

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-160  
District Docket Nos. IIIB-2015-0044E  
and IIIB-2015-0046E

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In the Matter of  
Jonathan Eric Diego  
An Attorney at Law

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Decision

Argued: July 18, 2019

Decided: December 15, 2019

Gregg A. Shivers appeared on behalf of the District IIIB Ethics Committee.

William J. Hughes, Jr. and Durann A. Neil, Jr. appeared on behalf of respondent.

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

These matters were before us on a recommendation for a censure filed by the District IIIB Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 3.2 (failing to treat with

courtesy and consideration all persons involved in the legal process); RPC 8.4(g) (engaging, in a professional capacity, in conduct involving discrimination); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons detailed below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey bar in 1994. During the relevant time frame, he was engaged in the practice of law with the Dwyer Law Firm, LLC in Newark, New Jersey. He has no prior discipline.

In this case, we are confronted with comments that an attorney made to court staff and must determine whether those remarks violated the Rules of Professional Conduct, and, if so, the appropriate quantum of discipline. Although respondent does not deny having uttered the words, he disputes that race played a role in his statements. In contrast, court staff interpreted respondent's comments as having racial connotations. The facts are as follows.

On April 11, 2014, respondent attempted to file eviction paperwork, in behalf of a client in a landlord-tenant matter, at the Special Civil Part clerk's office in the Atlantic County Civil Courts Building. Following a disagreement between respondent and court staff, and after Richard Hunter, a seventy-seven-year-old Jury Management Supervisor, had improperly placed his hands on respondent, respondent admittedly uttered the words, "I am tired of this racist

ghetto B.S.” Sharon Woodard and Shanise Griffith, African American court employees with whom respondent had been arguing, heard respondent’s comment and filed the ethics grievances underlying this matter. Hunter is also African American.

Woodard has been employed for twenty-six years as a Judiciary Clerk at the landlord-tenant counter of the Special Civil Part in Atlantic County. She recounted that respondent, whom she previously had not met, had attempted to apply for a warrant of removal, in respect of eviction proceedings, through another Judiciary Clerk, Griffith. Woodard and Griffith both informed respondent of a deficiency in his paperwork, and he replied, “Don’t tell me whether or not I can file the paperwork. I just need to know the fee.” Woodard continued to reiterate that his paperwork was deficient, and that she could not provide him the service and the fee that he was requesting, but respondent continued to dispute them, and then allegedly stated “I don’t have time for this ghetto trash.” Woodard interpreted respondent’s “ghetto trash” statement to be directed at her and Griffith, “because we [were] the only ones standing there,” and explained that she felt respondent was saying the women were “worth nothing,” and that the statement was made because the women are African American. During her testimony, Woodard described respondent as Caucasian, but denied that his race or appearance had any bearing on her interaction with

him. Woodard stated that respondent's comments toward her were "demeaning . . . racial comments," meant to intimidate.

Woodard then instructed Griffith to return to her desk, because respondent had, by this point, requested a supervisor. Woodard tried to call two supervisors, without success, and then observed a confrontation between respondent and Hunter, during which respondent allegedly stated to Hunter "go back where you came from." Woodard recounted that Hunter was ultimately disciplined for his interaction with respondent that day, but disputed respondent's account that Hunter had placed his hands on respondent.

Woodard claimed that, during the interaction with respondent at the counter, "he was getting louder . . . . His voice was escalating," and an argument started wherein both respondent and Griffith raised their voices. Woodard further stated that respondent had threatened to report both women to Judge Julio Mendez, the Atlantic County Assignment Judge, and to Harold Berchtold, the Atlantic County Trial Court Administrator. Woodard also claimed that, when a bystander told respondent "you should have taken your medicine before you left home this morning," respondent told him to "mind your business and continue to get evicted."

Ultimately, Woodard "chased down" Geovanny Feliciano, the Civil Intake Supervisor, for assistance with respondent. Woodard's interaction with

respondent then ended. Respondent did not file a complaint against Woodard, and she was not disciplined in connection with the incident. Woodard conceded that she, Griffith, and respondent all shared fault for the argument that occurred. Moreover, she agreed that Hunter's behavior "could have been better."

