STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re Thomas Melone
PRB File No. 120-2025

DECISION AND ORDER
MOTION TO DISMISS and
MOTION FOR MORE DEFINITE STATEMENT

Introduction

As provided in A.O. 9, Rule 13(A), Conflict Disciplinary Counsel conducted an investigation into allegations of Respondent's misconduct after a letter of complaint was received from Attorney Merrill Bent. As a result of the investigation, the Petition of Misconduct (hereafter "Petition") was filed against the Respondent on September 26, 2025. The Petition consists of 113 factual allegations. It contains allegations of eight counts of misconduct by the Respondent. Most of the counts assert that Respondent's conduct violated the Vermont Rules of Professional Conduct (hereafter "Rules") in multiple ways.

On October 27, the Respondent filed a multi-part motion which included (1) a special motion to strike under 12 V.S.A. § 1041, (2) a motion to dismiss for failure to state a claim, and (3) a motion for more definite statement. In an entry order dated November 6, 2025, the Hearing Panel resolved the first motion. This order resolves the remaining motions.

The Counts

As noted, the Petition alleges eight counts of misconduct.

Count I alleges that Respondent violated Rules 3.5(d), 4.3, 4.5, and 8.4(d). **Count II** alleges that Respondent violated Rules 4.5 and 8.4(d). **Count III** alleges that Respondent violated Rules 3.5(d), 4.3, and 8.4(d). **Count IV** alleges that Respondent violated Rule 3.5(b)(1). **Count V** alleges that Respondent violated Rules 3.1, 3.3(a)(1), 4.4(a), and 8.4(d). **Count VI** alleges that Respondent violated Rules 3.3(a)(1), 4.4(a), and 8.4(d). **Count VII** alleges that Respondent violated Rules 4.2 and 8.4(d). **Count VIII** alleges that Respondent violated Rule 8.4(d).

The Rules

The relevant rules provide in pertinent part as follows:

Rule 3.1

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 frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.. . .

Rule 3.3(a)(1)

(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;

Rule 3.5(b)(1)

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 3.5(d)

A lawyer shall not

(d) engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal.

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, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Rule 4.3

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested.

When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Rule 4.4(a)

(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.

Rule 4.5

A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter.

Rule 8.4(d)

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice;

I. Motion to dismiss for failure to state a claim upon which relief can be granted.

The Rules of Civil Procedure generally govern disciplinary proceedings. *See*, A.O. 9, Rule 20(B):

> **B. Proceedings Governed by Rules of Civil Procedure.** Except as otherwise provided in these rules, the Vermont Rules of Civil Procedure and the Vermont Rules of Evidence apply in discipline and disability cases.

Respondent's motion to dismiss is based upon V.R.C.P. 12(b)(6) which provides that a pleader may file a motion to dismiss by reason of the failure of the complaint—the Petition here—to state a claim upon which relief can be granted.

Respondent's motion repeatedly asserts that charges in the Petition are "frivolous" or "unmeritorious." But these are not the standards by which a motion under Rule 12(b)(6) is determined. When reviewing a motion to dismiss the tribunal must accept as true all well-pleaded factual allegations in the complaint. *Powers v. Office of Child Support*, 173 Vt. 390, 392 (2002). The Petition of Misconduct

conforms to the requirements of V.R.C.P. 8(a) in that it sets forth "a short and plain statement of the claim showing that the pleader is entitled to relief, ..." *See also, Lane v. Town of Grafton,* 166 Vt. 148, 152-53 (1997). It also conforms to the V.R.C.P. 8(e) requirement that each averment "shall be simple, concise, and direct." The rules do not require a specific and detailed statement of the facts which constitute a cause of action, but simply a statement clear enough "to give the [respondent] fair notice of what the [] claim is and the grounds on which it rests." *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99 (1957); *in accord, Levinsky v. Diamond*, 140 Vt. 595, 600 (1982).

Taking as true as required the facts alleged in the pleading, the Panel concludes that each count sets forth claims upon which relief can be granted, i.e. claims upon which the Respondent can be found guilty of the misconduct alleged.

Count I asserts that Respondent violated Rules 3.5(d), 4.3, 4.5, and 8.4(d) by claiming before the Public Utility Commission (PUC) that agents and employees of the Town of Bennington had engaged in criminal conduct. He alleged that they "were engaged in an active 'cover-up conspiracy' and committed acts '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.'"

