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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
DOCKET NO. DRB 99-077

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IN THE MATTER OF  
GREGORY H. WHEELER,  
AN ATTORNEY AT LAW

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Decision

Argued: June 10, 1999

Decided: November 17, 1999

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Albert B. Jeffers appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by special master Estella S. Gold. The four-count complaint charged respondent with a violation of RPC 5.5(a) (unauthorized practice of law), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 8.4(d) (conduct prejudicial to the administration of justice) and failure to comply with Office of Attorney Ethics (OAE) Administrative Guideline No. 23 governing suspended attorneys, (superseded by R.1:20-20). Respondent admitted the charges in the first three counts of the complaint, specifically, practicing law while

suspended.

Respondent was admitted to the New Jersey bar in 1980. He was temporarily suspended from the practice of law on November 9, 1990 for failure to comply with a fee arbitration determination. The order of suspension stated, among other things, that respondent was to comply with the administrative guideline governing suspended attorneys. On February 5, 1991, the Court denied respondent's petition for reinstatement. The Court's order provided that respondent could renew his petition upon demonstration of compliance with the requirements of the November 9, 1990 order.

By order dated April 29, 1991, the United States District Court, District of New Jersey temporarily suspended respondent from practice before that court and the United States bankruptcy courts. As of the date of the DEC hearing, November 9, 1998, respondent had not been reinstated in the federal courts.

On June 6, 1995, a combined New Jersey Supreme Court order imposed (1) a one-year reciprocal suspension on respondent, effective July 8, 1993, based on his suspension in Pennsylvania for retention of unearned retainers, lack of diligence, failure to communicate and misrepresentation and (2) a two-year suspension, effective July 8, 1994, based on multiple ethics violations, including practicing law while suspended. The order directed respondent to comply with the provisions of R.1:20-20 (the rule governing suspended attorneys). In re Wheeler, 140 N.J. 321 (1995). Respondent has remained under suspension from the practice of law since the Court's order of November 9, 1990.

**Count One (The Grace Baptist Church Matter; District Docket No. XIV-97-082E)**

In August 1996 respondent represented Grace Baptist Church ("the church") in connection with its petition before the Township of Burlington Board of Adjustment ("the Board of Adjustment"). The church advanced approximately \$500 to respondent. Respondent testified that those funds were designed to cover costs in connection with the application. According to respondent, he received no fee for his work in the church's behalf.<sup>1</sup>

On September 4, 1996 the Board of Adjustment held a hearing on the church's application for a use variance. Respondent appeared in the church's behalf and testified before the Board of Adjustment. The church's petition was granted. A second hearing was scheduled for February 5, 1997 to determine whether site plans for the property conformed to state and local ordinances. Prior to the hearing, however, the attorney for the Board of Adjustment learned that respondent was suspended from the practice of law. Accordingly, the February 5, 1997 hearing was adjourned. The church was required to retain substitute counsel to resubmit its application, causing additional expense and delay to the church. Respondent returned to the church all funds advanced to him and paid the additional expenses incurred by the church.

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<sup>1</sup>The parties stipulated that, if the church pastor had testified, he would have stated that, in addition to costs, the church had paid respondent an unspecified amount, not as a fee, but in appreciation of his assistance. Respondent testified, however, that the pastor's testimony on this issue would not have comported with respondent's understanding or recollection.

At all relevant times respondent knew that he was suspended from the practice of law. However, at no time prior to February 5, 1997 did he advise the parties to the transaction that he had been suspended.

Respondent testified that he holds a master's degree in city and regional planning and had worked in that field prior to becoming an attorney. He claimed that he was representing the church as a planner. He admitted, however, that he did not advise any of the parties to the transaction that he was not appearing as an attorney before the Board of Adjustment. Key to this issue is exhibit C-F, an affidavit of proof of service designating respondent as "Attorney, Grace Baptist Church."<sup>2</sup> In addition, exhibit C-E is a document submitted in connection with the church's application to the Board of Adjustment, naming respondent as "Applicant's Attorney." Respondent testified that initially he assumed that he would be able to pursue the matter without having to perform any "legal work;" it had become necessary, however, for an attorney to sign the application, which he did. Respondent knew when he signed the affidavit as an attorney that he was making a misrepresentation. He admitted that he had made a mistake in signing the application.

The complaint charged respondent with a violation of RPC 5.5(a) and RPC 8.4(c) and (d).

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<sup>2</sup>In her report, the special master stated that "[r]espondent was less than candid at the hearing in claiming that he believed he could handle the matter for the Grace Baptist Church in his capacity as a 'planner' when the document named representative [sic] as an attorney."

