SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-068

IN THE MATTER OF	:
MICHELE JACKSON	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 14, 1998

Decided: December 14, 1998

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

Cassandra T. Savoy appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline issued by the District VII Ethics Committee ("DEC"). The formal complaint charged respondent

with violations of *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).

Respondent was admitted to the New Jersey bar in 1992. He has no prior disciplinary history.

* * *

When respondent was admitted to the bar, the Court entered a September 9, 1992 Order placing the following conditions on his admission:

- That respondent either practice as a partner, shareholder, associate or employee under the supervision and guidance of an established New Jersey attorney or practice as a sole practitioner under a proctor approved by the Committee on Character.
- That respondent file certifications of his employment status with the Supreme Court Clerk twice a year and within one month of any employment change.
- That, if respondent practiced as a sole practitioner, he and his proctor file quarterly certifications with the Supreme Court Clerk.

The Court's Order resulted from concerns expressed in several reports and recommendations issued by the Committee on Character regarding respondent's admission to the bar. Those concerns stemmed from the following incidents: In 1985 respondent applied for an emergency loan from the University of Maryland Law School, where he was a student. Although respondent was awarded a $300 loan, he altered the amount to $800. The

loan was an advance against a grant that respondent was to receive later in the semester. The law school took no action against respondent, other than to place an account of the event in his file.

In addition, respondent registered for two courses with schedules that overlapped for one hour each week, in contravention of a school policy prohibiting students from registering for courses they are unable to fully attend. Respondent needed the credits from both courses to graduate. The law school dean referred the matter to the school's administrative committee for consideration. Because the committee refused to waive the policy, respondent's course registrations were voided and he did not receive the necessary credits to graduate on schedule. When respondent appealed to the school's faculty committee, he stated that, at the time of the registration, he was not aware of the policy prohibiting registration for simultaneous classes. The administrative committee later found that respondent lied to the faculty committee when he denied knowledge of the policy. The committee placed in respondent's file a letter about the event and forwarded a copy to the bar admission authorities. During the summer of 1988 respondent completed the necessary credits to earn a Juris Doctor degree, after which he served a judicial clerkship from September 1988 through June 1989.

Other matters of concern to the Committee on Character panel were as follows:

- Respondent's employment with a county clerk's office was terminated after one month for unsatisfactory performance. His work was below par, he was repeatedly late and he fell asleep during computer training. Respondent explained that, at the time, he was also employed by a department store in New York City and was working too many hours. The committee's report provided as follows: "This explanation from

a man concerned with beginning a career in his chosen field is somewhat disingenuous."

- Respondent's employment history consisted of temporary positions.

- Respondent failed to appear at several Division of Motor Vehicles hearings for traffic violations and issued checks on a closed account that obviously were dishonored by the bank. In April 1991 respondent made the necessary payments to restore his driving privileges.

- Respondent failed to repay his student loans. Although this may have been understandable during periods of unemployment, the panel was concerned because respondent had not made payments even while he was employed. Respondent's explanation — that he was young, drove an expensive car and was financially inept — caused the committee to question respondent's integrity, judgment and awareness of the grave responsibilities associated with handling clients' affairs and funds.

- In his October 16, 1988 certified statement to the committee, respondent failed to disclose the two law school incidents. Although the law school revealed the scheduling problem, in a June 1989 certified statement respondent also disclosed that incident, apparently without any external influence. He disclosed the emergency loan occurrence at the beginning of the committee's hearing.

Despite the foregoing, the panel found as follows:

> On the other hand, Mr. Jackson presented himself before the Panel as a man willing to answer questions without hesitation. He did not attempt to excuse his behavior. He did bring to the Committee's attention the alteration of the loan amount, an incident which the University of Maryland did not advise the Committee. He is the first member of his family to go to college and then on to law school. He has worked very hard to prepare himself for practice. The more serious incidents occurred four and six years ago. As a result his law school graduation was delayed for six months, and his admission to the bar has been delayed for the past year.

