

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

**DISCIPLINARY COUNSEL’S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

NOW COMES Petitioner Office of Disciplinary Counsel and requests that the Hearing Panel make the following findings of fact and conclusions of law based on the testimony taken and other evidence admitted at the February 3, 2026 Merits Hearing held on the Petition of Misconduct.

Proposed Findings of Fact

1. The Respondent, Melvin Fink, has been a licensed Vermont attorney for fifty-six years. *See* Transcript of Feb. 3, 2006 Merits Hearing at p. 148, lines 23-25 through page 149, lines 1-2 (“Tr. 148:23-25—149:1-2”).
2. On the morning of Monday, July 17, 2017, Respondent drove to the Peru, Vermont home of Mrs. Jeanne Howell for a professional meeting. Tr. 21:15-25—22:1-12, 35:15-25—36:1-18, 44:4-8, 46:1-6.
3. Jeanne Howell is currently sixty-nine years old, retired from the real estate business and lives in Bluffton, South Carolina. Tr. 18-10. She was widowed in 2006 and remains unmarried. Tr. 18-19.
4. Although Mrs. Howell lived in Florida in July 2017 with her then-fiancé, Joseph Coscia, she had owned the Peru, Vermont house since the early 1980s and was planning to be there on July 17, 2017 after a visit with her granddaughter, who lived in Vermont with her mother. *See* Tr. 21:22, 22:21-25—23:1-14, 36:19-25—37:1-3, 39:10-25—40:1-9.
5. After her July 17, 2017 meeting with Respondent, Mrs. Howell planned to drive from Peru,

Vermont to her parents' home in New Canaan, Connecticut and then fly home to Florida.
Tr. 42:11-14, 43:4-17.

6. Mrs. Howell is the mother of John Barry Howell, an ostensible former client of Respondent. Tr. 19:10-11, 137:7-9.
7. Between 2016 and early June 2017, Respondent had represented John Howell in a family court matter concerning support, custody and visitation matters for his minor daughter, who is Mrs. Howell's granddaughter. Tr. 24:6-24, 25:9-25, 27:3-22, 28:10-23.
8. Despite his withdrawal as John Howell's counsel of record in the family court matter, Respondent continued, at his suggestion, to provide legal advice and guidance to John and Jeanne Howell concerning the family court matter through regular correspondence and telephone calls with Jeanne Howell. *See* Tr. 31:8-11, 32:10-16; 33:24-25—34:1-4; 35:1-6; 160:19-21, 161:20-25—162:1-4.
9. Consistent with this course of conduct, the purpose of the July 17, 2017 meeting between Respondent and Mrs. Howell at her Peru, Vermont home was to review documents and discuss issues related to John Howell's family court matter. *See* Tr. 33:1-8, 53:13-21.
10. Jeanne and John Howell reasonably perceived their relationship to Respondent on July 17, 2017 to be the functional equivalent of an ongoing attorney-client relationship. *See* Disciplinary Counsel Exhibit 2, Nov. 3, 2023 Notice of Resolution Agreement in *State v. Fink*, Docket No. 124-1-19 Bncr, ¶ 2.
11. Jeanne and John Howell reasonably believed that Respondent's conduct toward each of them was governed by the same ethical norms applicable to an attorney's dealings with his clients. *See id.*
12. However, while at the July 17, 2017 meeting with Mrs. Howell, Respondent "erroneously

- perceived that [Mrs. Howell] harbored romantic feelings for him.” Disciplinary Counsel Exhibit 2, Nov. 3, 2023 Notice of Resolution Agreement in *State v. Fink*, Docket No. 124-1-19 Bncr, ¶ 3. Respondent told Mrs. Howell that she was “captivating.” Tr. 51:14-17.
13. Respondent then repeatedly declared to Mrs. Howell, “I’d like to pleasure you.” Tr. 56:13, 57:16.
 14. Respondent admits that he asked Mrs. Howell, “do you want me to pleasure you?” Tr. 171:5-6.
 15. Respondent then suddenly placed one hand on the back of Mrs. Howell’s head in a forceful “headlock” maneuver that rendered her unable to move, inserted his tongue deeply into her mouth, and forcefully grabbed her “rear end” with his other hand. Tr. 57:17-25, 58:5-18.
 16. Mrs. Howell reported that it felt like Respondent’s “tongue was down my throat” and, with his hand, he was “trying to go into my anus.” Tr. 57:25—58:1-2.
 17. In a criminal prosecution of Respondent arising out of his conduct toward Mrs. Howell on July 17, 2017, Respondent admitted that he “embraced her.” Disciplinary Counsel Exhibit 2, Nov. 3, 2023 Notice of Resolution Agreement in *State v. Fink*, Docket No. 124-1-19 Bncr, ¶ 2.
 18. Respondent also admitted that he did kiss Mrs. Howell “with an open mouth, with a French kiss.” Tr. 183:7-9.
 19. Mrs. Howell testified that, through her clothing, Respondent “was opening” her anus with his hand, which caused her physical pain and fear. Tr. 58:24-25—59:1-22, 61:15-22.
 20. In a criminal prosecution of Respondent arising out of his conduct toward Mrs. Howell on July 17, 2017, Respondent admitted “putting his hands on her clothed buttocks.” Disciplinary Counsel Exhibit 2, Nov. 3, 2023 Notice of Resolution Agreement in *State v.*

