STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

DECISION AND ORDER

Introduction

The Petition of Misconduct was filed against the Respondent on or about February 20, 2019. The matter was stayed pending disposition of the fact-related criminal proceeding against Respondent. The criminal case was resolved on November 3, 2023, and the Respondent was referred to the Court Diversion Program.

Hearing on the Petition was originally scheduled for September 29, 2025, but was twice continued because of the unavailability of the Complainant. Hearing was conducted by the undersigned Hearing Panel on February 3, 2026. Jon Alexander, Esq. was present for the Professional Responsibility Program. Respondent Melvin Fink, Esq. was present and was represented by David Sleigh, Esq. The parties submitted proposed findings of fact and conclusions of law on March 16, 2026.

Findings of Fact

Based upon the credible evidence presented, the Hearing Panel finds that the following facts have been proved by clear and convincing evidence.

1. The Respondent, Melvin Fink, has been a licensed Vermont attorney for fifty-six years.

2. On the morning of Monday, July 17, 2017, Respondent drove to the Peru, Vermont home of J.H. for a professional meeting.

3. J,H. is currently sixty-nine years old, is retired from the real estate business and lives in Bluffton, South Carolina. She was widowed in 2006 and remains unmarried.

4. Although J.H. lived in Florida in July 2017 with her then-fiancé, Joseph Coscia, she had owned the Peru, Vermont house since the early 1980s. She

was planning to be there on July 17, 2017, after a visit with her granddaughter, who lived in Vermont with her mother.

5. J.H. is the mother of John H., a former client of the Respondent.

6. Between 2016 and early June 2017, Respondent had represented John H. in a family court matter concerning support, custody, and visitation of his minor daughter, who is J.H.'s granddaughter.

7. Despite his withdrawal as John H.'s counsel of record in Family Court, Respondent continued, at his own suggestion, to provide legal advice and guidance to John H. and J.H. concerning the Family Court matter through regular correspondence and telephone calls with J.H.

8. Consistent with this course of conduct, the purpose of the July 17, 2017, meeting between Respondent and J.H. at her Peru, Vermont home was to review documents and discuss issues related to the case.

9. However, while at the July 17, 2017, meeting with J.H., Respondent "erroneously perceived that [J.H.] harbored romantic feelings for him." Disciplinary Counsel Exhibit 2, Nov. 3, 2023, Notice of Resolution Agreement in *State v. Fink*, Docket No. 1241-19 Bncr, ¶ 3. Respondent told J.H. that she was "captivating."

10. Respondent then repeatedly declared to J.H., "I'd like to pleasure you."

11. In his testimony, Respondent admitted that he asked J.H., "do you want me to pleasure you?"

12. Respondent then suddenly placed one hand on the back of J.H.'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.

13. It felt to J.H. like Respondent's "tongue was down my throat" and, with his hand, he was "trying to go into my anus."

14. In the criminal prosecution of Respondent arising out this incident, 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.

15. Respondent also admitted that he did kiss J.H. "with an open mouth, with a French kiss."

16. J.H. felt that Respondent "was opening" her anus with his hand, which caused her physical pain and fear.

17. In a criminal prosecution of Respondent arising out of his conduct toward J.H. 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.

18. At the merits hearing, Respondent contradicted himself several times by first testifying, "I did not touch her rear end" at all." Then testifying that his hand "may have brushed against her" clothed buttock, "but I didn't hold my hand on her buttock." Finally, on cross-examination, Respondent testified again that "I don't believe I put my hand on her buttocks" at any time, notwithstanding his criminal court admission.

19. By his own admission, Respondent committed all of his physical acts upon J.H. "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.

20. J.H. did not do anything to encourage or invite Respondent's conduct.

21. Respondent admitted that "his conduct violated the norms that [J.H.] 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.

22. After several minutes, Respondent stopped the above-described conduct, grabbed J.H.'s hands and again said to her, "I want to pleasure you." When J.H. responded that she did not wish to have any sexual contact, Respondent asked, "are you sure" and stated that "this is not good."

