STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

CONFLICT DISCIPLINARY COUNSEL'S OBJECTION TO THOMAS MELONE'S *MOTION FOR PERMISSION TO APPEAL*

The Hearing Panel should deny Thomas Melone's *Motion for Permission to Appeal*.

Memorandum

I. Introduction

On September 5, 2025, after obtaining a finding of probable cause, I filed a *Petition of Misconduct* (Petition) against Thomas Melone alleging a substantial number of violations of the Vermont Rules of Professional Conduct.

In response to the Petition, Mr. Melone has filed almost 500 pages of pleadings, repeatedly asserting that either the Hearing Panel or the Supreme Court should dismiss the Petition and the Rules of Professional Conduct do not apply to the conduct described in the Petition.

Mr. Melone's many motions include a *Verified Complaint for Extraordinary Relief* (164 pages) filed in the Vermont Supreme Court on October 23, 2025 asking that the Petition be dismissed. On October 30, 2025, the Supreme Court issued a one sentence ruling dismissing Mr. Melone's *Verified Complaint for Extraordinary Relief* stating it failed to satisfy the criteria under Vermont Rule of Appellate Procedure 21. Undeterred, Mr. Melone filed a *Motion for Clarification* in the Supreme Court on November 2, 2025. On November 5, 2025 the Supreme Court issued an order which said, in full: "Petitioner's motion to clarify is denied." Still

undeterred, on December 15, 2025, Mr. Melone filed a *Motion for Permission to Appeal* (50 pages) with the Hearing Panel.

In his *Motion for Permission to Appeal*, Mr. Melone argues that before the Hearing Panel hears the evidence, the Supreme Court should determine whether he was "not representing a client"[1] and whether various "rules"[2] [emphasis added] do not apply because, according to him, he appeared pro se. In very large part, the *Motion for Permission to Appeal* makes the same arguments Mr. Melone made, and the Supreme Court denied, in his *Verified Complaint for Extraordinary Relief*.

II. Interlocutory Appeals from A Hearing Panel to the Vermont Supreme Court

In proceedings in the Professional Responsibility Program, in very limited circumstances, the Vermont Supreme Court may hear all or part of case before the Hearing Panel has entered a final order. However, the Supreme Court greatly disfavors piecemeal appeals and, as a result, there are only three very narrow ways to transfer a legal question from the Hearing Panel to the Supreme Court. First, under V.R.A.P. 5(a)(1), the parties and the Hearing Panel may stipulate to an interlocutory appeal. Second, under V.R.A.P. 5(b)(2), a party may move for permission to appeal. Finally, under V.R.A.P. 5.1, when there is a "collateral final order" involving a controlling question of law, and there are substantial grounds for a difference opinion, the Hearing Panel may grant a party's motion for an interlocutory appeal. In all three circumstances, interlocutory appeal is allowed only if the appeal will materially advance the termination of the litigation.

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[1] *Respondent's Motion for Permission to Appeal*, p. 1.

[2] *Id.*, p. 1.

A. V.R.A.P. 5(a)(1)

V.R.A.P. 5(a)(1) allows disciplinary counsel, the respondent and the Hearing Panel to agree that a legal question in the case merits immediate appellate review because "the Supreme Court's disposition would finally dispose of the action in at least one alternative." There is no such agreement in this case. As a result, the Hearing Panel may not certify a question of law to the Supreme Court before the entry of a final order.

B. V.R.A.P. 5(b)(1)

In the absence of a stipulation, if a moving party demonstrates to a hearing panel that there is a controlling question of law about which there exists a substantial ground for a difference of opinion, and an immediate appeal will materially advance the termination of the litigation, a hearing panel may grant a motion for permission to appeal.

C. V.R.A.P. 5.1

Finally, the collateral order doctrine, recognized in V.R.A.P. 5.1(a)(1), is an exception to the general rule barring interlocutory appeals. The doctrine traces its origins to Cohen v. Beneficial Indust. Loan Corp., 337 U.S. 541 (1949). The doctrine is narrow, and only allows appeals to resolve crucial, separable issues that would be lost if the appellant had to wait for the entire case to end. For example, decisions on qualified immunity or double jeopardy sometimes come within the collateral order doctrine. In order to qualify, the appeal must conclusively determine a disputed question, be separate from the main case's merits, and be unreviewable later.

III. Mr. Melone's *Motion for Permission to Appeal*

Mr. Melone's *Motion for Permission to Appeal* fails to state whether his motion is based

on V.R.A.P. 5(a)(1), V.R.A.P. 5(b)(1) or V.R.A.P. 5.1.

