STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

CONFLICT DISCIPLINARY COUNSEL'S MOTION TO QUASH THOMAS MELONE'S SUBPOENA TO EDWARD MCNAMARA

I. A Brief Summary of the Charges Against Mr. Melone Because of His March 24, 2025 Email to Edward McNamara, Chair of the Public Utility Commission

At paragraphs 66 through 78 the *Petition of Misconduct,* I allege that on March 24, 2025, while a company owned by Thomas Melone was seeking a Certificate of Public Good from the Public Utilitiy Commission (PUC), Thomas Melone sent an email to the members of a committee of the Vermont House of Representatives criticizing both Edward McNamara, the PUC Chair, and the PUC. I report that in that email Mr. Melone asserted that:

- the Public Utility Commission had "weaponized and expanded" and "applied retroactively" what he described as the "single-plant rule" in order to deny a Certificate of Public Good to Chelsea;
- the Public Utility Commission had made a "demonstrably false claim" with respect to Apple Hill and Chelsea;
- "[w]hat appears to matter to the PUC is political connections;"
- "when the 'single-plant' rule became an obstacle for Global Foundries' solarization of its campus, the PUC ditched the rule for them;"
- "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."

I then allege that on the same day, Thomas Melone sent a copy of his email to Mr. McNamara, but did not send a copy of the email to any of the other parties in the proceedings in the PUC.

I then state that 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.

I assert that on June 17, 2025, the PUC ruled that Thomas Melone had violated the PUC's prohibition against *ex parte* communications with the Commission but declined to impose sanctions.

At Count IV of the Petition (at pages 18 and 19), I allege that Mr. Melone's email violated both Rule 3.5(b)(1) and Rule 8.4(d).

Rule 3.5(b)(1) states: "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."

Rule 8.4(d) states that a lawyer may not "engage in conduct that is prejudicial to the administration of justice."

II. There Are No Disputes of Fact With Respect to the March 24, 2025 E-mail

In his *Respondent's Responses to the Paragraphs in the Complaint*,[1] a document which

[1] This document appears at pages 221 through 231 of Mr. Melone's *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* filed on October 27, 2025. The "Respondent's Responses" are Exhibit 1.

appears to be Mr. Melone's Answer to the *Petition*, Mr. Melone admits, at paragraphs 65 through 78, all of the factual allegations of the *Petition of Misconduct* regarding his March 24, 2025 email to Mr. McNamara.[2]

Mr. Melone then goes on to assert that:

1. "the application of the Public Utilities Commission's *ex parte* rules to Thomas Melone's copying the email to the Vermont legislative committees to Edward McNamara violated Mr. Melone's First Amendment rights;" and
2. on April 21, 2025 he sent a copy of his March 24, 2025 email to the parties in the proceedings in the Public Utilities Commission, thus curing any violation of the rule.

III. Mr. Melone's *Subpoena* to Mr. McNamara

On November 24, 2025, Thomas Melone, utilizing the discovery tools available to parties to disciplinary proceedings in the Professional Responsibility Program, issued a *Subpoena Duces Tecum* to Edward McNamara, the Chair of the Vermont Public Utility Commission.[3] In that *Subpoena*, Mr. Melone ordered the witness to produce all internal PUC communications regarding Mr. Melone's March 24, 2025 email within the possession or control of the Public Utilities Commission during the period March 24, 2025 to November 24, 2025.

No document which Mr. Melone might obtain as a result of the *Subpoena* will have any relevance to whether Mr. Melone's March 24, 2025 email violated Rules 3.5(b)(1) or 8.4(d). The only remaining issues with respect to the email are issues of law. Specifically, the only

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[2] Mr. Melone correctly notes that a PUC Hearing Officer, not the PUC, made the finding that his email was an *ex parte* communication.

[3] A copy of the *Subpoena* is Exhibit 2.

remaining issues are (1) whether enforcement of Rule 3.5(b)(1) or 8.4(d) in this circumstance violates Mr. Melone's "First Amendment rights" and (2) whether his actions, roughly a month after his email, cured any violation of these Rules.

V. Mr. McNamara's Opinions Regarding Mr. Melone's March 24, 2025 Email Are Not Relevant

In his *Respondent's Reply to Mr. Hanley's Objection to Respondent's Motion to Dismiss and Motion for a More Definite Statement*, Mr. Melone says: "There is no explanation as of now as to why, if Mr. McNamara believed the receipt of the legislative email was an *ex parte* communication, why he waited until April 21, 2025, to file it."[4]

Whether Mr. McNamara believes Mr. Melone's March 24, 2025 email was an impermissible *ex parte* communication, and, if so, how he came to that conclusion, is neither relevant nor likely to lead to the discovery of relevant information. The issue is whether the Hearing Panel believes that Mr. Melone violated the prohibition against *ex parte* communications.