The Respondent's claims against the Town are set forth in paragraph 61 of the Petition. In paragraph 62, it is alleged that Respondent threatened to file a RICO[1] complaint in federal court. Although the RICO complaint is civil, it must allege "predicate acts" which must be linked to a criminal enterprise. *See e.g., In re Testosterone Replacement Therapy Products*, 159 F.Supp.3d 898, 910-11 (N.D. Ill. 2016). In this case, the threat of civil litigation included a threat to report criminal violations. Allegations in paragraphs 61 through 64 of the Petition provide adequate support for Count I.

Count II asserts that the Respondent violated Rule 4.5 by threatening to present criminal charges against the individuals identified by the initials ML and DG. It also asserts that this misconduct ran afoul of Rule 8.4(d). The allegations made in paragraphs 46 through 55 support these claims. The Petition alleges that ML and DG were opponents of at least one of the applications for a Certificate of Public Good (CPG) filed by one of Respondent's companies. It alleges that Respondent discovered a potentially criminal omission in a bankruptcy petition

[1] RICO is the acronym for "Racketeer Influenced and Corrupt Organizations."

filed by DG and that he advised ML and DG, "I do want you to be aware that we will be asking about it in your deposition." Subsequently, ML and DG withdrew from the PUC proceedings. Nevertheless, in an email Respondent advised, "I think the only way that the various lingering issues from your involvement [in the PUC proceeding] can be removed is if you send letters to the PUC, the Planning Commission and the Select Board supporting both projects.. . ." It can be inferred from Respondent's communications with ML and DG that he was threatening to report them for criminal conduct,

Count III asserts that the Respondent violated Rules 3.5(d), 4.3, and 8.4(d) by presenting "not credible" testimony to the Public Utility Commission regarding site preparation work before obtaining a Certificate of Public Good with respect to a proposed project. Paragraphs 56 through 60 of the Petition support these claims. The Petition alleges that despite the denial of a CPG for a solar project, Respondent's company began site-clearing. At a hearing before the PUC which was to determine if the site-clearing violated 30 V.S.A. § 248(a)(2), Respondent testified that site clearing was done solely for unrelated farming purposes. The PUC found this testimony to be "not credible," and issued a temporary injunction. Despite the injunction, Respondent's company continued its site-clearing activity.

Count IV asserts that the Respondent violated Rule 3.5(b)(1) by sending an *ex parte* communication, an email, to the chair of the Public Utility Commission. The email had been addressed to Vermont House and Senate committees and a copy was sent to the PUC Chair. The email allegedly contained criticism of the PUC and its Chair with respect to its response to one of the CPG applications made by one of Respondent's companies. The Petition alleges that Respondent did not send copies of the email to any of other parties involved in the PUC proceeding. The rule prohibits a lawyer from communicating *ex parte* with a person acting in a quais-judicial capacity in a pending adversary proceeding. Paragraphs 66 through 78 of the Petition support this claim.

Count V asserts that the Respondent violated Rules 3.1, 3.3(a)(1), 4.4(a), and 8.4(d) when he brought or caused to be brought s legal proceeding in the Environmental Division when that court had no subject matter jurisdiction and that he made false statements of law regarding the same. It further asserts that Respondent's purpose was to burden and delay a third person. Paragraphs 79 through 88 of the Petition support these claims.

Count VI asserts that the Respondent violated Rules 3.3(a)(1), 4.4(a), and 8.4(d) by engaging in the following conduct. Investigation of the Respondent's

conduct was initiated by a letter of complaint filed by Attorney Merrill Bent to the Professional Responsibility Program. The Petition alleges that in response, the Respondent sent a letter to Screening Counsel in which he stated that Ms. Bent's allegations in her letter of complaint constituted "actionable defamation *per se.*" Reports of misconduct are privileged, so long as the statements are official and so long as the report about them is fair and accurate. *See, e.g., Wolsfelt v. Gloucester Times*, 98 Mass.App.Ct. 321, 330, 155 N.E.3d 737 (2020).

