

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

IN RE:)
)
THOMAS MELONE) PRB File No. 25-120

MOTION TO QUASH SUBPOENAS

Carolyn Anderson, Elizabeth Kruska, Ronald Shems, Laura Bozarth, Alexander Shriver, and Brian Bannon (collectively “Petitioners”), by and through undersigned counsel, respectfully request that this hearing panel quash the subpoenas issued to them by Thomas Melone dated February 9, 2026, and February 24, 2026.¹ In support of this request, Petitioners argue as follows:

Background

Vermont’s attorney disciplinary process is governed by the Vermont Supreme Court’s Administrative Order (“A.O.”) No. 9, which established the Professional Responsibility Program. The Professional Responsibility Board oversees the Professional Responsibility Program. Rule 14 of A.O. No. 9 creates ten hearing panels within the Professional Responsibility Program, each with three volunteer members. When a complaint is filed against a lawyer and it appears that the conduct might require a disciplinary sanction or prosecution, the complaint is referred to disciplinary counsel for an investigation. Disciplinary counsel investigates the complaint and is then required under Rule 13 of A.O. No. 9 to seek probable cause review from one of the ten hearing panels before commencing formal charges against a lawyer’s law license.

¹ As of the date of this filing, the subpoenas at issue have not yet been properly served pursuant to V.R.C.P. 45(b).

If probable cause is found, the formal charges are heard by a different hearing panel than the one that reviewed the charging decision for probable cause.

The current matter before the Professional Responsibility Program hearing panel involves eight individual allegations of professional misconduct for which probable cause was found to believe that Mr. Melone, an attorney, violated Vermont's Rules of Professional Conduct. None of the Petitioners here were involved in, nor do they have any factual information about, the underlying conduct that comprise the challenges to Mr. Melone's law license. Mr. Melone and undersigned counsel conferred on March 10, 2026, in a good faith effort to resolve or reduce all differences regarding these subpoenas, as contemplated in VR.C.P. 26(h).

Carolyn Anderson is currently the Chair of the Professional Responsibility Board. Mr. Melone issued a subpoena commanding Ms. Anderson to appear on April 20, 2026, at 11:00 a.m. for a deposition at the Hampton Inn in Rutland, Vermont. *See* Exhibit A. Upon information and belief, Mr. Melone intends to question Ms. Anderson regarding her professional endeavors in order to uncover possible conflicts of interest with her role and duties as Chair of the Professional Responsibility Board. Mr. Melone also intends to question Ms. Anderson about ex parte communications with the former Chair of the hearing panel and the process of appointing Michael Hanley as conflict disciplinary counsel to Mr. Melone's disciplinary matter.

Elizabeth Kruska currently serves on a hearing panel for the Professional Responsibility Program. She was one of three members on the hearing panel that found probable cause existed to charge Mr. Melone with violating Vermont's Rules of Professional Conduct. Mr. Melone issued a subpoena commanding Ms. Kruska to appear on April 20, 2026, at 1:00 p.m. for a deposition at the Hampton Inn in Rutland, Vermont. *See* Exhibit B. Upon information and belief, Mr. Melone intends to question Ms. Kruska regarding how the hearing panel went about

determining probable cause existed to file disciplinary charges against Mr. Melone, in order for him to determine whether the process was meaningful.

Ronald Shems currently serves on a hearing panel for the Professional Responsibility Program. He was one of three members on the hearing panel that found probable cause existed to charge Mr. Melone with violating Vermont's Rules of Professional Conduct. Mr. Melone issued a subpoena commanding Mr. Shems to appear on April 21, 2026, at 11:00 a.m. for a deposition at 141 Main Street in Montpelier, Vermont. *See Exhibit C.* Upon information and belief, Mr. Melone intends to question Mr. Shems regarding how the hearing panel went about determining probable cause existed to file disciplinary charges against Mr. Melone, in order for him to determine whether the process was meaningful. Mr. Melone also intends to question Mr. Shems regarding alleged conflicts of interest with his role determining the existence of probable cause in this matter.

