

IN THE COURT OF APPEALS OF MARYLAND

RULES ORDER

The Court, on its own initiative, having considered at open meetings, notices of which were posted as prescribed by law, amendments to Rule 16-760 of the Maryland Rules of Procedure and Rule 5.3 of the Maryland Lawyers' Rules of Professional Conduct, it is this 2nd day of March, 2006,

ORDERED, by the Court of Appeals of Maryland, that Maryland Rule 16-760 and Rule 5.3 of the Maryland Lawyers' Rules of Professional Conduct be, and they are hereby, amended in the form attached to this Order; and it is further

ORDERED that the rules changes hereby adopted by this Court shall take effect on July 1, 2006 and, from and after said date, shall govern the conduct of attorneys and the conduct of nonlawyers who were formerly admitted to the practice of law and have been disbarred, suspended, or placed on inactive status because of incapacity; and it is further

ORDERED that a copy of this Order be published in the next
issue of the *Maryland Register*.

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Robert M. Bell

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Irma S. Raker

/s/ Alan M. Wilner
Alan M. Wilner

/s/ Dale R. Cathell
Dale R. Cathell

/s/ Glenn T. Harrell, Jr.
Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia
Lynne A. Battaglia

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Clayton Greene, Jr.

*Chief Judge Bell, Judge Raker and Judge
Greene declined to sign the Rules Order.
(See attached dissenting opinion.)

Filed: March 3, 2006

/s/ Alexander L. Cummings
Clerk
Court of Appeals of Maryland

Bell, C. J., dissenting

Rule 5.3 of the Maryland Rules of Professional Conduct has been a part of the Maryland rules since its adoption on April 15, 1986, eff. Jan. 1, 1987. For all of these years, it has prescribed the responsibilities of lawyers with regard to nonlawyer assistants, and it has done so without any special or specific reference to the nature of those nonlawyer assistants¹ - it did not differentiate on the basis of the present or the past occupation of those occupying those positions. There was never a dichotomy drawn between those who were disbarred lawyers and those who had never been lawyers. Nor was there thought to be a need to do so, not by this Court or by the American Bar Association, the promulgator of the Model Rules of Professional Conduct. The most recent revision of that Code, in fact, made no such differentiation; in the Ethics 2000 Project, Rule 5.3 consisted of the same basic sections as formerly, (a) through (c),² which treated the subject of attorney responsibility for the unauthorized practice of law by a person in the employ and under the supervision of an attorney in essentially the same way as it had been prior to the project, using essentially the same general terms as had always

¹Maryland Rule 16-760 (d) prohibits a person disbarred, suspended or on inactive status from practicing law or attempting to practice law. Consequently, such persons are, for all intents and purposes, and in fact, nonlawyers. Although aware of the breadth of the prohibition, I will conflate the categories and refer through this opinion only to “disbarred lawyers.”

²“With respect to a nonlawyer employed or retained by or associated with a lawyer:

“(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

“(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

“(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Maryland Lawyers' Rules of Professional Conduct if engaged in by a lawyer if:

“(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

“(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.”

characterized the Rule.

There is a reason that this Court did not separately and specifically regulate in its Rules what a disbarred lawyer could do when working for a law firm and why the Model Rules did not, and do not, recommend such separate treatment. Rule 5.3 is quite clear in its prescription of proper conduct by practicing attorneys in supervising and managing nonlawyers assisting in that practice.³ It requires a lawyer or firm that employs, hires and associates with a nonlawyer to “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer,” Rule 5.3 (a) and, in the case of individual lawyers, that obligation is “to make reasonable efforts to ensure that the conduct [of the nonlawyer over whom the lawyer has supervisory authority] is compatible with the professional obligations of the lawyer.” Rule 5.3 (b).

To be sure, the Rule does not define “conduct [that] is compatible with the professional obligations of the lawyer.” Undoubtedly, it was not considered necessary, as other Rules address what those obligations are. Of some, and perhaps, particular relevance to the issue, however, is Maryland Rule 16-760 (d),⁴ which sets out in some

³Comment 5 to Rule 3.8 of the Maryland Rules of Professional Conduct makes clear that Rule 5.3's reach extends to prosecutors:

“Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (e) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (e) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.”

