

**Nebraska Ethics Advisory Opinion for Lawyers  
No. 06-6**

ISSUES ADDRESSED

1. Can a suspended attorney do research, writing, and other projects for the firm where the suspended attorney previously practiced law if the suspended attorney works from a location away from the firm's office and has no contact with clients of the firm?
2. Can a suspended attorney do investigative work for the firm where the suspended attorney previously practiced law if the suspended attorney does not represent that they are acting as an attorney?
3. Can a suspended attorney perform either of the functions listed above at the firm where the suspended attorney previously practiced law if the suspended lawyer has no contact with clients of the firm?

STATEMENT OF FACTS

A law firm previously employed an attorney who, while employed, was suspended from practicing law. The suspended attorney is no longer doing work or working for the firm. The firm would like to rehire the suspended attorney to do research/paralegal or investigative work.

RELEVANT RULES OF PROFESSIONAL CONDUCT

**RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW.**

(A) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

DISCUSSION

In Advisory Opinion 96-1, it was determined that "a suspended attorney may be employed as a paralegal and/or law clerk if the employment is at a place and in such a manner as to not give the appearance of practicing law." It was further determined that "a suspended attorney may not be employed as a paralegal and/or law clerk at an office where he or she previously shared office space or practiced law." The opinion noted that a suspended lawyer acting as a paralegal at the firm he was associated with at the time of suspension may give the appearance of the suspended attorney providing continued legal services.

Advisory Opinion 96-1 relied on State Ex Rel. Nebraska State Bar Ass'n. v. Butterfield, 172 Neb. 645, 111 N.W.2d 543 (1961). In Butterfield, the court stated:

A suspended lawyer, who in connection with his law office engages in other activities, is in no different position than the active lawyer who confines himself solely to the practice of law in determining if the suspension order was violated. Where one is generally known in the community as a lawyer, it might well be impossible to divorce two occupations closely related if the rule was otherwise.

Butterfield, 172 Neb. at 649, 111 N.W.2d at 546. Advisory Opinion 96-1 concluded that an attorney's "prior association with the suspended lawyer would prevent the retention of the suspended attorney as a paralegal." Furthermore, the court warned that a suspended attorney

will not be heard to say that legal services recognized as within the practice of law were performed in some other capacity when he is called to account. Id. at 649, 111 N.W.2d at 546-47.

However, Butterfield and Advisory Opinion 96-1 were decisions made under the Code of Professional Responsibility ("CPR") and the Supreme Court of Nebraska adopted the Nebraska Rules of Professional Conduct ("NRPC") which became effective September 1, 2005. The CPR and the NRPC contain similar provisions on the unauthorized practice of law. The NRPC are based on the Model Rules of Professional Conduct, which the majority of jurisdictions have adopted. However, many jurisdictions have amended their rules on the unauthorized practice of law to specifically forbid retention of a suspended attorney by the firm where the suspended attorney was employed at the time of suspension. Comment 11 to the North Carolina Rules of Professional Conduct provides reasoning for the amendment, stating:

An attorney or law firm should not employ a disbarred or suspended attorney who was associated with such attorney or firm at any time on or after the date of the acts which resulted in the disbarment or suspension through and including the time of the disbarment or suspension. Such employment would show disrespect for the court or body which disbarred or suspended the attorney. Such employment would also be likely to be prejudicial to the administration of justice and would create an appearance of impropriety. It would also be practically impossible for the disciplined lawyer to confine himself or herself to activities not involving the actual practice of law if he or she were employed in his or her former office setting and obliged to deal with the same staff and clientele.

N.C. Rules of Prof'l Conduct R. 5.5 cmt. 11 (2003).

## CONCLUSION

The Advisory Committee is of the opinion that a suspended attorney should not be employed by the firm where the suspended attorney was previously employed in any of the capacities listed. Based on Butterfield and Advisory Opinion 96-1, it is clear that a suspended attorney may not be employed as a paralegal by the law firm where the suspended attorney was previously employed. The Advisory Committee was asked for an opinion on whether the suspended attorney could do "research, writing, and other projects," not specifically paralegal work and whether this work could be done at a place other than the firm. The request also asked for an opinion on whether the suspended attorney could do investigative work for the firm. While it is not clear that "research, writing, and other projects" or investigative work is necessarily the practice of law, it sounds substantially similar to the work of a paralegal or law clerk. Although Butterfield and Advisory Opinion 96-1 were decided under the Code of Professional Responsibility ("CPR"), the CPR and the newly adopted Nebraska Rules of Professional Conduct ("NRPC") contain similar provisions on the unauthorized practice of law. Furthermore, other jurisdictions have amended their rules of professional conduct to explicitly disallow the retention of a suspended attorney in a quasi-legal function for the same policy reasons underlying Butterfield and Advisory Opinion 96-1. Employing a suspended attorney that previously worked at the firm but preventing the suspended attorney from client interaction by having him work from a place away from the firm or a secluded place within the firm is contrary to the policies underlying Butterfield, Advisory Opinion 96-1, and the NRPC.

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1 Compare Neb. Code of Prof'l Responsibility DR 3-101(a) (2000) (stating that: "a lawyer shall not aid a nonlawyer in the unauthorized practice of law") with Neb. Rules of Prof'l Conduct R. 5.5(a) (2005) (stating that: "a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so").

2 See N.C. Rules of Prof'l Conduct R. 5.5(e) (2003) (stating that: "A lawyer or law firm shall not employ a disbarred or suspended lawyer as a law clerk or legal assistant if that individual was associated with such lawyer or law firm at any time on or after the date of the acts which resulted in disbarment or suspension through and including the effective date of

disbarment or suspension.”); See also N.M. Rules of Prof'l Conduct R. 16-505(d) (2005) (stating that a lawyer shall not: “employ or continue the employment of a disbarred or suspended lawyer as a law clerk, a paralegal or in any other position of a quasi-legal nature if the suspended or disbarred lawyer has been specifically prohibited from accepting or continuing such employment by order of the Supreme Court or the disciplinary board.”) (emphasis added).