
OFFICE OF ATTORNEY ETHICS,

Complainant,

v.

MICHAEL S. GAROFALO , ESQ.,

Respondent.

SUPREME COURT OF NEW JERSEY
District XIV Ethics Committee

Docket No. XIV-2014-0318E

Disciplinary Stipulation

Charles Centinaro
Director
Office of Attorney Ethics
P.O. Box 963
Trenton, N.J. 08625

Jason D. Saunders
Deputy Ethics Counsel
Of Counsel

THIS STIPULATION is made and entered into between Respondent, Michael S. Garofalo, ("Respondent") and Complainant, the Office of Attorney Ethics ("OAE"), Charles Centinaro, Director, by Jason D. Saunders, Deputy Ethics Counsel.

A. Unethical Conduct Committed

1. The Respondent, Michael S. Garofola, Esq., was admitted to practice law in the State of New Jersey in 1998.
2. Respondent is a municipal and land use attorney.
3. At the time of the events forming the basis for this Complaint, Respondent was a partner with Laddey, Clark and Ryan, LLP. ("Firm") located at 60 Blue Heron Road, Suite 300, Sparta, New Jersey 07871 (Sussex County).
4. Respondent was employed with the Firm from 2000-2014.
5. On or about March 12, 2014, Cherie DePaola ("DePaola") a former employee of the Firm reported an allegation of stalking and harassment to Robin Dolan ("Dolan") the legal administrator at the Firm. [Exhibit 12]
6. DePaola worked briefly for the Firm and left the Firm in 2005.
7. Following the report from DePaola, the Firm immediately commenced an internal investigation of the matter which later resulted in a confidential report dated April 10, 2014.
8. The Firm immediately directed that Respondent cease and desist any communications with DePaola.
9. The Firm directed Respondent cease and desist from using the firm's computers and email system for communications with DePaola.
10. Respondent agreed to cease communications with DePaola.

11. Respondent notified the Firm of his resignation on March 21, 2014 and his intention to take a position at Weiner Lesniak on March 24, 2014.
12. On May 2, 2014, the Firm notified Respondent of their intention to notify the OAE of Respondent's conduct pursuant to RPC 8.3(a) and requested that Respondent self-report the matter.
13. On May 16, 2014, Louis Criscuoli, Esq., ("Criscuoli") on behalf of Respondent, contacted the OAE.
14. On June 3, 2014, Criscuoli formally self-reported the matter on behalf of the Respondent.
15. While employed at the Firm, Respondent commenced a brief consensual sexual relationship with DePaola which started and ended in 2005.
16. DePaola was not employed at the Firm during the sexual relationship.
17. Thereafter, Respondent and DePaola continued to be social friends on and on until the end of 2009.
18. The social friendship deteriorated in late 2009 and DePaola indicated that she did not want any further communications from Respondent.
19. Respondent acknowledged to the OAE in a recorded interview that Ms. DePaola expressed that at least as early as 2012 she did not want any further communications from Respondent.
20. From 2009 to 2014, Respondent utilized the Firm's email system in his communications with DePaola.
21. The emails sent by Respondent to DePaola identified Respondent as a lawyer.
22. The emails were sent to DePaola's work email address.
23. DePaola asked Respondent to stop contacting her on a number of occasions.

24. On July 13, 2011, DePaola unambiguously told Respondent "DO NOT EMAIL OR CALL MY CELL PHONE AGAIN!" [Exhibit 1]
25. After July 13, 2011, Respondent continued this pattern of unwanted emails notwithstanding DePaola's expressed desire to have no further communication. [Exhibit 2]
26. A number of the emails from Respondent to DePaola were offensive, insulting and demeaning. [Exhibit 3]
27. Respondent's emails were often sexual in nature referring to DePaola as a "love doll", "sex toy", "love kitten", "sweetie pie", "lover", "sweetheart", "darling", "sweet pea", "sweet cheeks", "love muffin" and "sweet meats", "love cakes", "sweetness" "sexy" and "sexy girl" [Exhibit 6]
28. Respondent's emails expressed disappointment with DePaola's silence in the face of his many communications.
29. Respondent would refer to her as a "Bitch", "Asshole" or use other offensive language or statements directed at DePaola. [Exhibits 2, 3]
30. Respondent repeatedly expressed how much he loved DePaola.
31. Respondent via email requested sexual intercourse from DePaola in a crude and offensive manner. [Exhibit 4]
32. Respondent via email frequently asked DePaola to marry him and or inquired if DePaola was married yet. [Exhibit 5, 13]
33. Respondent would repeatedly ask DePaola out to lunch or for drinks after work. [Exhibit 6]

