

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CANTONE RESEARCH INC.  
(CRD No. 26314),

ANTHONY J. CANTONE  
(CRD No. 1066139),

and

RAYMOND J. DEROBPIO  
(CRD No. 1092310),

Respondents.

Disciplinary Proceeding  
No. 2017055886402

Hearing Officer–LOM

**ORDER EXCLUDING UNQUALIFIED ATTORNEY FROM THIS PROCEEDING**

**I. Introduction**

On September 2, 2022, I held a pre-hearing videoconference concerning the qualifications of Christopher P. Flannery, Esq. to continue representing Respondent Raymond J. DeRobbio in this proceeding. Flannery filed a Notice of Appearance in this matter on November 11, 2021. As of the date of the videoconference (and still to date), Flannery has filed no motion to withdraw pursuant to FINRA Rule 9142. For the reasons discussed at the videoconference and below, pursuant to FINRA Rules 9150(a) and 9280(a), I find that Flannery is disqualified from acting in a representational capacity in this proceeding, and I **ORDER** Flannery excluded from any further participation. Under FINRA Rule 9141(b), Respondent DeRobbio will represent himself unless and until he retains other counsel. If he retains other counsel, I **ORDER** that the attorney must file a notice of appearance and a power of attorney signed by DeRobbio signifying his authorization of the representation.

## II. Discussion

### A. Procedural History

The issue of Flannery's qualification to act in a representational capacity in this proceeding came to my attention for the first time because of an August 30, 2022 email that a Department of Enforcement attorney sent to the Office of Hearing Officers and all the attorneys who have been representing parties in this proceeding (including Flannery). The email suggested that Flannery may not be currently licensed to practice law.<sup>1</sup>

According to the August 30 email, Flannery signed a consent petition in April 2022 accepting a six-month suspension of his Pennsylvania law license, and by an order of the Supreme Court of Pennsylvania on June 21, 2022, Flannery's suspension became effective as of July 22, 2022. Enforcement's email asserted that Flannery's license to practice law in the State of New York is also currently suspended. Enforcement said it was not aware of any other state where Flannery might currently be admitted to practice.

The August 30 email recounted other prior communications between Flannery and Enforcement, as Enforcement attempted to better understand the situation. According to Enforcement, it contacted Flannery by letter on August 23 to inquire whether Flannery was qualified to continue to represent DeRobbio, notwithstanding his suspensions from practicing law in Pennsylvania and New York. Enforcement asked whether DeRobbio would be representing himself in the future in this ongoing proceeding. Flannery advised Enforcement on August 25 that he was arranging for substitute counsel for DeRobbio. Flannery did not answer Enforcement's questions regarding his qualifications to continue representing DeRobbio, and he did not respond to its subsequent inquiry regarding when he intended to advise the Office of Hearing Officers about his suspensions.

After receiving Enforcement's August 30 email recounting these events, I immediately scheduled the September 2, 2022 videoconference for the purpose of gathering information needed to resolve DeRobbio's representation. The Order scheduling the videoconference was served on all attorneys of record, including Flannery. It was also served on DeRobbio personally. I ordered both Flannery and DeRobbio to appear, Flannery to answer questions and clarify the facts, and DeRobbio to represent himself. Flannery did not appear; DeRobbio did.

At the videoconference, Enforcement explained that earlier in August it had discovered by accident that Flannery's Pennsylvania license had been suspended. Enforcement said that it then further investigated and found that Flannery's New York license had also been suspended.

Counsel for Cantone Research Inc. and Anthony Cantone said at the videoconference that she had received a copy of Enforcement's August 23 letter and that was the first time she became aware of Flannery's suspension. DeRobbio said at the videoconference that he learned about

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<sup>1</sup> The August 30, 2022 email is attached to this Order and made part of the record.

Flannery's suspension from the compliance officer at his firm sometime the week before the videoconference. After that he tried contacting Flannery, but Flannery did not respond.

At no time has Flannery communicated with the Office of Hearing Officers to dispute Enforcement's information about the suspension of his Pennsylvania and New York licenses. Nor has he indicated that he is licensed in any other state.

