SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-037
District Docket No. XIV-2014-0318E

IN THE MATTER OF :

MICHAEL S. GAROFALO :

AN ATTORNEY AT LAW :

Decision

Argued: June 16, 2016

Decided: October 26, 2016

Jason D. Saunders appeared on behalf of the Office of Attorney Ethics.

Louis M. Criscuoli appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a disciplinary stipulation filed by the Office of Attorney Ethics (OAE). Respondent admitted having violated RPC 8.1(a) (knowingly making a false statement of material fact in a disciplinary matter), RPC 8.4(b) (committing a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer in other respects, specifically, harassment, a violation of N.J.S.A. 2C:33-4A), RPC 8.4(c) (conduct involving dishonesty,

fraud, deceit or misrepresentation), and RPC 8.4(g) (engaging, in a professional capacity, in conduct involving discrimination). The OAE recommends a reprimand. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1998. He has no prior discipline.

The facts are contained in a January 14, 2016 stipulation (S) between respondent and the OAE.

Respondent was a partner in the law firm of Laddey, Clark and Ryan, LLP (LCR) in Sparta, New Jersey, from 2000 to 2014. In March 2014, CD,[1] a former LCR employee who had worked at the law firm for a brief time in 2005, reported to the law firm that respondent had been stalking and harassing her.

LCR immediately opened an investigation into the allegations, the results of which are contained in an April 10, 2014 confidential report that is not a part of the record. As a result of its investigation, LCR directed respondent to cease all communications with CD and prohibited him from using LCR's computers and e-mail system to communicate with her. Respondent agreed to these conditions.

LCR's internal investigation further revealed that respondent also had sexually harassed another law firm employee,

[1] We use initials to protect the victim's identity.

WB, through a series of e-mails he had sent over the entire calendar year 2011. In those e-mails, respondent used derogatory names, such as "sweet cheeks," when referring to WB. When interviewed by the OAE, WB stated that, although she had not reported respondent's conduct to anyone, she believed it inappropriate.

On March 21, 2014, prior to the issuance of the LCR report, respondent resigned from the firm and commenced employment with another law firm three days later.

On May 2, 2014, LCR notified respondent that, pursuant to RPC 8.3(a),[2] the firm intended to report his conduct to the OAE, if respondent did not self-report it first. Through counsel, respondent self-reported the matter to the OAE.

According to the stipulation, respondent and CD engaged in a brief consensual sexual relationship in 2005. CD was not employed by LCR at the time. Afterward, the two remained social friends until the end of 2009, when CD indicated to respondent that she no longer wanted him to communicate with her.

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[2] RPC 8.3(a) states that "a lawyer who knows that another lawyer has committed a violation of the [RPCs] that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority."

Respondent stipulated that, from 2009 to 2014, he had used LCR's e-mail system to communicate with CD and that, as of 2012, she had told him to cease such contact.

The e-mails that respondent sent to CD identified him as a lawyer and were sent to her work e-mail address. On a number of occasions, she asked respondent to stop contacting her. In a July 13, 2011 e-mail reply to respondent, she explicitly stated, "DO NOT EMAIL OR CALL MY CELL PHONE AGAIN."

Despite CD's July 13, 2011 e-mail admonition, respondent continued to send her unwanted and unsolicited correspondence. A number of the e-mails asked CD to go to lunch or for drinks after work. The e-mails were variously offensive, insulting, and demeaning. They were often sexual in nature, containing references to CD as a love doll, sex toy, love kitten, sweetie pie, lover, sweetheart, darling, sweet pea, sweet cheeks, love muffin, sweet meats, love cakes, sweetness, sexy, and sexy girl.

Respondent repeatedly expressed his purported love for CD, even asking her to marry him, but alternately referred to her as "Bitch" or "Asshole." He made offensive remarks about her supposed weight gain, and, in a December 21, 2012 e-mail stated, "All I want for Christmas is to [expletive] your brains out again."

Respondent stipulated that he sent hundreds of e-mails to CD from 2009 to 2015, sometimes asking her to vacation with him

in such destinations as the Bahamas, Cayman Islands, and Belize. CD did not accept any of respondent's many offers of food, drink, sex, or vacations, "after July of 2011."[3]

Respondent threatened to reveal to CD's significant other "what [she did] behind his back," if she did not accede to his demands to meet for lunch.

When CD informed respondent that she was changing her telephone number, he replied, "changing your number only makes me come up with other ideas."

On January 31, 2012, CD filed a police report in Parsippany to document respondent's harassment. Respondent was, however, unaware of that police report. Two years later, on January 23, 2014, CD's boyfriend filed a report with the Sparta Police Department, complaining about respondent's ongoing harassment. Respondent admits that, as a result of that report, Sergeant John Paul Beebe warned him that, if anything improper was going on, "to stop it."

Despite Sergeant Beebe's warning, on March 12, 2014, respondent again e-mailed CD: "Five years ago today we were looking for a house together!!"

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[3] The stipulation is unclear, but presumably, the inclusion of this date does not suggest that CD accepted respondent's unsolicited invitations up to July 2011.