The committee panel recommended that respondent be admitted to the bar on the condition that "he either work for someone who will thus be responsible for him, or if he practices as a sole practitioner, he must have a [proctor]."

The statewide panel rejected the report, recommending that respondent's certification to the bar be withheld pending a showing of rehabilitation. After the statewide panel's report, the committee panel, by a two to one vote, reconsidered its decision and recommended that certification be withheld.

Finally, on June 29, 1992, a different panel, after holding additional hearings, recommended certification. That panel noted that respondent had completed a professional ethics course offered by the Institute for Continuing Legal Education and had sought ethics guidance from other attorneys. The panel considered testimony from respondent and several other witnesses, including attorneys, that respondent had learned from his past mistakes and had appreciated their seriousness. The panel was also impressed with respondent's volunteer work as a karate instructor for a program offered to junior and senior high school students. The panel concluded as follows:

> We do not approve of Mr. Jackson's behavior while in law school, nor his irresponsibility in meeting his obligations since his graduation. However, when we weigh that behavior against the testimony of his witnesses as to his growth and his consistency in serving as a role model for the young men of the community, we are persuaded that Mr. Jackson should now be certified. However, we are of the opinion that he should be admitted only on the conditions that, for a period of at least two years, he practice under the supervision and guidance of an established New Jersey attorney or, if he practices as a sole practitioner, only under a preceptorship pursuant to Guideline 28 of the Office of Attorney Ethics.

As noted above, on September 9, 1992 the Court allowed respondent's admission to the bar, with the conditions recommended by the Committee on Character.

* * *

The Hill-Harvey Matter

Respondent was employed by Karimu Hill-Harvey, a sole practitioner in East Orange, from July 1993 through January 1994. In July 1993 respondent and Hill-Harvey entered into a non-traditional employment agreement drafted by respondent. According to Hill-Harvey, respondent approached her about entering into an employment agreement. Respondent told Hill-Harvey that he had entered into a prior similar arrangement with another attorney. After setting forth the fees to be charged for various services, the agreement provided as follows:

> I would like to commence my employment with your firm on Wednesday, July 28, 1993. I agree to the following fee arrangement with Karimu F. Hill-Harvey, Esq. I will split all legal fees I generate including consultation with the law office of Karimu F. Hill-Harvey, Esq., P.C. 50/50. I will accept 1/3 of any fee from matters referred to me by the law office of Karimu F. Hill-Harvey, Esq., P.C. with the exception of real estate and bankruptcy matter [sic]. Any bankruptcy and real estate matters referred to me, by the firm, I will split the fee 50/50 with the firm. I agree to pay for any increase in Karimu F. Hill-Harvey's legal malpractice insurance as a result of my association with the firm. Additionally, I agree to incur the added cost of receiving my paycheck bi-weekly, expenses on files for copying, postage, telephone(s), etc.

Respondent explained to Hill-Harvey that he was interested in practicing criminal law and was doing pool work for the public defender's office. They agreed that the employment

agreement applied to the fees that respondent was to earn from the public defender's office; those fees would be divided equally between the parties. Hill-Harvey did not pay respondent a salary or any other compensation, except as described in the agreement above.

Hill-Harvey testified that, at the beginning of respondent's employment, he showed her a copy of the Supreme Court Order conditionally admitting him to practice law in New Jersey. She stated that the Order did not affect the terms of their employment agreement except that respondent was required to "run any money" through her attorney business account. Hill-Harvey contended that she reviewed respondent's briefs, and on occasion, discussed his cases with him, usually in the evenings and on Saturdays.

According to Hill-Harvey, respondent never objected to the terms of the employment agreement. She related that, in mid-January 1994, several weeks before respondent resigned, he proposed altering the agreement, including changing "the figures." Hill-Harvey did not consent to respondent's proposal. She testified that, when respondent left her employ, he represented to her that he would continue to divide with her the fees from cases from the public defender's office that had been originated during his employment.

