

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

65 SOUTH FRONT STREET, 5<sup>TH</sup> FLOOR, COLUMBUS, OH 43215-3431  
(614) 387-9370 (888) 664-8345 FAX: (614) 387-9379  
[www.sconet.state.oh.us](http://www.sconet.state.oh.us)

OFFICE OF SECRETARY

## **OPINION 2008-7**

Issued December 5, 2008

*Withdrawn by Adv. Op. 2021-09*

**SYLLABUS:** A lawyer or law firm may employ an attorney who is disqualified (disbarred or resigned with discipline pending) or suspended from the practice of law, but only in compliance with the conditions set forth in Gov.Bar R.V(8)(G) and (H). This governing bar rule imposes conditions upon *both* the employing lawyer or law firm *and* the employed disqualified or suspended lawyer. An employing lawyer or law firm must register the employment, contractual, or consulting relationship with the Office of Disciplinary Counsel on a form provided by that office and provide an affidavit that the employing or supervisory attorney has read and understands the limitations of the order of disbarment, suspension, or resignation with discipline pending. An employing lawyer or law firm must receive written confirmation from the Office of Disciplinary Counsel before commencing the employment relationship. An employing lawyer or law firm is required to provide written notice to every client on whose matters the disqualified or suspended attorney will perform work or provide services. A disqualified attorney is not permitted to enter an employment, contractual, or consulting relationship with a lawyer or law firm with which the disqualified attorney was associated at the time of the misconduct which resulted in the attorney's disbarment or resignation with discipline pending. A suspended attorney may enter an employment, contractual, or consulting relationship with a law firm with which the suspended attorney was associated at the time of the misconduct resulting in the suspension. A disqualified or suspended attorney must have no direct client contact other than as observer at a meeting, hearing, or interaction between an attorney or client and must not receive, disburse, or otherwise handle client trust funds or property. A disqualified or suspended attorney does not violate the condition of no direct client contact by serving as a receptionist at a law firm 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, or other similar conduct. If a hiring lawyer or law firm limits the duties of a disqualified or suspended attorney to activities such as receptionist, mail room services, copying services, filing pleadings in court, or other similar conduct, the requirement of notification to clients would not be invoked since these activities do not directly involve performing work or providing services on a client matter. If a hiring lawyer or law firm expands the duties of a disqualified or suspended attorney to performing legal research and writing on client matters, the requirement of notification to the

clients is invoked since the activity involves performing work or providing services on a client matter. A disqualified or suspended attorney must not engage in the practice of law in Ohio and must comply with the court's order of disbarment, resignation with discipline pending, or suspension. A judge or a lawyer who is concerned that a disqualified or suspended attorney is engaging in the practice of law should direct those concerns to the Office of Disciplinary Counsel.

**OPINION:** This opinion addresses questions regarding employment of an attorney who is disqualified (disbarred, or resigned with discipline pending) or suspended from the practice of law.

Is it proper for a lawyer or law firm to employ an attorney who is disqualified (disbarred, or resigned with discipline pending) from the practice of law? If, so what work may be performed?

## Introduction

When an attorney is suspended without stay of the suspension from the practice of law, disbarred from the practice of law, or resigned from the practice of law with discipline pending, that attorney is no longer authorized to practice law. Yet, these attorneys may need employment and may look to a lawyer or law firm for such employment.

## Applicable Rule

A lawyer or law firm is permitted to employ an attorney who is suspended, disbarred, or resigned from the practice of law with discipline pending, but only under the conditions set forth in Section 8(G) and (H) of Rule V of the Supreme Court Rules for the Government of Ohio, as amended, effective September 1, 2008.

Gov.Bar R. V(8)(G) and (H), by its terms, applies to the employment of a "disqualified or a suspended attorney."

A "disqualified attorney" is defined in Gov.Bar R. V(8)(H) as "a former attorney who has been disbarred or who has resigned with discipline pending."

A "suspended attorney" is not defined in the rule but logically describes an attorney who is under an unstayed disciplinary suspension, interim remedial suspension, felony interim suspension, child support interim suspension, or mental illness suspension imposed by the Supreme Court of Ohio pursuant to Gov.Bar R. V, Jud. Rule II, or Jud. Rule III; a registration suspension imposed pursuant to Gov.Bar R. VI; and or a continuing legal education suspension pursuant to Gov.Bar R. X.

