**STATE OF VERMONT**
**BEFORE THE PROFESSIONAL RESPONSIBILITY BOARD**

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| In Re THOMAS MELONE,<br>(Thomas Melone, Respondent) | PRB File No. 25-120 |

**RESPONDENT'S OPPOSITION TO MOTION TO QUASH SUBPOENAS ISSUED BY RESPONDENT TO JAMES SULLIVAN, JEANETTE JENKINS, SHANNON BARSOTTI AND DAN MONKS**

Respondent THOMAS MELONE ("Respondent") hereby submits this Opposition to the Motion (the "Motion) to Quash Thomas Melone's Subpoenas (the "Subpoenas") to James Sullivan, Jeanette Jenkins, Shannon Barsotti and Dan Monks (collectively, the "Bennington Recipients").

## INTRODUCTION

As a threshold matter, Mr. Hanley was not duly appointed, and as a result has no standing to file a motion to quash the subpoenas. His motion should therefore be denied. Regardless, even if he were duly appointed (which he was not), his motion fails on the merits as well.

Mr. Hanley presents three arguments as to why the Subpoenas should be quashed. All three of Mr. Hanley's objections to the subpoenas fail. *First of all*, this case is not an employment discrimination case. As further discussed below, the after-acquired evidence issue that Mr. Hanley raises is limited to the specific statute involved in *McKennon v. Nashville Banner Publ. Co.*, 513 U.S. 352 (1995). And as Mr. Hanley concedes, there is no bar to using or obtaining after-acquired evidence in those employment discrimination cases either.

*Second*, on the one hand, Mr. Hanley is claiming that Respondent's statements filed with the Vermont Public Utility Commission ("PUC") on January 10, 2025 (the "January 10 Comments") that "[t]he cover up and overt acts include the forgery, counterfeiting and publication of official town and regional documents in violation of 13 V.S.A §1801 and §1802 and the submission of false certifications to the State and Federal government in violation of 13 V.S.A

§2002 and 32 V.S.A §631(a)(9),” are false, while at the same time claiming in the motion to quash subpoenas that evidence of "forgery," "counterfeiting," "false certifications" and violations of RICO are irrelevant. Those positions are irreconcilable.

There is no getting around the issues of the Bennington Town Plan, the Benn High development project, or whether Merrill Bent was validly hired as legal counsel on various specific matters. The specific charges brought in the Petition for Misconduct (the “Complaint” or “Petition”) filed by Michael Hanley against Respondent on September 26, 2025, put all of those issues, as well as others, squarely at issue. As explained in *RESPONDENT’S REPLY TO MR. HANLEY’S OBJECTION TO RESPONDENT’S MOTION TO REVISE* filed January 12, 2026 (the “Reply”), no valid Town Plan means forgery and counterfeiting when official documents are altered to cover-up that there is no valid Town Plan (as shown in the Reply), and obtaining or receiving grants or other benefits that require a valid Town Plan involves false certifications (also as shown in the Reply).

Mr. Hanley’s third argument that Vermont Rules of Professional Conduct (“VRPC”) 4.5 “Applies Even When the Opposing Party Is Guilty of Criminal Behavior,” is incorrect. As Mr. Hanley acknowledges, VRPC 4.5 relates to a “threat to use the criminal process to coerce adjustment of a private civil matter.” Count I is a clear example of weaponizing a vague and overbroad rule in order to chill and retaliate against Respondent’s exercise of his First Amendment rights. While Respondent disputes that there was any “threat” to bring any criminal action or that the other requirements of the rule have been met, the matter of government malfeasance which was disclosed in the January 10, 2025 Comments is not a “private civil matter” but one of public concern. VRPC 4.5 simply was not intended to apply to, and constitutionally cannot apply to, the *public* disclosure of government malfeasance in a litigation filing. Otherwise, the disciplinary rules can be turned, as here, into a weapon to chill the public disclosure of, and retaliation for public disclosure of, government malfeasance. In other words, Respondent’s public disclosure is protected by two immunity doctrines, the first is the general litigation privilege, and the second is the First Amendment’s right to be free from retaliation for publicly disclosing alleged government

misconduct.[1] And stating that a party is preparing a civil RICO complaint is not a threat to report criminal violations as the Second Circuit has held. *Revson v. Cinque & Cinque*, 221 F.3d 71, 81 (2d Cir. 2000). Quite simply, there was and is no probable cause for bringing Count I. Mr. Hanley conducted no real investigation. In other words, he did not care if there were any facts that would support Respondent's statements. Mr. Hanley appears to have simply followed the direction of Merrill Bent (who highlighted for him passages from various filings with the PUC) and kept blinders on to any other information. Even assuming *arguendo* that Rule 4.5 is constitutional,[2] Respondent is entitled to exercise the full panoply of discovery rights that are relevant to the issues that Mr. Hanley has raised.

Mr. Hanley's Motion also conflates his various factual claims with the various charges he brings. In other words, he attempts to obfuscate by lumping in all the alleged rule violations into

[1] Official retaliation for protected speech "offends the Constitution [because] it threatens to inhibit exercise of the protected right." *Hartman v. Moore*, 547 U.S. 250, 256, 126 S. Ct. 1695, 164 L. Ed. 2d 441 (2006) (alteration in original) (citation omitted). *See also, id.:*

> Official reprisal for protected speech "offends the Constitution [because] it threatens to inhibit exercise of the protected right," *Crawford-El v. Britton*, 523 U.S. 574, 588, n. 10, 118 S. Ct. 1584, 140 L. Ed. 2d 759 (1998), and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out, id., at 592, 118 S. Ct. 1584, 140 L. Ed. 2d 759; *see also Perry v. Sindermann*, 408 U.S. 593, 597, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972) (noting that the government may not punish a person or deprive him of a benefit on the basis of his "constitutionally protected speech"). Some official actions adverse to such a speaker might well be unexceptionable if taken on other grounds, but when nonretaliatory grounds are in fact insufficient to provoke the adverse consequences, we have held that retaliation is subject to recovery as the but-for cause of official action offending the Constitution. *See Crawford-El, supra*, at 593, 118 S. Ct. 1584, 140 L. Ed. 2d 759; *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274, 283-284, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977) (adverse action against government employee cannot be taken if it is in response to the employee's "exercise of constitutionally protected First Amendment freedoms"). When the vengeful officer is federal, he is subject to an action for damages on the authority of *Bivens*. See 403 U.S., at 397, 91 S. Ct. 1999, 29 L. Ed. 2d 619.