By letter dated January 20, 1994 respondent resigned from Hill-Harvey's firm, effective that same day. According to Hill-Harvey, respondent neither tendered fees owed to her pursuant to the employment agreement nor provided an accounting of the fees he had received after his resignation. In particular, Hill-Harvey testified that, although during

respondent's employment with her, he had represented a client, Antwan Halsey, she had not received her share of the fees for that case.

OAE investigative auditor Kenneth Tulloch testified that he prepared a schedule itemizing fees that the public defender's office paid respondent and listing the dispositions of the checks. The schedule revealed that of the $17,560 paid by the public defender's office respondent shared $2,430 with his prior employer and $2,836.25 with Hill-Harvey. He retained $12,293.75 for himself. Tulloch also prepared a schedule of fees that respondent received on behalf of a client, Antwan Halsey. That schedule showed that Hill-Harvey received $765, while respondent retained $1,675.[1]

Respondent took the position that Hill-Harvey had breached their employment agreement by not giving him reasonable access to the office, secretarial support and supervision. During cross-examination, Hill-Harvey testified that, as a full-time employee of the Newark Housing Authority, she was required to work at that office from 8:30 A.M. to 5:00 P.M. Monday through Friday. She asserted that the office hours for the law firm were from 10:00 A.M. to 8:30 or 9:00 P.M. on weekdays and 10:00 A.M. to 6:00 P.M. on Saturdays. Hill-Harvey conceded that she and her mother, the office manager, were the only people with keys to the office. However, because Hill-Harvey's mother was also employed as a school bus driver, the office employees, including respondent, were required either to make advance arrangements to have access to the office or to call Hill-Harvey, who would

[1] Although the record is not clear, respondent may have received an additional $300 cash payment.

then unlock the office. Hill-Harvey testified that, despite these circumstances, respondent never complained to her about his inability to gain access to the office.

Adrienne Davis, a former secretary for Hill-Harvey, testified about difficulties in entering the office. She stated that she and respondent often were required either to wait for someone to unlock the office or to call Hill-Harvey or her mother to open it. Davis mentioned that she usually arrived at the office between 10:00 A.M. and 11:00 A.M., while respondent's arrival time was usually between 10:00 A.M. and 12:00 P.M. She related that, on one occasion, she waited one and one-half hours in the building lobby until Hill-Harvey's mother arrived.

Davis also stated that she was not permitted to work on respondent's files and that secretarial support for respondent was secondary to Hill-Harvey, who had priority. In addition, she revealed that there was no particular day fixed for the distribution of paychecks to staff. Rather, employees were paid when Hill-Harvey signed the checks; if Hill-Harvey was not in the office to sign the checks, the distribution of paychecks was delayed.

For his part, respondent testified that, prior to entering into the employment agreement with Hill-Harvey, he explained to her that the majority of cases that he would bring to the firm were from the public defender's office. According to respondent, he had disclosed to Hill-Harvey that the 1992 Court Order placed conditions on his admission to practice law. He added that Hill-Harvey was not interested in acting as his proctor, preferring to hire him as an associate. Respondent claimed that, although Hill-Harvey was aware of her obligation

under the Court Order to supervise respondent's work, she failed to provide any supervision. Respondent claimed that, whenever he asked Hill-Harvey for guidance, she suggested that he review the books in the firm's law library. He stated that Hill-Harvey never accompanied him to jail to interview clients or to court for trials or conferences.

Respondent testified that the working conditions at Hill-Harvey's law firm were difficult at best. He asserted that, in their preliminary discussions before the employment agreement, Hill-Harvey never mentioned that he would be required to make arrangements to have access to the office. According to respondent, there were times when he met clients at the office, only to be embarrassed by his inability to gain entry. On other occasions, respondent claimed, he would leave the office for a conference or court appearance, only to discover on his return that the office was locked. He contended that his inability to enter the office detrimentally affected his practice of law. Respondent alleged that, although he tried to renegotiate the employment agreement before he resigned, Hill-Harvey refused to change any of its terms. He asserted that, when he left Hill-Harvey's firm, he believed that her failure to provide him access to the office, secretarial support and supervision over his legal work canceled any obligation on his part to share fees received after his departure.

