

STATE OF VERMONT
PROFESSIONAL RESPONSIBILTIY PROGRAM

In re Thomas Melone
PRB No. 120-2025

- CONFLICT DISCIPLINARY COUNSEL'S:**
- (1) MOTION TO QUASH ALL SUBPOENAS ISSUED BY MR. MELONE,**
 - (2) OBJECTION TO *RESPONDENT'S SECOND MOTION TO COMPEL MR. HANLEY TO COMPLY WITH SUBPOENA*, AND**
 - (3) REPORT ON MEETING AND CONFERENCE WITH RESPONDENT**

Pursuant to Rule 19(A)(4) of A. O. 9, the Chair of the Hearing Panel should quash the subpoenas issued by Mr. Melone because he has not yet filed an answer and no discovery may issue until he files an answer. A. O. Rule 19(B)(1).

Because Rule 19(B)(1) bars discovery, including requests for documents and other materials, until the respondent files an answer, the Chair should deny *Respondent's Second Motion to Compel Mr. Hanley to Comply with Subpoena*.

Section III of this memorandum is a report on the meeting and conference I had with the Respondent on January 30, 2026.

MEMORANDUM

I. Motion to Quash

Rule 19(A)(4) grants the Chair of the Hearing Panel the authority to hear and determine an attack on the validity of a subpoena. Rule 19(B)(1) prohibits discovery until the respondent files an answer to a petition for misconduct and then limits discovery to depositions and reasonable requests for production for a period of 60 days:

B. Discovery

- (1) *Scope.* Within 20 days following the filing of an answer, disciplinary counsel and respondent shall exchange the names and addresses of all persons having knowledge of relevant facts and/or

of witnesses. This list shall be updated without request. Within 60 days following the filing of an answer, disciplinary counsel and respondent may take depositions and shall comply with reasonable requests for production of (a) nonprivileged documents and evidence relevant to the charges or to respondent and (b) other material upon good cause shown to the chair of the hearing panel.

On September 26, 2025, following a finding of probable cause, I filed the *Petition for Misconduct* and served it on Mr. Melone. Mr. Melone has not filed an answer. Since the filing and service of the *Petition*, Mr. Melone has filed multiple motions to delay his answer, each requesting a more distant deadline or event (such as the Vermont Supreme Court's ruling on any of Mr. Melone's five filings he has made so far in that court). Mr. Melone's most recent request to delay his answer was filed on February 6, 2026.

Also since the filing of the *Petition*, Mr. Melone has sent multiple subpoenas for the production of documents, and for depositions, to various persons, including the Chair of the Professional Responsibility Board, the Professional Responsibility Board, Conflict Disciplinary Counsel and third parties, some of whom have no relevant evidence or information, except that they were the recipients of communications from Mr. Melone; communications that Mr. Melone does not dispute that he sent.

In all, Mr. Melone has sent 32 subpoenas for the production of documents or for depositions, but has not yet filed an answer to the *Petition* that was filed more than five months ago.

The rule prohibiting depositions and reasonable requests for production until the filing of an answer is designed to define the scope of discovery. The first part of Rule 19(B)(1), entitled "Scope" of discovery, requires disciplinary counsel and the respondent to exchange names of addresses of all persons having relevant facts, and of witnesses, within 20 days of the

respondent's answer. Such an exchange is designed to limit discovery to those persons with relevant evidence. The names exchanged can be compared to the petition for misconduct and the respondent's answer to determine whether the persons identified in the exchange actually have relevant information or are witnesses.

The rule prohibiting depositions and requests for the production of documents until after an answer is filed has the same purpose.

The rule limiting depositions and requests for production of documents to the sixty-day period following the filing of an answer, and the rule excluding all discovery provisions of the Vermont Rules of Civil Procedure except for subpoenas and depositions, are designed to prevent endless, unregulated discovery and to provide for the "fair and prompt" resolution of disputes.¹ Indeed, one of the duties of the Professional Responsibility Board is to adopt rules, such as Rule 19(B)(1), for "the prompt and timely disposition of all complaints"²

By delaying his answer while he sends out subpoenas and schedules depositions, Mr. Melone subverts the design of the rules for the fair, prompt and timely disposition of complaints. The Chair should quash all subpoenas issued by Mr. Melone, order that Mr. Melone must file an answer to the *Petition* before serving any more discovery requests, including subpoenas, and order that all discovery take place within the 60-day period after the filing of Mr. Melone's answer, pursuant to Rule 19(B)(1).

¹ A. O. 9, Purpose, at (2) ("The Professional Responsibility Program is established to provide a comprehensive system of regulation of the legal profession. Its objectives are . . . (2) to resolve disciplinary complaints against attorneys through fair and prompt dispute resolution procedures").

² A. O. 9, Rule 1(E)(1)(a).

II. *Objection to Respondent's Second Motion to Compel Mr. Hanley to Comply with Subpoena*

Because Mr. Melone has not yet filed an answer to the *Petition*, the subpoena he sent to me is not valid, should be quashed, and his motions to compel me to comply with the subpoena should be denied as moot.

In addition, I have already produced all discoverable records and documents to Mr. Melone. The documents I did not produce are not subject to discovery by virtue of the attorney work product and attorney-client privileges. Mr. Melone seeks, but is not entitled to, any and all documents prepared by me, or prepared under my supervision, in anticipation of litigation or in preparation for a hearing on the merits. He also may not have access to my notes or the notes of anyone working under my supervision, regarding my interview of witnesses. He may not have records of my legal research or any drafts of documents prepared by me.

Further, under Rule 19(A)(2), disciplinary counsel and respondent may only subpoena witnesses. I am not a witness.

III. *Report on January 30, 2026 Meeting and Conference*

On January 30, 2026, pursuant to the Chair's January 21, 2026 Order, I met and conferred with Mr. Melone and Assistant Attorney General David Groff, who represents the Chair of the Public Utility Commission, Ed McNamara. We spoke by telephone regarding disputes over the subpoenas that Mr. Melone served on Mr. McNamara and me. Mr. Groff left the conversation after a few minutes. My conversation with Mr. Melone lasted about 90 minutes.

I disagree with Mr. Melone's representations about what was said at the meeting. However, I will not report the details of our conversation. The "meet and confer" requirement for discovery disputes does not call for such reports, nor should it, because reports of this type

will only result in disputes over who said what. I participated in good faith in the conference and was unable to resolve the dispute. The matter should now be decided by the Chair. The subpoena should be quashed and the motions to compel me to comply with the subpoena should be denied.

WHEREFORE, the Chair should:

1. Quash all subpoenas previously issued by Mr. Melone;
2. Order that no discovery may take place until Mr. Melone files an answer to the *Petition for Misconduct*;
3. Order that all discovery must occur within sixty days of Mr. Melone's filing of an answer to the *Petition for Misconduct*; and
4. Deny *Respondent's Second Motion to Compel Mr. Hanley to Comply with Subpoena*.

Dated: February 9, 2026

/s/ Michael F. Hanley
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