

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

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

Disciplinary Counsel’s Reply to Respondent’s Motions to Enlarge/ Supplement the Record

I. Vermont House Bill 707 – Proposed Amendment to 21 VSA 495 h

Disciplinary Counsel (DC) takes no position on whether the copy of H 707 should be considered by the Panel.

However, if the Panel does consider H 707, it should reject Respondent’ claim that the provisions of H 707 cited by Respondent stands for the proposition that “at the present time, Vermont does not have an established policy on the issue of waiving claims of sexual harassment.” It is more reasonable to believe that the Legislature intended this proposed legislation to make more explicit what is already Vermont policy and law.

It is reasonable to believe that the State of Vermont has incorporated the determination by the US Supreme Court that there can be no prospective waiver of Title VII rights as a part of state policy. *Alexander v. Gardner Denver*, 415 US 36, 51 (1974) The evidence showed that Respondent saw the waiver provision in the “Notice of Intent to Engage in Mutually Welcomed Romantic Relationship and Waiver of Claims” - ¶ 3 of DC-5 – as a provision that would provide him with “protection” in the event the “romantic relationship” he envisioned with Ms. Binette “ended badly.” DC’s Proposed Findings – “Binette Counts” (BF) #108

DC has copied (below) the full text of proposed amendment to 21 V.S.A. § 495h (g). Respondent cites proposed section (g)(1) (B) in support of his claim that “at the present time, Vermont does not have an established policy on the issue of waiving claims of sexual harassment.” However, as noted above, the US Supreme Court said in *Alexander* that any proposed “prospective waiver” of a Title VII right is contrary to public policy and unenforceable. Again, it is reasonable to believe that current Vermont law and policy already bans the prospective waiver of Ms. Binette’s right to sue Respondent for sexual harassment that Respondent contemplated. 415 US 51; BF 108

(g)(1) An employer shall not require any employee or prospective employee, as a condition of employment, to sign an agreement or waiver that does either of the following:

(A) prohibits, prevents, or otherwise restricts the employee or prospective employee from opposing, disclosing, reporting, or participating in an investigation of sexual harassment; or

(B) except as otherwise permitted by State or federal law, purports to waive a substantive or procedural right or remedy available to the employee with respect to a claim of sexual harassment.

(2) Any provision of an agreement that violates subdivision (1) of this subsection shall be void and unenforceable. (h)(1) An agreement to settle a claim of sexual harassment.

Moreover, proposed section (g) (1) (A) - the provision that precedes the provision relied on by Respondent would bar any agreement which would, as a condition of employment, “prevent” any employee, or prospective employee, “opposing, disclosing, reporting or participating in an investigation

of sexual harassment.” Under Respondent’s reading of the proposed statute, this proposal means that there is at this time no Vermont policy or law that bars agreements that would prevent employees from “disclosing” that they have been sexually harassed. Again, it is more reasonable to believe that the proposal only makes more explicit, what is already Vermont policy and law.

II. Information and Affidavit Charging Andrea Poutre with Selling Heroin

Again, Disciplinary Counsel does not object to Respondent’s motion to enlarge/supplement the record – in this case to have the Panel consider the information and affidavit charging Andrea Poutre with sale of heroin. Again, however, DC asks the Panel to reject the conclusions Respondent asks Panel to draw from his offer.

Neither the fact that Ms. Poutre was being investigated for sale of heroin in the three months prior to the time she testified on November 13, 2017; nor the fact that she was charged around the time she testified, is admissible substantively on the issue of whether Respondent engaged in unprofessional conduct in his treatment of Ms. Poutre in January and February 2013. That is, the fact that Ms. Poutre is charged with sale of heroin in August 2017, does not tend to prove, or disprove, any material fact at issue in this proceeding. Moreover, the fact that Ms. Poutre was being investigated, and had been charged, or was about to be charged, when she testified was not, and is not, admissible to impeach her under VRE 607, 608 or 609.

