

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

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

Disciplinary Counsel's Reply to Respondent's Motion to Dismiss

Disciplinary Counsel renews his September 1, 2017 request for an order barring Respondent, or anyone acting on his behalf, from attempting to contact Ms. Pamela Binette concerning any matter related to these proceedings "without disciplinary counsel being present." This Panel now has an added reason to grant the order. Disciplinary Counsel will not call Ms. Binette to testify at the merits hearing.

1. Respondent Received Ms. Binette's "No Contact" Notice on July 18, 2017

During the weekend of July 15-16, Respondent left a phone message asking Ms. Binette's parent's help in contacting "Pam." He left his phone number. Ms. Binette's father, Chris, returned the call the next day- probably Monday, July 17- and asked Mr. Diamond why he was calling for Pam. Mr. Diamond told Mr. Binette that he wanted to find out the "truth."

Pamela Binette emailed Disciplinary Counsel on Tuesday, July 18, 2017 at 1:29 p.m. asking for help. She wrote that she was emailing "about the latest contact Mr. Diamond had with me." She said: "I'm not comfortable with these intrusive memories." Disciplinary Counsel called Ms. Binette and drafted an email (text of DC-1) to send to Atty. McGee. I then emailed the draft to her for her review and approval. Ms. Binette replied at 3:07 p.m. She said that she "must add" that she had called Mr. Diamond's cell phone "yesterday" (July 17). She said that she had been "unaware" that it was Mr. Diamond's phone number when she called. She said that she had spoken to Mr. Diamond for "a brief moment" and then "ended the call." She went on to say: "Either way. I want no one from their gang calling following or harassing me."

Disciplinary Counsel sent the email he had drafted to Attorney McGee at 4:09 p.m. He responded promptly and later confirmed that he had forwarded the email to Respondent and Mr. Diamond.

2. August 29-30, 2017 – Renewed Effort to Take Advantage of Ms. Binette

On Tuesday, August 29, 2017, Atty. McGee wrote to Disciplinary Counsel that he was "noticing" Ms. Binette for a deposition on September 12, 2017. I responded that I could attend the deposition on September 12 and that I expected to be able to tell him by Friday (September 1) whether Ms. Binette would be able to attend.

Atty. McGee did not mention in his August 29 letter to Disciplinary Counsel that he intended to ask his investigator to serve Ms. Binette with a "Notice of Deposition" and a

subpoena duces tecum the following day. He also failed to mention that he intended to have the investigator attempt interview Ms. Binette when she served her¹.

Disciplinary Counsel drove to the home Ms. Binette's shares with her parents in Beebe Plain on Thursday, August 31, 2017, to advise Ms. Binette (Pam) that she was going to be deposed and to explain what she could expect.

As it turned out, it wasn't necessary to tell Pam that she was going to be deposed on September 12. Pam and her mother, Diane, both advised that Atty. McGee's investigator had appeared at their home at 5:30 p.m. the evening before and left papers indicating that Pam was going to be deposed at Respondent's office. Diane Binette said that the investigator did not identify herself at first. She said that the investigator immediately asked if she could speak with Pam. Pam agreed to speak with her in another room.

When I spoke to Pam that morning, she said she was upset and angry that she was going to be deposed in the place where Respondent had treated her so badly. She was also angry that the investigator had asked questions that challenged the credibility of the complaint she had filed against Respondent and that the investigator had showed her a text, which Pam said was not authentic, in which Pam apologized to Respondent for fabricating the complaint against him. Finally, Pam was angry that the investigator did not tell her until she (the investigator) had finished her questioning that their Q & A had been recorded.

Although I had driven to the Binette home to speak to Pam about the upcoming deposition, I had also wanted to speak to Pam's parents. Her mother had told me in July, around the time of the calls from Mr. Diamond, that Pam's mental health had deteriorated since the Petition against Respondent had been filed. The discussion of Pam's health took up at least half of the time I was there. I spoke first to Pam's parents and then with Pam and her parents. By the time I finished speaking with them, I told them that she and her mom should plan on attending the September 12 deposition; but, that I would speak with Pam's psychiatrist as soon as possible.

I left a message with Pam's psychiatrist, Dr. Elliot Kaufman the next day (September 1) - the same day I filed the "No Contact" motion.

3. Dr. Kaufman Advises Against Permitting Ms. Binette to Testify

Dr. Kaufman has treated Ms. Binette for many years. He was treating her when she began working for Respondent in January 2012. I spoke to him on Thursday, September 7 and asked him to give me his opinion on whether testifying at the September 12 deposition and a

¹ on August 29, 2017 also wrote a letter to Ms. Binette (DC-2-SM ltr-MsB-8-29). In the letter to Ms. Binette, Atty. Mc Gee advises Ms. Binette that "You may be able to speak with Susan Randall the person who is serving you with the deposition notice , and we encourage you to do so. You are also welcome to call me at any time and I would be pleased to speak with you.

I am sorry we are having to proceed in this fashion, but our efforts to reach you informally have not been successful."

November merits hearing “would pose an unreasonable risk to (Ms. Binette’s) mental and physical.

He replied in a letter the following day- September 8:

“I very much believe testifying on Tuesday, September 12, 2017 poses an unreasonable risk to her (Ms. Binette’s) mental and physical health in that she has not been prepared with the help of a therapist, to deal with the feelings that are already being triggered as a result of revisiting the history of what was a traumatic experience. I spoke with Ms. Binette by phone two days ago, she expressed self-harm thoughts and impulses at the thought of having to return to that history of events and therefore scheduled an appointment with her next week. She has just recently begun meeting with a new therapist who, I assume, is in the process of learning about her history of trauma. It is that history of childhood and adult trauma that makes her vulnerable to being re-traumatized when exposed to triggering events. This is what is happening now in regards to the deposition and merits hearing. Her history does include acts of self-harm so I take such acts of self-harm very seriously.”

