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Employing Suspended or Disbarred Lawyers: A Tale of Two States

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Lawyers facing lengthy suspensions or disbarment are inevitably confronted with the very real economic question of how they will provide for themselves and their families financially when they cannot practice law. Some look to work outside the legal field. Others, however, are understandably interested in salvaging at least a portion of their legal training and experience by working in nonlawyer positions within law firms—such as a paralegal, an investigator or a law clerk.

For law firms, a suspended or disbarred lawyer may offer a level of training and experience that surpasses job applicants with more traditional resumes. Particularly for Portland firms that increasingly practice in both Oregon and Washington, the rules governing employing a suspended or disbarred lawyer are starkly different if the work is north or south of the Columbia. In this column, we'll look at those respective rules and then conclude with discussion of their somewhat muddy intersection.

Oregon

The Oregon State Bar in Formal Opinion 2005-24 generally permits a suspended or disbarred lawyer to work at a law firm as a paralegal, a law clerk or in a similar nonlawyer position under a lawyer's supervision. In doing so, Opinion

2005-24 mirrors a similar conclusion the OSB reached in 1991 under a predecessor version of the current opinion.

Opinion 2005-24 cautions that the lawyer supervising the suspended or disbarred lawyer's work must ensure that the latter is not engaging in the unauthorized practice of law. In this regard, RPC 5.5(a) not only prohibits the unauthorized practice of law—but also “assist[ing] another in doing so.” In other words, a supervising lawyer is at disciplinary risk if the supervising lawyer knowingly permits a suspended or disbarred lawyer to handle tasks—such as court appearances—that are reserved for lawyers.

Although Opinion 2005-24 answers the technical question of whether a law firm can employ suspended or disbarred lawyers in nonlawyer positions, the risk management considerations involved will vary with individual circumstances. For example, a lawyer serving a suspension for “guessing wrong” on a complicated conflict charge might pose little risk working as a paralegal or law clerk on substantive client work under a lawyer's supervision. By contrast, hiring someone to be the firm bookkeeper after the person was disbarred for stealing client funds would not ordinarily be a prudent call even though theoretically permitted.

Washington

Washington has long taken a much different approach to suspended or disbarred lawyers. Washington RPC 5.8(b), which has no counterpart in the ABA Model Rules, prohibits any legal work with a suspended or disbarred lawyer:

“A lawyer shall not engage in any of the following with a lawyer or LLLT who is a disbarred or suspended or who has resigned in lieu of disbarment or discipline or whose license has been revoked or voluntarily cancelled in lieu of discipline:

- (1) practice law with or in cooperation with such an individual;
- (2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;
- (3) permit such an individual to use the lawyer's name for the practice of law;
- (4) practice law for or on behalf of such an individual; or
- (5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.”

A long-standing (originally issued in 1990) and comparatively recently updated (amended in 2009) WSBA advisory opinion (No. 184) elaborates:

“This rule prohibits a lawyer from hiring or employing a disbarred [or suspended] lawyer in connection with or related to the practice of law. It does not prohibit a lawyer from hiring a disbarred [or suspended] lawyer in capacities not involving the practice of law. Thus, a lawyer may employ a disbarred [or suspended] lawyer in other nonlaw-related capacities from such mundane tasks as mowing lawns or

washing windows, to more sophisticated employment such as managing a business or property not related to the lawyer's practice of law."

Muddy Intersection

With lawyers increasingly practicing—and licensed—in both Oregon and Washington, employing a suspended or disbarred lawyer also has a multi-state dimension. The RPCs in both Oregon and Washington now have choice-of-law provisions—RPC 8.5(b) in both—that address which state's professional rules govern particular conduct. Under RPC 8.5(b)(1), litigation matters are generally controlled by the forum state's professional rules. Under RPC 8.5(b)(2), non-litigation matters are generally governed by the rules in the location where the lawyer's conduct occurred or where the conduct had its "predominant effect."

The choice-of-law rules suggest that an Oregon lawyer in Portland who is also licensed in Washington could employ a suspended or disbarred Washington lawyer in Oregon to work on Oregon matters. By contrast, the choice-of-law rules suggest that the dual-licensed Portland lawyer in our example could not employ a suspended or disbarred Washington lawyer to work on a litigation matter in Washington. WSBA Advisory Opinion 184, for example, concludes in this regard: "We are of the opinion that the restrictions imposed by RPC 5.8(b) do not prohibit a Washington lawyer from associating with a lawyer or law firm which

employs a disbarred [or suspended] lawyer or lawyers in a jurisdiction which permits it[.]”

ABOUT THE AUTHOR

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