SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-134
District Docket No. XIV-2012-0538E

IN THE MATTER OF	
JAY JASON CHATARPAUL	
AN ATTORNEY AT LAW	

Decision

Argued: September 15, 2015

Decided: December 14, 2015

Isabel McGinty 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 was before us on a recommendation for a censure, filed by a special ethics master. It arose out of

respondent's conduct in (1) publishing, on his law firm's website, an article about a discrimination case that he had instituted on a client's behalf and in which he made comments about the judge who had presided over the trial, (2) failing to remove the article from the website, as required by the terms of the settlement agreement executed by the parties, and (3) failing to comply with the RPCs governing attorney advertisements. We determined to impose a reprimand.

The Office of Attorney Ethics (OAE) charged respondent with having violated eleven RPCs, eight of which were charged twice. In each of the first two counts of the second amended ethics complaint, he was charged with having violated RPC 3.2 (failing to treat with courtesy and consideration all persons involved in the legal process), RPC 7.1(a)(1) (making a communication about a matter in which the lawyer has a professional involvement that contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading), RPC 7.1(a)(2) (making a communication about a matter in which the lawyer has a professional involvement that is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the RPCs or

other law), RPC 7.2(a) (requiring all advertisements to be "predominantly informational"), RPC 7.2(b) (failing to retain a copy or recording of an advertisement or written communication for three years after its dissemination along with a record of when and where it was used), RPC 8.2(a) (making a false statement, or a statement with reckless disregard as to its truth, concerning the qualifications of a judge), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). The third count charged respondent with having violated RPC 1.1(a) (exhibiting gross neglect), RPC 1.2(a) (failing to abide by the client's decisions concerning the scope and objectives of representation), and RPC 1.6(a) (revealing information relating to the representation of a client without the client's consent).

In imposing a censure, the special master found that respondent had violated RPC 1.1(a), RPC 3.2, which the special master characterized as the failure to expedite litigation, RPC 7.2(b), and RPC 8.4(d). In choosing to impose a reprimand, we found that respondent had violated only RPC 1.6(a) and RPC 7.2(b).

Respondent was admitted to the New Jersey bar in 1996. At the relevant times, he maintained an office for the practice of law in North Bergen.

In 2003, respondent received a reprimand, on a motion for reciprocal discipline, stemming from a New York matter, for failure to maintain the confidences of a client (RPC 1.6(a)), failure to adequately supervise a non-lawyer employee (RPC 5.3(a)), failure to take remedial action with respect to a non-lawyer employee's misconduct (RPC 5.3(c)(2)), commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer (RPC 8.4(b)), and RPC 8.4(d). In re Chatarpaul, 175 N.J. 102 (2003). Specifically, in an effort to collect a legal fee, respondent wrote a threatening letter to the client, under the signature of a non-lawyer employee, whom he directed to sign the letter. Respondent also directed his sister, another non-lawyer employee, to hand-deliver a similarly threatening letter to the client at his home. Finally, respondent sent a letter to a bank, enclosing documents pertaining to a criminal court complaint against the client, taken from a record that had been sealed.

In this disciplinary matter, at some point prior to 2012, respondent undertook the representation of Rameena Khan in a

civil action captioned Rameena Khan v. Rite Aid Corp., which was venued in the Superior Court of New Jersey, Law Division, Hudson County (the Khan case). In that matter, Khan alleged that Rite Aid and the other defendants had discriminated against her on the basis of age, race, sex, and ethnicity or national origin, in violation of the New Jersey Law Against Discrimination.

The Honorable Christine A. Farrington, J.S.C., presided over the jury trial, which commenced on March 5, 2012 and concluded on March 20, 2012, when the jury returned a verdict in favor of the defendants. On April 4, 2012, respondent filed a notice of appeal with the Appellate Division of the Superior Court of New Jersey.

While the appeal was pending, the Khan case settled. On May 21, 2012, Khan and respondent signed a settlement agreement and general release, which included the following provision:

> Plaintiff's Attorney agrees that as of the execution of this Agreement, it [sic] has removed: (a) any and all articles, blogs, or other writings that have been authored, posted, publicized or controlled by it [sic], which disparage or discuss the Lawsuit, Complaint, Federal Action, Amended Complaint, the Trial or the Appeal in any manner whatsoever, from the Internet and elsewhere, ***including but not limited to the articles attached hereto as Exhibit A;*** and (b) all hyperlinks and references to said articles from the Internet. In addition,

> [respondent] agrees not to write any further articles or blogs, or make any non-privileged statements, regarding or referencing the Lawsuit, the Complaint, the Amended Complaint, the Federal Action, the Trial or the Appeal.
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> [SF¶11[1] (emphasis in original).]

On May 31, 2012, at respondent's request, the appeal was dismissed, with prejudice.

The "articles" referred to in the above provision included one that appeared on the website of respondent's law firm, http://chatarpaullaw.com (the law firm's website), under the title "Case Against Rite Aid Corporation for Age and Sex Discrimination" (the Khan article).[2]

The Khan article summarized the facts underlying Rite Aid's termination of Khan's employment, the denial of her unemployment compensation claim, and the subsequent hearing before the State of New Jersey Department of Labor, followed by a summary of

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[1] "SF" refers to the Stipulated Facts, executed by the parties in April 2014, which is Ex.P4.

[2] The law firm's website also contained a hyperlink to a blog that appeared on a different website that hosts blogs (www.blogger.com), as well as to Facebook and other third-party websites, such as those maintained by federal, state, and local governments.

another case against Rite Aid, filed by Joanne Lazzaro, whose employment had been terminated by the two "upper management corporate officers" who had terminated Khan's employment. Respondent was not involved with the Lazzaro case.

The final sections of the Khan article summarized the defendants' summary judgment motion, filed in the Lazzaro case, which was decided by the Honorable Maureen B. Mantineo, J.S.C., as well as the errors purportedly committed by Judge Farrington in the Khan case. These sections also provided some detail about the backgrounds of both judges.

With respect to Judge Mantineo, the Khan article stated:

> The summary judgment motion was decided by the Hon. Maureen Mantineo. Judge Mantineo has been a New Jersey Superior Court judge for more than 10 years. She is a well-respected judge who is held in high esteem by lawyers and litigants appearing before her. In fact, in the N.J. Superior Court Judicial Survey, lawyers appearing before her have consistently rank [sic] her 1st in her superior knowledge and skills in handling complex legal issues, fairness in weighing evidence and arguments, respect for lawyers and litigants appearing before her, and her positive demeanor, fairness and lack of bias in her rulings.
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> [SF¶25.]

The Khan article also stated that Judge Mantineo had rejected the defendants' arguments, and that she had ruled in the plaintiff's favor "as to pretrial motions."

With respect to Judge Farrington, the Khan article stated:

> At trial, the case was assigned to Judge Christine Farrington. Judge Farrington was recently appointed as a judge of the Superior Court and took the bench in June 2010. Prior to being appointed judge, Judge Farrington spent 10 years as deputy counsel for the Port Authority of New York and New Jersey and worked in claims administration, risk management and environmental matters. During the trial, Judge Farrington made various prejudicial comments suggesting lack of impartiality, improperly excluding [sic] evidence and testimonies, etc., which are the subject of a pending appeal. Judge Farrington excluded various documents and testimonies, including documents and witnesses relating to the unemployment appeals hearing, documents and witnesses relating to Ms. Lazzaro [sic] termination and replacement, and other matters that are the subject of an appeal. The plaintiff's position is that the jury's verdict in favor of Rite Aid was the product of many errors of the trial judge, including various comments suggesting favoritism towards the position of Rite Aid. The plaintiff is confident that the appellate courts would [sic] grant a new trial based on these perceived errors.
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> [SF¶30.]

In the first count of the second amended complaint, the OAE alleged that the publication of the Khan article violated RPC

3.2, RPC 7.1(a)(1), RPC 7.1(a)(2), RPC 7.2(a), RPC 7.2(b), RPC 8.2(a), RPC 8.4(c), and RPC 8.4(d). The second count alleged that respondent violated the same RPCs when, during the period between April 8, 2013, when the OAE informed him that the Khan article continued to appear on the law firm's website, and August 9, 2013, he claimed that he had removed the article in May 2012 and that, when he searched for the article, it could not be found.

