STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re Thomas Melone
PRB No. 120-2025

CONFLICT DISCIPLINARY COUNSEL'S REPLY TO THOMAS MELONE'S "RESPONSE" TO CONFLICT DISCIPLINARY COUNSEL'S MOTION FOR THE RECUSAL OF THE HEARING PANEL CHAIR

In the Respondent's "Response" to Conflict Disciplinary Counsel's motion requesting the recusal of the Hearing Panel Chair Thomas Melone:

- Misstates what Conflict Disciplinary Counsel said in the motion requesting Chair Brill's recusal;
- makes a number of inaccurate statements about the nature of the disciplinary proceedings in Vermont, the role of the Professional Responsibility Board and its Chair, the role of Conflict Disciplinary Counsel and the role of the Hearing Panel;
- asserts a number of legal conclusions that are without foundation or merit; and
- asks for relief which has no basis in fact or law.

Hearing Panel Chair Brill should recuse herself, a new Chair should be appointed, Mr. Melone should stop obstructing these proceedings and honor his duty to cooperate with the disciplinary process, and the Hearing Panel should issue orders which lead to the prompt resolution of the charges of professional misconduct.

MEMORANDUM

I. Conflict Disciplinary Counsel Did Not Allege That Hearing Panel Chair Brill Violated the Code of Judicial Conduct.

Contrary to Mr. Melone's claims, Conflict Disciplinary Counsel has **not** alleged that Hearing Panel Chair Brill violated the Vermont Code of Judicial Conduct.

Under Administrative Order 9, Rule 14(d), a hearing panel member must disqualify herself if a "judge, similarly situated, would be required to do so under the Vermont Code of Judicial Conduct." Under Rule 1.2 of that Code, a judge must disqualify herself to avoid "the appearance of impropriety." Conflict Disciplinary Counsel only asserts that some might question whether Chair Brill attempted to investigate facts independently and, as a result, in order to avoid even a hint of controversy, Ms. Brill should recuse herself as Chair of the Hearing Panel.

Conflict Disciplinary Counsel does not assert or admit, and denies, that Chair Brill caused any injury, harm or prejudice to Mr. Melone.

II. Mr. Melone's Statements Regarding the Attorney Discipline Process in Vermont Are Inaccurate.

Unlike the situation in some states, the Vermont Constitution gives the Vermont Supreme Court the right and the duty to regulate the practice of law in Vermont.

Under A.O. 9, the Professional Responsibility Board manages the Professional Responsibility Program created by the Vermont Supreme Court to assist it in the regulation of the bar. The Board enacts policies with respect to that program. The Professional Responsibility Board is an administrative, not an adjudicative, body.

Disciplinary Counsel and Conflict Disciplinary Counsel are supervised by the Board. Disciplinary Counsel and Conflict Disciplinary Counsel regularly report to the Board. What

Disciplinary Counsel and Conflict Disciplinary Counsel say in their reports to the Board are subject to the attorney-client and work product privileges.

The Professional Responsibility Board and its Chair have no role in the adjudication of petitions of misconduct. While the Chair of the Professional Responsibility Board appoints the members of hearing panels, the Board and its Chair do not supervise hearing panels. The findings of fact, the conclusions of law and the recommendations of a hearing panel are **not** subject to review by the Board. However, the findings of fact, the conclusions of law and the recommendations of a hearing panel with respect to sanctions are subject to review by the Vermont Supreme Court, which is free to reject or accept those findings, conclusions and recommendations. Of course, the internal proceedings of a hearing panel are subject to the judicial privilege.

A review of the attorney discipline decisions of the Vermont Supreme Court shows that it is not uncommon for the Court to reject the sanction recommendations of hearing panels, albeit while thanking those panels for their work in helping the Court to fulfill its constitutional duty to govern the practice of law in Vermont. See, for example, In Re Watts, 2024 VT 48.

III. Mr. Melone's Requests for Relief, Not Contained in a Motion, Have No Basis in Fact or Law.

Mr. Melone's statement that "a mistrial must be declared" is without merit. The Hearing Panel has not conducted a trial or hearing. There cannot be a mistrial before a trial starts.

Mr. Melone's statement that "the case [must be] re-started (*i.e.*, begun anew)" is without merit. The Hearing Panel has heard no evidence and made no findings of fact or conclusions of law. There is nothing to restart.