It further alleges that he complained that Ms. Bent herself was guilty of misconduct by mistreating an employee of her firm. He later admitted that he had no direct knowledge about this conduct or even if Ms. Bent was the member of her firm who was involved. He also asserted that the Rules of Professional Conduct prohibited her from representing a certain client, the Bennington School Board. Despite Respondent's complaints to Screening Counsel, he allegedly did not file a report with the Professional Responsibility Program as he would be required to do under Conduct Rule 8.3(a) if these were, in fact, fair and accurate accusations. Paragraphs 95 through 102 of the Petition support these claims.

Count VII asserts that Respondent sent email communications to employees and officials of the Town of Bennington. The Town was represented by Attorney Merrill Bent at the time. The Petition asserts that the emails constitute violations of Rules 4.2 and 8.4(d). The Petition asserts that by sending emails to town officials who did not have authority to take any action in connection with the complaint that Attorney Bent sent to the Professional Responsibility Program violated the two rules set forth above. The allegation in paragraphs 103 through 113 of the Petition support the assertions in Count VII.

Count VIII asserts that in violation of Rule 8.4(d),

> Over the course of many years in a variety of forums . . . 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.

In support of Count VIII, Conflict Disciplinary Counsel cites *In re Wright*, 131 Vt. 473 (1973). *Wright* did not hold that a "consistent pattern" of misconduct was, in itself, a violation of the rules. Rather, the Court concluded that the "consistent pattern" was an important consideration in fashioning an appropriate sanction, namely disbarment, for the misconduct found. 131 Vt. at 493.

Nevertheless, the Panel will not dismiss Count VIII at this stage of the proceedings.

> A motion to dismiss for failure to state a claim is not favored and rarely granted.. . . Moreover, courts should be especially reluctant to dismiss on the basis of pleadings when the asserted theory of liability is novel or extreme.. . . The legal theory of a case should be explored in the light of facts as developed by the evidence, and, generally, not dismissed before trial because of the mere novelty of the allegations.

Assoc. of Haystack Property Owner, Inc. v. Sprague, 145 Vt. 143, 146-47 (1985) (internal citations omitted). Dismissal is warranted "only when it is beyond doubt that there exist no facts or circumstances, consistent with the complaint, that would entitle the plaintiff to relief." *Id., see also Bock v. Gold,* 2008 VT 81, ¶ 4, 185 Vt. 575, (mem.). Conflict Disciplinary Counsel will be given the opportunity to prove this allegation at the hearing on the Petition.

The motion to dismiss is *denied.*

II. Motion for more definite statement.

Rule 12(e) of the Rules of Civil Procedure provides:

> **(e) Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

The Petition is neither vague nor ambiguous. To the contrary, the Petition makes allegations of specific instances of misconduct. As set forth in section I of this opinion, the Petition contains "short and plain statement[s] of the claim[s] showing that the pleader is entitled to relief, ..." V.R.C.P. 8(a); *See also, Lane v. Town of Grafton,* 166 Vt. 148, 152-53 (1997). As well, it conforms to the V.R.C.P. 8(e) requirement that each averment "shall be simple, concise, and direct."

Respondent seems to complain that the Petition does not lay out exactly how each alleged act violated a particular rule. But this is not required. All that is required is a statement clear enough "to give the [respondent] fair notice of what the [] claim is and the grounds on which it rests." *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99 (1957); *in accord, Levinsky v. Diamond*, 140 Vt. 595, 600 (1982).

The Respondent asserts that, "Each count is based upon separate events and it is impossible [sic] which allegation(s) of the first 113 paragraphs apply to each Count." Respondent's Motion to Dismiss at *50-51 (Oct. 27, 2025). But the Panel is easily able to discern which paragraphs apply to each count. The first forty-five paragraphs are general, background allegations that apply to all counts. Allocation of paragraphs 46 through 113 to particular counts has been generally set forth in section I.

The Petition alleges under most of the counts that the Respondent's conduct violated the Rules of Professional Conduct in multiple ways. This is completely permissible pursuant to V.R.C.P. 8(a). That rule provides in pertinent part that, "Relief [claimed in a complaint] in the alternative or of several different types may be demanded." Under Vermont pleading rules, "a party can present inconsistent claims and demand relief in the alternative or of several different types." *Abatiell Assoc., P.C. v. Nicholas*, No. 2009-339, 2010 WL 1265841, at *2 (Vt. Apr. 1, 2010), citing *Spaulding v. Cahill,* 146 Vt. 386, 389 (1985).