Finally, the third count of the complaint alleged that, prior to the publication of the Khan article on the law firm's website, respondent did not obtain his client's consent. Further, the continued presence of the article on the website, after the settlement of the underlying litigation, was a breach of the terms of the settlement agreement, which prohibited disclosure and dissemination of the allegations made in the underlying litigation, "except as required by law," and, without his client's consent, as it was contrary to the "written directions which Respondent had received from his client." Thus, respondent violated RPC 1.1(a), RPC 1.2(a), and RPC 1.6(a).

The special master presided over a two-day hearing, where he received testimony from respondent and OAE information supervisor Terry Herbert, who was qualified as the OAE's

information technology expert. Because the disciplinary charges stem from an internet article, the hearing focused heavily on respondent's use and knowledge of internet technology.

Herbert testified that Network Solutions, which hosted the law firm's website, was an internet host provider that leased space on the internet to respondent. According to Herbert, an internet host provider is akin to a cable or telephone company.

At the time the Khan case settled, the Khan article was accessible on the law firm's website, www.chatarpaullaw.com. By clicking the "cases of interest" hyperlink, the user was taken directly to a list of articles, including the Khan article. At the end of the Khan article was another hyperlink that, if clicked, displayed the decision of the Department of Labor's Appeals Tribunal Unit's determination on Khan's unemployment claim.

Respondent explained how he had created the website, guided by Network Solutions. He selected a Network Solutions template, which he described as "a very simple procedure," and followed the directions, step by step. He described the process as "very easy" and stated that one does not need "any experience in IT or any education" to follow the procedure and create the website.

Respondent then explained the steps he took to remove the Khan article from the law firm's website, after the Khan case

had settled. First, he clicked on the Network Solutions hyperlink, which appeared at the bottom of every page on the law firm's website, then clicked on "manage account," followed by "website builder tool" and "edit website," which took him to the "control center screen." At that point, he selected the "edit your website pages" option, which placed the law firm's website in "administrative page mode." Each of the law firm's website pages was listed there, including "cases of interest."

At the hearing, respondent demonstrated the remaining steps he had taken to remove the Khan article by going to the law firm's website and clicking on an article from cnn.com (dubbed "Nebraska federal judge"), which he had copied and pasted to the "cases of interest" page. As he had done with the Khan article, respondent clicked on the cnn.com article and dragged it to the "delete page" option, at which point a dialogue box appeared and asked whether he was sure that he wanted to delete the Nebraska federal judge article. In order to delete the page, Network Solutions took respondent to another website, ezsitedesigner.com, which permitted him to carry out the change.

Based on respondent's testimony, it appears that the dialogue box, or, possibly, another dialogue box continued: "Deleting a page permanently erases its content from your site.

You can create another page in its place." In addition, it stated: **"Note: any images or files that were used in this deleted page will not be deleted and are still accessible from your files and photos library."**

Next, respondent had to delete the hyperlink. To do that, he returned to the edit page and clicked on "edit text," which took him to "text editor." He highlighted the Nebraska federal judge article, deleted it, and clicked on "continue." The final step in the process was to "publish the changes," which he did by clicking on "publish website," which was followed by a message that read "[w]e have successfully published your site to the internet."

This was the exact process that respondent followed when he removed the Khan article from the law firm's website. He stated that all of the steps and the wording were the same on the date he removed the Khan article, in 2012.

Respondent also testified about his efforts to remove search words. At the time respondent published the Khan article, he had inserted the keywords Chatarpaul, Rite Aid Corporation, employment discrimination, age discrimination, and sex discrimination. After the Khan case had settled, respondent deleted these keywords and clicked on "publish." He understood

that by clicking on "publish," the deletion was permanent. Thus, although a search of those terms might have led to the law firm's website, the article would not appear because it had been removed.

Respondent claimed that he had followed these procedures previously when he was required by other settlement agreements to delete certain articles.[3] Thus, he believed that he had removed the Khan article from the law firm's website and "the entire internet," as the special master phrased it.

Herbert conceded that a user could not access the Khan article on the law firm's website because the hyperlink to the article had been removed. As it turned out, the Khan article remained accessible on the internet through other means, as shown below.

This case was set in motion on August 30, 2012, more than three months after the settlement agreement was executed, when Judge Farrington submitted to the OAE a copy of the Khan article, which she had printed on August 29, 2012. At that time, the article was retrievable from the internet by adding

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[3] Respondent also removed the articles from his blog at blogger.com.

"/riteaid.html" onto the law firm's website http address, that is, http://chatarpaullaw.com/riteaid.html.

The OAE sent the grievance to respondent on April 8, 2013. In the letter transmitting the grievance, the OAE stated that the Khan article had remained "published in full" on the law firm's website and enclosed printouts of the webpage, http://chatarpaullaw.com/riteaid.html, as it appeared on August 29, 2012 and January 22, 2013.

In respondent's April 23, 2013 reply to the grievance, he asserted, in part: "With regard to the article on the website, the article was removed from my website back in May or June 2012, when the case was resolved on appeal." Respondent explained:

> My understanding is that it takes Google and other internet websites several months for the postings to be completely removed from the internet because search engines can still retrieve old postings from internet archives automatically. I thoroughly checked my websites for the article and it is not there.
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> [Ex.P7.]

When respondent replied to the grievance, in April 2013, it did not occur to him to conduct a Google search because he believed that the Khan article was not retrievable. He understood that the process, which he had followed when he

removed the article from the law firm's website, had removed the article permanently. He explained:

> This is what I'm trying to tell you. You're confusing my actions in removing from the internet, from my computer, versus the action -- versus the availability of the article on internet. So when I received the letter, of course, I went to my website, I went to my administrative page, it wasn't there. And this is where I got confused. I thought it was in a cache, that's why I used the word cache. I'm doing research, I'm trying to understand why is it still there.
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> [1T239-11 to 21.][4]

Respondent did not recall having typed in the address located on the printouts that the OAE had enclosed with the April 2013 letter, that is, http://chatarpaullaw.com/RiteAid.html, because he did not access his website in that manner. Rather, he went into the law firm's website's administrative account to delete articles.

Although respondent acknowledged that each of the August 2012 and January 2013 printouts reflected the "RiteAid.html" address at the bottom, he pointed out that the OAE's letter did not direct him to the bottom of those pages or that particular

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[4] "1T" refers to the transcript of the August 11, 2014 hearing.

address. Thus, he concentrated on the content of the OAE's letter. He explained:

> You didn't point me out to Chatarpaullaw.com, RiteAid.com, if you had wanted me to go and to search for that article, then you should have said that in your letter, so I would be more clear as to what I'm supposed to do. But you did not do that.
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> You just sent me a letter, send me a response to it. There's nothing in the letter -- you gave me a copy of my article. I didn't look at the bottom of it. I just read the article. Okay, so I'm thinking now that Judge Farrington had some issue with the content of the article. All of a sudden, you brought in the removal of the article as an issue. You didn't do that at the beginning.
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> [2T56-9 to 23.][5]

Respondent did not go to the http://chatarpaullaw.com/RiteAid.html web address because the OAE's letter did not refer to it. He claimed that the letter neither revealed that the article was still available on the internet nor instructed him to remove the article. Thus, respondent did not know what steps he should have taken upon receipt of the grievance.

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[5] "2T" refers to the transcript of the August 13, 2014 hearing.

Because Judge Farrington's letter, which was enclosed with the OAE's letter, did not mention that the article remained available on the internet, respondent assumed that the issue concerned the content of the article. Thus, his reply to the grievance focused on the First Amendment rights of attorneys to criticize judges. He did not check to determine whether the Khan article still appeared on the internet.

