

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-249
District Docket Nos. XIV-2021-0403E
and VC-2023-0900E

In the Matter of Ira Barry Karasick
An Attorney at Law

Argued
February 20, 2025

Decided
April 22, 2025

Corrected Dissent

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

We write separately to respectfully dissent from the majority's de novo finding, contrary to the conclusion of the hearing panel, that there was no clear and convincing evidence that respondent violated RPC 8.4(g).

We do not dispute the majority's comprehensive recitation of the facts in this matter, which are largely not disputed in any event. Like the majority, we do not find that a racist or malicious intent motivated respondent to utter the words at issue. We accept respondent's assertions that he sought to encourage Scott to enter the elevator, and did not specifically intend for his statement to cause harm. We also acknowledge respondent's expertise in constitutional law, which he contends is relevant to providing a context for the statement made.

We also agree that the majority correctly set forth the three-prong test that should be applied in determining whether an attorney's conduct runs afoul of the elements of RPC 8.4(g). Our disagreement is with the majority's application of the law to the undisputed facts of this case, an application that we believe is at odds with both the letter and the spirit of RPC 8.4(g).

For the reasons that follow, we find that respondent's conduct was unethical and violative of RPC 8.4(g). We address each element of RPC 8.4(g) in turn, below.

I. Respondent Engaged in the Conduct “In a Professional Capacity”

The first element requires that the attorney engaged in the conduct “in a professional capacity.” Here, contrary to the conclusion reached by the majority, we have no trouble finding that the evidence clearly and convincingly establishes that respondent was acting in his professional capacity at the time he made the statement at issue.

As noted in the majority opinion, the official comment to RPC 8.4 (g) states, regarding the requirement that an attorney engage in the conduct in his professional capacity that the rule

would, for example, cover activities in the courthouse,
such as a lawyer’s treatment of court support staff . . .
Except to the extent that they are closely related to the
foregoing, purely private activities are not intended to
be covered by this rule amendment

It is not disputed that the statements at issue were uttered by respondent in the courthouse, to interested stakeholders who were there to observe his appellate argument as counsel for the Township in which they were both residents and advocates for issues before the Appellate Court. This fact alone would, in our view, warrant a finding that the activity in question involved respondent engaging in conduct in his professional capacity as contemplated by the Rule. The fact that the official comment goes on to give an example (“such as a lawyer’s treatment of court support staff”) does not indicate the Rule would

not apply here, given that it took place in the courthouse where respondent's presence was clearly in his professional capacity and known as such by Scott and the other members of the group.

However, our conclusion that respondent was engaged in conduct in his professional capacity is not based solely on the fact that the conduct took place in the courthouse. Shortly before making his remark, respondent had concluded his appellate argument regarding the Township's rent control ordinance. Scott, and the other three housing advocates, Malloy, Felicidad, and Martin – Montclair residents, proponents of the ordinance, and, in the case of Scott and Malloy, co-chairs of the Montclair Housing Commission – attended the oral argument, which marked a significant stage in litigation initiated by opponents of the ordinance. As such they were clearly interested stakeholders in the matter before the court and in the position advanced by respondent during the argument.

After the hearing, respondent and the advocates engaged in interactions that would not have occurred but for his role, as Township Attorney, in the appeal that he had just argued. In a foyer outside the courtroom, they discussed the argument, the judges' questions and demeanors, and possible outcomes given the argument that had just transpired. As they were having this discussion, at some point they proceeded to the elevator, located a few feet from the foyer

where the discussion started.¹ Respondent's own description of what transpired confirms that these discussions continued as they were entering the elevator:

After an intense and fairly demanding argument, we exited the courtroom and gathered in the 5th floor lobby. I went over to the Montclair residents and thanked them for coming all the way to Trenton to support our ordinance, and they in turn thanked me for the work I had been doing to make the rent control ordinance a reality. They asked what I thought the Court would decide, and I said that I had no idea since the judges had been all over the place. As we talked, we moved over to the elevator, waited for someone to use the restroom, and entered an empty elevator when the door opened.