## **B. Applicable Law**

FINRA's Rule 9141(b) governs who may act on behalf of a respondent in a FINRA disciplinary proceeding. The Rule permits an individual respondent to act on his own behalf; it also allows someone else to act on the respondent's behalf—but only if that other person is licensed to practice law. Rule 9141(b) states that a respondent may be represented by “an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.”

Someone whose license to practice law is suspended is not currently licensed to practice law. The label “attorney” has been interpreted to apply to “an individual who is an active member in good standing of the bar of the highest court of any State.”<sup>2</sup> A suspension “negates” a person's status as an attorney.<sup>3</sup> In specialized forums like this one that require a person to have a law license to represent other individuals, a lawyer may be separately suspended from practice in the forum for continuing to act in a representative capacity while suspended from the practice of law.<sup>4</sup> The SEC has summarized the bases for denying a person the privilege of appearing or practicing before it as including any case in which “the person does not possess the requisite qualifications to represent others.” The SEC also may refuse to allow a person to appear or practice before it if “the person . . . has engaged in unethical or improper professional conduct.”<sup>5</sup>

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<sup>2</sup> See *Piccone v. USPTO*, 1:18-cv-00307 (LMB/IDD), 2018 U.S. Dist. LEXIS 193544, at \*7 n.9 (E.D. Va. Nov. 13, 2018) (definition of attorney for purposes of trademark proceedings) *aff'd*, 791 F. App'x. 932, 2019 U.S. App. LEXIS 34493 (Fed. Cir. Nov. 20, 2019).

<sup>3</sup> *Aretakis v. Comm. on Prof'l Stds.*, 08 Civ. 9712 (RMB)(KNF), 2009 U.S. Dist. LEXIS 56138, at \*20 (S.D.N.Y. July 1, 2009) (Mag. J. Report and Recommendation).

<sup>4</sup> See *Piccone*, 2018 U.S. Dist. LEXIS 193544 (an attorney who continued as counsel of record in a matter before the Patent and Trademark Office (“PTO”) while his Pennsylvania law license was suspended, and who continued representing clients in various judicial forums, was sanctioned by a three-year suspension from practicing before the PTO). See also *Gary B. Wolff*, Exchange Act Release No. 75521, 2015 SEC LEXIS 3082 (July 24, 2015) (consent). In *Wolff*, the Securities and Exchange Commission (“SEC”) initially denied a lawyer the right to appear before it while the lawyer's New York law license was suspended. Then, when the attorney continued to represent clients before the SEC while he was suspended, the SEC permanently barred him from practicing in that forum. It said in its Order that one who does not possess the requisite qualifications but who nevertheless represents others engages in improper professional conduct.

<sup>5</sup> *Steven Altman, Esq.*, Exchange Act Release No 63306, 2010 SEC LEXIS 3762, at \*35–36 (Nov. 10, 2010).

The remedial purpose for denying the privilege of practicing before the SEC is to “protect the integrity of its own processes.”<sup>6</sup>

FINRA has a regime similar to the SEC’s for regulating the conduct of those who appear in its forum in a representational capacity. Like the SEC, FINRA needs to have the means to protect the integrity of its own processes. Under FINRA Rule 9150(a), a Hearing Officer is authorized to exclude a person from acting in a representative capacity on behalf of a party in a FINRA disciplinary proceeding if that person has engaged in contemptuous conduct in the proceeding within the meaning of Rule 9280. Rule 9280(a) defines “conduct in violation of an order of a Hearing Officer” as one form of contemptuous conduct and contemplates that there may be “other contemptuous conduct.” Rule 9150(a) also authorizes a Hearing Officer to exclude a person acting as a party’s representative from the proceeding for “unethical or improper professional conduct in that proceeding.” Rule 9150(b) provides that the exclusion operates only as to the proceeding in which the misconduct occurred.<sup>7</sup>

### C. Conclusions

I find that Flannery has engaged in contemptuous conduct in this proceeding within the meaning of FINRA Rule 9280. I ordered him to appear at the videoconference to answer questions regarding his qualifications to act in a representative capacity, but he failed to appear. He also failed to contact the Office of Hearing Officers to offer an excuse or request rescheduling. He made no attempt to assert a valid reason for his failure to comply with the Order. He simply failed to comply.<sup>8</sup>

