

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

**CONFLICT DISCIPLINARY COUNSEL'S
MOTION TO QUASH SUBPOENAS ISSUED
BY THOMAS MELONE TO
JAMES SULLIVAN, JEANETTE JENKINS,
SHANNON BARSOTTI AND DAN MONKS**

Conflict Disciplinary Counsel moves to quash Thomas Melone's December 5, 2025 subpoenas to James Sullivan (Exhibit 1), Jeanette Jenkins (Exhibit 2), Shannon Barsotti (Exhibit 3) and Dan Monks (Exhibit 4).

Memorandum in Support of Motion to Quash

I. Who Are the Persons Mr. Melone Subpoenaed? What Documents Do the Subpoenas Seek?

James Sullivan, Jeanette Jenkins, Shannon Barsotti and Dan Monks are, or were, officers or employees of the Town of Bennington. Mr. Sullivan is a member of the Bennington Select Board and is the former executive director of the Bennington County Regional Commission. Ms. Jenkins is a former member of the Bennington Select Board. Ms. Barsotti is the Bennington Community Development Director. Mr. Monks is the Bennington Town Manager.

The subpoenas issued by Mr. Melone command these persons to produce all documents relating to "the validity of the current Town Plan of the Town of Bennington" and "all grants applied for by the Town of Bennington since January 1, 2023 to the Vermont Agency of Commerce and Community Development" and "Coronavirus State and Local Fiscal Recovery Funds received by the Town of Bennington." It is apparent that Mr. Melone is seeking evidence

to support his claims that officers and agents of the Town of Bennington were engaged in a “criminal conspiracy,” “counterfeiting,” *etc.* when they sought grants because, according to Mr. Melone, the Town Plan had expired.

II. The Factual Allegations of the Petition With Respect to Thomas Melone’s Statements Regarding the Bennington Town Plan

Paragraphs 61 through 65 of the Petition of Misconduct (“Petition”) allege:

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.”
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).
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.
64. Mr. Melone never filed a complaint alleging RICO violations by the Town of Bennington in any court.

The allegations in paragraphs 61 - 65 of the Petition are based on a document submitted by Thomas Melone to the Public Utility Commission entitled “Apple Hill Solar LLC’s

Preliminary Comments of [sic] the Department of Public Service's Motion to Stay." (Exhibit 5).¹

III. The Legal Allegations of the Petition Regarding "Cover-Up Conspiracy" "Forgery," "Counterfeiting," "False Certifications" and "RICO"

Paragraph 115 of the Petition alleges:

115. Thomas Melone's claims in filings in the Public Utility Commission that officials and agents of the Town of Bennington were engaged in a "cover-up conspiracy," committed acts of "forgery" and "counterfeiting," filed "false certifications to the state and federal government in violation of criminal statutes," and filed "false statements with the [Public Utility] Commission" and Thomas Melone's claim that the Town and its officials and employees were liable to him or his business organization for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c) violated:
- a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;
 - b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of law and fact;
 - c) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies' applications for Certificates of Public Good; and

¹ Exhibit 5 was an exhibit to Merrill Bent's complaint to the Professional Responsibility Board regarding Mr. Melone. The allegations of "forgery", "counterfeiting" "conspiracy" and "cover-up" and "violations of the Racketeer Influenced and Corrupt Organizations Act" appear at paragraphs 7 and 8. The highlights on the document were made by Ms. Bent.

- d) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.²

In his “Respondents responses to the paragraphs in the Complaint,” [sic]³ Mr. Melone denies the allegations of paragraphs 61, 62 and 63, admits the allegations of paragraph 64, and denies the allegations of paragraph 115. Simply stated, despite the statements in “Apple Hill Solar LLC’s Preliminary Comments,” Mr. Melone denies that he said that Town officials and agents were engaged in a “cover-up conspiracy,” “forgery,” “counterfeiting,” “false certifications” and violations of RICO, but admits that he never filed a complaint in any court alleging RICO violations by the Town of Bennington. It is difficult to understand how Mr. Melone denied the allegations of paragraphs 61, 62 and 63 given that “Apple Hill Solar LLC’s Preliminary Comments” (Exhibit 5) is a matter of a public record.

IV. Mr. Melone Should Not Be Allowed to Seek After-Acquired Evidence

At the outset, it is important to note that Mr. Melone should have had evidence of criminal acts on January 10, 2025, the day he made the allegations of criminal behavior, and should not be allowed to go fishing for that evidence now.

