



Ohio Board of Professional Conduct

OPINION 2021-9

Issued October 1, 2021

Withdraws Adv. Op. 2008-7 and 1990-6

Employment of a Disqualified or Suspended Lawyer

SYLLABUS: A lawyer or law firm may employ a disqualified or suspended lawyer provided the lawyer does not practice law and is closely supervised by a licensed lawyer, and both the disqualified/suspended lawyer and the supervising lawyer/law firm otherwise comply with Gov.Bar R. V(23).

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

65 SOUTH FRONT STREET, 5TH FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370 Fax: 614.387.9379

www.bpc.ohio.gov

PATRICIA A. WISE
CHAIR
HON. D. CHRIS COOK
VICE-CHAIR

RICHARD A. DOVE
DIRECTOR
D. ALLAN ASBURY
SENIOR COUNSEL
KRISTI R. MCANAU
COUNSEL

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QUESTIONS PRESENTED:

- 1) May a lawyer or law firm employ a lawyer who is disqualified or suspended from the practice of law?
- 2) May a lawyer, under suspension in the state where he or she is licensed, work as a paralegal in a law office in Ohio under the supervision of a lawyer licensed to practice in Ohio?

APPLICABLE RULES: Prof.Cond.R. 5.5

OPINION:

A lawyer who is suspended from the practice of law, without stay of the suspension, or a disqualified attorney as defined in Gov.Bar R. V(35) is no longer authorized to practice law. A suspended or disqualified lawyer must comply with the Supreme Court's order of suspension, disbarment, or resignation with discipline pending. Yet, lawyers in those situations often seek employment with a law firm or licensed lawyer.

With one exception noted below, a lawyer or law firm is permitted to employ a lawyer who is suspended, disbarred, or resigned from the practice of law with discipline pending, so long as the lawyer does not practice law, is closely supervised by a licensed lawyer, and only under the conditions set forth in Gov.Bar R. V(23). A “disqualified attorney” is defined in Gov.Bar R. V(35)(F) as a “former attorney who has been disbarred or who has resigned with discipline pending.” A suspended lawyer is not defined in the rule, but the Board concludes the phrase describes a lawyer who is under any one or more of the following: (1) an unstayed disciplinary suspension; (2) an interim remedial suspension; (3) an interim felony suspension; (4) an interim child support default suspension; (5) a mental illness suspension imposed pursuant to Gov.Bar R. V, Gov.Jud. R. II, or Gov.Jud. R. III; (6) a registration suspension imposed pursuant to Gov.Bar R. VI; or (7) a continuing legal education suspension imposed pursuant to Gov.Bar R. X.

An employing lawyer or law firm, as well as an employed disqualified or suspended lawyer, must give careful consideration to the requirements found in Gov.Bar R. V(23). The rule imposes conditions on both the employing lawyer or law firm as well as the disqualified or suspended lawyer. Further, the disqualified or suspended lawyer must comply with the specific requirements imposed by the Supreme Court in its disqualification or suspension order.

Establishment of the Relationship

A disqualified lawyer is treated differently under the rule than a suspended lawyer. A disqualified lawyer is not permitted to enter an employment, contractual, or consulting relationship with a lawyer or law firm with which the disqualified lawyer was associated at the time the misconduct occurred that resulted in his or her disqualification. Gov.Bar R. V(23)(B). A suspended lawyer may return to a prior working relationship with a lawyer or law firm even if the misconduct resulting in the suspension occurred during the prior working relationship.

A lawyer or law firm seeking to enter an employment, contractual, or consulting relationship with a disqualified or suspended lawyer is required to register the relationship with the Office of Disciplinary Counsel on a form provided by the office. Gov.Bar R. V(23)(C). The form requires, among other things, the duties to be performed, the name of the lawyer responsible for directly supervising the disqualified or suspended

lawyer and an affidavit that the lawyer has read and understands the disbarment order, the resignation order, or the suspension order. Gov.Bar R. V(23)(C). The employment, contractual, or consulting relationship may not commence until after the employing lawyer or law firm receives a written acknowledgement from the Office of Disciplinary Counsel. Gov.Bar R. V(23)(D).

