

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

Disciplinary Counsel's Proposed Findings of Facts Re: Counts II and III ("Binette Findings")

Background

1. Pamela Binette was 35-years-old at the time of the merits hearing in this case. She was 29-years-old when she began working in Respondent's law office in January 2012. Tr. 999: 10-17
2. She was born in Newport, Vermont and raised in nearby Beebe Plain, Vermont. Tr. 745: 14-16
3. She graduated from North Country Union High School in 2000. Tr. 745: 20-21
4. Ms. Binette became addicted to prescription opiates in 2000-2001, received treatment through Tri-County Substance Abuse Treatment services and has been "clean" since June 29, 2005. She does drink alcohol to excess at times; but, she does not consider it a problem. Tr. 747:6-12
5. Ms. Binette has worked at a pharmacy and a photo business in Newport, Vermont and at Walmart in Florida. Tr. 1013: 6-18

Mental Illness

6. Ms. Binette has not been employed since January 2013. She told the Panel that she has mental health problems that have made it difficult for her to find, and hold, a job. She said she has condition called "agoraphobia" which she explained as a "fear of leaving your home, a fear for your safety." Tr. 749: 18-25; Tr. 750: 1-4
7. Ms. Binette has been diagnosed with Post Traumatic Stress Disorder (PTSD) which resulted from trauma in the early 1990s. She has also been diagnosed Attention Deficit Hyperactivity Disorder (ADHD). She has been taking the prescription drug Adderall since 2005. Tr. 748: 1-12
8. Ms. Binette is currently receiving treatment from a therapist and a psychiatrist, Dr. Elliot Kaufman. She has been receiving treatment from Dr. Kaufman since 2006 -2007. She normally sees Dr. Kaufman monthly; but when she has an "immediate crisis" she sees him more frequently. Tr. 748:14-24; Tr. 749: 4-9
9. Dr. Elliott M. Kaufman, M. D. has practiced for 50 years. He is a graduate of Brown University and the Chicago Medical School. After completing his psychiatric residency at the Downstate Medical Center in New York, Dr. Kaufman went on to the Mt. Sinai Medical Hospital where he was on medical staff, taught medical students and ran one of the inpatient units. In addition to having his own private practice in psychiatry in New York for many years, he also served as Medical Director of the 250-bed South Beach Psychiatric Center in New York City. Tr. 928: 20-25; 929: 1-18

10. Dr. Kaufman moved to Northern New Hampshire to practice psychiatry in 1980 and served for a time on a New Hampshire Governor's Task Force which was working to develop psychiatric services in local hospitals in northern New Hampshire rather than at the State Hospital. He now splits his time between his office in Bethel, Maine and works as an independent contractor, providing psychiatric services for Northeast Kingdom Human Services in Derby, Vermont. Tr. 929: 19-25; Tr. 930: 1-3
11. Dr. Kaufman has treated Binette "every two weeks, sometimes once a month" at the Northeast Kingdom Human Services office in Derby since 2007. Tr. 930: 4-11

Respondent Became Aware of Ms. Binette's Mental Illness During the Time She Worked for Him

12. Vermont State Police Detective Lance Burnham interviewed Respondent on July 3, 2013 at Respondent's office in Newport to ask him about complaints Ms. Binette and Ms. Poutre had made against him. When talking about Ms. Binette early in the interview, Respondent told Detective Burnham that he was aware that Ms. Binette had "mental health issues." He told Detective Burnham that on occasions when Ms. Binette had not shown up for work, he had called Ms. Binette's parents because Respondent was concerned about her. Tr. 241: 5-21
13. Later, toward the end of the portion of the interview dealing with Ms. Binette, Detective Burnham asked Respondent if there was anything else he would like to say about Ms. Binette. Respondent told Detective Burnham that he liked Ms. Binette; but, her "mental health concerns were affecting her decision making while she was at work." Tr. 243: 7-25; Tr. 244: 15-19

I. JANUARY 2012-JANUARY 2013: WORK IN RESPONDENT'S LAW OFFICE

14. Ms. Binette came to Respondent for help in December 2011. She was being called by a Vermont State Trooper in St. Johnsbury who wanted to talk to her about an investigation he was conducting. She was concerned because she did not know what the trooper was talking about. Ms. Binette was already charged in a criminal case and she was concerned about calls about a second investigation that she felt had no connection with. Respondent called the trooper in St. Johnsbury and the calls stopped. Tr. 751: 1-19
15. Ms. Binette had another problem. She had "conditions of release" in a grand larceny case¹ that was pending against her in Orleans Criminal Court that prevented her from leaving the State of Vermont. Ms. Binette wanted to visit her brother in Florida. Respondent offered to call the judge and get her conditions changed so that she could visit her brother. Tr. 752: 17-25
16. Respondent did not charge Ms. Binette for the help he had given her. Tr. 751: 19-25; Tr. 752:
17. When Ms. Binette returned from Florida later in December 2011, she learned from her mother that Respondent had been calling to offer her a job. She had never worked in an office before and wasn't sure the job would be "up (her) alley." But, she accepted because she had applied to work for

¹ The record of the conviction stemming from the "grand larceny" was eventually expunged. Tr. 810: 7-11

Customs and Border Protection (CBP) and needed one full year of work experience² before she could attend the CBP training academy. Tr. 753: 12-19

18. Respondent did not ask Ms. Binette to fill out an employment application began when she began working for him. Tr. 763: 1-3
19. Ms. Binette had no experience working in an office before she went to work in Respondent's law office. Tr. 755:10-21
20. Ms. Binette started work in Respondent's office in January 2012 as a legal secretary. She started at \$9 per hour and received a paycheck intermittently – every four to seven weeks.³ If she needed money between paychecks, she could get an advance from Respondent.⁴ DC 20, 22
21. Ms. Binette worked for Respondent for one year. Her gross pay over that period was \$13, 154.75. DC 20, DC 21
22. Ms. Binette kept track of her own hours and reported them to Respondent's bookkeeper, Nekol Pyle. Tr. 1260: 22-25 Ms. Binette's pay records (DC 20, 21) show that her attendance at work grew progressively worse from her first full pay period in February 2012 when she worked approximately 85% of available work hours⁵ until it reached a low in late July-August 2012 when she worked less than 40 % of available hours⁶. DC 20, 21

² Ms. Binette explained later in response to a question from Chairwoman Ware (Chair) that she had been told by Fernando Beltran, the person who recruited her for CPB, that because she did not have a college degree she needed one full year of work related to the law or law enforcement before she could qualify for the training academy. Tr. 809: 18-25

³ This practice violated Vermont law, specifically, 21 VSA “§ 342, which requires employees to be paid at least every two weeks:

- (a) (1) Any employer having one or more employees doing and transacting business within the State shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.”
- (2) After giving written notice to the employee or employees, any employer having an employee or employees doing and transacting business within the State may, notwithstanding subdivision (1) of this subsection, pay biweekly or semimonthly in lawful money or checks each employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

⁴ Ms. Binette received six advances, totaling \$2,200, in the year she worked for Respondent. DC 22

⁵ Ms. Binette was paid \$1,413 for the pay period February 2, 2012 through March 6, 2012. (DC 20) The Panel can take administrative/ judicial notice (3 VSA 810 (4)) that the 2012 calendar shows there were 23 work days during that pay period and 184 available work hours ($23 * 8 = 184$). She was paid \$9 per hour at the time. If she had worked all 184 hours, she would have been paid \$1,656 ($\$9 * 184 = \$1,656$). (DC 20) She was paid \$1,413 for the pay period – $1,413 / 1,656 = 85\%$.