Fink, Docket No. 124-1-19 Bncr, ¶ 3.

21. At the subsequent Merits Hearing in this matter, Respondent contradicted himself multiple times by first testifying, “I did not touch her rear end” at all, Tr. 170:22, then testifying that his hand “may have brushed against her” clothed buttock, “but I didn’t hold my hand on her buttock.” Tr. 171:17-18. Finally, on cross-examination, Respondent testified again that “I don’t believe I put my hand on her buttocks” at any time, Tr. 177:18-19, 180:2-3, notwithstanding his criminal court admission.
22. Mrs. Howell did not resist Respondent because she was scared that, if she did, Respondent would harm her even more. *See* Tr. 59:19-23.
23. Also, because of the “headlock” that Respondent had placed her in, Mrs. Howell was unable to move. Tr. 60:3-7.
24. By his own admission, Respondent committed all of his physical acts upon Mrs. Howell “without invitation, instigation, or consent, express or implied” from her. Disciplinary Counsel Exhibit 2, Nov. 3, 2023 Notice of Resolution Agreement in *State v. Fink*, Docket No. 124-1-19 Bncr, ¶ 3.
25. Mrs. Howell likewise denied doing anything to encourage or invite Respondent’s conduct. *See* Tr. 61:9-14.
26. Respondent admitted that “his conduct violated the norms that [Mrs. Howell] would have expected to govern a professional meeting” and that he was “truly sorry and apologizes” for his “unwanted conduct.” Disciplinary Counsel Exhibit 2, Nov. 3, 2023 Notice of Resolution Agreement in *State v. Fink*, Docket No. 124-1-19 Bncr, ¶ 4-5.
27. By his own admission, Respondent’s behavior and acts toward Mrs. Howell caused her “emotional distress.” Disciplinary Counsel Exhibit 2, Nov. 3, 2023 Notice of Resolution

Agreement in *State v. Fink*, Docket No. 124-1-19 Bncr, ¶ 5.

28. After several minutes, Respondent stopped the above-described conduct, grabbed Mrs. Howell's hands and again said to her, "I want to pleasure you." Tr. 60:8-14, 61:25—62:1-3.
29. When Mrs. Howell responded that she not wish to have any sexual contact, Respondent asked, "are you sure" and stated that "this is not good." Tr. 62:10-11.
30. As Respondent left Mrs. Howell's home, he warned her, "[y]ou're going to lose" the family court matter involving Mrs. Howell's son and granddaughter. *See* Tr. 63:4-13; *see also* Disciplinary Counsel Exhibit 1 at p. 3 (Mrs. Howell relating in text message to Joseph Coscia that Respondent "just shook his head as if I lost.").
31. When Respondent had finally left, Mrs. Howell cried very hard. Tr. 64:14-19.
32. Soon after, Mrs. Howell left her Peru, Vermont home to drive to her parent's house Connecticut. While driving, she pulled over to text her fiancé Joseph Coscia about what Respondent had just done to her. *See* Tr. 64:5-25—65:1-4, 66:12-20.
33. In these text messages, Mrs. Howell related to Mr. Coscia that Respondent had told her during their meeting earlier that morning that she was "captivating," had asked her whether she "believe[d] in chemistry" and "then said he wanted to pleasure me." Disciplinary Counsel Exhibit 1, July 17, 2017 Text Messages between Jeanne Howell and Joseph Coscia at p.1.
34. Mrs. Howell indicated to Mr. Coscia that this was not full extent of Respondent's conduct toward her, writing, "I will tell u everything when we talk." Disciplinary Counsel Exhibit 1, July 17, 2017 Text Messages between Jeanne Howell and Joseph Coscia at p.2.
35. Mrs. Howell and Mr. Coscia subsequently spoke that day on the phone and in person the

following day, Tuesday, July 18, 2017, when Mrs. Howell returned to the home in Florida that she shared with Mr. Coscia. In these spoken communications she told Mr. Coscia “everything . . . [t]hat happened” in her meeting with Respondent. Tr. 68-1-25—69:1; *see also* Tr. 139:4-15, 144:25—145:1-3.