The situation is comparable to efforts by an employer in a wrongful discharge case to obtain evidence to attack the credibility of a fired employee and to support an “after acquired

² In his “Respondents responses to the paragraphs in the Complaint,” [sic] Mr. Melone denies the allegations of paragraphs 61, 62 and 63, admits the allegations of paragraph 64, and denies the allegations of paragraph 115.

³ The “Respondent’s responses to the paragraphs in the Complaint” [sic] is “Attachment 2” (pages 221 through 231) of Thomas Melone’s “Special Motion to Strike under 12 V.S.A. § 1041, Motion to Dismiss for Failure to State a Claim, Motion for More Definite Statement” dated October 27, 2025.

evidence” defense. After-acquired evidence is evidence discovered after an employee is fired. In McKennon v. Nashville Banner Publishing Co., 513 U.S. 352 (1995), the Supreme Court held that after-acquired evidence can be presented by an employer to limit the amount of damages the plaintiff may recover, but not to escape liability. However, the Court pointedly observed: “The concern that employers might as a routine matter undertake extensive discovery into an employee’s background or performance on the job to resist claims under [civil rights laws] is not an insubstantial one, but we think the authority of the courts . . . to invoke the appropriate provisions of the Federal Rules of Civil Procedure will deter most abuses.” In Walker v H & M Henner & Mauritz, L.P., 2016 WL 4742334 (S.D.N.Y.), the court said that the concerns expressed in McKennon became starker with the amendments to the Federal Rules of Civil Procedure in 2015. (The same amendments were adopted by Vermont not long thereafter.) In Walker, the Southern District quashed subpoenas which attempted to discover after-acquired evidence said to be based on inconsistencies in the plaintiff’s resume. The court said that “if H & M was concerned about the alleged inconsistencies in Walker’s resume, which it acknowledges that it obtained during the course of the hiring process, it would presumably have followed up at that time and not have hired her” Id. The same is true in this case. If Mr. Melone was concerned with the validity of the Town Plan, he presumably would have followed up before he made his allegations of criminal misconduct on January 10, 2025.

Finally, it should be noted that McKennon allows the use of after-acquired evidence to reduce damages, not escape liability. (“McKennon’s misconduct was not discovered until after she had been fired. The employer could not have been motivated by knowledge it did not have and it cannot now claim that the employee was fired for the nondiscriminatory reason.” Id., pages 359 - 360). In this case, neither party can seek damages. Just like the employer/defendant

in McKennon, Mr. Melone cannot assert that he was motivated by knowledge he did not have on January 10, 2025.

V. Whether Bennington's Town Plan Is or Was Invalid Is Not Relevant

In these proceedings, the Hearing Panel must determine whether Mr. Melone's statements in "Apple Hill Solar LLC's Preliminary Comments" violated V.R.Pr.C. 3.5(d), 4.3, 4.5 and 8.4(d).

The scope of the discovery is determined by V.R.Civ.P. 26(b)(1) which provides that:

parties may obtain discovery regarding 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, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

The validity of the Bennington Town Plan is not relevant. Even if we assume for the purposes of discussion that the Bennington Town Plan was invalid, had expired or is, or was, defective, and even if we assume that Bennington received grant money at a time its Town Plan was invalid, this does not lead to the conclusion that officers and agents of Bennington are criminals. The issue before the PUC was whether Mr. Melone's solar farm was "good" for the "public," not whether opponents of his solar farm were "bad." The issue in these proceedings is whether Mr. Melone violated the Vermont Rules of Professional Conduct, not whether witnesses are "bad," or even guilty of crimes. Evidence of criminal actions by opponents of Mr. Melone's solar project is not admissible in these proceedings. V.R.E. 608 prohibits use of extrinsic evidence, such as the documents subpoenaed by Mr. Melone, to prove specific instances of a witness's conduct to attack his/her credibility. V.R.E. 609 allows, in very limited circumstances,

impeachment by evidence of a criminal conviction of a witness, but does not allow impeachment by evidence of criminal conduct. The reason for this is obvious. Efforts to prove criminal conduct, not a criminal conviction, can devolve into a trial within a trial.