Since 2007, Griffith has been employed as a Judiciary Clerk for the Special Civil Part in Atlantic County. She confirmed that respondent, whom she had not previously met, had attempted to apply for a warrant for removal that she was unable to process due to deficiencies. When she advised respondent of the issue, he replied, "Don't tell me what to do. I just need it served." Ultimately, after speaking with her supervisor, Feliciano, respondent understood his mistake, realized that Griffith had been correct, and was able to file the paperwork.

According to Griffith, in the interim, however, respondent became "very agitated," both respondent and Griffith raised their voices, and "it turned into [a mutual] argument." Griffith corroborated Woodard's claim that respondent had threatened to report both women to Judge Mendez and to Berchtold, and added that she overheard respondent informing Feliciano that he knew and had worked with Judge Mendez and Berchtold. Griffith stated that Woodard instructed her to return to her desk, but that respondent had continued to yell,

saying “I’m sick of this ghetto racist b#\*\$@!~t.” Ultimately, Feliciano intervened and Woodard ended her conversation with respondent. Griffith testified that respondent’s “ghetto” comment upset her, because it was directed at her and Woodard, and was “defamatory.”

Griffith also observed Hunter’s attempts to diffuse the situation between Woodard and respondent. Griffith testified that Hunter told respondent “enough, enough . . . these young ladies are just trying to help you,” to which respondent replied, “shut up” and “go back where you came from.” Respondent did not file a complaint against Griffith, and she was not disciplined in connection with the incident with respondent.

The parties stipulated to Feliciano’s written statement describing the incident. He recounted that he was summoned to the landlord-tenant counter by Madeline Diaz, via a text message alerting him to a problem. When he arrived, Woodard informed him that respondent wanted to speak to him, and that he would not accept her explanation regarding the deficiencies in his warrant for removal paperwork. Respondent interjected that he would explain to Feliciano what really happened. Respondent then stated, “the lady in the back (pointing to Griffith) is rude and unprofessional, your staff members need some training on how to deal with attorneys.”

At that point, Hunter interjected, telling Feliciano that Woodard and Griffith had done nothing wrong; respondent asked Hunter who he was, and then told him to go back to his office because he was speaking to Feliciano. Hunter, now upset, told respondent not to “tell me where to go . . . because you’re not telling the truth.” When respondent again told Hunter to go back to his office, Hunter came out from behind the counter, grabbed respondent’s left shoulder, and turned him to face Hunter. Hunter, now pointing a pen in respondent’s face, voice raised, stated “if you have a problem let me know because we can solve it right now.” Respondent told Hunter to move his hands away from him and not touch him, and asked Hunter for his name. Hunter then yelled in respondent’s face, “my name is Richard Hunter and if you want my boss his name is Judge Mendez and Howard [sic] Berchtold.” At that point, Feliciano went out from behind the counter, got between Hunter and respondent, and instructed Hunter to return to his office. Feliciano then instructed respondent to complete his paperwork, and summoned Teresa Ungaro, a Division Manager, to address respondent’s concerns.

Respondent testified that his entire encounter with Woodard and Griffith began with “a flippant attitude,” when one of the women told him “you . . . need to go sit down” to complete your paperwork, rather than stand at the counter. Then, when Griffith told him that his paperwork was deficient, he

informed her that he was “not going to debate” it, and asked, multiple times for a supervisor. When his requests for a supervisor were not, in his opinion, promptly met, he threatened to call Judge Mendez and Berchtold, to file a complaint. At that point, Woodard instructed Griffith to go to her desk, and respondent began speaking to Feliciano.

According to respondent, Hunter then began to intervene in respondent’s conversation with Feliciano, and respondent told him to go back to his office. Respondent continued “[a]nd that’s where the racism comes in. That’s where the ghetto racist B.S. comes in.” Respondent testified that, rather than leave the area, Hunter came out from behind the counter and “grabs my left arm, spins me around like twisting it.” Respondent claimed he has a “bad left shoulder” from high school and college sports, and that Hunter’s actions “caused [him] pain.” He testified that Hunter then got in his face, and that, “where I grew up, that’s ghetto.” Respondent continued:

I expect that when I’m in Pleasantville or Atlantic City walking down the street to be assaulted or grabbed or pushed or try to be intimidated physically. I don’t expect that in the courthouse. And none of y’all understand because you haven’t lived my life. None of y’all grew up where I grew up. And I understand that and I appreciate that. Your mom didn’t get murdered in the ghetto . . . at forty-six in a Camden ghetto. Your dad didn’t die at thirty-nine . . . . You didn’t get jumped because of the color of your skin in the ghetto. I know racism because I



experienced it and I know racism when black people are racist. It isn't a one-way street . . . .

