STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re Thomas Melone	)	PRB No. 120-2025
	)	
	)	

RESPONDENT'S MOTION TO VACATE THE ORDER OF JANUARY 5, 2026

Respondent, Thomas Melone, respectfully requests that the Hearing Panel vacate its order of January 5, 2026 (the "Order") (which was served on Respondent on January 6, 2026) regarding Respondent's motion for permission to appeal (1) to allow Respondent to file a reply to Mr. Hanley's opposition as provided by the Vermont Rules of Civil Procedure before ruling on the motion, and (2) because the Order crucially misquotes A.O. 9, Rule 13 (as explained below, the word "only" does not appear in Rule 13.)

INTRODUCTION

This case was initiated by a complaint filed by Attorney Merrill Bent, who claimed she was compelled to do by and under color of State law, *i.e.*, VRPC 8.3. Ms. Bent filed the complaint shortly after two things happened. First, Respondent made a filing on January 10, 2025 with Vermont Public Utility Commission ("PUC") *publicly* disclosing alleged government malfeasance (which filing forms the sole basis for Count I). Second, in a subsequent filing with the PUC on January 29, 2025, Respondent disclosed that Bennington Town Manager, Stuart Hurd, implicated an attorney in the alleged cover-up involving the expiration of the Bennington Town Plan (which filing relates to Count VI). *See* **Exhibit 1** ("We believe we have sufficient documentation and a legal opinion supporting our position. It's not a lie if one believes what one's saying.")

Respondent's filing stated that "presumably" the opinion is from Merrill Bent. In her reply, Merrill Bent stated: "Petitioner speculates that this must mean that the undersigned counsel has provided a legal opinion to the Town relating to the validity of the Town Plan. Town Counsel's communications with its client are protected by attorney-client privilege."[1] Attorney Bent neither admitted nor denied that she provided the legal opinion that Mr. Hurd claimed that it had. Attorney

[1] *See*, Ms. Bent's reply memorandum in support of motion to strike, PUC docket 24-3517 at 7 (February 11, 2025).

Stasny's motion to quash in this case, however, strongly implies that the "legal opinion" was in fact given by Merrill Bent or someone in her firm. And Mr. Hurd's stated reliance on the legal opinion may have waived any attorney-client privilege that may have otherwise applied.[2] And if Ms. Bent was in fact involved in furthering the town's alleged malfeasance, then the crime-tort-fraud exception to the attorney-client privilege may apply in any event.[3].

I. The Hearing Panel's order "erod[es] the principle of party presentation so basic to our system of adjudication," *Arizona v. California*, 530 U.S. 392, 413 (2000), and eliminates Respondent's right under V.R.C.P. Rule 7(b)(4) to reply.

Respondent filed and served a motion for permission to appeal on December 15, 2025.

V.R.C.P. Rule 7(b)(4) provides:

> Memorandum in Opposition. Any party opposed to the granting of a written dispositive motion, including a motion for summary judgment under Rule 56, shall file a memorandum in opposition thereto not more than 30 days after service of the motion, unless otherwise ordered by the court. A memorandum in opposition to any nondispositive motion shall be filed not more than 14 days after service of the motion, unless otherwise ordered by the court. **Any party may file a reply to a memorandum in opposition, including a memorandum in opposition to a motion for summary judgment under Rule 56(b), within 14 days after service of the memorandum.** The court may also allow a surreply memorandum if the memorandum would assist in clarifying the issues, particularly where the party seeking to file the memorandum is addressing newly raised factual or legal arguments by the opposing party.

(Emphasis added).

Mr. Hanley filed opposition on December 29, 2025.

Under V.R.C.P 7(b)(4), Respondent was entitled to file a reply to Mr. Hanley's opposition within 14 days of December 29, *i.e*., by January 12, 2026. Yet on January 5, 2026, the Hearing Panel denied the motion and did so on grounds not argued by Mr. Hanley.

