

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

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

Background

Glenn Robinson (Respondent) has been licensed to practice law in Vermont since 1999. Respondent is 55-years old. He has practiced law in Newport, Vermont since 2000. Respondent has a general law practice which focuses on Family Law, Criminal Defense and Probate work. Most of Respondent's practice involves litigation. Transcript (Tr.).294: 12-20

On June 1, 2017, Disciplinary Counsel (Bob Simpson) filed a five-count Petition of Misconduct against Respondent. The Petition was based on charges made in Spring 2013 by three women: (1) Cindy Mead (Count I); (2) Pamela Binette (Counts II and III) and (3) Andrea Poutre (Counts IV and V).

ANDREA POUTRE – COMPLAINANT

Count IV

During the period from January 28, 2013 through March 8, 2013, Respondent violated Rule 8.4 (g) by engaging in sex discrimination by subjecting his employee, and client, **Andrea Poutre**, to unwelcome verbal and physical conduct of a sexual nature which had the effect of creating an intimidating and offensive work environment, all in violation of 21 VSA § 495 d (13) (C)

Relevant Rule

Rule 8.4 (g) says:

It is professional misconduct for a lawyer to:

(g) discriminate against any individual because of his or her . . . sex. . .”

21 VSA §495d (13) says:

(13) "Sexual harassment" is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(C) the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. (emphasis added)

I. DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT – COUNT IV

1. Andrea Poutre grew up in Irasburg, Vermont. She graduated from Lake Region Union High School and O'Brien's Cosmetology School in Burlington Vermont. She is a licensed cosmetologist. Transcript Volume I (Tr.) page 111: 14-21
2. Ms. Poutre has three children. Tr. 111: 21-22

2002 –2004 - Ms. Poutre Is Charged and Convicted of Driving Under the Influence- Fatality Resulting

3. Ms. Poutre met Respondent for the first time in Fall 2002. He and his father, Atty. M. Jerome Diamond were representing her in a Driving Under the Influence (DUI) Fatality Resulting(Fatal) case. Tr. 112: 7-16
4. Ms. Poutre had just turned 21-years-old. Tr.112: 11-12
5. She and her family retained Respondent at first. But, Respondent advised her to hire a more experienced attorney, Paul Volk of Burlington, when she was charged with DUI-Fatal – felony with a maximum sentence of 15 years. Tr.115: 20-25, 116:1-25
6. Ms. Poutre and one of her best friends were in the car that crashed. Ms. Poutre's friend was killed in the accident and Ms. Poutre was injured and hospitalized. Tr.116: 16-19
7. Ms. Poutre pleaded nolo contendere to the DUI -Fatal charge in December 2004. Tr. 114: 16-19 Ms. Poutre was sentenced to 1-15 years on probation, with 60 days to serve in prison. Tr. 115: 1-3, Tr. 118: 1-3
8. Respondent had remained on the case from 2002 through sentencing in 2004 as co-counsel to Atty. Volk. He did not charge Ms. Poutre for his services. Tr. 119:1-4

Respondent's Romantic Interest in Ms. Poutre

9. Respondent had a "romantic interest" in Ms. Poutre from the first time he met her in 2002-2003. Respondent told her that on the "day (Respondent) first met her (Fall 2002) "that he thought I was beautiful and that there was something special about me." Respondent told her and that he had mentioned this to his father when he "left my home that day. Tr. 118: 4-16
10. Around the time Ms. Poutre was sentenced on the DU-Fatal in 2004, Respondent told Ms. Poutre that he would like to marry her. Tr. 119: 7-14
11. Ms. Poutre has never had a romantic interest in Respondent. Tr. 119: 15-25, Tr. 120: 1

Opiate Addiction

12. Ms. Poutre is addicted to opiates. She has been receiving treatment at the Barton Clinic for six years. Tr. 120: 2-8
13. Ms. Poutre has been convicted of four probation violations since she was convicted of DUI-Fatal in 2004. Tr. 120: 9-15

14. These probation violations occurred in 2007, 2011 and two more in 2012. Ms. Poutre's opiate addiction played a part in each of these violations, Tr. 120: 16-25, 121:1-3

