

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Melvin Fink
PRB File No. 012-2019

**DISCIPLINARY COUNSEL'S MOTION TO AMEND
PETITION OF MISCONDUCT**

EXHIBIT 5

August 24, 2018

Sarah Katz, Esq.
32 Cherry St., Ste. 213
Burlington, VT 05401

Re: In Re: Jeanne Howell, Docket No. PRB File No. 2019-012

Dear Ms. Katz:

Please find a response to the allegations of Ms. Howell. It is important to note that at no time did Mr. Fink ever represent Ms. Howell. Thus, none of her allegations relate to any obligation he had to her as her lawyer.

Mr. Fink was hired by Ms. Howell's son, John Howell (John), on or about November 17, 2016, in connection with a pending paternity action John filed against the putative mother of his child, Brittney Pare. See, *Howell v. Pare*, Dkt. No. 313-11-15 Wmdm. John had previously been represented by counsel in the paternity case but, his lawyer withdrew citing a breakdown in the attorney-client relationship. John told Mr. Fink that his grandfather loaned him the money for attorney's fees.

Soon after commencing his representation of John, issues began to develop that adversely impacted Mr. Fink's ability to adequately represent John. Despite months of urging, John would not participate in the discovery process. For example, he failed to produce requested financial documents and other discovery sought by the mother of his child. In addition, John often missed or cancelled appointments with Mr. Fink.

Despite the clearly expressed intent of the child's mother to the contrary, John continued to maintain that he would be moving back to Colorado with Ms. Pare and his daughter and the paternity case would be dismissed. After several months of fruitless attempts to get John to comply with his discovery obligations together with John's dilatory

participation and unrealistic approach to the litigation, Mr. Fink moved to withdraw on May 22, 2017.

Mr. Fink's Motion to Withdraw was scheduled for hearing at the same time as Ms. Pare's Motions to Compel Discovery and Enforce Child Support Payments. The hearings took place as scheduled on June 6, 2017. On the 6th, John appeared at court along with his mother, Ms. Howell. By earlier arrangement, Mr. Fink arrived early to meet with John before the hearing. The three, Mr. Fink, Ms. Howell and John, met in a conference room before the hearing. Mr. Fink explained to John what would be happening that morning. He told John and Ms. Howell that the Motion to Withdraw would first be heard and if the court granted the Motion, Mr. Fink would be free to leave. Mr. Fink went on to explain that the Court would then consider the Ms. Pare's two Motions. Mr. Fink explained to John and his mother if the Motion to Withdraw was granted, he could obtain other counsel or represent himself.

The case was called. There was no opposition to the Motion to Withdraw and the court granted the motion. Mr. Fink took a seat in the gallery next to Ms. Howell and remained for the rest of the hearing.

At the conclusion of the hearing, John asked Mr. Fink if they could talk. Mr. Fink went into a conference room with the Howells. John was upset with the representations Ms. Pare made during the brief hearing. He was very emotional because, contrary to his long held expectations, Ms. Pare had proceeded on her motions. Mr. Fink told John that now he should realize he wouldn't be relocating with Ms. Pare and his daughter and he should give his case proper attention. Mr. Fink again asked John if he was going to get another attorney or represent himself. John indicated that he would represent himself and that his mother would assist him, especially in securing discovery material. Ms. Howell agreed. John asked if he could call upon Mr. Fink with questions about the process of representing himself going forward. Mr. Fink told him he would not represent him but would try to answer questions he might have to understand the process, e.g., how to serve process, who to copy, etc. John told Mr. Fink he wanted to be able to pay for Mr. Fink's time. Mr. Fink reminded him that he had funds on deposit in Mr. Fink's Trust Account. The three then left the courthouse.

Sometime later, Mr. Fink received a call from Ms. Howell requesting a meeting. She asked, "Do you do house calls?" Mr. Fink said not generally but has on some occasions in the past. She explained that she preferred not to come to Ludlow where Mr. Fink's office is located and she requested that they meet at her house in Peru. Mr. Fink agreed to meet at 9:00 a.m. on Monday, July 17. At the time Mr. Fink initially agreed to the meeting, he planned to thereafter continue on to Manchester, Vermont, to accomplish some personal errands. Subsequent to agreeing to meet, Mr. Fink received a hearing notice requiring him to be in court in White River Jct. on the 17th at 1:30 p.m.

Mr. Fink believes he called Ms. Howell for directions on the morning of July 17th. When he arrived at Ms. Howell's home, he knocked on the screen door a number of times and got no response. He yelled, "Hello" and heard a female voice saying, "Come in, the door is open and come around to the right." Mr. Fink let himself into the kitchen and was joined by Ms. Howell who came from the other side of the house. Contrary to Mr. Fink's expectations, John was not present. Ms. Howell, however, had various questions written down that John wanted to address. Mr. Fink doesn't recall the exact discussions but at one point Ms. Howell indicated that John wanted Mr. Fink to resume representing him in the paternity case. Mr. Fink asked her to tell John that he would not do so. She asked if Mr. Fink would recommend another lawyer and Mr. Fink told her it was not his practice to make referrals but agreed to give it some thought.

During this discussion, Ms. Howell was seated at a table and Mr. Fink stood by a breakfast bar. At one point, Ms. Howell approached Mr. Fink, put her arms around his neck and kissed him. The two exchanged kisses and briefly and embraced each other. Ms. Howell had her arms around Mr. Fink's neck and he had his arms around her waist. At no time did Mr. Fink grab, push, thrust or otherwise touch Ms. Howell's butt or other intimate areas of her body. Not knowing Ms. Howell's intentions or design, Mr. Fink asked her, "Do you want me to pleasure you?" She then stepped back and stated that she hadn't dated since her husband had passed and did not think she was ready to yet. The two then disengaged and resumed their conversation.

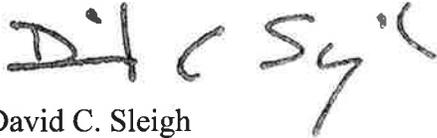
As part of the post-encounter conversation, Ms. Howell addressed John's questions surrounding grandparent visitation. Mr. Fink went to his car, retrieved the Vermont Family statute and rules compilation, and pointed out the grandparent visitation

provisions. Ms. Howell invited Mr. Fink to stay for lunch. He declined. The conversation came to an end, and Mr. Fink left without further incident.

Subsequently, John and/or his mother contacted Mr. Fink no less than five times and, at various times, asked Mr. Fink to again represent John or recommend another attorney. Mr. Fink told them he would do neither.

Any physical contact between Mr. Fink and Ms. Howell was consensual. It was brief and involved no contact of areas one would normally consider intimate.

Sincerely,

A handwritten signature in black ink that reads "D. C. Sleight". The letters are cursive and somewhat stylized, with a large "D" and "S".

David C. Sleight