

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM

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

**DISCIPLINARY COUNSEL'S MOTION TO LIFT STAY**

**EXHIBIT 6**

VERMONT SUPERIOR COURT  
Bennington Unit  
200 Veterans Memorial Drive  
Bennington, VT 05201  
802-447-2727  
www.vermontjudiciary.org



CRIMINAL DIVISION  
Case No. 124-1-19 Bncr

State of Vermont v. Melvin Fink

## DECISION ON MOTION

The motion is denied.

On November 7, 2023, the Vermont Attorney General's Office, through Paul Barkus, Esq., amended the criminal information in this case. Mr. Barkus, Esq. dismissed without prejudice the remaining count three, felony lewd and lascivious conduct, and added count four, misdemeanor prohibited conduct. Prohibited conduct states that "no person shall engage in open and gross lewdness." Prohibited conduct is a predicate offense in violation pursuant to 13 V.S.A. § 2601a. The penalty for a first conviction is imprisonment of not more than one year or a fine of not more than \$300 or both. The penalty for a second conviction is imprisonment of not more than two years or a fine of not more than \$1000 or both. The Court found probable cause for count four.

Mr. Barkus, Esq. then referred the case to Diversion to the Rutland County Community Justice Center. Mr. Sleigh, Esq., on behalf of the Defendant accepted. The complainant, J.H., placed on the record that she also agreed with this resolution and read from a statement as to why. The Defendant, under oath, then read from a prepared statement entitled "Notice of Resolution Agreement" and made admissions to count four in the presence of the complainant.

By statute, the Attorney General is responsible for developing and administering the adult court diversion program in all counties. 3 V.S.A. § 164(a). Under 3 V.S.A. § 164(b), "the diversion program shall be designed for two purposes: (1) to assist adults who have been charged with a first or second misdemeanor or a first nonviolent felony; (2) to assist persons who have been charged with an offense and who have substance abuse or mental health treatment needs regardless of the person's prior criminal history record except a person charged with a listed crimes in 13 V.S.A. § 5301(7) shall not be eligible under this section."


Here, the Attorney General's Office may refer count four to diversion as it is a misdemeanor, first offense. Additionally, the amended count four is not a violent felony, nor a sexually violent offense like count three lewd and lascivious conduct that would not be eligible for a referral to diversion.<sup>1</sup> Finally, William Farrell of the Vermont Attorney General's Office adult court diversion program advised the Court on November 7, 2023 that the Rutland County Community Restorative Center was willing to accept the referral and would oversee the Defendant's diversion participation. Mr. Barkus, Esq. and Mr. Sleigh, Esq. also agreed that while this case (through count four) was referred to diversion, the matter would not be confidential as otherwise presumed by the statute by agreement of the parties. 3 V.S.A. §164(e)(1).

Based on the above, the Bennington County State's Attorney's Office objection to the Attorney General's Office referral of the added misdemeanor count four prohibited conduct is denied on the merits, even before addressing the issue of standing in this unique case.

**The Court orders the Attorney General's Office to file the adult court diversion program referral in this case which includes both the signatures of Mr. Barkus, Esq. and the signature of the Defendant and his attorney, Mr. Sleigh, Esq.** The adult court diversion program referral is a court form required for the diversion referral. This should be filed no later than Friday, November 17, 2023.

Dated November 11, 2023.

Electronically signed pursuant to V.R.E.F. 9(d).

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Kerry A. McDonald-Cady, Superior Court Judge

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<sup>1</sup> At a status conference held in this case on November 6, 2023, the Court advised the attorneys that a diversion referral for count three, felony lewd and lascivious conduct, was prohibited. First, pursuant to Title 3, diversion referrals were for non-violent felonies, which lewd and lascivious conduct is not. Although Title 3 does not define a non-violent felony, Title 28 does which references non-listed crimes not included in Title 13 § 5301(7). Felony lewd and lascivious conduct is a listed crime pursuant to 13 V.S.A. § 5301(7)(H). Second, Community Justice Centers may not accept diversion referrals for crimes of domestic or sexual violence unless they have entered into a memorandum of understanding (MOU) with a local community network against domestic violence and sexual assault. 24 V.S.A. § 1967 and 1968. The Bennington CRJ who oversees the Bennington County diversion adult diversion program does not have the requisite MOU.