Probation Violations

15. Respondent represented Ms. Poutre in all four probation violations (VOP). Tr. 121: 7-11
16. VOP-2011 - When Ms. Poutre went to court for arraignment on the 2011 probation violation, she was surprised to learn from a court employee that her "attorney Glenn Robinson" was already there and was waiting for her. Tr. 121: 12-23
17. Respondent said he had seen Ms. Poutre's "name on the docket" and offered to help her with the case. Ms. Poutre accepted Respondent's help. Respondent represented Ms. Poutre in her probation violation (VOP). Tr. 1-8
18. VOP- May 2012 - When Ms. Poutre went to court to be arraigned on her May 2012 VOP, Respondent was "going through the metal detector" at the same time as Ms. Poutre. After they cleared the safety screening, Respondent asked Ms. Poutre if she wanted his help with the case. Ms. Poutre accepted Respondent's offer and Respondent represented Ms. Poutre on the May 2012 violation. Tr. 122: 10-25
19. VOP - October 2012 - When Ms. Poutre went to court to be arraigned on another VOP, her fourth, in October 2012 probation violation, she "ran into (Respondent) again" at the court and he represented her on that VOP as well. Tr. 123: 23-25; Tr. 124: 1-8
20. Respondent never charged Ms. Poutre for his services on any of the VOPs he represented her on. Tr. 124: 9-11

January 11, 2013 - Sentencing on Ms. Poutre's VOP

21. Ms. Poutre was sentenced on her fourth VOP on Friday, January 11, 2013. Tr. 124: 12-17
 22. Ms. Poutre asked Respondent to ask the judge to change her sentence from a "probation sentence" to a "furlough sentence." Ms. Poutre explained that the advantage to her from being on furlough rather than on probation was that if she is on a furlough sentence, she is free from supervision by the Department of Corrections (Corrections) once her underlying sentence expires. However, if she remained on probation, she would remain under the supervision of Corrections indefinitely- even after her underlying sentence expires. Tr:124: 22-25; Tr. 125: 1-25; 126: 1-2
 23. On Friday, January 11, 2013, the judge sentenced Ms. Poutre to report to the Chittenden County Correctional Facility on Monday, January 14, 2013. She would be in jail for a "very, very short time" so that Corrections could change her sentence classification from a "probation sentence" to a "furlough sentence." Once that was done she would be released on furlough. Tr. 126: 3-11
- Ms. Poutre testified credibly that the proposal to change her status from a "probation sentence" to a "parole sentence" was Ms. Poutre's proposal when she was asked what resolution she would

like to have to the case. Respondent then made the proposal to the judge in a “chambers conference” and the judge agreed. Tr. 179: 1-25

24. After that Friday afternoon sentencing, Ms. Poutre and Respondent walked from court back to Respondent’s office at 100 Main Street in Newport. It was getting dark. Ms. Poutre’s boyfriend, (Jeremy Prue) and their young son were waiting in the car for her. They were going to take her home. The car was parked outside Respondent’s office. Tr. 126: 15-25; Tr. 127: 1-6
25. Ms. Poutre and Respondent had met in Respondent’s office prior to the sentencing. Ms. Poutre had left her purse in Respondent’s office. She went into Respondent’s office with Respondent. She was going to pick up her purse and then go home. Tr. 127: 8-14
26. Ms. Poutre’s purse was on something like a “table” that was “built into the wall.” Tr.127: 14-16
27. As Ms. Poutre went to “grab her purse,” Respondent “shoved (Ms. Poutre) into that table.” Respondent pressed his body against Ms. Poutre’s body. Respondent started “groping” Ms. Poutre and he tried to kiss her. He “humped” her leg. Respondent “ended up ejaculating.” Tr. 127: 16-20

January 28, 2013 – Ms. Poutre Begins Work in Respondent’s Law Office

28. As the judge had ordered, Ms. Poutre reported to the Chittenden County Correctional Center (Correctional Center) on Monday, January 14, 2013. Respondent drove her to the Correctional Center. Tr. 130: 1-4
29. Respondent had told Ms. Poutre he had told the sentencing judge he would make sure that she would report to the Correctional Center on time. Tr. 130: 5-14
30. Ms. Poutre was released from the Correctional Center on January 24, 2013. Tr. 127: 21-25; Tr.128: 1-8
31. Ms. Poutre began work for Respondent in his law office as a legal secretary on January 24, 2013 – four days after her release from the Chittenden Correctional Center. Tr. 128: 12-18
32. As noted above (¶ 30), Respondent drove Ms. Poutre to the Correctional Center on Monday, January 14, 2013. Respondent had offered Ms. Poutre a job in his law office on the drive from Newport to South Burlington. Tr. 130: 1-2
33. Ms. Poutre accepted the job offer because she had no other job prospects. She and her boyfriend had two young children to take care of and her boyfriend (Jeremy Prue) had been unemployed for two years. “It was a way to make money at a really bad time.” Tr. 130: 14 -22
34. Respondent told Ms. Poutre she should be grateful to him.
 - a. He told her that he had given her a chance when no one else in the community was willing to give her a chance.
 - b. He reminded her that she “owed him” for all the legal work he done for her without charging her. Tr. 131: 5 -11

