STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Thomas Melone
PRB File No. 120-2025

CONFLICT DISCIPLINARY COUNSEL'S OBJECTION TO THOMAS MELONE'S *SPECIAL MOTION TO STRIKE*

Thomas Melone's *Special Motion to Strike Under 12 V.S.A. § 1041* should be denied.[1]

I. Introduction – SLAPPS

SLAPPs are Strategic Lawsuits Against Public Participation. They are meritless lawsuits filed with the goal of silencing opponents by burdening them with the expense and travails of litigation. "The object of SLAPP suits is not to win them, but to use litigation to intimidate opponents' exercise of petition and speech." Duracrat Corp v. Holmes Prods. Corp., 427 Mass 156 (1998).

Vermont's anti-SLAPP statute, 12 V.S.A. § 1041, is designed to free citizens from the burdens of defending SLAPPS by providing a mechanism for their prompt dismissal and the recovery of attorney's fees. The quintessential SLAPP suit is a defamation lawsuit brought by a real estate developer against people who object to the developer's request for a permit from a regulator. Indeed, the anti-SLAPP statute is designed to protect people from the type of conduct that resulted in the *Petition for Misconduct*.

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[1] Mr. Melone filed his 232 page *Special Motion to Strike Under 12 V.S.A. § 1041* on October 27, 2025. However, four days earlier, on October 23, 2025, he filed a 164 page *Verified Complaint for Extraordinary Relief* in the Supreme Court asserting that the *Petition of Misconduct* "is a nullity and must be dismissed." Arguably, the filing in the Supreme Court temporarily deprived the Hearing Panel of subject matter jurisdiction. This potential issue was resolved on October 30, 2025 when the Supreme Court issued an *Entry Order* which states, in full: " Petitioner's petition for extraordinary relief fails to satisfy the criteria set forth in V.R.A.P. 21, and is denied."

Vermont's anti-SLAPP statute provides for a two-step process. First, the defendant prove that his or her conduct was connected to constitutionally protected activity related to a public issue. 12 V.S. A. §1041(a). If this happens, the burden shifts to the plaintiff who must show that the defendant's conduct "was devoid of any reasonable factual support and any arguable basis in law[,] and . . . the defendant's acts caused actual injury to the plaintiff. 12 V. S. A. §1041(e)(1).

If a court grants the defendant's special motion to strike, "the court shall award costs and reasonable attorneys fees to the defendant." 12 V.S.A. § 1041(f)(1). "If the court denies the special motion to strike and finds the [defendant's] motion is frivolous or is intended solely to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to the plaintiff." Id. The award of legal fees to the prevailimng party in anti-SLAPP proceedings is mandatory, not discretionary. Cornelius v. The Chronicle, Inc., 2019 VT 4 ¶ 19 ("We conclude that the plain language 'shall award' indicates that the award of fees is mandatory when a motion to strike is granted"); also see, Soon Kwon v. Eaton, 2013 VT 73 ¶13 (When a "statute requires an award of attorney's fees, it is not within the trial court's discretion to determine whether to award such fees").

Whether a case comes within the anti-SLAPP statute is a question of law. The determination is made on the basis of "the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based." 12 V.S.A. §1041(e)(2).

Although 12 V.S.A. § 1041 does not set forth the burden of proof that a defendant making a special motion to strike must satisfy, the United States District Court for the District of Vermont has ruled that a special motion is akin to a summary judgment motion. Bible & Gospel Trust v. Twinam, 2008 WL 5245644, at 1 (D. Vt. 2008); Jang v. Trustees of St. Johnbury Academy, 31 F. Supp. 3d 312, 334 (D. Vt. 2018). As a result, under V.R.Civ.P. 56, the Hearing

Panel must view the evidence in the light most favorable to the *Petition of Misconduct* and draw all reasonable inferences in favor of the *Petition.*

Finally, it is important to remember that the anti-SLAPP statute must be construed as limited in scope and that great caution should be exercised in its interpretation. Although remedial statutes are ordinarily given a liberal construction, this is not so with respect to the anti-SLAPP statute. Because the statute attempts to define the proper intersection between multiple constitutional rights, the Vermont Supreme Court has concluded that "an overly broad interpretation of the statute would be inappropriate." Felis v. Downs Rachlin Martin PLLC, 2015 VT129, ¶ 41.

