

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Melvin Fink
PRB File No. 2021-018

PETITION OF MISCONDUCT

In accordance with a finding of probable cause dated November 23, 2020, Disciplinary Counsel formally charges Melvin Fink (Respondent) with the following violation pursuant to A.O. 9, Rule 11(D)(1)(b) as set forth below.

NOTICE TO RESPONDENT: This is a formal Petition of Misconduct. Pursuant to A.O. 9, Rule 11(D)(3), you are required to file an Answer within 20 days addressed to the Professional Responsibility Program, 109 State St., Montpelier, VT 05609, with copy to Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

Count 1 of 1

On or about August 17, 2020, Melvin Fink, a licensed Vermont attorney, who represented wife in a divorce matter, communicated or attempted to communicate about the subject of the representation with husband, a person he knew was represented by another attorney, without the consent of the other attorney or authorization by law or a court order, in violation of Vermont Rules of Professional Conduct 4.2 and 8.4(a).

Facts alleged in support of petition

1. Respondent is a licensed Vermont attorney who lives in Springfield and maintains a solo practice in Ludlow. He has over 30 years of experience practicing law.

2. Respondent represents Wife in a divorce from Husband.
3. Husband is a personal trainer with limited finances. His objective in ending his marriage is to do it as peacefully as possible and he had hoped to reach settlement without court involvement.
4. Respondent and Husband both live in Springfield and had met previously but did not know each other well. One of Respondent's neighbors is related to Husband and years ago Respondent represented Husband's mother on a matter.
5. Husband initially approached Respondent several months ago about representing him in his divorce, but Respondent declined because Wife had already hired him.
6. By letter dated May 13, 2020, Respondent wrote to Husband, stating:

I represent your spouse, [Wife] in regard to a divorce to be filed by her. [Wife] has requested that I prepare and forward to you a proposed agreement to settle all outstanding issues regarding the dissolution of your marriage. Enclosed is the proposal I have drafted. It enables you to continue the ownership of the business and the building where it is located conditioned upon [Wife] being re-paid the money she invested to purchase [a building] and the contents. If the agreement is acceptable to you, then you can sign and date the agreement, have your signature witnessed and notarized and return the original document to my office. I will then have my client fully execute the agreement and file it with the Court together with a complaint for divorce. Take notice that the proposal also requests that the Court grant a divorce without the necessity of a hearing. I represent [Wife] alone. I cannot give you legal advice. If you want legal advice then you should seek the representation of an attorney and deliver this material to him or her. I will calendar this matter for two weeks. If I do not receive back the signed agreement by May 27, 2020, then I will file my client's divorce complaint and presume that this divorce will proceed as a contested case without an agreement.
7. Husband did not respond to Respondent.
8. On May 22, 2020, Respondent again wrote to Husband as follows:

My client advises that you contacted her regarding your securing financing to purchase [a building] and a possible difficulty that you may experience in securing such financing because your name is on the mortgage for [another

property]. [Wife] is aware of the need to remove your name from the TD bank mortgage in order for you to secure financing and the last paragraph [of the settlement proposal] addressed that issue. However, if the bank where you are going to secure financing needs your name to be removed sooner than your completion of that transaction, then I have amended the Stipulation to include that [Wife] will be removing your name at such time as the Agreement is signed and you provide her with the quitclaim deeds specified in the Agreement for the [other] properties. To that extent, I have revised the Agreement, an original of which I enclose, together with two quitclaim deeds. If you want to move forward then I will need the fully executed Agreement and quitclaim deeds back in my office at which time [Wife] will attend to the removal of your name from the existing TD Bank mortgage. Once again if you are represented then you should turn this information over to your attorney.

9. Husband did not respond to Respondent.
10. Sometime around the end of May 2020, husband hired Patricia Benelli and gave her the May 13 and May 22 correspondence from Respondent.
11. On June 1, 2020, Benelli wrote to Respondent stating:

