

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

In the Matter of Ty Hyderally, an Attorney at Law (D-134-10) (068701)

Argued October 24, 2011 -- Decided December 20, 2011

PER CURIAM

In this attorney disciplinary matter, the Court considers whether New Jersey attorney Ty Hyderally violated Rule of Professional Conduct (RPC) 8.4 (c), which prohibits "conduct involving dishonesty, fraud, deceit or misrepresentation," by displaying on his law firm website the seal of the New Jersey Board on Attorney Certification (Board) although he had not been certified by the Supreme Court in one of the practice areas designated for certification pursuant to Rule 1:39. Only certified attorneys may display the seal in their advertising or other communications.

Hyderally, who practices in Montclair, asked his cousin, a California website designer who is not an attorney, to design a website for his law practice in 2005. The designer added the seal, which included the language "New Jersey Supreme Court Certified Attorney," to the website. He had no familiarity with legal terminology and had reviewed the websites of other New Jersey attorneys to look for law-related imagery to add to the website. He added the seal, which appeared on sixteen pages of the website, because he assumed that if an attorney practiced in New Jersey, it meant the attorney was certified by the Supreme Court. Hyderally knew the website had been designed, but never looked at its content in detail and did not learn of the presence of the seal until two years later when he was contacted about a grievance that had been received about his advertising by the Supreme Court Committee on Attorney Advertising (CAA). Hyderally immediately had the seal removed from the website.

The CAA referred the issue of the use of the seal on the website to the Office of Attorney Ethics (OAE) and the OAE filed a formal complaint against Hyderally in 2010. The complaint charged him with violation of RPC 8.4 (c), but did not charge him with violating RPC 7.1 or 7.2, which define the parameters of acceptable attorney representations regarding services, and of attorney advertising. At the ethics hearing, Hyderally testified that the presence of the seal on his website was unintentional and inadvertent, that he had not intended to hold out himself or his associates in his practice as a certified pursuant to Rule 1:39, that he did not include any reference to attorney certification on his business cards or letterhead, and that he did not receive any of the referral fees certified attorneys are allowed to receive from attorneys pursuant to Rule 1:39-6 (d). Hyderally also testified that he retained a professional website design company to redesign his website in 2009 and terminated the services of his cousin.

The hearing panel of the District Ethics Committee (DEC) concluded that Hyderally had a duty to monitor his website to ensure that no improper content appeared on it and that his failure to do so violated RPC 8.4 (c) and Rule 1:39-6(b). The panel recommended that he be reprimanded.

The Disciplinary Review Board (DRB) conducted a de novo review of the matter pursuant to Rule 1:20-15(f). The DRB agreed that Hyderally had improperly displayed the seal on his website, but concluded that the complaint should be dismissed because of the inadvertent nature of the inclusion of the seal on the website and because Hyderally had immediately removed the seal when instructed to do so and had derived no benefit from the display of the seal. The DRB noted that a violation of RPC 8.4 (c) requires a finding of intent and that there was not clear and convincing evidence that Hyderally had intended to include the seal on his website or had knowingly ratified its display.

The DRB filed its decision recommending dismissal of the complaint with the Court, which determined on its own motion to review the decision of the DRB and issued an Order that directed Hyderally to show cause why he should not be disbarred or otherwise disciplined. The OAE opposed the dismissal of the complaint, contending that the improper display of the seal for approximately two years could not be cured simply by removing the seal, that receipt by the attorney of a benefit from display of the seal was not required to prove an ethical violation, and that

Hyderally's claim of inadvertence was not credible. The OAE urged the Court to discipline Hyderally by reprimand or censure and to require him to submit his advertising to the CAA for approval for a period of two years.

HELD: There is no clear and convincing evidence that Hyderally either intentionally included the New Jersey Supreme Court Certified Attorney seal or approved its continued presence on his website, so there is no basis on which to find that his conduct constituted "dishonesty, fraud, deceit or misrepresentation," in violation of RPC 8.4 (c), and the ethics complaint should be dismissed. Attorneys are responsible for monitoring the content of all communications with the public, including their websites, so henceforth, attorneys who are not authorized to display the Certified Attorney seal on their websites or in other communication but do so, will be subject to appropriate discipline.

