

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
Docket No. DRB 24-034  
District Docket Nos. XIV-2020-0139E and IIIB-2021-902E

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In the Matter of Al Wheeler  
An Attorney at Law

Argued  
April 25, 2024

Decided  
August 5, 2024

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Colleen L. Burden appeared on behalf of the  
Office of Attorney Ethics.

Respondent appeared pro se.

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## **Introduction**

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

This matter was before us on a recommendation for a reprimand filed by the District IIIB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to dismiss the charges against respondent.

## **Ethics History**

Respondent earned admission to the New Jersey bar in 2006. He has no disciplinary history. During the relevant timeframe, he maintained a practice of law in Hammonton, New Jersey.

## **Facts**

This matter stems from events that occurred on September 16, 2019, in connection with respondent's appearance on behalf of a criminal defendant,

M.M.,<sup>1</sup> in a proceeding pending before the Honorable Cristen D'Arrigo, J.S.C., in the Superior Court of New Jersey, Cumberland County. On that date, respondent appeared before Judge D'Arrigo on behalf of M.M., who was incarcerated. Respondent had appeared with M.M. several times before and was aware that his client routinely acted out during court proceedings.

Because M.M. had refused to be transported to court that morning, Judge D'Arrigo ordered that he be brought to court using all reasonable force. Specifically, Judge D'Arrigo issued an extraction order (also known as a "touch order"), which allowed officers at the Cumberland County Jail to employ the force necessary to remove M.M. from his jail cell and transport him to Judge D'Arrigo's courtroom, if he refused to come willingly. According to the order, M.M.'s presence was necessary for the court to schedule a trial which already had been delayed, given M.M.'s refusal to appear in court on six dates between January 2018 and September 2019.

Respondent was aware of this order. Earlier that morning, Judge D'Arrigo briefly discussed M.M.'s transport with respondent, on the record, at the conclusion of one of respondent's other pending matters. At approximately 9:28 a.m., the following exchange took place:

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<sup>1</sup> We have anonymized respondent's client's information.

Respondent: As to the 10 o'clock matter, Your Honor -  
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Judge D'Arrigo: Yes, sir.

Respondent: -- I just want to say, that's fine if we can do it that way. If we can do it at 10. But I do have Atlantic, and then I have Judge Becker --

Judge D'Arrigo: Well, you're going to have to stick around. We're bringing him over here --

Respondent: All right, then.

Judge D'Arrigo: -- and he's not going to be happy.

Respondent: Thank you.

Judge D'Arrigo: All right.

[P-Ex5 at 3:2-14.]<sup>2</sup>

Respondent, however, had other criminal matters scheduled that morning, in Salem County. Accordingly, at approximately 10:15 a.m., before M.M.'s case was called and notwithstanding his representation to Judge D'Arrigo that he would remain in the courtroom, respondent departed and traveled to the Salem County courthouse. Before doing so, he sent an e-mail to the Salem County criminal division team leader, advising that he was delayed in Cumberland.

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<sup>2</sup> "P-Ex" refers to the presenter's exhibits admitted into evidence during the formal ethics hearing.

Respondent failed to alert Judge D'Arrigo or any court staff that he was leaving the Cumberland County courthouse. Thereafter, at 10:22 a.m., when the sheriff's officers brought M.M. into the courtroom, and M.M discovered that respondent was missing, he repeatedly disrupted another criminal proceeding and, ultimately, was removed from the courtroom.

At 11:19 a.m., Judge D'Arrigo's law clerk sent respondent an e-mail, asking if he was still available for the M.M. hearing. At 11:55 a.m., respondent replied, stating he had other criminal matters in Salem County before the Honorable Linda L. Lawhun, P.J. Cr., and the Honorable Robert P. Becker, Jr., J.S.C., and that he had "tried to get Cumb done first but . . . ."

At 12:14 p.m., the law clerk sent respondent another e-mail, stating, "Judge D'Arrigo asked me to reply back to you and tell you that you must be back here at 1:30pm today, you were told not to leave and you did." Respondent replied, "Ok will finish in Salem Lawhun and Becker. Will come back if not too late. AW."

Judge D'Arrigo's staff continued to make calls throughout that day attempting to locate respondent (some to Judge Lawhun), but those calls went unanswered by respondent; even as he traveled to Cumberland, respondent received a call after 3:30 p.m., telling him the Cumberland court staff were still looking for him.