As of the DEC hearing, although conceding that he should have placed the fees in escrow until the matter was resolved, respondent believed that Hill-Harvey was not entitled to any of those funds because she had breached their employment agreement.

Respondent claimed that, when he tried to renegotiate the employment agreement with Hill-Harvey, she implied that she would use the Order restricting his bar admission to her advantage, if a dispute arose between them. According to respondent, after he resigned Hill-Harvey called him "relentlessly" to demand payment of her share of the fees. Respondent added that, although he finally offered to make periodic payments to her, she rejected any installment schedule, demanding a lump sum payment.

After the DEC hearing, the presenter and respondent's counsel stipulated that respondent had retained fees totaling $11,817.75. Pursuant to the terms of the employment agreement, Hill-Harvey would be entitled to $5,908.88 out of the $11,817.75.

The Sumners, Council Matter

Respondent was employed by Sumners, Council, George & Dortch, P.C. ("the firm" or "Sumners, Council"), a Trenton law firm, from February 1, 1994 through March 17, 1995. Gerald Council, a partner, testified that initially the firm had been concerned that respondent had not "come from the traditional practice of law background," but instead was paid a percentage of fees while working for other attorneys. Council asserted that, despite these misgivings, the firm viewed respondent as an articulate individual with the potential to be a good attorney, albeit one who lacked discipline.

As part of its personnel guidelines, the firm prepared and distributed to all employees, including respondent, a policy and procedures manual containing the following provision:

Outside Employment:

> The Firm depends on you to devote your full attention and effort to the duties to which you have been assigned. Therefore, our full-time employees are asked to refrain from working elsewhere if at all possible. Should you find it necessary to take an additional job, a letter stating the conditions of the second position must be approved by your supervisor (attorney) and the Partners. This should be done prior to acceptance of any outside position. Under no circumstances will approval be given for work at another law firm while you are employed. Failure to comply with this policy may be grounds for termination.
>
> It must be realized that employment is the employee's primary responsibility. Outside employment will not be considered an excuse for poor performance, absenteeism, tardiness, or refusal to work overtime. Should the outside employment cause or contribute to any of these situations, it must be discontinued.

On February 3, 1994 respondent signed a document acknowledging receipt of the manual. According to Council, the manual absolutely prohibited attorneys from working for another firm or from maintaining a separate office. He added that, through the manual and numerous staff meetings, the partners made it clear that they expected the full efforts of the associates to be dedicated to the firm and that "under no circumstances [would] there be any outside employment solo or with any other firm."

When respondent was hired, he explained to the firm that he was counsel of record in numerous public defender matters, primarily in Essex County. On February 2, 1994 respondent gave the firm a detailed memorandum explaining the status of the cases and projecting that the matters would be concluded by March 4, 1994. Council testified that, until respondent provided the list, the firm was not aware of the substantial number of cases in

which respondent was attorney of record. Council stated that, because the memorandum showed that many cases were about to be concluded, the firm was willing to allow respondent time to complete them. According to Council, however, after ninety days the firm became concerned because the cases were still pending. It was Council's understanding that the firm would replace respondent as counsel in these cases and that respondent would turn over to the firm all fees received from those clients after he joined the firm. Council asserted that, although the memorandum indicated that respondent would direct one of the clients, Antwan Halsey, to forward future fee payments to the firm, the firm never received those fees. Council denied that the firm had refused to accept the fees or to take Halsey as a client. According to Council, respondent never sought permission to represent the following clients: Kimmeth Williams, Uriel Arias and the Santoro & Santoro law firm. Council conceded, however, that he did not know whether respondent had received a fee for any of the above matters.

Council claimed that, at the time that respondent was hired, respondent did not disclose to the law firm the 1992 Supreme Court Order placing conditions on his bar admission. Council contended that he discovered the existence of the Order on May 14, 1994, when he inadvertently reviewed a "fax" from Hill-Harvey to respondent. Council stated that he then confronted respondent, who denied any duty to notify the firm about the Order. At Council's request, respondent produced a copy of the Order. Council then contacted the Committee on Character to determine the firm's responsibilities under the Order. He was

informed that the firm was required to supervise respondent and to immediately report to the Committee any change in his employment status. According to Council, if he had been aware of the Order during respondent's interview, he would have questioned respondent about the circumstances surrounding its entry.

