

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

**CONFLICT DISCIPLINARY COUNSEL’S OBJECTIONS TO
*THOMAS MELONE’S MOTION TO DISMISS AND
MOTION FOR A MORE DEFINITE STATEMENT***

Thomas Melone asserts that “there is no provision of A.O. No. 9 that authorizes Michael Hanley to act as disciplinary counsel”¹ and that the *Petition of Misconduct* “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).”²

Mr. Melone’s *Motion to Dismiss* and his *Motion for a More Definite Statement* should be denied.

I. I Was Properly Appointed as Conflict Disciplinary Counsel

A.O. 9, Rule 1(E)(1) states that the “Powers and Duties” of “The Board” include the power to “[a]dopt internal procedures for the administration of the program that are consistent with these rules,” and that under Rule 1(E)(1)(c) the Board’s “powers and duties” include “the appointment of alternates when any member of a hearing panel, bar counsel, disciplinary counsel, or staff has a conflict or is otherwise disqualified or unable to serve.” PRB Board Policy 22 provides that “[w]hen 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

¹ *Motion to Dismiss*, p. 7.

² *Id.*, p. 3.

appoint an alternate.”³

Disciplinary Counsel notified the Board that he had a conflict and the Board Chair appointed me as Conflict Disciplinary Counsel. A copy of my appointment is *Exhibit 1*.

II. The *Petition For Misconduct* Conforms to the Requirements of V. R. Civ. P. 8

Disciplinary proceedings are governed by the Vermont Rules of Civil Procedure and the Vermont Rules of Evidence.⁴

V. R. Civ. P. 8(a) provides that “a pleading that states a claim for relief must contain (1) a short and plain statement of the grounds for the court’s jurisdiction; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought”

The *Petition for Misconduct* conforms to the requirements of Rule 8(a).

Mr. Melone demands a petition that is not short and plain. He demands the type of pleading he regularly files. As has been noted by District Judge Crawford, Mr. Melone regularly files lengthy documents that do not conform to the Rules of Civil Procedure.⁵ Indeed, Mr. Melone filed two documents in response to the *Petition of Misconduct*. The first, his *Special Motion to Strike Under 12 V. S. A. § 1041, Motion to Dismiss for Failure to State a Claim and Motion for a More Define Statement*, filed with the Professional Responsibility Program, has 232 pages. The second, his *Verified Complaint for Extraordinary Relief*, filed in the Vermont Supreme Court, has 164 pages. Both filings can fairly be described as long and elaborate.

³ Also see *In re Watts*, 2024 Vt 48, ¶ 22, n. 1.

⁴ A.O. 9, Rule 20(B).

⁵ *Allco Finance Ltd. v Roisman*, No. 20-cv-103; 2022 WL 2528328 (D. Vt. July 7, 2022) and 2024 WL 52776715, (D. Vt. November 19, 2024).

The *Petition for Misconduct* is different from Mr. Melone's filings. The *Petition* conforms to the requirement that it be "simple, concise, and direct."

In the *Petition*, I assert eight violations of the Rules of Professional Conduct.

Count I asserts that Thomas Melone's claims in the Public Utilities Commission that the Town of Bennington and its officials engaged in a wide variety of criminal acts violated:

- Rule 3.5(d), in that the statements were undignified or discourteous conduct which was degrading or disrupting to tribunal;
- Rule 3.3, in that Mr. Melone showed a lack of candor towards the tribunal in that the statements were false;
- Rule 4.5, by threatening to present criminal charges in order to gain advantage in civil matters, Mr. Melone's company's applications for Certificates of Public Good; and
- Rule 8.4(d), in that his conduct was prejudicial to the administration of justice.

Count II asserts that Mr. Melone violated Rule 4.5 by threatening to present criminal charges against two individuals who opposed his company's applications for Certificates of Public Good and violated Rule 8.4(d) in that his conduct was prejudicial to the administration of justice.

Count III asserts that Mr. Melone's site preparation in connection with a solar-electric energy generation facility in Bennington without a Certificate of Public Good, and his "not credible" testimony in the Public Utility Commission about that site preparation, violated:

- Rule 3.5(d), in that it was undignified or discourteous conduct which was degrading or disrupting to the tribunal;
- Rule 3.3, in that it showed a lack of candor towards the tribunal; and

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

Count IV alleges that Thomas Melone's March 24, 2025 email to the Public Utilities Commission chair Ed McNamara violated Rule 3.5(b)(1) and 8.4(d) in that it was an *ex parte* communication with a person acting in a judicial or quasi-judicial capacity and it was conduct prejudicial to the administration of justice.

