

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Melvin Fink
PRB File Nos. 2021-018

Disciplinary Counsel's Partial Objection to Respondent's "Hearing Memo to the Board"

The scheduling order in effect dated April 2, 2021 states as follows in paragraph 7:

"Any and all other pre-hearing motions and supporting memoranda, including any motions in limine, shall be filed by July 10, 2021." Respondent's "Hearing Memo," which asks the panel to "dismiss" the charge as "unproved," was filed July 26, 2021, long past the motions deadline.

In addition, the "Hearing Memo" recites as "fact" matters the parties are expected to put on before the panel in a public proceeding in accordance with the rules of evidence and subject to cross-examination. Respondent had every opportunity to work with disciplinary counsel to file a partial stipulation of fact prior to the hearing but declined to do so. He could also have requested a pre-hearing conference to offer admissions or narrow the issues presented by the pleadings but declined to do so. *See* A.O. 9, Rule 20(E). As a result, when the hearing begins, the parties will be required to offer evidence so that the panel may make its own findings based on the evidence properly admitted.

Disciplinary Counsel certainly has no objection to the panel considering Respondent's filing after the close of the evidentiary hearing. It would be appropriate to consider it as a request for findings and legal memorandum, which is a filing commonly requested by panels post-hearing. By deferring consideration of Respondent's memo until after the hearing, both parties will have full and fair opportunity to be heard on the issues based upon the evidence admitted.

Dated: September 9, 2021



Sarah Katz

Disciplinary Counsel