

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

IN RE: MELVIN FINK, Esq.
PRB File No. 2021-018

RESPONDENT'S WITNESSES & TESTIMONY SUMMARY

In accordance with the scheduling order, paragraph 9, I provide the following information to the panel regarding witnesses who may be called and a brief summary of their anticipated testimony:

Nathan Marshall – Will testify he was married to Denise and that he was informed, by and through Respondent, that his wife was seeking divorce. He will state that, prior to consulting with Ms. Benelli, he received a written proposed divorce settlement from Respondent. He will testify that he consulted with Ms. Benelli and authorized her to negotiate aspects of the divorce with Respondent. He will state that those negotiations did not lead to the resolution of the divorce. He will state that subsequently, Respondent caused Wife's divorce complaint to be served on him. He will state that he filed a pro se answer to the divorce complaint in early August of 2020. He will testify that he had no communication with Ms. Benelli between July 31 and August 17, 2020. He will testify that on August 17, Respondent called him and invited him to come to Respondent's office to discuss settlement terms. He will state that he told Respondent he needed to run this idea by his attorney. He will say Respondent said something to the effect of "You don't have to that, you filed pro se." He will explain that nothing of substance was discussed in the August 17th phone call and that the conversation was limited to an offer to meet and discuss potential

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settlement terms. He will add that he has had no contact of any sort with Respondent after the August 17th phone call.

Patricia Benelli - will testify that she has practiced family law in Vermont for about 35 years. She will state she has been the chair of the Family Law section of the Vermont Bar Association for the last 10 years. She will state she served on the Vermont Supreme Court's advisory committee on Family Court Rules. She will state that she has thorough knowledge of Vermont's Family Court rules. She will tell the panel that she was approached by Nathan Marshall sometime in May, 2020 to help him with a divorce sought by his wife Denise. She will say she learned that Denise was represented by Respondent and that she and Respondent exchanged emails over the course of a couple of months in an effort to settle the divorce without an adversarial hearing. She will state that she became aware that Nathan had been served with divorce papers and that she notarized his Answer and Pro se appearance on, or about, July 30, 2020. She will testify that she had no communication with Respondent after July 31, 2020 and before August 17, 2020. She will tell the panel that *pro se* means, "It means that a party is representing himself." She will acknowledge that Family Court Rule 15 requires attorneys to file Notices of Limited Appearance. She will admit she did not file a Notice of Limited Appearance in the divorce action. She will tell the panel that she did enter an unlimited appearance in the divorce case on, or about, October 6, 2020. She will tell the Panel that on August 17, 2020, Nathan called her and told her Respondent had called him about scheduling a meeting to discuss possible settlement of the divorce case. She will say she emailed Respondent and, in pertinent part, stated: "Your contact with Nathan was a gross violation of VRPC 4.2. Do not attempt to contact my client directly again on any matter related to the pending divorce or relief from abuse actions. You are to

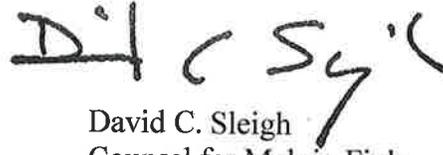
communicate with my client only through me. Period.” She will tell the Board that, following the email, Respondent never again contacted Nathan.

Mel Fink - will testify that, having received Nathan’s pro se appearance and, having heard nothing from Ms. Benelli in the two weeks following receipt of Nathan’s pleadings, he thought Nathan was then representing himself. He called Nathan to invite him to meet and discuss potential settlement of the divorce action. Respondent will say that he was contacting him because he had filed a pro se appearance and Nathan replied that he was not going to have a lawyer unless the case had to go to court. Respondent will say that he told Nathan that his client was interested in settling the case and Nathan indicated the same. Respondent will indicate that a meeting date and time were agreed upon. Nathan indicated that he was going to contact Attorney Benelli about the meeting and Respondent indicated he didn’t think it was necessary for him to contact her because Nathan was representing himself. The conversation concluded. There was no further contact. The meeting did not occur. Respondent will acknowledge receiving Ms. Benelli’s August 17 email and tell the panel he responded on August 21, 2020: “Don't pontificate to me. Nathan Marshall filed a prose appearance. He represents himself, period.” He will add he never contacted Nathan again after the August 17th phone call between the two.

Sarah Katz – will testify that the quotations contained in the instant complaint were the result of an unrecorded telephone interview between her and Mr. Marshall. She will add that she and Mr. Marshall were the only two persons participating in the interview and that the quotations in the complaint were based upon her notes generated in connection with said interview. [NB: Ms. Katz will be called only to impeach Mr. Marshall if he testifies inconsistently with the version of events provided to her during her investigation.]

DATED at St. Johnsbury, Vermont on July 26, 2021.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D C Sleight". The signature is written in a cursive, somewhat stylized font.

David C. Sleight
Counsel for Melvin Fink

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