They didn't like a white man with [a] shaved head and blue eyes asking for the supervisor and challenging their authority. They didn't like that. Period. And when I said it, I meant it. And as I said in my statement, I'm not sorry I said it. I'm sorry if it hurt their feelings. But you know what? What they did was racist and it was ghetto. And once [Hunter] put his hands on me, that was ghetto.

[T246-T249.]<sup>1</sup>

Respondent claimed that he told Hunter "you're acting like you're on the street. Go back to your office." Respondent also admitted that he then stated, "I'm tired of this racist ghetto B.S.," but maintained, considering the way he had been treated by Griffith, Woodard, and especially Hunter, he was justified in making the statement. Respondent added "I don't lose my First Amendment rights just because I'm an attorney." He testified that he did regret, however, not walking away from the counter after his request for a supervisor was not immediately granted. Respondent stated that "it was not my intent to upset [Woodard and Griffith] or offend them, but I meant what I said," because respondent felt that he was being mistreated, "partially" due to the color of his skin. Respondent concluded, "this never would have happened . . . if I was

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<sup>1</sup> "T" refers to the transcript of the July 21, 2016 DEC hearing.

black . . . there would never have been [ethics grievances] filed. Period . . . .  
That's the reality.”

During the ethics hearing, respondent presented multiple character witnesses who all testified that he was not racist. Neal Lock, a firefighter and respondent's life-long best friend, who is African American, testified that he and respondent grew up in the diverse community of Pleasantville, in Atlantic County, and that, in his opinion, respondent had no racist or discriminatory qualities.<sup>2</sup> He described respondent as “open-minded . . . almost to a fault.

Glynn Jones, the Director of Finance for the City of Camden and life-long friend of respondent, testified that he and respondent grew up together in Pleasantville, and that, in his opinion, respondent is very honorable, very trustworthy, and has no racist or discriminatory qualities.

Mark Love, a union electrician, a twenty-five-year friend of respondent, and the best man at his wedding, testified that he and respondent once lived together in Atlantic City, and that, in his opinion, respondent has no racist or discriminatory qualities.

Durann Neil, who is African American, the owner of an internet sports business, and the life-long friend of respondent, testified that, in his opinion,

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<sup>2</sup> The race of some of respondent's character witnesses is noted only because it was specifically elicited and discussed on either direct or cross-examination, in light of respondent's asserted defenses.

respondent has no racist or discriminatory qualities and that he is “the least racist person I know.”

Linda Dilworth-Diego, respondent’s wife of seventeen years, who is African American, testified that, in her opinion, respondent has no racist or discriminatory qualities. She added that she and respondent both serve on the board of the African American Heritage Museum, located in Atlantic City.

In an August 31, 2015 brief to us, respondent had voiced strenuous objection to the Office of Attorney Ethics’ (OAE) appeal from the dismissal of the original grievance against him.<sup>3</sup> Specifically, he averred that he had done nothing wrong, that such an appeal by the OAE is unheard of and conspiratorial, that “a phone call must have been made” to the OAE, and that the OAE’s appeal request was forum shopping and “improper gamesmanship . . . not authorized by the RPCs.”

In a June 25, 2019 brief to us, and during oral argument before us, respondent reasserted his position that he committed no ethics violations, and emphasized that he made the “racist ghetto B.S.” statement only after suffering an “unprovoked assault” at the hands of Hunter. Respondent admitted that “others could have misinterpreted his comment,” but argued that he did not intend to offend anyone. Respondent emphasized his lack of prior discipline in

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<sup>3</sup> On appeal, we remanded the matters for a new investigation, which resulted in the recommendation of a censure, following a hearing.

more than twenty-five years at the bar, and listed an extensive history of community involvement and volunteerism, including major contributions to the Hispanic and African American communities in and around Atlantic County. In conclusion, respondent argued that a “single incident precipitated by an unprovoked assault by a court employee” cannot support any of the charged ethics violations.

The DEC found clear and convincing evidence that respondent violated RPC 3.2, RPC 8.4(g), and RPC 8.4(d). In respect of RPC 3.2, the DEC found that respondent, by his own admissions, and regardless of his asserted defenses, “did not comport himself in a manner that would display ‘a courteous and respectful attitude’” toward the court employees he encountered on the date under scrutiny. The DEC emphasized respondent’s argumentative tone with Woodard and Griffith; his repeated engagement with Hunter, rather than allowing Feliciano to handle the situation; and his engagement with the bystander in such a public setting.

