Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-134
District Docket No. XA-2018-0027E

In the Matter of	:
Kevin Michael Regan	:
An Attorney at Law	:

Decision

Argued: October 15, 2020

Decided: March 22, 2021

Jennifer Fortunato appeared on behalf of the District XA Ethics Committee.

Gerard E. Hanlon 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 recommendation for a reprimand filed by the District XA 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(d) (engaging in conduct prejudicial to the administration of justice), and RPC 8.4(g)

(engaging, in a professional capacity, in conduct involving discrimination).

For the reasons set forth below, we determine to impose a censure.

Respondent earned admission to the New Jersey bar in 1999 and has no prior discipline. At the relevant time, he maintained a practice of law in Morristown, New Jersey.

The grievant, a former female client, was referred to respondent via her employer-provided legal benefits plan, and consulted him in the first half of 2018 about obtaining a divorce. The grievant expressed concern that a divorce from her husband, who was her immigration sponsor, might jeopardize her immigration status at a time when she was close to obtaining permanent residency status. Because respondent recommended that the grievant first obtain advice from an immigration attorney, she did not immediately retain respondent. On July 12, 2018, however, she executed a retainer agreement for respondent to represent her in the divorce proceedings.

On October 24, 2018, the grievant's divorce was finalized, and she expressed satisfaction with respondent's representation throughout the family court proceedings. Respondent testified that he and the grievant had a friendly but professional relationship, and that she received her final judgment of divorce within three months.

On October 24, 2018, immediately after the divorce was finalized, respondent sent the grievant an e-mail from his law firm e-mail address, with the subject line "Divorce Hearing," as follows:

> t's [sic] a happy and sad day. I am happy your divorce is complete! Sad, because I won't see your beautiful smiling self in the office anymore. (smiling face emoji) You are such a good and sweet person, If you're around, please stop by. I would love to see you again.
>
> [Ex.P1.][1]

The grievant replied that she appreciated respondent's services; offered to post a positive review for him; and stated that she hoped to "cross paths" with him in the future.

The legal benefits plan had paid almost all of respondent's fees. The grievant owed respondent approximately $100, but he determined not to bill her, and considered her bill paid in full. Respondent further asserted that he indicated to the grievant, both at the divorce hearing as well as in the October 24, 2018 e-mail, that their attorney-client relationship had concluded, by informing her that they would no longer be working together.

On October 26, 2018, respondent sent the grievant another e-mail from his law firm address, again with the subject line "Divorce Hearing." In that

[1] "P" refers to a presenter's exhibit admitted into evidence.[2] The full content of this e-mail is contained in Ex.P5.

correspondence, respondent thanked the grievant for her "nice review," but also made an inappropriate offer to perform oral sex on her, using extremely graphic language.[2]

Respondent admitted to the DEC investigator that he sent the grievant the October 26, 2018 e-mail, and that it was "clumsy" and "vulgar." He testified that he regretted having sent the e-mail, that he would never send such an e-mail again, and admitted that it was inappropriate. He further testified that he could have changed the subject line notation, but failed to do so, because it was among a string of e-mails relating to the date of the hearing, which bore the subject line notation "Divorce Hearing." He did not use his personal e-mail account because he "just replied to her email." Respondent maintained that he did not intend the e-mail to suggest that it was a law firm communication, which was "probably a mistake," but had reflexively replied to the e-mail thread that already existed. The grievant did not reply to respondent's sexually explicit e-mail.

During the ethics hearing, respondent acknowledged that, by Court Rule, he remained the grievant's attorney of record for forty-five days after the judgment, but he emphasized that he was not representing her in any specific matter when he sent the October 26, 2018 e-mail. He further

[2] The full content of this e-mail is contained in Ex.P5.

maintained that, despite the Court Rules,[3] the legal plan and the retainer agreement limited his role; that he was strictly bound to represent the grievant only in the consent divorce; and any additional services would have required a separate retainer agreement and plan approval. He asserted that if the grievant wanted to file an appeal, it would have been a separate matter from the divorce, adding that he does not engage in appellate practice. Respondent, thus, expressed a belief that, as of October 24, 2018, his role and duties as the grievant's divorce attorney had been completed.

