.**

40. Apple Hill's most recent petition is opposed by the Public Service Department, which has moved to dismiss on the grounds of collateral estoppel. **Response: This is admitted in part. Yes the PSD filed a motion to dismiss the petition on the grounds of collateral estoppel which motion has been denied. With that motion having been denied, the PSD has not stated to my knowledge what their substantive position on the petition is. The allegation is, except as aforesaid, DENIED.**

41. As of the filing this *Petition For Misconduct,* neither Apple Hill nor Chelsea have a Certificate of Public Good. **Response: This is admitted.**

42. Thomas Melone, and his son, Michael Melone, also a lawyer and also licensed to practice in Vermont, have represented Thomas Melone's companies in a large number of legal

proceedings in Vermont. **Response: DENIED.**

43. Thomas Melone has appeared on behalf of his various business organization on many occasions in the Civil and Environmental Divisions of the Vermont Superior Court, the Public Utilities Commission, the Vermont Supreme Court and the United States District Court for the District of Vermont. **Response: This is DENIED.**

44. In addition, Thomas Melone has represented his companies in appeals from the United States District Court for the District of Vermont to the United States Court of Appeals for the Second Circuit and in a *Petition for Writ of Certiorari* from the Vermont Supreme Court to the United States Supreme Court. **Response: This is admitted.**

45. In addition to serving as an attorney for his various Vermont business organizations, Thomas Melone has testified under oath as a witness in proceedings in the Public Utility Commission. **Response: It is admitted that Mr. Melone has testified under oath as a witness in PUC proceedings. It is DENIED that Mr. Melone had a client in any of those proceedings because as sole owner and president he was acting *pro se* and not representing a client under the rules of professional conduct. The allegation is, except as aforesaid, DENIED.**

46. ML and DG were opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good. **Response: It is admitted that a corporate entity owned or controlled by Maru Leon and/or David Griffin called Down to Earth Golf Course Development, Inc. objected to "one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good." The allegation is, except as aforesaid, DENIED.**

47. At some point before May 3, 2024, ML and DG filed under the Bankruptcy Act for protection from their creditors. **Response: This is admitted.**

48. In an email to ML and DG dated May 3, 2024, Thomas Melone said that he had discovered "property [that] does not seem to have been declared on Schedule A to the bankruptcy petition." **Response: This is admitted.**

49. In a bankruptcy case, Schedule A/B is the document where bankrupts list all real and all personal property. Schedule A focuses on real estate, while Schedule B covers everything else, including personal belongings and financial assets. **Response: This is admitted.**

50. Thomas Melone attached to his May 3, 2024 email a copy of a deed that conveyed real property in Florida from DG to a Florida limited liability company. **Response: This is admitted.**

51. In the May 3, 2024 email, Thomas Melone said "I do want you to be aware that we will be asking about it in your depositions." **Response: This is admitted.**

52. ML and DG withdrew from the proceedings in the Public Utility Commission. **Response: It is admitted that a corporate entity owned or controlled by Maru Leon and/or David Griffin called Down to Earth Golf Course Development Inc. withdrew from "the proceedings." The allegation is, except as aforesaid, DENIED.**

53. Nonetheless, in an email dated November 20, 2024 to ML and DG, Mr. Melone said:

> I assume you have still been following the Chelsea solar case. And I understand that you were in attendance at the Planning Commission meeting that looked at the recent plan for Apple Hill solar.
>
> As you know, in your filing withdrawing from the Chelsea case you listed various reasons for withdrawing, most of which were not very nice.
>
> The Town is repeating those reasons in their filings….
>
> As you also likely know, we requested the PUC to approve deposition subpoenas for you and the PUC denied that. We are appealing that decision to the Vermont Superior Court.
>
> I think the only way that the various lingering issues from your

involvement can be removed is if you send letters to the PUC, the Planning Commission and the Select Board supporting both projects. This way the other parties would stop trying to get you involved, and would eliminate any need for us to depose the two of you.
Please let me know if you are willing to do that.

Response: This is admitted.