The DEC further found that respondent violated RPC 8.4(g) “by uttering the words ‘I am tired of this racist ghetto B.S.’” The panel emphasized that respondent admitted have made the statement, and asserted that he was justified in doing so, but reasoned that it “cannot accept any justification for” respondent’s comment. Moreover, the panel determined that respondent’s

intent was not a required element in finding that he had violated this RPC, noting that the Rule is violated if an attorney made a derogatory or demeaning statement that is “likely to cause harm.”

Finally, the DEC found that respondent violated RPC 8.4(d) by continuing to engage Hunter, even after a supervisor, Feliciano, had arrived to discuss matters with respondent. In the panel’s view, by “failing to yield” to Feliciano’s role as a court supervisor, respondent “escalated an already difficult situation and thereby engaged in conduct prejudicial to the administration of justice.”

The DEC, thus, recommended that respondent receive a censure and be required to undergo sensitivity training.

Following a de novo review of the record, we are satisfied that the DEC’s finding that respondent’s conduct was unethical is fully supported by clear and convincing evidence. Specifically, we agree with the DEC’s finding that respondent violated RPC 3.2 and RPC 8.4(g). We determine, however, to dismiss the allegation that respondent additionally violated RPC 8.4(d).

On April 11, 2014, respondent attempted to file eviction paperwork, in behalf of a client, at the Atlantic County Special Civil Part clerk’s office. Following a disagreement between respondent and Woodard and Griffith, two Judiciary Clerks, and after another court employee, Hunter, had improperly

intervened and placed his hands on respondent, respondent stated, “I am tired of this racist ghetto B.S.” within earshot of Woodard and Griffith. Both women testified that the statement offended them, that they found it demeaning and derogatory, and that they perceived the “ghetto” component of the phrasing to reference their race.

Given the facts presented during respondent’s case-in-chief, and in his many submissions in respect of these ethics proceedings, which strongly support respondent’s defense that he neither holds nor condones racist beliefs, we consider respondent’s statement in the framework that he is demonstrably not racist; that he felt that he was the victim of discriminatory treatment by Woodard and Griffith; that he had been improperly touched by Hunter; that he was offended and angered by the cumulative conduct of the court employees and the comment of a third-party bystander at the time that he made the statement; and that he did not intend to cause harm when he uttered the statement within earshot of Woodard and Griffith.

Under that framework, we still reach the conclusion that respondent’s conduct was unethical. RPC 8.4(g) states that

It is professional misconduct for a lawyer to: engage, in a professional capacity, in conduct involving 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.

The Court's official comments to the RPC state that "'discrimination' is to be construed broadly. It includes . . . derogatory and demeaning language, and, generally, any conduct towards the named groups that are both harmful and discriminatory."

Few disciplinary cases have addressed discrimination based on race or national origin. One case that provides an analysis of RPC 8.4(g) in such a context is In re Geller, 177 N.J. 505 (2003). In that case, the attorney was reprimanded for his wide-ranging misconduct during his own child support and custody hearings. In the Matter of Larry S. Geller, DRB 02-467 (May 20, 2003) (slip. op. at 2, 47). In respect of RPC 8.4(g), Geller was found to have "exhibited ethnic bias" toward a Superior Court judge by remarking, following adverse rulings, that "Monmouth County Irish have their own way of doing business." Id. at 44. In concluding that Geller had violated RPC 8.4(g), we cited both RPC 8.4(g) and In re Vincenti, 114 N.J. 275, 283 (1989), which predated the RPC, wherein the Court stated that

we cannot overemphasize that some of the respondent's offensive verbal attacks carried invidious racial connotations . . . We believe this kind of harassment is particularly intolerable. Any kind of conduct or verbal oppression or intimidation that projects offensive and invidious discriminatory distinctions . . . is especially offensive.

[Id. at 44.]

Here, respondent made his comments, in a professional capacity, in the aftermath of an adversarial encounter with three African American court employees, in a public space within a courthouse. Respondent's exclamation regarding "racist ghetto B.S." was, by its very nature, demeaning and quite likely to offend. Respondent injected race and socioeconomic status into an altercation that, prior to his comment, featured no evidence of bigotry. He argues that we should accept his perception of the discrimination being perpetrated against him, but to dismiss Woodard's and Griffith's perception of the import of his "ghetto" comment.