[2] Rule 4.5 targets speech based on its expressive content. As such it is a content-based regulation which will trigger strict scrutiny analysis. Under strict scrutiny, a law is presumptively unconstitutional unless the government can show the challenged law is the least restrictive means of targeting speech while also serving a compelling governmental interest. The fact that the ABA Model Rules abandoned Rule 4.5 in 1983, and almost all States have as well, is compelling evidence that Rule 4.5 is ***not*** the least restrictive means of targeting speech while also serving a compelling governmental interest.

each of his three arguments. So, for example, while, *arguendo*, evidence of criminal conduct might not be relevant to alleged violations of Rule 4.5 (threatening criminal prosecution), such evidence is highly relevant to alleged violations of rule 3.3[3] (candor toward the tribunal), 3.5(d) (impartiality and decorum of the tribunal) and 8.4(d) (conduct prejudicial to the administration of justice). Said differently, the subject matter of the Subpoenas does not have to be relevant to each and every one of the allegations against Respondent as Mr. Hanley seems to be arguing. It is sufficient that the subject matter is relevant to any single allegation, and in order to avoid further muddying the waters, this opposition will focus on Count I.

Mr. Hanley's Complaint alleges that the January 10 Comments contained "false statements of law and fact" and that such statements allegedly resulted in multiple VRPC violations as set forth in Count I. To prove those alleged rule violations, Mr. Hanley must demonstrate (1) that the statements made were *actually* false and (2) that the Respondent knew they were false. With respect to item (1), Respondent is entitled to counter any argument made by Mr. Hanley that the statements were false. Knowing that these statements made were and are true and supported by evidence (as described in the Reply), it is entirely unclear to Respondent how Mr. Hanley plans on demonstrating that the statements were false. It is for that reason alone, that the Motion should be denied and the subpoenas enforced. Yet Mr. Hanley seeks to cut off Respondent's right to prove that the statements were not false. On top of the evidence discussed in the Reply, Respondent has a "right to every man's evidence." *In re Horowitz*, 482 F.2d 72, 81 (2d Cir. 1973) (quoting 8 Wigmore, Evidence § 2192 (McNaughton rev. 1961), at 70)). Respondent is entitled to the subpoenaed documents, and later Respondent is entitled to depose each of the Bennington Recipients.

The core purpose of discovery and the power to subpoena is to *develop* and *gather* evidence, allowing parties to uncover facts, documents, and witness

[3] As a preliminary matter this Hearing Panel should require Mr. Hanley to amend the Petition as well as the Motion to include the correct references to the Rules of Professional Misconduct as Mr. Hanley continues to reference the wrong rule numbers throughout his filings. Otherwise, if Mr. Hanley does not do so, then the charges that cite the wrong rules should be summarily dismissed.

information relevant to claims and defenses through tools like subpoenas, interrogatories, requests for production, and depositions before trial. *See, e.g., Prive v. Vermont Asbestos Grp.*, 2010 VT 2, ¶15, 187 Vt. 280 ("the rule in this state is that when plaintiffs have not yet had an opportunity to develop the case through discovery, all that is required is a short and plain statement of the claim.") (internal quotations and citations omitted); *Id. at* ¶14 (the burden on plaintiffs under Vermont law is "exceedingly low" at the pleading stage). In this instance, Mr. Hanley is seemingly seeking to punish Respondent for not filing a lawsuit against the Town of Bennington and its officers, as he is attempting to create a more stringent threshold in these proceedings with respect to accusations of wrongdoings than the Vermont courts do at the pleading stage where the burden is "exceedingly low". In other words, Mr. Hanley is seemingly insinuating that because a lawsuit related to all of Respondent's claims was never filed, those claims must not be true. By Mr. Hanley's logic, plaintiffs throughout Vermont would be exposed to ethics violations every time they lost on a claim in court or even amended their complaint to reduce the number of claims.

**FACTUAL BACKGROUND**

Mr. Hanley's Motion provides clarification of Count I of the Complaint. On pages 2-4 of his Motion, Mr. Hanley clarifies that Count I is based solely on *one* document—the January 10, 2025, Comments—and his characterization of what he believes that document said. That single document is Exhibit 5 to his Motion.

Mr. Hanley's Motion indicates that the allegedly offending paragraphs of that document are the highlighted ones—paragraphs 7 & 8. Mr. Hanley does not claim that he has any evidence other than that document to support the charges in Count I. In other words, in order to meet his clear and convincing burden of proof in the case, Mr. Hanley is simply relying on Exhibit 5 to his Motion, and his own advocate "edits" and characterization. On pages 2-4 of his Motion, Mr. Hanley states:

> The allegations in paragraphs 61 – 65 (*sic*) of the Petition are based on a document submitted by Thomas Melone to the Public Utility Commission entitled "Apple Hill Solar LLC's Preliminary Comments of [sic] the Department of Public Service's Motion to Stay." (Exhibit 5). [fn] Exhibit 5 was an exhibit to Merrill Bent's complaint to the Professional Responsibility Board regarding Mr. Melone. The

> allegations of "forgery", "counterfeiting" "conspiracy" and "cover-up" and "violations of the Racketeer Influenced and Corrupt Organizations Act" appear at paragraphs 7 and 8. The highlights on the document were made by Ms. Bent.
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> ***
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> despite the statements in "Apple Hill Solar LLC's Preliminary Comments," Mr. Melone denies that he said that Town officials and agents were engaged in a "cover-up conspiracy," "forgery," "counterfeiting," "false certifications" and violations of RICO, but admits that he never filed a complaint in any court alleging RICO violations by the Town of Bennington. It is difficult to understand how Mr. Melone denied the allegations of paragraphs 61, 62 and 63 given that "Apple Hill Solar LLC's Preliminary Comments" (Exhibit 5) is a matter of a public record.

Based upon Mr. Hanley's Motion, it also appears that the basis on which he claims certain (still not specifically identified) statements were false is based solely on the fact that Respondent "never filed a complaint in any court alleging RICO violations by the Town of Bennington." Motion at 4. In order to prove his claimed violation of Vermont Rule 3.3(a)(1), Mr. Hanley must prove with respect to each statement that (1) the (yet to be) identified statement was *in fact* false, (2) Respondent knew the statement was in fact false,[4] and (3) the statement was made by Respondent in "representing a client in the proceedings of a tribunal." Comment [1].

In order prove his claimed violation of Vermont Rule 4.5, Mr. Hanley must prove that Respondent (1) threatened to present criminal charges (2) specifically in order to obtain, (3) an advantage in a civil matter. There is no counterpart in the ABA Model Rules to Vt. Rule 4.5. Vt. Rule 4.5 is based upon the prior DR 7-105(A) of the Model Code (minus the word "solely"), which specifically prohibited a lawyer from using or threatening a criminal prosecution against an opposing party to gain an advantage in a civil matter. Although this provision has no counterpart in the Model Rules, it has historically been interpreted as not applying if the criminal matter is related to the civil matter. *See, ABA Formal Ethics Op. 92-363* (1992) ("The Model Rules do not prohibit a lawyer from using the possibility of presenting criminal charges against the opposing party in a civil matter, to gain relief for a client, provided that the criminal matter is related to the client's civil claim, the lawyer has a well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest

[4] Vt. RPC 1.0(f) (""Knowingly," "known," or "knows" denotes actual knowledge of the fact in question.")

improper influence over the criminal process.")

