Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-011
District Docket No. XIV-2019-0538E

In the Matter of	:
Josue Vazquez	:
An Attorney at Law	:

Decision

Argued: March 17, 2022

Decided: July 18, 2022

Amanda W. Figland appeared on behalf of the Office of Attorney Ethics.

Justin M. Day 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 between the Office of Attorney Ethics (the OAE) and respondent. Specifically, respondent stipulated to having violated RPC 1.7(a)(2) (engaging in a concurrent conflict of interest), RPC 4.2 (communicating with a person represented by counsel),

and RPC 8.4(g) (engaging, in a professional capacity, in conduct involving discrimination).

For the reasons set forth below, we determine that a censure is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2001 and has no disciplinary history. During the relevant timeframe, he served as a Senior Assistant Prosecutor with the Passaic County Prosecutor's Office (the PCPO), in Paterson, New Jersey. Respondent currently maintains a solo law practice in Newark, New Jersey.

Respondent and the OAE entered into a disciplinary stipulation, dated January 11, 2022, which set forth the following undisputed facts in support of respondent's admitted ethics violations.

As of December 17, 2018, A.E. had been enrolled in drug court for two years, and respondent had been assigned to the program for six months. On that date, A.E. met with probation officers, to whom she reported her concerns about respondent. Specifically, A.E. reported that, on three separate occasions, beginning on October 31, 2018, respondent (1) left the courtroom during her mandatory, weekly drug court appearance, (2) waited for her in the courthouse hallway, and (3) after the conclusion of her court appearance, engaged her in a conversation outside of the courtroom. More concerning, A.E. also reported that

respondent twice visited the diner where she worked. On his first visit, respondent provided A.E. with his telephone number along with a tip. Prior to his second visit, respondent called A.E.'s place of employment to confirm that she would be working before visiting.

A.E. asked the probation officers not to take any action taken against respondent as a result of the information she reported. The probation officers, however, advised A.E. of their obligation to report her concerns. Later that day, one of the officers prepared a formal memorandum memorializing A.E.'s statements about respondent, and forwarded the memorandum to the PCPO.

The next day, on December 18, 2018, the PCPO both notified respondent that they had received an internal affairs complaint against him and interviewed the probation officers.

The following day, on December 19, 2018, the PCPO also interviewed A.E.[1] In that interview, A.E. elaborated upon the information previously provided to the probation officers. Specifically, A.E. stated that, on three occasions, respondent left the Superior Court, Passaic County courtroom during her drug court appearance and waited in the hallway to speak with her after the conclusion of her matter. During their conversations, respondent questioned

[1] A.E. referred to respondent as "Joshua," based upon a note that he had left for her at her place of employment.

A.E. about her progress in drug court, the days she reported, and when her matter would conclude.

A.E. described respondent's efforts to start a conversation with her as awkward. A.E. would reply to respondent's questions, while continuing to walk, so that she could leave the courthouse. To avoid prolonged conversations with respondent, she elected to take the stairs to exit the courthouse, instead of waiting for the elevator. A.E. referred to her actions as trying to "escape" and "avoid" respondent. She described feeling "uncomfortable and intimidated" by respondent's behavior. A.E. also observed that respondent did not leave the courtroom and wait in the courthouse hallway for any other defendants.

The drug court program required that A.E. provide personal information, such as her place of employment, her residence, and social contacts.[2] A.E. stated that, during their courthouse conversations, respondent asked her whether she still worked at the diner, when she worked, and for the location of the diner.

Respondent first visited A.E.'s place of employment between October and November 2018, at which time he wore a suit. A.E. initially believed that

---

[2] Drug court is a probationary program focused on assisting participants in overcoming their substance dependencies while also resolving their criminal charges. N.J.S.A. § 2C:35-14. In most instances, the court requires participants to maintain employment for the duration of the program. On January 1, 2022, to better reflect its primary purpose, the program was renamed the recovery court program. See https://www.njcourts.gov/courts/criminal/drug.html?lang=eng (visited July 11, 2022).

respondent requested to sit in her assigned section at the diner, because he sat alone in a four-person booth, a placement the hostess would not ordinarily make absent an express request. At the diner, respondent engaged A.E. in a conversation about her tattoos. In particular, he complimented her hand tattoos, calling them "hot," and inquired whether she had others. Respondent also inquired regarding who A.E. spent time with and what she enjoyed doing in her free time, which she perceived as his indirect inquiry into whether she was in a relationship. A.E. briefly answered respondent's questions, but then walked away. Prior to leaving the diner, respondent left A.E. a $10 tip, in addition to a piece of paper with his telephone number and the name "Joshua" written on it. A.E. threw out the piece of paper and did not call respondent.