However, the fact that Ms. Poutre is an opiate addict is fair grounds for impeachment under VRE 607. In her direct testimony before this Panel, Ms. Poutre testified that she was an opiate addict and that she was still in treatment for opiate addiction. She also testified on direct testimony that she had been convicted of four violations of probation (VOP), including the violation that led to her brief incarceration at the Chittenden Correctional Center in January 2013. She told the Panel, again on direct, that her opiate addiction was responsible, in part, for each of these violations. DC’s Proposed Findings in Ms. Poutre’s case (PF), paragraphs 12-14

Respondent acknowledges on page 2 of his motion that “heroin trafficking may not constitute an admission of continued use of heroin.” He then goes on to ask the Panel to assume Ms. Poutre was using heroin around the time she testified, and to assume further, that it affected the credibility of her testimony. If the Panel is inclined to adopt these assumptions, it should focus on the credibility of Ms. Poutre’s testimony concerning Respondent’s treatment of her in January and February 2013. Just as importantly, the Panel should focus on the credibility of Respondent’s testimony concerning his treatment of Ms. Poutre during that period.

Two Examples of Ms. Poutre’s Credible Testimony and Respondent’s Incredible Testimony

1. January 2013 – After Ms. Poutre’s Sentencing on Her 4th VOP

Ms. Poutre’s Testimony

Ms. Poutre testified that when she and Respondent walked back to Respondent’s office in January 2013 after sentencing on her 4th VOP, she noticed that her longtime boyfriend and her young son were waiting for her in her boyfriend’s car outside Respondent’s office. They were going to take her home. PF 23-24

It was Friday night. The judge had just sentenced her to report to the Chittenden Correctional Center the following Monday. She went into Respondent’s law office to pick up her purse which was on a

table built into the wall. Ms. Poutre testified that as she was getting her purse, Respondent “shoved” her into the table, pressed his body against her body and began “groping” her and trying to kiss her. Ms. Poutre went on to tell the Panel that Respondent “humped” her leg and “ended up ejaculating.” PF 25-27

Respondent’s Version

Respondent told the Panel that he remembered the incident in his office after Ms. Poutre’s sentencing. He also remembered ejaculating. But, he insisted that Ms. Poutre was the aggressor and that it was her aggressive conduct that caused him to ejaculate.

Respondent testified that when he and Ms. Poutre returned to the office after the sentencing, Ms. Poutre was “euphoric” 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 married 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

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.

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 Ms. Poutre and her boyfriend didn’t break up until 4 years later - in 2017. Tr. 670: 17-21

2. February 2013 – Ms. Poutre’s Daughter Is Present

Ms. Poutre testified that 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 YouTube videos on a computer¹.

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.²

¹ PF## 51, 52

² PF #53

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.

She testified 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 testified that her daughter "came out (of Respondent's office) and saw again and was like Mom what are you doing?"³

Respondent's Version

Respondent testified that he did remember this incident. He confirmed that he and Ms. Poutre were looking at her daughter playing in his office from another office. But, once again, under his version of events it was Ms. Poutre who was the aggressor.

According to Respondent, Ms. Poutre came up behind him, grabbed his crotch and told him 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, 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

To accept Respondent's testimony regarding 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 him⁴.

Ms. Poutre's Failings

Ms. Poutre is an opiate addict. She is also a convicted felon and has been convicted of four probation violations - all the VOPs were due, at least in part, to her addiction. Ms. Poutre did not try to hide these facts from the Panel. If she is convicted on her pending charge of sale of heroin, she will have a second felony conviction and will face the prospect of a lengthy jail sentence. But, this does not disqualify her from being a victim. Just as importantly, it does not excuse Respondent's treatment of her.

Respondent appeared at Ms. Poutre's VOP arraignments, offered to represent her and then represented her without charge on each of them.⁵ His law license gave him access to her. Respondent hired Ms. Poutre as his legal secretary within days of her release from prison in late January 2013. The fact that he was her employer gave him power over her.

³ PF## 53-55

⁴ To believe Respondent's version of events, the Panel would also have to believe Ms. Poutre made up a story that had her being humiliated in the presence of her daughter and then came to Montpelier to repeat it in the presence of strangers.

⁵ PF ##15-20

The Panel has heard clear and convincing evidence that Respondent has used his access to Ms. Poutre as her lawyer, and his power over her as her employer to exploit Ms. Poutre's failings and subject her to unwelcome, demeaning, and grossly offensive behavior.

Dated at Burlington, Vermont on March 20, 2018

Robert V. Simpson, Jr.
Disciplinary Counsel