23. As a result of the conduct directed at J.H., the Respondent was charged with lewd and lascivious conduct as set forth in 13 V.S.A. § 2601 in the Vermont Superior Court, *State v. Fink*, Docket No. 124-1-19 Bncr.

24. The criminal case was resolved on November 3, 2023, when Respondent was referred to the Diversion Program for committing a misdemeanor. *See,* exhibit 2.

25. The most relevant part of exhibit2 is found in paragraph 3, which reads as follows:

> 3. While at J.H.'s house to review documents. Mr. Fink erroneously perceived that J.H. harbored romantic feelings for him. While there. and without invitation, instigation or consent, express or implied, from J.H., Mr. Fink embraced her, putting his hands on her clothed buttocks and kissed her. He asked her if she wanted him to pleasure her. J.H. did not invite or consent to Mr. Fink's advance.

Discussion

I. The Allegation.

In the Petition of Misconduct, Disciplinary Counsel alleged that,

> Melvin Fink, a licensed Vermont attorney, engaged in a serious crime; to wit: on July 17, 2017, engaged in lewd and lascivious conduct toward JH, a felony, in violation of 13 V.S.A. § 2601 and Vermont Rules of Professional Conduct 8.4(b)

II. The Rule

Respondent Melvin fink is charged with violating Rule of Professional Conduct 8.4(b). The rule was amended in 2022, but in 2017, the date of the alleged incident, it read as follows:

> **Rule 8.4. Misconduct.**
>
> It is professional misconduct for a lawyer to:
>
> (b) engage in a "serious crime," defined as any illegal conduct involving any felony, or involving any 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";[1]

[1] Rule 8.4 (b) now reads:
It is professional misconduct for a lawyer to: . . .
(b) engage in a "serious crime," defined as illegal conduct involving any felony or lesser crime that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or involving any 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";

III. The Burden of Proof.

The burden of proof is on Disciplinary Counsel to prove the violation alleged by "clear and convincing evidence." A.O. 9, Rule 13 D (5)(b). The Vermont Supreme Court has defined clear and convincing evidence as "a very demanding standard, requiring somewhat less than evidence beyond a reasonable doubt, but more than a preponderance of the evidence" *In re E.T.*, 2004 VT 111, ¶ 12, 177 Vt. 405. The standard "does not require that evidence in support of a fact be uncontradicted, but does require that the fact's existence be highly probable" *Id.* at ¶ 12. The Court has emphasized that "clear and convincing does not mean that the State's evidence must be wholly uncontradicted or unimpeached" *In re N.H.*, 168 Vt. 508, 512 (1998). Rather, the standard requires proof that the existence of a contested fact is highly probable rather than merely more probable than not. *State v. Zorn*, 2013 VT 65, ¶ 18, 195 Vt. 381.

Although Mr. Fink was prosecuted as a result of the incident with J.H., he ultimately was referred to the Court Diversion Program for committing a misdemeanor. *See,* exhibit 2. Thus, for Disciplinary Counsel to prove the alleged violation, he must prove that the Respondent committed a felony, namely lewd and lascivious conduct as set forth in 13 V.S.A. § 2601. Section 2601 provides (and so provided on July 17, 2017) that:

> A person guilty of open and gross lewdness and lascivious behavior shall be imprisoned not more than five years or fined not more than $300.00, or both.

As in a criminal trial, Disciplinary Counsel must prove each of the essential elements of the offense. But unlike a criminal prosecution, he need not prove his case beyond a reasonable doubt, but by clear and convincing evidence.

IV. The Essential Elements

The essential elements of lewd and lascivious conduct are as follows:

(1) The Respondent, Melvin Fink
(2) intentionally engaged in the conduct alleged;
(3) the conduct was open; and
(4) the conduct was lewd and lascivious.

To prove the first element, Disciplinary Counsel must prove that the

Respondent is the person who committed the alleged acts. The evidence showed that the Respondent was the person who engaged in physical contact with J.H. on July 17, 2017. Indeed, in his testimony Respondent admitted the same.