VI. V.R.Pr.C. 4.5 Applies Even When the Opposing Party Is Guilty of Criminal Behavior

The official *Comment* to V.R.Pr.C. 4.5 states:

The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting the person's legal rights, and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

As a result, even if opponents of Mr. Melone's application for a Certificate of Public Good were guilty of criminal conduct, Mr. Melone's threat to use the criminal process to coerce adjustment of a private civil matter subverted the civil process.

VII. Conclusion

Mr. Sullivan, Ms. Jenkins, Ms. Barsotti and Mr. Monks should not be dragged into these proceedings for no legitimate purpose. The Hearing Panel should not be distracted by a debate about the validity of the Bennington Town Plan. Mr. Melone's subpoenas should be quashed.

Dated: December 16, 2025

/s/Michael F. Hanley
Michael F. Hanley
Conflict Disciplinary Counsel
Plante & Hanley, P.C.
Post Office Box 708
White River Junction, VT 05001
802-295-3151, Ext. 102
mfhanley@plantehanley.com

EXHIBIT 1

STATE OF VERMONT

PROFESSIONAL
RESPONSIBILITY
PROGRAM

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

SUBPOENA DUCES TECUM

TO: JAMES SULLIVAN, 35 Asas Way, North Bennington, VT 05257

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

1. 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.

This SUBPOENA DUCES TECUM permits you to deliver the requested documents to Thomas.melone@allicous.com by December 31, 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 5th of December, 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 them 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.

EXHIBIT 2

STATE OF VERMONT

PROFESSIONAL
RESPONSIBILITY
PROGRAM

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

SUBPOENA DUCES TECUM

TO: JEANETTE JENKINS, 6 Prospect St., North Bennington, VT 05257

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

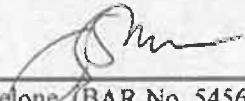
1. All e-mails, memoranda, text messages, electronic messages (including messages sent through an application-based messaging service, such as Slack or WhatsApp), analyses, manuals, evaluations, opinions, and other documents in your possession or control concerning, mentioning, or relating to (A) the 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.

This SUBPOENA DUCES TECUM permits you to deliver the requested documents to Thomas.melone@allcous.com by December 31, 2025.

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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 them 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.

EXHIBIT 3

STATE OF VERMONT

PROFESSIONAL
RESPONSIBILITY
PROGRAM

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

SUBPOENA DUCES TECUM

TO: SHANNON BARSOTTI, 141 Rolzin Rd., Bennington, VT 05201

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


1. For the period from January 1, 2023, to December 5, 2025, all e-mails, text messages, electronic messages (including messages sent through an application-based messaging service), in your possession or control to or from, or concerning, mentioning, or relating to any of (A) 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 (B) Coronavirus State and Local Fiscal Recovery Funds received by the Town of Bennington.

This SUBPOENA DUCES TECUM permits you to deliver the requested documents to Thomas.melone@allcourts.com by December 31, 2025.

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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

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(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.

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(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.

EXHIBIT 4

**STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM**

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

SUBPOENA DUCES TECUM

TO: DANIEL MONKS, Town of Bennington, 205 South Street, Bennington, VT 05201

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

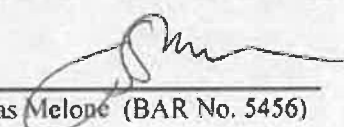
1. All e-mails, memoranda, text messages, electronic messages (including messages sent through an application-based messaging service, such as Slack or WhatsApp), analyses, manuals, evaluations, opinions, and other documents in your possession or control concerning, mentioning, or relating to (A) the 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.
2. 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.

This SUBPOENA DUCES TECUM permits you to deliver the requested documents to Thomas.melone@allcous.com by December 31, 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 5th of December, 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

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 them 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.

EXHIBIT 5

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Apple Hill Solar LLC,)	Docket No. 24-3517-PET
pursuant to 30 V.S.A. § 248, for a)	
certificate of public good authorizing)	
the installation and operation of a 2.0)	
MW solar electric generation facility)	
located off Willow Road in Bennington,)	
Vermont)	

**APPLE HILL SOLAR LLC’S PRELIMINARY COMMENTS OF THE DEPARTMENT
OF PUBLIC SERVICE’S MOTION TO STAY**

Apple Hill Solar LLC (“AHS”) will be prepared to preliminarily address the Motion to Stay of the Department of Public Service (“DPS”) and the Town of Bennington’s comments at the scheduling conference set for January 13, 2025.