Count V alleges that Mr. Melone's conduct with respect to the Bennington High Project violated:

- Rule 3.1, when he brought or caused to be brought a legal proceeding in the Environmental Division when there was no basis in law to assert that it has subject matter jurisdiction;
- Rule 3.3(a)(1), in that his statements to the Environmental Division and the Vermont Supreme Court regarding the subject matter jurisdiction of the Environmental Court were false statements of law;
- Rule 4.4(a), in that Mr. Melone's means and methods had no substantial purpose other than to delay a third person, the Bennington High developer, in order to gain advantage in connection with his company's applications for Certificates of Public Good; and
- Rule 8.4(d), in that his conduct was prejudicial to the administration of justice.

Count VI alleges that Mr. Melone's statements to both Screening Counsel and the complaining witness in this matter violated:

- Rule 3.3(a)(1), in that Mr. Melone showed a lack of candor towards the Program by falsely asserting that the complaining witness was liable to him for defamation when he knew or should have known that the complaining witnesses is absolutely

- privileged and no lawsuit may be predicated on her complaints to the Program;
- Rule 4.4(a), in that he showed disrespect for the complaining witnesses's rights and used means that had no substantial purpose other than to embarrass, delay or burden the complaining witness; and
 - Rule 8.4(d), in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate the complaining witness.

Count VII asserts that Mr. Melone's emails to the complaining witness's client, including, but not limited to, his threats to sue the client for defamation and other torts, violated the "no contact" provision set forth in Rule 4.2 and violated Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate the complaining witness.

Finally, Count VIII, citing In Re Wright,⁶ asserts that over the course of many years Mr. Melone has engaged in a consistent pattern of misconduct in a series of transactions which reflect more than poor judgment and, instead, show an unfitness to practice law.

III. The Petition Meets the Requirements of the Due Process Clause and A.O. 9 Rule 13(D)(1)(b) and Would Survive a Motion under V. R. Civ. P. 12(b)(6).

Disciplinary proceedings in Vermont are neither civil nor criminal, but basic due process rights are accorded to attorneys. A license to practice law is a property interest and cannot be infringed without due process. An attorney charged with ethical violations has a right to be given a full opportunity to explain the circumstances of an alleged offense and to offer testimony in mitigation regarding any possible sanction. Those interests are balanced against the importance of the public interest in expeditiously resolving complaints of misconduct. As a result, a

⁶ 131 Vt. 473 (1973).

respondent must receive notice of the grounds for discipline, must be afforded a hearing, and the opportunity to present evidence and question witnesses.⁷

With respect to Mr. Melone's due process rights, there is no question but that the Petition meets the basic requirement that the respondent receive notice of the proposed grounds for discipline.

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." This rule provides more than due process requires. Still, there is no question but that the *Petition* meets the requirements of Rule 13(D)(1)(b).

Finally, since these proceedings are governed by the Vermont Rules of Civil Procedure, the Panel should consider whether the Petition would survive a motion under Rule 12(b)(6) asserting that the *Petition* failed to state a claim upon which relief can be granted,⁸ even though Mr. Melone failed to cite this rule.

When considering a motion to dismiss, the Hearing Panel "must assume as true all factual allegations pleaded by the nonmoving party."⁹ Moreover, there is an "exceedingly low" threshold for withstanding a V. R. Civ. P. 12(b)(6) motion to dismiss. Motions to dismiss for

⁷ In re Watts, 2024 VT 48, ¶ 19; In re Fink, 2011 VT 42, ¶ 31; LaFlamme v. Essex Junction Sch. Dist., 170 Vt. 475, 481.

⁸ Mr. Melone's *Motion to Dismiss* does not claim that the Professional Responsibility Program lacks subject-matter jurisdiction, lacks personal jurisdiction over him, is an improper venue, that there is been insufficient service of process, or that someone other than him should have been made a party to these proceedings. As a result, the only issue is whether the *Petition* states a valid claim for relief.