Complaint para. 61 states:

> On January 10, 2025, in proceedings in the Public Utility Commission regarding Apple Hill's application for a Certificate of Public Good, Thomas Melone said that all but two members of the Town of Bennington Select Board were in engaged in an active "cover-up conspiracy" and committed acts of "forgery," engaged in "counterfeiting," filed "false certifications to the state and federal government in violation of criminal statutes" and filed at least one "false statement with the [Public Utility] Commission."

**Paragraph 61 does not accurately reflect what was stated.** As clearly stated in the January 10, 2025 Comments, Respondent stated that the members of the Select Board (other than two) were engaged in "multi-faceted conspiracy to cover up" *the expiration of the Town Plan*. *See,* para. 6 ("cover-up conspiracy includes all of the Select Board members but the two aforementioned and other Does and has resulted, *inter alia*, in the Town fraudulently obtaining grants from various entities, including federal funds, all of which require a Town Plan to be in effect.")

No allegations against any specific person or the Town were made with respect to the "forgery," "counterfeiting," filing of "false certifications to the state and federal government in violation of criminal statutes" or "false statement with the [Public Utility] Commission." *See* para. 7 ("The cover up and overt acts include the forgery, counterfeiting and publication of official town and regional documents in violation of 13 V.S.A §1801 and §1802 and the submission of false certifications to the State and Federal government in violation of 13 V.S.A. §2002 and 32 V.S.A §631(a)(9).") *See also id*. ("The cover-up also includes filing false statements with the Commission that are based upon the existence of a Town Plan, but for which the Town knows does not exist and has not existed since October 6, 2023.") Only the "cover-up" was alleged against the members of the Select Board (other than two). A complaint was filed against the Town in federal court related to the Town Plan. *PLH Vineyard Sky LLC v. Town of Bennington*, 2:25-cv-469 (D. Vt. Filed May 2, 2025).

Complaint para. 62 states:

> Thomas Melone told the Public Utility Commission that he was "finalizing" a complaint to be filed in the United States District Court for the District of Vermont against the Town of Bennington for violations of the Racketeer Influenced and

Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c).

**Paragraph 62 does not accurately reflect what was stated.** The January 10, 2025 Comments say Respondent was finalizing a *civil* complaint against the Town and others (including unidentified "Does") that would include *various civil claims*, including breach of contract, declaratory and injunctive relief related to the Town Plan, civil rights violations and a civil RICO count. But the Respondent did not state what defendants would be charged in which Count. In other words, as to the Town, the two claims that were certain to be directed to the Town were the breach of contract[5] and the declaration that the Town Plan expired. There is no threat against any person Mr. Hanley can point to. The allegation in the Complaint edits and aggrandizes what was said apparently in an attempt to align with Mr. Hanley's chosen narrative.

Complaint para. 63 states:

> A RICO complaint must describe "predicate acts," specific criminal offenses, that, when committed as part of a pattern, can be the basis for civil actions. "Predicate acts" are the building blocks of a RICO claim and must be linked to a criminal "enterprise" to constitute a RICO violation.

The United States Supreme Court has "made clear that it would not interpret *civil* RICO narrowly." *Attorney Gen. of Canada v. R.J. Reynolds Tobacco Holdings, Inc*., 268 F.3d 103, 139 n.6 (2d Cir. 2001) (citing *Sedima, S.P.R.L. v. Imrex Co*., 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985)) (emphasis added.) A civil RICO claim is a civil claim. It must be based upon certain predicate indictable offenses that can be attributed to an enterprise. A RICO enterprise "includes any individual, partnership, corporation, association, or other legal entity, and any union *or group of individuals associated in fact* although not a legal entity." 18 U.S.C. § 1961(4) (emphasis added).

Complaint para. 64 states:

> Mr. Melone never filed a complaint alleging "RICO" violations by the Town of Bennington in any court.

Based upon paras. 61-64, Count I makes the following charges:

115. Thomas Melone's claims in filings in the Public Utility Commission that

[5] The breach of contract was based, *inter alia*, on what the Respondent alleged were unauthorized acts of Merrill Bent.

officials and agents of the Town of Bennington were engaged in a "cover-up conspiracy," committed acts of "forgery" and "counterfeiting," filed "false certifications to the state and federal government in violation of criminal statutes," and filed "false statements with the [Public Utility] Commission" and Thomas Melone's claim that the Town and its officials and employees were liable to him or his business organization for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c) violated:

a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;

b) Rule 4.3 (*sic*) in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of law and fact;

c) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies' applications for Certificates of Public Good; and

d) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.

Vermont Rule 3.5, entitled *Impartiality and Decorum of the Tribunal* states:

> A lawyer shall not:
> ***
> (d) engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal.

Vermont Rule 3.3 entitled *Candor Toward the Tribunal* states:

> (a) A lawyer shall not knowingly:
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

Comment [1] to the Rule states:

> This rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal."

Comment [2] to the Rule states:

> This rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Vermont Rule 4.5 entitled *Threatening Criminal Prosecution* states:

> A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter.

Vermont Rule 8.4 entitled *Misconduct* states:

> It is professional misconduct for a lawyer to: …(d) engage in conduct that is prejudicial to the administration of justice

Comment [6] to the Rule states

> A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

## ARGUMENT

### I. MR. HANLEY HAS NO STANDING TO SEEK TO QUASH THE SUBPOENAS.

Mr. Hanley was not duly appointed, and as a result has no standing to file a motion to quash the subpoenas.