On October 30, 2018, respondent sent the grievant a final e-mail from his law firm address, again with the subject line "Divorce Hearing," stating "[h]i, I'm very sorry if I was out of line with my message. I think I got my signals from you crossed. Best regards, Kevin."

In her December 20, 2018 ethics grievance, the grievant expressed her reaction to respondent's October 26, 2018 e-mail:

> I was in shock when I read this and started to look for legal advice if I had to sue, file a complaint or both. He took my reply way to [sic] far, I mean to say to do business in the future. He was always efficient and also very nice to me, but never thought he had these horrible intentions. I did not reply to this message. On Tuesday October 30th, he e-mailed me

[3] Rule 1:11-3 provides that the responsibility of an attorney of record in any trial court terminates upon the expiration of the time for appeal from the final judgment. In turn, Rule 2:4-1(a) provides that appeals from final judgments must be filed within forty-five days of their entry.

> again . . . I'm beyond upset and disgusted, I never gave him a sign of anything. He's many decades older than me and he was my attorney for God's sake. I'm scared and always looking at my surroundings since he knows where I live, work and what car I drive since he knows a good chunk of my life due to the divorce proceedings.
>
> [P1.]

The resulting complaint alleged that, by sending the October 26, 2018 e-mail, respondent violated three Rules of Professional Conduct. First, the complaint charged a violation of RPC 3.2 because the e-mail contained highly offensive and vulgar language, and was discourteous and inconsiderate. Respondent admitted sending the e-mail, but countered that he had not intended to offend the grievant; that he got his signals from her "crossed," as explained in detail below; and that, once he realized that he may have offended her, he immediately apologized.

Next, the complaint alleged that respondent violated RPC 8.4(d), due to the unwelcome, inappropriate, and sexually suggestive remarks toward the grievant. Respondent denied violating RPC 8.4(d), because, he claimed, when the e-mail was sent, the attorney-client relationship had ended, and his purpose in sending the e-mail was not to offend the grievant.

Finally, the complaint alleged that respondent violated RPC 8.4(g) because the e-mail was highly offensive in nature, and was demeaning,

vulgar, and unsolicited; was sent two days after the grievant's divorce had been finalized; and was sent from his law firm e-mail address. The complaint asserted that the e-mail was discriminatory and caused harm to the grievant, who recently had completed a divorce and was vulnerable. When she received the e-mail, she felt frightened, and she remarked that, as a result, she always checks her surroundings because respondent knows where she works and lives, and can identify her car, having gained knowledge of this information during his representation of her. In communications with disciplinary authorities, the grievant also disclosed that the e-mail left her feeling "shaking and scared."

Respondent denied having violated RPC 8.4(g), arguing that this Rule relates to attorneys' conduct in their professional capacity, and he maintained that the attorney-client relationship had concluded prior to his sending the e-mail. Respondent claimed that he did not intend to offend the grievant and remarked that the grievant was so pleased with his representation that she offered to post positive reviews for him, and hoped to "cross paths" with him again in the future.

At the ethics hearing, respondent asserted that, on several occasions during their interactions, the grievant made comments that respondent interpreted as sexually suggestive. He claimed that, about one month into the

representation, the grievant began flirting with him, but he never indicated to her that her conduct was inappropriate, because "is flirting inappropriate? I – I don't know," and emphasized that he represented her professionally, diligently, and courteously. Respondent testified that the grievant had overtly signaled to him her sexual interest and engaged in flirtatious and suggestive behavior with him. He believed his October 26, 2018 e-mail was a "follow up on what [he] perceived to have been a history of her making advances." Respondent explained that he believed that there were indicators that, "based on his perception of [the grievant's] words and demeanor," his e-mail would be received "more affirmatively," and repeated his apology for sending the e-mail. He denied that his intent was to harass, annoy, or be discourteous or inconsiderate to the grievant; to the contrary, he liked her.

