Employing a Formerly Admitted Attorney

PLUS Blog
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A suspended or disbarred attorney is a formerly admitted attorney. Formerly admitted attorneys have knowledge, ability and contacts, but, employment of a formerly admitted attorney has potential to cause additional problems for the formerly admitted attorney as well as the lawyer or law firm which employs them. Most states have specific rules regarding the employment of formerly admitted attorneys. *See e.g.*, Al. R. Disp. P. 26(h); Ca. R.P.C. 1-311; Fl. R. of Disp. 3.6; Md. R. Att'y 19-305.3. Other states have more generalized prohibitions on formerly admitted attorneys serving in a legal capacity. See e.g., Il. Sup. Ct. R. 764. New York has no specific rule, and treats the question as an issue regarding the unauthorized practice of law. Two New York attorneys were recently suspended for 18 months each after hiring a formerly admitted attorney as a paralegal. *See*, *Matter of Friedberg and Pinkas*, 2021 NY Slip Op 02109.

Many of the specific state rules resemble those we have here in Pennsylvania. Pursuant to Pennsylvania Rule of Disciplinary Enforcement 217(j) which states: "A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements." A formerly admitted attorney may only engage in law-related activities under the supervision of a member of the Bar "who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision." If employed by an organization, the organization must designate a "supervising attorney" who is employed by the organization full time. Rule 217(j)(5) requires that the supervising attorney and the formerly admitted attorney file a notice of engagement with the Disciplinary Board, identifying the supervising attorney and certifying the formerly admitted attorney's activities will be monitored for compliance with subdivision 217(j). Another notice is required when the engagement ends. The "supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this subdivision (j)." Rule 217(j)(6).

A formerly admitted attorney may only perform "legal work of a preparatory nature," including legal research and drafting of briefs, pleadings and transactional documents. Rule 217(j)(2)(i). A formerly admitted attorney may also accompany a member of the Bar to depositions, meetings, "or other discovery matter" to provide clerical assistance to the member of the Bar. A formerly admitted attorney may only have contact with clients and other third parties "limited to ministerial matters." The rule requires the formerly admitted attorney clearly indicate in communications that "he or she is a legal assistant and identify the supervising attorney."

Formerly admitted attorneys may not perform law related tasks with a law firm or organiza-

tion they were associated with from the time of the occurrence of the acts which resulted in suspension or disbarment through the effective date of the discipline. They cannot represent themselves as a lawyer "or person of similar status," or perform services for any client they previously represented. Formerly admitted attorneys may not provide legal advice, appear on behalf of a client at a hearing or proceeding before any "adjudicative person or body," appear as a representative in a deposition or other discovery matter, negotiate or transact a matter on behalf of a client, or handle client funds.

In Pennsylvania, a formerly admitted attorney may perform the functions of a paralegal, and may perform those services even if not working in the office where the supervising attorney is employed. *See, In re Perrone*, 587 Pa. 388, 399, 899 A.2d 1108, 1114-15 (2006). However, a formerly admitted attorney may not represent a claimant in unemployment compensation hearings, even though claimants in unemployment compensation hearings may be represented by non-lawyers and a prior Supreme Court decision stated such representation does not constitute the practice of law. *Powell v. Unemployment Comp. Bd. of Review*, 638 Pa. 558, 561, 157 A.3d 884, 885 (2017). The Pennsylvania Supreme Court stated that formerly admitted attorneys are neither "attorneys" nor "non-lawyer representatives."

It is certainly not uncommon for formerly admitted attorneys to face additional discipline for the unauthorized practice of law. *See, e.g. Office of Disciplinary Counsel v. Harmon*, No. 72 DB 2019; *Office of Disciplinary Counsel v. Elam*, No. 140 DB 2015. It is less common for an employer to face sanctions for employing a formerly admitted attorney, but it does happen. In February 2021, the Supreme Court accepted the Verified Statement of Resignation of Neil Robert Gelb, and he was disbarred on consent. *Office of Disciplinary Counsel v. Harmon*, No. 72 DB 2019. The Supreme Court had previously suspended Mr. Gelb for a period of eighteen months. Mr. Gelb was suspended for failing to monitor the conduct of two formerly admitted attorneys in his employment.

Mr. Gelb employed Peter P. Barnett Gelb as a "Litigation Manager." Mr. Barrett, a formerly admitted attorney was placed on inactive status in 2003, and suspended for a period of two years. Mr. Barnett and the law firm did not file a notice of engagement as required by Rule 217(j)(5). Mr. Barnett was also involved in negotiating a settlement with an insurance company for a Gelb firm client. Mr. Barnett did not inform the insurance company that he was ineligible to practice law, and after Mr. Barnett agreed to a settlement on behalf of the client, the client refused to sign the settlement. The insurance company subsequently succeeded in a motion to enforce settlement. Mr. Barnett also held himself out as an attorney in three other cases in which he had contacts with clients that were not limited to ministerial matters, failed to identify himself as a legal assistant, and represented himself as a lawyer or person of similar status. The Supreme Court accepted a joint recommenddation of suspension for two years.

Mr. Gelb also employed Ronald I. Kaplan who was suspended for a year and a day in September 2006. A petition for reinstatement was denied in 2009. In January 2013, Mr. Gelb informed the Disciplinary Board that Mr. Kaplan was engaged as a paralegal/administrative assistant. In communications with opposing counsel regarding a client matter Mr. Kaplan identified himself as "Ron Kaplan

J.D. Case Manager," but did not identify himself as a "legal assistant," and did not identify the supervising attorney. Mr. Kaplan prepared the client for deposition and appeared at the deposition as a representative of the client. Mr. Gelb did not appear for the deposition. The deposition transcript identified Mr. Kaplan as "Ronald Kaplan, Esquire" "Representing the Plaintiff." Mr. Kaplan participated in the deposition and questioned the client. Mr. Kaplan subsequently failed to respond to a DB-7 regarding alleged violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement.

Philadelphia Bar Association advisory opinion 2005-10 provides a good overview of the activities that a formerly admitted attorney can engage in under the Pennsylvania Rules. The Pennsylvania Disciplinary Board also has a "Standard Guidance to Lawyers Who Have Been Disbarred" that is provided to all attorneys who are disbarred.

A formerly admitted attorney can be an asset to another lawyer or law firm, but the potential pitfalls are real. Prior to employing a formerly admitted attorney, the lawyer or law firm thinking about such employment should carefully review all guidance from their state in order to assure that neither the employer or the formerly admitted attorney is engaging in any action which could lead to discipline.

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