Mr. Hanley argued that "in very limited circumstances, the Vermont Supreme Court may hear all or part of case before the Hearing Panel has entered a final order." Opp. at 2. He then discussed three possible bases for interlocutory appeal. Respondent agrees that the three bases

[2] *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir.) (criminal defendant waived privilege when he asserted that he had a good faith belief that his actions were legal), *cert. denied*, 502 U.S. 813, 116 L. Ed. 2d 39, 112 S. Ct. 63 (1991).
[3] *See, e.g., United States v. Spinosa*, No. 21 CR 206, 2021 U.S. Dist. LEXIS 120141, *14-15 (S.D.N.Y. 2021).

described by Mr. Hanley are appropriate bases for interlocutory appeal even in this case, and are so ingrained in federal and state practice as to be an essential element of fair process.[4] *See, e.g., Will v. Hallock*, 546 U.S. 345, 352 (2006) stating that a collateral order appeal is appropriate an individual is subject to (as here) "the enormous prosecutorial power of the Government to subject an individual 'to embarrassment, expense and ordeal . . . compelling him to live in a continuing state of anxiety.'" (internal citations omitted). The United States Supreme Court stated that "the only way to alleviate these consequences of the Government's superior position was by collateral order appeal." *Id*. It "boils down to a judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement." *Id*. at 351-352.

The Hearing Panel's January 5 order (which itself constitutes a collateral order on the issue of appealability) is now the second time in this case that the Hearing Panel has decided a motion on grounds not presented by either Respondent or Mr. Hanley, or without a prior request from the Hearing Panel to brief a specific issue that the Hearing Panel would like to have addressed that was not raised by either Respondent or Mr. Hanley.

The Hearing Panel's two orders "erod[e] the principle of party presentation so basic to our system of adjudication." *Arizona v. California*, 530 U.S. 392, 413 (2000). Put another way, such a process is simply unfair, especially in a case in which the stakes are extraordinarily high as here, and have the potential to ripple through like an earthquake to the Respondent's licenses to practice law in the States of California, Connecticut, New Jersey, New York, Florida, Pennsylvania and Massachusetts.

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[4] Vermont Rules of Appellate Procedure Rule 1 states:

> (a) Scope of Rules. These rules govern procedure in all appeals to the Supreme Court from the Superior Court or an administrative board or agency and in matters of original jurisdiction unless expressly modified by rule or statute.
> (b) Rules Do Not Affect Jurisdiction. These rules do not extend or limit the Supreme Court's jurisdiction.
> (c) Terminology. For the purpose of appeals under these rules:
> (1) the term "superior court" includes the Civil, Criminal, Family, and Environmental Divisions of the Superior Court, and also includes the Probate Division or any administrative board or agency when an appeal is taken from a decision in which an appeal is permitted by law.

II. The Hearing Panel's Order Is Based Upon Language That Does Not Appear In Rule 13.

The Hearing Panel's January 5 order seems to put a lot of weight on Administrative Order No. 9's statement that "Disciplinary proceedings are neither civil nor criminal but are *sui generis*." Order at 1. That statement does not mean there is no process unless specifically provided. Disciplinary proceedings are "unique" because they have historically been considered to be a cross between criminal and civil actions. In *In re Ruffalo*, 390 U.S. 544, 551 (1968), the attorney disciplinary proceeding was characterized as quasi-criminal for purposes of procedural due process. *Id*. ("These are adversary proceedings of a quasi-criminal nature. *Cf. In re Gault*, 387 U.S. 1, 33. The charge must be known before the proceedings commence.") In other words, the law has struggled with whether the higher due process protections applicable to criminal actions should apply in part to disciplinary proceedings. *See In re Cordova-Gonzalez*, 996 F.2d 1334, 1336 (1st Cir. 1993) (noting that the due process rights of the respondent "do not extend so far as to guarantee the full panoply of rights afforded to an accused in a criminal case" (quoting *Razatos v. Colo. Supreme Court*, 746 F.2d 1429, 1435 (10th Cir. 1984))).

The Hearing Panel states:

> Rule 13 E. states specifically that "only final decisions of the hearing panel *which fully dispose of an entire proceeding* may be appealed."

(Emphasis in original.)

Based upon what is posted on Lexis/Nexis as the current Rule 13, the Hearing Panel has misquoted the Rule in critical part. As posted on Lexis/Nexis, *see* **Exhibit 1**, the Rule does not use the word "only."

The Hearing Panel's order is plain error and should be vacated. If the Hearing Panel wishes for further briefing on the issue of appealability, it certainly has the right to ask Respondent and Mr. Hanley to provide that briefing.

Moreover, in addition to erroneously adding the word "only", the Hearing Panel ignores the fact that the words "may be appealed," are followed by "as of right." In other words, the actual language only states the general rule that a final decision disposing of an entire proceeding is

appealable as of right. It does not, as the Hearing Panel implies state that such an appeal is the only appeal.