The special master determined that respondent violated RPC 5.5(a). She did not make any specific finding in connection with the allegations of a violation of RPC 8.4(c) and (d).

**Count Two** (The Sunkett Matter; District Docket No XIV-97-300E)

In September 1996 respondent prepared a bankruptcy petition in behalf of Golden Lee Sunkett. Although at the time respondent knew that he was suspended from practice, he signed the petition as "attorney for petitioner." Respondent recognized at the time that his signing the petition was "a wrongful act."

By way of explanation, respondent testified that Sunkett was a friend who was seriously ill at the time. According to respondent, he had advised Sunkett that he could not sign the petition, but Sunkett had "pushed" him to assist him. Respondent received no compensation for the representation.

The complaint charged respondent with a violation of RPC 5.5(a) and RPC 8.4(c) and (d).

The special master determined that respondent violated RPC 5.5(a). She did not make any finding in connection with the alleged violations of RPC 8.4(c) and (d).

**Count Three** (The Watkins Matter; District Docket No. XIV-97-301E)

On November 14, 1996 respondent attended a deposition in the matter of Lawrence Watkins v. Junior Achievement of Northern New Jersey, et al. Respondent held himself out

as an attorney, participating in the deposition and providing representation to Watkins, the plaintiff. Thereafter, on January 13, 1997, respondent represented Watkins at a settlement conference in federal district court. Although respondent knew that he was suspended from the practice of law at the time, he failed to so advise the parties. Respondent made no statement to any of the parties that his appearance at the deposition and settlement conference might be in a role other than as an attorney. Respondent received no compensation for his representation of Watkins.

\* \* \*

The complaint that respondent filed in Watkins' behalf contained the purported signature of Gregory B. Montgomery as attorney for the plaintiff. Exhibit C-Q. Under Montgomery's signature are an address and phone number. The address is Montgomery's. The phone number, however, is respondent's. Montgomery testified before the DEC that he did not sign the complaint. He explained that respondent had approached him about representing Watkins and that he, Montgomery, had declined the representation. At some point thereafter, Montgomery received a copy of the complaint. Until then Montgomery was unaware that the complaint stated that he was counsel for the plaintiff. Thereafter, Montgomery contacted respondent and, after some discussion, consented to and assumed Watkins' representation. It is unclear what was said during the conversation between Montgomery and respondent about the signature in question. Montgomery, however, testified that the conversation led him to believe that respondent had signed and filed the

complaint.

Contrarily, respondent testified that, although Montgomery had initially declined the representation, prior to the preparation of the complaint he had changed his mind and had agreed to represent Watkins. In a July 31, 1997 letter to the OAE, respondent explained as follows Montgomery's involvement in the Watkins matter:

Since Mr. Watkins did not have any money to pay a retainer on his case, I convinced Mr. Montgomery to take the case as a favor. Mr. Montgomery asked me to help collect information and develop the file on a non-professional basis. I did attend one deposition and some other meetings with them,<sup>3</sup> however, Mr. Montgomery represented Mr. Watkins at all times and was the attorney of record.

[Exhibit C-S]

As to the signature, although respondent admitted that he prepared and filed the complaint, he contended that he did not sign Montgomery's name. Respondent was unable to say who had signed the complaint. Respondent testified further that he had Montgomery's permission to put his name on the complaint.

The complaint charged respondent with a violation of RPC 5.5(a) and RPC 8.4(c) and (d).

The special master determined that a review of the complaint and deposition transcript in Watkins (exhibits C-Q and C-I) evidenced that respondent had participated in the unauthorized practice of law, in violation of RPC 5.5(a). In addition, the special master

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<sup>3</sup>Respondent testified that "them" did not include Montgomery.

found that respondent had forged Montgomery's signature on the complaint, in violation of RPC 8.4(c) and (d).

#### **Count Four (The Yellow Pages Listings)**

Prior to March 1995, Administrative Guideline No. 23 of the OAE set out the procedures required to be followed by attorneys who were suspended or disbarred.

Specifically, the regulation stated that the attorney

(7) Shall promptly require the telephone company to remove the disciplined attorney's listing in the telephone directory indicating that that person is a lawyer or attorney, or that he holds a similar title.

(13) Shall within 30 days after the date of the attorney's suspension, disbarment or the acceptance of resignation, file with the Clerk of the Supreme Court, the Director, the Secretary of the District Ethics Committee and the Counsel to the Board a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has fully complied with this regulation and the Supreme Court's order. . . .