Likewise, his motion never addresses the fact that he made the same arguments in his *Verified Complaint for Extraordinary Relief*, and the Supreme Court refused to consider those arguments.

In the absence of clarity from Mr. Melone, I assume that he does not rely on V.R.A.P. 5(a)(1) because there is no stipulation, and he does not rely on V.R.A.P.5.1 because he does not assert there is a collateral final order. As result, I assume that Mr. Melone's motion is based on V.R.A.P. 5(b)(1).

IV. Mr. Melone's *Motion for Permission to Appeal* Only Address the No Contact Rule, V.R.Pr.C. 4.2

Mr. Melone asserts there is a controlling question of law about which there exists a substantial ground for a difference of opinion. He asserts that there is a "fundamental and controlling question of whether certain rules [emphasis added] apply when Respondent is not representing a client."[3]

However, it is important to note that Mr. Melone only cites cases or authorities which discuss the no contact rule set forth in V.R.Pr.C. 4.2. In his 50 page motion, he cites no cases or authorities regarding any other Rule of Professional Conduct.

V. Mr. Melone Represented Various Business Organizations and Was Not Pro Se

A corporation or a limited liability company is a distinct person, separate from its owners. Business organizations own assets, incur debts, enter into contracts and can be taxed independently from their owners. Business organizations provide owners with limited liability

[3] *Id.*, p. 1.

and, in many instances, continue beyond their owners' lives. The entire purpose of Mr. Melone's more than 80 limited liability companies was to limit his personal liability by creating separate legal persons. We can be sure that if a judgment creditor of one Mr. Melone's limited liability companies asserted that Mr. Melone was personally liable for a judgement against one of his limited liability companies, Mr. Melone would object and say he was separate from the company. In the actions which resulted in the Petition, Mr. Melone did not represent himself, he represented a variety of limited liability corporations, all of which are legal persons separate and distinct from Mr. Melone.

VI. Even if Mr. Melone Was Pro Se, There Is Not Substantial Ground for a Difference of Opinion as to Whether the No Contact Rule Applies to Pro Se Attorneys

All but one of the courts which have considered the question of whether the no contact rule applies to a pro se attorney have ruled that it does. See In re Steele, 181 N.E.3d 976, 980 (Ind. 2022) (holding a pro se lawyer is subject to the no-contact rule); In re Disciplinary Action Against Lucas, 789 N.W.2d 73, 76 (N.D. 2010) ("Most courts have held Rule 4.2 applies to attorneys representing themselves because it is consistent with the purpose of the rule."); In re Disciplinary Action Against Haley, 126 P.3d 1262, 1269 (Wash. 2006) ("We hold that RPC 4.2(a) prohibits a lawyer who is representing his own interests in a matter from contacting another party whom he knows to be represented by counsel"); In re Discipline of Schaefer, 25 P.3d 191, 199 - 200 (Nev. 2001) ("[T]he purposes of the rule are better served by applying it to lawyers who are representing themselves."); Runsvold v. Idaho State Bar, 925 P.2d 1118, 1120 (Id. 1996) ("[W]e hold that a pro se lawyer/litigant does represent a client when representing himself or herself in a matter; thus, I.R.P.C. 4.2 applies to prevent the pro se attorney from

directly contacting a represented opposing party"); Sandstrom v. Sandstrom, 880 P.2d 103 (Wyo. 1994) (same); In re Segall, 509 N.E.2d 988, 990 (Il. 1987) (same); *see also*, Medina Cnty. Bar Ass'n v. Cameron, 958 N.E.2d 138, 140 - 41, 141 n.1 (Ohio 2011) (stating, in dicta, that a pro se lawyer is subject to the no-contact rule); Ruth v. Comm'n for Law. Discipline, 696 S.W.3d 233, 238 - 39 (Tex. App. 2024), *review granted* June 20, 2025.

The sole exception to the near uniform case law is Pinsky v. Statewide Grievance Comm., 578 A.2d 1075, 1079 (Conn. 1990) which held that the no-contact rule did not apply when the lawyer was representing himself.

At this point, I am required to note that Mr. Melone's comments regarding the cases on the no contact rule are inaccurate and grossly overstated. For instance, he cites In re Disciplinary Action Against Haley in support of his position.[4] In fact, in Washington, a pro se lawyer who directly communicates with an opposing party has been subject to discipline since 2006. The fact that almost twenty years ago the Washington Supreme Court decided to "apply our interpretation of the rule prospectively"[5] does not obscure the fact that every court that has addressed this question since Pinsky did so in 1990 has ruled against the argument made by Mr. Melone.

