

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**IN RE: EMPLOYMENT OF** )  
**DISBARRED, SUSPENDED,** ) **No. M2008-**  
**AND DISABLED LAWYERS** )  
)

---

**PETITION OF THE TENNESSEE BAR ASSOCIATION**

---

The Tennessee Bar Association (“TBA”), by and through its President, George T. Lewis; Immediate Past President, Marcia M. Eason; General Counsel, William L. Harbison; Chair, Working Group on the Employment of Disbarred, Suspended and Disabled Lawyers, Sue Van Sant Palmer, petitions this Court for adoption rules regarding the employment and reinstatement of disbarred, suspended and disabled lawyers.

**BACKGROUND**

According to reports from the , twenty-seven lawyers were disbarred, suspended or placed on disability inactive status during the latest report year available, 2006.

The only guidance given to Tennessee lawyers about their relationship with these lawyers is found in Formal Ethics Opinion 83-F-50 (copy attached as Exhibit “A”) which is cited as the authority for the Board of Professional Responsibility policy that a disbarred, suspended or disabled lawyer may not be employed in any capacity by a lawyer or law firm. In addition, Tennessee Supreme Court Rule 9, Section 18.7 contains the following provision, “Upon the effective date of the order, the respondent shall not maintain a presence or occupy an office where the practice of law is conducted.”

The provision of Rule 9, Section 18.7 has come to the attention of the court on a previous occasion. In 2003, the Tennessee Supreme Court requested a peer review of the Tennessee lawyer regulatory system by the American Bar Association Standing Committee on Professional Discipline. The committee’s report, “Tennessee Report on Lawyer Regulation System,” was issued in August 2003. Among the seventeen (17) recommendations to the court with respect to its discipline system was the recommendation that “The Court Should Continue to Forbid Disbarred or Suspended Lawyers From Working in a Law Office or in an Office Where the Practice of Law is Conducted.” Following the issuance of the report, the court created the Board of Professional Responsibility Advisory

Committee, also known as the “Crenshaw Committee” to make recommendations to the court for changes in its disciplinary system. The Chief Disciplinary Counsel, the Commission and the TBA all commented on the ABA committee report agreeing with the ABA committee recommendation in comments filed with the court in January 2005. A copy of the TBA comment which catalogs each report and the Chief Disciplinary Counsel, Advisory Commission recommendation and TBA recommendation is attached as Exhibit B.

Since that time, the TBA Standing Committee on Ethics and Professional Responsibility has undertaken a broad review of the Rules of Professional Conduct which will soon result in a petition to the Court for a comprehensive set of revisions to those rules. Because of the sentiment within the bar, and in particular among those involved in lawyer assistance efforts, has been that the BPR policy and Rule 9, Section 18.7 is too harsh and does not appropriately balance the needs of the public and the bar, the committee and a working group have continued to examine the policy. The TBA Board of Governors created a Working Group on the Employment of Disbarred, Suspended and Disabled Lawyers at its June 2007 meeting. That working group was charged with consulting with the Tennessee Lawyers Assistance Program and the , reviewing a recommendation by the

Standing Committee on Ethics and Professional Responsibility and rules from other jurisdictions, and making a recommendation for a policy in this area.

Working Group Chair Sue Van Sant Palmer undertook an extensive survey of other jurisdictions (copy of draft attached as Exhibit “C”). That survey disclosed that there are at least 25 jurisdictions which have adopted rules and policy in this area. Thirteen jurisdictions have incorporated a rule concerning the issue into their rules of professional conduct. In other jurisdictions, a rule addressing the topic appears in court rules and rules of disciplinary procedure. In still others, a rule is set out in connection with a particular set of facts in case law. In a number of jurisdictions, ethics opinions set out a rule sometimes as broadly applicable generalization and sometimes as applied only to a particular set of facts. The ethics opinions may be advisory only or may be binding, at least in a particular case.