The motion for more definite statement is *denied.*

III. Miscellaneous Issues.

A. Authority of Conflict Disciplinary Counsel.

In the preamble to his multi-part motion, Respondent suggests that Michael Hanley, the Conflict Disciplinary Counsel, does not have authority to bring a complaint under A.O. 9. This is not correct. Mr. Hanley was appointed pursuant to A.O. 9, Rule 1(E)(1)(c) provide that the Professional Responsibility Board has powers and duties which include:

> **(b)** 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;[2]

[2] In his reply memorandum, Respondent raises for the first time that CDC was not duly appointed by the PRB Chair. *See,* Resp.'s Reply at *29 (Nov. 20, 2025). The only complaint regarding Mr. Hanley's

The Board has specific authority to appoint alternate disciplinary counsel in case of a conflict.

B. Whether Respondent was representing a client with respect to alleged violations.

The Respondent claims that he could not have violated various rules because he was not representing a client and that the rules do not apply to him unless he was representing a client. The basis for his assertion appears to be an order of the PUC dated June 11, 2021. *See,* Respondent's Motion to Dismiss at *15-16 (Oct. 27, 2025).

The Panel is uncertain why the PUC apparently believed that the Respondent was not representing a client because he appeared *pro se*, but the Panel holds the contrary view. The PUC order does not bind the Panel. To the extent that the PUC believed that a self-represented lawyer does not have a client, it is incorrect, at least in the context of disciplinary proceedings. *See, In re Morisseau,* 763 F.Supp. 2d 648, 652 (S.D.N.Y. 2010) (Respondent's status as a *pro se* litigant does not exempt her from the Disciplinary Rules and Rule of Professional Conduct.) In accord, *Robinson v. Howard University, Inc.,* 335 F.Supp. 3d 13, 22 (D.D.C. 2018) (lawyers are not entitled to any special protection when they appear *pro se*). In addition, V.R.C.P. 83 (a)(3) provides,

> (3) The term "plaintiff's attorney" or "defendant's attorney" or any like term shall include any party appearing without counsel.

Thus, a self-represented litigant is deemed to be an attorney for the purposes of the Rule of Civil Procedure and, by extension, disciplinary proceedings. In this case, the attorney is representing himself; he is his own client.

C. The Petition includes matters beyond those set forth in Attorney Bent's letter of complaint.

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appointment was made by the Respondent in the "Factual Background" section of the original motion. There he asserted that,

> Attorney Michael Hanley *was assigned by the Chair of the PRB to be disciplinary counsel* to conduct the investigation. But there is no provision in A.O. No. 9 that authorizes Michael Hanley to act as disciplinary counsel.. . .

(Emphasis added.) Consequently, the issue of whether the appointment of Mr. Hanley as CDC was properly made is not properly before the Panel.

The Respondent complains that several of the counts presented in the Petition go beyond the matters raised in Attorney Bent's letter of complaint. He believes that he was deprived of the ability to respond to these allegations before they were formalized as provided by A.O. 9, Rule 13(A).

Rule 13(A) provides in pertinent part:

> 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 . . ..

It appears that in conducting his investigation, CDC uncovered issues beyond those raised in the Bent complaint. Respondent does not assert that CDC failed to provide a copy of the Bent complaint or notice of the substance of the matter under investigation. There is nothing in the rules—and it is not demanded by logic or experience—that limits a petition of misconduct to the matters originally complained of. The rule does not provide that Respondent has the right to respond to a complaint. Nor is there anything in the rules that requires CDC to notify Respondent of matters that arise in the course of his investigation. Respondent has not provided any legal authority to support his position.

Although Respondent apparently was not advised by CDC of each new issue that arose, he has been so advised by the Petition and, of course, now has the opportunity both to respond to the allegations and to contest them.

ORDER

I. The motion to dismiss for failure to state a claim upon which relief can be granted is *denied.*

II. The motion for more definite statement is *denied.*

Dated this 2nd day of December 2025,

Hearing Panel No. 2

By: _____
Mimi Brill, Esq., Chair

By: _____
Alexander W. Shiver, Esq.

By: _____

Brian Bannon, Public Member