A.E. later confirmed her initial belief that respondent had requested to sit in her assigned section at the diner. Specifically, the diner's owner subsequently informed A.E. that a male had called the diner and inquired whether she would be working that day. A.E. recalled overhearing the diner's owner and respondent speaking when respondent arrived at the diner, at which time the owner stated to respondent "oh you are the one who called," to which respondent replied in the affirmative and asked to sit in A.E.'s assigned section. Although A.E. reported that respondent had called the diner prior to his second visit to her place of employment, respondent's county-issued cellphone records demonstrated that

he actually called her place of employment on November 2, 2018, prior to his first visit.

The following month, on a weekend in December 2018, respondent made a second visit to A.E. at her place of employment, and again sat in her assigned section. Respondent commented "[o]h wow, this place is really busy. I have to start coming here more often." A.E. described respondent as "watching [her] the whole time" and stated that a co-worker also noticed respondent "staring at her up and down." A.E.'s co-workers referred to respondent as her boyfriend, but A.E. told them that he was her teacher, because not all her co-workers knew about her enrollment in the drug court program.

A.E. again described respondent's behavior as "intimidating" and "uncomfortable." She added that it "creeps [her] out" that respondent called her place of employment to see if she would be there and, subsequently, visited her place of employment, alone, and requested to sit in her assigned section. A.E. expressed fear for her safety, generally stating that she had reported the incident to her probation officer in case something happened to her.

A.E. had no romantic interest in respondent. However, she did not tell respondent that she did not desire to have personal conversations with him, because, as a drug court participant, she felt obligated to speak with him, as a drug court prosecutor. Specifically, she stated "I just don't know what to do

because like he is part of the court. So like I don't know if he is asking for court or if he is just asking me for himself."

In connection with its investigation, the PCPO obtained the Passaic County courthouse surveillance videos for A.E.'s six drug court appearances, which occurred between November 7 and December 12, 2018. The videos showed that respondent and A.E. spoke in the courthouse hallway and stairwell on November 14 and November 28, 2018. Specifically, on November 14, 2018: (1) respondent exited the judge's chambers; (2) A.E. later exited the courtroom; (3) respondent and A.E. spoke and walked in the courthouse hallway, prior to entering the stairwell; (4) respondent and A.E. engaged in conversation in the stairwell; (5) respondent showed A.E. something on his cellphone; (6) A.E. walked down the stairs; and (7) respondent returned to the judge's chambers. Similarly, on November 28, 2018: (1) respondent exited the judge's chambers; (2) A.E. later exited the courtroom; (3) respondent and A.E. spoke in the courthouse hallway; (4) A.E. walked down the stairs; and (5) respondent returned to the judge's chambers. The videos also demonstrated that respondent and A.E.'s conversations on November 14 and November 28, 2018 involved only the two of them.

On December 20, 2018, one day after A.E.'s interview, the PCPO suspended respondent, without pay, pending the investigation of A.E.'s

complaints. On January 25, 2019, respondent resigned from his position with the PCPO.

Respondent admitted that he spoke with A.E. outside of the courtroom but maintained that they merely exchanged pleasantries. He also admitted that, during these conversations, A.E.'s public defender was not present. Notwithstanding, respondent rationalized that A.E. had enrolled in drug court prior to him becoming the assigned prosecutor and that he had never participated in her matter before the court.

