

2/12/2026

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

In Re THOMAS MELONE,
(Thomas Melone, Respondent)

PRB File No. 25-120

February 12, 2026

**RESPONDENT’S REPLY TO MR. HANLEY’S OPPOSITION TO THE MOTION TO
COMPEL AND OPPOSITION TO MR. HANLEY’S MOTION TO QUASH ALL
SUBPOENAS**

Respondent THOMAS MELONE (“Respondent”) hereby submits this reply to Mr. Hanley’s opposition to the motion to compel and opposition to Mr. Hanley’s motion to quash all subpoenas issued by Respondent, which was filed by him on February 9, 2026.

A. REPLY TO MR. HANLEY’S OPPOSITION TO THE MOTION TO COMPEL.

Mr. Hanley makes two general assertions in his opposition.

1. Mr. Hanley’s Claim That An Answer Must First Be Filed Is Meritless.

He initially asserts that “[b]ecause 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.” Hanley Motion at 4. Mr. Hanley’s assertion is without merit.

First, Mr. Hanley failed to timely file a motion to quash. He has thus waived that right.

Second, Mr. Hanley fails to even address the clear provision of A.O. 9, Rule 19A(2) that expressly authorizes Respondent to issue subpoenas for discovery immediately once a petition for misconduct was filed. *Id.* (“After a petition, ... is filed, disciplinary counsel or respondent may compel by subpoena the attendance of witnesses and the production of pertinent books, paper, and documents.”)

Third, Mr. Hanley previously agreed with Respondent’s position that subpoenas for documents can be issued immediately after a petition for misconduct is filed. Indeed, Mr. Hanley

moved to vacate the Hearing Panel’s December 11, 2025, order on the subject¹ and the Hearing Panel vacated said part of the order.

The subpoena was and is valid. Mr. Hanley agreed in his December 16, 2025, motion to reconsider. A.O. 9, Rule 19A(2) is also clear that Respondent has the right to issue said subpoena.

Finally, Rule 45 subpoenas are appropriate to serve on parties as well as non-parties. *See, e.g., Badman v. Stark*, 139 F.R.D. 601, 603 (M.D. Pa. 1991) (holding that, although Rule 34 applies only to parties, “a subpoena under Rule 45 may be served upon both party and non-party witnesses.”) (citing *Continental Coatings Corp. v. Metco, Inc.*, 50 F.R.D. 382, 384 (N.D. Ill. 1970)).

District courts in the Second Circuit agree. *See, First City, Texas-Houston, N.A. v. Rafidain Bank*, 197 F.R.D. 250, 255 n.5 (S.D.N.Y. 2000), *aff’d*, 281 F.3d 48 (2d Cir. 2002) (“While a Rule 45 subpoena is typically used to obtain the production of documents and/or testimony from a non-party to an action . . . nothing in the Federal Rules of Civil Procedure explicitly precludes the use of Rule 45 subpoenas against parties.”) (citing *Badman*, 139 F.R.D. at 603). Citing the text of Rule 45, *Moore’s Federal Practice*, states that it “may be used to subpoena any person - party or nonparty - to produce books, documents, or tangible things at the trial.” James Wm. Moore et al., *7 Moore’s Federal Practice* § 34.02[5][c] (3d ed. 1997); *see also* *9 Moore’s Federal Practice* § 45.03[1] (noting that “subpoenas under Rule 45 may be issued to parties or non-parties”). *See also*, *10A Federal Procedure, Lawyers Edition* § 26:464 (1994) (stating that “FRCP 45, unlike FRCP 34(a) and (b), applies to nonparties as well as parties”) (footnotes omitted).

2. Mr. Hanley Has Not Produced All Documents.

Mr. Hanley asserts that “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.” Why should Mr. Hanley be believed when he fails to produce a necessary privilege log?

¹ *See*, CONFLICT DISCIPLINARY COUNSEL’S MOTION TO RECONSIDER THE HEARING PANEL’S DECEMBER 11, 2025 ENTRY ORDER dated December 16, 2025 (the “[Hanley Reconsideration Motion](#)”).

During adversarial proceedings after Plaintiff publicly disclosed governmental malfeasance of the Town and Ms. Bent's firm's potential role in it, Attorney Merrill Bent filed a bar disciplinary complaint against Plaintiff. None of Mr. Hanley's communications with Ms. Bent or any of the other people mentioned in the petition for misconduct constitute either work product or attorney-client communications. And Mr. Hanley has not produced any email from Ms. Bent. From Ms. Bent, he has only produced documents that he claims were highlighted by Ms. Bent, but has refused to produce any emails themselves.