Respondent's first hearing in Salem County was before Judge Lawhun and began at 12:23 p.m. After that matter concluded, Judge Lawhun advised that the morning docket was complete and that court would reconvene at 1:30 p.m., at which time she would hear respondent's second matter pending before her.

The pretrial conference in respondent's second matter before Judge Lawhun commenced at 1:41 p.m. and concluded at 1:55 p.m. Before his client arrived in the courtroom, respondent asked Judge Lawhun if he could "clear up the extraction order in Cumberland" and advised that Judge D'Arrigo's staff was asking him to return to the court "for a 1:30 extraction order." Specifically, the following colloquy took place:

Respondent: I was there this morning.

Judge Lawhun: Yeah. And Judge D'Arrigo did tell me that your client wouldn't come --

Respondent: I tried --

Judge Lawhun: -- so he signed a reasonable course order, and now your client's there.

Respondent: Yeah. And that's -- that's a summary -- the last three or four of five times he didn't come. So I wasn't going to derail an entire day again for someone who was, at the time I left, refusing again.

Judge Lawhun: Uh-huh.

Respondent: And I don't know whether they're going to -- how we'll get him over there. But --

Judge Lawhun: Apparently, they did get him there. And then they went looking for you. I don't know what time that was.

Respondent: Well, frankly, there appeared -- there were a roomful of attorneys, a roomful of public. This guy acts out and there appeared to be [no urgency]<sup>3</sup> to get him. So I thought I'd get something done, take care of my matters here.

Judge Lawhun: Understandable. But, apparently now they're -- I guess since they have him there, they want to --

Respondent: Well, they're still texting me.

Judge Lawhun: -- do what they can do.

Respondent: They're -- as with Atlantic asking me to do a [indiscernible], so all the judiciaries are not happy with me today.

Judge Lawhun: It's difficult when you go to so many different counties.

Respondent: Well, you know, Judge --

[P-Ex7 at 3.]

Thereafter, the discussion continued off the record. When the recording resumed, the parties scheduled trial and the court informed respondent's client of potential sentencing outcomes.

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<sup>3</sup> Although the transcript states, "nowhere I could see," a review of the CourtSmart audio file revealed that respondent clearly stated, "no urgency."



Once trial was scheduled, respondent advised the court that Judge Becker was on his way down for the 2:00 p.m. hearing in respondent's third matter. Judge Lawhun responded, "Okay. Great. And I'll let Judge D'Arrigo know you're on your way so he'll stop calling me?" Respondent said, "I sent [a note], I'll finish here and I'll go down there."

Respondent's third matter in Salem, a plea hearing before Judge Becker, commenced at 2:37 p.m. and concluded at 3:15 p.m.

Thereafter, respondent returned to the Cumberland County courthouse, arriving at approximately 4:00 p.m. When he arrived at Judge D'Arrigo's courtroom, other hearings were still taking place. The court heard M.M.'s matter from 4:42 p.m. to 5:05 p.m. Although the matter was scheduled for a pretrial conference, the proceeding was lengthy, because M.M. continuously interrupted Judge D'Arrigo and disrupted the proceeding. At least nineteen times during the twenty-three minute hearing M.M. was yelling so loudly that the transcriber was unable to hear what the court and counsel were saying.

After the court excused M.M., the sheriff's officers took him out into the hallway, where he continued to yell loudly. Respondent then addressed the court:

Respondent: I just want to get this on the record. Normally what I do is if I file harassment charges, that I'm conflicted and I have to come out. I'm careful not to do that and I am trying to do that.

Judge D'Arrigo: I've been patient, too. He's called me many times and I have done nothing.

Respondent: I hear you, Your Honor. But I'm just saying that is – I'm just going to put that aside for the moment. But it's – I'm not sure I can be very effective because I can't hear you and I don't know whether – I think we agreed on – what is his exposure?

Judge D'Arrigo: His exposure if he's not extended term is 18 –

Respondent: That's – okay.

[P-Ex10 at 39:21-40:10.]

On January 2, 2020, the assignment judge for the Cumberland/Gloucester/Salem vicinages, the Honorable Benjamin C. Telsey, A.J.S.C., referred this matter to the OAE.