35. Ms. Poutre testified credibly that Respondent took advantage of the vulnerable position she was in: “I just feel that he took advantage of the spot I was in. And I felt like I was stuck . . . there was nothing I could do.” Tr. 213: 14-18

Ms. Poutre’s Employment in Respondent’s Law Office

36. Ms. Poutre worked in Respondent’s law office for approximately five weeks – January 28, 2013 through March 8, 2013. Tr. 131: 14-18
37. Ms. Poutre’s employment with Respondent ended on March 8, 2013 after she was arrested for embezzling \$2,500 from him. Tr. 131: 19-25; Tr. 132: 1-2
38. Ms. Poutre was arrested and sent to jail (she was on a parole sentence) and spent five months in jail before the case was dismissed. Tr. 150: 12-14

Sexual Harassment - Part of the Daily Routine in Respondent’s Law Office

39. There was no one else working in the office except Ms. Poutre and Respondent. Tr. 143: 3-5
40. Ms. Poutre did very little office work during the five weeks she worked in Respondent’s law office. On a typical work day, Ms. Poutre would arrive around 10 a.m. She would “answer the phone a little and open the mail. Tr. 142: 21-25; Tr. 143: 1-2, 14-16
41. For the most she would sit in Respondent’s office. Ms. Poutre and Respondent would watch YouTube Videos together. Occasionally, she would sit in on conferences with clients. Tr. 143: 6-10
42. Respondent talked to Ms. Poutre about how he wanted to marry her. He also told Ms. Poutre repeatedly that she should leave her boyfriend, Jeremy Prue and “move into his (Respondent’s) place.” Tr. 143: 20-25; Tr. 144: 1-2
43. Respondent “talked a lot” about all the women he’s had sex with. He told Ms. Poutre about a “threesome” he had on the conference room table and about sexual relationships Respondent had with past employees. Tr. 144: 3-10
44. Respondent occasionally “slapped (Ms. Poutre) on the butt” when she walked by. But, there wasn’t much physical contact between Respondent and Ms. Poutre until the end of the work day. Tr. 144: 22-25; Tr. 145: 1-4
45. Ms. Poutre testified credibly under cross-examination that Respondent would “pull his pants down every day and show me what color under wear he was wearing. Tr. 187: 3-4

Additional Disturbing Behavior of a “Sexual Nature”

46. Ms. Poutre testified credibly throughout the hearing. She had nothing to gain, personally, from reliving Respondent’s bizarre and demeaning conduct nearly five years after she had made her original complaint. She had nothing to gain from lying and she did not lie.

47. *To Ms. Poutre, "it seemed like every day," when she was getting ready to leave and her boyfriend and their son were waiting for her in the parking lot. Respondent kept Ms. Poutre in the office as he "masturbated" or tried kiss or "grope" her. Tr. 145: 5-11*
48. She told the Panel the different ways Respondent had touched her: "he would grab my butt, he put his hand up my shirt one day and rubbed and grabbed my breast. . . just kissing, hugging, groping." Tr. 212: 1-4
49. Respondent would often make Ms. Poutre watch while he masturbated. Tr. 199: 21-25; Tr. 200: 1-2
- Her 2013 account to Detective Lance Burnham, which came into evidence at the merits hearing (11/14/2017) on redirect, was more specific and contained credible detail:
 "So it was like the end of my first week there he made me sit and front of him, he jerked off , as he held my shirt like this, like right, he would stand in front of me and jerk off. In that time he would ejaculate in his clothes, but every day after that before I would leave work he would make me watch him jerk off . . .he would always just say: 'tell me to come for you,' and then when I go to leave, he would hug me, and be groping me and kissing me." Tr. 282: 21-25; Tr. 283: 1-12
50. Ms. Poutre confirmed on cross-examination that she had told Detective Burnham, truthfully, in 2013, that Respondent would "pull me onto his lap, in front of the window, and rub me and grind me." Tr. 204: 1-4

