

Miller, Penny

From:	(SUP) Clerk of Court Office	FILED
Sent:	Monday, March 14, 2016 10:04 AM	IN THE OFFICE OF THE
To:	Miller, Penny	CLERK OF SUPREME COURT
Subject:	FW: proposed amendments to ND Rules of Professional Responsibility	MARCH 14, 2016
		STATE OF NORTH DAKOTA

Heather Keller

Deputy Clerk | North Dakota Supreme Court

From: Irby, John
Sent: Monday, March 14, 2016 10:02 AM
To: (SUP) Clerk of Court Office
Cc: 'jwetch@serklandlaw.com'
Subject: proposed amendments to ND Rules of Professional Responsibility

Dear Ms. Miller:

I would like to take the opportunity to comment on proposed Rule 6.3, notice of status regarding a suspended lawyer's ability to put his law degree to use in a law office in a capacity other than the practice of law. I would agree with the position of the State Bar in the letter submitted by Mr. Wetch that the restriction is too broad. I think that the more defined approach found in Rule 5.8 of the Minnesota Rules of Professional Conduct would adequately protect the public, allow the disciplined lawyer to not only earn a living but to rehabilitate him or herself while under the supervision of a licensed attorney who knows the status of the employee and the responsibility for employing the individual.

RULE 5.8: EMPLOYMENT OF DISBARRED, SUSPENDED, OR INVOLUNTARILY INACTIVE LAWYERS

- (a) For purposes of this rule "employ" means to engage the services of another, including employees, agents, independent contractors, and consultants, regardless of whether any compensation is paid.
- (b) A lawyer shall not employ, associate professionally with, or aid a person the lawyer knows or reasonably should know has been disbarred, suspended, or placed on disability inactive status by order of the court to do any of the following on behalf of the lawyer's client:
- (1) render legal consultation or advice to the client;
 - (2) appear on behalf of the client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer, unless the rules of the tribunal involved permit representation by nonlawyers and the client has been informed of the lawyer's suspension, disbarment, or disability inactive status;
 - (3) appear as a representative of the client at a deposition or other discovery matter;
 - (4) negotiate or transact any matter for or on behalf of the client with third parties;
 - (5) receive, disburse, or otherwise handle the client's funds; or

(6) engage in activities that constitute the practice of law.

(c) A lawyer may employ, associate professionally with, or aid a disbarred, suspended, or disability inactive lawyer to perform research, drafting, clerical, or similar activities, including but not limited to:

(1) performing legal work of a preparatory nature for the active lawyer's review, such as legal research, gathering information, and drafting pleadings, briefs, and other similar documents;

(2) directly communicating with the client or third parties regarding matters such as scheduling, billing, updates, information gathering, and confirmation of receipt or sending of correspondence and messages;
or

(3) accompanying an active lawyer to a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyer who will appear as the representative of the client.

(d) Prior to or at the time of employing a person the lawyer knows or reasonably should know is a disbarred, suspended, or disability inactive lawyer, the lawyer shall serve upon the Office of Lawyers Professional Responsibility written notice of the employment, including a full description of such person's current license status. The notice shall state that the suspended, disbarred, or disability inactive lawyer shall not be employed to perform any of the activities prohibited by paragraph (b).

(e) Upon terminating the employment of the disbarred, suspended, or disability inactive lawyer, the employing lawyer shall promptly serve upon the Office of Lawyers Professional Responsibility written notice of the termination.

The standard for adopting a rule that would deprive an individual from using his or hers professional education should not be the likelihood that it will be challenged. There would be many reasons for a suspended lawyer not to challenge the rule in court. The consideration should be adopting a rule that will adequately protect the public but not unfairly deprive an individual the use of their education in a capacity other than the practice of law.

Thanks.

John C. Irby
ECJD