34. Respondent via email frequently asked DePaola to go on vacation to the Bahamas, Caymans, Belize or other vacation destinations. [Exhibit 7]
35. Respondent sent hundreds of emails to DePaola from 2009 to 2015.
36. DePaola did not reciprocate the many invitations for vacations, lunch, drinks, or his requests for sexual relations after July of 2011.
37. Respondent threatened DePaola with revealing emails to third parties if she did not meet him or have lunch with him. [Exhibit 1]
38. When DePaola stated to Respondent that she was changing her number, Respondent replied by stating on January 18, 2012, "changing your phone number only makes me come up with other ideas". [Exhibit 8]
39. DePaola did in fact change her phone number.
40. On January 31, 2012, Ms. DePaola filed a report with the Parsippany Police Department. [Exhibit 9]
41. Ms. DePaola did so to document the continuing harassment from Respondent.
42. Respondent was unaware of the report to the Parsippany Police Department.
43. On January 23, 2014, DePaola's present boyfriend filed a report with the Sparta Police Department regarding the ongoing harassment [Exhibit 10]
44. Sgt. John Paul Beebe ("Beebe") spoke with Respondent and told him "if something is going on to stop it."
45. Respondent admitted to the OAE that he spoke with Beebe.
46. Notwithstanding Beebe's advisement, Respondent emailed DePaola again on March 12, 2014. [Exhibit 11]

47. As a result of the March 12, 2014 email, DePaola notified the Firm of Respondent's conduct. [Exhibit 12]
48. Respondent agreed with Thomas N. Ryan, Esq., ("Ryan") at the Firm that he would have no further contact with DePaola.
49. Notwithstanding Respondent's agreement with Ryan and the fact that the present matter was docketed for investigation by the OAE, Respondent sent an additional email on June 26, 2015.
50. Respondent is the municipal attorney for Sandyston Township.
51. Respondent utilized the email address provided by Sandyston Township to email DePaola on June 26, 2015. [Exhibit 13]
52. The June 26, 2015 email from Respondent to DePaola stated, "You married yet?"
53. On August 5, 2015, the OAE conducted a demand interview with Respondent.
54. Respondent swore or affirmed to tell the truth at the outset of the demand interview.
55. At the demand interview, the OAE presented Respondent with the June 26, 2015 email.
56. Respondent initially told the OAE that he did not have an email address from Sandyston Twp.
57. Respondent initially told the OAE that he did not send the June 26, 2015 email.
58. Respondent affirmed to the OAE that he did not send the June 26, 2015 email stating "you have my word".
59. Respondent then admitted that he did have an email address and identified the email address on the June 26, 2015 email as his email address issued by Sandyston Township.
60. Respondent was again asked if he sent the June 26, 2015 email and again Respondent stated "no".

61. Respondent was again asked, "are you sure."
62. Respondent replied, "yes sir."
63. When pressed even further by the OAE and advised that the OAE would subpoena the Township for records from the email server, Respondent finally admitted sending the June 26, 2015 email.
64. Respondent stated "I did it" admitting to sending the June 26, 2015 email to DePaola.
65. Earlier in the interview, Respondent stated that he had not had any communications with DePaola following the March 12, 2014 report to the Firm.
66. Respondent's denials regarding sending the email to DePaola are a misrepresentation made to the OAE while under oath.
67. Respondent vehemently maintained his denial until the OAE implored Respondent to come clean and stated to the Respondent that the records would be subpoenaed.
68. The Firm's internal investigation revealed that Respondent also sexually harassed a firm employee named Wendy Brick ("Brick").
69. Throughout calendar year 2011, Respondent sent inappropriate emails to Brick. [Exhibit 14]
70. Respondent referred to Wendy as "sweet cheeks" and derogatory names in emails while employed at the Firm.
71. Brick advised the OAE that she did not report Respondent's conduct however, Brick felt that Respondent's conduct was inappropriate.
72. In so doing, Respondent violated the Rules of Professional Conduct as follows:
 - a. RPC 8.4(b) – in that Respondent committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects by engaging in harassment in violation of N.J.S.A. 2C:33-4A;

