STATE OF VERMONT
PROFESSIONAL RESPONSIBILTY PROGRAM

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

TOWN OF BENNINGTON'S OBJECTION TO SUBPOENAS TO DANIEL MONKS, SHANNON BARSOTTI, JEANETTE JENKINS, AND JAMES SULLIVAN

Pursuant to V.R.C.P. 45(c)(2)(B), the Town of Bennington files and serves this objection to subpoenas duces tecum issued by Attorney Thomas Melone to two town employees (Town Manager Daniel Monks and Community Development Director Shannon Barsotti), a member of the Bennington Selectboard (James Sullivan), and a former member of the Bennington Selectboard (Jeanette Jenkins) (collectively, "Bennington Recipients"). The Town objects on behalf of the Bennington Recipients because the documents sought in the request belong to the Town, not to its individual employees and board members. Further, the requests also implicate claims of privilege which also belong to the Town, not to individual employees and board members. Accordingly, the Town has standing to object to the subpoenas on behalf of the Bennington Recipients. The Bennington Recipients each object in their individual capacity as well.

The subpoenas impose an undue burden on the Bennington Recipients, and also seek material subject to a claim of privilege. Although Rules 45 and 26 allow for broad discovery in matters, limits do exist. Rule 45 requires that "[a] party or an attorney responsible for issuance and service of a subpoena shall take reasonable

steps to avoid imposing undue burden or expense on a person subject to that subpoena." V.R.C.P. 45(c)(1). The Rule commands that a court quash or modify a subpoena if it "subjects a person to undue burden." V.R.C.P. 45(c)(3)(A)(iv). In short, a court must quash or modify a subpoena that imposes an undue burden on the recipient.

Subpoenas issued under Rule 45 cannot exceed the permissible scope of discovery set forth in Rule 26, which permits parties discovery upon "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, an whether the burden or expense of the proposed discovery outweighs its likely benefit." V.R.C.P. 26(b)(1). "[R]equested information is not relevant to . . . the pending action if the inquiry is based on the party's mere suspicion or speculation." *Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) ("The discovery rules are designed to assist a party to prove a claim it reasonably believes to be viable *without discovery*, not to find out if it has any basis for a claim.") (emphasis in original).

Additionally, where a subpoena "sweepingly pursues material with little apparent or likely relevance to the subject matter," it risks being found "overbroad and unreasonable." *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 51 (S.D.N.Y. 1996). A subpoena that is overbroad on its face and which exceeds the

bounds of fair discovery "falls with Rule 45(c)(3)(A)'s prohibition on subpoenas that subject a witness to 'undue burden.'" *Id.* In other words, when a subpoena is overly broad on its face, that alone justifies quashing it.

"An evaluation of undue burden requires [a] court to weigh the burden to the subpoenaed party against the value of the information to the serving party." *Travelers Indem. Co. v. Metro Life Ins. Co.*, 228 F.R.D. 111, 113 (D. Conn. 2005). "Whether a subpoena imposes an 'undue burden' depends upon 'such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.'" *Id.* quoting *United States v. Int'l Bus. Mach. Corp.*, 83 F.R.D. 97, 104 (S.D.N.Y. 1979). "[C]ourts give *special weight* to the burden on *non-parties* of producing documents to parties involved in litigation." *Id.* (emphasis added); *see also Tucker v. American Intern. Group, Inc.*, 281 F.R.D. 85, 92 (D. Conn. 2012) (in balancing burden against need, "courts have considered the fact that discovery is being sought *from a third or non-party*, which weighs against permitting discovery"); *Rossman v. EN Engineering, LLC*, 467 F. Supp. 3d 586, 590 (N.D. Ill. 2020) ("[C]ourts have consistently held that 'non-party status is a significant factor to be considered in determining whether the burden imposed by subpoena is undue").

The subpoenas issued to the Bennington Recipients each contain the same request for documents, directing that the recipient produce

> 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 (A) the validity of the current Town Plan of the Town of Bennington, Vermont, including without limitation (i) the purported re-adoption of the Town Plan of the Town of Bennington, Vermont, in 2018 or (ii) claims that the Town Plan of the Town of Bennington, Vermont expired in 2023 and (B) all grants applied for by the Town of Bennington since January 1, 2023, to the Vermont Agency of Commerce and Community Development or any subdivision thereof, and (C) Coronavirus State and Local Fiscal Recovery funds received by the Town of Bennington.[1]

In addition to the above-referenced request, the subpoena issued to Mr. Monks also seeks:

> All e-mails, memoranda, text messages, electronic messages (including messages sent through an application based messaging service) and other documents in your possession or control that evidence the hiring of Attorney Merrill Bent to represent the Town of Bennington in connection with (a) Public Utility Commission Case 23-0249, (b) Public Utility Commission Case 24-3517, (c) Vermont Superior Court Docket No. 25-ENV-00016, (d) Vermont Superior Court Docket No. 25-cv-01872, (e) Vermont Supreme Court Docket No. 25-AP-175, and (f) Vermont Superior Court, Docket No. 25-CV-01902.

