STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re Thomas Melone
PRB No. 120-2025

CONFLICT DISCIPLINARY COUNSEL'S OPPOSITION TO *RESPONDENT'S MOTION FOR STAY*

In his latest effort to avoid a fair and prompt resolution of this attorney disciplinary proceeding, Thomas Melone filed a motion to stay so that he can litigate a federal civil rights lawsuit he filed against the members of the Hearing Panel, the Chair of the Professional Responsibility Program, Disciplinary Counsel and Conflict Disciplinary Counsel, until there is "a final non-appealable decision."

The motion should be denied because no rule allows for a stay in these circumstances, because a stay would violate the core purpose of the Professional Responsibility Program: the prompt and fair resolution of attorney discipline matters, and because it is unlikely that the federal court will decide the merits of Mr. Melone's lawsuit.

1. There Are No Factual or Legal Grounds for the Extraordinary and Disfavored Remedy of a Stay of This Proceeding.

Stays are extraordinary legal remedies,[1] are "an intrusion into the ordinary processes of administration and judicial review,"[2] and "are disfavored and should be entered only where the facts are especially compelling."[3] There is no due process right to a stay of proceedings, not even

[1] Clift v. City of Burlington, Vermont, No. 2:12-CV-214, 2013 WL 12347196, at *1 (D. Vt. Apr. 8, 2013); United States v. Weeks, No. 1:09-CV-122, 2009 WL 2366437, at *1 (D. Vt. July 31, 2009), *adhered to on reconsideration*, No. 1:09-CV-122, 2009 WL 10702676 (D. Vt. Sept. 30, 2009); Weeks v. Ross, No. 1:09-CV-91, 2009 WL 2366444, at *1 (D. Vt. July 31, 2009) (all citing Jackson v. Johnson, 985 F. Supp. 422, 424 (S.D.N.Y. 1997)).

[2] Maldonado-Padilla v. Holder, 651 F.3d 325, 328 (2d Cir. 2011).

[3] DMJ Assocs., L.L.C. v. Capasso, 228 F. Supp. 2d 223, 232 (E. D. N. Y. 2002)

when parallel criminal proceedings have been filed against the respondent in an administrative proceeding.[4]

The only authority for the issuance of a stay appears in Administrative Order 9, Rule 20(G). That rule does not permit a stay so that Mr. Melone may litigate federal constitutional defenses to this disciplinary proceeding. Barring the exception that does not apply here, Rule 20(G) would not permit a stay even if a civil or criminal case were to be filed against Mr. Melone and that case made allegations substantially similar to this disciplinary proceeding: "The processing of a disciplinary matter shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation . . . ."

In "pending criminal or civil litigation" involving material allegations that are substantially similar to allegations of misconduct against a respondent, the Board or Hearing Panel *may* issue a stay, but *only* in their discretion *and* for good cause. Rule 20(G).

Mr. Melone's civil rights lawsuit does not allege matters substantially similar to the allegations against him in this proceeding. As one would expect, Mr. Melone makes no allegations against himself. His allegations are against members of the Hearing Panel, the Chair of the Professional Responsibility Program, Disciplinary Counsel and Conflict Disciplinary Counsel. He alleges that these defendants had improper motives and used improper means

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[4] *See* In re Hudson, No. 2007-283, 2008 WL 2781541, at *2 (Vt. May 2008) unpub. entry order) ("we find no due process violation and no abuse of discretion in the Board's decision to deny petitioner's motion for a stay of the hearing pending the resolution of any criminal charges. As for petitioner's unsupported due process claim, the Fifth Amendment to the United States Constitution "does not ... mandate a stay of civil proceedings pending the outcome of similar or parallel criminal proceedings") (quoting Jacksonville Sav. Bank v. Kovack, 762 N.E.2d 1138, 1141 (Ill. App. Ct. 2002) (citing In re Hotel & Rest. Employees & Bartenders Int'l Union Local 54, 496 A.2d 1111, 1133-34 (N. J. Super. Ct. App. Div.1985) (stating that commission did not have constitutional obligation to grant stay of civil administrative proceeding pending resolution of criminal investigation; rather, party seeking the stay "was merely put to the constitutionally acceptable choice of whether to testify or to remain silent").

throughout this disciplinary proceeding. Mr. Melone does not hide the purpose of his lawsuit, which is to prevent this disciplinary proceeding from being resolved on the merits: "Plaintiff brings this suit to stop the ongoing blatant violation of his First, Fifth and Fourteenth Amendment Rights by the Defendants."[5]

Mr. Melone's civil rights lawsuit does not meet the narrow rule authorizing a stay and his motion should be denied.

