

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4626/February 24, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-16554

In the Matter of

GRAY FINANCIAL GROUP, INC.,
LAURENCE O. GRAY, and
ROBERT C. HUBBARD, IV

ORDER DENYING DIVISION'S MOTION
FOR LEAVE TO CONTACT FORMER
GRAY FINANCIAL EMPLOYEES AS MOOT

On February 8, 2017, the Division of Enforcement submitted a motion seeking leave to contact former employees of Gray Financial Group, Inc., who are potential witnesses in this matter because, according to the Division, there has been miscommunication regarding whether the witnesses are represented by Respondents' counsel, Greenberg Traurig, LLP. The Division explained that its request was due to its discovery that – contrary to a prior representation by Greenberg – at least one former employee, Lisa Joe, is unrepresented, and therefore, according to a Georgia State Bar advisory opinion, the Division is permitted to contact her. Mot. at 1-3. On February 13, 2017, Respondents submitted a response stating that they do not object to the Division contacting Ms. Joe, who is unrepresented, subject to the limitations in the Georgia Bar advisory opinion. Resp. at 1. Respondents further stated, however, that they object to the Division contacting former Gray Financial employees Marc Hardy and Yolanda Waggoner Foreman, whom the Division had earlier subpoenaed, because they are represented. Resp. at 1-4. Respondents attached declarations from Mr. Hardy and Ms. Foreman confirming that they are represented by Greenberg.

The Division's request to contact former Gray Financial employees is premised on the assumption that they are unrepresented. *See* Mot. at 3. Since Respondents have demonstrated this is not the case for Mr. Hardy and Ms. Foreman, the Division, by its own acknowledgment, may not contact them.

Similarly, there is no need for me to grant the Division leave to contact Ms. Joe. The Georgia Bar appears to allow an attorney to contact an unrepresented former employee. Ga. Bar Formal Advisory Op. No. 94-3. In any event, Respondents do not object. Still, should the Division contact Ms. Joe, it must follow whatever ethics rules are pertinent to the situation, which likely includes disclosing its interests in the case and obtaining consent from Ms. Joe. *See id.* The Division must also ensure that the scope of its inquiry does not extend to information that is still protected by the attorney-client privilege between Respondents and Greenberg. *See*

Gray Fin. Grp., Inc., Admin. Proc. Rulings Release No. 4619, 2017 SEC LEXIS 536, at *16-17 (ALJ Feb. 22, 2017). As a former employee of Gray Financial, Ms. Joe cannot waive the privilege between Respondents and their counsel. See *United States v. Chen*, 99 F.3d 1495, 1502 (9th Cir. 1996).

Accordingly, the Division's motion is DENIED as MOOT.

Cameron Elliot
Administrative Law Judge