54. ML and DG did not "send letters to the PUC, the Planning Commission and the Select Board supporting both projects." **Response: This is admitted.**
55. On January 12, 2025, Thomas Melone filed "Further Comments" in the proceedings in the Public Utility Commission regarding Apple Hill's application for a Certificate of Public Good accusing ML and DG of "defrauding the federal government" and defrauding ML and DG's creditors. **Response: This is admitted.**
56. On August 30, 2024, in In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, 2024 VT 58, the Vermont Supreme Court affirmed the Public Utilities Commission's imposition of a $5,000 fine on various business organizations owned and controlled by Thomas Melone. **Response: This is admitted.**
57. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that even though the Public Utility Commission had issued a Temporary Restraining Order prohibiting site-preparation "developer continued to conduct site clearing activities the following day until the sheriff arrived and ordered all work to cease." **Response: This is admitted.**
58. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that "the PUC also found developer's claims that site preparation was done solely for unrelated farming purposes to be not credible given that developer knew that it did not have a Certificate of Public Good, that it was required to have one, that it needed to clear trees for site preparation, and that clearing had already been denied by the PUC." **Response: This is admitted.**
59. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that "the PUC concluded that developer's failure to comply with its regulatory obligations harm the credibility and integrity of the process, resulting in harm to the statutory scheme and potential harm to public safety and welfare, the environment, and utility customers." **Response: This is admitted.**
60. After an unsuccessful *Petition for Writ of Certiorari* to the United States Supreme Court, at least one of the business organizations owned and controlled by Thomas Melone paid the $5,000 fine. **Response: This is admitted**
61. On January 10, 2025, in proceedings in the Public Utility Commission regarding Apple Hill's application for a Certificate of Public Good, Thomas Melone said that all but two members of the Town of Bennington Select Board were in engaged in an active "cover-up conspiracy" and committed acts of "forgery," engaged in "counterfeiting," filed "false certifications to the state and federal government in violation of criminal statutes" and filed at least one "false statement with the [Public Utility] Commission." **Response: DENIED. Melone admits that he filed comments on January 10, 2025, with the PUC but the Petition's allegation does not accurately reflect what was stated, therefore the allegation is denied.**
62. Thomas Melone told the Public Utility Commission that he was "finalizing" a complaint to be filed in the United States District Court for the District of Vermont against the Town of Bennington for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c). **Response: DENIED. Melone admits that he filed comments on January 10, 2025, with the PUC but the Petition's allegation does not accurately reflect what was stated, therefore the allegation is denied.**

63. A RICO complaint must describe "predicate acts," specific criminal offenses, that, when committed as part of a pattern, can be the basis for civil actions. "Predicate acts" are the building blocks of a RICO claim and must be linked to a criminal "enterprise" to constitute a RICO violation. **Response: DENIED.**

64. Mr. Melone never filed a complaint alleging "RICO" violations by the Town of Bennington in any court. **Response: This is admitted.**

65. On January 29, 2025, Thomas Melone alleged to the Public Utility Commission, but not to the Professional Responsibility Program, that "attorney Bent's representation [of the Town of Bennington] would be a violation of multiple rules of the Vermont and New York attorney Rules of Professional Conduct." **Response: This is admitted.**

66. On March 24, 2025, Thomas Melone sent an email to the members of the House Committee on Energy and Digital Infrastucture (*sic*) and the Senate Committee on Natural Resources and Energy. **Response: This is admitted.**

67. In his March 24, 2025 email, Thomas Melone criticized Public Utility Commission Chair Ed McNamara as well as the Public Utility Commission. **Response: This is admitted.**

68. In the March 24, 2025 email, Mr. Melone asserted that the Public Utility Commission had "weaponized and expanded" and "applied *retroactively"* [emphasis in original] what he described as the "single-plant rule" in order to deny a Certificate of Public Good to Chelsea. **Response: This is admitted.**

69. Thomas Melone went on to say that the Public Utility Commission had made a "demonstrably *false claim"* [emphasis in original] with respect to Apple Hill and Chelsea. **Response: This is admitted.**

70. He asserted that "[w]hat appears to matter to the PUC is political connections." **Response: This is admitted.**

71. He asserted that "when the "single-plant" rule became an obstacle for Global Foundries' solarization of its campus, the PUC ditched the rule for them…" **Response: This is admitted.**

72. He then said: "The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia,* violates Allco's due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation." **Response: This is admitted.**

73. He then told the Legislative committees:

> The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.
>
> I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

Response: This is admitted.

74. On the same day, Thomas Melone sent a copy of his March 24, 2025 email to Public Utility Commission Chair Ed McNamara. **Response: This is admitted.**

75. Thomas Melone did not send a copy of his March 24, 2025 email to any of the other parties in the proceedings involving Apple Hill's applications for a Certificate of Public Good. **Response: This is admitted.**

76. On April 21, 2025, the Clerk of the Public Utility Commission issued a memorandum seeking comments on whether Mr. Melone's March 24, 2025 email violated the PUC's rule against ex parte communications. **Response: This is admitted.**

77. Thomas Melone asserted that the Commission's ex parte rule violated his First Amendment rights. **Response: This is admitted to the extent that the allegation is asserting that Thomas Melone asserted that the application of the Commission's ex parte rule to Thomas Melone's copying the email to**

the Vermont legislative committees to Edward McNamara violated Mr. Melone's First Amendment rights. The allegation is, except as aforesaid, DENIED.