⁶ Relevant pay period is July 19 - September 6. The Panel can take “administrative”/ “judicial notice” (3 VSA 810 (4)) that there were 35 work days, and a total of 280 work hours ($35 * 8 = 280$), during that period in 2012. DC 20 shows that Ms. Binette was being paid \$10 per hour at that time. DC 20 shows that Ms. Binette was only paid

23. Kelcie Dauphin, Respondent's long time legal assistant, had recommended Ms. Binette. She knew Ms. Binette because Ms. Binette had been in Respondent's law office prior to January 2012 as a client. Tr. 594: 22-25; Tr. 595: 1-3
24. Ms. Binette worked alone in the office with Respondent after a two-month training period. Ms. Dauphin, had decided to leave her job with Respondent to spend more time at home. According to Ms. Dauphin, Respondent had thought it would take "three to four months" to train Ms. Binette. However, Ms. Dauphin, who had agreed to come intermittently to train Ms. Binette, concluded after an approximately two-month period that Ms. Binette was "capable" and no longer needed training. Tr. 596: 7-25; Tr. 597:1-6

Ms. Binette Was Very Happy with Her Job During the First Months She Worked for Respondent
(January 2012- April 2012)

Ms. Binette was very happy during the first few months she worked for Respondent. Her parents saw it. Dr. Kaufman saw it. Ms. Binette looked up to Respondent. She liked the work and the fact that she was learning how the office worked.

25. Ms. Binette liked the work and got along well with the Respondent. "I loved it. It was great. I felt functional. It was very interesting. "There's a certain system...I was learning a lot. I was really learning a lot." "I was finishing my tasks, and it was something that used to be hard for me. I was really excited about that." In addition, she saw him "as a leader. He was really smart. He showed me how an office ran." Tr. 756: 23-25; Tr. 824:
26. During the first meetings he had with Ms. Binette after she went to work for Respondent in 2012, Dr. Kaufman observed: "...she was happy. She had a job and she was looking forward to it. She was looking good, she sounded good" - she sounded "confident." Tr. 939: 18-23
27. Ms. Binette's mother, Diane, saw the same thing Dr. Kaufman did: "She loved it . . . She was happy, learning a lot. She was sucking it all up . . .just very, very happy. Tr. 1001: 17-21
28. Diane Binette and her husband (Chris) did not have any concerns about Pamela's "emotional ability to cope with stress" when Pamela accepted Respondent's job offer (December 2011). "We never questioned it." Pamela seemed "so happy to work for a lawyer and learn. She just loved the law. She always has." Tr. 1011: 4-24

April 2012

Ms. Binette's attitude toward her work and Respondent had changed by late April 2012. Again Dr. Kaufman noticed it; her mother did too. Respondent had begun making unwanted advances toward her. When she didn't "cooperate", Respondent began belittling her and tossing paper clips at Ms. Binette's breasts and cleavage- a bizarre, demeaning practice that left her shaken.

\$1,000 during that pay period. That, in turn means that she only worked 100 hours ($1,000/10 = 100$) of the 280 works in the pay period or 36%

29. Dr. Kaufman's treatment notes⁷ for April 24, 2012 report: "Major stressor appears to be work or more specifically her boss who is making unwanted, unwanted advances toward Pam according to Pam. Pam invited her mother to this session." He wrote that her "mental status" was "anxious." Dr. Kaufman's written "Assessment" based on what he had observed and heard from Ms. Binette was that Ms. Binette's ADHD symptoms were in "remission"; but, her "PTSD symptoms surfaced as problems with her boss emerged." DC-27
30. Ms. Binette explained that Respondent grew unhappy with her. "He would say it was my fault that he got aroused because of the way I dressed . . ." He belittled her for refusing to "cooperate" in easing his sexual frustration. Tr.764: 4-25
31. In addition to calling her names like "squirrel head," Respondent threw paper clips at her breasts and cleavage. This happened when clients were present.⁸ Ms. Binette asked Respondent twice to stop – "I was feeling really degraded." But, Respondent didn't stop. He treated the practice as a joke. Tr. 758: 5-25; Tr. 760: 1-25

Respondent continued the practice of occasionally tossing paper clips at Ms. Binette's breasts up until the time she stopped working for him. Tr. 761: 1-7 In an email to Elizabeth Wilkel dated February 14, 2013, Ms. Binette said: "I have been replaced I was not fired and did not quit. . . I went to work on the 24th of January. Having been stressed out because of his behavior in the office, I was not able to keep myself from falling into an agoraphobic episode . . .and was avoiding as much as possible Glenn due to his picking on me for wanting to be a border patrol agent . . . and during an IC interview with a new client, he wouldn't stop throwing those stupid gold paperclips down my shirt . . .all that in one week and I haven't returned since." (emphasis added) DC-24

"T DC-24

"Notice of Intent to Engage in Romantic Relationship and Waiver of Claims" (May-June 2012)

In late May or early June 2012, Respondent asked Ms. Binette to sign a document which waived her right to sue him for sexual harassment. Ms. Binette did not understand why it was necessary to sign the document. She left it on her desk, unsigned for several months.

32. Respondent's father, Atty. M. Jerome ("Jerry") Diamond a former Vermont Attorney General, testified during a trip to Colorado in mid -May 2012, that Respondent wanted to date his employee,

⁷ At the beginning of each session with a patient, Dr. Kaufman takes notes, recording what the patient tells him about his/her current condition as the patient is speaking. He is careful to make sure that the notes are "accurate" in the sense that he has accurately recorded what the patient tells him. He uses the notes in treating the patient - deciding whether the medication the patient is being prescribed is still "appropriate" and in deciding whether he should contact a patient's therapist. Tr. 955: 1-25; Tr. 956: 1-4; Tr. 957: 1-18; Tr. 959: 25; Tr. 960: 1-5
Tr. 958: 23-25; Tr. 959: 1-6

Copies of contemporaneous records created by Dr. Kaufman during the period from April 24, 2012 through March 26, 2013 were admitted into evidence (DC 27-34). Tr. 974: 23-25; Tr. 975: 1-10

⁸ Ms Binette denied telling her mother, Diane Binette, that James Roy and Alan Franklin were two of the people present when the paper clips were tossed at her breasts. She said her mom must have misunderstood her. Tr. 826: 15-17 Despite this, Respondent called Roy and Franklin to deny Diane Binette's hearsay statement.