## Gov.Bar R. V (8)

**(G)(1) Employment of a Disqualified or Suspended Attorney.** A disqualified or suspended attorney subject to division (G) of this rule shall not do either of the following:

(a) Have any direct client contact, other than serving as an observer in any meeting, hearing or interaction between an attorney and a client;

(b) Receive, disburse, or otherwise handle client trust funds or property.

(2) On or after September 1, 2008, a disqualified attorney subject to division (G) of this rule shall not enter into an employment, contractual, or consulting relationship with an attorney or law firm with which the disqualified attorney was associated as a partner, shareholder, member, or employee at the time the attorney engaged in misconduct that resulted in his or her disqualification from the practice of law.

(3) An attorney or law firm seeking to enter into an employment, contractual, or consulting relationship with a disqualified or suspended attorney shall register the employment, contractual, or consulting relationship with the Office of Disciplinary Counsel. The registration shall be on a form provided by the Office of Disciplinary Counsel and shall include all of the following:

(a) The name of and contact information for the disqualified or suspended attorney;

(b) The name of and contact information for the attorney or law firm seeking to enter into the relationship with the disqualified or suspended attorney;

(c) The name of and contact information for the attorney responsible for directly supervising the disqualified or suspended attorney, if different than the attorney identified in division (G)(3)(b) of this section;

(d) The capacity in which the disqualified or suspended attorney will be employed, including a description of duties to be performed or services to be provided;

(e) An affidavit executed by either the attorney filing the registration or the supervising attorney indicating that the attorney

has read the Supreme Court's order disbaring, accepting the resignation of, or suspending the attorney to be employed and understands the limitations contained in that order;

(f) Any other information considered necessary by the Office of Disciplinary Counsel.

(4) Upon receipt of a completed registration form, the Office of Disciplinary Counsel shall send a written acknowledgement to the attorney or law firm that filed the registration form and any supervising attorney identified on the form. Upon receipt of the written acknowledgement, the employment, contractual, or consulting relationship may commence.

(5) An attorney who registers the employment of a disqualified or suspended attorney shall file an amended registration form with the Office of Disciplinary Counsel when there is any material change in the information provided on a prior registration form and shall notify the Office of Disciplinary Counsel upon termination of the employment, contractual, or consulting relationship.

(6) If a disqualified or suspended attorney will perform work or provide services in connection with any client matter, the employing attorney or law firm shall inform the client of the status of the disqualified or suspended attorney. The notice shall be in writing and provided to the client before the disqualified or suspended attorney performs any work or provides any services in connection with the client matter.

**(H) Definition.** As used in this section, "disqualified attorney" means a former attorney who has been disbarred or who has resigned with discipline pending.

#### Distinct features of rule

An employing lawyer or law firm, as well as an employed disqualified or suspended attorney, should give careful consideration to the distinct features of Gov.Bar Rule V(8)(G) and (H). The rule imposes conditions upon both an employing lawyer or law firm *and* the disqualified or suspended attorney who is employed.

Under Section (8)(G)(1)(a) a disqualified or suspended attorney is not permitted to have any direct client contact, other than as an observer in any meeting, hearing, or interaction between an attorney and a client. Direct client contact

would include communication in person, by telephone, mail, e-mail, or any other form of communication. Nevertheless, a reasoned application of this rule does not prohibit a disqualified or suspended attorney 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, or other similar conduct.

Under Section (8)(G)(1)(b) a disqualified or suspended attorney is not permitted to receive, disburse, or otherwise handle client trust funds or property. Pursuant to this restriction, a disqualified or suspended lawyer should not have any duties related to client trust funds or property.

Under Section (8)(G)(2) a disqualified attorney is treated differently than a suspended attorney. A disqualified attorney is not permitted to enter an employment, contractual, or consulting relationship with a lawyer or law firm with which the disqualified attorney was associated at the time of the misconduct which resulted in the attorney's disbarment or resignation with discipline pending. A suspended attorney may return to a prior working relationship with a lawyer or law firm even though the misconduct resulting in the suspension occurred during the prior working relationship.

Under Section (8)(G)(3), a lawyer or law firm seeking to enter an employment, contractual, or consulting relationship with a disqualified or suspended attorney is required to register the relationship with the Office of Disciplinary Counsel on a form provided by the office. The form requires, among other things, the duties to be performed, the name of the attorney responsible for directly supervising the disqualified or suspended attorney and an affidavit that the attorney has read and understands the disbarment order, the resignation order, or the suspension order. Under Section (8)(G)(5), the employing lawyer or law firm must file an amended form when there is a material change in the information and give notification to the Office of Disciplinary when the relationship ends. A lawyer or a law firm that entered into an employment, contractual, or consulting relationship with a disqualified or suspended attorney prior to September 1, 2008, is required to register such relationship, as provided for in Gov. Bar R. V, Section 8(G)(3), no later than November 1, 2008. Gov.Bar R. XX(2).