The OAE interviewed respondent on August 7, 2013. According to respondent, it was at this time that he learned that the Khan article was still available on the internet. The parties agreed that the Khan article did not appear at the law firm's website under "cases of interest," as of August 7, 2013. Nevertheless, respondent was informed that the article could be retrieved by using the search terms "Chatarpaul" and "Farrington." and by typing the law firm's web address, followed by ".RiteAid." Respondent, who testified that he was a "little bit stunned" by this revelation, replied: "I don't even know why that is, because I exclude [sic] it from my website since October of 2010

when the case was resolved."[6] He also pointed out that when he asked, at the interview, why his publication of the Khan article was an issue, the presenter replied that she, too, was "grappling with the question."

At the interview, respondent stated that he had been aware that, despite the removal of the article from the law firm's website, where it no longer appeared, it could be located through a search engine, such as Google. However, he could not explain why, stating that "somehow the archives come up and then it goes to my website." He demonstrated that, when a user accessed the law firm's website directly, the Khan article did not appear among the "cases of interest." In respondent's view, after the hyperlink had been removed from the law firm's website, the article remained within the internet archives, but he did not know how to "get rid of that."

The OAE interviewer suggested that respondent "look into it." Respondent answered:

> Yeah. I'm going to have to research it to find out how to get rid of that. I – like I said, I wish it's no longer there. The

[6] Respondent was obviously mistaken about this date, because he had removed the article from his website in 2012.

> case was resolved, and part of the settlement agreement was that I remove this, and so that happened. I went in to my website and I physically removed it.
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> [Ex.P5p.17l1.20-25.][7]

After the interview, respondent went home and checked the law firm's website. At the ethics hearing, respondent demonstrated what he did, using the Nebraska federal judge article. He entered the address chatarpaulaw.com, clicked on "articles," where the Nebraska federal judge article no longer appeared. This explained why respondent was "entirely confused as to how in the world that [the Khan] article can be retrieved" because he had deleted it and it did not appear on the website under "cases of interest." He simply did not understand how that could be the case.

Upon questioning by the special master, Herbert conceded that he had no information that respondent was aware, prior to the OAE's informing him, that the article remained available. Herbert had no factual basis upon which to conclude that

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[7] "P5" comprised certain pages from the transcript of respondent's August 7, 2013 interview.

respondent intentionally failed to remove the article completely from the website.

According to Herbert, upon receipt of the OAE's April 2013 letter, respondent could have gone onto the website and deleted the content of the article, which would have resulted in a searcher seeing only a blank page there. This would not require a particularly high skill level to accomplish, as one who types in content should be able to "type out" content.

On the evening of August 7, 2013, respondent reviewed help pages on Yahoo and Google. He did not contact Network Solutions because the contract he had with that provider did not include assistance with a website that was self-built. He sent emails to Yahoo, Google, and Bing, asking how to remove a cache. Bing replied, stating that it "does not control the operation, design, or content of the websites." Thus, according to Bing, respondent would have to contact the site owner to remove the content.

At the presenter's request, respondent clicked on the Network Solutions link, which was located at the bottom of the home page of the law firm's website. Next, he clicked on "customer support." He acknowledged that the page reflected an

800 number to call with a technical question about Network Solutions' services.

On August 8, 2013, the day after respondent's OAE interview, the OAE wrote to respondent, stating, in pertinent part:

> On doing a Google search of the words (a) "Chatarpaul" and "Farrington," or (b) "Farrington" and "Rite Aid," or (c) "Chatarpaul" and "Rite Aid," as of today, the very first site listed for the search results is http://chatarpaullaw.com/riteaid.html. I attach a printout of the file. As you can see, it is the article on the Khan case (the same exact text and site address as Judge Farrington sent to this office on August 30, 2012). The internet address on the printout demonstrates that the file continues to be published on your website, as of today. . . .
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> [Ex.P10;SF¶58;SF¶59.]

On that same date, respondent wrote the following letter to the OAE:

> I received your letter by fax requesting following [sic] up documents. I will be responding on or before the deadline. However, I would like to make a few brief comments relating to the publication of the article in question.
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> The article about the Khan case was removed from my website following the termination of the Khan case. If you go to www.chatarpaullaw.com and go through the whole website, you will not find the article. I removed the article as well as

all search words. Today, I again checked it and looked on each web page to see if I made a mistake and [sic] not delete something. I can't find anything relating to the Khan case. However, the article does come up, as you have stated, when you type in "Chatarpaul Farrington."

I researched how to remove a web page on Google and on Yahoo.com. I retrieved a few articles and then make [sic] a specific written request by filling out an on-line form to request the article's removal from Google and on [sic] Yahoo, which is powered by Bing. Please **see copy** of attached documents relating to the removal requests.

I will keep attempting to remove any reference to this article. As I indicated to you, there is no reason for me to keep this article because the settlement agreement calls for the removal of the article from my website, which I did. I wish I could remove them [sic] with a blink of an eye, but unfortunately, removal of the article is more complicated than I thought.

In addition to the steps taken to completely remove the article from the internet, I have sent a letter of apology to the Hon. Christine Farrington. Attached, please see copy of letter to Judge Farrington.

Since our meeting yesterday, I spent additional time thinking about this case over and over. If I were in Judge Farrington [sic] shoes [sic] how I would feel after reading that article. Putting myself in her shoes, writing the article was wrong and for that, I sent Her Honor a written apology. I did not use proper judgment, writing the article. In addition, looking back and after reading portions of a transcript in the

> case, I realized that I could have handled the dispute I had with Her Honor with more courteousness. And for my failure to do so, I have apologize [sic] to Her Honor. Please see copy of letter to Judge Farrington.
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> I have also reviewed some of the possible charges you may file against me. Some of these charges I may stipulate to. I would like to discuss any possible resolution including private reprimand or perhaps taking additional ethics courses.
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> In the meantime, I will provide you with copies of the documents and information you have requested.
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> Thank you.
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> [Ex.P11.]

On August 9, 2013, respondent wrote to the OAE, again, declaring that he had successfully removed the Khan article from the law firm's website. Though lengthy, the full text of the letter is set forth below:

> Following up on the steps taken to remove the webpage (chatarpaullaw.com/riteaid.html), from my website, I would like to inform you that the webpage has been successfully **removed** from my website, and the link completely removed from the search engines such as Google and Firefox.[8] Below are efforts made to accomplish this.

[8] Firefox is a web browser, not a search engine.

Last night, about 9:00 pm, I sent a written request to Google and Yahoo (powered by Bing), to remove the above referenced link. Bing sent an email to me this morning. **Attached** hereto is a copy of the email from Microsoft Customer Support. According to the email, the web page was still live. The email advised me to contact the webmaster, which I did.

I contacted Network solutions [sic], the hosting company for my website. I spoke to a client relations representative, and described the problem. He went through my site and advised that the wep [sic] page does not show up. I told him that when I do a google search, the link does come up. After some research, he went through the publication page of my website, and asked me to click on "**Advanced Option,**" which I did. Under "Advanced Option,["] he told me to click (check off) on "**Run a Full published** [sic] **and remove all pre-existing files and folders under the published directory . . .**" I did that, and then republished the web site. Previously, I did not use this "advanced option" as I did not notice it.

After I republished the website (web pages), while the client relationship representative was on the phone, I again did a search under "Chatarpaul Farrington." The link still came up. He did some more research and advised me that I need to **clear my computer browsing history, including all cookies.** I went on Firefox, clicked on "Clear Recent History" and deleted/clear [sic] browsing history, cookies, cache, etc. **Attached** hereto is the Firefox page with the clear history and cookies page. I also went on Internet explorer [sic] and did the same thing. Under "Internet Options" I checked deleted [sic] browsing history, which deleted temporary files, history, cookies, saved passwords, and web form information."

Attached hereto is the Internet Explorer page with the clear history option.

He also advised me to clear the browsing history and cookies on my iphone [sic] and iPad, which I did.

After clearing the history and cookies, I again typed in "Chatarpaul Farrington" on both Internet Explorer and Firefox. A link came up "Rite Aid Discrimination-Chatarpaul Law Offices." However, when you clink [sic] on that link, a message is displayed **"404:Page not Found."** Please see **attached** page indicating results for "Chatarpaul Farrington" and the "page not found" result from Internet Explorer. I also did the same for Firefox and the message "Whoops! Page could not be found" was displayed.