78. On June 17, 2025, the Public Utility Commission ruled that Thomas Melone had violated the PUC's prohibition against ex parte communications with the Commission but declined to impose sanctions. **Response: This is admitted in part and denied in part. Hearing officers, not the Public Utility Commission, issued the June 17, 2025 ruling. The allegation is, except as aforesaid, DENIED.**
79. On January 28, 2025, the Bennington Select Board authorized the Town of Bennington to enter into a contract with Hale Resources, LLC regarding the development of the former Bennington High School. **Response: This is admitted.**
80. On February 25, 2025, Thomas Melone, knowing that the redevelopment of the former high school was a priority for the Town, and while acting as counsel for one of his business organizations, PLH, appealed Bennington's decision to enter into a contract with the developer to the Environmental Division of the Vermont Superior Court. **Response: DENIED.**
81. On February 27, 2025, the Town of Bennington moved to dismiss the appeal asserting that the Environmental Division lacked subject matter jurisdiction in that the appeal did not involve the granting or denial of a permit allowing land development to occur, a prerequisite for subject matter jurisdiction under 24 V.S.A. § 4471. **Response: This is admitted. It is admitted that on February 27, 2025, the Town of Bennington moved to dismiss the appeal asserting that the Environmental Division lacked subject matter jurisdiction. The allegation is, except as aforesaid, DENIED.**
82. On February 28, 2025 the Environmental Division issued an entry order stating: "the court believes it lacks subject matter jurisdiction over this appeal and is prepared to dismiss the appeal sua sponte," but gave PLH until March 3, 2025 to file a response to the Bennington's *Motion to Dismiss.* **Response: This is admitted.**
83. PLH filed at least one pleading opposing the Bennington's *Motion to Dismiss* for lack of subject matter jurisdiction. **Response: This is admitted.**
84. On March 6, 2025, the Environmental Division dismissed PLH's appeal on the grounds that the court lacked subject matter jurisdiction. **Response: This is admitted.**
85. At the time Thomas Malone (*sic*) caused PLH to appeal to the Environmental Division, Thomas Melone knew, or should have known, that the Environmental Division lacked subject matter jurisdiction. **Response: DENIED.**
86. Thomas Malone (*sic*) caused PLH to appeal the Environmental Division's dismissal of PLH's appeal to the Vermont Supreme Court. **Response: This is admitted.**
87. Thomas Malone (*sic*) caused PLH to file suit against the Town of Bennington in the Vermont Superior Court, Civil Division, Chittenden Unit, alleging that Bennington's contract with the Bennington High developer was "municipal waste." **Response: This is admitted.**
88. Thomas Melone and Michael Melone told agents and employees of the Town Bennington that PLH would withdraw the appeal from the dismissal of its action in the Environmental Division, withdraw the allegation of "municipal waste," and would not oppose the Bennington High project if the Town of Bennington withdrew its opposition to Apple Hill's petition for a Certificate of Public Good. **Response: DENIED.**
89. In March 2025, the Professional Responsibility Program received a written complaint from a Vermont attorney, Merrill Bent. **Response: This is admitted.**
90. Ms. Bent alleged that both Thomas Melone and Michael Melone had, on multiple occasions, violated the Vermont Rules of Professional Conduct. **Response: Respondent admits that he received a written complaint from a Vermont attorney, Merrill Bent, which is part of the record and speaks for itself, Respondent otherwise DENIES the allegation.**
91. Ms. Bent said she had learned of the violations of the Rules while representing the Town of Bennington in (a) its opposition to Apple Hill's and Chelsea's applications for

Certificates of Public Good and (b) efforts to develop the former Bennington High School. **Response: Respondent admits that he received a written complaint from a Vermont attorney, Merrill Bent, which is part of the record and speaks for itself, Respondent otherwise DENIES the allegation.**

92. In her complaint, Ms. Bent said she acted pursuant to her obligations under Rule 8.3 of the Vermont Rules of Professional Conduct. **Response: Respondent admits that he received a written complaint from a Vermont attorney, Merrill Bent, which is part of the record and speaks for itself, Respondent otherwise DENIES the allegation.**