1. An attorney may display the Supreme Court Certified Attorney seal in advertising, including a website, only if the attorney has been designated by the Court as a Certified Attorney after having been found to meet the standards of the Board for professional experience, fitness, competence and education in the specified area of legal practice and after passing a written examination. The designation of an attorney as a Certified Attorney on the roll of attorneys represents a significant professional achievement and is an important symbol of professional competence in a specialized field. (pp.7-10).

2. Hyderally was not charged with violation of the specific Rules of Professional Conduct that govern attorney advertising, so the Court examines only whether there is clear and convincing evidence that Hyderally violated RPC 8.4 (c) by the inappropriate display of the seal on his website for approximately two years. In past cases, the Court has imposed discipline based on violation of this RPC when the record demonstrates intentional misconduct; in this case, there is not clear and convincing evidence that Hyderally's conduct constituted "dishonesty, fraud, deceit or misrepresentation." (pp.10-12).

3. Attorneys are responsible for monitoring the content of all their communications with the public, including websites designed by others, to ensure that their communications are always consistent with the Rules of Professional Conduct. In the future, attorneys who are not authorized by Rule 1:39 to use the New Jersey Supreme Court Certified Attorney seal, but who display it on their websites or in other communication, will be subject to discipline. Attorneys should frequently review the language and design of their websites. (p.12).

The Formal Complaint in District Docket No. XIV-2009-0329E is **DISMISSED**.

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, HOENS and PATTERSON, and JUDGE WEFING, temporarily assigned, join in the Court's Opinion. JUSTICE ALBIN did not participate.

IN THE MATTER OF

TY HYDERALLY,

An Attorney at Law

Argued October 24, 2011 - Decided December 20, 2011

On an Order to show cause why respondent should not be disbarred or otherwise disciplined.

Walton W. Kingsbery, III, Assistant Ethics Counsel, argued the cause on behalf of the Office of Attorney Ethics.

Frederick J. Dennehy argued the cause for respondent (Wilentz, Goldman & Spitzer, attorneys).

PER CURIAM

This ethics proceeding requires the Court to determine whether respondent, Ty Hyderally, violated Rule of Professional Conduct (RPC) 8.4(c), which prohibits "conduct involving dishonesty, fraud, deceit or misrepresentation," by virtue of his display of the seal of the New Jersey Board on Attorney Certification on his law firm website, notwithstanding the fact that respondent is not a Certified Attorney. An attorney may incorporate the seal of the New Jersey Board on Attorney Certification in attorney advertising, including any website,

only if he or she is certified as a civil trial attorney, criminal trial attorney, matrimonial law attorney, workers' compensation law attorney or municipal court trial attorney, pursuant to Rule 1:39. Members of the Bar may be subject to discipline if their websites or other communications improperly display the seal of the New Jersey Board on Attorney Certification. Attorneys are responsible for monitoring all advertising and other communications with the public to ensure conformity with the Rules of Professional Conduct. Nonetheless, the Court concludes that the record of this case does not support a finding by clear and convincing evidence that respondent violated RPC 8.4(c), and accordingly we do not impose discipline upon respondent.

I.

Respondent was admitted to the New Jersey Bar in 1994. He has a prior disciplinary history. In 1999, he was reprimanded for violating RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Hyderally, 162 N.J. 95 (1999). He maintains a practice in Montclair, with several attorneys and a paralegal, previously known as "Law Offices of Ty Hyderally, P.C.," and now known as "Hyderally & Associates, P.C."

In 2005, respondent asked his cousin, Yusuf Asgerally, who is a California website designer and is not an attorney, to

create a website for his law practice. Mr. Asgerally added the New Jersey Attorney Certification seal to respondent's website. The seal, including the language "New Jersey Supreme Court Certified Attorney," appeared on sixteen pages of respondent's website, including the pages containing biographical information about respondent, his associates and his staff, none of whom has been certified in accordance with Rule 1:39. On each page, the seal was placed under a heading entitled "Memberships/Affiliations." The "New Jersey Supreme Court Certified Attorney" seal remained on respondent's website for more than two years. Respondent testified that during this period, he knew he had a website, but "never went into it with that level of detail to look at the web site, . . . to look at that specific seal or see what that seal meant or anything of that nature."