Upon receipt of the March 12, 2014 e-mail, CD reported respondent's conduct to LCR. As previously mentioned, respondent then promised the law firm that he would have no further contact with CD.

Despite that promise, on June 26, 2015, at a time that the OAE already had docketed its investigation in this matter, respondent again e-mailed CD, this time asking, "You married yet?" The June 26, 2015 e-mail was sent, not from LCR's e-mail system, but rather from the Sandyston Township municipal e-mail system, where respondent was a municipal attorney.

During respondent's August 5, 2015 sworn interview with the OAE, he denied either having a Sandyston Township e-mail address or sending the June 26, 2015 e-mail to CD. He told the OAE, "You have my word." When, during the interview, respondent ultimately admitted having a Sandyston municipal e-mail address, he still denied having sent the e-mail to CD. After three such denials, and only after the OAE investigator informed respondent that the OAE would subpoena the Township's e-mail server records, respondent finally admitted sending the e-mail. He also corrected his earlier interview statement that he had not communicated with CD after March 12, 2014.

In aggravation, the parties cited respondent's failure to stop harassing CD, despite many warnings and opportunities to

remediate his conduct, which was viewed as a continuing pattern of conduct.

In mitigation, the stipulation recited that respondent has no prior discipline in eighteen years at the bar and has sought medical counseling "to address his conduct."

Following our independent review of the record, we are satisfied that the stipulation contains clear and convincing evidence of unethical conduct on respondent's part.

Respondent admitted to sexually harassing CD and WB, two female employees of LCR. He demeaned them, particularly CD, in e-mails in which he used misogynist language and extended crude invitations to drink, dine, vacation and engage in sex with him. None of respondent's overtures, contained in "hundreds" of e-mails, were welcomed, and in CD's case, continued for years after a brief 2005 relationship.

Respondent continued to send the e-mails even after CD explicitly directed respondent, in July 2012, to stop communicating with her. He disregarded his law firm's contemporaneous directive that he stop communicating with CD. He disregarded the Sparta police sergeant's 2014 admonition to cease his communications with her. He even sent CD an e-mail in 2015 from his Sandyston Township municipal e-mail account, which was available to him for official court business as that township's municipal attorney. Thus, respondent is guilty of

sexual harassment, a violation of RPC 8.4(g), RPC 8.4(b) and N.J.S.A. 2C:33-4A.

Respondent also lied to ethics authorities when interviewed on August 5, 2015. After being placed under oath, he denied having communicated with CD after she reported his conduct to LCR on July 13, 2012. He also denied that he had a Sandyston municipal e-mail address. He insisted, three times during the interview, that he had not sent the June 26, 2015 e-mail to CD. He finally admitted his misconduct only after the OAE attorney/investigator told him that the OAE would issue a subpoena to the township to obtain the e-mail documents. For his admitted lies to the OAE, respondent is guilty of violating RPC 8.1(a) and RPC 8.4(c).

In 1994, New Jersey RPC 8.4 was amended to include section (g), prohibiting discrimination "because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap, where the conduct is intended or likely to cause harm." Since that time, a number of attorneys have been charged with a violation of section (g) of the rule for conduct involving sexual harassment, but only two attorneys have been found guilty of violating this rule as a result of sexual harassment.

In In re Pinto, 168 N.J. 111 (2001), the attorney received a reprimand after being found guilty of having sexually harassed

a vulnerable, unsophisticated female client. During a conference with the client in his office, Pinto questioned her about her physical appearance, and engaged in "extremely crude," explicit conversations about what he could do sexually with her; on one occasion, respondent massaged the client's shoulders, kissed her on the neck, and told her that she should show herself off, "show whatever you have." In the Matter of Harry J. Pinto, Jr., DRB 00-049 (October 19, 2000) (slip op. at 3). On another occasion, Pinto was called upon to help the client jump start her car. Upon completing that task, he exclaimed, "This is what a real man can do," and then slapped the victim on the buttocks in the presence of her son and daughter. Id. at 5-6.

In a more recent matter, In re Witherspoon, 203 N.J. 343 (2010), the attorney received a one-year suspension after being found guilty of sexually harassing four female bankruptcy clients. In all four matters, the attorney repeatedly made sexual propositions that they interpreted as offers of his legal services in exchange for sex. In two of them, he discriminated on the basis of sexual preference.

Specifically, Witherspoon offered to pay a filing fee for client S.B., a lesbian, if she and her female friend "made out" in front of him. He commented to S.B., a lesbian, that "gay women" often "came on" to him. On another occasion, he offered to pay a court fee if S.B. lifted her skirt. In a third

incident, when S.B. tried to pay the outstanding legal fee, he told her that he would waive it if he could watch her and her female friend engage in sex or if they allowed him to join them for sex. In the Matter of David J. Witherspoon, DRB 08-302 (slip op. at 14-15).

