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	:	Dissent

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

A four-member Board majority recommends that respondent be reprimanded for behavior that I believe at most constitutes a de minimis violation and possibly no violation at all. Accordingly, I dissent and recommend dismissal of the complaint, diversion, or, at most, as one other Board member recommended, an admonition.

The majority would reprimand respondent for: (a) publishing his client's name without her permission in an article he wrote about her case, which the majority says was prohibited by RPC 1.6(a), even though her name had already become public when her lawsuit was filed; and (b) failing to retain a copy of all iterations of his law firm's web pages for three years, as seems to be required by RPC 7.2(b). Although the majority reasons that an admonition is the appropriate discipline for these violations, it recommends enhancing the admonition to a reprimand because

respondent, a member of the New Jersey bar since 1996, was reprimanded in 2003 for acts factually dissimilar to those that are the subject of this proceeding.

My disagreement with this reasoning is threefold:

(1) Like the special master who heard this matter, I do not think that re-publishing confidential information that has already been made public should be considered an ethics violation or that one should need a client's permission to use already-public information in an article. Nor do I think that the legal authority cited by the majority (at p. 61) supports such a holding. Specifically, In re Advisory Opinion No. 544, 103 N.J. 399 (1986) (Handler, J.), finding that the "disclosure" of the names of mentally disabled and indigent clients violated RPC 1.6(a), is inapplicable here because those names had not before been made public and their disclosure revealed the confidential information that these clients were disabled. Fundamentally, though, the republishing by respondent of already public information was not a disclosure at all and hence not a violation of RPC 1.6(a). Black's Law Dictionary (9th Ed. 2009) defines "disclosure" as "[t]he act or process of making known something that was previously unknown." Furthermore, I doubt that most members of the Bar, as respondent here, understand that re-publishing public information runs afoul of our ethics rules, as the majority now holds.

(2) Although RPC 7.2(b) requires attorneys to keep a copy of "an advertisement or written communication" for three years "after its dissemination," no prior case has found a violation of this rule or addressed this issue, and I disagree with the majority that failure to keep this type of record is comparable to violations of RPC 1.15(d) requiring attorneys to maintain financial and banking records. It is not even clear that RPC 7.2(b), adopted in 1984 before the wide use of the internet that exists today, requires attorneys to keep all versions of easily-changed websites that are often frequently updated. Moreover, this issue arose in this case only because a settlement agreement required respondent to remove his article from the internet and his failure to keep a copy of the various iterations of his website under these circumstances seems to be unintentional and, at most, a de minimis violation.

(3) Lastly, even if an admonition is deemed appropriate discipline, I would not enhance it to a reprimand based on this respondent's minor disciplinary history.

Disciplinary Review Board
Anne C. Singer

By: 
Ellen A. Brodsky
Chief Counsel