

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re Thomas Melone
PRB File No. 120-2025

TOWN OF BENNINGTON'S CLARIFICATION REGARDING ITS OBJECTION TO
SUBEPOENAS AND MOTION TO ALTER

Now comes the Town of Bennington, a non-party, to clarify that it has not filed a motion to quash Respondent's subpoenas issued to the Bennington Recipients, but rather has served on Respondent an objection to the subpoenas pursuant to V.R.C.P. 45(c)(2)(B). The Town moves the Hearing Panel to alter its Order of January 20, 2026, to the extent that it directs the Town to meet-and-confer with Respondent, as such obligation does not apply to a non-party recipient of a Rule 45 subpoena, whether it merely objects or affirmatively files a motion under that Rule.

Rule 45(c)(2)(B), cited as the basis for the Town's objection, provides:

Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court for which the subpoena was issued. If objection has been made, the

party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing or sampling.

(emphasis added).

Having made a timely and thorough objection to the subpoenas in accordance with Rule 45, the Town and the individual recipients are entitled to the protections of Rule 45(c)(2)(B).

In this instance, the Town filed a certificate of service with the Panel to demonstrate that timely objection had been served on Respondent and Disciplinary Counsel pursuant to Rule 45(c)(2)(B). Upon receiving the certificate of service, the Panel requested that the Town also file a copy of its Objection. The Town obliged, though it was under no procedural obligation to do so. In so doing, it appears that other parties and now the Hearing Panel have construed the Town's objection as a motion to quash. On that basis, the Hearing Panel has now issued a ruling that would effectively reverse the appropriate burden.

The Town further notes that the meet-and-confer obligation of Rule 26(h)—by its express terms—applies only to motions made pursuant to V.R.C.P. 26 and 37—not motions made pursuant to Rule 45. There is no burden imposed on a subpoena recipient to meet and confer in a case to which it is not a party. *See Clift v. City of Burlington, Vermont*, No. 2:12-CV-214, 2013 WL 12347197, at *1 (D. Vt. Aug. 26, 2013) (Sessions, J.) (“A non-party filing a Rule 45 motion therefore does not need to meet and confer prior with the counsel of the party serving the subpoena.”). Thus, even if the Town had filed a motion to quash, or the Respondent had filed a motion to compel, it would not subject the Town, a nonparty, to the requirements of Rule

26(h), which would itself result in undue burden. In ruling on a motion made pursuant to Rule 45, a court has an *obligation* to quash a subpoena under specified circumstances, including when the subpoena subjects the recipient to an undue burden, regardless of whether the non-party first attempted to confer about the scope of the subpoena. *Id.*

The Hearing Panel's January 20, 2026 Order directs that the Town of Bennington confer with the Respondent pursuant to V.R.C.P. 26. Insofar as V.R.C.P. 45 does not impose an obligation on nonparties receiving a subpoena under Rule 45 to meet and confer (and the Town has not filed a motion in any event), the Town respectfully requests that the Hearing Panel modify its order to remove any directive that the Town meet and confer with the Respondent.

Dated this 22nd day of January, 2026.

TOWN OF BENNINGTON

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