

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

**CONFLICT DISCIPLINARY COUNSEL’S MOTION TO RECONSIDER
THE HEARING PANEL’S DECEMBER 11, 2025 ENTRY ORDER**

Although the ruling granted a motion by me, I ask The Hearing Panel’s to reconsider its “Entry Order, Motion to Quash Subpoena” (Order) dated December 11, 2025. I believe it contains a plain error. It states “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.” This is contrary to the language of V.R.Civ.P. 45 and contrary to at least one treatise.

V.R.Civ. P. 45(a)(1)(C) states that a subpoena may “command each person to whom it is directed to attend and give testimony or [emphasis added] to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person” It goes on to state a subpoena may include “the command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with the command to appear at trial or hearing or deposition, or may be issued separately [emphasis added].”

V.R.Civ.P. 45(c) provides that “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 on inspection [emphasis added] unless commanded to appear for deposition, hearing or trial.”

Finally, V.R. Civ. P. 45 is based on the Federal Rules of Civil Procedure 45. The

“Author’s Comments” to the *Federal Civil Rules Handbook, 2026*, at page 1047 states:

A party may only issue a subpoena to a nonparty to compel two actions: 1) testimony at a deposition, hearing, or trial (sometimes called a subpoena *ad testificandum*) and 2) production of documents (sometimes called a subpoena *duces tecum*) or inspection of property or tangible things “

At page 1049, the authors go on to state,:

Subpoenas are limited to two functions: compelling a witness to testify . . . and compelling a nonparty to permit the inspection of documents, tangible things, or property”

In light of the above, I ask that the Hearing Panel reconsider it’s Order dated December 11, 2025. This is not to say that my *Motion to Quash* should be denied. It should be granted, but not for the reason stated in the Order.

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

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CERTIFICATE OF SERVICE

I certify that I filed *Conflict Disciplinary Counsel's Motion to Reconsider the Hearing Panel's December 11, 2025 Entry Order* 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