⁴Maryland Rule 16-760 (d) provides:

“(d) Effect of Order; Prohibited Acts. After the effective date of an order that disbars or suspends a respondent or places a respondent on inactive status, the respondent may not practice law, attempt to practice law, or offer to practice law in this State either directly or through an attorney, officer, director, partner, trustee, agent, or employee. Unless otherwise stated in an order of the Court of Appeals, the respondent shall not:

“(1) occupy, share, or use office space in which an attorney practices law unless under circumstances clearly indicating to

detail the acts that a disbarred or suspended lawyer is prohibited from doing. Significantly, in addition to stating clearly the effect of the disbarment sanction, it addresses, again quite clearly, the limitations on the disbarred lawyer's: association with practicing attorneys in the office context, the use of business cards and stationery and the like, the solicitation of legal business and the sharing of attorneys fees after the effective date of the disbarment order.

Also of relevance, I believe are Rules 5.1, requiring law firm partners and managing and supervisory lawyers to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the

clients, prospective clients, and persons who may visit the office that the respondent is not a lawyer and is not permitted to practice law;

* * * *

"(3) use any business card, sign, or advertisement suggesting that the respondent is entitled to practice law or maintain, either alone or with another, an office for the practice of law;

"(4) use any stationery, bank account, checks, or labels on which the respondent's name appears as an attorney or in connection with any office for the practice of law;

"(5) solicit or procure any legal business or retainer for an attorney, whether or not for personal gain; and

"(6) share in any fees for legal services performed by another attorney after the effective date of the order, but may be compensated for the reasonable value of services rendered prior to that date."

Subsection (2) prohibits a disbarred attorney, inter alia, from working as a paralegal for an attorney. By Order of this Court dated August 14, 2001, that prohibition was suspended, "pending further study of the rule by the Court." Its operation was reinstated, as of September 2, 2005, by Order of this Court dated June 2, 2005. Although in that order, we stated that further study had been done, the record is devoid of any evidence justifying our action. Moreover, we ordered, in connection with a motion, filed by Sidney Blum for reinstatement or suspension of rule 16-760 (d), Bar Counsel to include in his answer to the motion, "data reflecting the number of disbarred attorneys presently working as paralegals and also data disclosing the extent to which other States prohibit or restrict disbarred attorneys from working as paralegals."

As amended, Rule 16-760 (d) deletes the prohibition of working as a paralegal and replaces it with a new subsection 11, as follows:

"(11) If the respondent is or becomes employed or retained by or associated with a lawyer, the respondent shall comply with Rule 5.3 (d) of the Maryland Lawyers' Rules of Professional Conduct and assist the supervising lawyer in complying with the supervising lawyer's obligations under the Rule."

Maryland Lawyers' Rules of Professional Conduct;" 5.4,⁵ prohibiting lawyers or law firms from sharing legal fees with a nonlawyer, except under limited and specified circumstances, partnering with a nonlawyer for the practice of law or permitting a nonlawyer, client or otherwise, "to direct or control the lawyer's professional judgment";

⁵Captioned, "Professional Independence of a Lawyer," Rule 5.4 provides:

"(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

"(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

"(2) a lawyer who purchases the practice of a lawyer who is deceased or disabled or who has disappeared may, pursuant to the provisions of Rule 1.17, pay the purchase price to the estate or representative of the lawyer.

"(3) a lawyer who undertakes to complete unfinished legal business of a deceased, retired, disabled, or suspended lawyer may pay to that lawyer or that lawyer's estate the proportion of the total compensation which fairly represents the services rendered by the former lawyer;

"(4) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

"(5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

"(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

"(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

"(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

"(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

"(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

"(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

5.5, providing that, just as the lawyer may not “practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, [he or she may not] assist another in doing so”; and 8.4, proscribing conduct of a lawyer that:

(a) violate[s] or attempt[s] to violate the Maryland Lawyers’ Rules of Professional Conduct, knowingly assist[s] or induce[s] another to do so, or do[es] so through the acts of another;

* * * *

“(d) [constitutes] engaging in conduct prejudicial to the administration of justice”.

