

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

DISCIPLINARY COUNSEL’S RENEWED MOTION TO LIFT STAY

NOW COMES Petitioner Office of Disciplinary Counsel, pursuant to Supreme Court Administrative Order No. 9, Rule 20(G), and respectfully renews its previously denied motion to lift the stay of proceedings that the Hearing Panel ordered in this matter “pending the entry of judgment in the trial court in the related criminal proceeding,” *State v. Melvin Fink*, Docket No. 124-1-19 Bncr (hereinafter “*State v. Fink*”). See Mar. 28, 2019 Ruling on Request to Stay at 6. In support hereof, Petitioner states as follows:

1. In its March 27, 2024 Order Denying Disciplinary Counsel’s Motion to Lift Stay (“Order”), the Hearing Panel noted that Respondent had represented, in opposition to Disciplinary Counsel’s motion to lift the stay, “that if he completes Diversion, the criminal court would enter judgment dismissing the charges against him, ending the stay in this matter” Order at 3.
2. In contrast, Disciplinary Counsel predicted “that if Respondent successfully completes Diversion, the State would dismiss the criminal charges against Respondent, and the court would therefore not enter any judgment in the criminal matter,” thus leaving the stay in place. *Id.*
3. On May 15, 2024, the State filed its Notice of Dismissal in *State v. Fink* “dismiss[ing] the charge . . . due to [Respondent’s] successful completion of the Diversion program.” May 15, 2024 Notice of Dismissal, *State v. Fink*, copy attached as **Exhibit 1** hereto.
4. This prosecutorial dismissal had the effect of conclusively terminating *State v. Fink*

without entry of any judgment by the Bennington Superior Court. *See* Vt. R. Crim. P. 48(a) (“The attorney for the state may file a written dismissal of an indictment or information and the prosecution shall thereupon terminate.”).

5. In the absence of any judgment, the Hearing Panel’s stay of this attorney misconduct proceeding, by its own terms, remains in effect indefinitely.
6. “However,” as noted by the Order, “if the State dismisses the criminal charges, the Panel would likely consider such a dismissal a change in factual circumstances that warrants reconsideration of the stay.” Order at 4.
7. Accordingly, Disciplinary Counsel renews his motion to lift the stay in this matter. Now that *State v. Fink* has been fully concluded by the State’s dismissal, the Hearing Panel’s concern for the “potential implications” for parallel disciplinary and criminal proceedings created by Respondent’s assertion of his privilege against criminal self-incrimination is no longer present. *See* Order at 4 (noting that “significant discovery and evidentiary disputes which would arise from Respondent asserting his privilege against self-incrimination if the stay were lifted at this time . . . would be moot if the State dismisses the criminal charges against Respondent.”).
8. In addition, the Court-ordered conditions of release in *State v. Fink* that prohibited contact between Respondent and J.H. ended with the termination of that case, thereby posing no barrier to discovery proceedings or the merits hearing in this matter.
9. As a result, “good cause” no longer exists to continue the stay in this matter and further delay the resolution of this disciplinary matter. A.O. No. 9, Rule 20(G).

CONCLUSION

WHEREFORE, Petitioner Office of Disciplinary Counsel respectfully requests that the Hearing Panel enter an Order (1) lifting the stay of proceedings in this matter; and (2) directing the parties to promptly submit a stipulated proposed Scheduling Order for this matter.

Dated at Burlington, Vermont this 10th day of July 2024.

OFFICE OF DISCIPLINARY COUNSEL

/s/ Jon T. Alexander

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CERTIFICATE OF SERVICE

I certify that on July 10, 2024, Respondent Melvin Fink, Esq. was served with Disciplinary Counsel's Renewed Motion to Lift Stay and supporting Exhibit 1 in the above-referenced matter by email only to the following counsel of record:

David C. Sleigh, Esq.
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in accordance with A.O. 9, Rule 18(B) and Vermont Rule of Civil Procedure 5.

Dated at Burlington, Vermont this 10th day of July 2024.

OFFICE OF DISCIPLINARY COUNSEL

/s/ Jon T. Alexander

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