The Network Solutions' client relationship representative also referred me to a site called *pagewash.com*. According to him, this site will tell you whether a particular page is "currently active." I went to that site and typed in "chatarpaullaw.com/riteaid.html." The message displayed was **"404:Page not Found."** Please see **attached** webpage from *pagewash.com* and the results of the search.

According to the Network Solutions' client relationship representative, you have to clear the browser history and cookies in order to access "current web pages." He advised that unless you clear the browser history from your device (PC, smartphone, iPad, etc), the device will access old pages because it stores the old information on the device. I did not know about this before, and I learned something new. He further advised that search engines refreshed periodically and any web pages previously removed will not show up when a

> search is conducted. But for now, the article itself does not show up.
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> Please delete the browser history and cookies from your computer and other electronic device and then check again. Please also go to *pagewash.com* and verify that the page has been removed.
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> [Ex.P13.]

Respondent also provided the OAE with a copy of an August 8, 2013 letter that he had written to Judge Farrington, which reads as follows:

> As you may recall, I was the attorney who appeared before you in Hudson County for trial in the above referenced matter in or about March 2012.
>
> I wrote an article on my website relating to the case, which is now the subject of an ethics complaint. Notwithstanding whatever outcome of the ethics complaint, I wish to offer my sincere apology to you personally and as a Superior Court Judge.
> The article was removed from my website after the matter was resolved on appeal in 2012. At the time, I also removed all search engine words relating to the case. However, the article still comes up when certain key words are used. Today, I have sent a written request to Google.com and Yahoo.com to remove the link. Attached hereto is a copy of the written requests. I believe the article is in the internet history cache and still accessible unless the search engine specifically removes it. I will continue to follow up with these engines so that this article is completely removed from the internet.

In addition to taking all necessary steps to remove the article, I will never write an article remotely close to what I wrote about the Khan case.

This evening, I spend [sic] a good amount of time pondering the things I wrote in the article. I now realize that at the time I wrote the article I did not use proper judgment. At the time, I had thought that lawyers were not prohibited from commenting about their case based on their personal opinion. However, as I think more deeply about the article, irrespective of what I think lawyers can and cannot do, the fact remains that I should never have made such statements on my website about a judge or her rulings. Putting myself in your shoes, I can see how the article may have an impact on you personally, in a professional manner, and upon the judiciary as a whole. As I sit here writing this letter, I wish I can [sic] go back and change time, and with some common sense, not do what I did. But unfortunately, past mistakes cannot be corrected, only present and future ones could [sic] be avoided.
In addition, in reviewing a portion of a transcripts [sic] in this case, and upon reflection, I realized that I could have handled any disputes with Your Honor in a more courteous and respectful manner, and for my failure to do so, I am deeply sorry. I did not mean any disrespect to Your Honor.

As a human being, I make mistakes. But upon learning those mistakes, I try to better myself and avoid making similar mistakes. As an attorney, I strive to practice law within the confines of my moral and ethical obligations to my clients and to the profession. Sometimes, in the midst of a hard fought trial, these basic obligations

> give way to human emotions, which, although may seem common in the everyday world, are not appropriate in a court environment. For that, I am truly sorry and will take all steps to avoid any such conduct in the future.
>
> I am not asking Your Honor to accept my apology. I simply wish to convey my apology.
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> [Ex.P12.]

Respondent testified that he stood by the content of his August 8, 2013 letter to Judge Farrington. In particular, although he believed that, in retrospect, he should not have made such statements about the judge and her rulings, respondent did not believe they were unethical. Still, he would not publish such an article again because he did not want to be the subject of another ethics investigation.

The special master questioned respondent about his statement to Judge Farrington that he had removed the article from the internet because, on that very day, the OAE had shown him that the article was still on the internet. Respondent pointed out that, in his letter to the judge, he stated that he had removed the article from the internet but that he acknowledged that "it's coming up now." He insisted that nothing written in the letter was untrue. He removed the Khan article from the website. Although it could still be accessed,

respondent did not know how to remove it. He recognized that, perhaps, in hindsight, he should have called Network Solutions, but he did not. Respondent stated that, while he may have exercised poor judgment, he was not deceitful.

According to Herbert, it was not reasonable for respondent to contact Google or Bing to have the article removed from the website because neither entity hosted the law firm's website. Search engines, such as Google, simply "index information from the website on a periodic basis to establish its search criteria that might provide search hits for the site in question." Google could control the result of a search performed only on Google, not the results of searches conducted through other engines, such as Bing. Moreover, there could be other, uncooperative search providers that would refuse to remove the content without a court order.

Herbert claimed that the reasonable approach to removing an article from the law firm's website would have been for respondent to contact Network Solutions, the website host, by clicking on the hyperlink that appeared at the bottom of every page on the law firm's website. Respondent testified that it did not occur to him, initially, to contact Network Solutions for assistance in modifying the law firm's website because it was

respondent who had constructed the website, using Network Solutions' "website builder tool."

Herbert challenged respondent's claim that, by August 8, 2013, he had removed the search terms by which the Khan article could be retrieved on the internet, as respondent's selection of keywords within Network Solutions did not limit the terms that could be searched through search engines, such as Google. Through a series of searches, on numerous occasions around August 8, 2013, Herbert confirmed that the Khan article had remained publicly available on the internet. Indeed, Herbert claimed that respondent had stated that the article was finally removed on August 19, 2013, a point conceded by respondent, according to the special master.[9]

Herbert testified that a hyperlink to a page is merely a short cut. Thus, a page can still be live even after the hyperlink has been removed. Accordingly, an article would still be accessible either by typing the complete address in the address bar or conducting a search.

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[9] The August 19, 2013 date must be incorrect. Respondent's August 9, 2013 letter to the OAE demonstrates that, as of that date, the Khan article was no longer accessible.

Herbert understood that, in order to remove the article, respondent first "removed the listing on this particular page" but he did not "take any additional action to remove the HTML file itself from his website contents." Only later, "around the 19th," did respondent contact Network Solutions, obtain additional instruction, and remove the content.

Herbert offered his opinion of respondent's efforts to remove the article:

> Well, I feel it wasn't a sensible decision to begin the process of, you know, how do I ensure proper removal by starting with Google and then another before getting back to Network Solutions, who was, in fact, the provider as shown in the records. I do feel that that's somewhat common knowledge, I don't call Comcast, who is my home cable provider, for a problem with my iPhone that's through AT&T. So I would start with Comcast first if I noticed — and especially where I was buying additional services from them, and, you know, something with one of their aspects or what have you.
>
> [1T151-11 to 23.]

For example, respondent's e-mail to Microsoft (Bing) asking how to remove an article from the internet was "out of context." Herbert explained that, if there were a problem with his telephone, he would contact the telephone company, "not the

water company or [sic] not the electric company to come and assist or sort it out."

Ultimately, Herbert conceded, he did not know whether respondent had intentionally taken fewer steps than were necessary to completely remove the Khan article from the internet after the Khan case had settled. Respondent testified that he now understood the steps he would have had to have taken to completely remove the Khan article from the internet.

Herbert testified about respondent's "overall sophistication or knowledge of the internet," as follows:

> Yes. The site designer, maintainer appears to have an intermediate degree of savviness [sic] is capable of adding controls and features to his website and as well as making updates frequently. The site also follows a uniform layout and is easy to navigate, which does, again, indicate some degree of confidence in website design.
>
> [1T118-18 to 24.][10]

In addition, Herbert claimed that respondent had "an intermediate level of web design, knowledge of the social networking tools, knowledge of widgets, such as the imbedded map

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[10] Herbert identified respondent as the "maintainer and designer" of the law firm's website.

feature." Further, based on what Herbert "can see on screen," respondent is "versed in user interface and accessibility." That respondent has a computer, a website, and a "variety of tools" on the law firm's website "indicates a larger degree of web friendliness." He continued:

> Just the existence of having his own website, having two blogs, and having possibly additional posts on Facebook, there's some cohesion there. And given that many of the resources are accessible from the others, that again indicates to me a moderate degree of savviness.
>
> [2T196-16 to 22.]