In 2007, the Supreme Court Committee on Attorney Advertising (CAA) received a grievance about respondent's display of the seal. The Committee referred the issue to the Office of Attorney Ethics (OAE) on February 8, 2008. On February 9, 2010, the OAE filed a Complaint charging respondent with violating RPC 8.4(c), which provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." The OAE declined to charge respondent with violating RPC 7.1 or 7.2,

which define the parameters of acceptable attorney representations about services, and of attorney advertising.

The District V-C Ethics Committee (DEC) conducted a hearing on July 1, 2010, and August 30, 2010. Mr. Asgerally testified that when he designed the website in 2005, he had no familiarity with legal terminology. He stated that in reviewing websites of New Jersey attorneys to find "imagery [related] to law in New Jersey," he noticed the "seal talking about the New Jersey Supreme Court Certified Attorney." Assuming that "if you practice in New Jersey, that means you're a certified attorney and with the Supreme Court there," Mr. Asgerally added the seal to respondent's website.

Respondent testified that he did not direct Mr. Asgerally to include the "New Jersey Supreme Court Certified Attorney" seal on the website. He stated that he was unaware of the seal's presence on the website, and that had Mr. Asgerally's decision to include the seal been brought to his attention, he would not have permitted it. He stated that upon being notified of the grievance, he directed Mr. Asgerally "to immediately take down the emblem that was on the site." Respondent testified that the seal's presence on his website had been unintentional and inadvertent, that he had no intention of holding himself or his associates out as certified pursuant to Rule 1:39, and that he did not include any reference to attorney certification on

his business cards or letterhead. Respondent testified that he did not receive any referral fees from attorneys, as Rule 1:39-6(d) authorizes with respect to certified attorneys. In 2009, he retained a professional website design company to redesign his website, and accordingly terminated Mr. Asgerally's website design services.

The DEC hearing panel concluded that respondent had a duty to monitor his website to ensure that no improper content appeared on that website. It determined that his failure to do so violated RPC 8.4(c) and Rule 1:39-6(b), warranting a reprimand. In accordance with Rule 1:20-15(f), the Disciplinary Review Board (DRB) conducted a de novo review of the DEC panel's recommendation. Before the DRB, the OAE recommended that respondent be given either a reprimand or a censure, that the CAA monitor respondent's firm advertising for a period of time, and that respondent be barred for five years from applying for Certified Attorney status.

In a decision dated July 12, 2011, the DRB concurred with the DEC that respondent had improperly displayed the "New Jersey Supreme Court Certified Attorney" seal on his website, but concluded that the complaint should be dismissed. The DRB cited (1) respondent's immediate removal of the seal from his website after the CAA directed him to do so; (2) the fact that respondent had not derived any benefit from his display of the

seal; and (3) the "inadvertent" nature of respondent's inclusion of the seal on his website. Noting that "[a] violation of RPC 8.4(c) requires intent," the DRB concluded that because "there is no clear and convincing evidence that respondent intended to include the emblem on his website or knowingly ratified its display," no violation of RPC 8.4(c) had been shown.

II.

The Court determined on its own motion to review the DRB's determination pursuant to Rule 1:20-16(b), and issued an Order to Show Cause. The OAE challenged the first rationale of the DRB's decision, respondent's immediate removal of the seal from his website on learning of the grievance. Noting that "the Attorney Certification emblem was displayed for about two years," the OAE argued that "respondent's improper use of the Certified designation was not and cannot be 'cured' simply by its discontinuance." As to the second basis of the DRB's decision -- the absence of evidence that respondent derived a benefit from the presence of the "New Jersey Supreme Court Certified Attorney" seal on his website for two years -- the OAE argued that neither RPC 8.4(c) nor Rule 1:39-6(b) requires evidence of a benefit to prove a violation. The OAE also disputed the third rationale for the DRB's decision, that respondent's display of the seal was inadvertent. The OAE characterized respondent's position on that issue as "simply

incredible." It urged the Court to discipline respondent with a reprimand or censure, and to require respondent to submit his advertising to the CAA for approval for two years.