II. The Hearing Panel Lacks the Power to Adjudicate a Special Motion to Strike.

The burden is upon Mr. Melone to show that the Hearing Panel has the power to adjudicate his *Special Motion to Strike*. Under Chapter II, § 30 of the Vermont Constitution, "[t]he Supreme Court shall have . . . disciplinary authority concerning all judicial officers and attorneys at law in the State." Pursuant to the power granted to it by the Constitution, the Court adopted Administrative Order 9, "Permanent Rules Governing Establishment and Operation of the Professional Responsibility Program." Under A.O. 9, Rule 2, the Chair of the Programs appoints Hearing Panels consisting of two members of the bar and one public member. Rule 2(C) states:

> C. Powers and Duties. Hearing panels shall adjudicate all formal disciplinary and disability proceedings. The powers and duties of the hearing panel shall include:
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> (1) Ruling upon requests from disciplinary counsel for findings of probable cause;
> (2) Conducting all disability and disciplinary hearings;
> (3) Making findings of fact and conclusions of law;
> (4) Imposing sanctions in accordance with Rule

11.D(5); and

(5) Undertaking other related tasks assigned by the Board.

The Rule gives no additional powers or duties to a hearing panel. A hearing panel has no inherent powers. A hearing panel only has the power to adjudicate "disciplinary and disability proceedings" brought in conjunction with the Supreme Court's "disciplinary authority concerning . . . attorneys at law in the State." Nothing in Rule 2 allows the Hearing Panel to adjudicate a common law or statutory claim, or award a common law or statutory remedy.[2]

III. This Disciplinary Proceeding Is Not An "Action;" or This Disciplinary Proceeding Is An "An Enforcement Action."

12 V.S.A. § 1041(a) gives remedies to a "defendant in an action." The statute does not define "an action," but the title of the anti-SLAPP statute contains the phrase "Strategic Lawsuits." It is obvious that the statute creates a remedy for a defendant in an "action," commonly called a "lawsuit." Mr. Melone is a respondent in a disciplinary proceeding; he is not a defendant in a civil action or a lawsuit.

However, if one assumes that a disciplinary proceeding is an "action," then one must assume that this proceeding is "an enforcement action." 12 V.S.A. §1041(h)(1) expressly provides: " this section shall not apply to . . . any enforcement action or criminal proceeding brought by the State of Vermont or any political subdivision thereof." Although there are no

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[2] Assuming Mr. Melone seeks attorney's fees from Conflict Disciplinary Counsel, it is important to remember that official immunity shields public officials from lawsuits against them based on activities within the scope of their official duties. Polidor v. Mahady, 130 Vt. 173, 175, 287 A.2d 841, 843 (1972) (A prosecutor is immune from civil liability); also see, Levinsky v. Diamond, 1512 Vt. 178, 193-194 (1989); also see, ABA Model Rule 12 which provides that "disciplinary counsel and staff shall be absolutely immune from civil suit for all conduct in the course of their official duties."

Vermont cases on point, Vermont's anti-SLAPP statute is similar to the Massachusetts anti-SLAPP statute. Mass. G.L. c. 231§ 59H. In Commonwealth v. Exxon Mobil Corporation, 489 Mass 724, 187 N.E.3d 393 (2022), the Supreme Judicial Court of Massachusetts held that a defendant in a civil enforcement action brought by the Massachusetts Attorney General alleging unfair and deceptive trade practices could not pursue a special motion to dismiss, even though the Massachusetts statute, unlike the Vermont statute, contained no express carve-out for enforcement actions. The Supreme Judicial Court of Maine came to the same conclusion in Town of Madawaska v. Cayer, 2014 ME 121 and held that property owners who were defendants in a zoning enforcement action could not bring a special motion to dismiss under Maine's anti-SLAPP statute.

Mr. Melone cites a case from Texas, Comm.for Lawyer Discipline v. Rosales, 577 S.W.3d 305 (Tex. App. 2019), where an intermediate appellate court ruled that a Texas attorney could file a special motion to strike in a disciplinary proceeding. However, in a footnote, Mr. Melone concedes that because of this ruling the Texas Legislature amended the anti-SLAPP statute to exclude disciplinary proceedings. What Mr. Melone failed to disclose was that in Texas disciplinary proceedings are brought in the equivalent of our Superior Court and a respondent is entitled to a trial by jury. In any event, this proceeding is in Vermont, not Texas, and given the amendment of the Texas statute, Mr. Melone could not obtain the relief he seeks in his *Special Motion to Strike* even if he were in Texas.[3]

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[3] On October 12, 2021, the Texas Supreme Court accepted the "resignation, in lieu of discipline" of Omar Weaver Rosales, the Texas lawyer in the case cited by Mr. Melone. Vermont does not allow "resignation in lieu of discipline." A.O. 9, Rule 19.