Respondent further testified that, at the time he sent the October 26, 2018 e-mail, he believed that he had stepped out of the attorney role, and that it was "sort of a man and woman relationship . . based on the history of what – of our conversations that had gone on, I didn't feel [it] was inappropriate or that it would be met with – I thought it would be accepted, I truly did." He contended that the totality of the circumstances led him to believe that the e-mail would have been favorably received. He explained that he was hoping to begin a meaningful relationship with the grievant.

> Q. Okay. And the words that you used and there's – this is RPC 8.4(g), suggesting that words themselves can be discriminatory of a sexual nature, your intent was never to be discriminatory or to express to her something that you felt would – would be, all things considered, negatively received by her. Your – that was not your intent; your intent was to strike up a relationship with her beyond the attorney-client relationship.
>
> A. Yeah. I mean, I think if -- in a vacuum if you just said those words, it would be very bad, and I think that the reaction, you know --- and RPCs may be appropriate – applicable.
>
> But based on the history of the relationship of what had happened, that's -- that's the reason that, you know, I -- I felt it would be acceptable to use -- use the language that was used. And I didn't ever think that it would be received negatively and I don't know why -- what changed, I don't know what changed that – that it was.
>
> [T52-T53].[4]

According to respondent, the grievant normally replied quickly to his e-mails and, thus, respondent thought that, even if she determined that the October 26, 2018 e-mail was inappropriate, she would have replied and told him so. He believed that "something happened," and was concerned that her former spouse might have seen the e-mail; concluded respondent and the grievant had an affair; and threatened her regarding her immigration status. Also, respondent

[4] "T" refers to the December 4, 2019 hearing transcript.

noted that, in the grievant's response to his reply to the grievance, she denied having initiated any sexual advances toward him, and wrote that attorneys "should keep [a] client's matter confidential." He, thus, believed that her e-mail indicated that someone else, probably her former spouse, had seen the October 26, 2018 e-mail, and it became a problem for her. Based on that assumption, respondent then hoped that her former spouse would see the October 30, 2018 apology e-mail.

Respondent conceded that he had never suggested to the grievant that her allegedly flirtatious statements were inappropriate or objectionable, and had described their relationship throughout the representation as professional. He admitted that, even though the grievant allegedly initiated multiple advances toward him and he ignored them, he enjoyed her behavior, because it was flattering. Respondent testified that, in his years of representing "a lot" of women in divorce matters, he never believed any client was being flirtatious with him, other than the grievant.

Respondent testified that he expressly informed the presenter, during her ethics investigation, that he was withholding the sexually explicit details regarding the grievant's behavior from her, because he was concerned that the grievant's former spouse would gain access to that information. Respondent's purported concern was based on his understanding that the grievant's husband

previously had accessed her e-mails; accused her of cheating; and used his position as her immigration sponsor in a threatening matter. The presenter, however, proffered that respondent never informed her that he was withholding any such information from her.

Respondent's attorney argued that the grievant's absence from the hearing deprived him of the opportunity to question her and to assess her credibility.

Respondent testified that, after he received the underlying ethics grievance, he unsuccessfully attempted to contact the grievant, twice in the three weeks prior to the hearing, and left her one voicemail message apologizing for his misconduct and requesting that she withdraw the ethics grievance because he was facing "serious financial implications."[5] The grievant never contacted respondent.

The DEC determined that there was clear and convincing evidence that respondent violated RPC 3.2, RPC 8.4(d), and RPC 8.4(g).

The panel found not credible respondent's testimony that he had withheld the sexually explicit details of the grievant's flirtation from the DEC investigator during the ethics investigation. Specifically, the DEC characterized such behavior as illogical, based on the significance of the investigation and the

[5] Respondent was not charged with an additional violation of RPC 8.4(d) for this misconduct.

fact that those details were the crux of respondent's explanation for sending the sexually explicit October 26, 2018 e-mail.

The panel also rejected respondent's position that the representation had ended upon the entry of the judgment of divorce because the grievant's legal benefits plan and his retainer agreement did not include appellate representation. The panel specifically found that the retainer agreement and the description of the legal benefits plan did not include such a limitation, but simply provided that the client would pay for any services beyond the scope of the legal benefits plan.