Under Section (8)(G)(4) the employment, contractual, or consulting relationship between a disqualified or suspended attorney shall not commence until after the employing lawyer or law firm receives a written acknowledgment from the Office of Disciplinary Counsel.

Under Section (8)(G)(6) written notification of the status of a disqualified or suspended attorney must be provided by the employing lawyer or law firm to a client prior to commencement of a disqualified or suspended attorney's work or services on any client matter.

## Scope of employment activities of a disqualified or suspended attorney

Pursuant to Gov.Bar R.V(8)(G) and (H), a lawyer or law firm may employ a disqualified or suspended attorney as a non-attorney employee, only if the employment can be accomplished within the conditions of the rule including no direct contact with any client other than as an observer at a meeting, hearing, or interaction between an attorney or client; no handling of client trust funds or property; provision of written notification to every client on whose matter the disqualified or suspended attorney will perform work or provide services. The no direct client contact condition is not violated by a disqualified or suspended attorney 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, or other similar conduct.

If a hiring lawyer or law firm limits the duties of a disqualified or suspended attorney to activities such as receptionist, mail room services, copying services, filing pleadings in court, or other similar conduct, the requirement of notification to clients would not be invoked since these activities do not directly involve performing work or providing services on a client matter.

If a hiring lawyer or law firm expands the duties of a disqualified or suspended attorney to performing legal research and writing on client matters, the requirement of notification to the clients is invoked since the activity involves performing work or providing services on a client matter.

A disqualified or suspended attorney is not permitted to engage in the practice of law in Ohio and must comply with the court's order of disbarment, resignation with discipline pending, or suspension. A judge or a lawyer who is concerned that a disqualified or suspended attorney is engaging in the practice of law should direct those concerns to the Office of Disciplinary Counsel.

## Conclusion

A lawyer or law firm may employ an attorney who is disqualified (disbarred or resigned with discipline pending) or suspended from the practice of law, but only in compliance with the conditions set forth in Gov.Bar R.V(8)(G) and (H). This governing bar rule imposes conditions upon *both* the employing lawyer or law firm *and* the employed disqualified or suspended lawyer. An employing lawyer or law firm must register the employment, contractual, or consulting relationship with the Office of Disciplinary Counsel on a form provided by that office and provide an affidavit that the employing or supervisory attorney has read and understands the limitations of the order of disbarment, suspension, or resignation with discipline pending. An employing lawyer or law firm must receive written confirmation from the Office of Disciplinary Counsel before commencing the

employment relationship. An employing lawyer or law firm is required to provide written notice to every client on whose matters the disqualified or suspended attorney will perform work or provide services. A disqualified attorney is not permitted to enter an employment, contractual, or consulting relationship with a lawyer or law firm with which the disqualified attorney was associated at the time of the misconduct which resulted in the attorney's disbarment or resignation with discipline pending. A suspended attorney may enter an employment, contractual, or consulting relationship with a law firm with which the suspended attorney was associated at the time of the misconduct resulting in the suspension. A disqualified or suspended attorney must have no direct client contact other than as observer at a meeting, hearing, or interaction between an attorney or client and must not receive, disburse, or otherwise handle client trust funds or property. A disqualified or suspended attorney does not violate the condition of no direct client contact by serving as a receptionist at a law firm 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, or other similar conduct. If a hiring lawyer or law firm limits the duties of a disqualified or suspended attorney to activities such as receptionist, mail room services, copying services, filing pleadings in court, or other similar conduct, the requirement of notification to clients would not be invoked since these activities do not directly involve performing work or providing services on a client matter. If a hiring lawyer or law firm expands the duties of a disqualified or suspended attorney to performing legal research and writing on client matters, the requirement of notification to the clients is invoked since the activity involves performing work or providing services on a client matter. A disqualified or suspended attorney must not engage in the practice of law in Ohio and must comply with the court's order of disbarment, resignation with discipline pending, or suspension. A judge or a lawyer who is concerned that a disqualified or suspended attorney is engaging in the practice of law should direct those concerns to the Office of Disciplinary Counsel.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Ohio Rules of Professional Conduct, the Ohio Code of Judicial Conduct, and the Attorney's Oath of Office.**