Respondent also admitted that, on two occasions, he had visited A.E. at her place of employment. He further admitted that he (1) heard about A.E.'s employment at the diner during drug court; (2) called the diner on November 2, 2018 and inquired whether A.E. would be working, prior to visiting the diner that evening; (3) asked to sit in A.E.'s assigned section at the diner; and (4) returned to the diner a second time, knowing that A.E. would be working. Respondent further admitted that he referred to A.E.'s tattoos as "hot," that he "probably" asked A.E. about her interests outside of work, and that he "might" have provided her with his telephone number.[3] Although respondent denied being romantically interested in A.E., he believed that they had "a connection."

[3] Although respondent initially admitted that he "might" have provided A.E. with his telephone number, the disciplinary stipulation contains his admission to having done so.

Initially, respondent denied having behaved inappropriately towards A.E., calling the allegations "misleading." However, after watching the PCPO's interview of A.E., he acknowledged that he had made her uncomfortable and behaved inappropriately. Respondent expressed remorse for his behavior, stating that he would apologize to A.E. if given the opportunity to do so.

On September 20, 2019, the PCPO notified respondent that its investigation had concluded and that it had sustained the allegations against him for conduct unbecoming of a public employee. On that same date, as RPC 8.3 requires, the PCPO made a referral to the OAE regarding respondent's misconduct, noting that no criminal charges had been filed.

Respondent stipulated to having violated RPC 1.7(a)(2) based upon the significant risk that his representation of the State of New Jersey as a drug court prosecutor would be materially limited by his attempts to have a personal relationship with A.E., a drug court participant. He also stipulated to having violated RPC 4.2 by communicating with A.E. about the subject of her representation outside of the presence of the public defender, knowing that she was represented by counsel.[4] Finally, respondent stipulated to having violated

[4] Although respondent initially denied having spoken to A.E. about her status as a probationer in drug court or her sobriety, he subsequently stipulated to having done so.

RPC 8.4(g) when, while serving as a drug court prosecutor, he repeatedly left the courtroom to speak with A.E., a drug court participant, after her court appearance had concluded; described her tattoos as "hot;" appeared at her place of employment on two occasions; and provided her with his telephone number.

In aggravation, the parties stipulated that respondent, as a prosecutor, held a position of public trust. In mitigation, they stipulated to respondent's lack of disciplinary history, entry into the disciplinary stipulation, and remorse.

For the totality of respondent's stipulated violations of RPC 1.7(a)(2), RPC 4.2, and RPC 8.4(g), the OAE recommended that respondent receive a reprimand or such lesser discipline as we deem appropriate. In support of a reprimand, the OAE cited disciplinary precedent, which is discussed below.

In his brief to us, respondent again admitted to having violated the charged RPCs, but argued that an admonition was the appropriate quantum of discipline for his misconduct. He agreed with the OAE's recommendation of an admonition for his violation of RPC 4.2. However, respondent argued that, pursuant to relevant New Jersey disciplinary precedent, his admittedly inappropriate behavior warranted minor discipline.

Respondent also proposed to mitigate his discipline, emphasizing his lack of a disciplinary history; entry into a disciplinary stipulation; and resignation from his position with the PCPO. Respondent stated that he holds himself to a

high ethical standard, is actively involved in his local community and church, and that his misconduct is unlikely to recur. He also represented that, in January 2019, he enrolled in counseling. His counselor's letter, attached to his brief, generally states that respondent has recognized the improper nature of his behavior and has made strides in moving past such behaviors.

Notwithstanding the above, respondent suggested that, although he understood that it was no longer an option, the most appropriate discipline for his misconduct would have been an agreement in lieu of discipline, pursuant to R. 1:20-3(i)(2)(B),[5] had he not been a prosecutor. Respondent characterized his behavior as "minor unethical conduct" under that Rule.

Following a de novo review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.7(a)(2), RPC 4.2 and RPC 8.4(g).

RPC 1.7(a)(2) prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Under the Rule, a concurrent conflict of interest exists if:

> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former

[5] An agreement in lieu of discipline was not available to respondent, both because of the stage of the proceeding and because the decision to offer such an agreement lies within the sole discretion of the Director of the OAE. R. 1:20-3(i)(2)(B)(i); R. 1:20-3(i)(2)(A).

> client, or a third person or by a **personal interest of the lawyer.** (Emphasis added).