Sexual Harassment -Ms. Poutre's Child Is Present

51. Ms. Poutre recalled that on one occasion Respondent's father, Atty. M. Jerome (Jerry) Diamond had come up from Montpelier to Newport to visit and have lunch in the office. Respondent wanted Ms. Poutre to talk and have lunch with Mr. Diamond. Ms. Poutre's 11-year-old daughter came along with her. They expected to leave right after lunch. Tr. 146: 3-11
52. After Jerry Diamond left, Respondent told Ms. Poutre's daughter that he wanted to talk to her mother. He set the young girl up in his (Respondent's) office to watch You Tube videos on a computer. Tr. 146: 15-17
53. Respondent and Ms. Poutre went into another office. They could look through glass in that office into Respondent's office where Ms. Poutre's young daughter was playing. They could see her playing Tr. 146: 18-20
54. *Respondent pushed Ms. Poutre onto a desk and began "groping" and "touching" her. Respondent told Ms. Poutre not to worry that her daughter might see what was going on. Respondent had Ms. Poutre, who was standing behind Respondent, move her hand to touch his penis and masturbate him. Tr. 147: 1-6*
55. *Ms. Poutre said it "was at the end" when her daughter came into office where Respondent was having Ms. Poutre masturbate him, Respondent told the young girl to go back into his office. As Ms. Poutre walked out, Respondent pushed her into a bathroom and started kissing her. Ms. Poutre's daughter "came out (of Respondent's office) and saw again and was like Mom what are you doing?" Tr. 147: 8-16*

II. DISCUSSION – SEXUAL HARASSMENT (Count IV)

Count IV is based on Andrea Poutre’s 2013 charge that Respondent subjected her to unwelcome conduct of a sexual nature that created an intimidating and offensive work place:

During the period from January 28, 2013 through March 8, 2013, Respondent violated Rule 8.4 (g) by engaging in sex discrimination by subjecting his employee, and client, **Andrea Poutre**, to unwelcome verbal and physical conduct of a sexual nature which had the effect of creating an intimidating and offensive work environment, all in violation of 21 VSA § 495 d (13) (C)

Relevant Rule

Rule 8.4 (g) says:

It is professional misconduct for a lawyer to:

(g) discriminate against any individual because of his or her . . . sex. . .”

21 VSA §495d (13) says:

(13) "Sexual harassment" is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(C) the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. (emphasis added)

Respondent’s treatment of Andrea Poutre was similar to his treatment of Pamela Binette. He took advantage of his knowledge and experience as an attorney and his power as her employer to subject an attractive, much younger¹ woman to obsessive sexual misconduct that was bizarre, unwelcome and intimidating.

Ms. Poutre, like Ms. Binette, was particularly vulnerable. She was an opiate addict with no job prospects, who was piling up criminal charges. Respondent had all the power.

Respondent met Ms. Poutre in Fall 2002 after she was involved in a car crash that eventually resulted in her being charged with Driving Under the Influence- Death Resulting (DUI-Fatal). Ms. Poutre had just turned 21.² Respondent, who was 40-years old at the time, said he was “awestruck” by Ms. Poutre when he first met her. By the time Ms. Poutre was sentenced on the DUI-Fatal in 2004, Respondent wanted to marry her.³

Ms. Poutre has never had any romantic interest in Respondent.⁴

Sentencing on Ms. Poutre’s 4th Violation of Probation - January 11, 2013

¹ Andrea Poutre (DOB 10/31/81) is 19 years younger than Respondent (1/31/62)

² Proposed Findings of Fact (FF) 2-6

³ Tr. 401:14-18. Tr. 118:15-25; Tr. 119:1-15

⁴ Finding (F) #11

Ms. Poutre was an opiate addict by 2007 and this addiction led to a series of Violation of Probation (VOP) charges against her in 2007, 2011 and 2012 (VOPs in May and October).⁵ Each time Ms. Poutre was charged with a VOP, Respondent appeared and volunteered to represent her at no charge. Ms. Poutre accepted his offer each time.⁶

Ms. Poutre was clearly “not doing well on probation.” She had been charged with two VOPs in 2012 and had admitted her guilt on each. As the January 11, 2013 sentencing on her fourth VOP was about to get underway, Ms. Poutre asked Respondent to ask the judge to change her sentence classification on her underlying DUI-Fatal conviction from a “probation sentence” to a “parole sentence.”

Ms. Poutre explained the advantage of going from a probation sentence to parole sentence when she testified at the November 13, 2017 Merits Hearing in this case.⁷ Simply put, Ms. Poutre was likely to be under the supervision of the Vermont Department of Corrections for a shorter period of time if her sentence was “reclassified” to a “parole sentence.”⁸

The sentencing judge agreed to reclassify Ms. Poutre’s sentence at the January 11, 2013 sentencing on her 4th VOP. She was ordered to report to the Chittenden County Correctional Facility (Chittenden) on the following Monday (January 14, 2013) for “reclassification.” She would be released on “furlough” after a short period of incarceration at Chittenden.⁹

A. First Incident of “Unwelcome Conduct of a Sexual Nature”

One striking feature of Respondent’s reaction to allegations of sexual harassment is that he *admits* that a specific incident described by an accuser (Ms. Binette or Ms. Poutre) *did happen*. But, Respondent then goes on to insist that the woman who is accusing him was, in fact, the *aggressor – she led him on*. In effect, he argues that the employee/accuser “welcomed” the opportunity to watch her boss, Atty. Robinson, masturbate in front of her.