93. Rule 8.3(a) mandates a report to the Professional Responsibility Program when a lawyer "knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." **Response: Paragraph 93 of the Petition sets forth a legal conclusion to which no answer is necessary and Respondent leaves Mr. Hanley to his proof. Respondent admits that he received a written complaint from a Vermont attorney, Merrill Bent, which is part of the record and speaks for itself. The allegation is, except as aforesaid, DENIED.**

94. Screening Counsel Andrew R. Strauss reviewed Ms. Bent's report and informed Thomas Melone:

> In my judgment, the conduct which is the subject of the complaint appears to constitute misconduct that may require disciplinary sanctions. Therefore, pursuant to Rule 12.C of Administrative Order 9 [of the Vermont Supreme Court], I am referring the complaint to Disciplinary Counsel Jon T. Alexander.

Response: Respondent admits that Screening Counsel Andrew R. Strauss sent Respondent a communication with the quoted language. That communication, which is part of the record, and speaks for itself. Respondent otherwise DENIES the allegation.

95. On April 23, 2025, Thomas Melone wrote a letter to Screening Counsel Strauss, and said "Attorney Bent's allegations are actionable defamation." Thomas Moore (*sic*) went on to say "the allegations in the complaint are not only meritless, but actionable defamation per se." **Response: This is admitted.**

96. Thomas Melone then said "Bent's accusation is also actionable as a claim for false light." **Response: This is admitted.**

97. Thomas Melone told Screening Counsel Strauss that he had heard that a paralegal who had been employed by Ms. Bent's firm had been "verbally accosted by "[Merrill Bent]." (Brackets in original.) **Response: DENIED.**

98. Thomas Melone's statements suggested or implied that Ms. Bent had treated at least one employee of her law firm improperly. **Response: DENIED.**

99. Thomas Melone then told screening counsel Strauss "I do not have direct information as to which of the four partners [in Ms. Bent's firm] was accused of abusive behaviors (*sic*)." **Response: This is admitted.**

100. Thomas Melone did not tell Mr. Strauss why he had included the allegation that Ms. Bent had "verbally accosted" a female employee. **Response: Respondent admits that he sent the referenced letter April 23, 2025, to Screening Counsel Andrew R. Strauss and that Screening Counsel Andrew R. Strauss did not ask any questions regarding the contents of the letter, which letter is part of the record and speaks for itself. Respondent denies the allegation that Mr. Melone alleged that "Ms. Bent had 'verbally accosted' a female employee." As Petition paragraph 99 states Mr. Melone specifically stated that he did not have direct information as to which of the four partners in Ms. Bent's law firm was accused of the abusive behavior. Respondent otherwise DENIES the allegation.**

101. In his April 23, 2025 letter, Thomas Melone told Screening Counsel Strauss that Vermont Rule of Professional Conduct 3.7 "prohibited [Ms. Bent] from representing the Bennington Select Board." **Response: Respondent admits that he sent the referenced letter April 23, 2025, to Screening Counsel Andrew R. Strauss, which letter is part**

of the record and speaks for itself. Respondent otherwise DENIES the allegation.

102. Thomas Melone has never filed a complaint against Ms. Bent with the Professional Responsibility Program. **Response: DENIED. While not reporting those alleged violations would not be a violation of Rule 8.3 in Mr. Melone's view, the April 23, 2025 letter itself is sufficient to report those violations. The PRB has to Respondent's knowledge ignored those reported violations.**

103. On April 23, 2025, at a time when Ms. Bent represented the Town of Bennington, and Thomas Melone knew that Ms. Bent represented the Town of Bennington, Thomas Melone sent the following email to Ms. Bent and various elected officials and employees of the Town:

> Attached you will find the response that I submitted to the Professional Responsibility Board in response to the ethics complaint against me. I am now finalizing the defamation suit which I expect will be able to be filed next week. See excerpt attached as well.

Response: Admitted that Respondent sent the referenced email to various elected officials and employees of the Town. Respondent otherwise DENIES the allegation.

104. Thomas Melone attached not only his April 23, 2025 letter to Screening Counsel Strauss, but also included what he called an "excerpt" from a "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights." **Response: This is admitted.**

105. Thomas Melone was the author of the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights." **Response: This is admitted.**

106. The "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" listed both Ms. Bent and the Town of Bennington as defendants. **Response: This is admitted.**

107. Thomas Melone told the recipients of the email that he would file the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" in the United States District Court for the District of Vermont. **Response: DENIED**.