Here, respondent engaged in a concurrent conflict of interest, in violation of RPC 1.7(a)(2), by creating a "significant risk" that his representation of the State of New Jersey would be materially limited by his own personal interests. Particularly, his representation of the State, as an assigned drug court prosecutor, was incompatible with his concurrent effort to pursue a personal relationship with A.E., a participant in that court program. Indeed, A.E. expressed confusion about whether respondent had questioned her in his role as prosecutor on behalf of the court or for his own personal interest. This confusion resulted in her hesitation to more explicitly convey to respondent that she had no desire to engage in personal discussions with him. Respondent, thus, violated RPC 1.7(a)(2).

Next, RPC 4.2 prohibits a lawyer from "communicat[ing] about the subject of the representation with a party the lawyer knows to be represented by another lawyer . . . unless the lawyer has the consent of the other lawyer." In the instant matter, respondent knew that the Office of the Public Defender represented A.E. in drug court. Despite that knowledge, outside of both the courtroom and the presence of her counsel, respondent questioned A.E. about

information germane to her ongoing drug court matter. Thus, respondent violated RPC 4.2.

We likewise conclude that respondent's conduct violated RPC 8.4(g):

> 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 Supreme Court's official comment (May 3, 1994) to that Rule provides:

> "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.

In the instant matter, respondent held a position of power over A.E. He was a prosecutor in the drug court that required her regular reporting and, ultimately, would decide whether she remained on probation or would be incarcerated. Their association is comparable to that of a detention officer and a detainee. In State v. Martin, 235 N.J. Super. 47, 51 (1989), a jury found the detention officer guilty of having violated N.J.S.A. 2C:14-2c(3) (sexual assault), N.J.S.A. 2C:14-3b (sexual contact), and N.J.S.A. 2C:30-2a (official misconduct), for having sexual relations with a juvenile detainee over whom he exercised supervisory power. That case illustrated the unequal positions of power of the supervisor and supervisee, and the inherent coerciveness of same,

noting that "[i]t cannot be doubted that if [the detainee] had disregarded the instructions of her supervisors, she would have been subject to a charge of a violation of her probation" or loss of privileges. Id. at 56-57; see also, State v. Spann, 236 N.J. Super. 13, 27 & n.3 (App. Div. 1989) (the actor's status as a corrections officer at a county jail was sufficient to establish his supervisory authority over the inmate victim for purposes of a sexual assault conviction under N.J.S.A. 2C:14-2c),[6] aff'd, 130 N.J. 484 (1993).

We likewise have no trouble concluding that respondent's conduct was discriminatory within the meaning of RPC 8.4(g). See generally In re Seaman, 133 N.J. 67 (1993). In that case, the Advisory Committee on Judicial Conduct (the ACJC) brought judicial misconduct disciplinary charges against a Superior Court judge for his sexual harassment of his law clerk. Specifically, the judge repeatedly made sexual remarks towards his law clerk and inappropriately touched her. Seaman, 133 N.J. at 73. The Court noted that "[t]he vulnerability of a [law] clerk to a judge is even greater than that in most supervisor-employee relationships. By alienating his or her judge, a clerk risks great professional jeopardy." Id. at 94.

---

[6] We note that the Legislature has formally considered power imbalance in the sexual assault statute. N.J.S.A. 2C:14-2c(2) (forbidding sexual penetration by an actor where "[t]he victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status").

Here, the record contains no allegation that respondent specifically requested a sexual relationship with A.E. or that they engaged in such a relationship. However, we find that respondent clearly abused his position of power, and thereby engaged in discriminatory conduct.

Based on respondent's authority as the drug court prosecutor, A.E. felt obligated to speak with him and confused regarding whether he spoke to her for the benefit of the court or himself. Moreover, A.E. was keenly aware that any personal relationship between herself and respondent might have worked to her advantage, or disadvantage, as evidenced by her expressed discomfort and intimidation by respondent's behavior.

Notably, A.E. observed that, aside from herself, respondent did not wait for – or speak with – any other drug court participant after court. Respondent did not dispute that observation. In fact, he specifically believed that he and A.E. had "a connection."

We also note the recurring character of respondent's attentions and that he twice visited A.E. at her place of employment. Although he denied being romantically interested in A.E., respondent's persistent behavior suggests otherwise.