2. A Stay Would Frustrate the Purpose of the Attorney Disciplinary Process.

A core objective of the Professional Responsibility Program is the prompt and fair resolution of disciplinary complaints against attorneys. This objective appears in the "Purpose" of A. O. 9 ("to resolve disciplinary complaints against attorneys though fair and prompt dispute resolution procedures") and in Rule 1(E)(1)(a) (powers of the Board include adopting procedures for "the prompt and timely disposition of all complaints").

Mr. Melone has made strenuous efforts to avoid the prompt resolution of the disciplinary complaint against him. The *Petition of Misconduct* was filed five months ago on September 20, 2025. Mr. Melone's answer would have been due 20 days later, but he sought and received multiple extensions. He finally filed an answer last week. Between the filing of the *Petition* and Mr. Melone's answer, Mr. Melone filed hundreds of pages of motions and memoranda (at least) with the Hearing Panel, in an effort to avoid litigating the merits of the *Petition*. His filings include motions to strike, to dismiss, for clarification, for permission to appeal, to reconsider rulings by the Hearing Panel, to compel compliance with subpoenas (which were not properly issued or served), and a motion to recuse the Hearing Panel. He made multiple efforts to have

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[5] *Complaint for Civil Rights Violations, Injunctive Relief and Declaratory Judgment,* Melone v. Hanley, et al, No. 2:26-cv-00038-mkl, at page 1, ¶ 1.

the Vermont Supreme Court review the Hearing Panel's interlocutory orders, all of which were denied. He now seeks not just to delay this disciplinary proceeding, but to avoid its resolution altogether by a civil rights lawsuit in federal court, initiated by a complaint that repeats the same arguments he made before the Hearing Panel and the Vermont Supreme Court, all of which have been rejected.

3. The Federal District Court of Vermont Is Not Likely to Hear Mr. Melone's Lawsuit.

Mr. Melone's federal lawsuit will almost certainly not be decided on the merits, but will be dismissed (and will likely be appealed to the Second Circuit, where the decision of the trial court will almost certainly be affirmed).

There are many reasons for this. One, is that a review of U. S. District Court of Vermont decisions reveals that attempts like Mr. Melone's, to bring suit in federal court alleging federal constitutional violations during ongoing attorney disciplinary proceedings, do not succeed. *See*, *e.g.*, McCain v. Hermann Law Office, No. 5:09-CV-165-CR, 2010 WL 3322708, at *1 (D. Vt. July 7, 2010); Grundstein v. Eide, No. 5:13-CV-300, 2014 WL 11462807, at *1 (D. Vt. May 15, 2014); and Kennedy v. Rockwell, No. 1:12-CV-36, 2012 WL 3637237, at *1 (D. Vt. Aug. 21, 2012).

Judge Murtha, quoting a Second Circuit Court of Appeals decision, explained why:

> [T]he integrity of the bar is of public concern and the state which licenses those who practice in its courts, and which is the only body that can impose sanctions upon those admitted to practice in its courts, should not be deterred or diverted from the venture by the interloping of a federal court.

Kennedy v. Rockwell, No. 1:12-CV-36, 2012 WL 3637237, at *4 (D. Vt. Aug. 21, 2012) (quoting Anonymous v. Assoc. of the Bar of City of New York, 515 F.2d 427, 432 (2d Cir.1975)).

The federal courts' strong policy against interference in pending state matters, under the Younger abstention doctrine[6] discussed below, dictates that federal courts not interfere with state court proceedings "by granting equitable relief—such as injunctions of important state proceedings or declaratory judgment regarding constitutional issues in those proceedings—when such relief could adequately be sought before the state court."[7] It is based upon:

> a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.

Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423, 431 (1982).

The doctrine applies equally to state attorney discipline proceedings. Id.