In a May 20, 2025, letter to Mr. Hanley, *see* **ATTACHMENT 1**, Merrick Grutchfield stated:

> Dear Attorney
>
> Thank you for agreeing to serve as Conflict Disciplinary Counsel in the above referenced matter. We understand that your partner, Paul Perkins, may assist you on this matter and authorize the same. A copy of the file has been placed in a shared location by Brandy Sickles.
>
> The process is set out in Rule 13 of Administrative Order 9.
>
> If you will be billing for your time spent on this case, please send an itemized, monthly bill to my attention. Due to the confidential nature of our complaints and the fact that your bill will be processed by other departments, the bill should be somewhat redacted; please refer to the case by docket number and reference the attorney as "respondent." The assigned counsel rate for attorneys hired by the Professional Responsibility Board is $150 per hour. Finally, at the conclusion of this case, please return the complete file to Brandy Sickles.
>
> Bar Counsel Michael Kennedy is available to provide you with guidance on the process but is not authorized to discuss the substance of the complaint with you.
>
> Please contact me with any questions. Thank you so much for agreeing to undertake this matter.
>
> Very truly yours, Merrick Grutchfield Program Administrator

In an October 14, 2025, email to Respondent, Merrick Grutchfield stated that the appointment of Michael Hanley was done under color of authority of "Policy Number 22 [which] allows for the PRB Chair to name an alternate if Disciplinary Counsel has a conflict. AO 9 refers to the appointment of Disciplinary Counsel, versus the appointment of an alternate if Disciplinary Counsel has a conflict." *See* Policy 22 ("*22. When bar counsel, disciplinary counsel, screening counsel or any member of a hearing panel has a conflict or is otherwise disqualified or unable to serve, the Board Chair shall appoint an alternate.")*

While A.O. 9, Rule 1E(1)(c) provides that the PRB's "powers and duties include … Adopt[ing] internal procedures for the administration of the program that are consistent with these rules, including but not limited to guidelines for: … (c) the appointment of alternates when … disciplinary counsel … has a conflict or is otherwise disqualified or unable to serve," and the PRB has adopted Policy #22 that states the "Board Chair shall appoint an alternate,"

a. there is no evidence of his appointment being made by the Board Chair. Rather the letter from Merrick Grutchfield to Mr. Hanley indicates that it was the Program Administrator, Merrick Grutchfield, that "appointed" Mr. Hanley, not Carolyn Anderson.

b. On December 3, 2025, the chair of the Hearing Panel sent a letter to Carolyn Anderson requesting clarification regarding the appointment of Mr. Hanley. The letter stated:

> The only documentation we have of Mr. Hanley's appointment is a letter dated May 20, 2025, from Merrick Grutchfield in which she thanked Mr. Hanley for agreeing to serve as conflict disciplinary counsel in this case. But the letter does not advise Mr. Hanley that you, as chair of the Board, appointed him to this role. (I am attaching a copy of the letter.) We respectfully request that you clarify whether you made the appointment and, if so, the date of the same.

Respondent is unaware of any response from Carolyn Anderson to that letter.

c. Respondent issued a subpoena to Carolyn Anderson seeking, *inter alia*:

> For the period from January 1, 2025, to December 5, 2025, all e-mails, text messages, electronic messages (including messages sent through an application-based messaging service), in your possession or control to or from, or concerning, mentioning, or relating to any of (i) Thomas Melone, (ii) Michael F. Hanley, (iii) Merrill Bent, (iv) Paul Perkins, and/or (v) a solar energy electric generating facility located in, or proposed to be located in, Bennington, Vermont.

The Vermont Attorney General ("**AG**") responded on behalf of Carolyn Anderson. *See* **Attachment 1**. On the topic of the purported appointment of Mr. Hanley, the AG provided only the letter dated May 20, 2025, from Merrick Grutchfield, and refused to provide further information.[6] As a result, because the AG did not file a motion to quash but instead opted to object, Respondent must file suit to enforce the subpoena in Superior Court.[7]

d. Carolyn Anderson (if she is the Carolyn Anderson of Green Mountain Power ("**GMP**") which for some reason the AG refused to admit or deny) has a direct conflict with Respondent as she was general counsel for GMP when GMP was in active litigation with Respondent. Her conflict is evident and would have prevented her from taking *any action* related to Respondent, including appointing Mr. Hanley.

e. Policy 22 has not been approved by the Vermont Supreme Court.

f. Policy 22 is inconsistent with A.O. 9's requirements regarding appointment of disciplinary counsel under A.O. No. 9, Rule 2, which states that Disciplinary Counsel must be appointed by the Court Administrator "[f]ollowing consultation with the Board, and subject to Court approval." The Supreme Court did not approve Mr. Hanley's appointment for this matter following consultation between the PRB and the Court Administrator. The PRB can have a policy regarding "appointment of alternates when … disciplinary counsel … has a

[6] The AG did provide the orders from the Vermont Supreme Court appointing Carolyn Anderson as Chair of the PRB.

[7] Carolyn Anderson's refusal to produce the requested information is troubling in its own right—after all, what is she hiding?—but it also conflicts with her testimony provided to the Senate Government Operations Committee on April 1, 2025, *see* https://www.youtube.com/watch?v=LAECMbVFSxA (beginning in relevant part at 1:23:00). There she testified that the only information not obtainable after a complaint has been made public is that which might be protected by the work-product doctrine. Mr. Hanley has also refused to fully comply with a subpoena issued to him by Respondent for documents that would not be protected by the work-product doctrine. What is he hiding? Mr. Hanley produced some documents in response to a prior email request, the list of which is included in the two discovery certificates that he filed in this case dated October 1, 2025. One of the documents, *see* **ATTACHMENT 2**, appears to be surreptitiously redacted without any proper claim of justification for the redaction as required by V.R.C.P 45(d)(2)(A). The portion that appears to be improperly redacted is the entire first page above where the printed words begin. What is he hiding there?

conflict or is otherwise disqualified or unable to serve," but that policy cannot bypass the clear requirement of Rule 2.

The unlawful appointment of Michael Hanley renders his purported official actions void *ab initio*. The Complaint against Respondent that Mr. Hanley alone signed and filed is thus a nullity, should be dismissed, and regardless strips him of the ability to file the motion to quash the subpoenas. Dismissal of the Complaint and denial of the motion to quash is warranted because Mr. Hanley was not lawfully exercising governmental authority when he investigated, presented and signed the Complaint or filed the motion to quash. When a court determines that a government actor exercised "power that the actor did not lawfully possess," including because he was not "properly *appointed*," that ruling renders his past actions "void." *Collins v. Yellen*, 594 U.S. 220, 257-58 (2021) (emphasis added); *see id.* at 258 (citing cases). With an improper appointment, the officer at issue cannot "lawfully exercise the statutory power of his office at all in light of the rule that an officer must be properly appointed before he can legally act as an officer." *Id.* at 266 (Thomas, J., concurring). And any "[a]ttempts to do so are void." *Id.* at 283 (Gorsuch, J., concurring in part).

In light of these principles, the United States Supreme Court has invalidated judgments issued or reviewed by an improperly appointed adjudicator. In *Ryder v. United States*, 515 U.S. 177 (1995), for instance, the United States Supreme Court "reversed" the court-martial conviction of a defendant after he successfully challenged the appointment of the intermediate appellate judges who reviewed his case. *Id.* at 188. Likewise, in *Lucia v. SEC*, 585 U.S. 237 (2018), the United States Supreme Court set aside an agency adjudication "tainted with an appointments violation," making clear that a decision of an improperly appointed official cannot stand. *Id.* at 251. Similarly, in *United States v. Trump*, 740 F. Supp. 3d 1245 (S.D. Fla. 2024), the court applied these principles when dismissing an indictment because of a defect in the appointment of the prosecutor who secured the charges. The court reasoned that "[i]nvalidation follows directly from the government actor's lack of authority to take the challenged action in the first place." *Id.* at 1302-03.