Moreover, Herbert noted, respondent was "on top of the technology trends," as evidenced by the Windows 8.1 software on his laptop computer, which had a "touch screen as well." Thus, when asked if it is "fair to say that when a person who controls a website puts up content on a particular page, that person may also have the capability later on to go in and edit that particular content," Herbert answered "Absolutely."

Respondent testified that he considered the law firm's website to be an advertisement and that he did not advertise by any other means. Previously, respondent had received "calls/potential clients as a result of cases published on [his]

web." Thus, by publishing the Khan article on his firm's website, respondent sought to "attract new clients."

Respondent did not obtain Khan's consent prior to publishing the Khan article.[11] He acknowledged that he did not print and retain copies of the pages on the law firm's website. When he is required to remove a published article, "it's gone, as far as [he's] concerned." Respondent testified that, although he did not have a record of the pages of his website as they appeared throughout 2013, he believed that they could be located through the "go back machine, archive."

Herbert explained how an individual could find content that has been removed from the internet, by searching www.archive.org, which contains an internet search mechanism called the "Way Back Machine." The Way Back Machine browses content that "is no longer technically available in its current form on the internet." Its usefulness is limited, however, because it contains information captured on random dates. Thus, not every page of a website is captured with any regularity. In

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[11] Respondent made these statements in an April 24, 2014 brief submitted to the special master in support of a motion to dismiss the complaint.

the case of the law firm's website, its pages were captured on two dates in 2011, no dates in 2012, and two dates in 2013 (one in March and the other in September).

According to Herbert, the number of captures is not controlled by the owner of the website. Thus, if an attorney has an ethics obligation to maintain copies of all advertisements placed on the internet, the internet archive system would not be sufficient to carry out that duty. Attorneys could meet their obligation by printing the individual web pages; saving them to thumb drives, hard drives, CDs or DVDs; or saving a copy of the web page in the web browser.

Notwithstanding the above, Herbert testified that, as of the date of his testimony, "[m]uch" of the law firm's website was the same as in 2012 and 2013. He stated that the "formatting changed a little bit here and there, but there hadn't been a significant design change since very early on in the websites [sic] history." The same hyperlinks appeared in 2012 and 2013.

The special master's report focused on the content of the Khan article, respondent's awareness that the article remained accessible on the internet after he had taken steps to remove it from the law firm's website, and the use of his website for advertising purposes.

As to the Khan article's content, the special master ruled that none of respondent's statements constituted a violation of RPC 3.2, RPC 7.1(a)(1), RPC 7.1(a)(2), or RPC 8.2(a). The applicable provisions of these rules require an attorney to "treat with courtesy and consideration all persons involved in the legal process" (RPC 3.2); prohibit an attorney from making false or misleading communication about "any matter in which the lawyer has . . . a professional involvement" (RPC 7.1(a)(1)); prohibit an attorney from making a false or misleading communication that is "likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law" (RPC 7.1(a)(2)); and prohibit a lawyer from making a statement that "the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge" (RPC 8.2(a)).

The special master parsed the statements made in the Khan article in sections. The first section covered the section of the article beginning with "At trial" and ending with "environmental matters." According to the special master, these

statements were "factually accurate and consistent with other publicly available information about Judge Farrington."

Next, the special master considered the section of the article beginning with "During the trial" and ending with "the subject of an appeal," which he described as "a combination of fact and opinion." Because it was true that Judge Farrington had excluded evidence, including the outcome of the unemployment hearing, the statement summarizing her decision was fact. The statements that (1) these rulings were improper and that (2) the judge "made various prejudicial comments suggesting lack of impartiality" were respondent's opinion about the determinations, neither of which violated any of the applicable RPCs.

Finally, the special master reviewed the last two sentences of the Khan article, which began with "The plaintiff's position" and ended with "these perceived errors." He noted that, at the disciplinary hearing, no evidence was offered to establish that these statements were either inconsistent with or contrary to Khan's position. Moreover, the statements were opinions, which, in the special master's view, were protected by the First Amendment to the United States Constitution.

With respect to RPC 7.1(a)(1) and (2) in particular, the special master observed:

> The Article described a case handled by Respondent that he lost after a jury trial. Typically attorneys want to publicize their victories, not their losses. The OAE appears to allege that Respondent's opinion that an appeal would be successful constitutes a violation of these RPCs.
>
> I find nothing in the Article which is false or misleading concerning the prior work experience of the Trial Judge or facts of the case, or anything that would create an unjustified expectation about the results a lawyer can achieve. The statement that a lawyer is hopeful that a case will be reversed on appeal does not, without substantially more, violate RPC 7.1 (a) (2).
>
> [SMR22.][12]

The special master concluded:

> Under the facts of this case, and in consideration of the broad scope of the First Amendment, I cannot conclude on the record in this case that the content of the Article constitutes an RPC violation. Respondent's publication of the Article, while unpleasant and even distasteful for some, is a price we must pay in order to exercise our First Amendment freedoms.
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> [SMR21.]

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[12] "SMR" refers to the special master's report, dated October 21, 2014.

Finally, the special master concluded that the Khan article did not constitute a violation of RPC 3.2 because "the content of the Kahn [sic] Article is constitutionally protected speech."

With respect to respondent's failure to remove the Khan article from the internet entirely, the special master found that the record lacked any evidence that, prior to respondent's receipt of the grievance, in April 2013, he knew that the Khan article was still available on the internet. Indeed, the steps respondent took to remove the Khan article, following the May 21, 2012 settlement, were the same as those he had taken previously, in other cases, when he was required to remove articles pertaining to those matters. Thus, the special master ruled, Herbert "stray[ed] beyond the field of his expertise" when he opined that, at the time of the May 21, 2012 settlement of the Khan case, respondent knew, or should have known, what steps were necessary to completely remove the Khan article from the internet.

The special master did find, however, that, once respondent had received the grievance, in April 2013, he knew that the Khan article remained accessible on the internet. The special master based this finding on a statement made by respondent in the brief filed in support of his motion to dismiss the complaint,

which was dated April 24, 2014. The special master quoted the following from respondent's brief:

> I was unaware that the article was still retrievable through Google until I received a copy of the letter from the Office of [sic] Ethics dated April 8, 2013 attaching a copy of Judge Farrington's letter of grievance. Subsequent to the [sic] Office of Attorney Ethics Letter, I went to my website to check to see if the article was there. I did not see the article on the website. I then went to Google and typed in various keywords. The article did in fact show up. I then sent a written letter request to Google and other such search engines.
>
> [SMR24;Ex.P15p.27 (emphasis in original).]

The special master noted, however, that, at the disciplinary hearing, which took place just a few months after the brief was filed, respondent testified that he did not learn that the Khan article was still accessible until the August 7, 2013 OAE interview, when he was so informed by the presenter.

Based on this evidence, the special master concluded that respondent violated RPC 3.2 and RPC 8.4(d). With respect to the former, he held respondent to the statements made in the April 2014 brief and found that respondent "either did not pay attention to the facts as contained in the grievance on April 8, 2013, or he simply didn't care." Upon the view that RPC 3.2

applies to "both lack of diligence and a failure to expedite and/or complete litigation," the special master ruled that respondent's "lack of diligence in his failure to realize, at least as of April 8, 2013, that the Kahn [sic] Article was still accessible on the Internet" amounted to a violation of that RPC.

With respect to RPC 8.4(d), which prohibits conduct prejudicial to the administration of justice, the special master noted that "the evidence supports a finding that Respondent failed to take reasonable and necessary steps to make sure the Kahn [sic] Article was completely removed from the Internet (especially after Respondent received the OAE's April 8, 2013 letter), and that his failure to do so has unnecessarily consumed resources of the State."