Council declared that, after the firm learned of the Order, the firm did not supervise respondent in the cases that he had brought with him from Hill-Harvey's firm because they were simple criminal matters and respondent was experienced in public defender cases. The firm's concern was that the cases be resolved quickly.

On March 17, 1995 the firm terminated respondent's employment. The firm determined that respondent had breached the policy and procedures manual by maintaining a separate practice. According to Council, respondent's secretary had notified Council that, at respondent's direction, she had prepared correspondence and pleadings containing respondent's home address, not the firm's address. In addition, the secretary reported that respondent had instructed her to delete these documents from her computer. After Council telephoned the municipal court clerks to whom the letters had been sent, he concluded that respondent had represented clients in an individual capacity. Council then confronted respondent, who explained that he had represented a friend. The firm terminated respondent's employment, effective that day. Council acknowledged that he did not know whether respondent had appeared in municipal court during the day or in the evening.

For his part, respondent asserted that he had disclosed the Order to all the firm's partners before he was hired. He presented the following explanation for his misrepresentation to Council about outside cases.

According to respondent, because the firm had recently lost two associates, it needed to fill the position very quickly. Respondent contended that he had notified the firm of his obligation to complete cases in which he had been substantially involved. Respondent claimed that Council had put enormous pressure on him to stop working on those cases so that he could dedicate all of his efforts to the firm's cases. Respondent testified that, as a result of this pressure, he worked very hard to meet the firm's weekly billing requirements, while continuing to work on the cases he had brought with him from Hill-Harvey's firm. Respondent contended that, although he had tried to tender to Council fees that he had received on behalf of Antwan Halsey, Council had refused to accept the fees or the case. Respondent conceded that, although he had led the members of the firm to believe that he had been released from or had completed all of these cases, he continued to represent Halsey. Respondent testified that, because there were multiple defendants in that case, the judge had denied his motion to be relieved as counsel. Respondent added that the court had required him to continue to represent Halsey; at the same time, however, Council was putting pressure on him to conclude all the outside cases. According to respondent, because of these conflicting mandates and because Council had rejected Halsey as a client, respondent had misrepresented to Council that he had completed all the outside matters. He then had asked

his secretary to delete the *Halsey* documents so that the firm would not discover that he had continued to work on that matter after his misrepresentation to Council. Respondent testified that eventually the judge had permitted him to withdraw from the *Halsey* case, due to differences with his client.

With respect to outside employment, respondent explained that he had represented Kimmeth Williams *pro bono* as a courtesy to the alumni network, that he had appeared in the evening in a municipal court matter for his friend Uriel Arias and that he had made an appearance in bankruptcy court in Trenton for another friend, an associate in the law firm of Santoro & Santoro, who was not admitted in New Jersey. According to respondent, although he had not charged a fee for any of these services, Arias had insisted on paying him a fee. Respondent conceded that, at his request, his secretary had prepared standard letters of representation and discovery requests in two cases, *Williams* and *Arias*, and that his home address appeared on those letters. Respondent admitted that, after the conclusion of those matters, he had instructed his secretary to delete the documents because Council had directed him to cease working on any outside files. Respondent added that, before he agreed to represent Williams, he had "hinted" to Council that he wanted to represent a friend as a courtesy; Council, however, had quoted such a high fee that respondent believed that Council was discouraging him from taking the case. Thus, respondent claimed, although he had suspected that the firm did not want him to represent his friends, he had not directly asked for permission to do so.

Respondent denied violating the spirit of the firm's policy and procedures manual. He maintained that he merely provided legal services for friends. He asserted that he had not established a separate law office and had not opened separate bank accounts. Respondent stated that, because the manual did not forbid all outside work, he believed that a court appearance at night would not have affected his work during the day.