Laura Bozarth currently serves on a hearing panel for the Professional Responsibility Program. She was one of three members on the hearing panel that found probable cause existed to charge Mr. Melone with violating Vermont's Rules of Professional Conduct. Mr. Melone issued a subpoena commanding Ms. Bozarth to appear on April 21, 2026, at 1:00 p.m. for a deposition at 141 Main Street in Montpelier, Vermont. *See Exhibit D.* Upon information and belief, Mr. Melone intends to question Ms. Bozarth regarding how the hearing panel went about determining probable cause existed to file disciplinary charges against Mr. Melone, in order for him to determine whether the process was meaningful.

Alexander Shriver currently serves on a hearing panel for the Professional Responsibility Program. He is one of three members on the hearing panel considering the disciplinary charges against Mr. Melone. Mr. Melone issued a subpoena commanding Mr. Shriver to appear on April

20, 2026, at 12:30 p.m. for a deposition at the Hampton Inn in Bennington, Vermont. *See* Exhibit E. Upon information and belief, Mr. Melone intends to question Mr. Shriver regarding ex parte communications had by the former Chair of this hearing panel, who has since recused herself from these proceedings, and to uncover information about whether Mr. Shriver should recuse himself.

Brian Bannon currently serves on a hearing panel for the Professional Responsibility Program. He is one of three members on the hearing panel considering the disciplinary charges against Mr. Melone. Mr. Melone issued a subpoena commanding Mr. Bannon to appear on April 20, 2026, at 11:00 a.m. for a deposition at the Hampton Inn in Bennington, Vermont. *See* Exhibit F. Upon information and belief, Mr. Melone intends to question Mr. Bannon regarding ex parte communications had by the former Chair of this hearing panel, who has since recused herself from these proceedings, and to uncover information about whether Mr. Bannon should recuse himself.

Legal Standard

Rule 19 of A.O. No. 9 governs subpoenas and discovery in the Professional Responsibility Program's disciplinary process. A respondent in a disciplinary proceeding may compel by subpoena the attendance of witnesses at a deposition. A.O. No. 9, Rule 19(A)(2). Subpoenas and depositions are subject to the Vermont Rules of Civil Procedure regarding discovery. A.O. No. 9, Rule 19(B)(3).

Parties may obtain discovery by conducting depositions, but the scope of discovery must be relevant to a party's claim or defense and proportional to the needs of the case, and must not include privileged matters. V.R.C.P. 26(a); 26(b)(1). A tribunal may quash or modify a subpoena

if the subpoena, among other things, requires disclosure of privileged or other protected matter and no exception or waiver applies; or subjects a person to undue burden. V.R.C.P. 45(c)(3)(A).

When a subpoena commands a person's attendance, service is made by tendering the fees for one day's attendance and the mileage allowed by law along with a copy of the subpoena. V.R.C.P. 45(b)(1). Parties who issue subpoenas have a duty to "take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." V.R.C.P. 45(c)(1). A tribunal shall quash or modify a subpoena if it "subjects a person to undue burden." V.R.C.P. 45(c)(3)(A)(iv).

Argument

The proceedings before this panel involve Mr. Melone's actions and Mr. Melone's law license. None of the Petitioners are identified as having any information relevant to the underlying allegations at issue regarding Mr. Melone's unprofessionalism and misconduct. None of these Petitioners are witnesses in Mr. Melone's disciplinary proceeding before the hearing panel. Because the Rules only allow Mr. Melone to compel by subpoena the attendance of a *witness* at a deposition, these subpoenas must be quashed. *See* A.O. No. 9, Rule 19(A)(2).

Additionally, each Petitioner will be subject to an undue burden if these subpoenas are not quashed. Mr. Melone is required to "take reasonable steps to avoid imposing undue burden or expense on a person subject to [his] subpoena," and this hearing panel has the authority and discretion to limit or tailor discovery. V.R.C.P. 45(c)(1); V.R.C.P. 26(b). Rule 26 provides that a tribunal *must* limit the extent of discovery otherwise allowed by these rules if it determines that the discovery sought is unduly burdensome or is not proportional to the needs of the case. V.R.C.P. 26(b)(2)(B); *see also* V.R.C.P. 26(b)(1) (providing proportionality factors).