Respondent respectfully requests that the Hearing Panel vacate the January 5, 2026, order, allow the Respondent to reply to Mr. Hanley's opposition within 14 days of the date that the Hearing Panel vacates the January 5, 2026 order, and issue a list of any additional issues that the Hearing Panel wishes Respondent and Mr. Hanley to provide further briefing on.

Respectfully Submitted,

/s/ Thomas Melone
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EXHIBIT 1

Vt. A.O. 9 Rule 13

Current with rule changes received through December 12, 2025

VT - Vermont State & Federal Court Rules > Supreme Court Administrative Orders and Rules > Administrative Orders of the Supreme Court > Administrative Order No. 9. Permanent Rules Governing Establishment and Operation of the Professional Responsibility Program >

Rule 13. Disciplinary and Disability Proceedings

A. Investigation and Notice. If initial review pursuant to Rule 14.A indicates that an investigation is warranted, the matter must be referred to disciplinary counsel with notice to complainant and respondent. All investigations and disciplinary or disability proceedings are conducted or supervised by disciplinary counsel. Disciplinary counsel must provide respondent with a copy of the complaint or otherwise notify respondent in writing of the substance of the matter under investigation unless disciplinary counsel determines that there is a substantial likelihood that a client would be harmed, evidence would be destroyed, or for other good cause. If respondent is not subject to the jurisdiction of the Court, and if the allegations or information, if true, would constitute misconduct or disability, the matter must be referred to the appropriate entity in the jurisdiction in which the lawyer is admitted.

B. Review by Disciplinary Counsel. Following an investigation, disciplinary counsel may dismiss the complaint, refer it to the Bar Assistance Program or other dispute resolution program, initiate formal disciplinary or disability proceedings in accordance with Rule 13.D, or initiate disability proceedings in accordance with Rule 25. Disciplinary counsel must inform the complainant of the disposition of the complaint and reasons.

C. Probable Cause Review. Disciplinary counsel's decision to proceed with a petition of misconduct shall be reviewed for probable cause by a hearing panel assigned by the chair of the Board pursuant to a fixed rotation, and such review shall be based upon written application and affidavit setting forth a factual basis for the charges. If the panel finds probable cause to believe that a violation has occurred, disciplinary counsel shall present formal charges to a different hearing panel assigned by the chair of the Board, unless a stipulation to misconduct is earlier submitted.

D. Formal Proceedings.

(1) Filing of charges; notice to complainant. Disciplinary counsel may initiate formal disciplinary proceedings either: (a) by filing with the Board facts stipulated to by the respondent, along with any proposed legal conclusions and recommended sanction which disciplinary counsel and respondent, either separately or jointly, would like the hearing panel to consider; or (b) by filing with the Board and serving upon respondent a petition of misconduct which is sufficiently clear to inform respondent of the alleged misconduct and the rules alleged to have been violated.

Disciplinary counsel shall inform the complainant of the filing of formal charges against the respondent.

(2) Assignment of hearing panel. Upon receipt of the stipulation or petition, the Board shall assign the matter to a hearing panel pursuant to a fixed rotation. Substitution of members will be allowed only in the event of conflicts of interest or unavailability.

(3) Answer. If proceedings are initiated by petition, respondent shall serve an answer upon disciplinary counsel and file the original with the Board within 20 days after the service of the petition, unless the time is extended by the chair of the hearing panel. In the event the respondent fails to answer within the prescribed time, the charges shall be deemed admitted, unless good cause is shown.

(4) Hearing. If an answer to a petition of misconduct is filed, the hearing panel shall serve a notice of hearing upon disciplinary counsel and respondent, stating the date and place of hearing at least 25 days in advance thereof. If stipulated facts are filed, the hearing may be scheduled sooner at the discretion of the chair. The notice of hearing on a petition of misconduct shall state that the respondent is entitled to be represented by a lawyer, to cross-examine witnesses, and to present evidence. Disciplinary counsel shall further inform the complainant of the date and place of the hearing. The hearing shall be recorded.

(5) Hearing panel decision; service; finality:

(a) Where proceedings have been initiated by stipulated facts, the hearing panel shall review the stipulation and either: (i) reject the stipulation, in which case the parties may amend and resubmit it, or disciplinary counsel may reinstitute proceedings by filing a petition of misconduct in accordance with this rule; or (ii) accept the stipulation and adopt it as its own findings of fact, although the panel may take further evidence on the issue of sanctions.