With regard to the request for information relating to the Town Plan, the subpoena is unreasonably broad, and premised on speculation. There is no good faith dispute of fact in the above-captioned proceeding that would require the Town or its employees, non-parties, to respond to the burdensome, sweeping request. The Misconduct Petition alleges that Mr. Melone accused members of the Town of Bennington of a "cover-up conspiracy," and of committing acts of "forgery" and

[1] The subpoena served on Ms. Barsotti did not include the request for materials relating to the Town Plan.

"counterfeiting," as well as of filing "false certifications to the state and federal government in violation of criminal statutes," and "false statements with the [Public Utility Commission]." Compl. ¶¶ 62–64, 115.[2] The Complaint further alleges that Mr. Melone "never filed a complaint alleging 'RICO' violations by the Town of Bennington in any court," which Mr. Melone admits. Compl. ¶ 64; Answer, ¶ 64. The Complaint alleges that Mr. Melone's statements to the PUC alleging criminal misconduct relating to the Bennington Town Plan violated Rules of Professional Conduct 3.5(d), 4.3, 4.5, and 8.4(d).

Documents and communications relating to the readoption of the Bennington Town Plan and/or information relating to grants or Coronavirus Relief Act funding will not shed any light on whether Mr. Melone made the statements at issue (which is not in dispute), or on whether his conduct violates the Rules of Professional Conduct. The allegations of misconduct arise from the forum and manner in which Mr. Melone made the statements. Further, Mr. Melone's subpoenas issued to the Bennington Recipients reveal that he does not and did not have factual support for serious accusations of criminal conduct when he made them to the PUC. He now seeks sweeping discovery from a non-party in hopes that some post-hoc rationalization for his assertions will emerge. Mr. Melone has never articulated a

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[2] There is no legitimate dispute that Mr. Melone made the allegations attributed to him—they were publicly filed with the Vermont Public Utility Commission bearing his signature. Mr. Melone acknowledges that he made the filing in which the assertions appeared (though he inexplicably denies the statements attributed to him even though they are direct quotations from that filing with the immaterial exception that there should have been brackets around "criminal statutes").

good-faith basis for his claims of a vast criminal conspiracy; rather, he has only made conclusory assertions without any factual support. Even if, arguendo, the Town of Bennington had failed to satisfy all of the procedural requirements of a re-adoption of its Town Plan in 2018, Mr. Melone has never even alluded to any support for reaching the conclusion that public servants are engaging in a vast criminal conspiracy (let alone one that would provide no personal benefit to any of them, nor any benefit to the Town).

The burden on the Bennington Recipients is unquestionable. Mr. Monks and Ms. Barsotti are public servants who work hard every day to keep governmental operations running smoothly in the Town of Bennington. They both already have plenty to do in that regard. Ms. Jenkins and Mr. Sullivan are both members (one current, one former) of the Town Selectboard, giving of their time in public service on a volunteer basis. As a former Selectboard member, Ms. Jenkins does not even have access to the material sought anymore. The Town estimates that, given the number of emails that concern the Town Plan, grants from the Vermont Agency of Commerce and Community Development, and Coronavirus State and Local Fiscal Recovery Funds, responding to the subpoenas would take approximately 50-100 hours of staff time. The Town would also have to engage its attorney to review for claims of privilege.

With regard to Mr. Melone request for documents relating to Attorney Bent's representation of the Town of Bennington in various dockets, the Petition alleges that Mr. Melone alleged that "[A]ttorney Bent's representation [of the Town of

Bennington] would be a violation of multiple rules of the Vermont and New York Rules of Professional Conduct." Compl. ¶ 65. The Complaint alleges that Mr. Melone never filed a professional responsibility complaint against Attorney Bent for alleged misconduct, which Mr. Melone also admits (nor did he file a motion to disqualify Attorney Bent). Compl. ¶ 102; Answer, ¶ 102. The Complaint alleges that Mr. Melone's statements relating to Attorney Bent violated Rules of Professional Conduct 3.3(a)(1), 4.4(a), and 8.4(d).

In his request, Mr. Melone seeks documents that are subject to claims of attorney-client privilege. Attorney Bent's law firm, Woolmington, Campbell, Bent & Stasny, P.C. provides general legal services to the Town, and is listed as the Town's law firm year after year as an exception to the Town's Purchasing Policy (see, e.g., 2024 Exceptions to Purchasing Policy, Ex. A hereto (stating that Woolmington, Campbell, Bent & Stasny, P.C. "Provides legal services for all departments not covered by our Property and Casualty")). The Town's instructions to its attorney to enter an appearance in a particular matter are privileged communications not subject to any exception.

The subpoenas will subject the Bennington Recipients to an undue burden, and they also plainly seek the production of privileged material with respect to which no exception or waiver applies. The Town and the Bennington Recipients, therefore object to the subpoenas pursuant to V.R.C.P. 45(c)(2)(B).

Dated this 11th day of December 2025.

TOWN OF BENNINGTON, by

/s/ John D. Stasny
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