

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

**DISCIPLINARY COUNSEL'S MOTION TO CONTINUE MERITS HEARING, OR
ALTERNATIVELY, CONDUCT HYBRID MERITS HEARING**

NOW COMES Petitioner Office of Disciplinary Counsel and moves for a one (1) month continuance of the in-person Merits Hearing in this matter scheduled for September 29-30, 2025 in order to facilitate the voluntary attendance and testimony of an otherwise unavailable out-of-state material witness, the complainant in this matter, J.H.

Alternatively, if the Hearing Panel declines to continue the in-person Merits Hearing, Petitioner moves the Hearing Panel to permit J.H. to remotely attend and testify by video conference at a hybrid Merits Hearing on September 29-30th. In support hereof, Petitioner states as follows:

1. On October 10, 2024, the Hearing Panel issued a Notice of Hearing in this matter scheduling an in-person Merits Hearing for September 29-30, 2025 in or around Burlington, Vermont.
2. Disciplinary Counsel informed J.H., the non-party complainant in this matter, of the scheduled in-person Merits Hearing by telephone in mid-July 2025 and requested that she voluntarily attend and testify.
3. On this call, J.H., who has been a South Carolina resident for several years, confirmed to Disciplinary Counsel that she was willing, as she had indicated in prior communications, to voluntarily travel from her home in Bluffton, South Carolina to Burlington, Vermont to attend and testify at the September 29-30th Merits Hearing.
4. J.H. did not indicate at that time that personal attendance at the scheduled Merits Hearing

in Vermont was infeasible or conflicted with her schedule.

5. On August 8, 2025, the Hearing Panel issued an Amended Notice of Hearing which informed the parties that the September 29-30th Merits Hearing would take place in a designated courtroom of the Costello Courthouse in Burlington.
6. On August 13th, Disciplinary Counsel forwarded the Amended Notice of Hearing to J.H. by email and, confirming their earlier phone call about her agreed attendance at the September 29-30th Merits Hearing, inquired about the status of her travel arrangements from South Carolina to Vermont.
7. On August 27th, J.H. replied to Disciplinary Counsel to inform him, for the first time, that “I cannot be there in person” at the Merits Hearing because “[m]y parents are having a large event for their 70 years together. They are in their late 80’s.”
8. In an August 29th call, J.H. confirmed to Disciplinary Counsel that she is hosting a recently scheduled multi-day gathering of family and friends in South Carolina in honor of her parents’ anniversary from September 26th through September 30th.
9. J.H. indicated to Disciplinary Counsel that, although this gathering had been contemplated for several months, her parents had not chosen September 26-30th as the dates for the event until August, after she had indicated to Disciplinary Counsel in July that she was available to attend and testify at the in-person September 29-30th Merits Hearing.
10. J.H. indicated to Disciplinary Counsel that she did not realize when the September 26-30th dates were chosen by her parents that the family gathering would conflict with her prior commitment to travel to Vermont for the Merits Hearing in this matter.
11. On their August 29th call, J.H. confirmed to Disciplinary Counsel that she was no longer willing to travel from South Carolina to Burlington, Vermont for the September 29-30th

Merits Hearing.

12. However, she noted, she would be willing to absent herself from her hosting responsibilities and make herself available for several hours on either September 29th or 30th to remotely attend and testify by video conference at the Merits Hearing in this matter.
13. Alternatively, J.H. stated, she is generally willing to travel to Vermont and voluntarily testify at the Merits Hearing in this matter at another time this fall. J.H. specifically indicated that she would be willing to travel to Vermont to attend the Merits Hearing in late October 2025.

ARGUMENT

14. J.H. is a material witness who would be called by Petitioner to testify at the Merits Hearing about the Respondent's lewd and lascivious conduct toward her on July 17, 2017 at a house she then owned in Peru, Vermont.
15. Respondent's July 17, 2017 conduct toward J.H., which was not witnessed by anyone but J.H. and Respondent, forms the factual basis for his charged violation of Vermont Rule of Professional Conduct 8.4(b), as alleged in the February 20, 2019 Petition of Misconduct in this matter.
16. J.H. was not deposed during discovery in this matter. In 2020, J.H. was deposed by Respondent in a criminal matter, *State v. Fink*, 124-1-19 Bncr, but the Petitioner was not "present or represented at the taking of the deposition." V.R.C.P. 32(a).
17. J.H.'s recently announced unwillingness to attend and testify at the in-person September 29-30th Merits Hearing, after previously agreeing to do so approximately six weeks earlier, was unavoidable by Disciplinary Counsel, who exercised due diligence in attempting to procure her voluntary appearance. *See* V.R.C.P. 40(c)(2) (motion for continuance of trial

“may be made as soon as practicable after the cause or ground becomes known,” but “[o]rdinarily, the only grounds for continuance after the second day of the term [in which the action is in order for trial] will be the sickness of counsel or parties, the unavoidable absence of a material witness or evidence, or the rulings of the Administrative Judge as to conflicting appointments of trial attorneys” (emphasis added)). V.R.C.P. 40(c)(2).