Pamela Binette. Atty. Diamond testified that he advised Respondent that if he was going to date an employee, Respondent “should secure an agreement indicating that it was a voluntary relationship.” According to his father, Respondent agreed that it was probably a “good idea.” Tr. 218: 21-25; Tr. 219: 1-19; Tr. 220:21-24

33. Atty. Diamond suggested that another son, Atty. Josh Diamond, Respondent’s step-brother, could help Respondent draft the agreement because he, Josh Diamond, concentrated “a good deal of his practice in employment law.” Tr. 219: 20 – 25; Tr. 220: 1-4
34. Jerry Diamond spoke to his son, Atty. Josh Diamond, about drafting the “voluntary relationship” agreement for Respondent on the day Jerry Diamond returned from the Colorado trip. Tr. 221: 11-15
35. Atty. Josh Diamond, who practiced in Montpelier, telephoned Respondent’s office in Newport “on the same day” that Jerry Diamond had spoken to him about helping Respondent draft a document regarding Respondent’s intent to date his “legal secretary.” Tr.285: 20-25
36. Respondent put the phone “on speaker” at his end. A woman, who Josh Diamond assumed was Ms. Binette was with Respondent. Respondent did the talking for the couple. Tr. 286: 1-10; Tr. 287:15-20
37. Respondent asked Josh Diamond to “prepare a document” that “would facilitate them being able to date” Respondent “asked for three things.” One, the document would “reflect that the relationship was mutual and welcoming.” Two, the document would “contain a release of sexual harassment and gender discrimination claims.” Three, Josh Diamond said Respondent “used a term of art” that Josh Diamond “thought was ‘mutuality’ – Josh Diamond couldn’t explain to the Panel what Respondent meant by “mutuality.” Tr. 286: 7-14; Tr. 287: 5-9 (emphasis added)
38. Shortly after the phone call ended, Josh Diamond drafted the document Respondent had requested and emailed it to Respondent. That ended Josh Diamond’s involvement in the matter. Tr. 287: 24-25, Tr. 288: 1
39. The document⁹(DC -2) is titled “Notice of Intent to Engage in Mutually Welcomed Romantic Relationship and Waiver of Claims.” It has three provisions. None of the provisions provide specific protection for Ms. Binette other than Respondent’s promise to base “all decisions regarding terms and conditions of employment on “job performance and/ or economic conditions.” (DC 2-¶ 1)
40. Two of the three provisions in the document Josh Diamond drafted do provide protection for Respondent in that Ms. Binette gives up any claim that her relationship with Respondent has been coerced and she waives any right to sue Respondent for sexual harassment or gender discrimination:

¶ 2 Employee agrees that any romantic relationship with Employer is mutual and she welcomes such a relationship with Employer. Employee agrees that her interest in pursuing a relationship with Employer is done freely, voluntarily and without any coercion or undue duress.

¶ 3 Employee agrees to waive any and all demands, claims or other actions (against) Employer for gender discrimination and/ or sexual harassment pursuant to Title VII of the Civil Rights Act, and as

⁹ The document Atty. Josh Diamond drafted was admitted into evidence as DC-2. Tr. 288: 11-13

amended, and Vermont's Fair Employment Act, as amended, or any other legal or equitable claim arising against employer by virtue of her romantic relationship with Employer and her employment by Employer.”

41. Ms. Binette recalled the incident involving what she referred to as a “contract” took place sometime in late May or June. She said Respondent told her that she was required to sign it because it was somehow part of the hiring process:
42. “They doctored up a contract I was supposed to sign. I was told I was required to sign this in the beginning of being hired, but I didn’t even sign an application, so I was kind of in – beside myself when this was all happening. I didn’t know why there would need to be a contract.” Tr. 762: 6-25; Tr. 763: 1-5
43. Ms. Binette did not sign the “contract” at that time (late May early June). It stayed on Ms. Binette’s desk, unsigned, for several months. Tr. 763: 6-7; Tr. 776:14-25; Tr. 777:1-3
44. Diane Binette told the Panel that she had noticed a change in her daughter’s mood sometime in May 2012. She said that her daughter did not elaborate on what was making her unhappy. But, she did notice a change in Pamela’s mood. Mrs. Binette said that she and her husband “could tell something was not right.” Pamela seemed “kind of angry.” Tr.1003: 7-12

July- August 2012

In June, and well into July 2012, Respondent continued to goad Ms. Binette about her unwillingness to “cooperate” with his advances. Near the end of July 2012, Ms. Binette finally gave in to Respondent’s advances and engaged in what she referred to as the “tease game.” He responded by masturbating in her presence and ejaculating on his desk. This had a profound effect on Ms. Binette and her mental health. The impact of Respondent’s actions on Ms. Binette was corroborated by the testimony of Dr. Kaufman and Ms. Binette’s mother and other evidence.

45. Respondent told Ms. Binette “that it was (her) fault that he was sexually frustrated, and that I was too immature to handle an at-work relationship. . . I was pretty much spoken to in a condescending manner until I would do something. Tr. 765:15-17
46. Dr. Kaufman met with Ms. Binette on July 17, 2017. He testified that Ms. Binette’s was “tearful and upset”. Her PTSD symptoms were worsening. Tr. 984:1-9
47. Dr. Kaufman’s notes of this July 17 meeting with Ms. Binette say that Ms. Binette complained that her boss was “coming on to her.” Dr. Kaufman ‘s written “Assessment” says that her “PTSD symptoms had been exacerbated by unwanted sexual advances from her boss according to patient.” DC 29
48. Sometime toward the end of July, Ms. Binette thought it was July 27, Ms. Binette gave in and played what she refers to as the “tease game.” Ms. Binette said the “tease game” was Respondent’s idea. He asked her to: “Give me a little show. Come on tease me. You know you want to”. Tr. 766: 1-7; Tr. 812: 6-14.

49. Ms. Binette complied. "I unbuttoned my shirt and dropped some bra strap and then it was over – I also had to pull on his tie." RTr. 763: 11-21 Respondent ejaculated on his desk. Tr. 765: 9-12 Ms. Binette was asked later to explain further about the "tie" – "sort of a chronology of events." Ms. Binette responded: "Okay, I unbuttoned my shirt, took a strap down, while he was masturbating he said 'pull my tie' and I (reached) across the desk and pulled it." Tr. 814: 23-25; Tr. 815: 1-3
50. After that Ms. Binette picked up her purse and went home and told her mother what had happened. She was determined not to go back to work. She "boycotted" work - stayed out of work for the period from July 27 until sometime in the "middle of August." Tr. 771: 3-9
51. Ms. Binette also asked Respondent to see a therapist – "... thinking that would help him stop the behavior in the office." (Respondent told her later that he did see a therapist.) Tr. 774: 15-25
52. Mrs. Binette, confirmed that her daughter, Pamela, had told her that Respondent had masturbated in front of her at work. Pamela told her mother about it on the same day Respondent masturbated in front of her. Mrs. Binette remembered it was in July, 2012 - she couldn't remember the exact date. She testified that her daughter was home when Mrs. Binette got home from work. Her daughter was "clearly very upset", "humiliated" – "felt terrible." Her daughter told her that Respondent had masturbated in front of her and "asked (Pam) to pull on his tie and ejaculated on his desk." Tr. 1004: 12-25
53. Dr. Kaufman testified that July 31, 2012 Ms. Binette was still in the "same state" - "distressed" - "clearly upset." Tr. 984: 15-23
54. Dr. Kaufman's written "Assessment," based on his observations and what Ms. Binette had told him, was that although Ms. Binette's "ADHD was in fairly good remission, there was a situation causing her much distress related to her job." DC 30
55. Ms. Binette told the Panel that she is still unhappy about what she did, and what she permitted Respondent to do: "... I have no idea why I let all of the things he said to me and all of the actions the paper clips and masturbation. It wore me down so much. . . He wouldn't stop. I asked him several times. Nobody seemed to care. So, I started to feel I was less than a person and that's exactly how I still feel." Tr. 856: 1-7

August 2012

In August 2012, while she was still "boycotting" work, Ms. Binette sent an email to Respondent complaining that she had "felt threatened and forced to cooperate" and that she wasn't going to "let this happen to (her) anymore." She eventually returned to work in mid-August; but, she moved back in to live with her parents. Ms. Binette's mother, Diane, began to get calls from her daughter from work – calls which expressed fear that Respondent was going to "lock (Ms. Binette) in the office." Diane Binette came to realize her daughter's fear was real – but unreasonable.