Respondent argued that the Court should uphold the DRB's dismissal of the complaint, citing "the lack of any evidence or convincing argument to the contrary by the OAE, the logic of experience in support of respondent's position, and the judgment of the disciplinary body that heard his testimony and observed the demeanor of all the witnesses." Respondent contended that if the Court ruled that a violation of RPC 8.4(c) could be premised on inadvertent or negligent use of symbols on a website, it should do so only prospectively.

III.

The "New Jersey Supreme Court Certified Attorney" seal at the center of this proceeding represents a significant professional achievement by the lawyers who earn it. Rule 1:39 defines the exacting requirements that an attorney must satisfy to earn this designation:

An attorney of the State of New Jersey may be certified as a civil trial attorney, a criminal trial attorney, a matrimonial law attorney, a workers' compensation law attorney, or a municipal court trial attorney, or in more than one designated area of practice, but only on establishing eligibility and satisfying requirements regarding education, experience, knowledge, and skill for each designated area of practice as set forth below.

[R. 1:39.]

Rule 1:39-1 and Rule 1:39-1A authorize the appointment of a Board on Attorney Certification and a Certification Committee for each of the specialty areas of practice for which certification is allowed, and empower the Board and Committees to set standards for certification for those practice areas.

In addition to meeting eligibility requirements, a candidate for certification must demonstrate "extensive and substantial experience" in the designated practice area, as defined in the Board on Attorney Certification's regulations. R. 1:39-2(b). He or she must establish "professional fitness and competence in the designated area of practice" by presenting peer references, supplemented by the Board's or Committee's investigation of the candidate's qualifications and reputation. R. 1:39-2(c). The candidate must demonstrate "satisfactory and substantial educational involvement within the three years immediately preceding his or her application." R. 1:39-2(d). Upon completion of the requirements of Rule 1:39-2, the candidate must pass a written examination in the relevant field. R. 1:39-3. If, "upon due consideration," the Board deems an attorney is qualified for a specialty certification, it reports its decision to this Court, which then directs "the making of an appropriate entry on the roll of attorneys," and issues "an

appropriate document attesting thereto." R. 1:39-5.

Certification is effective for five years from the date of entry upon the roll of attorneys, R.1:39-5(b), and may be terminated upon a finding by the Board that the "attorney no longer demonstrates continuing competence or has engaged in conduct or omissions . . . that are not acceptable on the part of a certified attorney." R. 1:39-8(a).

An attorney who has met this high standard of competence in a given specialty to the satisfaction of the Board on Attorney Certification is afforded unique recognition. He or she "may make dignified use of the area of practice designation as provided in the Regulations of the Board," R. 1:39-6(b), but is barred from using that designation in any manner unauthorized by the Board, and from using "other words or combination of words" in place of the official designation. R. 1:39-6(c). Specialty certification authorizes certified attorneys to enter into referral relationships with other lawyers, with division of legal fees as defined by Rule 1:39-6(d), except in matrimonial cases. The privilege of practicing as a certified specialty attorney is accompanied by special disclosure obligations. A certified attorney must advise the Board of any malpractice actions brought, fee arbitrations or disciplinary complaints filed, or discipline imposed during the period of certification. R. 1:39-6(e). The "New Jersey Supreme Court Certified Attorney"

seal is thus an important symbol of professional competence in a specialized field, achieved by virtue of a demanding process. The OAE contended that respondent's use of the seal, without having undergone this process, violated RPC 8.4(c).

Because respondent was not charged with a violation of RPC 7.1 (communications concerning a lawyer's service) or RPC 7.2 (attorney advertising), the issue of whether respondent's undisputed two-year display of the "New Jersey Supreme Court Certified Attorney" seal violates those rules is not before the Court.¹ Instead, the Court must determine whether the record of this case supports a finding, by clear and convincing evidence, that respondent engaged in "conduct involving dishonesty, fraud, deceit or misrepresentation" and thereby violated RPC 8.4(c).

Discipline has been imposed on the basis of RPC 8.4(c) in various settings in which the record demonstrates intentional misconduct. See, e.g., In re Prothro, 208 N.J. 340 (2011) (attorney violated RPC 8.4(c) by knowingly making a false statement to a disciplinary authority); In re Trustan, 202 N.J. 4 (2010) (attorney violated RPC 8.4(c) by knowingly making false statements to a third party and offered evidence he knew was false); In re Stahl, 198 N.J. 507 (2009) (attorney violated RPC

¹ The OAE cites cases in which attorneys were disciplined pursuant to RPC 7.1 because of misleading advertisements. See In re Power, 171 N.J. 470 (2002); In re Sharp, 157 N.J. 27 (1999).