Respondent testified that he no longer practices law. He is employed as a senior examiner for an insurance carrier in New York City and has a second job working for a brokerage firm.

Violation of the Order Restricting Bar Admission

The complaint alleged that respondent violated the Order restricting his bar admission in the following respects:

- Respondent failed to notify the Sumners, Council firm of the Order before or at the time of his employment.
- Respondent's outside employment while employed by the Sumners, Council firm violated two provisions of the Order: (1) respondent practiced law without supervision and (2) respondent failed to file quarterly certifications when he practiced as a sole practitioner on outside cases.
- Respondent failed to file six out of seven semi-annual reports regarding his employment status and to timely file two reports about his change of employment.

As discussed above, Council testified that respondent failed to disclose the order to the firm. Council claimed that he discovered the Order in May 1994, three months after respondent was hired, when he inadvertently reviewed a letter that Hill-Harvey sent to

respondent. In contrast, respondent testified that he had disclosed the Order to all his attorney-employers, including the Sumners, Council partners, before he was hired. Respondent contended that, although no specific language in the Order required him to make this disclosure, he had done so because it was the proper thing to do.

At the ethics hearing, respondent conceded that he was aware at the time of his representation of his friends and Halsey that his conduct violated the Order. Moreover, in his answer, respondent acknowledged his failure to file the reports, as alleged in the complaint.

* * *

Respondent submitted a November 26, 1997 report from Marion Gedney, Ph.D., a psychologist, who opined that respondent suffers from a personality disorder, not otherwise specified, in which he uses poor judgment and acts impulsively, although he is aware that his actions are wrong and will be discovered. Dr. Gedney observed that, while respondent's actions are hurtful, they are hurtful and self-defeating to respondent alone. Dr. Gedney recommended that respondent receive intensive psychotherapy. Dr. Gedney pointed out that respondent has insight into his patterns of behavior and feels appropriate guilt and shame about them.

* * *

Remarking that respondent "demonstrated a pattern of acting inappropriately, unprofessionally and deceitfully in his professional life," the DEC found that he violated

RPC 8.4(c) and (d). While acknowledging that respondent faced intolerable work conditions under Hill-Harvey's employ, the DEC determined that he violated *RPC* 8.4(c) by improperly retaining fees owed to her. Similarly, the DEC found that the following conduct committed while respondent was employed by the Sumners, Council firm constituted violations of *RPC* 8.4(c): (1) concealment of his representation of friends and clients; (2) misrepresentation of the status of outside cases; (3) misrepresentation during the OAE's demand audit that he had paid the *Halsey* fees to Hill-Harvey. (At the ethics hearing respondent claimed that he had tried to tender those fees to Council); and (4) directive to his secretary to delete files from the computer system to conceal his outside cases.

The DEC concluded that respondent had violated both the spirit and the letter of the Order restricting his admission to practice by (1) failing to inform the Sumners, Council firm about the Order until Council confronted him after reviewing the letter from Hill-Harvey; (2) practicing law without supervision when he represented friends and clients without the Sumners, Council firm's knowledge or consent; and (3) failing to file quarterly certifications required by the Order. The DEC determined that such misconduct constituted *RPC* 8.4(d) violations.

The DEC was not persuaded by Dr. Gedney's report that respondent's behavior was mitigated by a psychological condition. The DEC recommended a three-year suspension, subject to proof of receipt of the psychological treatment recommended by Dr. Gedney. The

DEC also recommended that, after reinstatement, respondent practice under the guidance of a proctor for three years.

* * *

Following a *de novo* review of the record, the Board is satisfied that the DEC's finding of unethical conduct is clearly and convincingly supported by the evidence. Indeed, respondent admitted in his answer several of the allegations in the complaint, acknowledging that he had not fully complied with the Order restricting his admission to the bar and that he had been dishonest with the Sumners, Council firm.