Mr. Melone's statement that "the petition must be dismissed" is without merit. Both the Hearing Panel and the Vermont Supreme Court have denied multiple motions to dismiss by Mr. Melone. Indeed, no reasonable person would assert that if the factual allegations of the *Petition of Misconduct* are true, Mr. Melone did not violate the *Rules of Professional Conduct*.[1]

IV. Whether Conflict Disciplinary Counsel Was Properly Appointed by the Chair of the Professional Responsibility Board, and Whether the Chair Has the Authority to Appoint Conflict Disciplinary Counsel, Is Not Related to Whether Mr. Melone Engaged in Professional Misconduct.

Mr. Melone has objected at every point in these proceedings. He has objected to the appointment of Conflict Disciplinary Counsel in this case. He has challenged the authority of the Professional Responsibility Board to enact policies on what to do when Disciplinary Counsel has a conflict of interest, suggesting that if Disciplinary Counsel has a conflict regarding a particular case the disciplinary process cannot proceed, even if a lawyer if guilty of substantial misconduct.

Conflict Disciplinary Counsel would have no objection if the Hearing Panel were to order either the presentation of affidavits or an evidentiary hearing regarding my appointment. Both I and Professional Responsibility Board Chair Anderson would state, under oath, that:

- Disciplinary Counsel Jon Alexander thought he had a conflict of interest;
- Chair Anderson asked me to serve as Conflict Disciplinary Counsel;
- I agreed to do so;

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[1] Mr. Melone's repeated assertion that the Petition of Misconduct must be dismissed because he has a constitutional right to violate the Rules of Professional Conduct is irrational hyperbole. While the Constitution places some limits on a state's regulation of the speech of lawyers, Mr. Melone's claim that the Constitution bars all regulation of his speech as a lawyer is not supported by any of the cases he cites. Multiple decisions of the United States Supreme Court make clear that the protection afforded to professional speech is much less than the protection afforded to political or artistic speech.

- Chair Anderson asked the Program Administrator, Merrick Grutchfield, to prepare a letter memorializing my appointment; and
- Ms. Grutchfield prepared the letter and sent it to me.

Whether the letter Ms. Grutchfield prepared says what Mr. Melone claims it must say is beside the point. Chair Anderson appointed me as Conflict Disciplinary Counsel, and I agreed to serve.

Whether A.O. 9 authorizes the Professional Responsibility Board to enact a policy giving its Chair the authority to appoint Conflict Disciplinary Counsel is beyond the scope of these proceedings. A.O. 9 gives the Professional Responsibility Board the power to enact policies, and the Board enacted a policy giving its Chair the authority to appoint Conflict Disciplinary Counsel when Disciplinary Counsel has a conflict of interest. Any arguments Mr. Melone seeks to make regarding the validity of either A.O. 9 or Board policies enacted pursuant to A.O. 9 should be addressed to the Supreme Court at the appropriate time. The Hearing Panel has an important role in this case, but it does not extend to telling the Supreme Court what it can, and cannot, do in the Court's administrative orders.

V. A.O. 9 Requires That Disciplinary Proceedings Be Prompt.

A.O. 9 mandates the prompt resolution of disciplinary proceedings. The Petition of Misconduct was filed on September 20, 2025, 136 days ago. During that time Mr. Melone has filed hundreds pages of pleadings with the Hearing Panel and the Vermont Supreme Court, issued a substantial number of subpoenas to third parties, demanded that non-parties "meet and confer" with him regarding his subpoenas and threatened to initiate proceedings in federal court, but failed to file an answer. Mr. Melone's filings repeat the same baseless arguments again and again. Mr. Melone has obstructed these proceedings and blatantly violated his obligation to

cooperate with the disciplinary process. The Hearing Panel should not be distracted by Mr. Melone's antics and should ensure that these proceedings are promptly concluded.

VI. Conclusion

Hearing Panel Chair Brill should recuse herself, a new Hearing Panel Chair should be appointed, and the Hearing Panel should conduct a scheduling hearing. At, or shortly after, the scheduling hearing, the Hearing Panel should issues orders regarding motion practice, discovery and the date of the hearing on the merits, all designed to bring this matter to a conclusion. If, as he has threatened, Mr. Melone initiates proceedings in federal court, absent orders to the contrary from a federal court or the Vermont Supreme Court, the Hearing Panel should proceed with an adjudication on the merits.

Dated: February 11, 2026

/s/ Michael F. Hanley
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