In March 1995, R.1:20-20 came into effect. The relevant part of that rule states as follows:

(b) Notice to Clients, Adverse Parties and Others. An attorney who is suspended, transferred to disability inactive status, disbarred, or disbarred by consent:

(7) shall promptly require the telephone company to remove any listing in the telephone directory indicating that the attorney is a lawyer, or holds a similar title;



(14) shall within 30 days after the date of the attorney's prohibition from practice file with the Director a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order. . . .

Respondent, however, had a listing under the caption "Lawyers" in the 1994-1995 and the 1996-1997 Camden County and Burlington County "yellow pages." During the relevant time, respondent knew that he was suspended from the practice of law.

Respondent testified that he had been unaware of the listings until the OAE brought them to his attention. He subsequently took steps to remedy the situation. Exhibits R-7, R-8 and R-9.

In addition, the complaint charged that respondent had failed to file with the OAE affidavits demonstrating his compliance with Administrative Guideline No. 23 or R.1:20-20.

Respondent, in turn, testified that it was his recollection that he had filed the required affidavits and that he believed that he had complied with both Administrative Guideline No. 23 and R.1:20-20.

In connection with the affidavits, the OAE presented the testimony of Yvonne E. Norment, an OAE investigator, who stated that she had been unable to locate a second affidavit allegedly filed by respondent in compliance with R. 1:20-20.

The complaint alleged that respondent had failed to substantially comply with the provisions of R.1:20-20 and Regulation 23 and that he had violated RPC 8.4(c) and (d).

The special master did not find clear and convincing evidence of any violation in this count of the complaint.

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In his answer respondent set out the following factors, by way of mitigation:

A. At no time during the period set forth in the complaint did the Respondent maintain a law office in New Jersey, engage in the practice of law except as admitted herein nor did he solicit clients despite the telephone listings. Respondent never authorized any listing in the Burlington County yellow pages. Those persons and entities whom he improperly represented sought him out;

B. The Respondent did not charge any fee to Golden Lee Sunkett or Lawrence Watkins;

C. The charges made to Grace Baptist Church in the approximate amount of \$500.00 were all used to defray costs incurred in the variance application in addition to which Respondent paid an additional \$2,000.00 out of his own funds;

D. During the period in question, and at all times before and since, Respondent engaged in no other activities which violated the Rules of Professional Conduct or any laws. On the contrary he was properly and gainfully employed and functioned as a productive member of society contributing time, effort and monies to the community.

[Answer at 3-4]

In recommending the appropriate level of discipline for respondent's infractions, the special master stated that

[t]he disobedience of a clear Order of the Court is an aggravating factor in assessing the nature of an ethics infraction. See In the Matter Goldstein, [sic] 97 N.J. 545 (1984). In considering appropriate discipline, the finder of fact should take into account respondent's previous discipline, which in this case, is not merely a single episode of discipline, but reflects multiple

infractions showing a consistent lack of attention to professional obligations.

Taking into consideration the testimony of witnesses as well as the documents in evidence and uncontested stipulations, I find that the respondent is guilty of misconduct as set out above and recommend permanent suspension from the practice of law in the State of New Jersey.

[Special master's report at 4-5]

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Upon a de novo review of the record, we are satisfied that the conclusion of the special master that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

That respondent practiced law while suspended is uncontested. Respondent admitted this impropriety. He, thus, violated RPC 5.5(a). In addition, respondent held himself out as an attorney in each of the three cases, in violation of RPC 8.4(c) and (d). Lastly, he failed to comply with Administrative Guideline No. 23 and R.1:20-20, as alleged in the fourth count of the complaint.

As to this last count, the record in connection with the filing of the affidavits required pursuant to Administrative Guideline 23 and R.1:20-20 is murky. We cannot conclude by clear and convincing evidence to what extent respondent failed to comply with those requirements. It is clear, however, that respondent failed to have his name removed from the attorney listings in the "yellow pages" after he was suspended. Respondent contended that he was unaware of the listings until informed of them by the OAE. It was respondent's responsibility, however, to take affirmative steps to have the listings removed. His failure

to do so violated Administrative Guideline No. 23 and R.1:20-20. This failure, however, pales in comparison to respondent's misconduct in the Church, Sunkett, and Watkins matters, specifically, practicing law while suspended. The only question before us is whether respondent should be suspended or disbarred.