For the above reasons, Mr. Hanley has no standing to seek to quash the subpoenas.

## II. MR. HANLEY'S ARGUMENT RELATING TO THE SPECIAL CIRCUMSTANCE OF STATUTORY WRONGFUL DISCHARGE CASES IS NOT RELEVANT OR APPLICABLE.

Mr. Hanley argues that the "situation is comparable to efforts by an employer in a wrongful discharge case to obtain evidence to attack the credibility of a fired employee and to support an 'after acquired evidence' defense." Motion at 4-5. That is incorrect, the situation is not comparable at all.

The question before the Court in *McKennon v. Nashville Banner Publ. Co*., 513 U.S. 352 (1995) was "whether an employee discharged in violation of the Age Discrimination in Employment Act of 1967 ("ADEA") is barred from all relief when, after her discharge, the employer discovers evidence of wrongdoing that, in any event, would have led to the employee's termination on lawful and legitimate grounds." *Id*. at 354. McKennon's employer claimed she was discharged "as part of a work force reduction plan necessitated by cost considerations." *Id*. McKennon claimed she was discharged because of her age in violation to the ADEA, which makes it unlawful for any employer: "to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1). *Id.* at 354-355. During discovery, McKennon admitted that "she had copied several confidential documents bearing upon the company's financial condition … took the copies home … for 'insurance' and 'protection.'" *Id.* at 355. Shortly after her admission, the employer "sent McKennon a letter declaring that removal and copying of the records was in violation of her job responsibilities and advising her (again) that she was terminated." *Id*. For purposes of summary judgment, the employer conceded its discrimination against McKennon. The District Court granted summary judgment for the employer (which was affirmed by the Court of Appeals) "holding that McKennon's misconduct was grounds for her termination and that neither backpay nor any other remedy was available to her under the ADEA." *Id*. "The Court of Appeals considered McKennon's misconduct, in effect, to be supervening grounds for termination." *Id*. at 536. The Supreme Court reversed, holding that

McKennon's misconduct did not render it irrelevant that admitted discrimination took place. *Id*. The Court held that it would not accord with the ADEA statutory "scheme if afteracquired evidence of wrongdoing that would have resulted in termination operates, in every instance, to bar all relief for an earlier violation of the Act." *Id*. at 358. The Court stated that "[t]he employer could not have been motivated by knowledge it did not have and it cannot now claim that the employee was fired for the nondiscriminatory reason." *Id*. at 360. The Court held that "[o]nce an employer learns about employee wrongdoing that would lead to a legitimate discharge, we cannot require the employer to ignore the information, even if it is acquired during the course of discovery in a suit against the employer and even if the information might have gone undiscovered absent the suit." *Id.* at 362. The Court held that the relief McKennon would generally be entitled to under ADEA would be limited to backpay for the period "from the date of the unlawful discharge to the date the new information was discovered." *Id*. at 864.

That situation has no bearing on this case. Here, Mr. Hanley has alleged that certain statements of Respondent (which he still fails to explicitly identify) were "false statements of law and fact." The question then is whether those statements were in fact actually false, and on that issue Respondent is entitled to exercise the full panoply of discovery rights that are relevant to the issues that Mr. Hanley has raised. Of course, Rule 3.3 also requires Mr. Hanley to prove by clear and convincing evidence not only that those unidentified statements were in fact false, but were known by Respondent to be false.

## III. THERE ARE NO EXTRAORDINARY CIRCUMSTANCES THAT WOULD JUSTIFY QUASHING OR RESTRICTING THE SUBPOENAS.

The Vermont Supreme Court has cautioned that "during the pretrial period 'restrictions which may impede the development, presentation and determination of facts should be avoided.'" *Schmitt v. Lalancette*, 2003 VT 24 (2003) at P13 ("*Schmitt*") quoting *Int'l Bus. Mach. Corp. v. Edelstein*, 526 F.2d 37, 41 (2d Cir. 1975). *See also*, *Farnsworth v. Procter & Gamble Co.,* 758 F.2d 1545, 1547 (11th Cir. 1985) ("trial preparation and defense . . . are important interests, and great care must be taken to avoid their unnecessary infringement"). The position on protective

orders of the Vermont Supreme Court and all federal and state courts is the same—protective orders are disfavored and should only be granted under extraordinary circumstances. *Schmitt* at P12 fn. 3 ("[p]rotective orders might prove necessary where there is a risk that one party will abuse the discovery process, [] but these are exceptional situations.") Here, the Subpoenas are simply for documents, documents that are easily accessible to the Town Recipients. It is not burdensome.

**A. Existing Evidence**

Mr. Hanley argues that Respondent is not entitled to any discovery in these proceedings as it relates to the Bennington Recipients because he believes that Respondent should have had all of the relevant information on January 10, 2025. As argued above in section II, Mr. Hanley is incorrect.

Regardless, the statements and disclosure made in the January 10 Comments were based soundly on existing documentary and video evidence which has been provided in the Reply.

**B. Mr. Hanley's Argument Against "After Acquired Evidence."**

The accumulation of evidence provided with the Reply was sufficient for Respondent to believe that truth of the matters asserted in the January 10 Comments and more than sufficient to commence an action against the various persons allegedly involved. The burden on plaintiffs under Vermont law at that stage is "exceedingly low." *See Prive v. Vermont Asbestos Group*, 2010 VT 2, ¶ 14, 187 Vt. 280, 992 A.2d 1035.

Had Respondent proceeded to litigation, there is no question that Respondent would be entitled to further develop his case through discovery. The same applies here. In any case, while some of the evidence that Respondent had on January 10, 2025, clearly indicated which official(s) of Bennington were allegedly involved, other evidence did not indicate which official(s) were responsible for a particular action. For example, with respect to the claim of allegedly filing false certifications to the State, ***Reply* Exhibit F** clearly shows which Bennington officials were involved because they are the ones with their signature on the Resolution. With respect to the claims of violations of 13 V.S.A. § 1801, however, the altered Town Plan is unsigned, and although it was Dan Monks who allegedly uploaded the altered document to the VCDP website, it is not

possible to tell solely from the cover page of the Town Plan, which person or persons were responsible for the actual alleged alteration or which persons knew about it, participated in it and/or authorized it. On that issue documents from the subpoenas are particularly relevant. This is one of the reasons why Respondent can deny the allegations of paragraph 61 of the Petition. Paragraph 61 of the Complaint reads as follows:

> On January 10, 2025, in proceedings in the Public Utility Commission regarding Apple Hill's application for a Certificate of Public Good, Thomas Melone said that all but two members of the Town of Bennington Select Board were in engaged in an active "cover-up conspiracy" and committed acts of "forgery," engaged in "counterfeiting," filed "false certifications to the state and federal government in violation of criminal statutes" and filed at least one "false statement with the [Public Utility] Commission."