Mr. Melone must demonstrate to this tribunal that the information sought is relevant to the subject matter involved in the pending action. V.R.C.P. 26(b)(1). Though Vermont Rule of Evidence 401 sets a low standard for relevance - providing that evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable” – Mr. Melone is still unable to meet this standard. No information Mr. Melone seeks to obtain from Petitioners through their depositions has any relevance to whether Mr. Melone’s conduct violated the Rules of Professional Conduct. The information Mr. Melone seeks is not relevant to the disciplinary charges against him, or to any cognizable defense to the charges. Because the information sought by Mr. Melone is of limited or no relevance to this matter, the burden to Petitioners of preparing for and attending a deposition is undue.

Finally, Ms. Kruska, Mr. Shems, Ms. Bozarth, Mr. Shriver, and Mr. Bannon are entitled to absolute immunity for their quasi-judicial acts. Judicial immunity protects judges from “liability for damages for acts committed within their judicial jurisdiction.” *Pierson v. Ray*, 386 U.S. 547, 554–55, 87 S. Ct. 1213 (1967). Likewise, “quasi-judicial” immunity applies to officials who “exercise a discretion similar to that exercised by judges. Like judges, they require the insulation of absolute immunity to assure the courageous exercise of their discretionary duties.” *McCray v. Maryland*, 456 F.2d 1, 3 (4th Cir. 1972). Judicial and quasi-judicial immunity “also extends to protection against discovery.” *In re Lickman*, 304 B.R. 897, 903 (Bankr. M.D. Fla. 2004) (“The policy behind immunity does not merely extend to suits, it also extends to protection against discovery. If judicial immunity were applicable, then it would be senseless and disruptive to allow for discovery.”). *See also LeClerc v. Webb*, No. CIV.A. 03-664, 2003 WL 21026709, at *6 (E.D. La. May 2, 2003) (“[T]he protection afforded government officials by the doctrines of

absolute and qualified immunity would be greatly depreciated if it did not include protection from discovery.” (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 816–18 (1982))).

This immunity extends to testimony aimed at discovering a judicial officer’s mental process used in decision-making. *See U.S. v. Roth*, 332 F. Supp. 2d 565, 567 (S.D.N.Y. 2004), *aff’d sub nom. U.S. v. St. John*, 267 F. App’x 17 (2d Cir. 2008) (“Judges are under no obligation to divulge the reasons that motivated them in their official acts; the mental processes employed in formulating the decision may not be probed.” (internal quotations omitted); *id.* (“[A]llowing an examination of a judge’s mental processes would be ‘destructive of judicial responsibility’ and such scrutiny cannot be permitted.” (quoting *U.S. v. Morgan*, 313 U.S. 409, 422 (1941))). The communications of Ms. Kruska, Mr. Shems, Ms. Bozarth, Mr. Shriver, or Mr. Bannon with each other, other hearing panel members, and/or disciplinary counsel, related to their exercise of quasi-judicial function, are privileged and immune from discovery.² Therefore, these subpoenas must be quashed.

Conclusion

For the foregoing reasons, Petitioners respectfully request that the hearing panel grant this Motion to Quash the subpoenas issued by Mr. Melone.

² Additionally of note is A.O. No. 9, Rule 16(B), which states that “the work product of the Board, hearing panel, and their counsel, as well as the deliberations of the hearing panel, Board, and Court shall remain confidential.”

Dated at Hinesburg, Vermont, the 12th day of March 2026.

STATE OF VERMONT

CHARITY R. CLARK
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March 2026, I filed Petitioners' *Motion to Quash Subpoenas* with the Professional Responsibility Board by sending same via email to:

Merrick.Grutchfield@vtcourts.gov

With a copy to the Respondent via email to:

Thomas.Melone@gmail.com

Dated at Hinesburg, Vermont, the 12th day of March 2026.

STATE OF VERMONT

CHARITY R. CLARK
ATTORNEY GENERAL

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