Further, the panel determined that respondent's contention that the attorney-client relationship had ended and he, thus, could not have violated the RPCs, was without merit. Respondent used his law firm e-mail address to send the e-mail, which could be construed as using his status as the grievant's attorney to communicate with her; the retainer agreement and legal benefits plan did not clearly state that the attorney-client relationship was terminated upon the judgment of divorce; and a lay person could not reasonably perceive that the relationship was terminated two days after the entry of the judgment.

The DEC found that respondent violated all three RPCs charged in the complaint by sending the October 26, 2018 e-mail. Specifically, the panel found a violation of RPC 3.2 because the e-mail was of an extremely graphic sexual nature, was discourteous and highly offensive, and was unprofessional and

disrespectful. The panel found that, even if respondent's explanation that he believed the grievant's prior conduct had invited the e-mail was credible, it would not justify the content of the e-mail. Respondent's contention that the grievant's former spouse previously had obtained access to her e-mails; accused her of cheating; and used his role as her immigration sponsor in a threatening manner further demonstrated respondent's lack of judgment and disregard for his client's interests. Respondent should have reasonably expected that matrimonial clients are emotionally vulnerable, and that sexual advances toward such clients have the potential to cause emotional distress and significant harm.

The DEC determined that respondent also violated RPC 8.4(d) because the e-mail lacked professionalism; was very inappropriate, given the particular vulnerabilities of a matrimonial client; and was prejudicial to the administration of justice. The panel expressed its opinion that respondent's conduct undermined public confidence in the legal profession and disciplinary system.

Finally, the panel found that respondent violated RPC 8.4(g) by sending to a female matrimonial client the sexually explicit October 26, 2018 e-mail, which was demeaning, derogatory, harmful, and discriminatory. The DEC rejected any justification respondent proffered for his conduct, including that the grievant had made "advances" toward him and had engaged in flirtatious behavior with him. The DEC further rejected respondent's contention that he

did not intend to cause harm, because the scope of the Rule is not limited to conduct intended to cause harm, but includes conduct that is "likely to cause harm." The DEC concluded that respondent's crude and shocking statements in the October 26, 2018 e-mail, made to a female matrimonial client two days after the entry of the divorce judgment, subjectively and objectively were "likely to cause harm."

The panel considered the change in society's attitude toward sexual harassment and remarked that sexual harassment is perceived as among the most serious, pervasive, and debilitating forms of gender discrimination.

In mitigation, the DEC acknowledged that respondent had a previously unblemished disciplinary history; that he recognized the inappropriate nature of his communication and expressed remorse; and that the misconduct was a singular instance.

In aggravation, the panel acknowledged that respondent continued to attempt to justify his misconduct, based on the grievant's alleged sexual advances toward him, and that, prior to the hearing, he tried to contact the grievant to ask her to withdraw the grievance, which likely constituted another RPC 8.4(d) violation. The fact that the grievant did not reply to either of respondent's post-judgment e-mails should have alerted him that she did not want any further communication from him.

Based on its findings, the panel recommended a reprimand.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent violated RPC 3.2 and RPC 8.4(g) is supported by clear and convincing evidence. For the reasons set forth below, however, we determined to dismiss the charge that respondent violated RPC 8.4(d).

On October 26, 2018, respondent sent the sexually explicit e-mail to the grievant. Respondent's claim that, by that date, his attorney-client relationship with the grievant had ended, is without merit. As discussed above, R. 1:11-3 provides that the responsibility of an attorney of record in a trial court terminates on the expiration of the time for appeal from the final judgment, and R. 2:4-1(a) provides that appeals from final judgments shall be filed within forty-five days of their entry.

Respondent sent the October 26, 2018 e-mail to the grievant only two days after the entry of the October 24, 2018 final judgment of divorce, well within the forty-five days that respondent was required, by Court Rule, to remain the grievant's attorney of record.

Respondent's e-mail, thus, must be considered in the context that he still represented the grievant. RPC 8.4(g) provides:

> 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.