This is what happened when Ms. Poutre accused Respondent of sexual misconduct following the January 11, 2013 sentencing on her 4th VOP.

Ms. Poutre’s Version

Ms. Poutre testified that she and Respondent walked back to Respondent’s office after her sentencing. It was getting dark and her boyfriend and her five-year-old son waiting for her in the parking lot to take her home.¹⁰

⁵ FF ## 12-14

⁶ FF ## 15-20

⁷ FF ## 21-22

⁸ Although Respondent attempted to take credit for the idea to get Ms. Poutre’s sentence reclassified, it was evident from the testimony at the Merits Hearing that it was Ms. Poutre’s idea. Ms. Poutre understood the distinction between a parole and a probation sentence. Tr. 125: 1-25 Respondent did not. Despite his attorney’s best efforts to get him on track, Respondent continued to refer to Ms. Poutre as being on “probation” in describing the terms of the sentence the judge ordered in January 2013. Tr. 434: 19-21

⁹ F# 23

¹⁰ F #24

She went into Respondent's office to pick up her purse. She had left there before walking to court with Respondent for her sentencing. Her purse was in Respondent's office on a "table" that was "built into the wall."¹¹

Ms. Poutre testified that as she went to grab her purse: "(Respondent) shoved (Ms. Poutre) into that table and had pressed his body against" Ms. Poutre's body. Respondent started "groping" Ms. Poutre and he tried to kiss her. He "humped" her leg for a while and "ended up ejaculating."¹²

Respondent's Version

Respondent's *did recall* the incident which took place in his office after Ms. Poutre's sentencing. He *also recalled* that he and Ms. Poutre went into the office together. He *also remembers* ejaculating. But, under his version of the events, he ejaculated only because Ms. Poutre led him on and encouraged him to do so.

When Respondent and Ms. Poutre returned to the office after the sentencing, he claims that Ms. Poutre was "euphoric"¹³ over the outcome, he claims to have won at the sentencing. He testified that Ms. Poutre surprised him when they got into his office:

"I heard the door slam behind me ... and I turned around and she was standing there. . . and she says: I love you. You've been there for fourteen years for me, you've always been there for me, and I've decided that you're the one for me and I want to get married¹⁴ to you . . . and she wrapped her arms around me and pressed her face against mine . . . and she kissed me in a way that was you know not anything other than sexual contact . . ." Tr. Tr.435: 19-25 436: 1-6

Respondent went on at length describing for the Panel how Ms. Poutre was "all over him." He says he warned Ms. Poutre that he was "getting excited." According to Respondent, Ms. Poutre said: "Go ahead, I want you to. And I did, I had an orgasm in my pants." Tr. 436: 6-21 Respondent also acknowledged later in his testimony that Ms. Poutre also told him at that during the incident after the sentencing hearing, that she was "getting rid of Jeremy" (her longtime boyfriend Jeremy Prue.) Tr. 527: 7-10; Tr. 664: 5-7

This testimony is Respondent's *fantasy*. To believe his version, the Panel would have to believe that Ms. Poutre, who was going to jail in two days, chose this moment – her boyfriend and young son were waiting for her in the car – to declare her love for Respondent, tell him she was "getting rid of" her boyfriend, get "all over" Respondent and encourage him to ejaculate in his pants.

¹¹ F #26

¹² F #27

¹³ As noted above (F# 23), although it was Ms. Poutre's idea and Respondent did not appear to grasp the distinction between a "parole sentence" and a "probation sentence," he, nonetheless, took credit for the outcome of the sentencing:

"I believe I gave the best argument in favor of not sending her to jail that I've ever come up with." Tr. 434: 5-7 Respondent said he was "pleased and stunned" over the results of Ms. Poutre's sentence. He described Ms. Poutre as "euphoric." Tr. 435: 7-9

¹⁴ Respondent recalled later in his testimony that Ms. Poutre also told him, during this incident after the sentencing hearing, that she was "getting rid of Jeremy" (her longtime boyfriend Jeremy Prue.) Tr. 527: 7-10; Tr. 664: 5-7

Of course, Ms. Poutre never married Respondent even though Respondent testified that Ms. Poutre “said she wanted to marry me like four or five times when she was working for me.” T 668:12-15 And she and her boyfriend didn’t break up until 4 years later - in 2017. Tr. 670: 17-21

B. Sexual Harassment - Part of the Daily Routine in Respondent’s Law Office

Ms. Poutre reported to the Chittenden Correctional Center on January 14, 2013 – as the judge had ordered. Respondent drove her there. On the way, Respondent offered her a job in his law office.¹⁵

By the time Ms. Poutre reported to the Correctional Center, she was in trouble financially. She and her longtime boyfriend, Jeremy Prue, had their two young children to care for. Ms. Poutre had no job. Her boyfriend had been out of work for two years. Ms. Poutre accepted Respondent’s job offer because: “It was a way to make money at a really bad time.”¹⁶

Ms. Poutre started work at Respondent’s law office as a legal secretary on January 28, 2013- four days after she got out of the Correctional Center. She began to be subjected to demeaning, intimidating conduct of a “sexual nature” almost immediately.