[P-2 at 1-2 (emphasis supplied).]

Respondent, Scott, and the other members of the group also took a group photograph outside the courthouse for possible use by the advocates in a social media post regarding the litigation. These interactions bracketed respondent's statement, "you only count three-fifths," and nothing in the record suggests that, before making his statement to Scott, there had been the equivalent of a cooling-off period or break in his nexus to the interactions – that is, that respondent had

¹ We submit that the Board and the Court can take judicial notice of the configuration of the 5th floor of the Hughes Justice Complex and the proximity of the foyer outside the courtroom doors to the elevators.

stopped relating to the four advocates as Township Attorney or the advocates had stopped interacting with him as an attorney.

As respondent repeatedly emphasized, he and the other four knew each other professionally, not as social friends. Further, as the DEC observed, part of the practice of law is discussing with clients or other interested parties the progress, status, or outlook of pending matters – clearly the context here. Respondent himself stated that his presence in the courthouse played a role in the incident and his comment, emphasizing that the setting and the argument brought to his mind the United States Constitution.

We disagree with the majority’s conclusion that extending the reach of RPC 8.4(g) to the circumstances under scrutiny here would be unprecedented and improper. In our view, nothing in the RPC itself, or the Court’s comment to the Rule, suggests that the scope of “in a professional capacity” applies so narrowly that it excludes conduct in a courthouse, by an attorney representing a local government entity, interacting with proponents of a local ordinance, following oral argument in a case addressing a challenge to that ordinance.

II. The Conduct Involved Discrimination Because of Race

We agree with the majority's conclusion with respect to the second element of RPC 8.4(g), which they determined clearly is satisfied by clear and convincing evidence in this case – that the conduct at issue “involv[ed] discrimination . . . because of race” – and incorporate their reasoning herein.

III. The Conduct Was Likely to Cause Harm

Next, we turn to the third element of RPC 8.4(g), which requires that the conduct be “intended or likely to cause harm.” Respondent's uncontested testimony regarding his statement was that it was a joke and its intended purpose was to encourage Scott to join the group on the elevator strongly supports his defense that he did not specifically intend for his words to cause harm. Thus, the application of the Rule to his conduct depends on whether his remark was “likely to cause harm.”

Respondent argued that the proofs of harm were not clear and convincing based on his view of ways in which Scott, his colleagues, or others purportedly might have, but did not, manifest harm. In so doing, he disregarded Scott's testimony that, mindful of being in a courthouse, he “didn't want to do anything that caused a disturbance,” “didn't want to strike Mr. Karasick because of a comment that . . . I took as a problem, which was an attack on me as a person,”

and, having “to process that pretty quickly . . . I felt that the best thing to do, in my response, I didn’t do anything.”

Further, Scott expressed, in myriad ways, his perception of the harms caused by the statement. For instance, he testified that he found respondent’s remark “devastating,” compared it unfavorably, based on his experience as an African American, to being called “the N word” or other “racial comments that have been made over many, many years,” and offered other, similar insights, in testimony that the DEC credited, having heard Scott’s testimony firsthand and observed his demeanor. Within days of the incident, Scott was in touch with the Montclair NAACP president and took part in the NAACP executive meeting in which the incident was discussed, after which the NAACP forwarded a demand for investigation to the Mayor of Montclair. Moreover, Scott discussed the remark with his pastor, described the incident to the press, and addressed its hurtful impact on the wider Montclair community through an interfaith meeting.

Respondent openly acknowledged, in an e-mail to Scott, that his remark was hurtful to Scott. In his public apology, his participation in an interfaith meeting, and his initial interview with the OAE, he also acknowledged that his remark “was hurtful to the four active, dedicated Montclair residents” who attended the hearing and “undoubtedly also caused pain to a broader community of Montclairians who believe in our town as a space dedicated to racial justice.”