Further, the Supreme Court's official comment (May 3, 1994) to RPC 8.4(g) provides:

> [t]his rule amendment (the addition of paragraph g) is intended to make discriminatory conduct unethical when engaged in by lawyers in their professional capacity. It would, for example cover . . . activities related to practice outside of the court house, whether or not related to litigation[.]
> . . .
>
> "Discrimination" is intended to be construed broadly. It includes sexual harassment, derogatory or demeaning language, and, generally, any conduct towards the named groups that is both harmful and discriminatory.

Respondent's vulgar October 26, 2018 e-mail to the grievant, his divorce client, was derogatory and demeaning, and constituted sexual harassment, a form of gender discrimination. Respondent, thus, violated RPC 3.2 and RPC 8.4(g).

Like the hearing panel, we reject respondent's hollow claims that he did not intend to cause harm to the grievant, his female client who had finalized her divorce just two days earlier, and believed that the e-mail would be received favorably. Those subjective intentions and beliefs do not obviate the fact that respondent recklessly sent the sexually explicit October 26, 2018 e-mail from his law firm e-mail address, and the grievant asserted that she was harmed. The

grievant represented that the e-mail left her shaking and scared, and constantly examining her surroundings because respondent knew her home address, her work address, and the type of car she drove.

Both we and the Court previously have rejected the defense that respondent has asserted here, that the offensive conduct was not "likely to cause harm." In In re Diego, 241 N.J. 542 (2020) (discussed in detail below), the attorney denied that comments that he had made to court personnel were racist, contending that he had perceived himself to be the victim of racism, and that he had not intended to cause harm to court staff. Nevertheless, we found that Diego engaged in conduct involving discrimination, in violation of RPC 8.4(g), because his conduct was likely to cause harm. In the Matter of Jonathan Eric Diego, DRB 19-160 (December 16, 2019) (slip op. at p. 16). See also In re Farmer, 239 N.J. 527 (2019) (attorney reprimanded for engaging in conduct involving discrimination, in violation of RPC 8.4(g), by making derogatory comments about Chinese culture in connection with litigation in which his adversary was of Chinese ancestry; we rejected the attorney's defenses, including his contention that he had not intended to cause harm; we observed that the Rule also applies to conduct likely to cause harm); In the Matter of George Louis Farmer, DRB 18-276 (January 15, 2019).

Similarly, in In re Pinto, 168 N.J. 111 (2001), the attorney received a reprimand after being found guilty of having sexually harassed a vulnerable 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, "[t]his 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.

Here, we determined, however, to dismiss the charge that respondent's conduct 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. The e-mail was sent two days after the court hearing when the final judgment of divorce was entered on the record and had no effect on court operations.

If the complaint had charged respondent with violating RPC 8.4(d) for attempting to induce the grievant to withdraw her ethics grievance, that charge would be sustained, because such conduct is a per se violation of that Rule. See A.C.P.E. Opinion 721, 204 N.J.L.J. 928 (June 27, 2011) (in which the Advisory Committee on Professional Ethics opined that an attorney may not "seek or agree, as a condition of settlement of an underlying dispute" that a client refrain from filing or withdraw an ethics grievance). Despite the failure to charge that theory in the complaint, we considered respondent's improper behavior in connection with the ethics grievance as an aggravating factor.

In sum, we find that respondent violated RPC 3.2 and RPC 8.4(g). We determined to dismiss the remaining charge that he violated RPC 8.4(d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

All reported cases addressing an RPC 8.4(g) violation, including Pinto, have resulted in a reprimand or greater discipline. See In re Garofalo, 229 N.J. 245 (2017) (respondent was suspended for six months for knowingly making false statements to disciplinary authorities; committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in all other respects – specifically harassment, in violation of N.J.S.A. 2C:33-4(A); engaging in conduct involving dishonesty, fraud, deceit or

misrepresentation; and engaging, in a professional capacity, in sexual harassment discrimination; no prior discipline) and In re Witherspoon, 203 N.J. 343 (2010) (respondent 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).