Similarly, Mr. Melone cites ABA Comm. On Ethics & Pro. Resp., Formal Op. 22-502 (2022) in support of his position. However, in Formal Opinion 22-502, the ABA Ethics Committee determined "the language of the Rule and its established purposes lead to the conclusion that the Rule applies to pro se lawyers."[6] It went on to say that "[t]here are decades

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[4] *Id.*, p. 5.

[5] Haley, at 338.

[6] Formal Op. 22-502 (2022), p. 1.

worth of disciplinary cases, civil cases and ethics opinions concluding that a lawyer acting in a pro se capacity may not communicate directly with a represented adversary or other represented person about the subject of the representation without the consent of that person's lawyer, unless the communication is authorized by law or court order."[7] The committee reasoned that "[p]ro se lawyers represent themselves as 'a client,' and direct pro se lawyer-to-represented person communication in such circumstances can result in a substantial risk of overreaching, disruption of the represented person's client-lawyer relationship, and acquisition of uncounselled disclosures."[8] The fact that one member of the committee dissented from this opinion does not mean a substantial ground for a difference of opinion on this topic.

Finally, this brings us to Mr. Melone's comments about Bar Counsel Michael Kennedy's blog allegedly "recommending a rule change."[9] What Mr. Kennedy said was that while "I tend to agree" with the dissent to Formal Opinion 22-502, "I don't disagree with the conclusion that a no-contact rule should apply to self-represented lawyers." As to Mr. Melone's claim that Mr. Kennedy recommended a rule change, the most Mr. Kennedy said was: "ABA opinion concludes that the 'no contact' rule applies to self-represented lawyers. Should we amend Vermont's rule?"

What then did the dissent to Formal Opinion 22-502 say? Among other things it said "[a]pplying Rule 4.2 to pro se lawyers is supported by compelling policy arguments."[10] The only point of the dissent was that the language of the Rule should be clearer. The dissent did not, as

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7 *Id.*, p. 4.

8 *Id.*, p. 3.

9 *Motion for Permission to Appeal*, p. 5.

10 Formal Op. 22-502 (2022), p. 7.

Mr. Melone suggests, assert that a pro se lawyer should be free to contact a represented person.

In summary, V.R.A.P. 5(b)(1) requires "substantial grounds for a difference of opinion," something substantially more than a single case or commentary suggesting that the Rule 4.2 should be better drafted.

VII. An Immediate Appeal Will Not Materially Advance the Termination of the Litigation

Contrary to what Mr. Melone's motion suggests, this case involves far more than an alleged violation of the no contact rule. This alleged violation appears in Count VII of the Petition, which contains eight counts. As a result, in the highly unlikely event that the Hearing Panel or the Supreme Court should rule that Mr. Melone (1) was pro se and (2) V.R.Pr.C. 4.2 does not apply to pro se lawyers, the Hearing Panel would still have to determine whether Thomas Melone's:

- claims in the Public Utilities Commission that the Town of Bennington and its officials, agents and employees engaged in criminal conduct violated Rules 3.3(a), 3.5(d), 4.5 and 8.4(d);[11]
- communications with ML and DJ violated Rules 4.5 and 8.4(d);[12]
- site preparation without a Certificate of Public Good and his "not credible" testimony in the Public Utility Commission violated Rule 3.3, 3.5(d) and 8.4(d);[13]
- March 24, 2025 email to Public Utility Commission Chair Ed McNamara violated

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[11] Count I of the Petition.

[12] Count II of the Petition.

[13] Count III of the Petition.

Rule 3.5(b)(1);[14]

- conduct with respect to the Bennington High Project violated Rules 3.1, 3.3(a)(1), 4.4(a) and 8.4(d);[15]
- statements to Screening Counsel Strauss with respect to Merrill Bent's complaint to the Professional Responsibility Program violated Rules 3.3(a)(1), 4.4(a) and 8.4(d);[16] and
- persistent and deliberate violations of the Rules of Professional Conduct violated Rule 8.4(d).[17]

VIII. Conclusion

Before this matter is considered by the Supreme Court, the Hearing Panel should consider, and rule upon, all allegations of misconduct and, in the event of findings of misconduct, rule upon the appropriate sanction. Thomas Melone's *Motion for Permission to Appeal* fails to meet the requirements of V.R.A.P. 5(a)(1), 5(b)(1) or 5.1 and should be denied.

Dated: December 29, 2025

/s/Michael F. Hanley

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[14] Count IV of the Petition.

[15] Count V of the Petition.

[16] Count VI of the Petition.

[17] Count VIII of the Petition.