
In Re:

The August 24, 2026 Complaint against:

KEVIN M. DAILEY.

STATEMENT OF FACTS

On Friday, October 16, 2026 I met with the Complainant who filed a Discrimination and Harassment Complaint on August 24, 2026. That Complaint was brought against Town Attorney Kevin M. Dailey, for, in sum and substance, comments made by Town Attorney Dailey in the presence of the Complainant. (Hereinafter, the Complainant will be refereed to using the pronouns "he/she" in order to protect that person's identity).

I wanted to meet with the Complainant before I met with the Town Attorney. The purpose of this interview order was for me to have a full and complete understanding of what was being alleged in the Complaint.

I never met the Complainant before our meeting.

Before we began our conversation, I went to the location in Town Hall where the comments were made. I noted a rather small office space.

I offered to meet with the Complainant in a neutral, off-site location if he/she chose to do so. The Complainant declined my off-site offer, instead choosing to meet with me in the Town Hall's 2nd floor conference room. I began our meeting by introducing myself and providing a brief overview of my qualifications in matters such as this one at hand. No one else was present during our meeting. Our meeting was uninterrupted. Our meeting began at 8:45 AM and concluded at 9:46 AM. No part of our conversation was recorded. I took notes during our meeting.

The Complainant was well spoken, replied appropriately to the questions that I asked and did not appear to be guarded. The Complainant appeared to be making every effort to provide a well thought out and thorough response to the questions that I presented. The Complainant had an overall calm demeanor.

I advised the Complainant that I am not his/her attorney nor am I the attorney for the Town Attorney. I explained to the Complainant that I am a neutral, independent party who has been tasked with reaching a fair, impartial and objective conclusion based upon the information that I obtain and applying the law, free of any bias or preconceived notions as to how this matter should turn out.

I advised the Complainant that at any point he/she could stop our meeting and seek the assistance of an attorney of his/her choice if he/she chose to do so. The Complainant declined.

I also advised the Complainant that pursuant to the Town Employee Handbook, that he/she must cooperate in my investigation (See Section 902, Investigation of Complaint). He/she agreed to do so.

In order to get a better overall feel for the Complainant, I inquired about his/her educational background and employment history with the Town of Clifton Park. The Complainant indicated to me that he/she holds a [REDACTED] degree and has been employed with the Town for [REDACTED] years. (The specific employment start date was given to me. However, in order to protect the identity of the Complainant, that date will not be provided herein).

I advised the Complainant that I confirmed with GTM that both he/she and the Town Attorney have taken the mandatory sexual harassment training course.

I reviewed with the Complainant the Town's definition of Harassment as set forth in section 902 of the Town of Clifton Park's Employee Handbook.

I then reviewed with the Complainant the allegations set forth in each of the 4 dates noted in his/her Complaint:

Wednesday, August 12, 2026;
Thursday, August 13, 2026;
Monday, August 17, 2026; and,
Tuesday, August 18, 2026.

The Complainant indicted that the information contained in her Complaint were made contemporaneous, or thereabouts with the events described therein. In sum, the Complainant alleges that she overheard the Town Attorney discussing a personal medical issue over the phone with someone that appeared to be, based upon the general tone of the conversation that he/she overheard, a health care provider.

After our meeting, the Complainant provided me with a 1:53 surreptitious audio recording from Thursday, August 13, 2026. I listened to the entire audio recording several times. In the recording, after discussing a town related matter, the Complainant asked the Town Attorney to close the office door when speaking to his doctor. The Town Attorney appeared surprised and then very briefly discussed a possible medical condition that happens "when you get older".

The Complainant also subsequently provided me several documents via screen shots which I reviewed.

The Complainant stated that the Town Attorney at one point apologized for making him/her feel uncomfortable.

I asked the Complainant if he/she had anything additional facts to add to the above 4 dates. The Complainant added that he/she has asked the Town Attorney to cease any further discussions regarding those health related matters contained in his/her Complaint.

The Complainant added that he/she is disappointed in how this matter has turned out. (i.e. going as far as this has gone).

The Complainant indicated that the alleged behavior of the Town Attorney was "insulting".

According to the Complainant, the statements made by the Town Attorney were not directed towards the Complainant.

When asked, the Complainant indicated that what has been alleged to have been said, as set forth in his/her Complaint, has not interfered with his/her work performance.

The Complainant also discussed with me an occurrence that happened on January 2, 2026 in which the Town Attorney told a story about 2 Town Board Member who were reportedly caught [REDACTED] the Town Attorney's office. The Complainant stated that [REDACTED] was present during that statement made by Kevin Dailey. The January 2, 2026 occurrence date was confirmed by an email that was forwarded to me by the Complainant from the email address cliftonpartktransition2025@gmail.com, signed by the "Transition Team".

On Monday, October 19, 2026, I spoke to [REDACTED] over the phone. [REDACTED] also confirmed that this statement was made by Kevin Dailey on January 2, 2026 while [REDACTED] was introducing the Complainant to the prospective Town Attorney. [REDACTED] stated to me that Kevin Dailey's statement was not made in a threatening tone. [REDACTED] described Kevin Dailey's statement as 'telling a story'.

KEVIN M. DAILEY

On Monday, October 19, 2026 I met with Town Attorney Kevin Dailey. Prior to our meeting I also offered to meet in a neutral, off-site location. The Town Attorney chose to meet with me at my private law office located outside of Saratoga County. Our meeting began at 10:35 AM and concluded at 11:42 AM.

