

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 1

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

[PROPOSED] FIRST AMENDED PETITION OF MISCONDUCT

In accordance with a finding of probable cause dated February 15, 2019 **and the Hearing Panel's** _____, **2024 Ruling on Disciplinary Counsel's Motion to Amend Petition of Misconduct**, Disciplinary Counsel formally charges Melvin Fink (Respondent) with the following violation pursuant to A.O. 9, Rule **13** ~~4~~(D)(1)(b) as set forth below.

NOTICE TO RESPONDENT: This is a formal Petition of Misconduct. Pursuant to A.O. 9, Rule **13** ~~4~~(D)(3), you are required to file an Answer **to the First Amended Petition of Misconduct** 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 ~~13~~

Melvin Fink, a licensed Vermont attorney, engaged in a serious crime; to wit: on July 17, 2017, engaged in lewd and lascivious conduct towards JH, a felony, in violation of 13 V.S.A. § 2601 and Vermont Rule of Professional Conduct 8.4(b).

Count 2 of 3

Melvin Fink, a licensed Vermont attorney, knowingly made false statements of material fact in connection with a disciplinary matter and/or engaged in conduct involving dishonesty,

deceit or misrepresentation, to wit: misrepresented to Disciplinary Counsel, through his counsel on or about August 24, 2018, that during a July 17, 2017 meeting between Mr. Fink and JH “[a]ny physical contact between Mr. Fink and [JH] was consensual” and “[a]t no time did Mr. Fink grab, push, thrust or otherwise touch [JH’s] butt or other intimate areas of her body,” in violation of Vermont Rules of Professional Conduct 8.1(a) and 8.4(c).

Count 3 of 3 (pleaded partially in the alternative to Count 2, per V.R.C.P. 8(e)(2) and A.O. 9, Rule 20(B))

Melvin Fink, a licensed Vermont attorney, knowingly made false statements, misleading omissions and personal misrepresentations of fact to a tribunal and/or engaged in conduct involving dishonesty, deceit or misrepresentation, to wit: falsely stated and personally misrepresented in a November 3, 2023 “Notice of Resolution Agreement” filed in State v. Melvin Fink, Docket No. 124-1-19 Bncr, and subsequently testified falsely and misleadingly at a November 7, 2023 hearing in State v. Fink that, during a July 17, 2017 meeting with JH, Mr. Fink “without invitation, instigation, consent, express or implied from [JH], I embraced her, putting my hands on her clothed buttocks and kissed her She did not invite or consent to my advance” which was “unwanted conduct” by Mr. Fink directed toward JH, in violation of Vermont Rules of Professional Conduct 3.3(a)(1) and 8.4(c).

Facts alleged in Support of *First Amended* Petition

1. Respondent is a licensed Vermont attorney who maintains a busy litigation practice in Ludlow.

2. On February 8, 2019, Respondent was arraigned on a two-count Information filed by the Attorney General, charging him with lewd and lascivious conduct towards JH, arising out of a single encounter that occurred July 17, 2017 in Bennington county. *State v. Melvin Fink*, 124-1-19 Bncr.
3. The arraignment package contains a police affidavit which describes the conduct in detail.
4. The police affidavit states, in relevant part, that:
 - a. Respondent provided legal representation to JH's adult son in a child custody matter from November 2016 to June 2017.
 - b. On June 6, 2017, Respondent withdrew from representing JH's son, but continued to provide advice and counseling on the matter to JH.
 - c. On July 17, 2017, Respondent and JH were scheduled to meet to discuss the matter. The meeting occurred at JH's residence in Peru.
 - d. Respondent grabbed the back of JH's head, forced her face to his face, and inserted his tongue into her mouth and partially down her throat. He also pushed his fingers through the clothing of JH, into her anus. He engaged in this conduct without JH's consent and without any lawful purpose.
5. The conduct set out in the police affidavit is a felony violation of 13 V.S.A. § 2601.
6. **On July 12, 2018, the Vermont Professional Responsibility Program received a written complaint from JH dated July 10, 2018 in which she alleged, inter alia, that Respondent had sexually assaulted her in her home during a July 17, 2017**

meeting with him.

7. By letter to Respondent dated July 17, 2018, Professional Responsibility Program staff forwarded to Respondent a copy of JH's July 10, 2018 complaint and requested that he provide Disciplinary Counsel "with a written response to the complaint" by August 10, 2018.
8. By letter to Disciplinary Counsel dated August 9, 2018, Respondent's counsel, Mr. Sleigh, informed Disciplinary Counsel that he had been retained to represent Respondent. In this letter, Mr. Sleigh requested an extension until August 24, 2018 to provide Disciplinary Counsel with a written response to JH's complaint.
9. By letter from Respondent's counsel, Mr. Sleigh, to Disciplinary Counsel dated August 24, 2018, Respondent provided the requested written response to JH's complaint against him.
10. In this August 24, 2018 letter from his counsel, Respondent knowingly made the following three false statements of material fact in connection with the instant disciplinary matter.
11. First, Respondent falsely stated, through counsel, that during a July 17, 2017 meeting between Respondent and JH "[a]ny physical contact between Mr. Fink and [JH] was consensual."
12. Second, Respondent falsely stated, through counsel, that "[a]t no time" during the July 17, 2017 meeting "did Mr. Fink grab, push, thrust or otherwise touch [JH's] butt or other intimate areas of her body."

13. Third, Respondent falsely stated, through counsel, that during the July 17, 2017 meeting, “[a]ny physical contact between Mr. Fink and [JH] . . . involved no contact of areas one would normally consider intimate.”
14. These three false statements of material fact, conveyed through counsel, also independently constitute conduct by Respondent involving dishonesty, deceit or misrepresentation.
15. The three above-quoted statements by Respondent in his counsel’s August 24, 2018 letter to Disciplinary Counsel were made by Respondent with knowledge of their falsity in light of certain directly contradictory November 2023 statements, personal representations of fact and testimony by Respondent to the Bennington Superior Court, alleged and quoted below, in a criminal prosecution of Respondent, captioned State v. Melvin Fink, Docket No. 124-1-19 Bncr (hereinafter “State v. Fink”) arising out of Respondent’s July 17, 2017 sexual assault on JH that also forms the original basis for this attorney disciplinary proceeding.
16. On November 3, 2023, a document entitled “Notice of Resolution Agreement” was filed in State v. Fink.
17. This “Notice of Resolution Agreement” was signed personally by Respondent, his counsel Mr. Sleigh and Assistant Attorney General Paul Barkus.
18. In the “Notice of Resolution Agreement,” contrary to Respondent’s above-quoted statements in his counsel’s August 24, 2018 letter to Disciplinary Counsel, Respondent stated and personally represented to the Bennington

Superior Court that, during his July 17, 2017 meeting with JH, he “without invitation, instigation, consent, express or implied from J.H., Mr. Fink embraced her, putting his hands on her clothed buttocks and kissed her. . . . J.H. did not invite or consent to Mr. Fink’s advance” which was “unwanted conduct” by Respondent directed toward JH.

19. During a subsequent November 7, 2023 hearing in State v. Fink, Respondent was sworn under oath and voluntarily testified to the Bennington Superior Court, the Honorable Kerry A. McDonald-Cady presiding, again contrary to Respondent’s above-quoted statements in his counsel’s August 24, 2018 letter to Disciplinary Counsel, that during his July 17, 2017 meeting with JH, Respondent “without invitation, instigation, consent, express or implied from [JH], I embraced her, putting my hands on her clothed buttocks and kissed her. . . . She did not invite or consent to my advance” which was “unwanted conduct” by Respondent directed toward JH.
20. Neither Respondent nor his counsel, Mr. Sleigh, ever informed Disciplinary Counsel of his November 2023 representations and testimony to the Bennington Superior Court in State v. Fink concerning his July 17, 2017 meeting with JH, which is also the subject matter of this attorney disciplinary proceeding.
21. Likewise, neither Respondent nor his counsel, Mr. Sleigh, ever contacted Disciplinary Counsel to explain, clarify or amend the directly contradictory statements Respondent gave to Disciplinary Counsel in August 2018 concerning Respondent’s July 17, 2017 meeting with JH.

22. To the extent that Respondent's false statements in his counsel's August 24, 2018 letter to Disciplinary Counsel, alleged and quoted supra paragraphs 11-13, are determined by the Hearing Panel in this proceeding to be true, then, alternatively, Respondent's above-quoted statements, personal representations of fact and testimony to the Bennington Superior Court in the November 3, 2023 "Notice of Resolution Agreement" and during the November 7, 2023 hearing in State v. Fink, alleged supra paragraphs 18-19, must then constitute knowingly false statements and personal misrepresentations of fact by Respondent to a tribunal.
23. Respondent's above-quoted November 2023 statements, personal representations of fact and testimony to the Bennington Superior Court, if determined to be false, would then also independently constitute conduct by Respondent involving dishonesty, deceit and misrepresentation.
24. Respondent's above-quoted November 2023 statements, personal representations of fact and testimony to the Bennington Superior Court also misleadingly omitted material facts necessary to convey to the Court an accurate understanding of the highly aggressive, sexually violent and physically invasive nature of his July 17, 2017 conduct toward JH.
25. Specifically, Respondent knowingly failed to disclose and admit to the Court that he "grabbed the back of JH's head, forced her face to his face, and inserted his tongue into her mouth and partially down her throat" or that Respondent also "pushed his fingers through the clothing of JH, into her

*anus,” as alleged by the State’s original Information in State v. Fink based on
the supporting attached Affidavit of Vermont State Police Detective Sergeant
Jesse Robson.*

DATED : ~~February 20, 2019~~ February , 2024

Sarah Katz, Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL

/s/ Jon T. Alexander

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