In advance of the conference, AHS provides the following preliminary comments.

1. AHS has already explained to DPS that AHS is proceeding with the petition under the assumption that it would be a merchant generator. That is the same basis on which the Commission reviewed the project initially in docket 8797, which then eventually became a project with a standard offer contract *after* the CPG was issued. There is no difference here. AHS is not seeking to rely on any waivers. If DPS needs AHS to say that in different ways or clarify testimony, AHS is happy to do so.

2. With respect to Commission Rule 5.403(A)(19), it is difficult to believe that DPS even raised that point because the existence of Chelsea Solar has such a storied history. AHS has supplemented the testimony to state that the Chelsea Solar LLC project currently before the Commission in Case 23-0249 is a project described in Rule 5.403(A)(19), and that there are no others.

3. With respect to the AHS project in docket 8454, the issue of estoppel may be interesting, after all, the Commission held that the Chelsea Solar project satisfied all the requirements for a CPG but only denied the CPG based upon a then newly announced single plant rule. If estoppel is at play then the CPG for Chelsea Solar in case 23-0249 should be summarily

granted now that the Commission denied the extension of the AHS standard offer contract. Counsel to Chelsea Solar will review the estoppel issue for that proceeding and make the appropriate motion for summary judgment.

4. As for the AHS project itself in this docket, the petition itself describes the differences that would be material from the prior one such as, for example, the smaller footprint, the removal of what the Commission referred to as a “black box,” and the growth in existing vegetation.

5. Some of the players have also changed. For example, the closest neighbor to the project has filed written support for the projects. So too have other neighbors. And those neighbors spoke out in support of the project before the Town’s planning commission. In fact, more than twice the number of people spoke out in favor of the Project than against it.

6. There are other differences as well, including, *inter alia*, that there is no Bennington Town Plan in effect. Thanks to the doggedness of two honest Bennington Select Board members and a number of whistleblowers, AHS has become aware that the Bennington Town Plan expired under 24 V.S.A. §4387 on October 6, 2023, eight years after its adoption. What has ensued is a multi-faceted conspiracy to cover up that fact for a variety of reasons, including reasons related to the AHS and Chelsea Solar projects. The still active cover-up conspiracy includes all of the Select Board members but the two aforementioned and other Does and has resulted, *inter alia*, in the Town fraudulently obtaining grants from various entities, including federal funds, all of which require a Town Plan to be in effect. The expiration of the Town Plan also resulted, *inter alia*, in the loss of the Downtown Designation and the Town’s Bolio Amendment being *void ab initio*.

7. The cover up and overt acts include the forgery, counterfeiting and publication of official town and regional documents in violation of 13 V.S.A §1801 and §1802 and the submission of false certifications to the State and Federal government in violation of 13 V.S.A §2002 and 32 V.S.A §631(a)(9). The dramatic scope of the cover up is not surprising considering that since the expiration of the Town Plan in 2023, the Town has applied for and/or received millions of dollars in state and federal funds through grants and tax benefits as well as other types

of benefits from various programs that specifically require that a duly adopted municipal town plan be in place. The cover-up also includes filing false statements with the Commission that are based upon the existence of a Town Plan, but for which the Town knows does not exist and has not existed since October 6, 2023.

8. AHS's parent Allco Finance Limited is finalizing a complaint to be filed in Federal District Court against the Town of Bennington, its Select Board members (other than the two aforementioned), the town planner and town manager involving their conspiracy to cover-up the fact that the Town Plan expired on October 6, 2023, as well as other claims, such as breach of contract (i.e., the settlement agreement between AHS and the Town), violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c)), injunctive and declaratory relief, and violations of civil rights. The complaint will also set the record straight on why the Mount Anthony Country Club (who the Town was and may still be working with) withdrew as an intervenor in the Chelsea Solar case.

Dated: January 10, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC

By: */s/ Thomas Melone*

Thomas Melone

Apple Hill Solar LLC

157 Church Street, 19th Floor

New Haven, CT 06510

Thomas.Melone@AllcoUS.com

212-681-1120

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

CERTIFICATE OF SERVICE

I certify that I filed *Conflict Disciplinary Counsel's Motion to Quash Subpoenas Issued by Thomas Melone to James Sullivan, Jeanette Jenkins, Shannon Barsotti and Dan Monks* 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: December 16, 2025

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