Against this backdrop, the working group, the TBA House of Delegates, and the TBA Board of Governors concluded that clear guidance for lawyers who might employ former lawyers and explicit rules for the , its Hearing Committees and

lawyers seeking reinstatement were needed. Exhibits “D” and “E” are rules proposed to address the issues.

**1. RELATIONSHIPS WITH DISBARRED, SUSPENDED AND DISABLED  
LAWYERS SHOULD BE CLEARLY DELINIATED THROUGH  
ADOPTION OF A NEW TENNESSEE RULE OF PROFESSIONAL  
CONDUCT 5.8.**

The Tennessee Bar Association proposes the adoption of a new Rule of Professional Conduct 5.8 as shown in exhibit D. The RPC 5.8 Amendment adds a new Section 5.8 with subsections (a) – (d) with Comments. The preamble to Rule 5.8 states the scope: “With respect to a person who is disbarred, or whose law license is suspended or transferred to disability inactive status:

**Disbarred Lawyer Prohibited Law Firm Employment.** Subsection (a) prohibits the employment by a lawyer or Law Firm of a disbarred lawyer to perform any function in connection with the practice of law. Placing disbarred lawyers in a separate group and prohibiting their performing any work in connection with the practice of law serves the interests of the profession and the public. There is a general consensus that a lawyer whose license has been

transferred to disability inactive status but who has complaints pending should be restricted from engaging in the work allowed under this Rule 5.8 until the pending complaints have been resolved.

**Suspended Lawyer Relationship With Prior Law Firm.** Subsection (b) prohibits a lawyer or Law Firm from employing a suspended lawyer if the suspended lawyer was associated with that lawyer or Law Firm at any time on or after the conduct that resulted in the suspension. A number of jurisdictions have a rule similar to this. Allowing the suspended lawyer to return to his or her Law Firm may not contribute to change or reform in the suspended lawyer and the public's perception of the effectiveness of the lawyer disciplinary system may be harmed by having the suspended lawyer simply return to his or her old law office. This prohibition does not apply to lawyers in disability-inactive status with no pending complaints. Lawyers in disability-inactive status with no pending complaints could benefit from the support of a group that knows them and the chances for rehabilitation could be improved in a familiar setting.

**Activity Not Allowed.** Subsection (c) prohibits performance of certain specific activities and the general category of activities that constitute the practice of law, and law-related activities performed through a lawyer's office or law firm.

It also prohibits the handling of client funds or property. This subsection was derived from similar provisions in the rules of other states (whether set out as a Rule of Professional Conduct or set out in ethics or court opinions). The proscription on the handling of client funds is common among the states that allow Former Lawyers to be employed in law offices and, the Working Group believes, protects the profession and the public's perception of the profession.

**Activity Allowed.** Subsection (d) allows a lawyer or Law Firm to engage the suspended lawyer or the lawyer in disability-inactive status with no pending complaints to perform research, drafting or clerical duties. This subsection includes a list of permissible kinds of work. The Comment makes clear that such persons may be engaged as paralegals if their duties are consistent with the prohibitions in subsection (c) and the permissive provisions in subsection (d).

**2. THE BOARD OF PROFESSIONAL RESPONSIBILITY, ITS HEARING COMMITTEES AND FORMER LAWYERS SHOULD BE GIVEN EXPLICIT RULES ON CONSEQUENCES OF DISCIPLINE AND THE PATH TO REINSTATEMENT.**

In addition to the rules governing lawyers' relationships with former lawyers, Tennessee lawyers and those who discipline them need explicit guidance as to the consequences of disciplinary action and the steps to seek reinstatement of license. In its survey of the manner in which other states deal with the issue, the working group found several models for addressing such an issue. The TBA recommends that Tenn. Sup. Ct. Rule 9 dealing with disciplinary enforcement be amended to set forth a new section addressing permissible activities.

