

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: Glenn Robinson, Esq.
PRP File No. 2013- 172

Motion in Limine to Prevent Respondent from Introducing Improper “Reputation for Truthfulness Evidence”

Attorney McGee indicated at the November 6 Pre-Trial Conference that he intended to introduce “reputation for truthfulness” evidence to prove Respondent is a truthful person. (e.g. proposed testimony of Judge Van Benthuysen).

Vermont Rule of Evidence 608 (a) provides:

RULE 608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

- (a) **Opinion and Reputation Evidence of Character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise. (emphasis added)

Respondent cannot call a witness to testify as to Respondent’s reputation for truthfulness unless the Disciplinary Counsel has called a witness that has attacked Respondent’s “character for untruthfulness” through opinion or reputation evidence. Disciplinary counsel does not intend to call a witness to attack Respondent’s reputation for truthfulness. Respondent cannot call a witness to testify that Respondent “reputation for truthfulness” in his case simply because that witness believes Respondent has a reputation for truthfulness. Disciplinary counsel must have first called a witness who attacks Respondent’s reputation for truthfulness. Again, disciplinary counsel will not call a witness to attack Respondent’s reputation for truthfulness.

Specific Instances of Conduct to Attack Witness Credibility

VRE 608 (b) says:

- (b) **Specific Instances of Conduct.** Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. (emphasis added)

Under VRE 608 (b), Respondent cannot call witness A to testify as to a specific instance of conduct

which has been observed by witness A - conduct which tends to show that witness B is not truthful. Respondent may call witness A to testify as to witness B's "reputation for truthfulness" but, she cannot describe specific instances of conduct to support her opinion.

For instance, Ms. Poutre told Detective Burnham that a Corrections Officer (Diana Miles -Respondent Witness#19) knew Respondent was "hitting on" female inmates. Under VRE 608 (b) Respondent can ask Ms. Miles about Ms. Poutre's reputation for truthfulness; but, Ms. Miles cannot testify that she had never observed Respondent "hitting on" female inmates. Disciplinary Counsel would, however, be permitted to cross-examine Ms. Miles by asking her if she is aware of specific incidents which tend to show Ms. Poutre is a truthful person (e.g. portions of depositions of Ms. Poutre and Respondent). *State v. Kelly*, 312 A2d 906 (Vt., 1971); *State v. Blair*, 583 A2d 585 (Vt., 1990) (reversed for misuse of character evidence by the prosecutor) and *State v. McCarthy*, 589 A2d 869 (Vt. 1991) (reversed for misuse of character evidence by the prosecutor)

Disciplinary counsel is aware that the Panel is committed to deciding evidentiary issues on a case-by-case basis. However, Disciplinary Counsel will object to any alleged "reputation evidence" until Respondent makes a specific offer of proof on his proposed use of "reputation for truthfulness" evidence.

Dated at Burlington, Vermont on November 10, 2017.

Robert V. Simpson, Jr.
Disciplinary Counsel