⁹ Amiot v. Ames, 166 Vt. 288, 291; Prive v. Vermont Asbestos Group, 2010 VT 2, ¶ 2.

failure to state a claim are disfavored and should be rarely granted. Dismissal under V. R. Civ. P. 12(b)(6) is proper only when it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.”¹⁰

Assuming the factual allegations of the *Petition* are true, it is clear that Mr. Melone, had he tried, would not have been able to show that it is beyond doubt that there are no facts or circumstances that would result in a finding of misconduct.

IV. The Motion for a More Definite Statement Should be Denied.

Mr. Melone’s claim that the *Petition* is a “shotgun or puzzle pleading lacking the clarity required by due process and VT. A.O. 9 Rule 13(D)(1)(b)”¹¹ simply is not true. On the contrary, the *Petition* is far more detailed than the petitions in many other disciplinary proceedings in Vermont and far exceeds the requirements of due process. Mr. Melone has received notice of the grounds for discipline and he can utilize the discovery tools available under the Vermont Rules of Civil Procedure to gain additional information.

V. Conclusion

The denial of the *Motion to Dismiss* and the *Motion for a More Definite Statement* would not mean that Mr. Melone’s claims that the *Petition* “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”¹² because he a “vocal” and “unpopular” “climate warrior,”¹³ cannot be

¹⁰ Levinsky v. Diamond, 140 Vt. 595, 600-01 (1987); Colby v. Umbrella, Inc. 2008 VT 20, ¶ 8; Prive v. Vermont Asbestos Group, 2010 VT 2, ¶ 14.

¹¹ *Motion to Dismiss*, p. 3.

¹² Id., p. 3.

¹³ Id., p. 1.

heard. It would only mean that he would not avoid a hearing on the merits governed by the Rules of Evidence. This is a fair outcome.

Dated: November 4, 2025

/s/Michael F. Hanley

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Conflict Disciplinary Counsel
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EXHIBIT 1

Carolyn Anderson, Esq., Chair
Caryn Waxman, Esq., Vice-Chair
Hon. David Howard
Amelia Darrow, Esq.
Kevin O'Donnell
Susan Fay
Larry Cassidy



Merrick Grutchfield
Program Administrator

109 State Street
Montpelier, Vermont
05609-0703
802.828.6551

May 20, 2025

Michael F. Hanley
82 Fogg Farm Road
White River Junction, VT 05001

RE: PRB-120-2025
Thomas Michael Melone, Esq. - Respondent
Merrill E. Bent- Complainant

Dear Attorney

Thank you for agreeing to serve as Conflict Disciplinary Counsel in the above referenced matter. We understand that your partner, Paul Perkins, may assist you on this matter and authorize the same. A copy of the file has been placed in a shared location by Brandy Sickles.

The process is set out in Rule 13 of Administrative Order 9.

If you will be billing for your time spent on this case, please send an itemized, monthly bill to my attention. Due to the confidential nature of our complaints and the fact that your bill will be processed by other departments, the bill should be somewhat redacted; please refer to the case by docket number and reference the attorney as "respondent." The assigned counsel rate for attorneys hired by the Professional Responsibility Board is \$ 150 per hour. Finally, at the conclusion of this case, please return the complete file to Brandy Sickles.

Bar Counsel Michael Kennedy is available to provide you with guidance on the process but is not authorized to discuss the substance of the complaint with you.

Please contact me with any questions. Thank you so much for agreeing to undertake this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Merrick Grutchfield".

Merrick Grutchfield
Program Administrator

attachments

cc: Carolyn Anderson, Esq. – Chair

STATE OF VERMONT
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CERTIFICATE OF SERVICE

I certify that today I filed *Conflict Disciplinary Counsel's Objection to Thomas Melons's Motion to Dismiss and Motion for a More Definite Statement* 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: November 4, 2025

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

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

CERTIFICATE OF SERVICE

I certify that on November 6, 2025 I filed a *Conflict Disciplinary Counsel's Objection to Thomas Melons's Motion to Dismiss and Motion for a More Definite Statement* with the Professional Responsibility Program by sending it and a *Certificate of Service* to Merrick Grutchfield via email at:

merrick.grutchfield@vtcourts.gov

with a copy to the Respondent via email to:

Thomas.Melone@gmail.com

Dated: November 6, 2025

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