108. The "excerpt" from the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" also stated:

> Plaintiff alleges that Bent filed the PRB Complaint on behalf of the Town of Bennington.

Response: This is admitted.

109. The "excerpt" from Thomas Melone's "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" does not disclose how he came to the conclusion that Ms. Bent filed her complaint "on behalf of the Town of Bennington." **Response: Admitted that Respondent sent the referenced email to various elected officials and employees of the Town, Respondent otherwise DENIES the allegation.**

110. At the time Thomas Melone sent the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights," no official, agent or employee of the Town of Bennington, other than Ms. Bent, was aware that Ms. Bent had filed a confidential complaint with the Professional Responsibility Program. **Response: DENIED**.

111. When asked by Ms. Bent to stop communicating with officials, agents and employees of the Town of Bennington, Thomas Melone refused to do so. **Response: Admitted that Respondent asserted that he has the right under the First Amendment to the United States Constitution to contact government officials of the Town of Bennington, Respondent otherwise DENIES the allegation.**

112. In emails to Mr. Bent, Thomas Melone asserted that he had the right to communicate with Bennington officials and employees because of the First Amendment right to petition the government for the redress of grievances. **Response: Admitted that Respondent asserted that he has the right under the First Amendment to the United States Constitution to contact government officials of the Town of Bennington, Respondent otherwise DENIES the allegation.**

113. On multiple dates in 2025, Thomas Melone sent additional emails to Bennington officials and employees. **Response: This is admitted.**

Petition paragraphs 114, 116, 118, 120, 122, 124, 126 and 131 are denied or admitted to the same extent as the referenced paragraphs are so denied or admitted above.

Petition paragraphs 115, 117, 119, 121, 123, 125, 127, 128, 129, 130, 132, 133 and 134 are DENIED.

Respondent **DENIES** the Legal Claims made by the Petition in Counts I to VIII.
Respondent **DENIES** the conclusions made by the Petition.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
Michael Hanley lacks legal authority to investigate, present or pursue the Complaint.

SECOND AFFIRMATIVE DEFENSE
The Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE
The Petition engages in unlawful selective enforcement, as is evidenced, for example, by the failure of the PRB to pursue Respondent's claims against Ms. Bent once they were presented to Screening Counsel, and by the failure of the PRB to pursue claims against every attorney that has lost a case based upon lack of subject matter jurisdiction and by the failure to pursue claims against every attorney that is alleged to have made an ex parte communication.

FOURTH AFFIRMATIVE DEFENSE
The Petition is a violation of Respondent's civil and constitutional rights under Federal and Vermont constitutions and law, and a violation of 42 U.S.C. §1983

FIFTH AFFIRMATIVE DEFENSE
The Petition is an unlawful SLAPP complaint in violation of 12 V.S.A. § 1041.

SIXTH AFFIRMATIVE DEFENSE
The truth is an affirmative defense to Count I and Count III and Count VI and Count VIII.

SEVENTH AFFIRMATIVE DEFENSE
Merrill Bent was never properly appointed in an open meeting to represent the Town of Bennington.

EIGHTH AFFIRMATIVE DEFENSE
Vermont Rule 8.5 bars the claims in the Petition

NINTH AFFIRMATIVE DEFENSE
Count III, IV and VIII are barred by the double jeopardy clause of the Federal and Vermont Constitutions

TENTH AFFIRMATIVE DEFENSE

All counts are barred by the *Noerr-Pennington* doctrine, by qualified or absolute immunity, and by the First, Fifth and Eighth Amendments to the United States Constitution and the corresponding provisions of the Vermont Constitution

ELEVENTH AFFIRMATIVE DEFENSE

Counts I, III, IV, V and VIII are barred by estoppel.

TWELVTH AFFIRMATIVE DEFENSE

Count VI is barred because ABA Model Rule 12 is not an enforcement standard.

THIRTEENTH AFFIRMATIVE DEFENSE

Respondent reserves its rights to amend this Answer and Affirmative Defenses to assert additional affirmative defenses on the completion of their investigation and discovery herein.

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
PRB File No. 25-120

CERTIFICATE OF SERVICE

I certify that on October 27, 2025, I sent the attached **SPECIAL MOTION TO STRIKE UNDER 12 V.S.A. § 1041, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, MOTION FOR A MORE DEFINITE STATEMENT** by email to Michael Hanley at mfhanley@plantehanley.com.

By: */s/ Thomas Melone*
Thomas Melone
601 S Ocean Blvd
Delray Beach, FL 33483 06510
Thomas.Melone@AllcoUS.com
212-681-1120