Further, the inconsistency of respondent's statements about when he learned that the article was still accessible formed an independent basis for a second violation of the same RPC. The special master explained:

> The two statements . . . cannot be reconciled. The only conclusion that I can draw is that Respondent is [either] reckless in representations he makes as to when and how he learned that the Article was still available on the Internet, or that he gave false testimony in this hearing. In either circumstance, there is, in my view, a violation of this RPC because Respondent

> either made a false statement during the hearing, or that his contradictory statements are so irreconcilable that he recklessly makes statements at different times that apparently seem convenient for his immediate purpose. In either event, I believe that the OAE has satisfied its burden of establishing a violation of RPC 8.4(d).
>
> [SMR29.]

Finally, the special master rejected the OAE's claim that the Khan article violated RPC 7.2(a), which requires advertisements to be "predominantly informational." The special master explained:

> There is no factual misstatement in the Article, and the statements concerning the nature and extent of the experience of Judge Farrington prior to being appointed to the Superior Court are factually true. The statements by Respondent as to his belief that the trial judge exhibited bias and that her rulings were infected by that bias are fundamentally no different from statements that would be contained in a legal brief. While statements in a legal brief would clearly be protected by a litigation privilege, I cannot conclude based on the record evidence in this case that the statements in the Article, either alone or in combination with each other, constitute a violation of RPC 7.2(a).
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> [SMR26.]

With respect to count three, the special master found that respondent should have known, "no later than April 8, 2013,"

that the Khan article remained accessible on the internet. "Indeed," the special master continued, "this is what he stated in writing in his brief on April 24, 2014 in support of his motion to dismiss the Complaint."

Further, in the special master's view, "[e]ven a cursory review of the OAE's April 8, 2013 letter would have revealed, by the text of the letter itself, the Kahn [sic] Article was still available." The same was true with respect to the attachments to that letter.

Once again, the special master observed that respondent "either did not care, or did not give appropriate attention to the OAE's communication." Thus, respondent's "failure to take steps shortly after April 8, 2013 to completely remove the Kahn [sic] Article constitutes gross negligence," a violation of RPC 1.1(a) (prohibiting a lawyer from handling or neglecting a matter "entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence").

The special master dismissed the OAE's claim that, by failing to completely remove the Khan article, respondent violated RPC 1.2(a) (requiring a lawyer to "abide by a client's decisions concerning the scope and objectives of representation"). According to the special master, if respondent

had taken no steps to remove the Khan article, upon execution of the May 2012 settlement agreement, he would have violated the RPC. That the steps he did take, at the time, were insufficient did not rise to such a level.

Finally, the special master dismissed the charged violation of RPC 1.6(a) (prohibiting a lawyer from revealing "information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation"). The special master observed that it would be a violation of the First Amendment to prohibit the revelation of truthful information about a case that is "otherwise publicly available," in the absence of the client's consent.

The special master also observed that, under the OAE's interpretation of RPC 1.6(a), an attorney would violate that rule if he or she disclosed his or her prior litigation experience to a prospective client. In the special master's view, "that conclusion makes no[] sense."

The special master found no basis for concluding that respondent's failure to "timely remove" the Khan article from the internet violated RPC 1.6(a).

For respondent's violation of RPC 1.1(a), RPC 3.2, RPC 7.2(b), and RPC 8.4(d), the special master recommended a censure. Although the special master did not specifically identify aggravating factors, he pointed out respondent's contradictory statements as to when he learned that the Khan article had remained accessible on the internet.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

We begin with an examination of the content of the Khan article and whether that content violates the RPCs charged in the complaint. In this regard, the OAE has chosen to rely on the analysis it provided to the special master.

First, we consider the claims that respondent violated (1) RPC 7.2(a), by his "misuse" of his website, a form of advertising, "to criticize a Superior Court Judge by name, in an unfair and unfounded manner and for purposes of attracting business for the attorney and not for purposes of conveying accurate information, where the publication of the article . . . was global and unrestricted," (2) RPC 8.2(a), by making a statement concerning the qualifications of a judge, with reckless disregard as to its truth or falsity, and (3) RPC 3.2,

by failing to treat the judge, a person involved in the legal process, with courtesy and consideration.

With respect to the RPC 7.2(a) charge, it is important to keep in mind that the language of the rule is very different from what is suggested in the complaint. Although subparagraph (a) is lengthy, only a single sentence could possibly apply to the facts of this case. That sentence reads: "All advertisements shall be predominantly informational." RPC 7.2(a). The OAE's analysis of this RPC violation repeats the allegations of the complaint.

The plain language of RPC 7.2(a) requires the advertisement to be predominantly informational, not exclusively informational. Because the charge relates to the Khan article's statements about Judge Farrington, we limit the discussion of this rule to that portion of the article devoted to her, parsing it as did the special master.

From "At trial" to "environmental matters," the article is exclusively informational, a recitation of pure fact. These sentences do not criticize the judge, let alone in "an unfair and unfounded manner." Similarly, from "Judge Farrington excluded" to "the subject of an appeal," the article is exclusively informational. There is no evidence to suggest, and

no argument has been made, that the judge did not issue the rulings described.

The final section of the article, beginning with "[t]he plaintiff's position is" and ending with "these perceived errors," is informational. Of course, it was the plaintiff's position that the defense verdict was the product of errors on the part of the trial judge. Indeed, such is the position of nearly every party who appeals an adverse verdict. That statement is clearly informational. The statement that the errors included "various comments suggesting favoritism" also is informational. Judicial bias is a ground for appeal when, for example, a judge abuses his or her discretion in denying a motion for recusal. Similarly, the claim that plaintiff was confident that the Appellate Division would grant a new trial is informational.

The remaining sentence under consideration begins with "During the trial" and ends with "pending appeal." That, too, is informational. It identifies the "subject of a pending appeal," that is, the claim that the judge had made "various prejudicial comments suggesting lack of impartiality."

In short, every sentence pertaining to Judge Farrington in the Khan article is "predominantly informational," as required

by RPC 7.2(a). Thus, the OAE's claim that the article criticized her "in an unfair and unfounded manner" is without merit. For the same reasons, the RPC 8.2(a) also is meritless.

In addition, the OAE's claim that respondent violated RPC 3.2, which requires a lawyer to "treat with courtesy and consideration all persons involved in the legal process," is without merit. The OAE takes the position that the Khan article "characterized" Judge Farrington as "biased, inexperienced, unfair, partial, arbitrary, and failing in comparison to a Judge of the experience, stature and reputation of Judge Mantineo." It does not.

We note that the special master engaged in a thorough First Amendment analysis of the content of the Khan article. In light of our finding that respondent's comments did not violate the charged RPCs, we need not consider whether those comments were protected by the First Amendment.

In addition to the claim that the Khan article unfairly treated Judge Farrington, the OAE also asserts that it contained "false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement," a violation of RPC 7.1(a)(1) and RPC 7.1(a)(2). The former characterizes a false or

misleading communication as the "material misrepresentation of fact or law," as well as the omission of "a fact necessary to make the statement considered as a whole not materially misleading." The latter characterizes a communication as false or misleading if it "is likely to create an unjustified expectation about results the lawyer can achieve. . . ."

With respect to the RPC 7.1(a)(1) charge, the OAE argues that the Khan article "materially misrepresented facts relating to both the trial and the appeal, and omitted information about the dismissal of the appeal with prejudice under the terms of the Settlement Agreement." According to the OAE, the Khan article "mischaracterized as fact the statements which Respondent included about Judge Farrington, and his personal assessment of her deficiencies as a trial judge, which he packaged as part of his overall description of the services his law firm had to offer." The brief also suggests that, because Khan did not consent to the publication of the article, it was false to state that "plaintiff's" position was that the verdict was the product of judicial errors and that "plaintiff" would prevail on appeal.

The argument misses the mark. As shown above, the article did not contain any information that was not factual. Moreover,

any reasonable person would recognize the comments as those of a litigant who had lost the action, rather than an objective observer of the judiciary. Finally, positions taken in litigation, though those of the lawyer, who is trained to recognize issues, are always attributed to the party to the litigation, in this case, the plaintiff.