IV. Mr. Melone Has Failed to Prove That His Conduct Arose from "The Right of Free Speech" or the Right to "Petition the Government for Redress of Grievances."

This disciplinary proceeding arises from Mr. Melone's efforts to obtain permits necessary for the operation of a commercial enterprise, a facility designed to generate electricity for sale to public utilities. His speech and actions were related to commercial activity. While the First Amendment provides some protection to commercial speech, it receives less protection than political speech or artistic expression. Central Hudson Gas and Electric Corp. v. Pub. Service Comm., 447 U.S. 557 (1980). The fact that commercial speech receives some protection under the First Amendment does not lead to the conclusion that Mr. Melone's commercial speech is protected by the anti-SLAPP statute. The First Amendment does not require that Vermont provide the same protection to commercial speech that it provides to political or artistic speech, or that Vermont's anti-SLAPP statute must apply to commercial speech.

Jang v. Trustees of St. Johnbury Academy, *supra.*, while not controlling, is directly on point. Jang sued the Academy and KDC for defamation because of a letter they sent to a government official regarding the establishment of a satellite campus in Korea. The Academy and KDC filed special motions to dismiss under the anti-SLAPP statute. After concluding that "the Academy and [and KDC] are not concerned citizens; instead they have a business interest in the approval and establishment of a school" and "the Academy and KDC were focused on protecting those business interests," the federal court held that the defendants were not entitled to the protections provided by the anti-SLAPP statute. Id. at 336.

V. Mr. Melone Has Failed to Prove That His Conduct Was "In Connection With a Public Issue."

In order to prevail on a special motion to strike, Mr. Melone must prove that his activity

was "in connection with a public issue." In Felis v. Downs Rachlin Martin PLLC, 2015 VT 29, the Supreme Court gave that phrase a narrow construction and ruled that a defendant who provided opinions regarding the value of property owned by the parties in a divorce proceeding did not come within the anti-SLAPP statute because the divorce was not a matter of public interest.

The Supreme Court's most recent decision on the meaning of "in connection with a public issue" is Polak v. Ramirez-Diaz, 2025 VT 9. The Court said that even if a broad and amorphous concept of public interest could be connected to the dispute between the parties, this was not sufficient to meet the requirements of the anti-SLAPP statute. Noting that there was "no evidence that plaintiffs . . . were public figures or were in the public eye" and that the "defendant's allegations did not affect large numbers of people beyond themselves and plaintiffs," the Court ruled that the defendants had failed to demonstrate that their statements and activity were "in connection with a public issue."

Viewing the evidence in the light most favorable to the *Petition of Misconduct* and drawing all reasonable inferences in favor of the *Petition* compels the conclusion that Mr. Melone has failed to meet his burden of showing that he acted "in connection with a public issue."

VI. The Conduct Described in the *Petition of Misconduct* was "Devoid of Any Reasonable Factual Support and Any Arguable Basis in Law."

Mr. Melone makes three arguments in his *Special Motion to Strike*. First, he asserts he did not do some of the things described in the *Petition of Misconduct*. Second, Mr. Melone asserts that he was proceeding "pro se" and, as a result, the *Vermont Rules of Professional Conduct* do not apply. Third, he asserts that the United States Constitution gives him the right

to do the things described in the *Petition*.

All three arguments fail. At stated at the outset, the Hearing Panel must view the facts in the light most favorable to the *Petition of Misconduct* and draw all reasonable inferences in favor of the *Petition*. Moreover, the *Vermont Rules of Professional Conduct* are not suspended when a lawyer represents himself or herself. Finally, no member of the bar of this state has a constitutional right to violate the *Vermont Rules of Professional Conduct*, to give false testimony, to have *ex parte* communications with judicial or quasi-judicial officials, to baselessly accuse multiple opponents of criminal conduct, to threaten to bring, and to bring, meritless lawsuits against opponents of one's commercial endeavors, to cause injury to third parties, and to make repeated false statements of fact and law to courts and administrative bodies. Mr. Melone's assertions are "devoid of any reasonable factual support and any arguable basis in law."

VII. Conclusion

For the reasons stated, Thomas Melone's *Special Motion to Strike* the *Petition of Misconduct* should be denied.

Dated: October 31, 2025

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CERTIFICATE OF SERVICE

I certify that on October 31, 2025 I filed *Conflict Disciplinary Counsel's Objection to Thomas Melons's Special Motion to Strike* with the Professional Responsibility Program by sending the same to Merrick Grutchfield via email at:

merrick.grutchfield@vermont.gov

with a copy to the Respondent via email to:

Thomas.Melone@gmail.com

Dated: October 31, 2025

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