- b. RPC 8.4 (g) – in that Respondent engaged in a professional capacity in conduct involving discrimination by sexually harassing DePaola;
- c. RPC 8.4(g) – in that Respondent engaged in a professional capacity in conduct involving discrimination by sexually harassing Brick;
- d. RPC 8.4(c) – in that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- e. RPC 8.1(a) – in that Respondent knowingly made a false statement of material fact in connection with a disciplinary matter while under oath.

B. Representations

By entering into this stipulation, Respondent waives a proceeding by way of formal complaint and public hearing thereon, it being agreed that the matter may proceed directly to the Disciplinary Review Board (hereinafter “Board”) in accordance with R. 1:20-15(f) for the sole purpose of determining the extent of final discipline to be imposed. The Respondent shall have the right to present relevant and material written evidence of non-causal mitigating factors to the Board which relate to the issue of the quantum of discipline to be imposed. Ethics counsel shall have the equal right to produce relevant and material written evidence of aggravating factors to the Board directed to the issue of the quantum of discipline to be imposed. Any such mitigating or aggravating evidence shall be in writing and in accordance with the briefing schedule determined by the Board. No evidence may be submitted by either party which is inconsistent with the essential facts set forth in this stipulation.

C. Recommended discipline

The Respondent reserves the right to submit in writing his position as to the appropriate level of discipline, in accordance with the Board’s briefing schedule.

The OAE contends that the appropriate discipline is a reprimand based upon the facts of the instant matter and the applicable case law. The OAE's recommendation for discipline is not binding on the Respondent, the Disciplinary Review Board or the Supreme Court.

RPC 8.4(b) Commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

The level of discipline imposed in disciplinary matters based on the commission of a crime depends on a number of factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." Id. at 445-46. Discipline is imposed even though an attorney's offense was not related to the practice of law. In re Kinnear, 105 N.J. 391, 395 (1987). Discipline may be imposed for a violation of RPC 8.4(b) even in the absence of a criminal conviction. See In re Bornstein 187 N.J. 87 (2006).

The most factually analogous case involving a violation of N.J.S.A. 2C:33-4(a) is In the Matter of Jeff E. Thacker, DRB 03-047, wherein Respondent was reprimanded for a disorderly persons conviction of harassment in connection with conduct involving repeated telephone calls to a former client. In that case Respondent Thacker was warned by the Police that further calls would result in a criminal complaint. Despite the warning by police Respondent continued the phone calls.

RPC 8.4(g) Engaging in a professional capacity, in conduct involving sexual harassment and discrimination.

In cases involving sexual misconduct and harassment by attorneys, the discipline has generally been a reprimand. See In re Tucker, 174 N.J. 347 (2002); In re Pinto, 168 N.J. 111 (2001); In re Hyderally, 162 N.J. 95 (1999).

RPC 8.1(a) and RPC 8.4(c) False Statements to the OAE.

The quantum of discipline to be imposed for "a misrepresentation in any context typically results in the imposition of at least a reprimand. The Court has consistently imposed reprimands for misrepresentations to clients, third parties, disciplinary authorities, and the courts." Quoting: In the Matter of Doris Iris Delgado-Shafer, DRB 08-094 (September 9, 2008); citing In re Kasdan, 115 N.J. 472, 488 (1989).

Aggravation

The OAE asserts the following in aggravation:

1. Respondent failed to remediate his conduct despite multiple opportunities to do so.
2. Respondent's misconduct was part of a continuing pattern of conduct.

Mitigation

In mitigation the OAE submits the following:

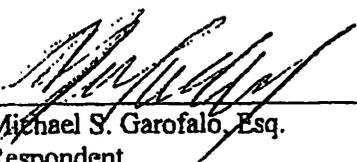
1. Respondent has no prior disciplinary history.
2. Respondent sought medical counseling and direction to address his conduct.

D. Signatures



Charles Centinaro, Director
Office of Attorney Ethics

Dated: 1/14/16



Michael S. Garofalo, Esq.
Respondent

Dated: 1/6/16