

# The Legal Intelligencer

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## PROFESSIONAL CONDUCT

### Hiring a Formerly Admitted Attorney: How, What, When and Why?

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*Special to the Legal*

Last week, a column appearing in *The Legal* suggested that the Pennsylvania Supreme Court is wrong to allow disbarred and/or suspended attorneys to seek work as paralegals, file clerks or administrative assistants at law firms and in-house counsel offices. We're using our column this month to discuss the rules governing the hiring of suspended and disbarred lawyers and to explain why we think the Supreme Court's support of this hiring practice serves the interests of the public, the profession, and the rehabilitation of the attorney under discipline.

Rule 217 of the Pennsylvania Rules of Disciplinary Enforcement governs the conduct of formerly admitted attorneys and is designed to prevent any potential abuses. In 2000, the rule was amended to add subsection (j) which provides, a "formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth" except in accordance with the rule. Specifically, Rule 217(j)(1) requires that all law-related activities of the former attorney be conducted under the supervision of an attorney in good standing of the Pennsylvania Bar. In addition, the rule limits the scope of work that formerly admitted attorneys may perform to legal work of a preparatory nature, communicating with clients in ministerial matters only and providing clerical assistance to other attorneys.



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The rule expressly prohibits a formerly admitted lawyer from working in a legal capacity for any law firm or lawyer that the disciplined lawyer was associated with during the course of events that led to the disbarment or suspension, working in an office that is not staffed by a full-time supervising attorney, working for any former client, representing himself or herself as an attorney, giving legal advice to a client, appearing on behalf of a client in any proceeding, including at a deposition, negotiating or acting on behalf of a client and handling client funds.

As an additional safeguard, the rule

requires that the supervising attorney and the formerly admitted attorney file a notice of engagement with the disciplinary board, which identifies both attorneys and certifies that the formerly admitted attorney's law-related activities will be monitored. If either the formerly admitted attorney or the supervising attorney fails to comply with the provisions of the rule, the supervising attorney is also subject to disciplinary action. As the Supreme Court stated in a disciplinary matter, *In re Perrone*, "The rule was intended to balance the benefits of allowing a formerly admitted attorney to remain current in the law to enhance competency, while recognizing the significant policy considerations of preventing the unauthorized practice of law and avoiding public confusion regarding the status of a disbarred or suspended attorney."

Since Jan. 1, 2007, the Pennsylvania Supreme Court has issued orders in 13 reinstatement cases, granting reinstatement to 11 formerly admitted attorneys and denying reinstatement to two. Of the 11 attorneys granted reinstatement, six had worked in the legal field as paralegals or clerks during their period of suspension or disbarment. Our research did turn up one case involving an abuse of Rule 217(j). In *Office of Disciplinary Counsel v. Mazza*, the respondent was disbarred July 24, 2003, based on two felony convictions. On Sept. 24, 2004, the Office of Disciplinary Counsel filed a contempt petition, based on allegations that the respondent was willfully violating Rule 217(j)(4)(i) by working as a paralegal for the firm with which he had been previously

associated. The board recommended that the respondent be fined \$1,000 and be prohibited from seeking reinstatement for an additional three-year period. The Supreme Court adopted the recommendation of the board. As a result of this violation, an attorney who was months away from being eligible for reinstatement had to wait another three years.

Last week's column condemning the practice of allowing attorneys to engage in law-related work cites the "legal environment" as a concern, decrying the fact that last year, 249 attorneys received some sort of disciplinary sanction, including 48 suspensions and 25 disbarments. As of Aug. 5, 2008, there were 60,706 lawyers in active status in Pennsylvania. Based on the numbers, less than one half of 1 percent of all active attorneys in the commonwealth received some form of discipline last year. These numbers hardly represent an epidemic of ethics violations that would justify the imposition of draconian prohibitions against the performance of law-related work by formerly admitted attorneys.

It should be noted that New Jersey is one of a handful of states that does not permit formerly admitted attorneys to continue to work in the legal field. N.J. Court Rule

1:20-20 prohibits any attorney or law firm from employing disbarred or suspended attorneys in any capacity, and specifically prohibits disbarred or suspended attorneys from practicing "law in any form either as principal, agent, servant, clerk or employee of another." In New Jersey, disciplined attorneys must have their contact information removed from any telephone directory listing them as attorneys and must have Martindale-Hubbell remove their profiles. Disciplined New Jersey attorneys are not even permitted to share office space with an attorney. Further, Rule 1:20-20 requires disciplined attorneys to maintain financial records from the last seven years of their law practice, documentation of disciplinary proceedings and documents relating to certain prior matters in which the disciplined attorney was representing a client. Rule 1:20-20 requires disciplined attorneys to file, within 30 days of the order imposing discipline, an affidavit explaining how the disciplined attorney has complied with each provision of the rule and the Supreme Court's disciplinary order.

Thomas G. Wilkinson, co-editor of the "Pennsylvania Ethics Handbook," gave us his opinion of Rule 217(j): "(w)hen followed

in good faith, the process works as it should and grooms the suspended lawyer for the productive return to practice. We all know fellow lawyers (and law firms) who have benefited in the long run, not to mention their families." This opinion expresses our view exactly. Through our practice we know that attorneys who lose their licenses have made mistakes and need to take the period of suspension or disbarment to address the problems that led them into those mistakes. During that time, we, as professionals and colleagues, should support them as best we can. Sometimes that may mean offering them an opportunity to demonstrate, in a regulated and supervised environment, that they have the skills, the discipline, and the integrity to resume the practice of law.

The basic goals of the disciplinary system are to protect the public and preserve the integrity of the courts. By offering suspended and disbarred attorneys a potential path back to licensure, we believe Rule 217(j) serves those purposes well.

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