Following its investigation, the OAE charged respondent with having violated RPC 3.4(c) and RPC 8.4(d).

### **The Parties' Positions Before the DEC**

On June 23, 2023, the ethics hearing took place. The OAE presented the testimony of its investigator and respondent testified on his own behalf.

Respondent did not dispute the events that occurred on September 16, 2019; however, he denied having violated the Rules of Professional Conduct. Judge D'Arrigo, according to respondent, was aware that he had other criminal

matters that day in Salem County. Respondent further explained that, in his view, Judge D'Arrigo's instruction to "stick around" was not a directive to stay all day but, rather, meant that he should stay as long as he could before having to leave the courthouse to attend his other clients' matters pending in Salem County. He testified that he did not intend to defy any order or directive of Judge D'Arrigo.

Respondent emphasized that none of the clients he was representing that day were private clients but, rather, had been assigned and scheduled by the Office of Public Defender. Thus, he asserted that his busy calendar was not attributable to his own actions in overscheduling private clients. Further, respondent argued that none of the judges he appeared before that day had complained about his whereabouts. Instead, the matter had been referred to the OAE by the assignment judge, four months after the fact. Moreover, in respondent's view, Judge Lawhun was a presiding judge and, when faced with conflicting schedules, he believed the presiding judge's calendar took priority.

Last, respondent argued that he was deprived due process because the panel chair denied his request to subpoena Judge D'Arrigo, Judge Lawhun, Judge Becker, and Judge Telsey to testify before the hearing panel.

In his written summation, respondent reiterated the various excuses for his failure to remain in Judge D'Arrigo's courtroom. Further, he described his

representation of multiple criminal defendants that day as “facilitat[ing] the administration of justice,” maintaining that any allegation that he obstructed the administration of justice was “absurd.”

In its written summation, the OAE urged the hearing panel to find that respondent violated RPC 3.4(c) and RPC 8.4(d). Specifically, the OAE asserted that respondent violated RPC 3.4(c), which prohibits an attorney from knowingly disobeying an obligation under the rules of a tribunal, by leaving the courtroom after Judge D’Arrigo expressly directed him to stay for the M.M. matter, which was calendared for 10:00 a.m. When the M.M. matter commenced at 10:22 a.m., however, respondent already had left to attend court in Salem County. When Judge D’Arrigo’s law clerk contacted him, she directed him to appear at 1:30 p.m., stating “you were told not to leave and you did.” Again, respondent failed to return to Judge D’Arrigo’s courtroom by 1:30 p.m. Thus, the OAE alleged that respondent knowingly disobeyed an obligation under the rules of the tribunal, in violation of RPC 3.4(c).

Next, the OAE argued that, by failing to abide by Judge D’Arrigo’s directive that he remain in the courthouse until the M.M. matter had concluded, respondent caused the unnecessary expenditure of judicial resources, in violation of RPC 8.4(d). Specifically, sheriff’s officers were twice required to produce respondent’s client to the courtroom and, further, court staff expended

time in their attempts to locate respondent and, ultimately, were required to stay past 4:30 p.m.

The OAE maintained that respondent's claim that "stick around" meant only that he was required to stay until 10:00 a.m. was belied by the transcript of the proceeding. Specifically, the OAE argued that Judge D'Arrigo had never qualified his directive with a specific time. Rather, the transcript reflected the judge's clear intent that respondent stay in the courtroom until his client's case was heard.

Respondent admitted that he failed to tell anyone that he was leaving Judge D'Arrigo's courtroom or to inform Judge Lawhun and Judge Becker that he had been told to remain in Judge D'Arrigo's courtroom. Further, the OAE asserted that respondent admittedly was aware of his client's disruptive tendencies and that the court had entered a "touch order" to secure M.M.'s appearance that morning.

Citing disciplinary precedent discussed below, the OAE recommended a reprimand or a censure for respondent's misconduct. The OAE analogized respondent's misconduct to that of the attorney in In re Ali, 231 N.J. 165 (2017), who was reprimanded for failing to appear when ordered to do so. However, the OAE emphasized respondent's lack of contrition or acceptance of responsibility which, according to the OAE, was deserving of significant aggravating weight.

In mitigation, the OAE noted respondent's lack of prior discipline in his eighteen years at the bar.