Perhaps because of the clarity of Rule 5.3, which permits the objects of the Rule, the lawyers who would hire and have to supervise the nonlawyers, including disbarred lawyers, to understand precisely what is required of them, but certainly because, I believe, of the seriousness with which they view and have undertaken to comply, there have been very few cases in which the issue of inappropriate or inadequate supervision of a disbarred lawyer has been raised. Attorney Griev. Comm'n v. Brennan, 350 Md. 489, 714 A.2d 157 (1998); Attorney Griev. Comm'n v. James, 340 Md. 318, 666 A.2d 1246 (1995); Matter of Murray, 316 Md. 303, 558 A.2d 710 (1989); Application of R.G.S., 312 Md. 626, 541 A.2d 977 (1988). See also Attorney Griev. Comm'n v. Lee, 387 Md. 89, ___, 874 A. 2d 897, ___ (2005), in which, although the respondent had been charged with violations of Rules 5.3 and 5.5, those charges were withdrawn from the hearing court’s consideration prior to its being called upon to decide their applicability. Two of these cases, Brennan and James, were related, arising out of the same or essentially the same factual circumstances. James, while not a disbarred lawyer, had been suspended and purported to be Brennan’s paralegal. We were not persuaded and, so, required James to serve out his suspension and, in a separate case, sanctioned Brennan with a ninety day suspension.

Murray, a disbarred lawyer who had been a partner in a Towson law firm, was employed as a paralegal while disbarred by an established Westminster firm. 316 Md. at 306 & n. 1, 558 A.2d 711 & n. 1. This fact was noted in the recitation of the background, and not pejoratively. Murray’s petition for reinstatement to the Bar was granted. RSG was neither a suspended nor a disbarred lawyer. Rather, he was a lawyer admitted in North Carolina, where he had practiced for five years. He applied for admission to the Maryland Bar, taking the abbreviated examination for attorneys previously barred in another State. Because he came to Maryland to become a full-time professor of law, which he pursued for some fourteen years, and, then, having reduced his teaching schedule to that of a part-time, adjunct faculty instructor, accepted employment as counsel to an established law firm in Anne Arundel County, *id.* at 628, 541 A.2d at 978, where he drafted pleadings, supporting memoranda, and briefs, under the supervision of licensed Maryland lawyers and advised the partners on litigation strategy and the like, *id.* at 632-33, 541 A.2d at 981, we were presented with the issue of how to characterize his counsel activities, whether they were the unauthorized practice of law or could be credited toward the experience requirement of Rule 14.⁶ *Id.* at ____, 541 A. 2d at _____. Although acknowledging that the legal work “may be

⁶Bar Admission Rule 14 then provided for admission of an applicant to the Maryland Bar, upon successful completion of an abbreviated examination “if the applicant, among other things, has been admitted, by examination, to the ‘Bar of another State, District or Territory of the United States’ ... and if he or she ‘for at least five of the seven years immediately preceding the filing of his [or her] petition [for admission in Maryland] ... has been regularly engaged in any of the following activities: as a practitioner of law; as a full-time teacher of law at a law school approved by the American Bar Association; or as a judge of a court of record....’” Application of R.G.S., 312 Md. 626, 627-28, 541 A.2d 977, 978 (1988).

actual practice within the meaning of Rule 14,” *id.* at 638-39, 541 A.2d at 983, we concluded that it was not unauthorized practice, it having been “performed by one already admitted to practice by examination in another state[,] in a way that insulated the practitioner from direct contact with lay clients and the courts and administrative tribunals [and] under the supervision of a licensed Maryland lawyer.” *Id.*

This paucity of cases speaks to the need for the addition to Rule 5.3 that the majority makes⁷ - there simply is none. That was the conclusion of Bar Counsel when asked to

⁷A new subsection (d) is added to Rule 5.3, as follows:

“(d) a lawyer who employs or retains the services of a nonlawyer who (i) was formerly admitted to the practice of law in any jurisdiction and (ii) has been and remains disbarred, suspended, or placed on inactive status because of incapacity shall comply with the following requirements:

“(1) all law-related activities of the formerly admitted lawyer shall be (A) performed from an office that is staffed on a full-time basis by a supervising lawyer and (B) conducted under the direct supervision of the supervising lawyer, who shall be responsible for ensuring that the formerly admitted lawyer complies with the requirements of this Rule.

“(2) the lawyer shall take reasonable steps to ensure that the formerly admitted lawyer does not:

“(A) represent himself or herself to be a lawyer;

“(B) render legal consultation or advice to a client or prospective client;

“(C) appear on behalf of or represent a client in any judicial, administrative, legislative, or alternative dispute resolution proceeding;

“(D) appear on behalf of or represent a client at a deposition or in any other discovery matter;

“(E) negotiate or transact any matter on behalf of a client with third parties;

“(F) receive funds from or on behalf of a client or disburse funds to or on behalf of a client; or

“(G) perform any law-related activity for (i) a

provide input for the Court's consideration of motions filed by Sidney Blum and other disbarred attorneys seeking the continued suspension of 16-760 (d). His position was that any prohibition against disbarred lawyers acting as paralegals not affect those already so acting, thus, Mr. Blum's motion should be granted. Bar Counsel also urged the Court to, "on a case by case basis, consider whether any attorney, disbarred or suspended, should make application to this Court for permission to act in the capacity of a paralegal."