As discussed above, Respondent never stated that all but two members of the Town of Bennington Select Board were engaged in acts of "forgery" and "counterfeiting," Respondent stated that only the cover up included such acts. Respondent did not "names names" at such point in time because Respondent did not (and still does not) know exactly which persons actually executed the alleged altering of official documents or which officials knew about it or authorized it. So, while Respondent had sufficient evidence of wrongdoing to support the veracity of his statements as well as to support the impending litigation, there was still additional work to be done through discovery to pinpoint exactly which officials were involved, and what each person actually did.

As evidenced by the accumulation of evidence described in the Reply, what Respondent had on January 10, 2025, was clear and more than sufficient to support his assertions and to support the impending litigation. What Respondent does not have at this stage of the proceeding, however, is any insight into how Mr. Hanley will attempt to satisfy his burden of demonstrating that Respondent's statements were false. Because of that fact too, Respondent is entitled to discovery and the documents to be produced from the subpoenas.

Tellingly, Mr. Hanley offers no case law in support of his arguments other than wrongful discharge cases that are inapposite. Respondent is not an employer looking for reasons to fire an

employee after he fired them. Respondent had sufficient evidence to believe the allegations to be truthful and, had the case proceeded to litigation, would have been entitled to further develop his case. Moreover, in *McKennon*, the case cited by Mr. Hanley, the defendant employer was entitled to conduct discovery and use the "after-acquired" evidence in its defense so it is entirely unclear why Mr. Hanley is referencing this case at all. Mr. Hanley also misreads the holding of *McKennon* by stating that "the Supreme Court held that after-acquired evidence can be presented by an employer to limit the amount of damages the plaintiff may recover, but not escape liability." Motion at 5. That is not at all what *McKennon* held. What the Supreme Court stated was:

> Where an employer seeks to rely upon after-acquired evidence of wrongdoing, it must first establish that the wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone if the employer had known of it at the time of the discharge. The concern that employers might as a routine matter undertake extensive discovery into an employee's background or performance on the job *to resist claims under the Act* is not an insubstantial one, but we think the authority of the courts to award attorney's fees, mandated under the statute, 29 U.S.C. §§ 216(b), 626(b), and to invoke the appropriate provisions of the Federal Rules of Civil Procedure will deter most abuses.

*McKennon* at 362-363 (emphasis added).

In other words, in *McKennon*, (1) the employer was entitled to discovery and (2) the employer could absolutely use the after-acquired evidence to "escape liability", even if potentially not all liability.

Lastly, neither *McKennon* nor *Walker v. H & M Hennes & Mauritz, L.P.*, 2016 U.S. Dist. LEXIS 123371 (S.D.N.Y. Sep. 12, 2016) ("*Walker*"), the other case cited by Mr. Hanley, stand for the proposition that Respondent is not entitled to any discovery as Mr. Hanley argues. In referencing the quoted language from *McKennon* above, the *Walker* court held:

> Courts have relied on this language in *McKennon* in holding that the after-acquired evidence defense cannot be used to pursue discovery *in the absence of some basis for believing that after-acquired evidence of wrong-doing will be revealed*. *Chamberlain v. Farmington Sav. Bank*, No. 3:06-CV-1437 (CFD), 2007 U.S. Dist. LEXIS 70376, 2007 WL 2786421, at *2 (D. Conn. Sept. 25, 2007) (collecting cases).

*Id.* at 4 (emphasis added).

In other words, the question before the court in *Walker* was not whether the employer was

entitled to discovery at all but whether the employer could use its after-acquired evidence to obtain *additional discovery* concerning that after-acquired evidence. The answer to that question was "yes" as long as there is a basis for believing that after-acquired evidence of wrong-doing will be revealed. Here, for one thing, there is no "after-acquired evidence", so the cases cited by Mr. Hanley are simply not relevant. And even if there was "after-acquired evidence", the cases cited by Mr. Hanley still do not present a blanket roadblock to discovery as he argues for.

But regardless, the evidence provided with the Reply is more than sufficient to establish that that there is "some basis for believing that after-acquired evidence of wrong-doing will be revealed." *Id*.

**C. <u>The Validity of the Town Plan Is Relevant.</u>**

Mr. Hanley argues that the issue in these proceedings is whether Mr. Melone violated the Vermont Rules of Professional Conduct, not whether witnesses are "bad," or even guilty of crimes. Mr. Hanley seems to forget that whether the Bennington witnesses are "bad" or guilty of crimes is *the issue* with respect to Count I in these proceedings and it is *the issue* because he made it the issue. It is difficult to ascertain why Mr. Hanley believes that the conduct of various Bennington persons is not relevant to the allegations against Respondent when Mr. Hanley himself is required to demonstrate that their conduct was not criminal.

**D. <u>V.R.E. 608 and 609 Are Not Applicable Here.</u>**

Mr. Hanley argues that discovery to elicit evidence of criminal actions should not be permitted in this proceeding because of V.R.E. 608 and 609. Mr. Hanley is wrong on two fronts. First, discoverable information does not have to also qualify as admissible. Second, V.R.E. 608 and 609 would only be applicable here if Respondent was looking to attack the credibility of certain witnesses in Bennington. While the credibility of certain witnesses from Bennington may have been relevant to the underlying PUC proceedings, as of now at this stage of the proceedings, their credibility as witnesses is not what the discovery is about. In these proceedings with respect to Count I, Mr. Hanley must demonstrate (i) that the statements made were actually false and (ii) that the Respondent knew they were false. At least at this stage of the proceeding, the credibility of

the Bennington Recipients as witnesses has nothing to do with those two questions, so V.R.E. 608 and 609 are not applicable.

**E. VRPC 4.5.**

Mr. Hanley argues that VRPC 4.5 applies whether or not the officers of Bennington were engaged in criminal conduct so evidence of any such criminal conduct is not relevant. Whether that is the case or not, is not relevant to the discovery issues here. VRPC 4.5 is not the only violation that Mr. Hanely has alleged. With respect to Count I, the issues include (1) whether Respondent's statements in the January 10 Comments were false, and on that score, whether Bennington officials were engaged in criminal conduct are relevant, because if they were, then there could be no basis for Count I's claim of falsity and (2) whether Respondent knew such statements to be false. Clearly, evidence of potential criminal conduct that would constitute predicate acts under a civil RICO claim is highly relevant to those questions and, therefore, these proceedings.