With respect to the *Hill-Harvey* matter, it is undeniable that respondent retained fees that he received after his resignation from the firm. According to the employment agreement between the parties, respondent was required to tender one-half of those fees to Hill-Harvey. Respondent did not do so, contending that Hill-Harvey had breached the employment agreement by failing to provide access to the office, secretarial support and supervision. Respondent argued that, because Hill-Harvey had breached the implicit conditions of their agreement, he was not obligated to share the fees with her.

Respondent and Hill-Harvey had a non-traditional employment agreement. Rather than pay respondent a salary, Hill-Harvey agreed to provide him with an office, staff support and supervision, in exchange for a percentage of the fees generated by respondent. By failing

to honor the contract, both parties may have breached their employment contract. Certainly, any breach of contract is not favored. Moreover, as respondent conceded at the hearing, rather than retaining the disputed funds, he should have placed them in escrow. However, the disciplinary system should not assume the role of a collection agency. Hill-Harvey has civil remedies available to her to resolve her claim for breach of contract. In short, while respondent's conduct in this regard was flawed, it did not rise to the degree of dishonesty and, therefore, was not a violation of *RPC* 8.4(c).

Respondent's conduct in this regard was different from actions by attorneys who are found guilty of ignoring an attorney's lien or a court order requiring the tender of fees to another attorney. In those cases, either an attorney has placed another attorney on notice of his or her entitlement to a portion of the funds or a court order has required that the latter pay the funds to the former. For example, in *In re Rinaldo*, 155 *N.J. 541* (1998), the attorney had been ordered by a court to divide a fee, upon its receipt, with his client's prior attorney. Instead, Rinaldo did not notify the prior attorney of his receipt of the fee, deposited the fee in his business account and used the funds for office expenses. For this and other misconduct the Court imposed a three-month suspension. Here, respondent did not disobey a court order or disregard a valid attorney's lien. Instead, he failed to honor the terms of a contract.

Respondent's conduct in the *Hill-Harvey* matter was similar to that of the attorney in *In re Bromberg*, 152 *N.J.* 382 (1998). In that case, Bromberg had entered into an agreement with another attorney who had been practicing as a sole practitioner. Under the agreement,

Bromberg was required to generate sufficient fees to pay part of his monthly salary or draw. When the firm's revenues proved to be lower than anticipated, the attorney terminated Bromberg's monthly salary. The parties agreed that Bromberg would remain with the firm to complete litigation in process, for which he would receive future compensation. Faced with severe cash flow problems, Bromberg intercepted two fee checks sent to the firm, improperly endorsed them and retained them for his own use. He then lied to the attorney, telling her that the client had made the checks payable to him individually and had sent them to his home address. Although the OAE urged Bromberg's disbarment under *In re Siegel*, 133 *N.J.* 162 (1993), the Court did not find that he had knowingly misappropriated partnership funds. Instead, the Court concluded that Bromberg had violated *RPC* 1.15(b) (failure to notify party of receipt of funds and failure to deliver funds) and *RPC* 8.4(c) for the deceptive means used to obtain the checks, the improper endorsement of the checks and the misrepresentation to the attorney that the checks had been payable to him individually and sent to his home address. For this misconduct Bromberg received a reprimand.

Here, respondent did not engage in dishonesty, fraud, deceit or misrepresentation with respect to the fees due to Hill-Harvey. The checks, which were payable to respondent, were sent to him. Thus, there was no deception in his receipt of those funds. Nor was there any direct misrepresentation to Hill-Harvey about those fees. Respondent simply failed to notify her of his receipt of the fees. By this conduct respondent violated *RPC* 1.15(b). Although the complaint did not specifically charge him with a violation of this *RPC*, the facts in the

complaint gave him sufficient notice of this possible violation. Furthermore, the record developed below contains clear and convincing evidence of a violation of that *RPC*. Respondent did not object to the admission of such evidence in the record. In light of the foregoing, the Board deemed the complaint amended to conform to the proofs. *R.* 4:9-2; *In re Logan*, 70 *N.J.* 222, 232 (1976).