VI. The PUC Has Already Produced Many Documents Regarding the March 24, 2025 Email

In his *Respondent's Reply to Mr. Hanley's Objection to Respondent's Motion to Dismiss and Motion for a More Definite Statement,* Mr. Melone attached a total of 11 exhibits. Four of the exhibits (Exhibits 8, 9, 10 and 11) are related to the *ex parte* communication charge. The Respondent's reply makes clear that in prior proceedings in the PUC, Mr. Melone obtained many of the documents he seeks in the *Subpoena*.

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[4] "Respondent's Reply," p. 12.

VII. Conclusion

The Hearing Panel should quash the *Subpoena*. Mr. Melone should not use the discovery tools available to him in these proceedings to burden a person who is not a party, especially so when these efforts will not result in the production of relevant information or even information likely to lead to the discovery of relevant information.

Dated: November 25, 2025

/s/Michael F. Hanley

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EXHIBIT 1

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.

EXHIBIT 2

STATE OF VERMONT

PROFESSIONAL
RESPONSIBILITY
PROGRAM

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

SUBPOENA DUCES TECUM

TO: EDWARD MCNAMARA, Vermont Public Utility Commission, 112 State Street Montpelier, VT 05620-2701

YOU ARE COMMANDED to produce the following documents, electronically stored information:

1. **For the period from March 24, 2025, to November 24, 2025, all e-mails, memoranda, text messages, electronic messages (including messages sent through an application-based messaging service, such as Slack or WhatsApp), analyses, manuals, evaluations, opinions, and other documents in your possession or control concerning, mentioning, or relating to the allegations of *ex parte* contact that is the subject of the attached memo from Holly R. Anderson, as well as all documents relating, in whole or in part to, the alleged *ex parte* email that is the subject of that attached memo.**

This SUBPOENA DUCES TECUM permits you to deliver the requested documents to Thomas.melone@allcous.com by December 15, 2025.

The Vermont Rules of Civil Procedure require that every subpoena set forth the text of subdivisions (c) and (d) of the Rule.

WARNING: FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED IN CONTEMPT OF COURT

This SUBPOENA is issued pursuant to the authority under Vermont Rule of Civil Procedure 45 and Vermont Supreme Court Administrative Order 9, RULE 19A dated this 24th of November, 2025.

By: _____
Thomas Melone (BAR No. 5456)

The name, address, and telephone number of the party who requests this subpoena: Thomas Melone, 601 S Ocean Blvd., Delray Beach, FL 33483, 212-681-1120 *(requesting party or attorney's name, address, phone number)*

Thomas.Melone@AllcoUS.com

[i] **PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court for which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection, copying, testing or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection producing any or all of the designated materials or inspection of the premises – or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy test, or sample the materials or inspect the premises except pursuant to an order of the court for which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party of an officer of a party from significant expense resulting for the inspection, copying, testing or sampling commanded.

(3)(A) On timely motion, the court for which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a resident of this state to travel to attend a deposition more than 50 miles one way unless the court otherwise orders; requires a nonresident of this state to travel to attend a deposition at a place more than 50 miles from the place of service unless another convenient place is fixed by order of court, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not party or an officer of a party to incur substantial expense to travel more than 50 miles one way to attend trial,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO A SUBPOENA

(1)(A) A person responding to a subpoena to produce documents shall produce theme as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such source if the requesting party shows good cause, considering the limitations of Rule 26(b)(1). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

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State of Vermont
Public Utility Commission

MEMORANDUM

To: Parties in PUC Case Numbers 23-0249-PET and 24-3517-PET

From: Holly R. Anderson, Clerk of the Commission

Re: Request for Comments

Date: April 21, 2025

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.

PUC Case No. 24-3517-PET - SERVICE LIST

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STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

CERTIFICATE OF SERVICE

I certify that today I filed *Conflict Disciplinary Counsel's Motion to Quash Thomas Melone's Subpoena to Edward McNamara* with the Professional Responsibility Program by sending the same via email to:

SupremeCourt@vtcourts.gov

with a copy to the Respondent via email to:

Thomas.Melone@gmail.com

Dated: November 26, 2025

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