She and Respondent were the only ones in the office. (Ms. Poutre had replaced Pamela Binette). Respondent often talked to Ms. Poutre about how he wanted to marry her. He urged Ms. Poutre to leave her boyfriend, Jeremy, and “move into” Respondent’s home¹⁷. Respondent talked about women he’d had sex with, including women who were past employees. He also reminisced about a “threesome” in the office conference room.¹⁸

Although there was relatively little physical contact between Ms. Poutre during most of the work day (an occasional “slap” on Ms. Poutre’s “butt”), she told the Panel that “it seemed like every day” when Ms. Poutre was getting ready to leave to go home, Respondent would keep her behind in the office for his own gratification. This happened while her boyfriend and her young son were waiting for her in the parking place.¹⁹

He often made her watch him masturbate²⁰. Other times he “he would grab my butt, he put his hand up my shirt one day and rubbed and grabbed my breast. . . just kissing, hugging, groping.” Ms.

¹⁵ FF # 32

¹⁶ F# 33

¹⁷ F# 42

¹⁸ F #43

¹⁹ F# 47

²⁰ Respondent *did remember* masturbating in front of Ms. Poutre. But, again, he claimed it only happened because Ms. Poutre was the aggressor. According to Respondent, Ms. Poutre led him on, and encouraged him to masturbate, because she wanted to excite him “like Pam (Ms. Binette) did:”

: “. . . she came around my desk, and she walked right up to me. I was sitting in a chair and she walked right up between my legs and she pressed one of her legs against my thigh and she leaned over like this. And she said: Really? Is this what she used to do? I want to do with you what she used to do. And I said: You do? And she ran her leg up just like she had done before, and she said Do it for me. Do it . . . And she unbuttoned her shirt and she pulled her shirt aside, and she said go ahead, Do it. Do what you did with Pam. And I did. Yeah.” Tr. 461: 1-25; Tr. 462:1-3

Again, this appears to be Respondent’s fantasy. There was nothing in Ms. Poutre’s demeanor as she testified, or the circumstances that led her to come to work for Respondent that would reasonably suggest that she would suddenly become attracted to Respondent. She did watch Respondent masturbate – not because she encouraged or

Poutre also recalled times when Respondent would “pull (her) onto his lap, in front of the window, and rub me and grind me.”²¹

C. Disturbing, Demeaning of a “Sexual Nature” With Poutre’s Child Present

Respondent subjected Ms. Poutre to many instances of demeaning, intimidating conduct of a sexual nature during the five weeks she worked for him. This was conduct that went well beyond being “offensive.” But, no incident was more disturbing than when Respondent took advantage of Ms. Poutre when her eleven-year-old daughter was present.

Respondent had asked Ms. Poutre to come to lunch in his law office. She brought her young daughter with her. His father, Jerry Diamond, was there. After lunch, and after Jerry Diamond had left, Respondent told Ms. Poutre’s daughter that he wanted to talk to her mother. He set the young girl up in his (Respondent’s) office to watch You Tube videos on a computer²².

Respondent and Ms. Poutre went into another office. They could look through glass into Respondent’s office where Ms. Poutre’s young daughter was playing. They could see her playing. Ms. Poutre told the Panel that Respondent took the opportunity, while they were alone together, to push Ms. Poutre onto a desk and begin “groping” and “touching” her.²³

Respondent moved Ms. Poutre’s hand to touch his penis and begin to masturbate him. Ms. Poutre told the Panel that toward “the end” of this process, her daughter came into office where Respondent was having Ms. Poutre masturbate him.

Respondent told the young girl to go back into his office. Respondent still did not stop. As Ms. Poutre walked out, Respondent pushed her into a bathroom and started kissing her. Ms. Poutre’s daughter “came out (of Respondent’s office) and saw again and was like Mom what are you doing?”²⁴

Respondent’s Version

Respondent does recall this incident. But, once again, under his version of events it was Ms. Poutre who was the aggressor. He also recalls looking at Ms. Poutre’s daughter and saying what a wonderful child she is. Respondent also remembered saying that he envied Ms. Poutre and wished he had a child.