**CONCLUSION**

The Bennington Recipients were "dragged" into these proceeding not by Respondent but by Mr. Hanley himself. It is Mr. Hanley that accused Respondent of making false statements about the Bennington Recipients. It is Mr. Hanley that has the burden of demonstrating that those statements were false. Mr. Hanley cites no case law or statute that would preclude Respondent from engaging in discovery to defend against Mr. Hanley's accusations. While Respondent has sufficient evidence to support the statements made in the January 10 Comments as demonstrated by the accumulation of existing evidence described in the Reply, Respondent is entitled to exercise the full panoply of discovery rights that are relevant to the issues that Mr. Hanley has raised. There is no getting around the issues of the Bennington Town Plan, the Benn High development project, or whether Merrill Bent was validly hired as legal counsel on various specific matters. Mr. Hanley put those in issue and discovery on all those topics is fair game and necessary for Respondent to receive the fair and due process to which he is entitled.

For the above reasons, Respondent is entitled to the requested discovery and the documents to be produced from the subpoenas, and the motion must be denied.

Dated: January 13, 2026

Respectfully submitted,

*/s/Thomas Melone*

Thomas Melone
601 S. Ocean Blvd.
Delray Beach, FL 33483
Telephone: (212) 681-1120
Facsimile: (801) 858-8818
Thomas.Melone@AllcoUS.com

# ATTACHMENT 1

**CHARITY R. CLARK**
**ATTORNEY GENERAL**

**TEL: (802) 828-3171**

**www.ago.vermont.gov**

**STATE OF VERMONT**
**OFFICE OF THE ATTORNEY GENERAL**
**109 STATE STREET**
**MONTPELIER, VT**
**05609-1001**

December 30, 2025

By Email Only

Thomas Melone
601 S Ocean Blvd
Delray Beach, FL 33483
Thomas.melone@allcous.com

Re: Subpoena to Carolyn Anderson
In Re: Thomas Melone
PRB File No. 120-2025

Dear Attorney Melone,

I am writing in response to your subpoena to Professional Responsibility Board Chair Carolyn Anderson, served on December 18, 2025, seeking:

1. For the period from January 1, 2025, to December 5, 2025, all [communications] to or from, or concerning, mentioning, or relating to any of (i) Thomas Melone, (ii) Michael F. Hanley, (iii) Merrill Bent, (iv) Paul Perkins, and/or a solar energy electric generating facility located in, or proposed to be located in Bennington, Vermont.
2. For the period of January 1, 2024, to December 5, 2025, all documents appointing you as Chair of the Professional Responsibility Board.

You are hereby referred to the Petition of Misconduct served on you in this case, PRB 120-2025. That document is publicly available at: https://www.vermontjudiciary.org/about-vermont-judiciary/boards-and-commitees/professional-responsibility/hearing-calendar.

The public documents appointing Carolyn Anderson as Chair of the PRB and Michael Hanley as Conflict Disciplinary Counsel in PRB-120-2025 accompany this letter, as a courtesy to you.

Otherwise, Chair Anderson objects, pursuant to V.R.C.P. 45(c)(2)(B), to the request in your subpoena on the basis that the request imposes an undue burden by seeking information of limited or non-existent relevance, is directed to Ms. Anderson individually when it should be directed to the Board, and because it seeks information that is privileged and protected by quasi-judicial immunity in as much as it seeks information regarding the Board's supervision of the disciplinary hearing process involving your case. In addition, Chair Anderson objects on the basis that the hearing panel has ordered that the time to return documents for your subpoenas has been stayed pending resolution of the motions to quash pending in the disciplinary case.

Firstly, the information you seek is of limited or no relevance to this matter, and therefore the burden of searching for responsive documents, screening them for relevance and privilege and producing them to you is undue. The disciplinary violations alleged against you are spelled out in the Petition of Misconduct. The information you seek is not relevant to those charges or to any cognizable defense to the charges.

Second, to the extent any of that information could be relevant, it is in the custody of the Professional Responsibility Board, not Ms. Anderson individually. Any subpoena should be directed to the Board itself.

Third, absolute judicial immunity applies to officials who act in a quasi-judicial capacity and extends to protection against discovery related to the exercise of an official's quasi-judicial duties. *See In re Lickman*, 304 B.R. 897, 903 (Bankr. M.D. Fla. 2004) ("The policy behind immunity does not merely extend to suits, it also extends to protection against discovery. If judicial immunity were applicable, then it would be senseless and disruptive to allow for discovery."); *see also LeClerc v. Webb,* No. CIV.A. 03-664, 2003 WL 21026709, at 6 (E.D. La. May 2, 2003) ("[T]he protection afforded government officials by the doctrines of absolute and qualified immunity would be greatly depreciated if it did not include protection from discovery." (citing *Harlow v. Fitzgerald,* 457 U.S. 800, 816–18 (1982))).

The immunity extends to documents or testimony aimed at discovering a judicial officer's mental process used in decision-making. *See U.S. v. Roth*, 332 F. Supp. 2d 565, 567 (S.D.N.Y. 2004), *aff'd sub nom. U.S. v. St. John*, 267 F. App'x 17 (2d Cir. 2008) ("Judges are under no obligation to divulge the reasons that motivated them in their official acts; the mental processes employed in formulating the decision may not be probed." (internal quotations omitted); *id*. ("[A]llowing an examination of a judge's mental processes would be 'destructive of judicial responsibility' and such scrutiny cannot be permitted." (quoting *U.S. v. Morgan*, 313 U.S. 409, 422 (1941))).

The communications of Chair Anderson with other Board members, with the PRB staff, or with disciplinary or conflict disciplinary counsel related to the PRB's

exercise of its quasi-judicial function are privileged and immune from discovery. Chair Anderson, therefore, objects to your subpoena.

Please direct any additional correspondence regarding this issue to me. Thank you.

Sincerely,

*/s/ Alison Powers*

Alison Powers
Assistant Attorney General

**STATE OF VERMONT**

**Administrative Appointment No. 974** **September Term, 2025**

**Appointments to Professional Responsibility Board**

Pursuant to Administrative Order No. 9, **Susan Fay** is hereby reappointed to serve as a member of the Professional Responsibility Board for a term expiring August 31, 2030.

The following persons are hereby designated as Chair and Vice-Chair of the Board for terms expiring August 31, 2026.

**Carolyn Anderson, Esq., Chair**
**Caryn Waxman, Esq., Vice-Chair**

Done in Chambers at Montpelier, Vermont this 2nd day of September 2025.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice

Merrick Grutchfield
Program Administrator

109 State Street
Montpelier, Vermont
05609-0703
802.828.6551

May 20, 2025

Michael F. Hanley
82 Fogg Farm Road
White River Junction, VT 05001

RE: PRB-120-2025
Thomas Michael Melone, Esq. - Respondent
Merrill E. Bent- Complainant

Dear Attorney

Thank you for agreeing to serve as Conflict Disciplinary Counsel in the above referenced matter. We understand that your partner, Paul Perkins, may assist you on this matter and authorize the same. A copy of the file has been placed in a shared location by Brandy Sickles.