I further find that Flannery has engaged in unethical and improper professional conduct within the meaning of FINRA Rule 9150. According to Enforcement, when it asked about the suspensions, Flannery did not deny that his law licenses have been suspended. Rather, he said he was in the process of finding other counsel for DeRobbio. From that response, one could reasonably infer that Flannery was searching for other counsel because he was suspended and knew he was no longer qualified to represent DeRobbio. Enforcement afforded Flannery the opportunity to dispute its suggestion that he is suspended from the practice of law, but he did not tell Enforcement that its information was in error. I gave Flannery another opportunity to dispute Enforcement’s information when I scheduled the pre-hearing videoconference for the specific

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<sup>6</sup> *Id.* at \*39.

<sup>7</sup> Rule 9150(a) provides that a person excluded from “a disciplinary hearing or conference or any portion thereof,” including an attorney, may seek review by the National Adjudicatory Council (“NAC”). Rule 9280(c) sets a short deadline for seeking such review. Under that Rule, the excluded person may file and serve a motion to vacate with the NAC but must do so within five days after service of the exclusion order.

<sup>8</sup> Flannery had due notice of the Order directing him to appear and answer questions regarding the status of his law licenses. The Order was served on him by email to the same address he provided in his notice of appearance for this proceeding. When he did not appear at the outset of the videoconference, I delayed the conference and the Case Administrator telephoned him at the number given in the notice of appearance. He did not answer her call and he failed to join the videoconference. I then proceeded with counsel for the other parties and DeRobbio.

purpose of investigating Flannery's qualifications to represent DeRobbio. Flannery's failure to appear or to dispute in any way that he has been suspended from the practice of law constitutes a tacit admission that his law licenses are suspended. The Office of Hearing Officers also confirmed in a search of public records that the Supreme Court of Pennsylvania, as Enforcement asserted, issued an Order suspending Flannery's law license and the New York State Unified Court System also shows Flannery as suspended in its records.

Under these circumstances, I conclude that Flannery is not currently an attorney in good standing. As a result, he is no longer qualified to represent DeRobbio in this proceeding. When the suspension of his law licenses became effective, Flannery should have immediately withdrawn from his representation of DeRobbio in this proceeding.

Instead, Flannery concealed his suspensions and concomitant disqualification. He did not disclose to his client, the other parties, or the Office of Hearing Officers that his law licenses had been suspended. If Enforcement had not accidentally discovered that Flannery's licenses are suspended, he apparently would have continued the representation as though he were qualified.

This misconduct is particularly egregious because, according to Enforcement, Flannery has known since April 2022, when he signed the consent petition, that his law license was going to be suspended. He could have anticipated that his client would need new representation and could have facilitated an earlier transition to counsel qualified to represent DeRobbio.

Flannery's responses to Enforcement's inquiries after its discovery that his law licenses were suspended were disingenuous and evasive. He avoided direct questions about the status of his law licenses and said that he was looking for substitute counsel, as though it were appropriate for him to continue as counsel until a replacement could be found. But Flannery had no right to continue in a representative capacity while looking for new counsel. And it does not appear that he ever spoke to his client about his suspension or any purported search for new counsel. DeRobbio said at the pre-hearing videoconference that he only learned that there was a problem with Flannery's representation of him from his firm's compliance officer the week before the videoconference.

In sum, Flannery engaged in deceptive conduct, contrary to the rules of the forum and contrary to the interests of his client. This was unethical and improper professional conduct.

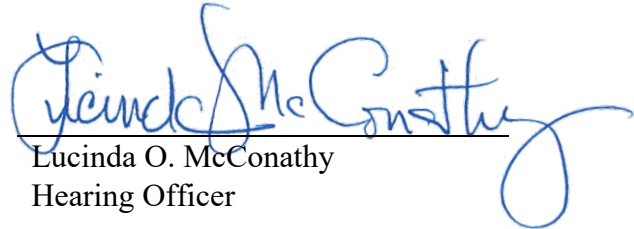
### **III. Order**

Pursuant to my authority under FINRA Rules 9150(a) and 9280(a), I exclude Christopher P. Flannery from this proceeding in any capacity. He will be removed from the Certificate of Service for this matter and will receive no future filings, but he is provided a courtesy copy of this Order for his files. Under FINRA Rule 9280(c), he has five days from service of this Order if he wishes to file a motion to vacate this exclusion Order with the NAC.

Under FINRA Rule 9141(b), Respondent Raymond J. DeRobbio will represent himself in this proceeding going forward, unless and until he retains a qualified attorney to represent him. If

DeRobbio retains such an attorney, the attorney shall file both a notice of appearance and a power of attorney signed by DeRobbio.

**SO ORDERED.**

  
Lucinda O. McConathy  
Hearing Officer

Dated: September 8, 2022

Service copies to:

Raymond J. Derobbio (via email and overnight mail)  
Heidi E. VonderHeide, Esq. (via email)  
Alan Wolper, Esq. (via email)  
Brody Weichbrodt, Esq. (via email)  
Noel C. Downey, Esq. (via email)  
Kevin Hartzell, Esq. (via email)  
Mark Fernandez, Esq. (via email)  
Jennifer L. Crawford, Esq. (via email)

Courtesy copy to:

Christopher P. Flannery, PC. (via email)

**This Order has been published by FINRA'S Office Of Hearing Officers and should be cited as OHO Order 22-18 (2017055886402)**

**From:** [Weichbrodt, Brody](#)  
**To:** [Shaffer, Kate](#); [Downey, Noel](#); [Hartzell, Kevin](#); [Fernandez, Mark](#); [Crawford, Jennifer](#); "[cpflannerylaw@gmail.com](mailto:cpflannerylaw@gmail.com)"  
**Cc:** "[hvonderheide@ulmer.com](mailto:hvonderheide@ulmer.com)"; [awolper@ulmer.com](mailto:awolper@ulmer.com); [Mora, Daniel](#); [Hrubec, Mary](#)  
**Subject:** RE: DOE v Cantone 2017055886402 Motion for Continuance  
**Date:** Tuesday, August 30, 2022 11:11:21 AM

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Dear Ms. Shaffer:

We write regarding Respondent Raymond DeRobbio's continued representation by his attorney-of-record in this matter, Chris Flannery, Esq. Enforcement recently discovered that Mr. Flannery's license to practice law in the States of Pennsylvania and New York are currently suspended. Specifically, in April 2022, Mr. Flannery signed a consent petition accepting a six-month suspension from practicing law in the State of Pennsylvania, which became effective on July 22, 2022 by order of the Supreme Court of Pennsylvania dated June 21, 2022. In addition, according to the New York State Unified Court System website, Mr. Flannery's license to practice law in the State of New York is currently suspended. Enforcement is not aware of any other state in which Mr. Flannery is currently admitted to practice.

On August 23, 2022, Enforcement sent Mr. Flannery a letter seeking information regarding whether Mr. Flannery was qualified to continue to represent Mr. DeRobbio in this matter pursuant to FINRA Rule 9141(b), notwithstanding his suspensions from practicing law in the States of Pennsylvania and New York, or whether Mr. DeRobbio would obtain new counsel or represent himself in this ongoing disciplinary proceeding. On August 25, 2022, Mr. Flannery advised Enforcement that he was "arranging for substitute counsel for Mr. DeRobbio," but he failed to answer Enforcement's questions regarding his qualifications to continue representing Mr. DeRobbio in the meantime. By follow up correspondence the same day, Enforcement asked Mr. Flannery when he intended to advise the Office of Hearing Officers regarding his suspensions and reminded him that attorney withdrawal is governed by FINRA Rule 9142. To date, Mr. Flannery has not responded.

Given the uncertainty concerning whether Mr. Flannery can continue to represent Mr. DeRobbio in this proceeding under Rule 9141(b) and whether Mr. Flannery has advised Mr. DeRobbio of his suspensions, Enforcement thought it prudent to notify the Hearing Officer of this information so the Hearing Officer could take whatever action she deemed appropriate to manage this proceeding.

v/r bw

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**FINRA.**