According to Respondent, this prompted Ms. Poutre to come up behind him and announce that she wanted to marry him

“We’re going to get married, and if you want to have children, we can have children. Do you want to have children with me Glen? And I said: I’d love to have children with you Andrea. And she—I was still looking at her daughter, and she came up behind me, and she put her arms around the front of me, and she put her hand on my genitals outside my clothing and she said: really? Do you really want to have children with me? I’m like: cut it out. I pushed her hand off me and I turned around and put my hand on her hips and I pushed her away from me and I said: Andrea,

“welcomed” it- but because she felt had to endure it because she had no choice but to do so during a “really bad time” for her, and her family.

²¹ FF ##48, 50

²² FF## 51, 52

²³ F #53

²⁴ FF## 53-55

cut it out. And she said: Why Glenn? Why? And I said No. 1- you have a boyfriend, I've told you that, and No. 2 - your daughter's in this office and that's not appropriate." Tr. 454: 1- 16

Respondent's version of this incident is literally incredible.

To accept his version of this incident, the Panel would have to believe that Ms. Poutre chose a time when her young daughter was nearby to put her hand on Respondent's genitals and declare that she wanted to have children with him. The Panel would also have to believe that Respondent, who had been pursuing Ms. Poutre for ten years, spurned her advances out of a sense of propriety.

The Panel Heard Clear and Convincing Evidence that Respondent Committed Professional Misconduct by Subjecting Ms. Poutre to Sexual Harassment

If the Panel accepts Ms. Poutre's testimony, it has clear and convincing evidence that Respondent engaged in professional misconduct. The Panel should find Ms. Poutre's credible. There are good reasons to believe her version of what happened to her in Respondent's office. On the other hand, there are no good reasons to believe Respondent's version

First, the Panel should consider that Ms. Poutre had nothing to gain from traveling to Montpelier to relive Respondent's humiliating treatment of her nearly five years ago. In the first place, it makes no sense that Ms. Poutre would, for instance, fabricate her description of Respondent's humiliating treatment of her in the presence of her eleven-year-old daughter. And, it makes even less sense to believe that she would willingly travel to what, for her, was clearly an intimidating proceeding, in order to repeat a fabrication that she had concocted five years earlier.

Ms. Poutre gained nothing of value for herself, or her family, by testifying - nothing other than the satisfaction she probably gained from knowing that she had the strength and courage to confront a powerful man who had used his position as her lawyer, and her boss, to treat her badly.

Second, the Panel should consider that Respondent's version of relationship with Ms. Poutre makes no sense. It is absurd, for instance to believe version of what happened after Ms. Poutre's sentencing in January 2013. Respondent says that Ms. Poutre returned to his law office to get her purse. Her boyfriend and their young son were waiting in the car to take her home. Yet, according to Respondent, Ms. Poutre chose this moment to force herself on him and to tell him for the first time that she loved him, that she was getting rid of her boyfriend and that she wanted to have children with him.

It is equally absurd to accept Respondent's claim, reviewed above, that Ms. Poutre chose a time in February to 2013 - a time when she had brought her eleven-year-old daughter to work - to put her hand Respondent's crotch and declare, again, that she loved him.

Finally, the Panel should also consider that while Respondent clearly believed that Ms. Poutre owed him her gratitude and love, there is no reason to believe that Ms. Poutre returned his affection. It is simply impossible to believe, as Respondent claimed, that Ms. Poutre welcomed the opportunity to watch him masturbate. If Ms. Poutre encouraged any of Respondent's acts of self-gratification, she did not do so because she had suddenly fallen in love with Respondent. She was forced to endure Respondent's conduct in an effort to keep her job and help her family get through, what Ms. Poutre described as, a "really bad time."

Conclusion

For the reasons set out above, Disciplinary Counsel respectfully asks the Panel to find that there is clear and convincing evidence that Respondent committed Professional Misconduct in violation of Rule 8 (g) by repeatedly subjecting, his employee, Andrea Poutre, to sexual harassment during the period she worked for him - January 28, 2013 through March 8, 2013.

FAILURE TO PROPERLY SUPERVISE - COUNT V

COUNT V

On about February 20, 2013, Respondent violated Rule 5.3 (c) (2) by failing to prevent **Andrea Poutre**, an employee over whom he had direct supervisory control, from engaging in fraudulent misrepresentation even though Respondent became aware of the proposed fraudulent misrepresentation at a time when he could have taken steps to prevent it- the fraudulent misrepresentation would have been a violation of the Rules of Professional Conduct if Respondent had engaged in it.