18. J.H. may not be summoned to testify in-person at the September 29-30th Merits Hearing in Vermont. *See* V.R.C.P. 40(d)(3) (“A party shall not be entitled to a continuance on the ground of the absence of a material witness whom it is in the power of such party to summon, except when such witness is sick or otherwise disabled from attending court, unless the party shall have caused such witness to be regularly summoned to attend”).
19. As a South Carolina resident and nonparty witness in this matter, J.H. is generally not subject to Vermont compulsory process. *See* 81 Am. Jur. 2d *Witnesses* § 33 (“In the absence of statute or interstate compact, compulsory process cannot extend beyond the territory of the state, and a state court cannot require the attendance of a witness who is a nonresident of, and is absent from, the state”); *see also Quinn v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 1410 P.3d 984, 985 (Nev. 2018) (rejecting claim that “Nevada district court has authority to compel an out-of-state attorney to appear in Nevada for a deposition as a nonparty witness in a civil action pending in Nevada state court”).
20. Both Vermont and South Carolina have enacted the Uniform Act to Secure Attendance of Witnesses from Without the State in Criminal Cases, *see* 13 V.S.A. §§ 6641, *et seq.*; S.C. Code Ann. §§ 19-9-30, *et seq.*, as well as court rules and statutes to facilitate the taking of depositions and other pre-trial discovery of out-of-state individuals in civil cases. *See* V.R.C.P. 45(f); S.C. Code Ann. §§ 15-47-100, *et seq.*

21. However, there is no known statutory or rule-based process under both Vermont and South Carolina law to compel the physical attendance of a South Carolina resident, like J.H., at a non-criminal trial or hearing before a Vermont court or administrative tribunal.
22. Vermont's long-arm statute, 12 V.S.A. § 913(b) "confers jurisdiction to the full extent . . . permitted by the Due Process Clause," but only "over nonresident defendants," not nonresident nonparties like J.H. *Dall v. Kaylor*, 163 Vt. 274, 275, 658 A.2d 78, 79 (1995); *see also Colorado Mills, LLC v. SunOpta Grains & Foods Inc.*, 269 P.3d 731, 734 & n.4 (Colo. 2012) (noting that court had not "found any authority applying our long-arm statute, or the long-arm statute of any other state for that matter, to enforce a civil subpoena against an out-of-state nonparty" (collecting citations)); *cf. Quinn*, 410 P.3d at 989 ("As other jurisdictions have recognized, the concept of personal jurisdiction is different from that of subpoena power.").
23. Under A.O. 9, Rule 19(A)(6), the Vermont Professional Responsibility Board and its Hearing Panels are broadly empowered to issue subpoenas "pursuant to the laws of another jurisdiction for use in lawyer discipline or disability proceedings . . . to compel the attendance of witnesses and production of documents."
24. However, the equivalent South Carolina Rule for Lawyer Disciplinary Enforcement more precisely provides that "[w]henver a subpoena is sought in this State pursuant to the law or disciplinary rules of another jurisdiction for use in lawyer or judicial disciplinary or disability proceedings" the South Carolina Commission on Lawyer Conduct or one of its panels "upon a showing of good cause, may issue a subpoena to compel the attendance of witnesses and the production of documents in the county where the witness resides or is employed or elsewhere in this state as agreed by the witness." S.C. Rules for Lawyer Disc.

Enf., Rule 15(f) (emphasis added).

25. Thus, in accordance with this rule, South Carolina's lawyer disciplinary authorities cannot compel J.H., a South Carolina resident, to travel to Vermont to personally attend and testify at the September 29-30th Merits Hearing. Rather, at most, J.H. might be subpoenaed to appear at some location within South Carolina to testify remotely by video conference at the Merits Hearing on those dates, something that J.H. has agreed to do voluntarily, as discussed above.
26. In light of the above circumstances, good cause exists to continue the Merits Hearing in this matter for one (1) month.
27. Alternatively, if the Hearing Panel declines to continue the Merits Hearing, good cause also exists to permit J.H. to remotely attend and testify by video conference at a hybrid Merits Hearing on September 29-30th. *See* V.R.C.P. 43.1(h) (setting forth factors to be considered in determining whether to permit or require participation of witnesses in a hearing via audio or video conference).
28. As discussed above, the physical presence of a material witness, J.H., at the September 29-30th Merits Hearing cannot be procured on a voluntary or compelled basis. Second, there are no known technological barriers to receiving J.H.'s testimony via video conference. In particular, video conference would allow for full and effective examination and cross-examination of J.H. by both parties and the Hearing Panel. Finally, Petitioner is aware of no undue prejudice that would be imposed on any party or J.H. from taking her testimony via video conference.

CONCLUSION

WHEREFORE, Petitioner Office of Disciplinary Counsel respectfully requests a one (1) month continuance of the in-person Merits Hearing in this matter scheduled for September 29-30, 2025, or in lieu of this preferred relief, permission for J.H. to remotely attend and testify by video conference at a hybrid Merits Hearing on September 29-30th.

Dated at Burlington, Vermont this 8th day of September 2025.

OFFICE OF DISCIPLINARY COUNSEL

/s/ Jon T. Alexander

Jon T. Alexander

Disciplinary Counsel

32 Cherry Street, Suite 213

Burlington, VT 05401

(802) 859-3001

jon.alexander@vtcourts.gov

*Counsel for Petitioner Office of Disciplinary
Counsel*

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CERTIFICATE OF SERVICE

I certify that on September 8, 2025, Respondent Melvin Fink, Esq. was served with Disciplinary Counsel's Motion to Continue Merits Hearing, or Alternatively, Conduct Hybrid Merits Hearing in the above-referenced matter by email only to the following counsel of record:

David C. Sleigh, Esq.
Sleigh Law, PC
364 Railroad Street, Suite E
PO Box 278
St. Johnsbury, VT 05819
david.sleigh@sleighlaw.com

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

Dated at Burlington, Vermont this 8th day of September 2025.

OFFICE OF DISCIPLINARY COUNSEL

/s/ Jon T. Alexander

Jon T. Alexander
Disciplinary Counsel
32 Cherry Street, Suite 213
Burlington, VT 05401
(802) 859-3001
jon.alexander@vtvourts.gov

*Counsel for Petitioner Office of Disciplinary
Counsel*