

**STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD**

In Re THOMAS MELONE,
(Thomas Melone, Respondent)

PRB File No. 120-2025

**RESPONDENT’S MOTION TO STRIKE
AND ALTERNATIVELY, RESPONDENT’S REPLY**

Respondent THOMAS MELONE (“Respondent”) hereby respectfully moves to strike the following document submitted and signed by Paul Perkins (the “Perkins Filing”) and alternatively, replies to the Perkins Filing:

“CONFLICT DISCIPLINARY COUNSEL'S OPPOSITION TO THOMAS MELONE’S MOTION FOR THE RECUSAL OF ALEXANDER SHRIVER AND BRIAN BANNON” dated February 23, 2026.

A. WHO IS PAUL PERKINS?

Who is Paul Perkins? Disciplinary Counsel is Jon Alexander. Like the fictional “Highlander,” there can be only one. Jon Alexander presumably is an employee of the State of Vermont’s Supreme Court or the Professional Responsibility Board (“PRB”). PRB Chair, Carolyn Anderson, purportedly claims that she hired Michael Hanley pursuant to PRB Policy to investigate Respondent, and act in lieu of Jon Alexander counsel for this case. Michael Hanley is not an employee of the State of Vermont. He is at best a private contractor to the PRB.¹ Members of the hearing panel and the probable cause hearing panel are likewise not employees of the State of Vermont. They may be private contractors, or they may not even attain that status because they are volunteers.

As a private contractor, Michael Hanley’s legal status is not the same as Jon Alexander’s. For example, Michael Hanley may be entitled to assert derivative defenses in any suit against him. But as a private contractor, he cannot obtain “[i]mmunity from suit” by “reason of a contract” he

¹ The legal status of the PRB is a separate question, *i.e.*, is it an administrative agency or something else.

made with the government. *Brady v. Roosevelt S. S. Co.*, 317 U. S. 575, 583, 63 S. Ct. 425, 87 L. Ed. 471 (1943).

Paul Perkins on the other hand, is neither an employee of the State of Vermont, nor a private contractor to the PRB. He has no status with respect to this case. As a result, the Perkins Filing must be stricken.

B. THE PERKINS FILING MUST BE STRICKEN.

Last month, in *GEO Grp. Inc. v. Menocal*, 607 U.S. ___, 2026 U.S. LEXIS 1104 (2026), the United States Supreme Court reaffirmed the *Roosevelt* rule in a civil rights action involving GEO Group, which operates a private detention facility in Aurora, Colorado, under a contract with United States Immigration and Customs Enforcement. *See, id.*, at *15 (“sovereign immunity is not transferrable to agents, including contractors, of a government. As Justice Holmes once explained, the Federal Government’s immunity from a suit (absent a statute providing otherwise) ‘does not extend to those that act[] in its name.’”)

Instead of immunity, private contractors are entitled to a merits defense under *Yearsley v. W. A. Ross Constr. Co.*, 309 U. S. 18, 20, 60 S. Ct. 413, 84 L. Ed. 554 (1940). Under *Yearsley*, a private contractor cannot be held liable for conduct that the government has lawfully “authorized and directed” the contractor to perform. *GEO Grp* at *6. “[L]iability may attach only if the authorization was unlawful or if the contractor acted outside its scope.” *Id.*

As previous filings explain, Respondent is challenging Mr. Hanley’s purported appointment. But even assuming *arguendo* that Mr. Hanley can succeed on that issue, he should lose on the “outside the scope” requirement because his contract does not authorize him to bring charges that do not have probable cause. Nor does his contract authorize him to engage in judicial deception of the probable cause hearing panel. Nor does his contract authorize him to blatantly violate Respondent’s clear and long-standing civil rights under the First Amendment.

And as Respondent explains in his answer in this case and in the complaint filed in *Melone v. Hanley*, case 2:26-cv-38 (D. Vt. filed February 18, 2026), the *Noerr-Pennington* doctrine protects all of Respondent’s petitioning activity, including the petitioning activity that forms the

sole basis for Mr. Hanley’s charges. The *Noerr-Pennington* doctrine extends to “all petitioning activity,” including “concerted efforts incident to litigation, such as pre-litigation threat letters and settlement offers.” *Singh v. NYCTL 2009-A Tr.*, 683 F. App’x 76, 77 (2d Cir. 2017) (quoting *Primetime 24 Joint Venture v. Nat’l Broad., Co.*, 219 F.3d 92, 100 (2d Cir. 2000)). Excepted from the doctrine, however, is “sham litigation” that is both “objectively baseless” and “intended to cause harm to the defendant ‘through the use of the governmental process.’” *T.F.T.F. Cap. Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002) (quotation marks, brackets, emphasis, and citation omitted); see *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972) (“Misrepresentations, condoned in the political arena, are not immunized when used in the adjudicatory process.”); cf. *Hartman v. Great Seneca Fin. Corp.*, 569 F.3d 606, 616 (6th Cir. 2009) (“[T]he Petition Clause protects legitimate petitioning but not sham petitions, baseless litigation, or petitions containing ‘intentional and reckless falsehoods,’” (quoting *McDonald v. Smith*, 472 U.S. 479, 484, 105 S. Ct. 2787 (1985))).