56. On August 7, 2012, while Ms. Binette was still at home with her parents, she sent an email to Respondent complaining of the way Respondent had treated her. DC -3 (She copied her mother, Diane, on the email.) Her email said in part:

"I will not be in the office today. I will probably not be in tomorrow either. I am trying to communicate with you that the issues which lead to my absence are the direct result of the removal of my rights and protections under the Vermont Statutes, as amended, and Fair Employee Acts . . . I do not feel respected as an employee, individual, or human being as a result of your recent behavior and comments. I have felt threatened and forced to cooperate and I am not going to let this happen to me anymore. I have not been treated as an employee. I have not been paid as an employee should . . ." (emphasis added) DC-3

57. Respondent replied by email the following day. He told Ms. Binette that if she didn't "want to sign the papers we drafted with Josh, that's fine. If you do not wish to follow through on dating that is fine too." He went on to tell her that if she wanted a "professional relationship based only on your employment here, that's fine. . . The job is yours as long as you show up for work. . ." DC-3 Respondent spoke to Ms. Binette only once about the email. After that, he never again said, or did, anything to address the concerns she had expressed in the email. Tr. 1261:4-9 (emphasis added)
58. Ms. Binette had moved from her parents' home in Beebe Plain into Newport to be closer to the office in the months when she first started working for Respondent. She moved back to her parents' home in August 2012. Tr. 1003: 19-21
59. Ms. Binette's mother, Diane, testified that in August 2012 -again she didn't have an exact date – her daughter told her that Respondent had been throwing paper clips at her "breasts and cleavage." Pamela was angry- she told her mother that she asked Respondent to stop several times; but, he hadn't stopped. Tr. 1005:24-25; Tr. 1006: 1-10
60. Although she says now that she "shouldn't have ever gone back," Ms. Binette did go back to work for Respondent sometime in mid-August. She had intended not to; but, she needed to complete a full year's work to get into the CBP Academy and she was running out of money. Tr. 769: 2-4; Tr. 775: 4-15
61. The atmosphere in the office was "less hostile" when she went back to work – but then, after a while, the "paper clips started again." Tr. 776: 3-6
62. At some point after the Waiver Document was signed Respondent left a "post it" note for Ms. Binette. He wrote "U Drive My Pants Crazy F. Y. I", "You Make Me Wanna MB" (masturbate) and "At 5 a. m. when I waken you drive me crazy." R6; Tr. 902: 1-25, Tr. 1121: 9-15

Unreasonable Fear of Being Locked in Respondent's Law Office

63. Diane Binette testified that "starting in the summer months" of 2012, her daughter developed an unreasonable fear that Respondent would lock her in the law office overnight or over the weekend. Pamela called her mother and others, including her grandmother, on several occasions, to come to the law office and stay with her until she finished work. These calls to her mother and others continued throughout 2012 and ended in January 2013 when Ms. Binette stopped working for Respondent. Tr. 1007: 12-25; Tr. 1008: 1-7

64. There was no real danger that Pamela would be locked in the office; but her fear was “real. It was instilled.” Tr. 1007: 20-25

September 2012

65. On September 6, 2012, Ms. Binette received a \$1,000 paycheck (less a \$250 advance) for the pay period from July 19 through September 6. DC 20, 22. It was during this period (7/19-9/6) that Ms. Binette had “boycotted” work after Respondent had masturbated and ejaculated on his desk when Ms. Binette had given in to Respondent’s repeated requests to cooperate and played the “tease game.” Her attendance at work during this period was the lowest of any in the year she worked for Respondent. She worked less than 40 % of available hours¹⁰. DC 20, 21
66. On September 28, 2012, Ms. Binette signed the “Notice of Intent to Engage in Mutually Welcomed Romantic Relationship and Waiver of Claims.” (Waiver Document) DC-5 After Ms. Binette signed the Waiver Document, she went home and told her father that she had signed the contract. She did not go to Respondent’s condo. Tr. 846: 4-9
67. Ms. Binette signed the “contract” after Respondent told her “. . . that Jerry Diamond was going to be here in 20 minutes” and “we need to both sign this before he gets here or we’re both going to be in a lot of trouble.” Tr. 778: 6-18 Respondent often used his father’s name to “intimidate” Ms. Binette. Tr. 778: 19-22
68. A copy of the document Josh Diamond had drafted (DC-2) had been on Ms. Binette’s desk since Atty. Diamond had sent it in late May - early June 2012. She had not signed it. Tr. 776: 17-25; Tr. 777: 1-3
69. Paragraphs 2 and 3 of the Waiver Document (DC-5) Ms. Binette signed were basically the same as the paragraphs 2 and 3 of the document Josh Diamond had drafted in late May or early June (DC-2). Although Respondent had edited¹¹ paragraph 2 of the Waiver Document (DC-5), paragraph 2 still required Ms. Binette to confirm that she and Respondent had both agreed to a “romantic relationship.” And, although Respondent had also edited¹² paragraph 3 of the Waiver Document (DC-5), paragraph 3 continues to require Ms. Binette to waive her right to sue Respondent for sexual harassment. (DC-2, paragraphs 2 and 3)

“¶ 2 Employee agrees that any romantic relationship with Employer is by mutual agreement¹³. Employee agrees that her interest in pursuing a romantic relationship with Employer is done freely, voluntarily and without any coercion or undue duress.

¹⁰ Relevant pay period is July 19 - September 6. The Panel can take “administrative”/ “judicial notice” (3 VSA 810 (4) that there were 35 work days, and a total of 280 work hours (35*8 = 280), during that period in 2012. DC 20 shows that Ms. Binette was being paid \$10 per hour at that time. DC 20 shows that Ms. Binette was only paid \$1,000 during that pay period. That, in turn means that she only worked 100 hours (1,000/10 =100) of the 280 works in the pay period or 36%

¹¹ Respondent inserted the phrase “by mutual agreement” (DC-5) to replace the phrase “is mutual and she welcomes such an agreement with the employer.” (DC-2)

¹² Respondent had removed the word “demands” and added the word “against.” DC-5, DC-2

¹³ In addition to adding paragraphs 4 and 5, Respondent edited paragraph 2 by substituting the words “by mutual agreement” (DC-5): for his brother’s phrase “is mutual and she welcomes such a relationship with her employer” (DC-2)

¶ 3 Employee agrees to waive any and all claims or other actions against Employer for gender discrimination and/ or sexual harassment pursuant to Title VII of the Civil Rights Act, and as amended, and Vermont's Fair Employment Practices Act, as amended, or any other legal or equitable claim arising against employer by virtue of their romantic relationship with Employer and her employment by Employer.

70. The big difference between DC-2 and DC-5 was that DC-5 contained two additional paragraphs. In one of the new paragraphs- paragraph 4- Respondent wrote that he agrees to “continue to afford (Ms. Binette) latitude” regarding showing up for work on time. The second new provision, paragraph 5 confirms that Ms. Binette understands that she may have to work “after regular business hours and/ or on weekends.” DC 2, DC 5

¶4. Employer hereby acknowledges that employee suffers from a condition that sometimes makes it difficult for her to be on time for the start of her workdays. Employer has in the past given Employee a certain amount of latitude regarding her showing up for work on time. The parties to this agreement hereby acknowledge Employee will continue to be afforded latitude regarding her showing up for work on time. Employee has and will continue to make reasonable efforts to see that she comes to work on time, in spite of her condition.”