To prove the second element, Disciplinary Counsel must prove that the Respondent intentionally engaged in physical contact with J.H. Lewd and lascivious contact is a general intent crime. *State v. Benoit,* 158 Vt. 359, 361 (1992). Counsel need not prove that Respondent intended to cause a specific harm or result. *Id. See also, State v. Penn*, 2003 VT 110, ¶ 9, 176 Vt. 565:

> The crime of lewd and lascivious conduct with a child under sixteen requires a willful act on the part of the defendant. 13 V.S.A. § 2602.[2] The trial court's jury charge correctly defined willfully as "purposefully and intentionally, and not by accident, mistake or inadvertence." . . .

It is clear from exhibit 2, as well as the testimonies of both J.H. and the Respondent that his conduct was intentional and purposeful.

The third element requires proof that the Respondent's conduct was "open." "The term 'open' means 'undisguised, not concealed' and requires no more than one [non-consenting] witness." State v. Grenier, 158 Vt. 153, 155 (Vt. 1992), citing *State v. Millard,* 18 Vt. 574, 578 (1846). Conduct meets the statutory requirement of "openness" if it is done in the presence of at least one other witness. *State v. Penn*, 2003 VT 110, ¶ 12, 176 Vt. 565.

Consent means words or actions by the other person indicating a voluntary agreement to do something or to participate in something. "Consent" means consent of the will. Lack of consent may be shown without proof of resistance.[3] There was no evidence that J.H. consented to Respondent's conduct, rather the evidence showed that she was unable to resist. The evidence showed that Respondent grasped J.H. so tightly that she was unable to physically resist his

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[2] Section 2602 of Title 13 differs from section 2601 in that it requires proof of additional elements. The definition of lewd and lascivious conduct is unchanged.

[3] 13 V.S.A. § 3254 provides,

> In a prosecution for a crime defined in this chapter or section 2601 of this title:
>
> (1) Lack of consent may be shown without proof of resistance.. . .

advances.[4] In exhibit 2, the Respondent admitted, "J.H. did not invite or consent to Mr. Fink's advance."

The fourth element requires proof that the Respondent's conduct was lewd and lascivious.

> "Lewd and lascivious" behavior for purposes of 13 V.S.A. § 2601 is broadly defined. Vermont's statute concerning lewd and lascivious conduct states that "[a] person guilty of open and gross lewdness and lascivious behavior shall be imprisoned not more than five years or fined not more than $300.00, or both." 13 V.S.A. § 2601. The statute does not define "open and gross lewdness and lascivious behavior," and this Court has also declined to give this language a precise definition. Rather, we defer to "the common sense of the community," and, in turn, the members of the jury, to define open and gross lewd and lascivious conduct in each particular case. *State v. Penn,* 2003 VT 110, ¶ 12, 176 Vt. 565, 845 A.2d 313 (mem.); see also *State v. Ovitt*, 148 Vt. 398, 405, 535 A.2d 1272, 1275 (1986) (holding that "[p]ublic masturbation is an act which may be said to affront the sensibilities of a substantial segment of the community" (quotation omitted)); *State v. Purvis*, 146 Vt. 441, 443, 505 A.2d 1205, 1207 (1985) (explaining that this Court has declined to define lewd and lascivious conduct, "deferring instead to the common sense of the community"). We have in the past approved of jury instructions explaining that "lewd and lascivious behavior means behavior that is sexual in nature, lustful, or indecent, that which offends the common social sense of the community, as well as its sense of decency and morality." *Penn*, 2003 VT 110, ¶ 12, 176 Vt. 565, 845 A.2d 313.

State v. Discola, 2018 VT 7, ¶ 20, 207 Vt. 216.