Thus, Mr. Hanley could only begin to argue that he had probable cause if he could show and could allege that Respondent’s “petitioning activity was both “objectively baseless” and “intended to cause harm to the defendant ‘through the use of the governmental process.’” Mr. Hanley alleges neither prong. Nor could he objectively allege that either prong was met.

And when it comes to Paul Perkins, he is neither an employee of the State of Vermont, nor a private contractor to the PRB. He has no status with respect to this case. So on what basis does he have the authorization to sign filings in this case? The answer is none. And there is nothing in A.O. 9 or PRB Policy that would permit Mr. Hanley to delegate his purported role (even for a single filing) to Paul Perkins or anyone else. *Widakuswara v. Lake*, Case 1:25-cv-1015 (D.D.C. March 7, 2026) Slip Op. at 14 (“The problem for Lake is that the provision she cites says not one word about delegation.”) As a result, the Perkins Filing must be stricken.

C. THE PERKINS FILING IGNORES THE FACTS AND THE APPLICABLE RULES.

In the Perkins Filing, Mr. Perkins simply ignores the facts and the applicable rules. On

January 27, 2026, Michael Hanley filed a motion to have Mimi Brill, the then Hearing Panel Chair recuse herself based on alleged violations of Rule 2.9(A) and Rule 2.9(C) of the Code the Vermont Code of Judicial Conduct (Vt. A.O. 10) (the “Judicial Code”). To be sure, he couched it along the lines that there would be no need to press the issue of whether a violation actually occurred if you—Mimi Brill—simply opt to voluntarily recuse yourself before things get worse. But it is plain to see that Mr. Hanley was pushing her out because of the *ex parte* communications and the alleged violations of Rule 2.9(A) and Rule 2.9(C) of the Judicial Code.

While those *ex parte* communications were sent by only Mimi Brill, those *ex parte* communications plainly state that she was sending them on behalf of the entire Hearing Panel. *See*, December 3, 2025, email: “[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.)

Respondent has issued subpoenas to Alexander Shriver and Brian Bannon in order to, *inter alia*, address the question of whether Mr. Shriver and/or Mr. Bannon were aware of or otherwise concurred or acquiesced in the sending of those *ex parte* communications.

The only way that Mr. Perkins could in good faith assert that “as a matter of fact, there is no evidence that Mr. Shriver or Mr. Bannon communicated with the Chair of the Professional Responsibility Board regarding Conflict Disciplinary Counsel’s appointment,” is if Mr. Perkins had *ex parte* communications with Mr. Shriver and Mr. Bannon regarding the issue, which would support Mr. Perkins underlying position that Ms. Brill was misrepresenting on whose behalf she was engaging in the *ex parte* communications, *i.e.*, either only herself or as the *ex parte* communications plainly state on behalf of the entire hearing panel.

D. THE *EX PARTE* COMMUNICATIONS BETWEEN MR. HANLEY AND MS. ANDERSON ARE IMPROPER.

Mr. Perkins asserts that the “communications between [Mr. Hanley] and the Chair of the

Responsibility Board ... are mandatory,” citing Rule 9. Rule 9 (entitled “Disciplinary Counsel”) states: “Disciplinary Counsel confers periodically with the Board to review operations and perform other assigned tasks.” Mr. Perkins further asserts that “[s]uch communications cannot be *ex parte* because the Professional Responsibility Board and its Chair have no role in adjudicating petitions of misconduct, including the allegations of misconduct against Mr. Melone.”

Mr. Perkins is plainly wrong.

First, 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. Thus, Carolyn Anderson does have a role in the adjudication of this case.

Second, Rule 9 does not authorize Mr. Hanley’s *ex parte* communications with Carolyn Anderson. Mr. Hanley is not “Disciplinary Counsel.” Jon Alexander is Disciplinary Counsel. In addition, *ex parte* communication regarding a specific ongoing case does not constitute “review[ing] operations.” Nor do *ex parte* communications regarding a specific ongoing case constitute “perform[ing] other assigned tasks.”

Last, but not least, Mr. Perkins urges that a “new Hearing Panel Chair should be appointed and the matter should be scheduled for a final hearing on the merits.” Mr. Perkins’ advocacy for the continued blatant violation of Respondent’s First Amendment rights and blatant disregard for the *Noerr-Pennington* doctrine (violations for which he has no immunity), is nothing more than Mr. Perkins asking the Hearing Panel to join in Mr. Perkins’ and Mr. Hanley’s continued and ongoing blatant violation of Respondent’s First Amendment rights.

CONCLUSION

The Perkins Filing should be stricken and the motion to recuse should be granted.

Dated: March 9, 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