With respect to RPC 7.1(a)(2), the OAE argues that the Khan article was likely to create an unjustified expectation about the results respondent could achieve on appeal in the Khan case. Respondent created this unjustified expectation "because he attributed all responsibility to Judge Farrington for anything that had not gone in his client's favor at trial."

This argument also misses the mark. The Khan article's claims that certain rulings of the trial judge formed the basis for an appeal does not in any way "attribute[] all responsibility to Judge Farrington for anything that had not gone in his client's favor at trial."

Although the complaint charged respondent with having violated RPC 8.4(c), the OAE did not specify, either in the complaint or in the post-hearing brief, how respondent had done so. There is no basis upon which to find that respondent made

any misrepresentations in the Khan article, when it was published. We, thus, dismiss the RPC 8.4(c) charge.

The OAE asserts that respondent violated RPC 8.4(d) because the Khan article "disparaged a sitting judge, criticized her conduct in a pending case, and put the qualifications and integrity of the judiciary at issue." In support of its argument, the OAE relied on the following statement contained in respondent's August 8, 2013 letter to Judge Farrington: "Putting myself in your shoes, I can see how the article may have an impact on you personally, in a professional manner, and upon the judiciary as a whole."

The OAE's position is unsustainable. The content of the Khan article did not contain, or even suggest, anything improper. By stating the grounds for appeal, the Khan article did not disparage Judge Farrington. Moreover, it did not criticize her in a manner that prejudiced the administration of justice. It most certainly did not make an issue of her qualifications or the integrity of the judiciary.

To put this issue in perspective, these types of violations are typically reserved for truly disparaging comments that are, at worst, simply untrue, or, at best, scandalous. See, e.g., In the Matter of Alfred Sanderson, DRB 01-412 (2002) (in the course

of representing a client charged with DWI, attorney made discourteous and disrespectful communications to the municipal court judge and to the municipal court administrator; in a letter to the judge, the attorney wrote: "How fortunate I am to deal with you. I lose a motion I haven't had [sic] made. Frankly, I am sick and tired of your pro-prosecution cant;" the letter went on to say, "It is not lost on me that in 1996 your little court convicted 41 percent of the persons accused of DWI in Salem County. The explanation for this abnormality should even occur to you."); In re Weiner, 217 N.J. 146 (2014) (attorney-plaintiff asserted in various court filings, among other things, that the Pennsylvania judiciary was "beholden to the authority and influence" of the defendants, that the official acts of the judges that presided over the litigation were "predetermined" and the "product of a corrupt conspiracy, that induced the judges to act in a particular way," and that decisions made in the litigation were "wrought with judicial errors at best or under the constraints of undue influence at worst"); In re Van Syoc, 216 N.J. 427 (2014) (during a deposition, the attorney called opposing counsel "stupid" and a "bush league lawyer;" the attorney also impugned the integrity of the trial judge, by stating that he was in the defense's

pocket); In re Swarbrick, 178 N.J. 20 (2003) (the attorney made numerous statements in front of a jury that the judge was unfair and prejudiced and announced the time more than 130 times during a jury trial); In re Geller, 177 N.J. 505 (2003) (the attorney filed baseless motions accusing two judges of bias against him; failed to treat judges with courtesy, characterizing one judge's orders as "horseshit," and, in a deposition, referring to two judges as "corrupt" and labeling one of them "short, ugly and insecure"); In re Shearin, 172 N.J. 560 (2002) (among other things, the attorney demonstrated a reckless disregard for the truth when she made disparaging statements about the mental health of a judge); In re Hall, 170 N.J. 400 (2002) (among other things, the attorney made false and baseless accusations against judges); In re Hall, 169 N.J. 347 (2001) (the attorney was found in contempt by a Superior Court judge for accusing her adversaries of lying, maligning the court, refusing to abide by the court's instructions, suggesting the existence of a conspiracy between the court and her adversaries, and making baseless charges of racism against the court); and In re Solow, 167 N.J. 55 (2001) (the attorney engaged in intimidating and contemptuous conduct towards two administrative law judges; in particular, the attorney filed approximately one hundred motions

seeking one of the judge's disqualification on the basis that he was blind and, therefore, unable to observe the claimant or review the documentary evidence; the motion papers repeatedly referred to the judge as "the blind judge"). Nothing stated by respondent in the Khan article comes close to the conduct and comments of the attorneys in the above cases.

Finally, we find, as did the special master, that respondent violated RPC 7.2(b) because, contrary to the requirements of the rule, he admittedly failed to keep a copy of the various pages of his website, in their various forms, "for three years after . . . dissemination along with a record of when and where [they were] used."

As stated above, the second count of the complaint contains the same charges as the first. The difference is that, with the first count, the charges stemmed from the publication of the Khan article in the first instance. The charges in the second count are based on the continued presence of the article on the internet after execution of the settlement agreement, in May 2012, and after respondent's receipt of the grievance, in April 2013, through the date it was finally and entirely removed from the internet, sometime in August 2013. Thus, we assess respondent's conduct during these two periods.

For the reasons stated in the analysis of the first count, we dismiss the following charges, in the second count: RPC 3.2, RPC 7.2(a), RPC 7.2(b), and RPC 8.2(a). For the same reasons, we find that respondent violated RPC 7.2(b). As explained below, however, we must consider the allegations underlying the RPC 7.1(a)(1), RPC 7.1(a)(2), RPC 8.4(c), and RPC 8.4(d) charges, as they relate to a time period that is different from that in the first count of the complaint. As to these violations, the presenter, at oral argument, directed us to paragraphs sixty-one through sixty-five of the complaint, which are set forth below:

> 61. Respondent wrote to the OAE on August 8, 2013, "The article about the Khan case was removed from my website following the termination of the Khan case." (A60). This was not true.
>
> 62. Respondent stated on August 8, 2013, that, "following the termination of the Khan case," Respondent "removed the article as well as all search words." (A60).
>
> 63. Respondent then acknowledged that this statement was not true, as he added, "however, the article does come up, as you have stated, when you type in 'Chatarpaul Farrington.'" (A60).
>
> 64. In a letter to the OAE submitted by Respondent on August 9, 2013, Respondent included an e-mail which he had received from Microsoft Customer Support that same day. The Customer Support e-mail confirmed that the webpage at

> http://chatarpaullaw.com/riteaid.html "is still active," and that it was not a "cached" page. (A66).
>
> 65. Respondent provided to the OAE a copy of a letter dated August 8, 2013, addressed to the Honorable Christine Farrington from Respondent. Respondent wrote in the letter as follows:
>
> > I wrote an article on my website relating to the [Khan] case, which is now the subject of an ethics complaint. Notwithstanding whatever outcome of the ethics complaint, I wish to offer my sincere apology to you personally and as a Superior Court Judge. [A62].
>
> [C¶61-C¶65.][13]

In addition to the paragraphs above, we note, too, that paragraphs sixty-six through sixty-nine contain additional allegations of misrepresentations on the part of respondent. Paragraphs sixty-six and sixty-seven of the complaint allege that respondent spoke an untruth when he stated, in the letter to Judge Farrington, that "[t]he article was removed from my website after the matter was resolved on appeal in 2012" because, at that time, respondent knew that the article was

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[13] "C" refers to the second amended complaint, dated May 8, 2014.

still accessible on the internet. Paragraphs sixty-eight and sixty-nine allege that his representation to Judge Farrington that he had also removed all search engine terms was untrue.

We do not agree that the purportedly false statements of respondent, identified in the above paragraphs, were, in fact, false. Although respondent's claim to the OAE and to Judge Farrington that, following the "termination" of the Khan case, the Khan article had been removed from the law firm's website and the search terms deleted, was inaccurate, the record lacked clear and convincing evidence that respondent intentionally misrepresented those facts.

