STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re Thomas Melone
PRB File No. 120-2025

ENTRY ORDER
RESPONDENT'S MOTION TO STRIKE ORDER OF JANUARY 5, 2026

On January 5, 2026, the Hearing Panel issued an order denying Respondent's motion for permission to take an interlocutory appeal from the order denying Respondent's motion to dismiss issued on December 2, 2025. On January 12, Respondent filed the instant motion in which complains that he was not given the opportunity to file a reply memorandum as permitted by V.R.C.P. 7(b)(4).[1] For the reasons set forth herein, the motion is *denied*.

The Panel issued its order without awaiting a reply memo because it is beyond dispute that interlocutory appeals are not permitted in disciplinary proceedings. Rule 13 E of A.O. 9 provides for appeal of only final decisions of hearing panel.[2] The Rule is in accord with the "well-established policy [of the Supreme Court] of avoiding piecemeal appeals." *Castle v. Sherburne Corp.*, 141 Vt. 157, 162 (1982).

The position of Conflict Disciplinary Counsel did not and does not alter the Panel's decision. The Panel is not required to adopt the position of either party that it concludes is erroneous.

Respondent also appears to rely on the language of Rule 1 of the Vermont Rules of Appellate Procedure. V.R.A.P. 1(a) provides that the rules of appellate

[1] V.R.C.P 7(b) states that "any party *may* file a reply to a memorandum in opposition, ..." (Emphasis added.) Many litigants do not file reply memos. Nevertheless, the Hearing Panel apologizes to the Respondent for not awaiting his reply memo for this motion. It will await a reply memo in the future unless, as here, the resolution is clear. The better practice would be for the parties to advise the Panel—they may do so by email—that they intend to file a reply memo.
[2] Respondent correctly notes that the Hearing Panel misquoted Rule 13 E in its January 5 order. The sentence should have read. "only 'final decisions of the hearing panel *which fully dispose of an entire proceeding* may be appealed.'" (Emphasis in original order.) The misquote does not change the tenor of the order.

procedure "govern procedure in all appeals to the Supreme Court from the Superior Court or an administrative board or agency . . .." Rule 1(c)(1) provides:

> 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;

Hearing Panels of the Professional Responsibility Program are not included in the list of entities included in the rule. A panel is obviously not a court. Nor is it an administrative board or agency. It is *sui generis*. A.O. 9, Rule 20 A. And even if the Hearing Panel were deemed an administrative board or agency, Rule 1 applies only when "an appeal is taken from a decision in which an appeal is permitted by law." A.O. 9, Rule 13 E does not permit interlocutory appeals.

Respondent complains that the Panel's failure to await his filing of a reply memorandum and its failure to give the parties an opportunity to brief the issue not previously raised by the parties without giving them the opportunity to brief the same "erod[es] the principle of party presentation so basic to our system of adjudication." Resp.'s motion to strike, Jan. 12, 2026, at *3 (quoting *Arizona v. California*, 530 U.S. 392, 413 (2000). But Respondent failed to quote the Court's complete sentence which reads in full,

> Where no judicial resources have been spent on the resolution of a question, *trial courts must be cautious about raising a preclusion bar* <u>*sua sponte*,</u> thereby eroding the principle of party presentation so basic to our system of a adjudication.

Id. (Emphasis added.) The Court opined that a *sua sponte* decision may be appropriate under certain circumstances. The Panel believes that this is one of them.

Whatever the merits of the argument based upon the *Arizona v. California* quotation, Respondent has an expeditious avenue to a potential remedy. If he believes, contrary to the decision of the Hearing Panel, that V.R.A.P. 5 (b) affords him the right to take an appeal from an interlocutory order, he can immediately request that the Supreme Court review the question. V.R.A.P. 5 (b)(7).

ORDER

Respondent's motion to vacate the January 5, 2026, is *denied*.

Because Respondent was not served with the January 5, Order until January 6, and because of the delayed issuance of this order, he shall file his Answer no later than January 26, 2026. If Respondent files a motion for permission to take an interlocutory appeal pursuant to V.R.A.P. 5(b)(7), his Answer shall be filed no later than 14 days after the Supreme Court resolves his motion.

It is SO ORDERED this 15th day of January 2026

Hearing Panel No. 2

By: _____
Mimi Brill, Esq., Chair

By: _____
Alexander W. Shiver, Esq.

By: _____
Brian Bannon, Public Member