In one of our more recent cases, the attorney received a one-year retroactive suspension in two consolidated cases capturing multiple RPC violations, the most serious of which was possession of cocaine. In re Jones, ___ N.J. ___ (2021); In re Stephen Robert Jones, DRB Nos. 20-035 and 20-067 (January 29, 2021) (considering absence of prior New Jersey discipline in mitigation). We there expressed that Jones had "violated RPC 8.4(g) when he sent lewd text and Facebook messages to [his client] . . . pursuant to that Rule, such sexual harassment constitutes discrimination based on sex." (Slip op. at 12). Testimony showed that the lewd texts were preceded by a meeting between respondent and the client at his home, in which he asked her personal questions, and directed her to his bedroom to conduct business. (Slip op. at 5).

Cases analyzing RPC 8.4(g) in the context of race and national origin are also instructive. In In re Geller, 177 N.J. 505 (2003), 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.]

More recently, in In re Diego, 241 N.J. 542, the Court imposed a reprimand on an attorney who was attempting to file eviction paperwork in behalf of a client at the Atlantic County Special Civil Part clerk's office when he became involved in a dispute with two African American judiciary clerks, at which time an African American court employee emerged from behind the counter, intervened, and improperly placed his hands on respondent. In the Matter of Jonathan Eric Diego, DRB 19-160 (December 15, 2019) (slip op. at

13-14). Diego then made the discriminatory remark, "I am tired of this racist ghetto B.S." within earshot of the two clerks. Id. at 13-14.

We determined that Diego's conduct violated RPC 8.4(g) and RPC 3.2, even though respondent presented compelling evidence that he neither held nor condoned racist beliefs; felt he was the victim of the clerks' racially discriminatory conduct; did not intend to cause harm; and was improperly touched by a court employee. Id. at 14,17-19. We determined that the exclamation "racist ghetto B.S." was, in itself, demeaning and likely to offend. Id. at 16. Although Diego demonstrated a lack of remorse, he presented compelling mitigation, including lack of prior discipline; dedication to community involvement; and that, prior to uttering the offensive statement, he had been physically accosted by a court employee. Id. at 19.

We find respondent's conduct to be most closely analogous to that of the attorneys who engaged in discriminatory acts in Geller, Pinto, and Diego, all of whom had no prior discipline, and received reprimands. The attorney in Farmer, who previously had received an admonition for engaging in a conflict of interest, also received a reprimand solely for violating RPC 8.4(g). Although Geller and Pinto committed additional ethics violations, Diego's transgressions, like respondent, were limited to violations of RPC 3.2 and RPC 8.4(g). Also, like the attorneys in Diego, Farmer, and Pinto, respondent denied that he intended to

cause harm; yet, his subjective intent did not serve to obviate his RPC violations.

Notwithstanding the unjustifiable character of respondent's conduct, we decline to impose the suspensions seen in Witherspoon, Garofalo, and Jones, which were justified by the larger number of harassed persons (Witherspoon; Garofalo) or accompanying RPC 8.4(b) violation (Garofalo; Jones).

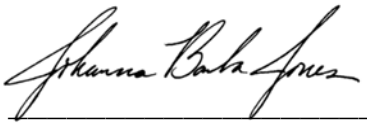
In addition, we considered the aggravating and mitigating factors. In mitigation, respondent has no disciplinary history in twenty-one years at the bar; expressed remorse; recognized the inappropriate nature of the communication; apologized to the grievant; and the misconduct was a singular communication. In aggravation, although respondent expressed remorse, he continued to deny, at the ethics hearing, that his conduct was unethical. In further aggravation, we considered respondent's improper attempt to persuade the grievant to withdraw the grievance, a per se RPC 8.4(d) violation. Although RPC 8.4(d) was not charged in respect of that misconduct, even uncharged conduct may serve as an aggravating factor, and the enhanced sanction of a censure is warranted.

On balance, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Members Hoberman, Petrou, and Singer voted to impose a reprimand.

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: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kevin Michael Regan
Docket No. DRB 20-134

Argued: October 15, 2020

Decided: March 22, 2021

Disposition: Censure

Members	Censure	Reprimand	Recused	Did Not Participate
Clark	X			
Gallipoli	X			
Boyer	X			
Hoberman		X		
Joseph	X			
Petrou		X		
Rivera	X			
Singer		X		
Zmirich	X			
Total:	6	3	0	0

Johanna Barba Jones
Chief Counsel