In any case, Mr. Hanley's bald assertion of work product and attorney client privilege is insufficient. He must produce a privilege log if he seeks to claim any type of privilege with sufficient information to justify the claimed privilege. *See, e.g., Jansson v. Stamford Health, Inc.*, 312 F. Supp. 3d 289, 299 (D. Conn. 2018), *reconsideration denied*, No. 3:16-CV-260 (CSH), 2018 U.S. Dist. LEXIS 86959, 2018 WL 2357271 *35-36 (D. Conn. May 24, 2018) ("A party's right to assert and succeed upon of a claim of privilege is conditioned upon its filing 'an adequately detailed privilege log'" (quoting *United States v. Construction Prods. Research*, 73 F.3d 464, 473 (2d Cir. 1996)); *Aurora Loan Servs., Inc. v. Posner, Posner & Assocs., P.C.*, 499 F. Supp. 2d 475, 479 (S.D.N.Y. 2007) ("[f]ailure to furnish an adequate privilege log is grounds for rejecting a claim of attorney client privilege"); *OneBeacon Ins. Co. v. Forman Int'l, Ltd.*, 2006 U.S. Dist. LEXIS 90970, 2006 WL 3771010, at *6 (S.D.N.Y. Dec. 15, 2006) ("Courts in this Circuit have refused to uphold a claim of privilege where privilege log entries fail to provide adequate information to support the claim."). *See also, Am. Fed'n of Musicians of the United States & Canada v. Skodam Films, LLC*, 313 F.R.D. 39, 46 (N.D. Tex. 2015) ("Rule 45(d)(2)(B) objections to discovery requests in a subpoena are subject to the same prohibition on general or boiler-plate objections and requirements that the objections must be made with specificity and that the responding party must explain and support its objections") (citing *Heller v. City of Dallas*, 303 F.R.D. 466, 483 (N.D. Tex. 2014)).

3. Mr. Hanley's Claim That He Is Not Subject To Subpoena Is Meritless Too.

Mr. Hanley's final argument is that "under Rule 19(A)(2), disciplinary counsel and

respondent may only subpoena witnesses. I am not a witness.” Respondent intends to call Mr. Hanley as a witness in any hearing held. Regardless, A.O. 9, Rule 19A(2) plainly authorizes Respondent to “compel by subpoena the attendance of witnesses and the production of pertinent books, paper, and documents.”) (Emphasis added.) As Mr. Hanley argued in the Hanley Reconsideration Motion, attendance of witnesses and production of documents are completely separate and not interdependent things. Moreover, despite multiple opportunities to do so, Mr. Hanley has not cited a single case to support his position that he is not subject to subpoena.

Respondent has a “right to every man’s evidence,” including Mr. Hanley’s. *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. The core purpose of discovery and the power to subpoena is to *develop* and *gather* evidence, allowing parties to uncover facts, documents, and witness 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).

Mr. Hanley’s desire to rush this case to a hearing is a transparent attempt to run out the clock on respondent obtaining all relevant information for his defense. After all, the more information that comes to light, the clearer it becomes that Mr. Hanley has engaged in misconduct and that this case is a unlawful use of the bar disciplinary machinery to retaliate against Plaintiff for his litigation involving one of Vermont’s legal elite—Attorney Merrill Bent, the chair of the Judicial Conduct Board, and frequent legal counsel to the Town of Bennington, Vermont. Mr. Hanley’s recent production of the documentation presented to the probable cause hearing panel constituted judicial deception for the reasons stated in Respondent’s second motion to compel.

B. OPPOSITION TO MR. HANLEY’S MOTION TO QUASH SUBPOENAS.

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's motion to quash is based upon what we see all too often these days—claims that ask us to disbelieve what we actually see. Here, as discussed above, Mr. Hanley's frivolous argument fails to even address the clear provision of A.O. 9, Rule 19A(2), that expressly authorizes Respondent to issue subpoenas for discovery immediately once a petition for misconduct was filed. *Id.* (“After a petition, ... is filed, ... respondent may compel by subpoena the attendance of witnesses and the production of pertinent books, paper, and documents.”) Also, as noted above, Rule 45 subpoenas are appropriate to serve on parties as well as non-parties. There is simply no basis to quash the subpoenas.

CONCLUSION

The recipients of the various subpoenas were “dragged” into these proceeding not by Respondent but by Mr. Hanley himself. It is Mr. Hanley that accused Respondent of making false statements and taking other actions involving the subpoena recipients. Mr. Hanley cites no case law or statute that would preclude Respondent from issuing subpoenas to defend against Mr. Hanley's accusations. Mr. Hanley put the issues involving the subpoena recipients 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 and the reasons stated in Respondent's second motion to compel, the Respondent's second motion to compel should be granted and Mr. Hanley's motion to quash should be denied.

Dated: February 12, 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