The new Section 19.9 is intended to guide Former Lawyers in the context of the reinstatement process. This rule is intended to be consistent with Rule 5.8, albeit with some more detailed requirements.

The preamble to Section 19.9 is permissive: it allows the employment of the person whose license has been suspended or transferred to disability-inactive status with no pending complaints.

This permissive statement is followed by conditions: (i) the work must be in conformity with the Rules of Professional Conduct, including RPC 5.8; (ii) the work performed by authority of the rule must be in a Tennessee office; (iii) the



work must be supervised by a licensed Tennessee lawyer against whom there is no pending petition for discipline and who has agreed in a writing copied to the Board of Professional Responsibility to undertake this supervision; (iv) payment for the work must not be connected with fees received for or the outcome of a case or other matter; (v) the person must obtain CLE as required in Supreme Court Rule 21; (vi) a person subject to a TLAP agreement must report the work to TLAP and give to TLAP a copy of the supervising lawyer's written undertaking to supervise; and (vii) the permission to undertake such work may continue unless prohibited in any order denying reinstatement.

**3. THE PROPOSED RULES STRIKE THE PROPER BALANCE  
BETWEEN THE FAIR TREATMENT OF LAWYERS WHO ARE  
SEEKING TO REHABILITATE THEMSELVES AND THE PUBLIC  
TRUST AND CONFIDENCE IN THE LAWYER DISCIPLINE SYSTEM.**

As reiterated in the recently-decided *Hughes v. Board of Professional Responsibility*, 239 S.W. 3<sup>rd</sup> 631 (Tenn., 2008), the court must balance the efforts by a lawyer at rehabilitation against the quality of the bar and the impact of the public's confidence in the administration of justice. These proposed rules address

that balance by continuing the policy that a disbarred lawyer may not participate at all in the legal profession. The proposal acknowledges that a lawyer who has been suspended and will ultimately return to the practice of law or a lawyer who is on disability inactive status with no pending complaints can and should have limited participation in the profession in order to rehabilitate themselves. This balance affects the public and the public's confidence through limiting the activities of the suspended or disabled lawyer in their relationship with clients.

## **CONCLUSION**

For the reasons stated, the petitioners urge the adoption of the proposed rules.

**RESPECTFULLY SUBMITTED,**

By: /s/ by permission \_\_\_\_\_

GEORGE T. LEWIS (007018)  
President,  
Tennessee Bar Association  
Baker, Donelson, Bearman, Caldwell  
& Berkowitz, PC  
165 Madison Avenue, Suite 2000  
Memphis, TN 38103  
(901) 526-2000

By: /s/ by permission\_\_\_\_\_

MARCIA M. EASON (011374)  
Immediate Past President,  
Tennessee Bar Association  
Miller & Martin PLLC  
832 Georgia Avenue, Suite 1000  
Chattanooga, Tennessee 37402  
(423) 756-6600

By: /s/ by permission\_\_\_\_\_

WILLIAM L. HARBISON (007012)  
General Counsel,  
Tennessee Bar Association  
Sherrard & Roe, PLC  
424 Church Street, Suite 2000  
Nashville, Tennessee 37219  
(615) 742-4200

By: /s/ by permission\_\_\_\_\_

SUE VAN ZANT PALMER (014437)  
Chair, Working Group on the Employment  
of Disbarred, Suspended and Disabled  
Lawyers  
Bridgestone/Firestone North America  
535 Marriott Drive, Ninth Floor  
Nashville, TN 37214  
(615) 937-3168

By: \_\_\_\_\_

ALLAN F. RAMSAUR (005764)  
Executive Director,  
Tennessee Bar Association  
Tennessee Bar Center  
221 Fourth Avenue North, Suite 400  
Nashville, Tennessee 37219-2198  
(615) 383-7421

### CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "F" by regular U.S. Mail, postage prepaid on \_\_\_\_\_.

\_\_\_\_\_  
Allan F. Ramsaur