The process is set out in Rule 13 of Administrative Order 9.

If you will be billing for your time spent on this case, please send an itemized, monthly bill to my attention. Due to the confidential nature of our complaints and the fact that your bill will be processed by other departments, the bill should be somewhat redacted; please refer to the case by docket number and reference the attorney as "respondent." The assigned counsel rate for attorneys hired by the Professional Responsibility Board is $150 per hour. Finally, at the conclusion of this case, please return the complete file to Brandy Sickles.

Bar Counsel Michael Kennedy is available to provide you with guidance on the process but is not authorized to discuss the substance of the complaint with you.

Please contact me with any questions. Thank you so much for agreeing to undertake this matter.

Very truly yours,

Merrick Grutchfield

Merrick Grutchfield
Program Administrator

attachments
cc: Carolyn Anderson, Esq. – Chair

Gmail Thomas Melone <thomas.melone@gmail.com>

# PRB-120-2025; Subpoena to Carolyn Anderson

**Powers, Alison (she/her)** <Alison.Powers@vermont.gov> Thu, Jan 8, 2026 at 3:56 PM
To: "Thomas.Melone@allcous.com" <thomas.melone@allcous.com>

Attorney Melone,

I'm going to decline to answer any further questions at this time. There is no legal basis for your inquiry, and you are not entitled to an answer. Not only are your questions beyond the scope of the subpoena duces tecum served on Ms. Anderson in PRB File No. 120-2025, but the State has already stated its objections to the subpoena. Nevertheless, I provided you certain documents and public information as a courtesy. I decline to continue to do so.

Alison Powers

Assistant Attorney General

Office of the Vermont Attorney General

802-828-2359

**Please send all mail electronically**

---

**From:** Thomas Melone <Thomas.Melone@allcous.com>
**Sent:** Thursday, January 8, 2026 2:52 PM
**To:** Powers, Alison (she/her) <Alison.Powers@vermont.gov>
**Subject:** Re: PRB-120-2025; Subpoena to Carolyn Anderson



Thank you. When did she leave GMP?

On Thu, Jan 8, 2026 at 2:34 PM Powers, Alison (she/her) <Alison.Powers@vermont.gov> wrote:

> Hello,
>
> Carolyn Anderson is not employed by Green Mountain Power.
>
> Alison Powers
>
> Assistant Attorney General
>
> Office of the Vermont Attorney General

802-828-2359

**Please send all mail electronically**

---

**From:** Thomas Melone <Thomas.Melone@allcous.com>
**Sent:** Thursday, January 8, 2026 10:12 AM
**To:** Powers, Alison (she/her) <Alison.Powers@vermont.gov>
**Subject:** Re: PRB-120-2025; Subpoena to Carolyn Anderson

**EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.**

Good morning Alison,

Thank you for your email. Can you confirm that Carolyn Anderson is still employed with Green Mountain Power Company?

regards

Tom

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited

777 West Putnam Avenue, Suite 300

Greenwich, CT 06830

(212) 681-1120
(801) 858-8818 (fax)

On Tue, Jan 6, 2026 at 4:33 PM Powers, Alison (she/her) <Alison.Powers@vermont.gov> wrote:

> Hello Attorney Melone,
>
> Attached is a copy of the 2024 letter appointing Carolyn Anderson as Chair of the PRB. As described in my letter dated December 30, this public document is being provided to you as a courtesy. My letter makes no assertions regarding the existence or non-existence of additional communications pertaining to Michael Hanley's appointment as conflict disciplinary counsel.
>
> Sincerely,
>
> Alison
>
> Alison Powers

Assistant Attorney General

Office of the Vermont Attorney General

802-828-2359

**Please send all mail electronically**

---

**From:** Thomas Melone <Thomas.Melone@allcous.com>
**Sent:** Monday, January 5, 2026 9:58 AM
**To:** Powers, Alison (she/her) <Alison.Powers@vermont.gov>
**Subject:** Re: PRB-120-2025; Subpoena to Carolyn Anderson

**EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.**

Good morning Alison,

Thank you for the response.

Can you please send me the appointment letter from the Supreme Court for the previous year?

And can you confirm that Carolyn Anderson is still employed with Green Mountain Power Company?

Finally, are you asserting that there are no other communications regarding the alleged appointment of Michael Hanley as alternate disciplinary counsel (other than the letter that you attached from Merrick Grutchfield)?

Sincerely,

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited

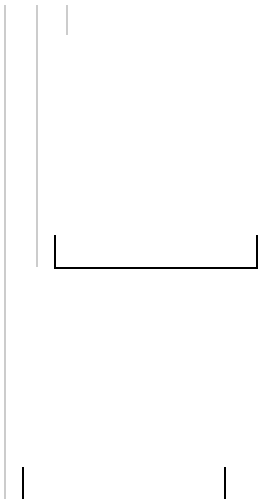
777 West Putnam Avenue, Suite 300

Greenwich, CT 06830

(212) 681-1120
(801) 858-8818 (fax)

On Tue, Dec 30, 2025 at 10:50 AM Powers, Alison (she/her) <Alison.Powers@vermont.gov> wrote:

> Attorney Melone:
>
> Please see the attached communication in response to the subpoena served on Carolyn Anderson.
>
> Alison Powers
>
> Assistant Attorney General
>
> Office of the Vermont Attorney General
>
> 802-828-2359
>
> **Please send all mail electronically**



# ATTACHMENT 2

From: **Thomas Melone** <thomas.melone@gmail.com>
Date: Wed, Nov 20, 2024 at 7:55 PM
Subject: Chelsea & Apple Hill Solar
To: Maru Leon <maru@mtanthonycc.com>, Maru Leon <maruleondesign@gmail.com>, <dgriffin@mtanthonycc.com>

Hello Maru & David,

I assume you have still been following the Chelsea solar case. And I understand that you were in attendance at the Planning Commission meeting that looked at the recent plan for Apple Hill solar.

As you know, in your filing withdrawing from the Chelsea case you listed various reasons for withdrawing, most of which were not very nice. The Town is repeating those reasons in their filings.

As you know, the Town is also pressing the issue of the view from the MACC as an issue.

As you also likely know, we requested the PUC to approve deposition subpoenas for you and the PUC denied that. We are appealing that decision to the Vermont Superior Court.

I think the only way that the various lingering issues from your involvement can be removed is if you send letters to the PUC, the Planning Commission and the Select Board supporting both projects. This way the other parties would stop trying to get you involved, and would eliminate any need for us to depose the two of you.

Please let me know if you are willing to do that.

Sincerely,

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th floor
New Haven, CT 06510

(212) 681-1120
(801) 858-8818 (fax)