To be sure, the Court in James, quoted liberally from an Informal Opinion of the

law firm or lawyer with whom the formerly admitted lawyer was associated when the acts that resulted in the disbarment or suspension occurred or (ii) any client who was previously represented by the formerly admitted lawyer.

"(3) the lawyer, the supervising lawyer, and the formerly admitted lawyer shall file jointly with Bar Counsel (A) a notice of employment identifying the supervising lawyer and the formerly admitted lawyer and listing each jurisdiction in which the formerly admitted lawyer has been disbarred, suspended, or placed on inactive status because of incapacity; and (B) a copy of an executed written agreement between the lawyer, the supervising lawyer, and the formerly admitted lawyer that sets forth the duties of the formerly admitted lawyer and includes an undertaking to comply with requests by Bar Counsel for proof of compliance with the terms of the agreement and this Rule. As to a formerly admitted lawyer employed as of July 1, 2006, the notice and agreement shall be filed no later than September 1, 2006. As to a formerly admitted lawyer hired after July 1, 2006, the notice and agreement shall be filed within 30 days after commencement of the employment. Immediately upon the termination of the employment of the formerly admitted lawyer, the lawyer and the supervising lawyer shall file with Bar Counsel a notice of the termination."

Maryland State Bar Association Committee on Ethics, Docket 79-41, which counseled a sole practitioner against hiring, as a paralegal, a former associate attorney who had been disbarred, noting the difficult and substantial perception issues such employment would present and equating them to the James/Brennan relationship. 340 Md. at 325-26, 666 A.2d at 1249. I am also aware of Attorney Griev. Comm'n v. Weiss, ___ Md. ___, ___ A. 2d ___ (2005) and the concern that some members of this Court expressed regarding the fact that, although Weiss ceased being a partner in the firm from which he stole money, he remained as an associate of the firm. Neither our discussion in James nor the concern with respect to Weiss' continuation in the employ of his District of Columbia firm suffices to justify the new Rule's provisions. Nor, without more, can Pennsylvania's and other states' experience in this area substitute for a demonstrative showing that it is not only appropriate, but necessary, to treat the supervision of disbarred lawyers separately and distinct from other nonlawyers.

In addition to being unneeded, which the amendment itself tacitly confirms - Rule 5.3 (d) (2) is certainly encompassed in the Rule 5.3 (a) through (c), the amendment is burdensome both to the lawyer willing to hire a disbarred lawyer and to Bar counsel. The micro-managing of a firm's supervisory policies, coupled with the reporting requirements, which are, in addition, rather onerous - there is required an "executed written agreement between the lawyer, the supervising lawyer, and the formerly admitted lawyer that sets forth the duties of the formerly admitted lawyer," are likely to discourage the employment of disbarred lawyers. That perhaps is the real reason for the amendment. Bar Counsel will now have to monitor the reporting, for the failure to file the report, irrespective of the quality of the supervision given the disbarred lawyer, in fact, is itself a violation. Furthermore, it

will not be sufficient for Bar Counsel to receive timely reports, he must, as the Rule makes clear, Rule 5.3 (g), seek proof of compliance with the written agreement between the disbarred lawyer, the firm and the supervising attorney.

What is most disturbing to me, however, is the message it sends to, and about, lawyers. I have no doubt whatever that what is intended is the protection of the public, the ultimate goal of attorney discipline, and that is the message that is sought to be given to the public, whom we are mandated to protect. There is no demonstrative or persuasive evidence that there is a persistent and on-going problem with disbarred lawyers being allowed to practice law in the guise of working as a paralegal or that Maryland lawyers have not taken, or will not take, seriously Rule 5.3, as it relates to nonlawyers in general, which, of course, includes disbarred lawyers. On the contrary, the evidence is that the vast majority of Maryland lawyers are scrupulously ethical, complying strictly and always with the professional conduct rules. It should be noted, in this regard, that the informal opinion from which we quoted so liberally in James, was prompted by inquiry from the lawyer. That avenue for advice remains available for lawyers to use and there is no indication that, in close cases, they will not make use of it.

