

Representing two attorneys brought up on ethics charges by the New Jersey Office of Attorney Ethics (OAE) for allegedly instructing a paralegal to "friend" a represented adversary on Facebook in an underlying personal injury case, the first time that any New Jersey court has opined on issues pertaining to the application of our rules of ethics to the social media.

RELATED ATTORNEYS

Janie Byalik

Michael S. Stein

RELATED PRACTICE AREAS

Appellate Advocacy

Attorney Ethics & Professional Misconduct

The adversary in that matter filed charges against the attorneys before the District II-B Ethics Committee (DEC), who reviewed the grievance, and determined that the attorneys' conduct did not amount to a violation of the Rules of Professional Responsibility. After the DEC dismissed the grievance, the adversary's attorney demanded that the OAE review and reverse the DEC's decision. The OAE docketed and investigated the matter and filed charges against the attorneys. Following a five-year litigation, from the trial court to the Supreme Court, to resolve a novel procedural issue concerning the scope of the OAE's authority to investigate and prosecute attorney grievances, the matter was ultimately remanded for an ethics hearing. The case proceeded to an ethics hearing before a Special Master, during which the OAE voluntarily dismissed the case against one of the attorneys. Following a complete trial as to the second attorney, the Special Master issued a decision dismissing all charges in their entirety, holding that the OAE failed to establish by clear and convincing evidence any violation of the RPCs. The OAE has appealed the Special Master's decision to the Disciplinary Review Board (DRB). Following briefing and oral argument, a four-member majority of the DRB reversed the Special Master's decision, finding that the attorney's conduct violated the RPCs and imposed an admonition. That decision was not unanimous, as five DRB members dissented in three separate opinions. On behalf of the client, Pashman Stein filed a Petition for Review with the Supreme Court. The Supreme Court reversed the DRB's plurality decision, held that the Office of Attorney Ethics failed to establish by clear and convincing evidence that Respondent violated the RPCs, and

dismissed the disciplinary charges against him. The Court credited the Special Master's findings concerning Respondent's good faith misunderstanding regarding the nature of Facebook, noting the infancy of Facebook when the conduct occurred in 2008, but otherwise held that in today's world, attorneys have a duty to acquaint themselves with social media platforms to ensure permissible uses of online research.