I am writing to let you know that I am working with [husband] on this divorce matter. Accordingly, please send all correspondence . . . to me from now on. Thanks. I understand that the parties have reached a basic agreement on all issues and that what remains to be worked out is how to accomplish it. To that end, [Husband] gave me a copy of your letter of May 22 to him, along with the modified proposal agreement. Your client is correct that [Husband] has been working to mortgage [a property] to pay the settlement amount to [Wife] and that the bank has informed him that to get this financing, he will have to be off the mortgage on the [other two] properties. Your letter refers to [Wife's] "removing" [Husband's] name from that mortgage, but I see nothing that indicates she can do that. My understanding is that she will need to refinance that VA mortgage, which was facilitated by [Husband], in her own name to get him off that obligation. On the other hand, if she can secure a release of [Husband] from this obligation from the lender without having to refinance the debt, then please send it to me as soon as you can, because that will greatly speed up the settlement process. If she cannot secure this release, then she must apply to refinance the mortgage. My understanding is that the quitclaim deed(s) to the [other two] properties will be provided at the closing on the refinances (or upon the lender's release of [Husband] from that obligation) and that [Wife's] quitclaim deed to the [building] will be provided when the agreed payment is made to her. Please let me know where this stands. I look forward to hearing from you and working with you to help ou[r] clients end their marriage peacefully and with a minimum of court

involvement.

12. In June, Respondent and Benelli continued to communicate about possible settlement terms of the parties' divorce but no agreement was reached.
13. On June 17, 2020, Respondent arranged for in-hand personal service of Wife's summons and complaint for divorce upon Husband. However, Husband did not sign the return of service, so service was incomplete.
14. On June 26, 2020, Respondent electronically filed Wife's Complaint for Divorce in Windsor Family Division.
15. Service of the complaint was completed July 20, 2020.
16. Husband filed an Answer and counterclaim pro se dated July 29, 2020, which Benelli notarized for him.
17. On July 31, 2020, after the divorce action had been filed and served, the attorneys continued to correspond about possible settlement terms by email and U.S. mail.
18. By letter dated July 31, 2020, Respondent wrote to Benelli requesting that [Husband] share a government stimulus payment with [Wife]. Benelli responded via email as follows:

I am writing in response to your letter of July 31. [Husband] would be happy to share the stimulus payment equally with [Wife]. Per your offer, please send the check to me, [Husband] will sign it, I will return it to you, [Wife] will sign it, cash it, and send [Husband's] share - \$1200 – directly to him forthwith.

19. By email dated July 31, 2020, Benelli wrote to Respondent as follows:

Attached please find a settlement proposal from [Husband]. He has secured a loan which will allow him to pay the \$115,000 to [Wife] as soon as it can close. However the bank has conditioned it on his being released from the parties' current joint debts: "The borrower shall have his name removed from the residential mortgage debt at TD Bank and the personal recreational loan at One

Credit Union prior to the closing on this loan.” The personal recreational loan is on the camper, which the parties have agreed is to be [Wife’s] property, so she should not have a problem having the debt in her name alone. It is my understanding that both parties want this divorce done as soon as possible, which is September 24, given the separation date. Please let me know your client’s position regarding [Husband’s] settlement proposal.

20. Nothing in their communication indicated Benelli was no longer representing husband or that Respondent had permission to negotiate with Husband directly about settling the divorce.
21. On August 17, 2020, Respondent initiated a phone call directly to Husband, left a message, and Husband called him back. Husband and Respondent spoke for approximately six minutes.
22. During the call, Respondent invited husband to his office to “sit down and talk.” Husband responded that that was “fantastic” and that he really wanted to move forward to try to get the matter resolved. Husband then stated, “let me get ahold of my lawyer” and Respondent told him that “technically she doesn’t have to be here” and “I see you filed a pro se appearance.”
23. Husband agreed to a date and time for meeting, hung up with Respondent and then immediately called Benelli.
24. After Husband called Benelli, she immediately emailed Respondent reminding him that she represented husband in the divorce matter and stating, “you are to communicate with my client only through me.” She also proposed a settlement conference with everybody present.
25. On August 21, 2020, Respondent replied to Benelli, stating “Don’t pontificate to me. [Husband] filed a pro se appearance. He represents himself, period.”

26. Respondent did not indicate that he would cease direct contact with Husband or apologize after Benelli stated that Respondent must not contact her client directly.
27. On August 24, 2020, Benelli responded to Respondent's August 21 email as follows:
- Your email implies that you are still not accepting that [Husband] is represented. He is, period. You are not to have any more direct contact with him, period. You are fully aware that I am representing [Husband]. We have been exchange[ing] settlement proposals and other communications, even after the divorce action was filed. You are fully aware that I do not have to enter an appearance in court to be representing [Husband].
28. On October 6, 2020, Benelli file a notice of appearance for Husband in the action for divorce pending in Windsor Family Division.

DATED : January 12, 2021



Sarah Katz, Disciplinary Counsel