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 TO REVISE HP ORDER*

The Hearing Panel should deny Thomas Melone's *Motion to Revise HP Order*.

I. The Grounds for a Motion to Revise or a Motion for Reconsideration

Although described as a "motion to revise," Mr. Melone's latest pleading is usually called a motion for reconsideration. In this motion, filed on December 16, 2025, Mr. Melone asks the Hearing Panel to reconsider its December 2, 2025 Order denying his *Motion to Dismiss* the *Petition of Misconduct*.

Although there is no Vermont Rule of Civil Procedure rule which expressly provides for motions for reconsideration, a hearing panel may revise an interlocutory order. What Mr. Melone does not address are the grounds for granting a motion for reconsideration or, as he calls it, a motion to revise. There is very little law on this topic in Vermont beyond statements that "the trial court has discretion to decide a motion to ro reconsider and may dispose of such a motion with a hearing." Fed. Nat'l Mortgage Assoc. v. Johnston, 207 Vt. 473, 479 (2018).

Because the Vermont Rules of Civil Procedure are based on the Federal Rules of Civil Procedure, in the absence of Vermont case law, Vermont court look to the federal case law on point. As in Vermont Rules of Civil Procedure, there is no "motion for 'reconsideration' in the Federal Rules of Civil Procedure." Bass v. United States Dep't of Agriculture, 211 F.3d 959, 962 (5th Cir. 2000). However, the federal case law makes clear that motions to reconsider seek

an extraordinary remedy, granted only in highly unusual circumstances. McDowell v. Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999). *See also*, U. S. ex rel Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (simple disagreement with court's ruling will not support Rule 59(e) relief"). Courts frequently say that these motions do not provide litigants with an opportunity for a second bite at the apple. Motions for reconsideration are not vehicles for litigating relitigating old issues.

In almost all courts, a motion for reconsideration may be made only on the grounds of:

1. a material difference in the facts or the law which in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of the decision; or
2. the emergence of new material facts or a change of law after the decision; or
3. a failure by the court to consider material facts or law presented to it before the decision.

Additionally, most courts do not allow a motion for reconsideration to repeat an argument made in support of or in opposition to the original motion. "Unhappiness with the outcome is not included within the rule; unless the moving party shows that one of the stated grounds for reconsideration exists, the Court will not grant a reconsideration." Gish v. Newsom, Case No. 5:20-cv-00755-JGB (KKx), 2020 WL 6054912, at *2 (C.D. Cal. Oct. 9, 2020) (citation omitted).

II. Mr. Melone's Motion to Revise Merely Expresses Unhappiness with the Denial of His Motion to Dismiss

Mr. Melone makes no effort to show a fact or a law different from that he presented to the Hearing Panel in his *Motion to Dismiss*, or in any of his many other pleadings. He does not

claim the emergence of new material facts. He does not claim a change of law occurring after the denial of his *Motion to Dismiss*. On the contrary, Mr. Melone simply makes the same arguments he made in the Supreme Court in his *Verified Complaint for Extraordinary Relief*, and the very same arguments he made to the Hearing Panel in his *Special Motion to Strike*, his *Supplement to* his *Special Motion to Strike*, his *Motion to Dismiss*, his *Motion for More Definite Statement* and his *Motion for Permission to Appeal*. Mr. Melone's *Motion to Revise HP Order* does nothing more than restate arguments repeatedly made in prior pleadings.

III. Conclusion

Motions to dismiss for failure for failure to state a claim are not favored and rarely granted. Assoc. of Haystack Property Owners, Inc. Sprague, 145 Vt 443, 146 - 47 (1985). Also see Bock v. Gold, 2008 VT 81 ¶ 4. Motions to reconsider are also greatly disfavored and rarely granted. A motion to reconsider the denial of a motion to dismiss, absent the rarest of rare circumstances, none of which are even argued by Mr. Melone, must be denied.

Dated: December 29, 2025

/s/Michael F. Hanley

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