

**STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM**

In re: Melvin Fink, Esq.
PRB Docket No. 2019-012

RULING ON MOTION FOR RECONSIDERATION

Disciplinary Counsel has filed a motion requesting that the Hearing Panel reconsider two provisions of its Order issued on March 28, 2019 in connection with the Respondent's motion to stay the above-captioned disciplinary proceeding. Disciplinary Counsel does not request reconsideration of the Panel's decision to grant the motion to stay pending the entry of judgment in the related criminal proceeding, but rather requests amendment of other provisions set forth in the Panel's Order.

I.

Paragraph 1 of the Panel's March 28, 2019 ruling includes the following provision:

The stay will take effect 30 days from the issuance of this Order so that Disciplinary Counsel may file any amended petition of misconduct and Respondent may file a response to any amended petition. Disciplinary Counsel shall file any amended petition within 7 days of the issuance of this Order and Respondent shall file his response within 20 days thereafter.

The petition of misconduct in this proceeding alleges that Respondent engaged in a serious crime in violation of Rule 8.4(b) of the Vermont Rules of Professional Conduct. The charge of misconduct is based on conduct that is the subject of charges separately pending against Respondent in a Criminal Division proceeding, *State v. Melvin Fink*, Docket No. 124-1-19 Bncr ("the criminal proceeding").

The Panel included this provision in its Order after observing that the alleged date of the crime set forth in the petition of misconduct – July 17, 2017 – is not the same date alleged in the copy of the

criminal information that was provided to the Panel for its consideration – June 17, 2017. *See* Ruling, 3/29/19, at 2 n.1. Based on the fact that the date of arraignment and criminal proceeding docket number alleged in the petition of misconduct were otherwise confirmed by the criminal information and conditions of release papers that were submitted to the Panel by the parties, the Panel considered the possibility that “Disciplinary Counsel *may have* made a clerical error in preparing the petition of misconduct.” *Id.* (emphasis added). The Panel stated that “[i]f that is the case, Disciplinary Counsel should promptly file an amended petition of misconduct to correct this error.” *Id.* Based on these observations the Panel included in Paragraph 1 of the Order a provision allowing for the possibility that Disciplinary Counsel might wish to amend the petition to address the inconsistency. *See* Order, ¶ 1 (delaying effective date of stay “so that Disciplinary Counsel *may file any amended petition of* misconduct”) (emphasis added).

In her motion to reconsider, Disciplinary Counsel represents that she has consulted with the assistant attorney general handling the criminal proceeding, who advised her that the date of the incident in the original information was incorrect and that he had amended the information by hand on the date of the arraignment. Based on these representations that the copy of the information provided to the Panel was not accurate, Disciplinary Counsel argues that amendment of the petition of misconduct is not necessary.

While the Panel appreciates Disciplinary Counsel’s representations, no modification of Paragraph 1 of the March 28, 2019 Order is needed. The Panel did not decide that Disciplinary Counsel had made a clerical error. It simply allowed for that possibility based on the information that was

provided to the Panel by the parties at the time and set a deadline for “*any* amended petition” to be filed. Because the Order does not require Disciplinary Counsel to file an amended petition, the request to modify Paragraph 1 is denied.

II.

Paragraph 2 of the Order provides that “Disciplinary Counsel shall monitor the related criminal proceeding and promptly advise the Hearing Panel when judgment in the criminal proceeding has been entered in the trial court on the charges.” Disciplinary Counsel requests that she be relieved of the obligation to monitor the criminal proceeding and that the Panel impose on Respondent, rather than Disciplinary Counsel, the obligation to notify the Panel when judgment has been entered in that proceeding.

The Panel has required Disciplinary Counsel to monitor the criminal proceeding in order to evaluate any developments that could impact this disciplinary proceeding, including but not limited to any amendments of the criminal charges that might impact whether a stay of the disciplinary charges continues to be justified, or not. *See* Ruling on Request to Stay, 3/28/19, at 6 (“This ruling is conditioned on the facts presently before the Panel. If the factual circumstances change, the ruling will be subject to reconsideration at any time.”). To clarify the level of effort that is expected, the Panel will specify that the criminal proceeding be monitored by Disciplinary Counsel once every 60 days until judgment has been entered in the criminal proceeding. Monitoring may consist of examining the docket entries and court rulings in the criminal proceeding and, if Disciplinary Counsel deems it appropriate, conferring (by email or by telephone) with the prosecuting attorney in the criminal proceeding on the

status of the criminal proceeding.

Disciplinary Counsel also requests that Panel impose on Respondent the obligation to notify the Panel when judgment has been entered in the criminal proceeding. Disciplinary Counsel argues that Respondent will be notified by the clerk as soon as judgment has been entered and therefore is in a better position to promptly notify the Panel. Respondent does not object to this request. Accordingly, Respondent will be required to promptly notify the Panel when judgment is entered. Notwithstanding this modification, however, the Panel cannot relieve Disciplinary Counsel of the obligation under Rule 17(A) to notify the Panel promptly if the clerk in the criminal proceeding transmits a certificate of conviction to Disciplinary Counsel. *See* A.O. 9, Rule 17(A) (“The clerk of any court in this state in which a lawyer is convicted of a crime shall within ten (10) days of the conviction transmit a certificate of conviction to disciplinary counsel who will so advise the Board.”).¹

ORDER

Based on the foregoing, Paragraph 2 of the Panel’s March 28, 2019 Order in the above matter is hereby amended as follows:

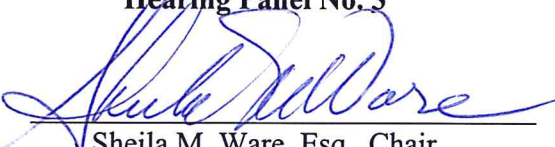
(2) Disciplinary Counsel shall monitor the status of the related criminal proceeding no less frequently than once every 60 days until judgment has been entered in that proceeding. Monitoring may consist of examining the docket entries and court rulings that have been entered in the criminal

¹ Disciplinary Counsel asserts that the “trial courts are generally unaware of this automatic obligation and must be reminded to transmit the certificate.” If that is the case, it would seem prudent for Disciplinary Counsel to remind the clerk of the court handling the pending criminal proceeding of the obligation under Rule 17(A) in the event of a conviction and thereby enhance the prospects of Disciplinary Counsel receiving prompt notice of any conviction. The Panel recognizes that Disciplinary Counsel cannot guarantee that the court clerk will transmit to her a notice of conviction.


proceeding and, if Disciplinary Counsel deems it appropriate, conferring (by email or by telephone) with the prosecuting attorney in the criminal proceeding on the status of the criminal proceeding. Respondent shall promptly notify the Hearing Panel when judgment in the criminal proceeding has been entered in the trial court on the charges; provided, however, that Respondent's notification obligation does not alter or otherwise affect any obligation of Disciplinary Counsel that may arise under Administrative Order 9, Rule 17(A).

Dated: ~~April~~ ^{MAY 3}, 2019

Hearing Panel No. 3



Sheila M. Ware, Esq., Chair



Gary F. Karnedy, Esq.



Peter Zuk, Public Member