Additionally, the plain language of RPC 8.4(g) prohibits conduct "likely to cause harm." Here, we find that respondent's conduct was likely to cause

harm to both A.E. in particular and the drug court program generally.

First, respondent's misconduct clearly caused A.E. harm. Specifically, she told law enforcement that his advances caused her to feel uncomfortable and intimidated. Consistent with that description, A.E. contemporaneously reported respondent's inappropriate behavior to her probation officer for her safety.

Respondent's conduct also was likely to harm the drug court program. That program is intended to encourage the engagement of its participants to ensure their successful completion of the program and ultimate recovery from addiction, in lieu of incarceration. Respondent preyed on a drug court participant, while serving as the drug court prosecutor. He also used a public resource, his PCPO-provided cellular phone, to commit his misconduct. By pursuing a drug court participant while in an official role of direct responsibility, respondent undermined the goals of the program. Additionally, if perceived by others, respondent's disparate treatment of a female participant could diminish public confidence in the program, and thereby stifle participation and recovery from substance dependency.

In sum, we find that respondent violated RPC 1.7(a)(2), RPC 4.2, and RPC 8.4(g). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

The discipline imposed on attorneys who communicate with represented

individuals, outside the presence of their legal counsel, ranges from an admonition to a three-month suspension, depending on the presence of additional RPC violations, in addition to aggravating and mitigating factors. See, e.g., In the Matter of Donyale Yvette Hooper-Reavis, DRB 20-008 (April 21, 2020) (admonition; in violation of RPC 4.2, during litigation between her client and the adversary, the lawyer repeatedly, directly communicated with the adversary, despite knowing that individual was represented by counsel; further, on at least two occasions, the attorney ignored the adversary's request that she refrain from communicating directly with his client, including sending copies of letters to him; the attorney also violated RPC 5.5(a) (unauthorized practice of law)); In the Matter of Mitchell L. Mullen, DRB 14-287 (January 16, 2015) (admonition; attorney, in the course of an e-mail chain, communicated directly with an individual on at least three occasions, when the attorney knew or should have known that the individual was represented by counsel; those communications involved the subject of the representation; the attorney also sent a notice of deposition directly to that individual, without notifying his counsel of the deposition date; in mitigation, we considered that the attorney's conduct was minor and caused no harm to the grievant; also, the attorney had no disciplinary history in his thirty-nine years at the bar); In re Tyler, 204 N.J. 629 (2011) (reprimand; attorney who, in one of six bankruptcy matters,

communicated directly with the client about a disgorgement order in the matter, although she knew or should have known that counsel had been engaged; the attorney also violated RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); and RPC 1.4(b) (failure to communicate); in mitigation, the attorney had no prior discipline and struggled with mental health issues at the time of the misconduct); In re Ibrahim, 236 N.J. 97 (2018) (censure; attorney attempted to resolve a domestic violence case directly with the other party, whom the attorney knew was represented by counsel; that communication occurred at the courthouse, just before the hearing, forcing the court to reschedule the matter; in another matter, the attorney violated RPC 1.5(b) (failure to communicate in writing the rate or basis of fee); In re Veitch, 216 N.J. 162 (2013) (censure; attorney who, in a criminal matter, communicated with his client's co-defendant, who had pleaded guilty, about the merits of the criminal case, even though counsel for the co-defendant previously had denied the attorney's request to speak with his client; in mitigation, the attorney had no disciplinary history in his thirty-eight years at the bar, and the attorney's misconduct did not harm any party or the judicial system); In re Fogle, 235 N.J. 417 (2018) (three-month suspension; attorney copied his adversary's client on a letter to his lawyer proposing a settlement in an eviction matter, without the lawyer's consent; the attorney engaged in many other RPC violations, including