36. Mr. Coscia testified that Mrs. Howell related to him in their spoken communications on July 17-18, 2017 that Respondent “tried to kiss her. And she backed off, and he proceeded at that point to kind of force himself on her.” Tr. 141:6-8.
37. Specifically, Mrs. Howell told Mr. Coscia that Respondent “tried to stick his tongue down her throat, that he placed his hand on her butt and he pressed against her butt with his fingers,” that is, “in her anus.” Tr. 141:15-20; *see also* Tr. 145:24-25—146:1 (“Pressed his hand into her butthole . . . [t]hrough her clothes.”).
38. Mrs. Howell waited nearly a year to report Respondent’s conduct to the police and attorney disciplinary authorities because she was fearful that Respondent would act on his apparent threat to prejudice her son John Barry Howell’s efforts through the family court case to establish visitation rights for his daughter. *See* Tr. 73:16-17; *see also see also* Disciplinary Counsel Exhibit 1 at p. 2 (Mrs. Howell relating in text message to Joseph Coscia that Respondent “knows he safe because of jb [John Barry] situation” and revealing Respondent’s conduct to her son would put “Jb over the edge.”).
39. Mrs. Howell also delayed her reporting of Respondent’s conduct because she was fearful that her son would become angry and physically “go after” Respondent if he learned of the conduct toward his mother. *See* Tr. 73:18-25—74:1-4.
40. However, by 2018, John Howell’s original attorney in the family court matter before Respondent, Attorney Patricia Benelli, had agreed to resume her representation of Mr.

Howell and, as a result, “[t]hings were going well” in that case. *See* Tr. 75:6-24; *see also id.* 81:18-19.

41. In particular, a June 2018 stipulated agreement was reached between Attorney Benelli, on behalf of John Howell, and the attorney for the mother of John’s daughter which provided that mother would live with and have custody of John’s daughter, while John would have certain visitation rights to see his daughter, an arrangement that Mrs. Howell thought was a “good” resolution of the family court case. *See* Tr. 129.
42. Until this favorable and agreed resolution of her son John’s family court matter in June 2018, Mrs. Howell did not believe that it was safe to report Respondent’s conduct to law enforcement and professional conduct authorities, which she did shortly afterwards. *See* Tr. 76:12-16.

Proposed Conclusions of Law

1. The February 20, 2019 Petition of Misconduct in this matter charged Respondent with one count of misconduct: that he “engaged in a serious crime; to wit: on July 17, 2017, engaged in lewd and lascivious conduct towards [Mrs. Howell], a felony, in violation of 13 V.S.A. § 2601 and Vermont Rule of Professional Conduct 8.4(b).” Petition of Misconduct at 1.
2. When Respondent was charged, Vermont Rule of Professional Conduct 8.4(b) provided that “[i]t is professional misconduct for a lawyer to . . . engage in a ‘serious crime,’ defined as illegal conduct involving any felony or involving any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, intentional misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a ‘serious crime.’”

V.R.Pr.C. 8.4(b) (eff. Sept. 18, 2017).

3. During the pendency of this matter, Rule 8.4(b) was amended to its current version in which the definition of “serious crime” was broadened to include misdemeanors “that adversely reflect on the lawyer’s . . . fitness as a lawyer in other respects.” *See* V.R.Pr.C. 8.4(b) (eff. Nov. 14, 2022).
4. However, the official commentary to Rule 8.4 has, at all relevant times, provided that “[m]any kinds of illegal conduct reflect adversely on fitness to practice law” and therefore constitute professional misconduct, such as “[o]ffenses involving violence.” V.R.Pr.C. 8.4, cmt. 2.
5. Consistent with this principle, “[c]rimes of a sexual nature violate [ABA Model] Rule 8.4(b),” including sexual assault and abuse. *See* American Bar Association, *Annotated Model Rules of Prof’l Conduct* r. 8.4, Annotation (10th ed. 2023) (collecting citations from various jurisdictions dating to 1996).
6. However, “[i]t is not necessary for a lawyer to be convicted of, or even charged with, a crime to violate Rule 8.4(b)” since this rule imposes “discipline for conduct, not convictions.” *Id.* (citation omitted).
7. We conclude that Respondent engaged in a “serious crime” in violation of Rule 8.4(b), even under the pre-2022 version of this rule. During his July 17, 2017 meeting with Mrs. Howell, there is clear and convincing evidence that Respondent engaged in conduct toward her that constitutes the Vermont felony crime of Lewd and Lascivious Conduct, 13 V.S.A. § 2601.
8. Under Vermont law, the “ordinary meaning of lewdness is sexualized behavior that is shocking or repulsive to the community, while lasciviousness connotes sexual desire or

lust.” *In re A.P.*, 2020 VT 86, ¶ 20, 213 Vt. 291, 246 A.3d 399, 405.