In addition, respondent's conduct in the *Hill-Harvey* matter violated *RPC* 8.4(d). Respondent asserted that Hill-Harvey breached the employment contract by failing to provide adequate guidance and supervision to him. He, thus, acknowledged that, contrary to the requirements of the Order placing conditions on his bar admission, he had practiced law without the necessary supervision. Realizing that he was not in compliance with the Order, respondent could have sought supervision from another attorney, ceased practicing law or asked the Court for appropriate relief in the form of relaxation or modification of the Court requirements. Instead, by continuing to practice law without supervision, respondent violated the conditions of the Order and, hence, *RPC* 8.4(d).

In the *Sumners, Council* matter, respondent conceded that he represented clients without the knowledge or consent of his employer and that he was aware at the time of the conduct that such representation violated the Court Order. Respondent also acknowledged that he led Council to believe that he had completed all of his outside cases, when he had not. To conceal his outside employment, respondent instructed his secretary to delete the files

from the firm's computer. In this context respondent's actions constituted a violation of *RPC* 8.4(c).

Also, the evidence of respondent's violation of the Order placing conditions on his practice of law was clear and convincing. Respondent conceded that he had failed to timely file the required certifications of his employment status and that he had represented clients without appropriate supervision. This conduct was prejudicial to the administration of justice, in violation of *RPC* 8.4(d).

In summary, respondent practiced law without adequate supervision from Hill-Harvey, failed to notify Hill-Harvey of his receipt of fees in which she had an interest, accepted and retained fees from two clients while employed by Sumners, Council, misrepresented the status of outside cases to Council, represented clients without adequate supervision while employed by Sumners, Council and did not fully comply with the Order conditionally admitting him to the bar.

Having found that respondent's conduct was unethical, the Board considered whether to discipline him or to revoke his license to practice law. Although attorneys have been disciplined for failure to disclose information on their bar admission applications, *see In re Guilday*, 134 *N.J.* 219 (1993), and *In re Scavone*, 106 *N.J.* 542 (1987), no attorney has yet been disciplined for violating conditions of admission.[2] The Court has also revoked licenses

[2] Attorneys have been disciplined, however, for violating Court Orders issued in a disciplinary setting. *See In re Goldstein*, 97 *N.J. 545* (1984) (attorney disbarred for breaching agreement to limit his practice to criminal matters, failing to carry out contracts of employment with eleven clients, failing to act competently and misrepresenting to his clients the status of matters).

of attorneys who have lied on the applications for bar admission. For example, in *In re Gouiran*, 130 *N.J.* 96 (1992), the attorney failed to disclose disciplinary proceedings in connection with his real estate broker's license. Although the Court revoked his license to practice law, it stayed the revocation to permit the attorney to reapply for admission. In *In re Scavone*, 106 *N.J.* 542 (1987), too, the attorney's license was revoked after it was discovered that he had lied on his bar admission application.

Hence both discipline and revocation have been appropriate results when an applicant to the bar makes misrepresentations on the application. Here, however, respondent was admitted to the bar subject to certain conditions. When an individual is conditionally allowed to become a member of the bar, notwithstanding the presence of some concerns about the individual's good character, the message should be loud and clear that, if that individual does not comply with those conditions, his or her license to practice law will be revoked. Except for cases in which the attorney has committed a technical violation of the Order or has made good faith efforts to comply with the Order, any violation, no matter how serious, should result in revocation. As a matter of policy, the mere act of violating the Order mandates this course of action.

After consideration of respondent's conduct in this matter, which was deemed intentional, a five-member majority of the Board was convinced that the only appropriate remedy is to revoke his license. Respondent practiced law without the supervision of another attorney or proctor, that is, without any of the safeguards ordered by the Court to protect the

public. That apparently no member of the public was harmed is inconsequential. The mere fact that the Order was violated should mandate revocation.

Two members dissented, voting to impose a one-year suspension, with the added condition that, before reinstatement, respondent demonstrate proof of fitness to practice law and that he practice under the guidance of a proctor for an indefinite period of time following his reinstatement. One member recused herself. One member did not participate.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 12/14/07

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board