### **The DEC's Findings**

The DEC concluded that respondent violated RPC 3.4(c) by knowingly disobeying Judge D'Arrigo's initial directive to remain in the courtroom that morning and, later, to appear at 1:30 p.m. The DEC emphasized respondent's acknowledgement, during his recorded colloquy with Judge Lawhun, that he had been directed to remain in the courtroom and that M.M.'s attendance had been secured via the use of force. Further, he told Judge Lawhun that he was busy and "wasn't going to derail his entire day for someone who was at the time he left refusing again" to appear in court. Thus, the DEC determined that respondent violated RPC 3.4(c).

The DEC, however, found no clear and convincing evidence that respondent's conduct caused the unnecessary expenditure of judicial resources or that it was prejudicial to the administration of justice. Thus, the DEC declined to find a violation of RPC 8.4(d).

In mitigation, the DEC considered respondent's lack of prior discipline. In aggravation, however, the DEC highlighted respondent's lack of remorse and failure to accept any responsibility for his misconduct. In recommending the

imposition of a reprimand, the DEC analogized respondent's misconduct to that of the attorney in Ali, 231 N.J. 165, cited by the OAE.

### **The Parties' Positions Before the Board**

Neither respondent nor the OAE submitted briefs for our consideration. Rather, they relied upon their written summations to the hearing panel.

At oral argument before us, the OAE emphasized respondent's continued lack of contrition and remorse and argued that the conduct was likely to recur. Respondent, according to the OAE, refused to accept responsibility for his actions and, instead, took every opportunity to blame others and accuse the OAE of not being honest or forthright.

Respondent, for his part, reiterated that Judge D'Arrigo had told him to "stick around" until ten and that he did just that. In response to our questioning, respondent admitted that he had not told anyone that he was leaving, or why he was leaving, Judge D'Arrigo's courtroom. Further, he admitted not calling Judge D'Arrigo's chambers throughout the day because, according to respondent, Judge Lawlun's chambers already had been in touch with him.

Respondent also explained that, when he returned to Judge D'Arrigo's courtroom later that afternoon, it was still "hustling and bustling," and he had to wait for other matters to conclude before his client's matter was heard. Thus, in

his view, there was no proof that he caused the court to incur overtime.

## **Analysis and Discipline**

### *Violations of the Rules of Professional Conduct*

Following a de novo review of the record, we determine to respectfully part company with the DEC's finding that respondent violated RPC 3.4(c). We agree, however, with the DEC's determination that the OAE did not meet its burden of establishing, by clear and convincing evidence, that respondent violated RPC 8.4(d).

RPC 3.4(c) provides that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." Pursuant to RPC 8.4(d), it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. The OAE alleged that respondent violated both Rules by leaving the courtroom, despite Judge D'Arrigo's specific directive that he stay until his client's matter was heard, and, as a direct result of respondent's conduct, M.M., an extremely disruptive defendant, was moved into and out of the courtroom multiple times that day. Further, the OAE alleged that court staff and security were required to work beyond 4:30 p.m., thereby creating overtime issues.



It is undisputed that, on September 16, 2019, Judge D'Arrigo informed respondent, on the record, that his client's case would be heard at 10:00 a.m. and, despite respondent's expressed concern that he had other court appearances scheduled in Salem, Judge D'Arrigo told him to "stick around." However, by 10:22 a.m., when M.M. was brought into the courtroom, respondent already had left the courthouse, and respondent ultimately admitted that he had failed to inform Judge D'Arrigo or court staff that he intended to leave.

Respondent then traveled to Salem County to handle other pending matters before Judge Lawhun and Judge Becker. After respondent left Cumberland, Judge D'Arrigo's law clerk sent an e-mail to respondent, advising that the judge wanted him to appear at 1:30 p.m. Respondent replied, stating that he needed to remain in Salem County to handle other criminal matters, and in fact, he did return to Judge D'Arrigo's courtroom after he completed those matters. Moreover, when respondent arrived back in Cumberland County, Judge D'Arrigo still had other matters to complete before M.M. could be heard. As respondent contended, the court was not waiting idly for him to return and, thus, his conduct did not prevent the court from hearing other matters.

In our view, there is no doubt that respondent should have handled this matter differently. His conduct on September 16, 2019 lacked professionalism and reflected a disregard for Judge D'Arrigo's calendar and the issues inherent

to a difficult client, including the extraction order. However, the question before us is whether he knowingly violated a court order, in violation of RPC 3.4(c), or prejudiced the administration of justice, in violation of RPC 8.4(d).