Conclusions of Law

The Hearing Panel concludes that Disciplinary Counsel has proven by clear and convincing evidence each of the essential elements of the offense of lewd and lascivious conduct as set forth in 13 V.S.A. § 2601. The only disputed element is about the character and extent of the Respondent's conduct on July 17, 2017. The

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[4] 13 V.S.A. § 3254 provides,

> In a prosecution for a crime defined in this chapter or section 2601 of this title:
> …
> (2) Submission resulting from the use of force, threat of force or placing another person in fear does not constitute consent.

Panel credits and believes the testimony of J.H. To a great degree, her testimony is corroborated by the testimony of the Respondent and by exhibit 2.

The Respondent attempted to impeach the testimony of J.H. in several ways. For example, J.H. waited about one year before reporting Respondent's conduct. At that time, her son had just lost his legal battle for custody of his daughter. Also, J.H. sent a letter to the Professional Responsibility Board which blamed Respondent for the loss. Despite impeachment evidence, the Hearing Panel finds that J.H.'s testimony is credible and that it is credible by clear and convincing evidence.

As noted, J.H.'s testimony is corroborated by the testimony of the Respondent as well as exhibit 2. Exhibit 2 is a document entitled, "Notice of Resolution Agreement" which was filed in the fact-related criminal proceeding against the Respondent. As implied by its title, the document was executed in connection with a resolution of that case. It reads in pertinent part:

> 3. While at J.H.'s house to review documents. Mr. Fink erroneously perceived that J.H. harbored romantic feelings for him. While there. and without invitation, instigation or consent, express or implied, from J.H.. Mr. Fink embraced her, putting his hands on her clothed buttocks and kissed her. He asked her if she wanted him to pleasure her. J.H. did not invite or consent to Mr. Fink's advance.

Exhibit 2 was signed by the Respondent as well as his attorney. Respondent's admissions in exhibit 2 differ from J.H.'s testimony only insofar as it does not describe using a "headlock" on her, sticking his tongue into her mouth, or attempting to place his fingers in her anus. But in the document Respondent admitted that he "embraced" J.H. and "put[ ] his hands on her buttocks." During his testimony, Respondent admitted that he kissed J.H. with an open mouth, with a French kiss. These admissions are sufficient to corroborate J.H.'s testimony. The Respondent's various attempts to explain away the admissions made in exhibit 2 detract from his credibility and also tend to support J.H.'s narrative.

There are two Vermont cases which support the Panel's conclusion that the Respondent's acts constituted lewd and lascivious conduct. In *Discola,* Defendant was convicted for fondling the buttocks of several women and girls. In *State* v. *Squiers* the defendant was convicted under 13 V.S.A. § 2602 for hugging his granddaughter tightly; rubbing her shoulders, ears, and neck; sniffing her hair; and touching her upper leg while making various suggestive statements. 2006 VT 26, ¶¶ 3–5, 179 Vt. 388.

In *Discola*, the Court opined,

> [W]e disagree with defendant that the unwanted and public grabbing of a victim's buttocks cannot, as a matter of law, amount to lewd and lascivious conduct. In many instances, we can safely say that 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 in this case is clearly distinguishable.. . .

2018 VT 7 at ¶ 22.

The Hearing Panel has found that the Respondent gripped J.H. tightly, forced his tongue into her mouth, and attempted to insert his hand into her intergluteal cleft through her clothing. This conduct is "sexual in nature, lustful, [and] indecent," and it "offends the common social sense of the community, as well as its sense of decency and morality." *Penn*, at ¶ 20.

ORDER

Based upon the findings of fact and conclusions of law set forth above, the Hearing Panel finds that Disciplinary Counsel has proved by clear and convincing evidence that on July 17, 2017, the Respondent violated Rule 804 (b) of the Vermont Rules of Professional Conduct as alleged in the Petition of Misconduct.

The Program Administrator is requested to set this matter for hearing on the sanction to be imposed pursuant to A.O. 9, Rule 15.

Dated this 14th day of April 2026,

Hearing Panel No. 3

By: _____
Gary F. Karnedy, Esq., Chair

By: _____
Ashley W. Taylor, Esq.

By: _____
Peter Zuk, Public Member