As I did with my interview with the Complainant, I began our meeting by introducing myself and providing a brief overview of my qualifications.

I advised the Town Attorney that I had previously met with the Complainant. I did not share any information provided by the Complainant to me with the Town Attorney.

As I did with the Complainant, I advised the Town Attorney that I am not his attorney nor am I the attorney for the Complainant. I explained to the Town Attorney that I am a neutral, independent party who has been tasked with reaching a fair, impartial and objective conclusion based upon the

information that I obtain and applying the law, free of any bias or preconceived notions as to how this matter should turn out.

As I did with the Complainant, I advised the Town Attorney that at any point he could stop our meeting and seek the assistance of an attorney of his choice if he chose to do so. The Town Attorney declined.

As I did with the Complainant, I advised the Town Attorney that pursuant to the Town Employee Handbook, that he must cooperate in my investigation. He agreed to do so.

Prior to our meeting I had never met the Town Attorney.

No part of our conversation was recorded. I took notes during our meeting.

The Town Attorney presented dressed in work attire. He responded appropriately to the questions I set forth to him. He did not appear to be guarded or defensive. He appeared to be cooperative.

Using an abundance of caution, I asked the Town Attorney to sign a HIPAA release in my favor. The Town Attorney did so.

Prior to our meeting, I provided a copy of the Complaint to the Town Attorney. He acknowledged receipt of the Complaint. He stated that he had reviewed the Complaint prior to our meeting.

I reviewed the substance of the Complaint with the Town Attorney. He indicated that he does not dispute what is alleged to have been said by him. The Town Attorney stated that upon hearing from his health care provider of a possible concerning serious medical issue, he became focused on that health matter and "wasn't thinking at all". He indicated that he "never consciously harassed" the Complainant. We reviewed the relevant portions of the definition of Harassment as set forth in the Town Employee Handbook. The Town Attorney denied creating a work environment that meets that criteria.

THE TOWN OF CLIFTON PARK'S EMPLOYEE HANDBOOK

Section 902 of the Town of Clifton Park's Employee Handbook defines Harassment in relevant part as "unwanted, unreasonable, verbal, or physical conduct, directed toward, or affecting another person that disturbs, frightens, insults, threatens, intimidates, demeans, or offend that other person, and that continues or is repeated after a request to cease..."

APPLICABLE LAW

Relevant case law is clear on this point.

Mere offensive utterances do not rise to level of physically threatening or humiliating in a workplace environment. Rather, conditions must be so severe and pervasive as to constitute a sexually hostile work environment under New York State Human Rights Law. Mincker v United Parcel Services, Inc. 132 A. D.2d 1186 (3rd Dept., 2015). In Mincker, the former employee served as an administrative assistant in a small office in close proximity to other employees for a package

delivery firm. The former employee said she overheard another employee call her a sexually derogatory name. The former employee was also subject to having her bra straps pulled, pulling her hair, suggesting that she purchase sexual paraphernalia and once rubbing lubricant on her arm. The Appellate Division affirmed a Summary Judgement Motion granted to the employer noting that the plaintiff "failed to demonstrate either that she suffered any adverse employment action following her complaint or that the working conditions were so intolerable that a reasonable person would have felt compelled to resign. . .". Mincker at page 1189, citing Guntlow v Barbera, 76 A. D. 3d 760, 2010.

Billitch v New York City Health & Hospitals Corp., 194 A. D. 3d 999 (2nd Dept., 2021), held that a person who claims that a hostile work environment exists must show that the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive. The Billitch decision drew a distinction between those types of actions and that which are merely an offensive utterance. Billitch at page 1001.

Similarly, the recent case McIntosh v City of New York, 247 A. D. 3d 1171 (2nd Dept., 2026) continued to draw the distinction, having to consider all of the circumstances, between a work environment that contains discriminatory conduct, the severity of such, whether it is physically threatening or humiliating and whether it unreasonably interfered with the employee's work performance or a mere offensive utterance. McIntosh at page 1174.

APPLYING THE FACTS TO THE LAW AND CONCLUSION

The Code of Conduct set forth in the Town Employee handbook applies to Town Employees only. Any discussion made by Kevin Dailey on January 2, 2026 concerning 2 Town employees [REDACTED] must be disregarded since Kevin Dailey was not made a Town employee until January 6, 2026 (See Town Board Resolution No. 1 of 2026).

With respect to the remaining allegations set forth in the Complainant's August 24, 2026 Complaint:

Admittedly by the Complainant, the discussion the Town Attorney had with his health care provider was not directed towards the Complainant, but rather simply overheard.

The discussion between the Town Attorney and his health care provider does not rise to the level of creating a hostile work environment permeated with discriminatory intimidation, ridicule sufficiently severe or pervasive.

According to the Complainant, the discussion between the Town Attorney and his health care provider has not interfered with the Complainant's work performance.

Any discussion between the Town Attorney and his health care provider should have been conducted in a more private setting. At most, that discussion was nothing more than an offensive utterance.

I therefore conclude that no ethics violation has been committed.

Moving forward, I make the following recommendations set forth below.

RECOMMENDATIONS

Although the discussions by the Town Attorney to his health care provider did not rise to the level of the Town's definition of Harassment, it should be emphasized that creating an uncomfortable or unprofessional environment for colleagues is not acceptable. I suggest that the Town Attorney focus on appropriate workplace communication and appropriate office boundaries.

Dated: October 20, 2026

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Michael P. Mansion", written in black ink.

Michael P. Mansion, Esq.