On another occasion, knowing that another bankruptcy client, A.C., was a lesbian, Witherspoon suggested to the client that her sexual preference may have come about as the result of a bad experience with "the male sex organ." A.C. interpreted this comment as a slur. At the conclusion of her bankruptcy case, Witherspoon told her that he was a "breast man," liked the way she looked, and would refund $660 of his legal fee if she came back to his office to join him on his office couch. Ibid. In both cases, Witherspoon's use of discriminatory language demeaned his clients on the basis of their sexual orientation, violations of RPC 8.4(g). Witherspoon was also guilty of engaging in conflicts of interest with his female clients, practicing law while ineligible, and recordkeeping deficiencies. In aggravation, he showed no remorse for his actions and had two prior admonitions, a reprimand, and a censure.

Here, respondent's misconduct was at least as serious as that of the attorney in Pinto (reprimand). Respondent sexually harassed two female victims, whereas Pinto harassed one. Moreover, respondent continued to harass one of his victims for

ten years after their brief sexual relationship terminated. Further, respondent continued his inappropriate behavior for a time after the victim, the police, and the partners in his law firm had all warned him to stop.

Respondent's conduct can be distinguished from that of the attorney in Witherspoon, who tried to trade legal services for sex, engaged in discrimination based on sexual orientation, and sexually harassed four female clients. Moreover, Witherspoon had significant prior discipline and was totally unrepentant for his actions, elements not present in this case.

For attorneys who lie to ethics authorities, ascending sanctions, starting with a reprimand, have been imposed, depending on the number of client matters involved, the existence of other misconduct, such as the creation of fictitious documents, and the existence of prior discipline. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who lied to the OAE during its investigation; the attorney had permitted two matters to be dismissed, and created a phony arbitration award to mislead his partner; he also failed to consult with his clients before allowing their matters to be dismissed; considerable mitigation considered: the passage of ten years since the occurrence of the event, the attorney's otherwise unblemished record and professional achievements, his participation in a variety of bench/bar committees, his pro bono

contributions, the lack of financial gain to the attorney or harm to the client, and the attorney's contrition and remorse); In re Schroll, 213 N.J. 391 (2013) (censure for attorney who made an affirmative misrepresentation in a letter to ethics authorities, and then lied by omission in five subsequent letters, a violation of RPC 8.1(a)); the attorney also grossly neglected the client's underlying personal injury case, failed to communicate with the client, and misrepresented the status of the case, which had been dismissed, to the referring attorney); In re Allocca, 185 N.J. 404 (2005) (censure for attorney who mishandled a real estate transaction; specific findings included lack of diligence, truthfulness in statements to others, lying to ethics authorities, and conduct involving dishonesty, fraud, deceit or misrepresentation; in correspondence to the DEC investigator, the attorney made material misrepresentations regarding the real estate mortgage pay-off, payment of taxes, and recording of the deed, in order to obscure his mishandling of the underlying matter; no prior discipline); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who, after the grievance was filed, fraudulently created two fictitious letters about the underlying client matters as part of his defense, and submitted them to the district ethics committee in connection with charges of failure to communicate with the two clients; no prior discipline); and In re Verni, 172

N.J. 315 (2002) (three-month suspension for attorney who knowingly made false statements of material fact to a disciplinary authority by lying to the DEC, claiming that he had drafted his own interrogatories in a case when he had actually used form interrogatories; the attorney also charged excessive fees in three matters; prior reprimand).

Although respondent initially lied to ethics authorities three times during his sworn interview, he finally admitted that he had used his Sandyston Township e-mail address to send a harassing e-mail to CD. Respondent's ultimate admission would implicate the lower end of the discipline, such as the reprimand imposed in, Sunberg, supra, where the attorney also lied to ethics authorities during an interview.

Either aspect of respondent's misconduct — sexual harassment or lying to ethics authorities — would merit the imposition of a reprimand.

We consider, in aggravation, that respondent engaged in a years-long campaign of harassment toward CD. He recklessly disregarded opportunities to cease his misconduct, and continued after warnings to stop from the victim, the police, and his law firm.

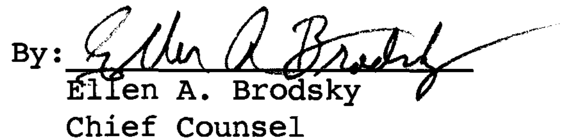
Mitigation is limited to respondent's lack of prior discipline since his 1998 admission to the New Jersey bar.

Because a reprimand is warranted for either facet of respondent's serious misconduct, and, based on the years-long, unrelenting pattern of harassment, we determine that a censure is appropriate.

Members Hoberman and Rivera did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

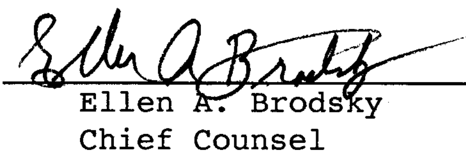
In the Matter of Michael S. Garofalo
Docket No. DRB 16-037

Argued: June 16, 2016

Decided: October 26, 2016

Disposition: Censure

Members	Censure	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman			X
Rivera			X
Singer	X		
Zmirich	X		
Total:	7		2



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