8.4(c) where he knowingly made false statements to a law tribunal and offered evidence he knew was false); In re Marshall, 196 N.J. 524 (2008) (attorney violated RPC 8.4(c) where she assisted her client in conduct she knew was illegal or fraudulent, and made a false statement of material fact to a third party); In re Tan, 188 N.J. 389 (2006) (attorney violated RPC 8.4(c) by knowingly making false statements on his bar application). Absent evidence supporting a finding of intentional misconduct, this Court has declined to impose discipline pursuant to RPC 8.4(c). See, e.g., In re Uffelman, 200 N.J. 260 (2009) (imposing discipline based upon RPC 1.1(a), RPC 1.3 and RPC 1.4(b) after DRB dismissed RPC 8.4(c) charge in the absence of a finding of an intent to misrepresent); In re Seelig, 180 N.J. 234, 244 n.6 (2004) (noting the DRB majority's conclusion that the respondent "could not have violated RPC 8.4(c) . . . because he withheld information about [his client's] indictable offense in good faith. Respondent's belief that he was acting ethically 'precluded a finding that he intended to deceive the court.'").

Applying those principles to the case before us, we conclude that there is no clear and convincing evidence demonstrating that respondent either intentionally included the New Jersey Supreme Court Certified Attorney seal, or approved its continued presence, on the website created for him by Mr.

Asgerally. Accordingly, there is no basis for a finding, under the applicable standard of proof, that respondent's conduct constituted "dishonesty, fraud, deceit or misrepresentation." RPC 8.4(c). We agree with the DRB's unanimous determination that the complaint against respondent should be dismissed.

Notwithstanding our decision on the record of this case, we remind the Bar that attorneys are responsible for monitoring the content of all communications with the public -- including their websites -- to ensure that those communications conform at all times with the Rules of Professional Conduct. No attorney who has not complied with the requirements of Rule 1:39 should display the New Jersey Supreme Court Certified Attorney seal on a website, in other advertising, on letterhead or in any other form of communication, or otherwise state or imply that he or she has been certified pursuant to Rule 1:39. Prospectively, attorneys who are not authorized by Rule 1:39 to utilize the New Jersey Supreme Court Certified Attorney seal, but who display that seal on their websites or in other communication, will be subject to appropriate discipline. Whether a website is created by an outside consultant or developed and maintained by an attorney or his or her staff, all language and design that appears on it should be reviewed frequently for compliance with Rule 1:39 and all Rules of Professional Conduct.

An order shall be entered consistent with this opinion.

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, HOENS, and PATTERSON, and JUDGE WEFING, temporarily assigned, join in this Opinion. JUSTICE ALBIN did not participate.

SUPREME COURT OF NEW JERSEY
D-134 September Term 2010
068701

IN THE MATTER OF :
TY HYDERALLY, :
AN ATTORNEY AT LAW :
(Attorney No. 023231993) :

O R D E R

It is ORDERED that the formal ethics complaint in District Docket No. XIV-2009-0329E filed against **TY HYDERALLY** of **MONTCLAIR**, who was admitted to the bar of this State in 1994, is hereby dismissed for lack of clear and convincing evidence of unethical conduct.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 20th day of December, 2011.

CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY

NO. D-134

SEPTEMBER TERM 2010

APPLICATION FOR _____

DISPOSITION Order to Show Cause Why Respondent Should
Not be Disbarred or Otherwise Disciplined

IN THE MATTER OF

TY HYDERALLY,

An Attorney at Law

DECIDED _____ December 20, 2011

OPINION BY _____ Per Curiam

CONCURRING OPINION BY _____

DISSENTING OPINION BY _____

CHECKLIST	DISMISS
CHIEF JUSTICE RABNER	X
JUSTICE LONG	X
JUSTICE LaVECCHIA	X
JUSTICE ALBIN	-----
JUSTICE HOENS	X
JUSTICE PATTERSON	X
JUDGE WEFING (t/a)	X
TOTALS	6