RPC 1.4(b); RPC 1.15(a) (failure to safeguard funds); RPC 1.15(b) (failure to promptly notify the client of the receipt of funds and deliver those funds); RPC 1.15(d) (recordkeeping violations); RPC 1.16(a) and (d) (failure to notify the client of his administrative suspension from the practice of law); RPC 8.1(b) (failure to cooperate with the disciplinary authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice); suspension imposed due to the attorney's "disregard of the disciplinary system," which began early in his career and reflected "an arrogance that we cannot countenance"); In re Smith, 235 N.J. 165 (2018) (three-month suspension; attorney who, in a domestic violence matter, sent an e-mail to the other party, who was represented by counsel, after he had been unable to reach counsel; the attorney also violated RPC 3.5(b) (ex parte communication with a judge) and RPC 5.5(a); the attorney had an extensive disciplinary history, consisting of an admonition and two censures; we determined that the attorney demonstrated an inability or unwillingness to recognize wrongdoing and to confirm his behavior to the standards required of all New Jersey attorneys).

An attorney's violation of RPC 1.7(a)(2) by entering into or attempting to enter into personal relationships with a client, typically results in a reprimand.

In re Carroll, 232 N.J. 111 (2018) (public defender[7] violated RPC 1.7(a)(2) by engaging in a sexual relationship with an appointed client; the attorney also violated RPC 8.4(d)); In re Resnick, 219 N.J. 620 (2014)[8] (attorney engaged in a sexual relationship with a client, whom he initially had represented pro bono; the attorney also violated RPC 1.16(d) (failure to protect a client's interests on termination of the representation, RPC 3.5(b), and RPC 8.4(a) (violation of the RPCs)); In re Warren, 214 N.J. 1 (2013) (attorney engaged in a sexual relationship with an appointed client in municipal court; the attorney also violated RPC 8.4(d)). However, unlike the attorneys in Carroll, Resnick, and Warren, respondent's advances did not result in a sexual relationship.

Similarly, an attorney's violation of RPC 8.4(g), for sexual harassment, has resulted in a reprimand or greater discipline. See, e.g., In re Pinto, 168 N.J. 111 (2001) (attorney reprimanded, with the condition of sensitivity training, for sexually harassing a vulnerable, unsophisticated female client; the attorney engaged in "extremely crude," explicit conversations about what he could do sexually with her; on one occasion, he massaged the client's shoulders, kissed

---

[7] Although respondent did not represent A.E., either by retainer or court appointment, the dynamics of their professional association are similar because respondent was the assigned prosecutor to the court that required A.E.'s appearance – thus, ensuring their regular interaction and affording respondent a position of power.

[8] Notably, in In the Matter of Michael L. Resnick, DRB 13-413 (June 17, 2014), we recommended the imposition of a censure (slip op. at 34). The Court disagreed and imposed a reprimand.

her on the neck, and told her that she should show herself off; on another occasion, he slapped the client on the buttocks); In re Hyderally, 162 N.J. 95 (1999) (attorney reprimanded, on a motion for reciprocal discipline, for his sexual advances toward two legal-aid clients); In re Pearson, 139 N.J. 230 (1995) (attorney reprimanded, where he hugged his client, put his hands on her buttocks, and pushed his head into her chest and commented about the size of her breasts); In re Rea, 128 N.J. 544 (1992) (attorney reprimanded, where he had a sexual relationship with a client who, because of her past history and mental health, lacked the capacity to freely consent to the relationship); In re Liebowitz, 104 N.J. 175 (1985) (attorney reprimanded for sexual misconduct with an assigned client, where he attempted to have a sexual relationship with the client; specifically, he invited the client to dinner and, thereafter, to his apartment; requested that she enter his bedroom and sit on the bed next to him while he made telephone calls; unbuttoned the top of her dress; kissed her on the lips; removed his clothing; and urged her to join him in bed; additionally, after the client told him that she had to leave and went into the living room, the attorney pulled her back into the bedroom, touched her, and placed her hand on his genital area).

Under certain factual scenarios, suspensions also have been imposed. See In re Garofalo, 229 N.J. 245 (2017) (attorney received a six-month suspension

for sexually harassing two employees at his law firm; in one instance, he sent repeated, unwanted communications of a sexual nature, over the course of ten years, and showed no remorse for his misconduct after the victim, the police, and the partners at his law firm warned him to stop); In re Witherspoon, 203 N.J. 343 (2010) (attorney suspended for one year for his sexual harassment of four female clients; in all four matters, the attorney repeatedly made inappropriate propositions whereby he offered his legal services in exchange for sex and, in two of the matters, he discriminated based on sexual orientation; in aggravation, the attorney had a significant disciplinary history and showed no remorse for his misconduct).