There is no presumption that the Hearing Panel or Vermont's attorney disciplinary process will not safeguard the federal constitutional rights of Mr. Melone. The U. S. District Court of Vermont must abstain from granting Mr. Melone's requests for relief in that case unless Vermont "clearly bars" Mr. Melone from raising his constitutional defenses: "[w]here vital state interests are involved, a federal court should abstain 'unless state law clearly bars the interposition of the constitutional claims.'" Id. at 432. This Hearing Panel, and the Vermont Supreme Court, will not prevent Mr. Melone from litigating his federal constitutional defenses to the *Petition for Misconduct* (see discussion below).

The grounds for abstention will be met in Mr. Melone's federal case. There must be (a) an ongoing civil or administrative proceeding that is "judicial in nature" and (b) "involve[s]

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[6] Named for the case, Younger v. Harris, 401 U. S. 37 (1971).

[7] Amanatullah v. Colorado Bd. of Medical Examiners, 187 F.3d 1160, 1163 (10th Cir. 2003).

important state interests, matters which traditionally look to state law for their resolution or implicate separately articulated state policies;" and (c) the state tribunal must provide an adequate forum to hear the claims raised in the federal complaint. Id. (internal citations omitted); Crenshaw v. The Supreme Court of Indiana, et al., 170 F.3d 725, 727–28 (7th Cir.), *cert. denied*, 528 U.S. 871 (1999).

The disciplinary proceeding against Mr. Melone obviously is ongoing and Vermont's attorney discipline proceedings, including *In re* Thomas Melone, are judicial in nature, involving as they do, the right to counsel, the filing of pleadings, discovery, motion practice, a final merits hearing and a final decision reviewable by the Vermont Supreme Court.

As to the second prong, the State of Vermont has an important interest in maintaining and assuring the professional conduct of the attorneys it licenses. The judiciary and the public depend upon professional, ethical conduct of attorneys and thus has a significant interest in assuring and maintaining high standards of conduct of attorneys engaged in practice by "protecting the public from misconduct and maintaining confidence in our legal institutions . . . ." *In re* Hunter, 167 Vt. 219, 226 (1997) (quoting) *In re* Sullivan, 530 A.2d 1115, 1119 (Del.1987)). And, Vermont has adopted its own code of legal ethics, the Vermont Rules of Professional Conduct, which the attorney disciplinary program looks to for the resolution of allegations of attorney ethics violations.

Finally, the Hearing Panel, and the Vermont Supreme Court, on review of the Hearing Panel's final decision, are empowered to hear and decide Mr. Melone's federal constitutional challenges to this proceeding. *See*, *e.g.*, *In re* Hunter, 167 Vt. 219, 223 (1997) (reviewing attorney's claim of federal due process violations arising from the Professional Conduct Board's denial of his motion for recusal); In re Watts, 2024 VT 48, ¶ 19 ("Disciplinary proceedings in

Vermont are neither civil nor criminal, but basic due process rights are accorded to attorneys"); *In re* Hodgdon, 2011 VT 19 (reviewing respondent attorney's defenses under the First Amendment of the U. S. Constitution and various Vermont constitutional provisions); *In re* PRB Docket No. 2002.093, 2005 VT 2 (reviewing respondent attorney's First Amendment challenge to Hearing Panel decision).

Stated differently, there is *not* good cause to grant a stay so that Mr. Melone may litigate his constitutional defenses to this attorney discipline proceeding before a federal court instead of the sole, proper forum for the adjudication of the claims against him for attorney misconduct: this Hearing Panel, followed by a review by the Vermont Supreme Court. This Hearing Panel was appointed pursuant to rules for the Professional Responsibility Program of Vermont, is empowered by the Supreme Court of Vermont to adjudicate claims of misconduct by Vermont attorneys, and its final decision is subject to review by the Vermont Supreme Court.

4. Conclusion

The Hearing Panel should not be distracted by Mr. Melone's relentless efforts to avoid the prompt and fair resolution of this disciplinary proceeding. The Hearing Panel should deny the motion to stay, schedule a hearing on the merits, and grant other relief necessary to ensure that this proceeding is promptly and fairly concluded.

Dated: February 26, 2026

/s/ Paul J. Perkins

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