

**OFFICE OF ATTORNEY ETHICS
SUPREME COURT OF NEW JERSEY
P.O. Box 963
Trenton, New Jersey 08625
Trial Counsel: Jason D. Saunders
609-530-5808**

**SUPREME COURT OF NEW JERSEY
OFFICE OF ATTORNEY ETHICS
Docket No. XIV-2014-0318E**

**OFFICE OF ATTORNEY ETHICS,
Complainant**

v.

**MICHAEL S. GAROFALO, ESQ.,
Respondent.**

**COMPLAINT
Misconduct (Complex)
R. 1:20-4(b)**

Complainant, Office of Attorney Ethics (“OAE”) of the Supreme Court of New Jersey, P.O. Box 963, Trenton, New Jersey 08625, by way of complaint against Respondent, says:

GENERAL ALLEGATIONS

1. The Respondent, Michael S. Garofalo, 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 against Respondent of stalking and harassment to Robin Dolan (“Dolan”) the legal administrator at the Firm. [Exhibit 1]
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 file a grievance with the Office of Attorney Ethics (“OAE”) 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.

COUNT ONE

Commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of N.J.S.A. 2C:33-4(a) or (c) and RPC 8.4(b);

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

Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of RPC 8.4(c);

False statements of material fact to the OAE in connection with a disciplinary matter in violation of RPC 8.1(a).

15. The General Allegations are repeated as if set forth fully at length herein.
16. While employed at the Firm, Respondent commenced a brief consensual sexual relationship with DePaola which started and ended in 2005.
17. DePaola was not employed at the Firm during the sexual relationship.
18. Thereafter, Respondent and DePaola continued to be social friends off and on until the end of 2009.
19. The social friendship deteriorated in late 2009 and DePaola indicated that she did not want any further communications from Respondent.
20. 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.
21. From 2009 to 2014, Respondent utilized the Firm's email system in his communications with DePaola.
22. The emails sent by Respondent to DePaola identified Respondent as a lawyer.
23. The emails were sent to DePaola's work email address.

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

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

48. As a result of the March 12, 2014, email DePaola notified the Firm of Respondent's conduct. [Exhibit 11]
49. Respondent agreed with Thomas N. Ryan, Esq., ("Ryan") at the Firm that he would have no further contact with DePaola.
50. 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.
51. Respondent is the municipal attorney for Sandyston Township.
52. Respondent utilized the email address provided by Sandyston Township to email DePaola on June 26, 2015. [Exhibit 13]
53. The June 26, 2015 email from Respondent to DePaola stated, "You married yet?"
54. On August 5, 2015, the OAE conducted a demand interview with Respondent.
55. Respondent swore or affirmed to tell the truth at the outset of the demand interview.
56. At the demand interview, the OAE presented Respondent with the June 26, 2015 email.
57. Respondent initially told the OAE that he did not have an email address from Sandyston Twp.
58. Respondent initially told the OAE that he did not send the June 26, 2015 email.
59. Respondent affirmed to the OAE that he did not send the June 26, 2015 email stating "you have my word".
60. Respondent then admitted that he did have an email address and identified the email on the June 26, 2015 email as his address issued by Sandyston Township.
61. Respondent was again asked if he sent the June 26, 2015 email and again Respondent stated "no".

62. Respondent was again asked, "are you sure."
63. Respondent replied, "yes sir"
64. 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.
65. Respondent stated "I did it" admitting to sending the June 26, 2015 email to DePaola.
66. Earlier in the interview, Respondent stated that he had not had any communications with DePaola following the March 12, 2014 report to the Firm.
67. Respondent's denials regarding sending the email to DePaola are a misrepresentation made to the OAE while under oath.
68. Respondent vehemently maintained his denial until the OAE implored Respondent to come clean and stated to the Respondent that the records would be subpoenaed thereby alerting the Township of the matter.
69. The Firm's internal investigation revealed that Respondent also sexually harassed a firm employee named Wendy Brick ("Brick").
70. Throughout calendar year 2011, Respondent sent inappropriate emails to Brick. [Exhibit 14]
71. Respondent referred to Wendy as "sweet cheeks" and derogatory names in emails while employed at the Firm.
72. Brick advised the OAE that she did not report Respondent's conduct however, Brick felt that Respondent's conduct was inappropriate.

73. 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;
- 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.

WHEREFORE, Respondent should be disciplined.