Recently, in In the Matter of Kevin Michael Regan, DRB 20-134 (March 22, 2021), we imposed a censure on an attorney who sent an improper, sexually explicit e-mail to an existing adult client two days after her divorce had been finalized, in violation of RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process) and RPC 8.4(g) (slip op. at 2, 15-16, 23), so ordered, 249 N.J. 17 (2021). We found that the e-mail constituted derogatory and demeaning sexual harassment, rejecting the attorney's claimed belief that his e-mail would be received favorably due to their prior interactions. Id. at 16. As in this matter, that recipient asserted that the attorney's behavior caused her to feel uncomfortable. Id. at 16-17. Like

respondent, the attorney in Regan had no disciplinary history. Id. at 23. Additionally, in Regan, we declined to impose a term of suspension on the attorney, distinguishing his behavior from the attorneys in Witherspoon and Garofalo, who had harassed multiple victims. Like the attorney in Regan, respondent harassed one victim, but, unlike Regan, respondent did not make sexually explicit advances to A.E.

Most recently, in In the Matter of Jonathan Lloyd Becker, DRB 21-199 (November 23, 2021), on a motion for discipline by consent, we imposed a one-year suspension on the attorney for making sexual explicit statements and hypotheticals, to his minor, appointed client, in violation of RPC 1.14(a) (when a client's capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client) and RPC 8.4(g) (slip op. at 1, 2). As in this matter, that recipient asserted that the attorney's behavior caused her harm, as demonstrated by her prompt reporting of the inappropriate behavior. Id. at 5. Also like respondent, the attorney in Becker held a position of trust and had no disciplinary history in New Jersey. Id. at 6. However, unlike Becker, respondent's inappropriate behavior involved an adult, not a minor, and he did not use crude language. Id. at 1. Our decision in Becker

remains pending with the Court.

Here, unlike the attorney in Tyler, who received a reprimand for having violated RPC 4.2, or the attorneys in Veitch and Ibrahim, who received censures, respondent did not communicate with a represented individual in an attempt to gain an advantage in pending litigation. Thus, respondent's violation of RPC 4.2, standing alone, warrants the minimum sanction of an admonition. However, we also must consider his additional RPC violations.

Respondent's case bears the closest factual resemblance to Pinto and Liebowitz, in which both respondents were reprimanded. Like the attorney in Pinto, respondent inappropriately commented on A.E.'s physical appearance. Most like the attorney in Liebowitz, respondent attempted to engage A.E. in a relationship, which she declined and subsequently reported. Indeed, just like the recipient of Liebowitz's inappropriate advances, A.E. was in a vulnerable position, as a drug court participant in the court where respondent served as a prosecutor. Also, just like Liebowitz, respondent sought the company of his victim outside of the courthouse. Like respondent, the attorneys in Pinto and Liebowitz had no disciplinary history.

Thus, we determine that the totality of respondent's misconduct warrants at least a reprimand. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

In mitigation, respondent entered into a disciplinary stipulation, admitting the allegations of the complaint. He also has enrolled in counseling.

In aggravation, although it initially appeared that respondent appreciated the severity of his misconduct, his subsequent characterization, in his brief to us, of his conduct as "minor ethical misconduct" arguably minimized that realization and raises serious, continuing concerns. Indeed, at oral argument before us, respondent continued to diminish his misconduct and offered excuses for his behavior.

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

Vice-Chair Singer and Members Boyer and Menaker voted to impose a reprimand.

Member Campelo was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Josue Vazquez
Docket No. DRB 22-011

Argued: March 17, 2022

Decided: July 18, 2022

Disposition: Censure

Members	Censure	Reprimand	Absent
Gallipoli	X		
Singer		X	
Boyer		X	
Campelo			X
Hoberman	X		
Joseph	X		
Menaker		X	
Petrou	X		
Rivera	X		
Total:	5	3	1

Johanna Barba Jones
Chief Counsel