Disciplinary counsel told Atty. McGee on September 9 that Ms. Binette would not be testifying at the deposition and later confirmed that, based on Dr. Kaufman’s advice, I would not call Ms. Binette to testify at the merits hearing.

4. Reply to Respondent’s Affidavit

Disciplinary Counsel’s September 1, “Motion for No Contact” set out three basic reasons why it was “unreasonable” and “unfair” to permit Respondent to continue to attempt to contact Ms. Binette:

- 1. Respondent was notified on July 18, 2017 that Ms. Binette did not want Respondent, or anyone acting on his behalf, to contact her;
- 2. By Respondent’s own account, Ms. Binette has “mental health problems” that at times seriously impair her decision-making;
- 3. There was no reason for Respondent to take a recorded statement from Ms. Binette at her home on August 30, 2017 because he had “noticed” her for deposition which was to take place in two weeks (September 12, 2017)

Respondent replied on September 9. His reply does not offer any counter to the three justifications for the proposed “No Contact” order. But, the most significant the failure is to even acknowledge Ms. Binette’s fragile mental condition.

Respondent, is charged with taking advantage of a Ms. Binette, a person who he knew was suffering from a mental condition that impaired her decision-making, when he urged her to sign a contract on September 28, 2012, which waived her right to sue him for sexual harassment in exchange for his conditional promise to continue to employ her.

No one, including Respondent, has denied that Ms. Binette’s mental health is fragile. Ms. Binette candidly acknowledged near the beginning of her interview with Detective Burnham of the Vermont State Police in May 2013 that people in Orleans County are reluctant to hire her

because of “who I am” – because her well-known mental health problems. According to her psychiatrist, Ms. Binette suffers from a chronic mental health disorder which can disrupt her thinking when triggered by memories of a traumatic event.

Respondent’s affidavit makes no mention of Ms. Binette’s mental disorder. Yet, the description of Ms. Binette’s confused and contradictory behavior on July 18 – the day she asked for Disciplinary Counsel’s help – may be a good example of her mental disorder.

Respondent’s father, says in his affidavit² that he contacted Ms. Binette on July 18 and she told him “that she did not understand why the investigation was going forward” and that “(Respondent) did not deserve this, he’s a wonderful person.” According to Mr. Diamond, Ms. Binette told him she would be “comfortable” having Respondent’s investigator come to speak to her.

Yet, not long after Mr. Diamond says this happened – 1:30 in the afternoon of July 18 - Ms. Binette emailed Disciplinary Counsel complaining of the “latest contact” with Mr. Diamond because she was “*not comfortable*” with these intrusive memories and she followed up with an email at 3 p.m. that said she didn’t want Respondent’s “gang” harassing her anymore.³ This prompted Disciplinary Counsel’s to draft an email, which was later reviewed and approved by Ms. Binette, which gave Respondent notice that Ms. Binette did not want Respondent or anyone acting on his behalf contacting her.

Respondent honored that request for roughly six weeks-until August 30. On that date, as noted earlier, Respondent, through his attorney, decided to send an investigator to Ms. Binette’s home and take a recorded statement from her. Respondent’s affidavit does not explain why it was necessary to disregard Ms. Binette’s request for no contact when a deposition was scheduled in a little less than two weeks. He cannot cite any legal right that would have been denied him if he had honored this troubled young woman’s request that Respondent honor her privacy - her request to be left alone.

The only reasonable explanation for what happened at Ms. Binette’s home on August 30, is that Respondent, through his attorney, used the power given to attorneys to issue subpoenas, as a vehicle to attempt to take advantage of Ms. Binette and gain an advantage in this proceeding.

Discovery Schedule

Disciplinary Counsel renews his 9/1/2017 request for an order requiring parties to exchange witness lists and exhibits on, or before, September 18, 2107.

Witness Lists

Disciplinary Counsel intends to call the witnesses identified in his September 1, 2017 Discovery Memo with the exception of Ms. Binette.

² Paragraph 18

³ This email and a follow up email are described in footnote 1 (above)

I do intend to call Dr. Kaufman. Although he has not formally agreed to testify, I have emailed Atty. McGee a copy of his letter because, aside from recommending that Ms. Binette not be called to testify, he gives his opinion on two other questions which will be relevant in the merits hearing.

Additions to the Witness List

Disciplinary Counsel will call Chris and Diane Binette, Pamela's parents. They will testify that Ms. Binette was happy, at first to be working for Respondent at his law office. But, in mid-2012, she became upset and angry with Respondent's conduct.

Disciplinary Counsel will file a list of all witnesses he may call with Ms. Laferriere on September 18.

Depositions

Disciplinary Counsel has informed Atty. McGee that I intend to depose Josh Diamond, Respondent's brother. I reserve the right to call other depositions depending on the witnesses and exhibits Respondent discloses,

Exhibits

Disciplinary Counsel emailed all exhibits I may seek to admit at the merits hearing to Atty. McGee on September 12.

Production of Documents

Disciplinary Counsel renews his request to order Respondent to produce the recording of his investigator's interview with Ms. Binette at her home on August 30.

Dated at Burlington, Vermont on September 13, 2017.

Robert V. Simpson, Jr.
Disciplinary Counsel