As a matter of courtesy and professionalism, respondent should not have left Judge D'Arrigo's courtroom when he was told to "stick around." Further, he had a number of options that would have avoided this controversy altogether. He could have called Cumberland County court staff days before the hearing – or at least upon realizing he had a scheduling conflict – to advise that he was unavailable or to ask to have the M.M. matter heard first that morning. In the alternative, he could have told Salem County court staff that he had to remain in Cumberland when Judge D'Arrigo told him to "stick around." At the very least, if respondent still felt compelled to leave before the M.M. matter was heard, he should have advised Cumberland court staff that he planned to do so, prior to leaving. Had respondent taken any of these measures, staff from the Cumberland and Salem County courthouses could have communicated with one another directly and coordinated a plan that would have allowed respondent to handle all the matters on his schedule, while also satisfying Judge D'Arrigo's need to hear the M.M. matter expeditiously.

We are equally troubled by respondent's refusal to accept any responsibility for the inconvenience his conduct caused that day. These findings

notwithstanding, we are unable to conclude, on this record, that Judge D'Arrigo's statement to "stick around" constituted a court order within the meaning of RPC 3.4(c) and, thus, determine to dismiss that charge.

Moreover, it is not unusual for a criminal court to be bustling with activity, and for defense attorneys to be scheduled for multiple appearances, even at different locations, on the same day. Under these circumstances, and without any documentary evidence to support the OAE's allegation that respondent "created overtime and compensatory issues," we cannot find clear and convincing evidence that, but for respondent's conduct, the court would have concluded its docket before 4:30 p.m. that day. Thus, the record lacks clear and convincing evidence that his "conduct resulted in the unnecessary and avoidable expenditure of judicial resources," and therefore, we determine to dismiss the charge that respondent violated RPC 8.4(d).

Disciplinary precedent solidifies our decision in this matter. See, e.g., Ali, 231 N.J. 165 (the attorney disobeyed three court orders; first, despite the court's order that he file a substitution of attorney, he failed to do so; the attorney then twice failed to appear before the court, despite being ordered to do so; violations of RPC 3.4(c) and RPC 8.4(d)); In re Cerza, 220 N.J. 215 (2015) (the attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him;

violations of RPC 3.4(c) and RPC 8.4(d)); In re Gellene, 203 N.J. 443 (2010) (the attorney engaged in conduct prejudicial to the administration of justice and knowingly disobeyed an obligation under the rules of the tribunal by failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; violations of RPC 3.4(c) and RPC 8.4(d)); In re D'Arienzo, 207 N.J. 31 (2010) (the attorney failed to appear for a scheduled criminal trial and, thereafter, at two orders to show cause stemming from his failure to appear at that trial; we found that the attorney's failure to appear inconvenienced the court, the prosecutor, and witnesses, and prevented the court from scheduling other matters).

### **Conclusion**

In conclusion, respondent's conduct in this matter simply is not of the same caliber as the attorneys who have who have been disciplined for knowingly disobeying a court order. Accordingly, based on the unique facts of this record, we conclude that there is no clear and convincing evidence that respondent violated RPC 3.4(c) or RPC 8.4(d) and, thus, determine to dismiss both charges.

Chair Cuff, Vice-Chair Boyer, and Member Campelo voted to sustain the RPC 3.4(c) charge, finding that respondent's actions amounted to a knowing

violation of Judge D'Arrigo's directive. In their view, respondent's misconduct warrants an admonition.

Members Hoberman and Rivera were absent.

Disciplinary Review Board  
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.),  
Chair

By: /s/ Timothy M. Ellis  
Timothy M. Ellis  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Al Wheeler  
Docket No. DRB 24-043

Argued: April 25, 2024

Decided: August 5, 2024

Disposition: Dismiss

<i>Members</i>	Dismiss	Admonition	Absent
Cuff		X	
Boyer		X	
Campelo		X	
Hoberman			X
Menaker	X		
Petrou	X		
Rivera			X
Rodriquez	X		
Spencer	X		
Total:	4	3	2

/s/ Timothy M. Ellis  
Timothy M. Ellis  
Chief Counsel