Consequently, the intended message will neither be the one received nor the one perceived to be sent. The Court's prescription of a regime to regulate the hiring and supervision of disbarred lawyers, under these circumstances, says to the lawyers of this State, you can not be trusted to supervise disbarred lawyers properly. And that message is likely to speak volumes to the public, many members of which are all too willing to believe the worse about lawyers and, for many, will be confirmatory of what they already believe, that

lawyers conspire among themselves and protect each other to the public's detriment. These beliefs are buttressed by political campaigns that tend, perhaps, intentionally so, to marginalize lawyers and through them the legal system; they paint lawyers as responsible for frivolous litigation and virtually anything else that ails this country. It is bad enough that lawyers are now, perhaps more than ever, being vilified, with little or no support in fact, but it is doubly damaging to have that vilification confirmed, at least to some extent, by this Court and especially when it does so on so sparse and lacking a record. As I have said, the fact that Pennsylvania and other states may have a similar rule is not justification for Maryland to adopt one.

Judges Raker and Greene join in the views herein expressed.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-760 to add to section (c) certain duties with respect to Rule 5.3 (d) of the Maryland Lawyers' Rules of Professional Conduct and to rescind subsection (d)(2), as follows:

Rule 16-760. ORDER IMPOSING DISCIPLINE OR INACTIVE STATUS

...

(c) Duties of Respondent

Unless otherwise stated in the order, an order that disbars or suspends a respondent or places a respondent on inactive status shall operate as an immediate directive that the respondent perform each of the following duties in a timely manner:

(1) The respondent shall not accept any new clients or undertake any new or further representation of existing clients.

(2) The respondent shall take any action necessary to protect current clients.

(3) The respondent shall conclude any current client matters that can be concluded within 15 days after the date of the order.

(4) Within 15 days after the date of the order, the respondent shall supply to Bar Counsel or an attorney designated by Bar Counsel a list of the attorney's clients (by name, address, and telephone number) whose legal matters have not been concluded by the respondent and

identify any client matters (by name, tribunal, and docket reference) currently pending in any court or agency.

(5) Within 15 days after the date of the order, the respondent shall mail a letter to each client whose legal matter has not been concluded, to counsel for any other party or to any unrepresented party in a pending action or proceeding, and to all attorneys with whom the respondent is associated in the practice of law, notifying each of them of the order and the fact that the respondent will be unable to practice law after the effective date of the order. The respondent shall supply copies of the letters to Bar Counsel or an attorney designated by Bar Counsel.

(6) Within 30 days after the date of the order, the respondent shall withdraw from all client matters.

(7) Unless suspended for a definite period of not more than one year, the respondent shall promptly request the publisher of any telephone directory or law listing to remove any listing or reference that suggests that the respondent is eligible to practice law.

(8) The respondent shall deliver promptly to clients with pending matters any papers or other property to which the clients are entitled or notify the clients and any co-counsel of a suitable time and place to obtain the papers and other property and call attention to any urgent need to obtain them.

(9) The respondent shall promptly notify the disciplinary authority in each jurisdiction in which the respondent is admitted to practice of the disciplinary sanction imposed by the Court of Appeals.

(10) Within 30 days of the effective date of the order, the respondent shall file with the

Commission an affidavit that states (A) the manner and extent to which the respondent has complied with the order and the provisions of this section, (B) the names of all state and federal jurisdictions in which and administrative agencies before which the respondent has been admitted to practice, (C) the residence and any other address of the respondent to which future communications may be directed, (D) the policy number and the name and address of each insurer that provided malpractice insurance coverage to the respondent during the past five years and the inclusive dates of coverage, and (E) the date and manner that a copy of the affidavit required by this subsection was served upon Bar Counsel. The affidavit shall be accompanied by copies of the list required by subsection (c)(4) of this Rule and the letters mailed under subsection (c)(5) of this Rule.

(11) If the respondent is or becomes employed or retained by or associated with a lawyer, the respondent shall comply with Rule 5.3 (d) of the Maryland Lawyers' Rules of Professional Conduct and assist the supervising lawyer in complying with the supervising lawyer's obligations under the Rule.

~~(11)~~ (12) The respondent shall maintain records of the various steps taken to comply with this section and the order of the Court of Appeals and make those records available to Bar Counsel on request.