A violation of RPC 8.4(c) requires intent. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011) (complaint charging attorney with RPC 8.4(c) based on the appearance of the emblem of the New Jersey Board of Attorney Certification sixteen times on his website; emblem was placed there by his non-attorney cousin, who designed the website, and used the emblem in order to make the site "attractive and appealing;" complaint dismissed because the attorney did not intend to include the certified civil trial attorney emblem on his website, was unaware of its appearance on the site, and who, upon learning of the emblem, arranged for its immediate removal;

prior reprimand for conduct prejudicial to the administration of justice based on his sexual advances toward two legal aid clients); In re Uffelman, 200 N.J. 260 (2009) (where we noted that, if an attorney makes a statement believing it to be true at the time that he makes it, then it is not a misrepresentation; a misrepresentation is always intentional and, therefore, does not occur simply because an attorney is mistaken or his statement is later proved false, due to changed circumstances); 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).

Paragraphs sixty-one to sixty-nine suggest that respondent admitted to having misrepresented to the OAE that, following the "termination" of the Khan case, he "removed the article as well as all search words." Yet, his acknowledgement to the OAE, after having been informed that, despite his belief, the article remained accessible and that it could be found through a search of certain terms cannot be deemed a concession that a statement previously made was intentionally false. Rather, in our view,

respondent's comment was merely an acknowledgment that what the OAE had stated to him was accurate, despite his own belief that the article had been completely removed from the internet.

Finally, most of the charges in count three should be dismissed. First, RPC 1.1(a) governs the manner in which a lawyer handles a legal matter, that is, the case itself. It simply does not apply to a lawyer's "handling" of his or her firm's website, including the placement of content. Thus, respondent did not violate the rule, as the complaint alleged, by failing to remove the Khan article from the internet until August 2013.

The RPC 1.2(a) charge also stems from the misapplication of that rule to the facts of this case. Repeatedly, the OAE asserts that, by signing the settlement agreement, Khan was directing respondent, in writing, to do what he was required to do under the terms of that agreement. Thus, Khan had expressly directed respondent to remove the Khan article from the internet. RPC 1.2(a) does not apply, for several reasons.

First, Khan signed the settlement agreement because she was a party to the case. The settlement agreement required each party to undertake and complete certain duties. The provision requiring respondent to remove the Khan article was imposed

solely on him, not by his client, but by the defendants. Thus, there was no written instruction, authored by Khan, independently directing respondent to remove the Khan article from the law firm's website.

Second, the applicable provision of RPC 1.2(a) requires a lawyer to "abide by a client's decision whether to settle a matter." Presumably, respondent abided by that decision when he negotiated the settlement. Khan's signature on that document supports such a finding.

With respect to the OAE's claim that respondent violated RPC 1.6(a), by disclosing information "not within the categories of information allowed under the Rule," the OAE argues that the Rule prohibits an attorney from publishing on his or her website "***any*** information about the client's representation unless the client ***first*** consents following consultation." The applicable portion of the RPC provides:

> A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).
>
> [RPC 1.6(a).]

Subparagraphs (b), (c), and (d) do not apply to the facts of this case because they govern situations in which the lawyer must reveal information to prevent the client or another person from committing a criminal, illegal, or fraudulent act.

We find that respondent violated RPC 1.6(a) because he did not have his client's consent to publish the Khan article, which identified her by name. Although the special master was of the view that there was no violation because the Khan article contained only publicly available information, RPC 1.6(a) is not limited to the disclosure of client confidences or information protected from disclosure by the attorney-client privilege.

The Court addressed the scope of RPC 1.6 in In re Advisory Opinion No. 544, 103 N.J. 399 (1986). That case involved the disclosure of the names of Community Health Law project clients as part of the program's reporting obligations to funding sources. In its discussion of the issue, the Court noted that RPC 1.6(a) had expanded the scope of protected information beyond the attorney-client privilege "to include all information relating to the representation, regardless of the source or whether the client has requested it be kept confidential or whether disclosure of the information would be embarrassing or detrimental to the client." Id. at 406. In analyzing the

Project's quandary, the Court specifically noted that compliance with the reporting requirement (by disclosing merely the client names) would, of necessity, disclose very personal and confidential information about them (i.e., that they were indigent and/or mentally disabled). Thus, in this very limited context, the Court held that the identity of the project's clients constituted "information relating to the representation" and that to disclose the names of the project's clients, without their authorization to do so, would indeed violate RPC 1.6(a). Id. at 411-12. See, also, Advisory Committee on Professional Ethics Opinion 700, 182 N.J.L.J. 1126 (2005).

Although the Court did discuss certain exceptions to the prohibition against disclosure of "information relating to the representation," publicly available information was not among them or otherwise addressed – and we are not aware of any case specifically addressing the application of RPC 1.6(a) to such matters. However, because we have determined that respondent's disclosure of Khan's identity alone on his website without her authorization constitutes an impermissible disclosure, we need not reach the issue of whether the remainder of his disclosure in respect to publicly available details of her matter also violated RPC 1.6(a).

To conclude, the clear and convincing evidence establishes only that respondent violated RPC 1.6(a), to the extent that he disclosed Khan's name in the Khan article, without her consent, and RPC 7.2(b), to the extent that he failed to retain copies of the pages of the law firm's website.

There remains for determination the appropriate measure of discipline to impose on respondent for his violations of RPC 1.6(a) and RPC 7.2(b).

There is a dearth of precedent applying RPC 1.6(a). In In re Lord, 220 N.J. 339 (2014), the attorney received a reprimand for disclosing confidential client information, a violation of RPC 1.6(a), in addition to engaging in a conflict of interest, and improperly terminating the representation of her clients. The attorney divulged confidential client information by sending to her adversary a copy of a letter that she had written to her clients about their failure to sign the settlement agreement in the matter and in which she stated that she had "tried to reach you via telephone on several occasions to make arrangements for you to sign the typed up Settlement Agreement, but you either do not answer the telephone or you hang up on me."

In respondent's prior matter, In re Chatarpaul, supra, 175 N.J. 102, he received a reprimand for not only sending to a bank

sealed records pertaining to his client's criminal matter, a violation of RPC 1.6(a), but also engaging in heavy-handed tactics to compel the client to pay his outstanding legal fee.

Finally, in In re Hopkins, 170 N.J. 251 (2001), the attorney received a reprimand for his violation of RPC 1.4(a) (failure to communicate with a client), RPC 1.5(b) (failure to communicate basis of fee in writing), RPC 1.6(a)(1), and RPC 1.7(a) (conflict of interest). The RPC 1.6(a)(1) violation arose out of the attorney's discussion of one matrimonial client's divorce case with another matrimonial client.

If nothing else, the above cases establish that, for a violation of RPC 1.6(a), arising out of the disclosure of clearly confidential information, a reprimand is in order. Moreover, the above cases involved violations of other RPCs, notably those pertaining to conflicts of interest. Here, the disclosure of Khan's name, though protected by RPC 1.6(a), was not revealed by respondent in the course of breaching the attorney-client privilege. Moreover, her name was disclosed after the trial had concluded and the matter was on appeal. Thus, in our view, an admonition would be the greatest measure of discipline that could be imposed on respondent for this violation.

With respect to respondent's failure to retain a copy or recording of the law firm's web pages for three years after their dissemination, we have found no case that has addressed that issue. By analogy, we look to those cases involving an attorney's failure to maintain required records, a violation of RPC 1.15(d) (failure to comply with R. 1:21-6, the recordkeeping rule). An admonition is the usual form of discipline for failing to maintain required records. See, e.g., In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards) and In the Matter of Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (attorney did not keep receipts and disbursements journals, as well as a separate ledger book for all trust account transactions). We, thus, determine that an admonition is appropriate in this case for respondent's violation of RPC 7.2(b).

Based on the above, an admonition would be warranted for respondent's violation of RPC 1.6(a)(1) and RPC 7.2(b). We determine, however, that respondent's disciplinary history requires enhancement to a reprimand. We so vote.

Chair Frost voted to impose an admonition. Member Singer voted to dismiss the complaint and filed a dissenting decision. Vice Chair Baugh and Member Clark did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Maurice J. Gallipoli, Member

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jay J. Chatarpaul
Docket No. DRB 15-134

Argued: September 15, 2015

Decided: December 14, 2015

Disposition: Reprimand

Members	Disbar	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh						X
Clark						X
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer				X		
Zmirich		X				
Total:		4	1	1		2

Ellen A. Brodsky
Chief Counsel