¶ 5. The parties understand that their work will sometimes require them to work after regular business hours and/or on weekends.” DC 5 (emphasis added)

71. Ms. Binette explained that she had asked for the provision (paragraph 4) which requires Respondent to continue to give her “latitude” for being late for work as long as (she) kept working at trying to be on time. Tr. 779:12-20
72. Ms. Binette felt she had been forced to sign the “contract.” She said that “if I was going to sign my rights away, I would at least not be fired.” Tr. 842: 4-9
73. Ms. Binette never wanted to have a “romantic relationship” with the Respondent. She didn’t have “sexual for feelings” Respondent. She didn’t have “romantic feelings” for Respondent. “Nothing about this was mutual.” Tr. 807: 20-25; Tr. 808: 1-20
74. She explained that she was “already dating someone else” at the time Respondent claimed she wanted to have “sexualized” relations with him. She told the Panel the man’s name. Tr. 840: 18-25; Tr. 841: 1-6
75. Respondent did not advise Ms. Binette to contact her own attorney before she signed the Waiver Document. Tr. 779: 21-23

October – December 2012

In December, she told Dr. Kaufman that she had begun to enjoy her work again. She also said her relationship with Respondent was “better.” She attributed the improvement their relationship with the fact that Respondent was seeing a therapist. However, Ms. Binette was still troubled. She had started “cutting” again— giving herself multiple superficial cuts - in April 2012. She continued to “cut” herself occasionally through the rest of the year.

76. Ms. Binette recalls that from the time she signed the Waiver Document through the rest of 2012, “had to pretend like there was nothing wrong.” She “tried to be as pleasant and cooperative as I could.” Tr. 780: 20-25
77. Respondent gave Ms. Binette a raise in November 2012 – from \$10 per hour to \$10. 50 per hour. He raised her pay again in December – to \$11 per hour. DC-20
78. At the request of his parents, Respondent consulted a psychiatrist at Dartmouth psychiatry in late September or October 2012. Tr. 651: 12-19 The psychiatrist said that he (Respondent) had a “grief disorder” and Respondent ended up going to see Counselor Erin Donahue in November 2012. Tr. 644: 14- 25; Tr. 647: 1-25;
79. Dr. Kaufman’s notes of his December 18, 2012 meeting with Ms. Binette say: “Pam states she is enjoying her work, (her) relationship with her boss is better and she believes it is because he is in therapy.” Dr. Kaufman’s “assessment” based on what he had observed and what Ms. Binette had told him was that her symptoms were in “remission.” DC 31

“Cutting”

80. Ms. Binette has been treated for “cutting” in the past and that she had not had problems with it again until she worked for Respondent. She testified that started to “cut” again in April 2012 and continued into 2013, when it “really got bad.” Tr. 799: 4-18
81. Ms. Binette discussed her “cutting” problem with Respondent. “. . . and I was so mad at myself for letting it happen, and I went to work the next day and showed (Respondent), and I said, Look at my arms.” Tr. 801: 18-21
82. She described the process as trying to “dig the disgrace out” by scratching herself with “tweezers, pins but mostly my fingernails.” Tr. 799 4-6; Tr. 802: 1-7
83. Dr. Kaufman explained that for a long time “cutting” had been considered a “symptom” of disorders such as PTSD. More recently, however, it is considered a “separate illness.” Tr. 934-25; Tr. 935: 1; Tr. 936: 18-20 He explained that people who are “cutters” harm themselves with many (sometimes hundreds) of superficial cuts. Tr. 935: 7-19
84. Dr. Kaufman told the Panel that most people stop “cutting.” But, a small percentage, including Ms. Binette, whose cutting “is associated with an illness,” continue to cut themselves, especially when they “are under stress.” Tr. 935: 21-25
85. According to Dr. Kaufman, Ms. Binette began cutting herself in her childhood as a result of a traumatic event. She has continued to “cut” herself periodically since then. Tr. 938: 1-10
86. People like Ms. Binette “cut”, in part, because they have an “intensely negative view of themselves.” According to Dr. Kaufman, the more negative view people like Ms. Binette have of themselves, the more likely it is they are going to “cut.” This, he says, has “enormous implications” for people like Ms. Binette, and others were her illness, because there will inevitably be things in her life that she

cannot control -they just happen to her. Yet, despite the fact that she cannot control them, these uncontrollable events still cause her to have an even more “negative view” of herself. This, in turn, causes her to “cut” again. Tr. 936: 1-15

January-2013

87. Respondent offered Andrea Poutre a job as his legal secretary on January 14, 2013 when he was driving her to prison to have her sentencing status changed. She had accepted. Tr. 133: 1-2, 14-20
88. Respondent’s plan was to have Ms. Binette train Ms. Poutre. After that, they going to share the work Ms. Binette had been doing. Tr. 856: 17-25; Tr. 857: 1-2
89. On January 24, 2013, less than a week before Ms. Poutre was to start work, Ms. Binette received the second largest paycheck she had received in the year she worked for Respondent - \$1,820.50¹⁴ gross pay -for the period from December 14, 2012 through January 24, 2013. Ms. DC-20
90. Later that day, Respondent asked Ms. Binette to come into the office conference room. He told her that she had a “decision to make” if she wanted to continue to work with him. She had to become a “winner” like Ms. Poutre. Respondent was “rubbing himself” and asking for Ms. Binette to play what she called the “tease game” again. Respondent eventually ejaculated. Ms. Binette left immediately. Tr. 790: 15-25; Tr. 791: 9-15; Tr. 793: 8-14

February 2013

91. Ms. Binette did not tell Dr. Kaufman what had happened to her at first. “It was incredibly humiliating.” Tr. 794: 14-16
92. Ms. Binette sought help and advice from Elizabeth Wilkell, a private investigator who had worked with her on the Grand Larceny charge. She wanted help and advice on what to do. Ms. Wilkell was willing to help. Tr. 794: 21-25; Tr. 796: 21-25
93. Ms. Binette emailed Ms. Wilkell on February 14, 2013. She had been out of work for roughly three weeks.

“Subject: Unemployed

I have been replaced I was not fired and did not quit. . . I went to work on the 24th of January. Having been stressed out because of his behavior in the office, I was not able to keep myself from falling into an agoraphobic episode . . . Nekol was in on the 24th so I got my paycheck, I was coming down with the flu, had just gotten back from a final hearing on a relief from abuse order for Travis Parenteau, and was avoiding Glenn due to his picking on me for wanting to be a border patrol agent . . . and during an IC interview with a new client, he wouldn’t stop throwing those stupid gold paperclips down my shirt . . . all that in one week and I haven’t returned since.

¹⁴ The pay period was December 15 through January 25. The Panel can take administrative notice that there were 33 work days and 264 work hours (8*33=264) during that pay period. Ms Binette worked 165.5 of the 264 work hours (\$1820.50 / 11 = 165.5) during that pay period or 63% (264/165.5 = 63%) of the work hours available.

**

...Then I called (Attorney)Jen Nelson. She said it sounds like at least a claim for workmans comp. . . im confused, what do I do? she recommended 2 women. Lauren Kolitch was also mentioned by you.

..

If you have any thoughts, please let me know. I have filed for unemployment. I don't have a very confident clear head right now. It is has been very stressed.