Requirements During the Relationship

A disqualified or suspended lawyer is not permitted to have any direct client contact, other than as an observer in any meeting, hearing, or interaction between a lawyer and a client. Gov.Bar R. V(23)(A)(1). Direct client contact includes communication by telephone, mail, email, in person, or any other form of communication. If a disqualified or suspended lawyer is to complete work or services on a client matter, the employing lawyer or law firm must provide written notification of the status of the disqualified or suspended lawyer to the client prior to commencement of that lawyer's work on the matter. Gov.Bar R. V(23)(F). A disqualified or suspended lawyer performing legal research and writing on a client matter invokes the requirement of notification to the client. The required notice must be provided directly to each client for whom the disqualified or suspended lawyer is providing work. Leaving a generic notice form in different locations around a law office, which may not be brought to a client's attention, does not comply with the rule. See *Disciplinary Counsel v. Dougherty and Cicero*, 157 Ohio St.3d 486, 2019-Ohio-4418.

Despite the prohibition on direct client contact, a disqualified or suspended lawyer is not prohibited from serving as a receptionist, provided that any communication with a client is limited to scheduling an appointment, taking a message, or transferring a question or call to the appropriate legal or non-legal staff. If the employing lawyer or law firm limits the duties of the disqualified or suspended lawyer to receptionist activities, mail room services, copying services, filing completed pleadings with a court, or other similar limited conduct, the requirement of notification is not invoked since these activities do not directly involve performing work or providing services on a client matter.

A disqualified or suspended lawyer is also not permitted to receive, disburse, or otherwise handle client trust funds or property. Gov.Bar R. V(23)(A)(2). Pursuant to this

restriction, a disqualified or suspended lawyer should not have any duties related to client trust funds or property.

Change or Termination of the Relationship

The employing lawyer or law firm must file an amended form when there is a material change in the relationship or the information provided on the prior registration form. Gov.Bar R. V(23)(E). The employing lawyer or law firm must notify the Office of Disciplinary Counsel upon termination of the employment, contractual, or consulting relationship. *Id.*

Lawyer Disqualified or Suspended by Another State

For purposes of employment within the state of Ohio, the Board finds no distinction between a lawyer who has been disqualified or suspended in Ohio and one disqualified or suspended by another state. Both are prohibited from practicing law or holding themselves out as licensed to practice law in Ohio. A lawyer disqualified or suspended in another jurisdiction must comport his or her conduct with that jurisdiction's restrictions on a disqualified or suspended lawyer's activities as well as any order of disqualification or suspension. A lawyer or law firm seeking to enter into an employment, contractual, or consulting relationship with any disqualified or suspended lawyer, including one disqualified or suspended in another jurisdiction must comply with the registration requirements contained in Gov.Bar R. V(23)(C).

Prof.Cond. R. 5.5(a)

A lawyer may not assist another lawyer in practicing law in violation of the regulation of the legal profession. Prof.Cond.R. 5.5(a). "Ohio attorneys have a duty to ensure that their employees do not engage in the unauthorized practice of law." *Disciplinary Counsel v. Willis*, 96 Ohio St.3d 142, 2002-Ohio-3614. As such, it is necessary for the employing lawyer to exercise close supervisory control over the disqualified or suspended lawyer to prevent any unauthorized practice of law. For example, an employing lawyer must not permit a disqualified or suspended lawyer to: 1) participate in substantive legal discussions and give his or her analysis or opinion; 2) respond to clients' legal questions or requests for legal advice when answering the phone; 3) provide litigation strategy or advice to the employing lawyer; or 4) allow the disqualified or

suspended lawyer to actively participate in depositions rather than just attend as an observer. *See Willis and Dougherty, supra; Cincinnati Bar Assn. v. Begovic*, 157 Ohio St.3d 401, 2019-Ohio-4531.