9. Therefore, “lewd and lascivious conduct does not necessarily require physical contact between the perpetrator and victim,” *State v. Wiley*, 2007 VT 13, ¶ 11, 181 Vt. 300, 305, 917 A.2d 501, 505, and need “not involve specific body parts.” *State v. Discola*, 2018 VT 7, ¶ 21, 207 Vt. 216, 227, 184 A.3d 1177, 1185.
10. However, the Supreme Court has specifically held that “unwanted and public grabbing of a victim’s buttocks” through clothing can “amount to lewd and lascivious conduct.” *Id.*, 2018 VT 7, ¶¶ 22, 3-4; *see also In re A.C.*, 2012 VT 30, ¶ 21, 191 Vt. 615, 619, 48 A.3d 595, 600 (indicating that ‘openness’ requirement of 13 V.S.A. § 2601 and similar criminal statutes is met when there is unconsented touching of victim’s buttocks through underwear and such acts “were witnessed by [the victim]”); *see also In re A.P.*, 2020 VT 86, ¶ 9 (“‘[O]pen’ means ‘undisguised, not concealed,’ and requires no more than one witness” and “lewd acts” need not “take place in public places to be open” (citation omitted)).
11. Although, “[i]n many instances . . . the touching of another’s buttocks cannot be criminally lewd and lascivious: members of an athletic team encouraging or congratulating one another or a friend attempting to guide a peer through a crowd, for example,” the “personal invasion” of a stranger, who without permission, grabs a person’s buttocks, which is a “private and sexualized area,” is “within the universe of conduct that a reasonable trier of fact could consider criminally offensive under community standards of decency and morality.” *Discola*, 2018 VT 7, ¶ 22.
12. The Supreme Court has also indicated that “the inherently suggestive ‘French kiss’” by which the perpetrator inserts his tongue into the victim’s mouth can constitute a “a lewd

or lascivious act.” *State v. Berard*, No. 2012-232, 2013 WL 2922418, *1-2 (Vt. June 2013) (collecting citations).

13. Here, there is clear and convincing evidence establishing that Respondent committed felonious Lewd and Lascivious Conduct upon Mrs. Howell, as the scope of this crime has been interpreted by the Supreme Court in its *Discola*, *Berard* and other decisions because it was “sexualized behavior that is shocking or repulsive to the community” and was characterized by Respondent’s “sexual desire or lust.” *In re A.P.*, 2020 VT 86, ¶ 20.
14. Respondent admitted that he kissed Mrs. Howell “with an open mouth, with a French kiss” such that it felt like to Mrs. Howell that his “tongue was down my throat.” Findings ¶¶ 16, 18.
15. Mrs. Howell also reported that Respondent forcefully grabbed her buttocks and was “trying to go into my anus” by “opening” her anus with his hand. Findings ¶¶ 15-16, 19. Soon afterwards, she likewise reported to her fiancé Mr. Coscia that Respondent “tried to stick his tongue down her throat, that he placed his hand on her butt and he pressed against her butt with his fingers,” that is, “in her anus” when he “[p]ressed his hand into her butthole . . . [t]hrough her clothes.” Finding ¶ 37.
16. All of this behavior by Respondent was, by his own admission, unconsented to and uninvited by Mrs. Howell. Finding ¶ 24.
17. Moreover, Respondent confirmed the sexualized nature and lustful motivations of his conduct by repeatedly stating to Mrs. Howell before and after his conduct that he wished to “pleasure” her. Findings ¶¶ 13-14, 28.
18. Respondent’s “sexualized behavior” is manifestly the type that would be “shocking or repulsive to the community,” *In re A.P.*, 2020 VT 86, ¶ 20, because it involved an

unconsented “personal invasion” of a “private and sexualized area” of Mrs. Howell’s body, namely, her buttocks and anus, by a near-stranger who gained admittance to her home through his trusted status as an attorney and legal advisor to Mrs. Howell. *Discola*, 2018 VT 7, ¶ 22. Such conduct, which caused Mrs. Howell physical pain, fear and emotional distress, Findings ¶¶ 19, 27, can only be viewed as “criminally offensive under community standards of decency and morality.” *Discola*, 2018 VT 7, ¶ 22.

CONCLUSION

WHEREFORE, Petitioner Office of Disciplinary Counsel respectfully requests that the Hearing Panel (1) make the foregoing proposed findings of fact and conclusions of law; and (2) determine that Respondent violated Vermont Rule of Professional Conduct 8.4(b).

Dated at Burlington, Vermont this 16th day of March 2026.

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