

LEGAL EMPLOYERS BEWARE!

by

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Unlike some other jurisdictions, Minnesota permits disbarred, suspended or involuntarily disabled lawyers to work in law offices. Rule 5.8 of the Minnesota Rules of Professional Conduct (MRPC) sets out guidelines for hiring a disbarred, suspended or involuntarily disabled lawyer. While hiring such lawyers may seem like a good idea because of their legal experience, the hiring attorney should evaluate the situation very carefully.

Rule 5.8 clearly limits the disbarred, suspended or involuntarily disabled lawyer's ability to interact not only with clients but also with third parties on behalf of the clients. A suspended, disbarred or disabled lawyer cannot provide legal consultation or advice to a client, handle client funds, represent a client at a deposition or in relation to any other discovery matters, negotiate or transact business with a third party on behalf of the client or engage in any activity which would constitute the practice of law. A hiring lawyer must ensure that the actions of a disbarred, suspended or involuntarily disabled lawyer do not go beyond those permitted by Rule 5.8.

The rule also places an affirmative duty on the hiring attorney to notify the Office of Lawyers Professional Responsibility, in writing, of the employment of a disbarred, suspended or involuntarily disabled attorney.

Prior to employing such an individual, it would also be wise for the hiring attorney to put in place policies and procedures to ensure compliance with Rule 5.8, and to ensure that the disbarred, suspended or involuntarily disabled attorney does not violate Rule 5.5 of the MRPC by engaging in the unauthorized practice of law.

Supervision of disbarred, suspended or involuntarily disabled attorneys requires a heightened level of scrutiny. The rule makes no distinction between paid or unpaid assistance from a disbarred, suspended or involuntarily disabled attorney, and provides a broad definition of employment that includes agents, independent contractors and consultants, as well as employees.

Also, at the end of any such employment, the hiring attorney needs to notify the Director's Office in writing that the employment relationship has ended.

As the following matters demonstrate, failure to comply with Rule 5.8 can lead to discipline for the hiring attorney and further discipline for the disbarred, suspended or involuntarily disabled lawyer. Had the supervisors and suspended/disbarred attorneys in these cases taken seriously their obligations under Rules

5.5 and 5.8, discipline could have been avoided.

Cases in point

Brian Peterson was recently disbarred for conduct some of which occurred while Peterson was suspended and working for attorney Donald Fraley. See *In re Peterson*, 2006 WL 2075149 (Minn. 2006).

With very little supervision or intervention by Fraley, Peterson was allowed to continue working on client files Peterson held prior to Peterson's suspension. Peterson's misconduct included self-dealing in violation of Rule 1.7, committing a criminal act in violation of Rule 8.4(b), failing to disclose information in violation of Rule 8.4(c) and misappropriating money.

Fraley, the hiring attorney, received an indefinite suspension for a minimum period of 90 days. *In re Fraley*, 709 N.W.2d 624 (Minn. 2006).

Fraley allowed Peterson to handle matters in areas of law Fraley was not familiar with, which led to competence issues on the part of Fraley. Because he was not properly supervising Peterson, Fraley also violated rules regarding reasonable fees, conflict of interest and proper maintenance and use of a trust account.

Another suspended attorney recently received additional discipline for his actions after his suspension. In *In re Martinez*, 717 N.W.2d 428 (Minn. 2006), the Supreme Court extended Martinez's indefinite suspension by 18 months. Martinez's additional suspension was a result of work he did under the supervision of a licensed attorney. While being supervised, Martinez engaged in the unauthorized practice of law, failed to act diligently, failed to communicate with clients, failed to return a client file and failed to cooperate with the Director's Office.

Finally, the Director's Office issued an admonition to another hiring attorney for failing to properly supervise a disbarred attorney in his employ. In this matter, the disbarred attorney sent a letter to an insurance company on behalf of a client. The letter set forth the specifics of the client's case and appeared to make a specific settlement demand. The letter clearly created a violation of Rule 5.8 because the suspended lawyer was attempting to negotiate with a third party on behalf of a client.

On October 1, 2005, this rule was renumbered from 5.7 to 5.8 without any material change to the rule. The complete text of the rule is available on the Office of Lawyers Professional Responsibility website at www.courts.state.mn.us/lprb.