The level of discipline for practicing law while suspended has generally ranged from a long-term suspension to disbarment, depending on a number of factors, including the attorney's level of cooperation with the disciplinary proceedings, the presence of other misconduct and the attorney's prior disciplinary history. In In re Rubin, 144 N.J. 161 (1996), an attorney not admitted in New Jersey who was suspended in New York, was admitted pro hac vice to represent a client before the New Jersey Office of Administrative Law, based upon an affidavit that contained misrepresentations. The attorney did not cooperate with the disciplinary authorities. The Court ordered that Rubin's privilege to apply for pro hac vice admission in New Jersey be suspended for three years and until his restoration to practice in New York; In In re Goldstein, 97 N.J. 545 (1984), the attorney was disbarred for misconduct in eleven different matters and for practicing law while temporarily suspended by the Court, in violation of an agreement with the Board that he limit his practice to criminal matters; In In re Beltre, 130 N.J. 437 (1992), the attorney was suspended for three years for appearing in court after having been suspended and misrepresenting his status to the judge, failing to carry out his responsibilities as an escrow agent, lying to the Board about maintaining a bona fide office and failing to cooperate with an ethics investigation; In In re Kasdan, 132 N.J. 99

(1993), the attorney was suspended for three years for continuing to practice law while suspended after the Court's express denial of her request for a stay of her suspension; the attorney also failed to disclose her suspension to her clients, her adversary or the courts, to keep complete trust records and to advise her adversary of the whereabouts and amount of escrow funds; in addition, she displayed conduct involving dishonesty, fraud, deceit or misrepresentation; In In re Grabler, 127 N.J. 38 (1992), the attorney was suspended for two years for practicing law while suspended, gross neglect and misrepresentations to client; the attorney had had two prior suspensions; In In re Lisa, 158 N.J. 5 (1999), a one-year suspension was imposed where the Board took into consideration that a childhood incidence of sexual abuse by a neighbor caused the attorney to be highly anxious about offending other people or refusing their requests; out of fear of offending a close friend the attorney agreed to assist as "second chair" in a New York criminal proceeding involving the friend; no venality or personal gain motivated the attorney's actions; in fact, he did not charge his friends for the representation; finally, he cooperated with the ethics system by entering into a disciplinary stipulation.

Here, respondent received a two-year suspension in 1994 for, among other violations, practicing law while suspended. In its decision in that earlier matter, the Board cited In re Goldstein, supra, 97 N.J. 545 (1984), where the attorney was disbarred for misconduct in eleven matters and for practicing law while temporarily suspended. In our review of respondent's earlier matter, we did not consider respondent's misconduct to equate to that

of Goldstein. There, respondent undertook, albeit wrongfully, to assist an individual in a single matter over a short period of time. Here, however, respondent represented clients in three matters. His representation spanned a limited time only because he was "caught" by opposing counsel. That respondent once again practiced law while suspended demonstrates such a contempt for the court, the bar and the judicial system that nothing less than disbarment is warranted. We unanimously recommend to the Court that respondent be disbarred.


One additional point warrants mention. In the Watkins matter, as discussed above, Montgomery's signature appears on the complaint filed in the plaintiff's behalf. According to Montgomery, he neither signed the complaint nor consented to the use of his name thereon. Respondent disputed Montgomery's testimony about his decision to become involved in the matter and denied having forged Montgomery's name on the complaint. The special master found respondent guilty of a violation of RPC 8.4(c) and (d). We note that, although respondent was charged with a violation of RPC 8.4(c) and (d), there are no facts alleged in the complaint that would have given respondent notice of these specific accusations and, therefore, an opportunity to defend himself against those charges. In addition, respondent's counsel objected to the questioning on this issue during the DEC hearing. Given the lack of notice to respondent of the charge, his counsel's objection and the fact that a finding on this issue is not necessary to reach the conclusion that respondent

should be disbarred, we refrain from making any findings of violations of those RPCs.

One member recused himself.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 11/17/88

By:  \_\_\_\_\_

LEE M. HYMERLING  
CHAIR  
DISCIPLINARY REVIEW BOARD

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Gregory H. Wheeler  
Docket No. 99-077**

**Argued: June 10, 1999**

**Decided: November 17, 1999**

**Disposition: Disbar**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	x						
Cole	x						
Boylan	x						
Brody	x						
Lolla	x						
Maudsley	x						
Peterson	x						
Schwartz	x						
Wissinger						x	
<b>Total:</b>	<b>8</b>					<b>1</b>	

\* Member Thompson is on a temporary leave of absence

By *Robyn M. Hill* 12/21/99  
Robyn M. Hill  
Chief Counsel