

**STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM**

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

**ENTRY ORDER  
MOTION TO QUASH SUBPOENA**

On November 24, 2025, Respondent issued a subpoena duces tecum to Edward McNamara of the Vermont Public Utility Commission (PUC). Mr. McNamara is not a party to this proceeding. The subpoena commanded Mr. McNamara to provide certain documents to the Respondent by email on or before December 15, 2025.

On November 26, Conflict Disciplinary Counsel (CDC) filed a motion to quash the subpoena. The crux of CDC's motion is that the documents the Respondent seeks are not relevant to the proceedings. There is, however, a more basic reason why the subpoena should be quashed.

A.O. 9, Rule 20 (B) provides that,

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.

There is no provision in the Rules of Civil Procedure for the production of documents by email or to an attorney's office in the absence of a deposition. The only authority for a pre-trial subpoena duces tecum in the Civil Rules is found in Rule 30(b)(1), which provides, ". . . If a subpoena duces tecum is to be served on the person to be examined [at deposition], the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice."

Administrative Order 9 mirrors the Rules of Civil Procedure. Rule 19 (B)(3) provides:

Discovery proceedings under these rules are not subject to the Vermont Rules of Civil Procedure regarding discovery except those relating to depositions and subpoenas.

And Rule 19 (A)(2) provides:

After a petition or a motion for reinstatement is filed, disciplinary counsel or respondent may compel by subpoena the attendance of witnesses and the production of pertinent books, paper and documents at a deposition or hearing under these rules.

In short, a subpoena duces tecum can be utilized only in connection with a deposition or hearing. It cannot be used otherwise to obtain production of documents. The only method by which the Respondent can attempt to obtain the documents he seeks is to serve a subpoena duces tecum in conjunction with a deposition.<sup>1</sup> It appears on the face of the Respondent's subpoena that a deposition of Mr. McNamara is not contemplated.

### ORDER

The motion to quash the subpoena issued to Edward McNamara is *granted*.

Dated this 11<sup>th</sup> day of December 2025

Hearing Panel No. 2

By: Mimi Brill  
Mimi Brill, Esq., Chair

By: Alexander W. Shiver  
Alexander W. Shiver, Esq.

By: Brian Bannon  
Brian Bannon, Public Member

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<sup>1</sup> The Panel takes no position at this time regarding the relevance of the documents the Respondent seeks.