(d) Effect of Order; Prohibited Acts

After the effective date of an order that disbars or suspends a respondent or places a respondent on inactive status, the respondent may not practice law, attempt to practice law, or offer to practice law in this State either directly or through an attorney, officer, director, partner, trustee, agent, or employee. Unless otherwise stated in an order of the Court of

Appeals, the respondent shall not:

(1) occupy, share, or use office space in which an attorney practices law unless under circumstances clearly indicating to clients, prospective clients, and persons who may visit the office that the respondent is not a lawyer and is not permitted to practice law;

~~(2) work as a paralegal for or as an employee of an attorney;~~ (3) (2) use any business card, sign, or advertisement suggesting that the respondent is entitled to practice law or maintain, either alone or with another, an office for the practice of law;

~~(4)~~ (3) use any stationery, bank account, checks, or labels on which the respondent's name appears as an attorney or in connection with any office for the practice of law;

~~(5)~~ (4) solicit or procure any legal business or retainer for an attorney, whether or not for personal gain; and

~~(6)~~ (5) share in any fees for legal services performed by another attorney after the effective date of the order, but may be compensated for the reasonable value of services rendered prior to that date.

...

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 5.3 of the Maryland Lawyers' Rules of Professional Conduct to add certain provisions with respect to a nonlawyer assistant who was formerly admitted to the practice of law in any jurisdiction and who has been disbarred, suspended, or placed on inactive status because of incapacity, as follows:

Rule 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; ~~and~~

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Maryland Lawyers' Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct

involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and

(d) a lawyer who employs or retains the services of a nonlawyer who (i) was formerly admitted to the practice of law in any jurisdiction and (ii) has been and remains disbarred, suspended, or placed on inactive status because of incapacity shall comply with the following requirements:

(1) all law-related activities of the formerly admitted lawyer shall be (A) performed from an office that is staffed on a full-time basis by a supervising lawyer and (B) conducted under the direct supervision of the supervising lawyer, who shall be responsible for ensuring that the formerly admitted lawyer complies with the requirements of this Rule.

(2) the lawyer shall take reasonable steps to ensure that the formerly admitted lawyer does not:

(A) represent himself or herself to be a lawyer;

(B) render legal consultation or advice to a client or prospective client;

(C) appear on behalf of or represent a client in any judicial, administrative, legislative, or alternative dispute resolution proceeding;

(D) appear on behalf of or represent a client at a deposition or in any other discovery matter;

(E) negotiate or transact any matter on behalf of a client with third parties;

(F) receive funds from or on behalf of a client or disburse funds to or on behalf of a client; or

(G) perform any law-related activity for (i) a law firm or lawyer with whom the formerly admitted lawyer was associated when the acts that resulted in the disbarment or suspension occurred or (ii) any client who was previously represented by the formerly admitted lawyer.

(3) the lawyer, the supervising lawyer, and the formerly admitted lawyer shall file jointly with Bar Counsel (A) a notice of employment identifying the supervising lawyer and the formerly admitted lawyer and listing each jurisdiction in which the formerly admitted lawyer has been disbarred, suspended, or placed on inactive status because of incapacity; and (B) a copy of an executed written agreement between the lawyer, the supervising lawyer, and the formerly admitted lawyer that sets forth the duties of the formerly admitted lawyer and includes an undertaking to comply with requests by Bar Counsel for proof of compliance with the terms of the agreement and this Rule. As to a formerly admitted lawyer employed as of July 1, 2006, the notice and agreement shall be filed no later than September 1, 2006. As to a formerly admitted lawyer hired after July 1, 2006, the notice and agreement shall be filed within 30 days after commencement of the employment. Immediately upon the termination of the employment of the formerly admitted lawyer, the lawyer and the supervising lawyer shall file with Bar Counsel a notice of the termination.

COMMENT

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and ~~should be~~ is responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Maryland Lawyers' Rules of Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Maryland Lawyers' Rules of Professional Conduct if engaged in by a lawyer.

[3] Paragraph (d) addresses formerly admitted lawyers engaging in law-related activities and does not establish a standard for what constitutes the unauthorized practice of law.

Model Rules Comparison.-- The language of Rule 5.3 (a) through (c) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct. Paragraph (d) and Comment [3] are in part derived from Rule 217 (j) of the Pennsylvania Rules of Disciplinary Enforcement and in part new.