That Scott forgave respondent does not make respondent's conduct any less harmful. Thus, on the record before us, we have no trouble concluding that the remark, regardless of respondent's intent or subjective view, was "likely to cause harm," as the Rule requires.

It is true that respondent's violation of RPC 8.4(g) stems from a single statement, as opposed to multiple acts. In our view, while this fact may be relevant in determining the appropriate level of discipline, it does not otherwise limit the Rule's applicability. In this respect, we reject the argument that there must be multiple incidents to sustain a finding under the Rule, a conclusion finding no support in the text of the Rule itself.²

The majority acknowledges the harm that resulted from the statement but asserts that an objective standard should be applied to whether the statement was "likely to cause harm." While we agree that an objective standard should be applied, applying such a standard leads us to conclude that the statement made was patently offensive and likely to cause harm. The impact of the statement on members of the African American Community was clearly both likely and foreseeable. Respondent himself admitted that his remark was "a flippant play on the Constitution that popped out of my mouth lightly but served to remind

² Respondent's reference to the official comment, which gave an example of multiple incidents evidencing an awareness that conduct is likely to cause harm, is not persuasive to us. It is set forth in the comment as an example, not as a requirement.

African Americans of the systemic discrimination that they wrongly suffered and that I flippantly referenced.” P-5.

In our view, application of an objective standard to the comment made is not even a close call. A flippant and joking reference, to an African American, in the presence of other African Americans, to the systemic discrimination wrongly suffered by African Americans, by saying “you only count three fifths” is by any objective reasonable standard, likely to cause harm. The defense that it was a joke neither excuses the conduct nor reduces the likelihood that harm would occur.³ If anything, a joking, flippant reference to such an important topic (and a topic that was in the forefront of everyone’s mind based upon the appellate argument that had just occurred) evidences a willful disregard of the harm that objectively is likely to follow.

Finally, we believe the majority misconstrues the objective standard of whether something is likely to cause harm by failing to take into account the sensibilities and likely reaction of the person to whom the comment was directed. While another person may view the comment as nothing more than a bad joke, an African American hearing the comment in the context in which it

³ In other contexts, this Board and the Supreme Court has rejected the “I was only joking” defense. See, e.g., In re Laufer, 245 N.J. 265 (2019). Allowing such a defense in this case would set a dangerous precedent, in our view, as discriminatory conduct can certainly include making someone the butt of a joke, where the focus of the joke is to highlight, in a derogatory way, a person’s race, color, religion, age, sex, sexual orientation, national language, marital status, socioeconomic status or handicap.

was made (in the courthouse right after an appellate argument addressing issues of concern to the African American community) would likely be offended. Scott eloquently expressed the harm he felt as follows:

I've been, as an adult, an African American growing up in the north, my family's from the south, you know, we were fully aware of racial comments that have been made over many, many years. But the three-fifths of a human has such implications because it's a part of this country's Constitution, is very, very concerning and devastating to be framed in that manner. Now, you know, people could call you the N word or a number of other things, that's not in the Constitution, okay? So that comment was – it was just devastating. Beyond any of the things that you deal with on a daily basis, but it just brought back, you know, what African Americans have had to deal with in this country, even from a constitutional standpoint.

[T90:3-18.]

In our view such a reaction is not only reasonable, it is likely under these circumstances, a conclusion buttressed not only by Scott's reaction, but also by the public outcry that followed when the conversation was made public. Given the likelihood that harm would and did result, the third element of the Rule has been satisfied.

CONCLUSION

In conclusion, for the reasons stated, we find that respondent violated RPC 8.4(g), as found by the hearing panel below. In considering the sanction to be imposed, we recognize the existence of significant mitigating factors.

Respondent has devoted decades of his career to public service, including civil rights matters. The incident at issue was an isolated incident, and the misconduct is unlikely to recur. Respondent has publicly acknowledged the harm caused by his statement, and he has apologized to the other members of the group and to the public at large. Weighing these factors, we recommend the imposition of an admonition.

Disciplinary Review Board
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.),
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By: /s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel