

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 11-016  
District Docket No. XIV-2009-0329E

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IN THE MATTER OF  
TY HYDERALLY  
AN ATTORNEY AT LAW

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Decision

Argued: April 21, 2011

Decided: July 12, 2011

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a recommendation for a reprimand filed by the District VC Ethics Committee (DEC). The complaint charged respondent with violating RPC 8.4(c) (conduct involving, dishonesty, fraud, deceit or misrepresentation) and R. 1:39-6(b) (improper use of emblem for certified civil trial attorney). We determine to dismiss the complaint for lack of clear and convincing evidence that respondent knowingly violated the charged rules.

Respondent was admitted to the New Jersey bar in 1994. He maintains a law practice in Montclair, New Jersey.

In 1999, he was reprimanded, on a motion for reciprocal discipline. The discipline was based on the Judge Advocate General's (JAG) suspending respondent from practicing before the Navy courts or boards for two years for committing a criminal act that reflected adversely on his honesty, trustworthiness or fitness to practice as a judge advocate. The JAG found that, while in the Navy, respondent had made sexual advances to at least two women who were his legal aid clients. The New Jersey Supreme Court found the conduct comparable to conduct violating RPC 8.4(d) (conduct prejudicial to the administration of justice).

We now turn to the facts of this case.

By letter date February 8, 2008, the Committee on Attorney Advertising (CAA) referred to the Office of Attorney Ethics (OAE) a claim that respondent was using a website, which, on each page, included the emblem (or seal) of the New Jersey Board of Attorney Certification; the emblem appeared sixteen times on the website. According to the CAA, by using the emblem, respondent was claiming status as a Supreme Court certified attorney. However, neither respondent, nor any member of his firm was certified at that time. The CAA was also concerned that

other attorneys might have referred matters to respondent, believing that he was a certified attorney, and that they might have received referral fees from respondent.

Respondent claimed that the emblem appeared on his website inadvertently and unintentionally and that, therefore, no discipline was warranted. At the DEC hearing, respondent explained that, in 2005, he had his cousin, Yusuf Asgerally, a non-lawyer, design the site. Asgerally had some experience creating websites and designed respondent's at no charge. According to respondent, because he personally had no "IT" background, he provided his cousin with the biographical information for the site, never giving him any information relating to the design. He left the design to his cousin's discretion.

Asgerally, who testified via telephone from California, stressed that he personally chose the emblem and that, at the time, he did not realize that "certified" meant anything other than being licensed to practice law. He never consulted with respondent about creating the site nor did respondent direct him to put the emblem on the site.

Asgerally stated that he was not familiar with "legal terminology or requirements for New Jersey lawyers," but wanted to make the site look "attractive and appealing." To create the

site, Asgerally did a "Google" search for images related to law, like the scales of justice. He searched other New Jersey law firms to "get an idea for . . . popular color schemes, and the look, and feel" of a site. In so doing, he came across the image of the seal for the New Jersey Supreme Court Certified Civil Trial Attorney. Because he had created the site approximately five years earlier, he could not recall which sites he had researched to come up with the emblem.

According to Asgerally, he believed, at the time, that individuals who practice law in New Jersey were certified attorneys. He never asked respondent if he was certified, never asked him about the propriety of using the seal, and did not otherwise call respondent's attention to it. The only time that he discussed the seal with respondent was in 2007, when respondent asked him to remove it from the site. Asgerally immediately did so. Respondent's website displayed the seal for approximately two years.

Respondent testified that he did not ask his cousin to place the seal on his website and would not have permitted him to do so. It was not until the "OAE" (presumably he meant the CAA) contacted him that he became aware that the emblem was on his website. He claimed that he never looked at his site "with that level of detail . . . at the specific seal or [to] see what

the seal meant or anything of that nature." He admitted that, over the two-year period that his website contained the inappropriate emblem, he looked at the site, but did not notice the emblem or its contents. He maintained that, had he noticed it, he would have removed it immediately. He explained that, after hearing from "the committee," he looked at the site, saw the emblem, called his cousin, and instructed him to immediately remove the emblem. He reiterated that the emblem appeared on his website unintentionally and inadvertently.

Respondent's position was that the inadvertent use of the emblem did not constitute a misrepresentation because he understood that a misrepresentation required "scienter . . . you have to have intentional knowledge that the statement you're making is untrue or false." Instead, he claimed, he never intended to hold himself out to be a certified civil trial attorney. Other than the emblem, the site did not describe him or any of the other attorneys in the firm as certified civil trial attorneys. Moreover, neither his letterhead nor his business cards stated that he was a certified civil trial lawyer nor did the documents bear the emblem of that designation. According to respondent, he never told anyone -- clients, lawyers or judges -- that he was a certified civil trial lawyer.

Respondent added that, in 2009, he retained a professional company to re-design his web page, because the firm was changing its name.

The presenter argued that respondent's conduct was a strict liability offense, that, as the "captain of the ship," he was required to check his website, and that he failed to check it, his "advertising . . . [did] not pass the smell test, it is simply illogical and an unsupportable argument."

As part of its investigation, the OAE reviewed respondent's business and trust account records from April 2006 to August 2009. According to respondent, the OAE did not find any financial improprieties. In fact, he claimed that the auditor had stated that his records were in such good shape that he should teach a course on bookkeeping.

Respondent testified that he never accepted nor paid referral fees. He further testified about his good professional reputation, as shown by other attorney's calls to him for sample pleadings, tips, or other advice relating to employment issues. He added that he was the president of the National Employment Lawyers Association of New Jersey (NJELA) for four years, was an executive board member of NJELA for several years, was named a New Jersey Super Lawyer in 2006, was "included in the Ten Leaders in Employment Law in Northern New Jersey," was a

contributing member to the ABA Employment Rights and Responsibilities Subcommittee, served as the co-chair of its Trial Advocacy Subcommittee, was invited to speak at meetings of the group's various sections, handled pro bono cases, made presentations to and consulted with the legal aid office, and represented low-income employees who were victims of discrimination, harassment, and abuse.

During respondent's direct examination the following exchange took place:

[Respondent's Counsel]: Did the [OAE] investigators also indicate that the violation was completely inadvertent?

A. That's what they said.

. . . .

[Respondent's Counsel]: Did the investigators also state that their review indicated that any professional violation was completely -- professional code violation was completely inadvertent?

[Presenter]: Objection. We wouldn't be here if they stated that they reported that to me in a misrepresentation [sic]. Now, I'm going to have to we keep these proceedings open past today so I can bring in a rebuttal witness . . . .

[T38-25 to T39-8.]<sup>1</sup>

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<sup>1</sup> T refers to the transcript of the July 1, 2010 DEC hearing.

Respondent clarified that the "context" of one of the OAE investigator's statements to him was that the investigator's wife had a web design and that, "when his wife designed the web site, there were things put on there that she wasn't even aware, and he could see how it is certainly conceivable and possible that someone could have a website and have on it things that they didn't know were on it."

The hearing was continued to August 30, 2010 to give the presenter an opportunity to offer rebuttal testimony from OAE disciplinary auditor G. Nicholas Hall. In general, Hall's recollection of his 2009 comments during the audit was less than clear. He did not recall anyone mentioning someone's wife designing a website. He added that his wife had not created a website for him and did not recall comments about the other investigator's wife designing a website.

The presenter questioned Hall about some of respondent's statements in his verified answer, concerning the audit. In paragraph 34, respondent claimed that one of the investigators thought that "their review would lead them to discuss a dismissal with [the OAE attorney]." Hall denied that he had informed respondent to contact the presenter "to discuss the possibility of a dismissal," calling that statement "absolutely untrue." According to Hall, he did not use the term dismissal,



as he did not have the authority to do so. He was assigned to determine whether respondent had paid referral fees. He found no improprieties in that regard and did not review the issue of respondent's improper use of the emblem.

Respondent's answer stated that the investigators were "very impressed with the documents." Although Hall did not recall using those words, he admitted that he "may have said it's very fortunate that you had good records," or perhaps that he was "impressed with the fact that most attorneys don't have good records, the cases I get, they're sometimes in a box and stuff like that, he had good records, that's the bottom line." Hall later testified, "Never in my life did I say I was 'impressed' with an attorney's records."

As to the auditor's alleged remark that respondent's "books were in such good order that [respondent] should teach a class on bookkeeping" practices, although Hall did not recall uttering those words, he admitted that he might have told respondent that he should talk to other attorneys, because his records were in such good shape.

With regard to respondent's statement that the OAE investigators had labeled his violation "completely inadvertent," Hall could not say whether respondent's conduct

had been inadvertent and did not recall having made that representation to him.

One other topic engendered some discussion in this disciplinary matter. Respondent had testified that his discharge from the Navy had been honorable. Yet, Exhibit 19, respondent's certificate of release or discharge from active duty, stated at line 23 (type of separation) "MISCONDUCT." Line 24 (Character of service) stated "GENERAL (UNDER HONORABLE CONDITIONS)." The presenter produced a document called "milpersman 1910-304," which defined a general discharge (under honorable conditions) as follows:

the quality of the member's service has been honest and faithful; however, significant negative aspects of the member's conduct or performance of duty outweighed positive aspects of the member's service record.

The presenter made note of the discrepancy between respondent's testimony that he had received an honorable discharge and the document that showed a general discharge, under "Honorable Conditions." The presenter raised this apparent discrepancy for the sole purpose of discrediting respondent's testimony, rather than charging an additional ethics violation. The presenter viewed this seeming inconsistency as casting doubt on respondent's credibility and as an aggravating factor.

The OAE urged us to impose a reprimand or a censure, to have the CAA monitor respondent's advertising for a period of time, and to bar respondent, for a five-year period, from applying for certified trial attorney status, under R. 1:39.

