

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

IN RE: MELVIN FINK
PRB FILE NO. 012-2019

Motion to Enlarge Time & Notice of Opposition to Disciplinary Counsel's Motion to Lift Stay

AO 9 Rule V.R.C.P. 7

COMES NOW your respondent, by and through counsel, and respectfully moves this Panel to enlarge the time in which he must notice his opposition to Disciplinary Counsel's Motion to Lift Stay and, notices his opposition to Disciplinary Counsel's Motion to Lift Stay.

Motion to Enlarge Time

Respondent mistakenly thought the time provisions of AO 9 Rule 13 (D) applied to filing his Notice of Opposition. But, given AO 9 Rule 20 B incorporates the Vermont Rules of Civil Procedure, it appears that V.R.C.P. 7 (b)(4) required an opposition to be filed by February 19, 2024. Respondent asks the Panel to extend the time to include today's date, February 21, 2024. The short extension will not prejudice Disciplinary Counsel or adversely impact the orderly conduct of the Panel's business.

Notice of Opposition to DC's Motion to Lift Stay

This Panel stayed the instant proceeding pending the entry of judgment in the trial court in the related criminal proceeding, i.e., *State v. Fink*, 124-1-19 Bncr. See, Panel Ruling on Request to Stay, March 28, 2019. No judgment has been entered in the criminal case.

Rather, the criminal case has been sent to diversion pursuant to 3 V.S.A. § 164. Mr. Fink has met with the Diversion Board and has been assigned a contract. He is expected to fulfill his

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obligations to the program in less than 90 days. If he completes the contract, the criminal case will be dismissed and a judgment entered. If he fails to complete the program, however, his case will once again be referred to court for resumed prosecution.

Diversion is unlike a deferred sentence. 13 V.S.A. § 7041. See, *State v. Love*, 2017 VT 66; *State v. Rafuse*, 168 Vt. 631 (1998) (discussing deferred sentences generally.) While completion of probation on a deferred sentence results in dismissal, as does successful completion of a diversion, a plea of guilty and the entry of judgment are conditions precedent to a deferred. Failure to complete the conditions of a deferred sentence results in the imposition of a sentence as a judgment of guilt had already been entered.

Maintaining the current stay for a short period will allow for the completion of the diversion contract or the resumption of the criminal prosecution. Lifting the stay would necessitate resolution of the issues the stay was imposed to avoid.

WHEREFORE, Respondent notices his opposition to the Motion to Lift the Stay.

DATED at St. Johnsbury, VT on February 21, 2024.

Respectfully Submitted,



David C. Sleight
Counsel for Melvin Fink

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CERTIFICATE OF SERVICE

COMES NOW the Respondent, Melvin Fink, by and through counsel, David C. Sleigh, and certifies that on February 21, 2024, the *Motion to Enlarge Time and Notice of Opposition to Disciplinary Counsel's Motion to Lift Stay* was served via e-mail on the Disciplinary Counsel's attorney of record in this matter to:

Jon Alexander
Disciplinary Counsel
32 Cherry Street, Ste. 213
Burlington, VT 05401
jon.alexander@vermont.gov

DATED at St. Johnsbury, Vermont on February 21, 2024.

Respectfully submitted,



David C. Sleigh
Counsel for Respondent Melvin Fink