STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re Thomas Melone	)	PRB No. 25-120
	)	
	)	February 10, 2026

RESPONDENT'S RESPONSE TO
MICHAEL HANLEY'S MOTION FOR RECUSAL

On January 27, 2026, Michael Hanley filed a motion to have the Hearing Panel Chair recuse herself based on alleged violations of the *Vermont Code of Judicial Conduct* (Vt. A.O. 10) (the "Judicial Code"). In support of his motion, Mr. Hanley attached multiple *ex parte* communications involving the Hearing Panel chair and Carolyn Anderson who is the chair of the Professional Responsibility Board ("PRB"). Mr. Hanley's motion also disclosed multiple *ex parte* communications involving himself and Carolyn Anderson.

Mr. Hanley and Ms. Anderson have both refused (without any valid legal basis) to provide all of their electronic communications regarding the Respondent and this case. It's easy now to understand why. The communications that Hanley did disclose are likely just the tip of the iceberg. That any *ex parte* communications between Ms. Anderson and Mr. Hanley exist after the Petition for Misconduct was filed is alarming in and of itself, displays utter lack of fairness in the process, and reinforces the Respondent's theory of this case as retaliation by Vermont's legal elite for the Respondent's litigation involving Merrill Bent, the chair of the Judicial Conduct Board, after Respondent publicly disclosed the Town of Bennington's governmental malfeasance and Ms. Bent's firm's potential role in it.

Administrative Order No. 9. Rule 2D requires that a "hearing panel member shall disqualify himself or herself from taking part in any proceeding in which a judge, similarly situated, would be required to do so under the Vermont Code of Judicial Conduct." That Rule further provides that the "chair of the hearing panel shall rule on any motion to disqualify." The Rule then provides that "[a]ny appeal of that decision will be decided by the chair of the Board, [*i.e.*, Carolyn Anderson] whose decision is final." In other words, Carolyn Anderson *ex parte* sent communications to Mr. Hanley, which then Mr. Hanley used to seek the HP Chair's recusal, all

the while with both of them knowing that if Mr. Hanley's motion was turned down, Carolyn Anderson then could overrule that decision under A.O. 9, Rule 20D.

Assuming *arguendo* that Mr. Hanley was properly appointed (which Respondent still disputes for the reasons stated in earlier filings), Mr. Hanley's motion references various *ex parte* communications from Carolyn Anderson, one of which allegedly was Ms. Anderson's reply to the HP Chair. That reply was not attached to Mr. Hanley's motion (although he obviously has it) and has never been provided to Respondent.

According to Mr. Hanley's recusal motion, "Ms. Anderson told Chair Brill that she appointed [Hanley] as Conflict Disciplinary Counsel on May 16, 2025." However, without seeing that email, Respondent has no way to adequately respond to the alleged statement of Ms. Anderson, and Respondent has no way of knowing whether Mr. Hanley's characterization is accurate.

Regardless, an *ex parte* email from Carolyn Anderson in January 2026 to the HP Chair claiming that she appointed Mr. Hanley back in May 2025 is not evidence. Indeed, it is clearly inadmissible because it was obtained through a violation of Rule 2.09(C). *See, e.g., Rutanhira v. Rutanhira*, 190 Vt. 449, 455-56, 35 A.3d 143 (2011) (holding it was error for the district court to conduct its own investigation and rely on information taken from outside of the proceeding because it deprives the parties of the opportunity to respond and test any of the information acquired through this examination). "'In conducting its own independent factual research, the court improperly went outside the record in order to arrive at its conclusions, and deprived the parties [of] an opportunity to respond to its factual findings.'" *Matter of Justice v. King*, 60 A.D.3d 1452, 1453-54, 876 N.Y.S.2d 301 (2009) (internal citation omitted). *See also, In Matter of Rokowski*, 168 N.H. 57, 61-62, 121 A.3d 284 (2015) (holding trial court erred because it relied, in part, upon its own internet research); *See also Wang v. Attorney General of United States*, 423 F.3d 260, 269 (3d Cir. 2005) (the assurance that the arbiter is not predisposed to find against a person "is absent—and judicial conduct improper—whenever a judge appears biased, even if she actually is not biased") (internal citations omitted). As the United States Supreme Court declared in *Williams v. Pennsylvania,* 579 U.S. 1, 136 S. Ct. 1899, 1909 (2016): "An insistence on the appearance of

neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself." Apropos to this case, the failure to recuse the entire hearing panel, or alternatively to disqualify the entire hearing panel under A.O. 9, Rule 20J would be "an unconstitutional failure to recuse constitut[ing] structural error." *Id.* at 579 U.S. at 14.

Even if Carolyn Anderson's response weren't excludible (which it is), if Carolyn Anderson did, in fact, appoint Mr. Hanley (even assuming *arguendo* that Policy 22 is authorized), there would have been evidence contemporaneous with the alleged appointment. Thus far, nothing of the sort has been produced. Indeed, even in the face of a subpoena, Carolyn Anderson has refused to provide all documentation allegedly related to the appointment. Carolyn Anderson only produced the same letter from Merrick Grutchfield that the Hearing Panel is in possession of. And whatever immunity or privilege that she claimed as the basis to resist the subpoena's command for documents would now be waived in any event because she voluntarily sent that email to the HP Chair and, as a result, she has now placed what she did or did not do on May 16, 2025, at issue. Regardless, the fact that the Chair of the PRB is hiding information displays utter lack of fairness in the process, and reinforces the Respondent's theory of this case as retaliation by Vermont's legal elite for the Respondent's litigation involving Merrill Bent, the chair of the Judicial Conduct Board

In any case, the December 3, 2025, email from the HP Chair stated that: "[t]he *panel* is seeking clarification regarding the appointment of Michael F. Hanley." (Emphasis added.) The letter attached to the email and subsequent *ex parte* emails to Carolyn Anderson stated: "We [*i.e., all members of the hearing panel*] anticipate that in [Respondent's] answer he will raise the issue of whether Conflict Disciplinary Counsel Michael Hanley was properly appointed." (Emphasis added.)

In other words, if the HP Chair's actions violated the rules of conduct (which they do), then the violation applies to *all of the members* of the hearing panel.

Nevertheless, Respondent contends that Mr. Hanley's allegation that the Hearing Panel Chair has violated the rules of Judicial Conduct also constitutes a "complaint" against her for purposes of A.O. 9, Rule 20J. The question of recusal would then be moot because A.O. 9, Rule 20J automatically disqualifies the entire hearing panel. *Id.* ("If a complaint is filed against a member of a hearing panel, no member of that hearing panel shall participate in disposition of that complaint.")

Put another way, regardless of the reason for the entire hearing panel being removed from this case, a mistrial must be declared and the case completely re-started (*i.e.*, begun anew) with a new hearing panel, and because, *inter alia*, of Mr. Hanley's judicial deception,[1] the current petition must be dismissed and the finding of probable cause vacated.

CONCLUSION

The investigation of facts independently by the Hearing Panel are clear violations of the rules of judicial conduct, constitute a violation of Respondent's constitutional due process rights and additionally likely violate multiple rules of the rules of professional conduct. Whether due to multiple violations of the rules of conduct or the application of A.O. 9, Rule 20J, all the members of the hearing panel must recuse themselves, a mistrial declared and the case re-started afresh with a new hearing panel.

Dated: February 10, 2026

Respectfully Submitted,

/s/ Thomas Melone
Thomas Melone
601 S Ocean Blvd
Delray Beach, FL 33483
(212) 681-1120
Thomas.Melone@AllcoUS.com

[1] *See*, RESPONDENT'S SECOND MOTION TO COMPEL MICHAEL HANLEY TO COMPLY WITH SUBPOENA dated February 9, 2026 at 2 *et seq*.