We conclude that respondent's comment projected intolerable and "offensive and invidious discriminatory distinctions," likely to be perceived as ascribing the qualities of "ghetto" to the African American employees with whom he had just had negative interactions. Despite respondent's credible defense that he is not racist and did not intend to cause harm with his words, the words he chose to voice violated both RPC 3.2 and RPC 8.4(g).

The plain language of RPC 8.4(g) prohibits conduct "likely to cause harm." Previously, in In re Pinto, 168 N.J. 111 (2001), we rejected the very same defense asserted here by respondent, based on the plain language of RPC 8.4(g), and the Court agreed with our analysis. In that case, the attorney received a reprimand after being found guilty of having sexually harassed a



vulnerable, unsophisticated female client, in violation of RPC 8.4(g). 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, the attorney 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. Regardless of Pinto’s subjective intent, we and the Court determined that his behavior was “demeaning, crude and vulgar,” and, thus, “likely to cause harm” to his client, in violation of RPC 8.4(g). Id. at 13.

In this matter, respondent is not absolved of his misconduct through his claims that he was being discriminated against because he was perceived as being a white man. To the contrary, respondent, as the attorney involved in the dispute, who believed himself to be a victim of racial discrimination, should have used the resources of the judiciary to lodge his complaints, instead of airing his grievances, in such an offensive manner, in a public courthouse. Further, if respondent had decided, in that moment, to state that Woodard,

Griffith, and Hunter were “the most unprofessional court employees” he had ever come across, there would be no disciplinary case. Instead, he chose racially and socioeconomically charged, demeaning words, which, by their very nature, were likely to cause harm. Thus, regardless of respondent’s subjective view of the situation, his conduct cannot be tolerated. Moreover, the record is devoid of evidence that he has shown any genuine remorse for his conduct.

We determine to dismiss the charge that respondent’s conduct further violated RPC 8.4(d). In respect of the RPC 8.4(d) allegation, the record is bereft of evidence that respondent’s conduct unduly delayed or prejudiced court operations on the date in question. In fact, the court employees admittedly shared fault with the evolution of the facts underpinning this case, and, thus, respondent cannot be said to be solely responsible for conduct prejudicial to the administration of justice.

In sum, respondent violated RPC 3.2 and RPC 8.4(g). We dismiss the RPC 8.4(d) charge. The only remaining issue is the appropriate quantum of discipline to be imposed for respondent’s misconduct.

There is no disciplinary precedent where an attorney found to have violated RPC 8.4(g) received only an admonition. In fact, all reported cases addressing such violations have resulted in a reprimand or greater discipline.

As set forth above, the attorneys in Geller and Pinto, both of whom had no prior discipline, received reprimands. Both of those attorneys, however, also committed additional ethics violations.

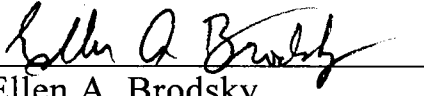
The exceptional facts of this case caused us to strongly consider a downward departure from such precedent, but respondent's continuing lack of remorse or understanding in respect of his misconduct convinced us otherwise. We accord substantial weight to the compelling mitigation present in this case, including respondent's lack of prior discipline; demonstrated dedication to community involvement; and the fact that he had been improperly physically accosted, by a court employee, prior to losing his composure and making the offensive statement. We assign in aggravation, however, equal weight to respondent's steadfast refusal to acknowledge his misconduct.

On balance, thus, we determine that a reprimand is adequate discipline to protect the public and to preserve public confidence in the bar.

Members Rivera, Singer, and Zmirich voted to impose an admonition. Vice-Chair Gallipoli was recused, and Member Petrou 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  
Bruce W. Clark, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

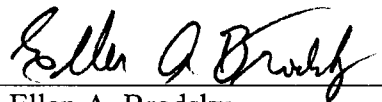
In the Matter of Jonathan Eric Diego  
Docket No. DRB 19-161

Argued: July 18, 2019

Decided: December 16, 2019

Disposition: Reprimand

<i>Members</i>	Reprimand	Admonition	Recused	Did Not Participate
Clark	X			
Gallipoli			X	
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou				X
Rivera		X		
Singer		X		
Zmirich		X		
Total:	4	3	1	1



Ellen A. Brodsky  
Chief Counsel