The DEC found that Hall rebutted respondent's testimony that, in Hall's opinion, respondent's use of the emblem was unintentional. The DEC also found that Hall did not otherwise make the statements that respondent attributed to him.

Despite those issues, the DEC found that respondent's testimony, in general, was credible and that any "contradiction about the investigator's statements was a lack of recollection and/or a misunderstanding, rather than an intent to deceive the hearing panel." The DEC reasoned that it would make no sense for respondent to deceive the hearing panel because the investigator was available to confirm or deny the statements attributed to him. The DEC did not specifically rule on respondent's credibility regarding the characterization of his military discharge, even though it mentioned that there had been testimony on that issue.

As to the misuse of the emblem, the DEC found that, even if respondent's use of it were to be deemed unintentional, his failure to review and monitor the content of his own website, "which ultimately gave rise to the unauthorized use of the

emblem," violated RPC 8.4(c) and R. 1:39-6(b). The DEC remarked that an attorney has an affirmative obligation to review the content of material made available to the public and that respondent admittedly did not do so. The DEC recommended the imposition of a reprimand.

Respondent filed a brief with us, in which he noted that the DEC framed the issue in this matter as whether he had engaged in knowing conduct. He asserted that there is no evidence that he knowingly violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and that the DEC believed that his use of the seal was "inadvertent and unintentional." Respondent further argued, among other things, that, given the inadvertent use of the seal and "other mitigating factors," no discipline was warranted. The mitigating factors he listed were his (1) lack of intent; (2) "acknowledgement of misconduct;" (3) immediate corrective action by directing the removal of the seal; (4) acceptance of full responsibility for ensuring that the content of the website is accurate; (5) lack of use of the designation of certified civil trial attorney in any other context; (6) good reputation and legal accomplishments; and (7) commitment to his clients, colleagues and the legal profession.

Following a de novo review of the record, we are unable to find clear and convincing evidence that respondent was guilty of unethical conduct.

Respondent was charged with a single count of violating RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and R. 1:39-6(b) (improper use of the certified civil trial attorney emblem). The facts are not in dispute: respondent's website improperly contained the emblem for the certified civil trial attorney in sixteen places, for approximately two years. Once the CAA notified respondent that the use of the emblem was improper, he immediately instructed his cousin, the website's designer, to remove it from his website.

The OAE did not charge that respondent benefited from using the emblem. The OAE did not present any evidence to refute Asgerally's testimony that he had personally come up with the aesthetically pleasing design for the site and that he was not aware that it was improper to use the emblem. Moreover, there was no evidence that respondent was aware that the emblem appeared on the site, until he was so notified. In addition, the OAE did not present any evidence to refute respondent's testimony that he never held himself out to be a certified civil trial attorney to anyone and that neither his letterhead nor

business cards contained that designation. The evidence, therefore, supports respondent's contention that the appearance of the emblem on his website was unintentional and inadvertent, even though it was a misrepresentation of his status.

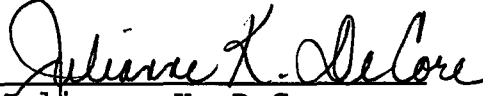
The DEC found that respondent's testimony was credible and that any discrepancies with his and Hall's testimony were based on a lack of recollection or a misunderstanding, rather than an intent to deceive the DEC. We, therefore, give deference to the DEC's finding in this regard, as it had the opportunity to observe the witnesses' testimony. Dolson v. Anastasia, 55 N.J. 2, 7 (1969) (a court should defer to a tribunal's findings with respect to those intangible aspects of the case not transmitted by the written record).

A violation of RPC 8.4(c) requires intent. See, e.g. In re Uffelman, 200 N.J. 260 (2009) and In the Matter of Karen E. Ruchalski, DRB 06-062 (June 26, 2006) (case remanded where the attorney did not know that her statements in reply to a grievance were inaccurate but, nevertheless, stipulated that she had made misrepresentations; the attorney had not intended to make the misrepresentations and did not stipulate intent). Because there is no clear and convincing evidence that respondent intended to include the emblem on his website or knowingly ratified its display, it cannot be found that he

violated RPC 8.4(c). We, therefore, determine to dismiss the complaint.

Member Baugh did not participate.

Disciplinary Review Board  
Louis Pashman, Chair

By:   
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Ty Hyderally  
Docket No. DRB 11-016

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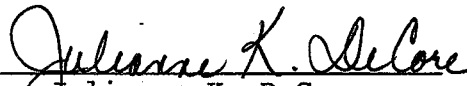
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Argued: April 21, 2011

Decided: July 12, 2011

Disposition: Dismiss

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman				X		
Frost				X		
Baugh						X
Clark				X		
Doremus				X		
Stanton				X		
Wissinger				X		
Yamner				X		
Zmirich				X		
Total:				8		1

  
Julianne K. DeCore  
Chief Counsel