

Hiring A Suspended Or A Disbarred Attorney

by

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The Office of Lawyers Professional Responsibility maintains on its Web site (www.courts.state.mn.us/lprb/list.html) a list of lawyers disbarred or suspended from practice in Minnesota after Jan. 1, 1985, who have not been reinstated. There are presently 225 people on this list. Many of them have left the law for other occupations and never intend to practice again.

Others, especially those who have been suspended for less than a year, will apply for reinstatement and return to the practice of law.

For those who intend to be reinstated, working as a law clerk or paralegal can be an attractive option during their suspension. By hiring a suspended attorney, law firms may either gain a valuable resource or make a terrible mistake.

Suspended or disbarred attorneys offer special training, skills and sometimes specialized expertise that may be used in legal research, drafting pleadings, writing briefs and doing other work of a preparatory nature.

Working as a law clerk or paralegal allows the attorney to maintain legal skills and competence while addressing the issues that caused his or her misconduct. When that individual is ready to apply for reinstatement, the testimony of his or her attorney employer can be very powerful evidence of current fitness.

On the other hand, some individuals have attempted to circumvent their suspension or disbarment by continuing to practice law while ostensibly working as a law clerk or paralegal. See e.g., *In re Jorrisen*, 391 N.W.2d 822 (Minn. 1986) and *In re Ray*, 452 N.W.2d 689 (Minn. 1990).

The court has also publicly disciplined attorneys for aiding the unauthorized practice of law by a suspended or disbarred attorney. See e.g., *In re Markert*, 522 N.W.2d 921 (Minn. 1994) and *In re Scatterella*, unpublished decision CX-94-1750, Oct. 3, 1995.

Attorneys who employ a suspended or disbarred attorney have an obligation to set appropriate boundaries and closely supervise to ensure adherence to these boundaries so that there is no unauthorized practice.

A few states, including Wisconsin, have adopted rules which prohibit attorneys from employing suspended or disbarred attorneys. Others, such as Iowa, have set severe restrictions or limits on such employment.

Minnesota has taken a different approach. This summer the Minnesota Supreme Court adopted a new rule which hopefully sets out clear parameters within which practicing attorneys and suspended or disbarred attorneys can work to the benefit of all concerned.

Rule 5.7: Employment Of Disbarred, Suspended, Or Involuntarily Inactive Lawyers

(a) For purposes of this rule "employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid.

(b) A lawyer shall not employ, associate professionally with, or aid a person the lawyer knows or reasonably should know has been disbarred, suspended, or placed on disability inactive status by order of the court to do any of the following on behalf of the lawyer's client:

(1) render legal consultation or advice to the client;

(2) appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer unless the rules of the tribunal involved permit representation by nonlawyers and the client has been informed of the lawyer's suspension, disbarment, or disability inactive status;

(3) appear as a representative of the client at a deposition or other discovery matter;

(4) negotiate or transact any matter for or on behalf of the client with third parties;

(5) receive, disburse or otherwise handle the client's funds; or

(6) engage in activities that constitute the practice of law.

(c) A lawyer may employ, associate professionally with, or aid a disbarred, suspended, or disability inactive lawyer to perform research, drafting, clerical, or similar activities, including but not limited to:

(1) legal work of a preparatory nature for the lawyer's review, such as legal research, the gathering of information, drafting of pleadings, briefs, and other similar documents;

(2) direct communication with the client or third parties regarding matters such as scheduling, billing, updates, information gathering, confirmation of receipt or sending of correspondence and messages; or

(3) accompanying an active lawyer in attending a deposition or other discovery procedure for the limited purpose of providing clerical assistance to the active lawyer who will appear as the representative of the client.

(d) Prior to or at the time of employing a person the lawyer knows or reasonably should know is a disbarred, suspended, or disability inactive lawyer, the lawyer shall serve upon the Office of Lawyers Professional Responsibility written notice of the employment, including a full description of such person's current license status. The notice shall state that the suspended, disbarred, or disability inactive lawyer shall not be employed to perform any of the activities prohibited by paragraph (b).

(e) Upon termination of the employment of the disbarred, suspended, or disability inactive lawyer, the employing lawyer shall promptly serve upon the Office of Lawyers Professional Responsibility written notice of the termination.