(b) Where proceedings have been initiated by petition, disciplinary counsel shall have the burden of proving the alleged violations by clear and convincing evidence. In its discretion, the hearing panel may bifurcate the hearing in order to consider evidence relevant to the charged violations separately from evidence relevant to sanctions.

(c) The hearing panel shall in every case issue a decision containing its findings of fact, conclusions of law, and the sanction imposed, if any, within 60 days after the conclusion of the hearing. The panel shall promptly serve its decision on disciplinary counsel and the respondent, and submit a copy, together with a record of its proceedings, pleadings and briefs, if any were submitted, to the Board for filing with the Court. The Board shall promptly inform the complainant of the decision and provide a copy to the complainant if so requested. If no appeal is served and filed within 30 days of the hearing panel decision, and the Court does not otherwise order review on its own motion, the decision shall become final, and shall have the same force and effect as an order of the Court.

E. Review by the Court. All final decisions of the hearing panel which fully dispose of an entire proceeding may be appealed as of right to the Court by respondent or disciplinary counsel pursuant to the Vermont Rules of Appellate Procedure, which rules shall govern the proceedings on appeal except where these rules establish a different procedure. To the extent applicable, all references in the Vermont Rules of Appellate Procedure to the superior court shall be deemed to be a reference to the hearing panel, and all references to the clerk of the superior court shall be deemed to be a reference to the chair of the hearing panel.

If no appeal or petition for review is filed with the Court, the Court may order review on its own motion within 30 days of the date the hearing panel decision is filed with the Court. The Court may remand a case to the hearing panel or modify its decision only upon notice and opportunity to be heard.

The Court shall not receive any additional evidence. Arguments not advanced before the hearing panel shall not be presented to the Court, except for good cause shown. Findings of fact shall not be set aside unless clearly erroneous. If a hearing panel suspends or disbars the respondent and an appeal is taken or the Court orders review on its own motion, the hearing panel decision shall be stayed for the duration of the appeal.

History

Amended Nov. 2, 2021, eff. Apr. 1, 2021; Feb. 7, 2022, eff. Apr. 11, 2022; Jan. 9, 2023, eff. Mar. 13, 2023; Apr. 10, 2023, eff. July 3, 2023.

Annotations

Notes

Reporter's Note—Second 2023 Amendment

The changes to Rule 13.D(3) are not substantive. Rather, they reflect an intent to remove gender-specific pronouns from Administrative Order 9.

Reporter's Note—First 2023 Amendment

Prior to this amendment, an argument existed that the rule allowed a disciplinary suspension to be enforced and to expire before the Court could fully review and dispose of an appeal. The amendment clarifies that a lawyer (1) will not have to serve a suspension prior to receiving an opportunity to challenge it; and (2) cannot moot the Court's review of a disciplinary decision by "serving" a suspension before the Court fully reviews and disposes of a disciplinary matter.

The amendment is consistent with the law and current practice. The Rules of Civil Procedure apply to disciplinary proceedings. A.O. 9, Rule 20.B. But for exceptions that do not apply in attorney discipline cases, Vermont Rule of Civil Procedure 62(a) prohibits enforcement of a judgment until 30 days have passed or the time to appeal has run. When an appeal is taken from a judgment that falls within the scope of Civil Rule 62(a), the appeal operates to stay the underlying judgment for the duration of the appeal. V.R.C.P. 62(d). This amendment clarifies that when a hearing panel decision is appealed or reviewed by the Court, the decision is stayed for the duration of the appeal.

The new language does not change or alter the language in Rule 22. When a hearing panel decision is appealed or reviewed by the Court, while the decision is stayed, Disciplinary Counsel and the Court retain the authority granted by Rule 22 to request and to issue an interim suspension of the respondent's law license for threat or harm.

Reporter's Notes—2022 Amendment

Rule 13.B is amended to correct a cross reference from Rule 15.D to Rule 13.D.

Reporter's Notes—2021 Amendment

Former Rule 11 is renumbered Rule 13 and amended to provide that disciplinary matters formerly referred to an assistance panel will, under the new rules, be referred to the Bar Assistance Program. Minor language edits are made, and cross references are updated.

ANNOTATIONS

Cited.

Cited in

In re Andres, 2004 VT 71, 177 Vt. 511, 857 A.2d 803, 2004 Vt. LEXIS 248 (2004); In re Hongisto, 2010 VT 51, 188 Vt. 553, 998 A.2d 1065, 2010 Vt. LEXIS 71 (2010) (mem.).

Research References & Practice Aids

Hierarchy Notes:

Vt. A.O. No. 9

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