Relevant Rule

Rule 5.3 - Responsibilities toward non-lawyer assistants, says in pertinent part:

- (a) A lawyer shall be responsible for the conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer if:
- * * *
- (2) the lawyer is a partner . . . or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

I. DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT – COUNT V

1. Although Ms. Poutre was paid each week during the time she worked for Respondent, she only received one “paycheck” from Respondent. That is, she received only one paycheck with a “pay stub” that showed her gross pay minus taxes withheld from Ms. Poutre’s pay as well as a statement of tax (e.g. federal unemployment) and other required contributions paid by her employer(Respondent). That came at the end of the month. Tr. 132: 16-18; Tr. 133: 17-3
2. The weekly payments that Ms. Poutre received did not have the required deductions from her pay for taxes she owed. The weekly payment also didn’t show Respondent, her employer, had paid his required federal unemployment tax, social security and Medicare. As Ms. Poutre put it, she was being paid each week but “taxes were not being taken out.” Tr. 135: 14-18
3. Ms. Poutre was supervised by the Department of Probation and Parole in Newport at the times she worked for Respondent. The person in Probation and Parole who Ms. Poutre was assigned to was Lisa Levesque. Tr. 133: 2-6

4. Ms. Levesque asked Ms. Poutre to produce “pay stubs” from her employer. When Ms. Poutre told Respondent about the “pay stub” request, Respondent told her to tell Ms. Levesque that his accountant only came to Newport once a month and Ms. Poutre would produce the “pay stub” then. Tr. 133: 16-25; Tr. 134: 1 -5
5. That answer seemed to satisfy Ms. Levesque; but, it didn’t satisfy Ms. Levesque’s boss, Lane Chester. The next time Ms. Poutre reported to Probation and Parole, Ms. Levesque’s boss told Ms. Poutre that if she didn’t produce a “pay stub” from Respondent by the end of the day, she could no longer list Respondent’s law office as an “approved” place for Ms. Poutre to be while on furlough. Tr. 134: 6-14
6. Ms. Poutre testified credibly on cross examination that the primary reason Mr. Chester wanted a “pay stub” was not to prove that Ms. Poutre was working for Respondent - Corrections’ Field Supervision Unit (FSU) had already confirmed that- Mr. Chester wanted the “pay stub” so that he could be sure that Ms. Poutre wasn’t being “paid under the table and that Respondent was paying the employer taxes he was required to pay. Tr. 184: 1-10
7. Since there was no “pay stub” for the weekly payments she had received, Ms. Poutre and Respondent created a “fake pay stub.” Respondent gave Ms. Poutre access to QuickBooks, the accounting software that Respondent’s accountant used to generate proper paychecks. Ms. Poutre generated a the “paycheck”/ “pay stub”²⁵ which showed, falsely, that state and federal state deductions had been taken from Ms. Poutre’s pay. Tr. 135: 9-11
8. Respondent did not try to stop Ms. Poutre from delivering the “fake pay stub.” In fact, he helped her generate the “pay stub” because he wanted to avoid trouble with the IRS. Tr.: 141: 24-25; Tr. 142: 1-9

II. Discussion

Respondent’s conduct in assisting Ms. Poutre in providing the Department of Corrections Office of Probation and Parole with a “false pay stub” is Professional Misconduct; but, it is clearly not as serious as his sexual harassment of Ms. Poutre.

Still, there can be no dispute that Ms. Poutre presented a false pay stub (DC-7) that showed Respondent had deducted state and federal taxes from Ms. Poutre’s pay, when, in fact, he hadn’t. Respondent not only failed to stop Ms. Poutre, he assisted her by giving her access to the office QuickBooks account. It is important to point out that this may have been a minor infraction; but it could have had serious consequences for Ms. Poutre, who was Respondent’s client, as well as his employee. Since she was on a parole sentence, she could have been jailed immediately at the discretion of her parole officer.

Disciplinary Counsel respectfully asks the Panel to find that, on or about February 20, 2013, Respondent committed Professional Misconduct in violation of Rule 5.3 (c) (2) by failing to prevent Andrea Poutre, an employee over whom he had direct supervisory control, from engaging in fraudulent

²⁵ The “fake pay stub” was admitted into evidence as DC-7. Tr. 141: 20-21

misrepresentation even though Respondent became aware of the proposed fraudulent misrepresentation at a time when he could have taken steps to prevent it and that the Panel find further that this fraudulent misrepresentation would have been a violation of the Rules of Professional Conduct if Respondent had engaged in it.

Dated at Burlington, Vermont on December 27, 2017.

Robert V. Simpson, Jr.
Disciplinary Counsel