DATE: *November 23, 2015*

OFFICE OF ATTORNEY ETHICS

By: *Charles Centinaro*
Charles Centinaro, Director

OFFICE OF ATTORNEY ETHICS

OF THE

SUPREME COURT OF NEW JERSEY



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DIRECTOR

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P.O. BOX 963
TRENTON, NEW JERSEY 08625

December 8, 2015

Certified Mail, RRR

Louis Criscuoli, Esq.
1A Main Street, Suite 3
Sparta, NJ 07871

Re: Office of Attorney Ethics vs. Michael S. Garofalo
Docket No. XIV-2014-0318E

Dear Mr. Criscuoli:

Pursuant to your representation that you are authorized to accept service in this matter, I enclose two (2) copies of our complaint and the original and one (1) copy of an Acknowledgment of Service. Please complete and return the original Acknowledgment to me.

In accordance with *R.1:20-4(e)*, your client is required to file a written answer within twenty-one (21) days of your receipt of this complaint. Please note that your client must personally verify the answer. Kindly file the original and one (1) copy of your client's answer and Acknowledgment of Service **directly with me**.

In filing your client's answer, you must follow *In re Gavel*, 22 N.J. 248, 263 (1956) and *R.1:20-4(e)*, which requires the answer to contain:

- (1) a full, candid and complete disclosure of all facts reasonably within the scope of the formal complaint;
- (2) all affirmative defenses, including all claim of mental or physical disability, if any, and whether it is alleged to be causally related to the offense charged;
- (3) any mitigating circumstances;

- (4) a request for a hearing either on the charges or in mitigation; and
- (5) any constitutional challenges to the proceedings. *R.1:20-4(e)*.

You are advised that, while the burden of proof by clear and convincing evidence is on disciplinary authorities to establish unethical conduct, the burden of going forward on all properly raised affirmative defenses and mitigating factors, including claims of mental and physical disability, if any, and whether such defenses or claims are causally related to the offense charged, is on your client. The burden of proof for all medical/psychiatric defenses is clear and convincing evidence. *R.1:20-6(c)(2)(B)*.

Please note that your client must personally verify the answer by attaching and signing the following form to the answer:

<u>VERIFICATION OF ANSWER</u>	
I, _____, am the respondent in the within disciplinary action and hereby certify as follows:	
1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.	
2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.	
DATE: _____	_____
	(Sign Name Here)

TAKE NOTICE THAT YOUR FAILURE TO FILE A TIMELY, VERIFIED ANSWER WILL CONSTITUTE AN ADMISSION OF THE CHARGES. SUCH FAILURE MAY ALSO RESULT IN YOUR CLIENT'S IMMEDIATE TEMPORARY SUSPENSION FROM PRACTICE. IN EITHER EVENT, NO FURTHER HEARING NEED BE HELD AND THE ENTIRE RECORD, OR A RECORD SUPPLEMENTED BY THE PRESENTER, IN THIS MATTER CAN BE CERTIFIED DIRECTLY TO THE DISCIPLINARY REVIEW BOARD FOR IMPOSITION OF SANCTION, ALL PURSUANT TO *R.1:20-6(c)(1)*, *R.1:20-4(e) and (f)* AND *R.1:20-11*.

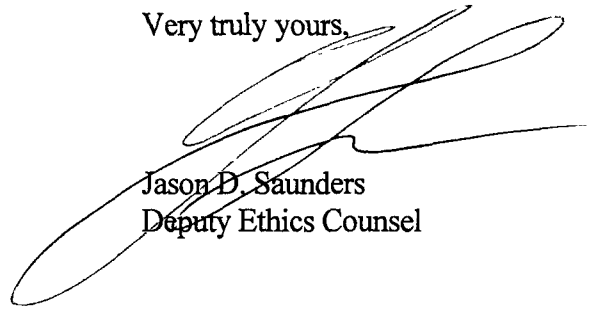
This matter will be prosecuted before a three member panel of the District Ethics Committee. Pursuant to *R.1:20-7(i)*, you are entitled to the issuance of subpoenas necessary and relevant to your client's defense. This application should be directed to the hearing panel chair or any special ethics master at least two weeks prior to the hearing date. Your failure to timely request the issuance of subpoenas will constitute a waiver.

Louis Criscuoli, Esq.
December 8, 2015
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Pursuant to *R.1:20-5(a)*, discovery of all information specified therein is requested. In the event that any class of information specified in that rule is not available, a written representation to that effect is required.

If you have any questions regarding this matter, you should promptly communicate with me at 609-530-5808.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jason D. Saunders", is written over the typed name and title.

Jason D. Saunders
Deputy Ethics Counsel

JDS/mbb
Enclosures

- cc: Thomas N. Ryan, Esq., Grievant (w/encl.)
George B. Harper, Jr., Mayor, Sandyston Township (w/encl.)
Alan Beck, Disciplinary Investigator (w/o encl.)
William M. Ruskowski, Chief of Investigations (w/o encl.)
Barbara M. Galati, Assistant Chief Disciplinary Investigator (w/o encl.)