Thank you very much for your time and I am very grateful to be asking you for advice. I want to be the one who finally isn't afraid of this guy, truth is I am but we don't have to tell anyone especially him. I won't do anything but regret keeping quiet. Unless you think I should, I have already been through the worst of it. I hope." DC 24

94. Ms. Wilkel replied in less than twenty minutes . . . I still think you should consult with an attorney on this as soon as possible, and perhaps more than one – just like in medicine get a second opinion so you can evaluate all your options. . . Ms. Wilkel provided Attorney Lauren Kolitch's email address. DC 24
95. Ms. Binette's "mental health was declining." Her "cutting" episodes were getting more frequent. Eventually, it got to the point where she "cut" 800 days in a row. Tr. 799: 9-18
96. At his February 26, 2013, meeting with Ms. Binette, Dr. Kaufman noted that Ms. Binette "seemed defensive . . . She has lost her job and said she quit because of sexual harassment of her employer but did not elaborate." DC 32

March – 2013

97. On March 4, 2013, Ms. Binette wrote an email to Respondent. She said that time she had worked for Respondent was "the best year of my life." She said that "... every day I think about how it feels/ felt to be in the same room with you, I melt to the floor in my tears with a heart that is no longer complete. . . If you hate me I understand because I hate you too, but it's because I don't know how to love you and having lost you I see that I was not able to meet your needs . . ." R-1 (FF)
98. At her scheduled meeting with Dr. Kaufman on March 12, 2012, a little over one week after she sent the email telling Respondent that the time she worked for him was "the best year of (her) life, Dr. Kaufman reports in his notes that: "Pam states that she is very unhappy not working. She states she quit her job when her boss masturbated at work! Currently she is unhappy about having lost a job that she actually enjoyed. She has not kept appointments with her own therapists to discuss the issue." DC 33
99. At her scheduled meeting with Dr. Kaufman two weeks later on March 26, 2012, Dr. Kaufman reports in his notes that "Pam states that she is very anxious as she deals with her job situation . . . She has decided not to return to her old job and is looking for work. Her experience with her boss has been very upsetting and she has made an appointment with her therapist." DC 34

April - 2013

100. On April 26, 2013, Ms. Binette sent an Email to Attorney Lauren Kolitch: I was referred to you by Liz Wilkel. I need your help. My boss is an attorney and he has been sexually devastating me and

my life to a point that I hardly feel alive anymore and I am VERY INCREDIBLY AFRAID of his statements and I guess they are threats. Maybe you can help. If so, I have a few pages I can email you to give you a clear but not detailed description of how ill I have fallen. I can't do this anymore. Best regards. Pamela" (emphasis in original) DC 25

May-2013

101. On May 9, 2013, Ms. Binette met with Detective Lance Burnham of the Vermont State Police and gave a recorded statement. That statement prompted Disciplinary Counsel to review files relating to Ms. Binette and ultimately file Counts II and III of the Petition in this matter.¹⁵ The "Binette Counts" were brought for the first time in June 2017. Ms. Binette had not initiated the complaint. Detective Burnham called her: "When I contacted Ms. Binette it was more to corroborate Ms. Poutre's statements. I had no idea she was a victim or even an alleged victim until she came and we conducted an interview at the Sheriff's (Lamoille County) Department." Tr. 248: 23-25; Tr. 249: 1-10

July- 2013

102. Detective Burnham interviewed Respondent in Respondent's Newport office on July 3, 2013. After assuring himself that Respondent was aware of his rights, Detective Burnham advised Respondent of claims that had been made against him, including those made by Pamela Binette. Tr. 228: 1-5; Tr. 231: 17-20

103. Respondent told Detective Burnham that he had seen Ms. Binette "in court" and asked Ms. Binette to come and work for him. Respondent knew Ms. Binette was in legal trouble before he hired her to work in his law office. Tr. 232: 1-4; Tr. 235: 10-15

104. Respondent told Detective Burnham, when Detective Burnham interviewed him in May 2013, that Ms. Binette had "no legal skills" and "rarely showed up for work." Tr. 235: 20-21

105. At some point while Ms. Binette was working for him, Respondent became attracted to Ms. Binette. Respondent told Detective Burnham that he felt the attraction was "mutual." That is, Ms. Binette was attracted to Respondent and she was attracted to him. Tr. 235: 22-25; Tr. 236: 1-6

106. Respondent gave Detective Burnham an example of why he believed Ms. Binette was attracted to him: Respondent and Ms. Binette were in the law office conference room. Ms. Binette told Respondent she had to change her shirt. Respondent "gave her permission" to change her shirt. According to Respondent, this eventually led to Ms. Binette "rubbing her breasts" (Respondent). Tr. 236: 9-15

107. Respondent told Detective Burnham that he (Respondent) had become "excited" when Ms. Binette was "rubbing her breasts" and "dancing" in front of him. He told the detective that "his penis became erect" and Respondent said he "ended up masturbating in front of Ms. Binette." Tr. 240: 21-25

¹⁵ The "Binette Counts" were brought for the first time in June 2017. Prior Disciplinary Counsel had elected not to pursue the Binette case.

108. Respondent explained to Detective Burnham that at some point before he and Ms. Binette agreed to “date,” Respondent asked his brother, who was also an attorney, to draw up a contract for mutual “protection” so that they could not sue one another if the “relationship ended badly.” Tr. 237: 12-25; Tr. 238: 1-21

109. Respondent told Detective Burnham that Ms. Binette took the contract home overnight to review it before Ms. Binette signed it the next day. Tr. 239: 9-14 Respondent recalled the contract had been signed in “approximately October 2012.” Tr. 239: 5-8

110. Respondent did not tell Detective Burnham that he had advised Ms. Binette to get a lawyer before signing the contract. Tr. 240: 13-15

111. Respondent indicated to Detective Burnham that the incident during which Respondent masturbated in front of Ms. Binette in the conference room had taken place prior to the time he and Ms. Binette had signed the contract. Tr. 241: 1-4

112. Respondent told Detective Burnham that he was aware that Ms. Binette had “mental health issues” and that on occasions when Ms. Binette was not showing up for work, Respondent called Ms. Binette’s parents because Respondent was concerned about her. Tr. 241: 5-21

*Later, toward the end of the portion of the interview dealing with Ms. Binette, Detective Burnham asked Respondent if there was anything else he would like to say about Ms. Binette. Respondent told Detective Burnham that he liked Ms. Binette; but, her “mental health concerns were affecting her decision making while she was at work.” Tr. 243: 7-25; Tr. 244: 15-19

August -2014

113. Ms. Binette told her mother that she was afraid that Respondent was trying to kill her. Tr. 836: 12-18

114. Ms. Binette told her mother that two black men had come up from Connecticut on July 31, 2014 to try to intimidate Ms. Binette for filing a complaint against Respondent. She said the men had dragged her into Lake Memphremagog and held her body under water as a “fear tactic.” Tr. 833: 16-17; Tr. 834: 8-18

115. Ms. Binette’s mother, Diane, knew “something was not right” with her daughter in early August 2014 -right after the alleged Memphremagog incident. Tr. 1044:2-25; Tr. 1045: 1-4 and 20-21

116. On August 11, 2014, roughly two weeks after the alleged incident with the “black men,” Ms. Binette made an unexpected visit to Respondent’s condo. She said that she did so because she wanted to convince Respondent “not to have (her) killed.” Tr. 833: 18-24

117. On August 16, 2014, Ms. Binette began a text exchange with Respondent. At 10:35 p.m. Ms. Binette texted Respondent and told him that she felt she had lost her “best friend” (Respondent). R2-p.7

118. In a text exchange between 11 p.m. and 11:20 p.m. Respondent told Ms. Binette that he would let her “back in (his) life on one condition” - the condition was that she “apologize” for the “lies” she had told “state police.” R-2, pp. 11-13

119. Ms. Binette quickly agreed to apologize. At 11:27-29, Ms. Binette said she needed “the truth to be known.” She said Respondent was “never bad to (her) - ever.” She said that she was the “bad guy” and she wanted her “falseness to be known.” She said she had “lied out of self-pity.” R-2, pp. 14-15

120. At 11:34 p.m. Respondent texted that he was really “impressed” with Ms. Binette’s apology. - “You know what – I think you are no longer a girl. You are a woman now.” R-2, p.15

121. At 11:40 p.m. Respondent texted to Ms. Binette: “I can be with you now.” A few minutes later he texted that he had never forgotten Ms. Binette and said now that she had apologized he could “start healing.” Approximately half an hour later (00:14 on August 17) Ms. Binette accepted Respondent’s invitation to spend the night at his condo. (11:45 p.m.) R-2, pp. 17-18, pp.20-24

2015

122. Ms. Binette and her mother acknowledged on cross-examination that there had been other episodes of paranoia in 2015. Ms. Binette told her mother that she was abducted in Milton on September 1, 2015 after someone had given her a “pink pill.” Tr. 835: 17-25; 836: 1-10; Tr. 1030: 18-24 Ms. Binette also developed a fear that there was a “motorcycle gang” after her. Tr. 838: 4-11.

123. Ms. Binette only began to develop the clearly unreasonable fears that she and her mother recounted for the Panel until after she had begun working for Respondent in his law office. Before that, Ms. Binette had not been plagued by the fear of being “locked in”, or of becoming a “speed bump” or of being abducted after being given a “pink pill” or of “black men from Connecticut” dunking her in Lake Memphremagog Tr. 1044:10-25; Tr. 1045: 1-25; Tr. 1046: 1-5

124. She admitted that her “brain has been kind of warped ever since” mid late July 2012 when Respondent masturbated in front of her and ejaculated on his desk. Tr. 765: 6-11

ADHD and PTSD

125. Dr. Kaufman testified that Ms. Binette had been diagnosed with ADHD as well as PTSD and that he had been treating her for these disorders before she went to work for Respondent. He told the Panel that people with ADHD tend have impaired “executive functioning” in that they tend to see “everything as of equal importance.” They tend to be “impulsive in the sense that they may “try to attend to everything” and as a result “attend to nothing.” Tr. 932: 18-25; 933: 1-20

126. PTSD “has to do with the part of the brain that is referred to as the limbic system. PTSD resides to a significant degree in the limbic system “in the sense that it is filled with emotion.” Tr. 931: 2015

127. According to Dr. Kaufman, people with PTSD tend to react to “stress” by becoming “hypervigilant.” Tr. 932:4-7
128. People with PTSD tend to share a characteristic with people with ADHD in that they tend to be “impulsive.” The symptoms of PTSD and ADHD tend to “overlap” and “feed into one another.” This can lead to a “kind of chaotic functioning” and can “make life incredibly difficult. Tr. 933: 11=17; Tr. 934: 1-14
129. According to Dr. Kaufman, PTSD is a chronic disease. “It doesn’t go away.” The traumatic event Ms. Binette suffered as a child has “hung on” as “part of her mental life” with “attached feelings” or emotions that can be “triggered” by something “associated with” the traumatic event. Sometimes people with PTSD are conscious of what triggers the emotions associated with the traumatic event -sometimes they are not aware of what has triggered the emotions. Tr. 938: 6-22
130. Dr. Kaufman testified that, in his opinion, Ms. Binette had experienced a “triggering event” during the period that she worked for Respondent. Tr. 939: 12-16

Episodes of Paranoia Following Complaint Against Respondent

131. When Detective Burnham interviewed Ms. Binette in May 2013, she complained of Respondent’s treatment of her. No criminal or professional misconduct charges were filed as a result of her complaint. In 2014 and 2015, she experienced what she now admits were episodes of paranoia in which she feared Respondent was trying to have her killed in retaliation for filing the complaint against him. Respondent highlighted these episodes in cross-examination of her.
132. Ms. Binette admitted that she had experienced episodes of paranoia after working for Respondent. She had discussed it with Dr. Kaufman. “I have a tendency to become paranoid when my rational thinking checks out. And that does happen, and it is unfortunate, and it is hard to get through that and it’s hard to navigate back to rational thinking, but I can do that it’s very doable.” Tr. 837: 9-16
133. Dr. Kaufman explained that people, like Ms. Binette, whose PTSD is triggered, can “disassociate” to point that they “misinterpret”¹⁶ what is going around them in their environment to the point that their “judgment is impaired.” They can “look psychotic” and they “can certainly look paranoid.” Dr. Kaufman explained further that a person with “paranoid disorder” are in a “constant” state of “paranoia and psychosis.” But, with Ms. Binette and others in her condition, the paranoia is episodic. It “eventually passes” and when it passes, “if you meet the person in the street, they’re not paranoid.” They are like “anybody else.” Tr. 949: 7-25
134. In discussing Ms. Binette’s PTSD, Dr. Kaufman explained that when PTSD is triggered it “overwhelms your capacity to think straight.” Ms. Binette can appear “delusional” to others. Dr. Kaufman told the Panel that Ms. Binette has adopted “coping mechanisms” for dealing with Ms. Binette sees as a potential threat. Tr. 951: 1-25; Tr. 952: 1-5

¹⁶ Dr. Kaufman repeatedly rejected the claim that Respondent made on cross-examination - that people with PTSD like Ms. Binette make false accusations because it is not a symptom of their disease. Tr. 1210:17 through Tr. 1212: 1-25

135. Dr. Kaufman explained that one way that Ms. Binette copes with a perceived threat is “withdrawal” - she withdraws to her room and avoids “social engagements.” Tr. 952: 5-9 But, there are also times when Ms. Binette copes by doing the opposite of “withdrawal” - she “engages” what she sees as a potential threat: “Some people see it as counterphobic - you’re afraid of that so a way to deal with it is to be involved with it and make things better by altering whatever that threat is.” Dr. Kaufman explained that Ms. Binette goes “back and forth” between withdrawing from the potential threat and engaging and embracing it in an effort to “make things better.” According to Dr. Kaufman, this is a “familiar pattern” to those who practice psychiatry.

Tr. 952: 9-17; Tr. 953: 24-25; Tr. 954: 1-5

136. Dr. Kaufman said that it is not unusual in his experience for women who are in abusive, or clearly “destructive relationships” to stay, or return, to those relationships. In the past, he said, people have tended to blame the woman for causing her own problems – “saying why don’t get out of the relationship.” That’s “wrong” he said. “That is one of the things that happens in that kind of a relationship. You stay in it for a variety of reasons, trying to make it better. I see it every day. Tr. 952: 22-25; Tr. 953: 1-15

Respondent’s Testimony at the Merits Hearing

Waiver Document

137. Respondent testified at the November 2017 merits hearing that in May 2012 his father, Atty. M. Jerome (“Jerry”) Diamond gave him some advice as he was considering whether to date Ms. Binette. According to Respondent, his father said “. . . before that (relationship with Ms. Binette) happens it might want to make sure that you have something in writing that evidences what you share was mutually consented to.” Tr. 511: 1-4

138. Respondent testified that “a day or two” after he told Ms. Binette that he wanted “something in writing” (late May or early June 2012) his brother, Atty. Josh Diamond called to propose “The Notice of Intent to Engage in a Mutually Welcomed Romantic Relationship and Waiver of Claims” (Waiver Document). Respondent told the Panel he was taken aback by his brother’s call: “I mean it wasn’t my doing . . . the phone call caught us (Respondent and Ms. Binette) off guard . . . and so we asked Josh why he was calling. Tr. 513: 19-25; Tr. 514: 1-2

139. Respondent told the Panel, again this was at the November 2017 merits hearing, that he was “disappointed” with what his brother, Josh had drafted. He said he had “the impression that he (Josh) got it off the internet as a standard form. . . I did not, and neither did Pamela, ask him for a form that said to waive sexual harassment claims or anything like that.” Tr. 516: 9-11

140. Two months later, at the January 3, 2018 merits hearing, Respondent testified that before he and Ms. Binette signed the Waiver Document on September 28, 2012, he “took out” a paragraph. According to Respondent, he had the document his brother, Atty. Josh Diamond had sent him, on “(his) computer” and he and Ms. Binette went through the document (DC-2) “paragraph by paragraph.” He said there was one paragraph with “legal cites or citations” that neither he, nor Ms. Binette, understood, so they agreed to “just take it out.” Respondent said they took “it out.”

Respondent says he told Ms. Binette that he was “fine” with the document once the paragraph with the legal citations was taken out¹⁷. Tr. 1082: 11- 22 (emphasis added)

141. The only paragraph in the document his brother had drafted (DC-2) that contained “legal cites or citations” was ¶ 3 (e.g. “Title VII of the Civil Rights Act”) - the provision in which Ms. Binette waived her right to sue Respondent for sexual harassment.” The document Respondent and Ms. Binette signed on September 28, 2015 (DC-5), retains ¶ 3 – the waiver of Ms. Binette’s right to sue that Respondent’s brother had drafted. It had not been “taken out.” It is still there. (DC-5)

142. Respondent told the Panel at the January 3, 2018 merits hearing that he and Ms. Binette signed the document (DC-5) “together” on September 28, 2012. Tr. 1082: 23-25; Tr. 1083: 1-25

Ms. Binette’s Mental Illness

143. Respondent testified at the January 3, 2018, merits hearing that he was “never” aware that “(Ms. Binette’s mental health was affecting her work. Tr. 1247: 15-22

144. At the January 3, 2018 hearing, Respondent also denied that he was aware that his attorney had filed an Answer to Counts II and III in the Petition charging him with Unprofessional Conduct which said:

* Answer, Count III, paragraph 13: “Respondent admits he told detective that Ms. Binette had “some mental health challenges that had adversely affected her work, but respondent had not recognized the extent of those challenges until the end of her employment when she stopped showing up for work, and the mental health challenges only became manifest in communications from Ms. Binette to respondent only after she was no longer employed by respondent.”¹⁸ Tr. 1247: 23-25; Tr. 1248 through 1251: 1-3

August 7, 2012 Email (DC-3)

145. After the late July 2012 “masturbation incident”, Ms. Binette sent Respondent an email (DC-3) complaining that he had violated her rights as an “employee” and a “human being.”

*Respondent testified that Ms. Binette had confided in him that, despite what it said, the email had nothing to do with the way he had treated Ms. Binette. Instead, he claims, it was to “cover up” the fact that Ms. Binette had an abortion. Respondent said Ms. Binette told him “. . . that (the email) was just something she had done to appease her parents, and then I told her I really didn’t understand that, and then she said. Well, just between you me and a fence post, I don’t want you to tell anybody about this, but I went and had an abortion, and I was like - What? And she said I, you know, words to the effect of I had to cover up what happened or something.” Tr. 1119: 12-18 Tr. 1119: 3-411.

- a. Ms. Binette’s mother, Diane, testified that in 2011, the year before she went to work for Respondent, Pamela had told her mother that she’d had an abortion. Mrs. Binette told the Panel that she supported her daughter’s decision. Tr. 1046: 6-19

¹⁷ Respondent never identified, or sought to introduce, the document that claimed had the the paragraph with the “legal citations taken out.

¹⁸ Respondent’s Answer to allegation 13 in Counts II, III of the June 1, 2017 Petition Charging him with Unprofessional Conduct. Disciplinary Counsel asks the Panel to take “Official”/ Judicial Notice of the Answer Respondent filed. 3 VSA810 (4)

b. When asked on cross-examination to explain why email was needed to “appease” her parents, when her mother, Diane Binette, had testified that her daughter had the abortion in 2011 and that she (Diane Binette) had supported her daughter’s decision, Respondent backed off his claim that Ms. Binette had told him that she wrote the email to “cover up” the fact she had an abortion. He changed his testimony and said only that he had “gotten the impression” that “(Ms. Binette) wanted to hide it (the abortion) from her parents.” Tr. 1256: 22-25; Tr. 1257:1-4

146. Respondent insisted that he had recorded the alleged conversation about the “cover up.” But, the recording was not available. At first, he testified that he had recorded the conversation on his old iPhone but “the button on it broke and AT&T could not resurrect the information.” He also said the phone had “water damage” Tr. 1120:7-10 Later, at the close of Respondent’s testimony, a Panel member asked Respondent about the recording that was “inadvertently destroyed” -the recording he allegedly made of his conversation with Ms. Binette after he received the August 7, 2012 email (DC-3) from Ms. Binette - Respondent said: “I don’t believe it got destroyed, sir.” He said he didn’t remember what happened to it. “It’s gone. I can’t find it.” Tr. 1270: 14-25

Sex with a Client in the Office Conference Room

147. In January 2013, Respondent had sex in the office conference room after business hours with Erin Oeschger. Tr. 785: 21-24; Tr. 789: 1-15 Ms. Oeschger was a client¹⁹ of Respondent. Tr. 787: 4-6 Respondent was representing Ms. Oeschger in a divorce and a criminal matter at the time. Tr. 1155: 6-25; Tr. 1156: 1-14 Ms. Binette and Ms. Oeschger had been engaging sexual contact in the office conference room. Ms. Oeschger invited Respondent into his conference room to participate. Respondent admitted to the Panel that he had sex with Ms. Oeschger in the conference room. Tr. 1128:1-17

Paper Clips

148. Respondent denied that he had tossed paper clips at Ms. Binette’s breasts and cleavage. He told the Panel that on one occasion, he scooped up a handful of paper clips, tossed them in the air and they all landed on (Ms. Binette).” He testified a short time later that a single paper clip from the group he had tossed in the air had landed in Ms. Binette’s cleavage area. He suggested that the incident may have prompted what he alleged was Ms. Binette’s false testimony about tossing paper clips at her breasts and cleavage area. But, he insisted that “nothing (Ms. Binette) said about paper clips is true.” Tr. 1114: 2-71115: 1-9

Respondent Wrote the “Post It” Note “U Drive My Pants Crazy” (R-6) After Ms. Binette Signed the Waiver Document

149. Respondent testified that he had written the note (R-6) telling her that she made his “pants crazy” and she makes him want to masturbate after Ms. Binette had signed the contact on September 28, 2012. Tr. 1121: 9-15

¹⁹ Respondent also called a former client, Christian Cornelius, who appeared to suggest in his testimony that when Ms. Binette referred to having to pull on Respondent’s tie while he masturbated, she was actually referring to having to “straighten” Respondent’s tie before a court appearance - not a “lewd act.” Tr. 1092:10-25; Tr. 1093: 1-10. Respondent also suggested that Mr. Cornelius was the victim of “witness intimidation.” Mr. Cornelius eventually acknowledged that he was afraid Ms. Binette would “slander” him -not harm him physically. Tr.1099:4-21

Dated at Burlington, Vermont on February 26, 2018

Robert V. Simpson, Jr.
Disciplinary Counsel