

Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member
(Commission's Proposed Rule – Clean Version)

- (a) For the purposes of this Rule:
 - (1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
 - (2) "Member" means a member of the State Bar of California.
 - (3) "Involuntarily inactive member" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203(d)(1), or California Rule of Court 958(d); and
 - (4) "Resigned member" means a member who has resigned from the State Bar while disciplinary charges are pending.
- (b) A lawyer shall not employ, associate professionally with, or aid a person the lawyer knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member to perform the following on behalf of the lawyer's client:
 - (1) Render legal consultation or advice to the client;
 - (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
 - (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 which constitute the practice of law.
- (c) A lawyer may employ, associate professionally with, or aid a disbarred, suspended, resigned, or involuntarily inactive member to perform research, drafting or clerical activities, including but not limited to:
 - (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
 - (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
 - (3) Accompanying an active member in good standing of the bar of a United States state in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the 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, resigned, or involuntarily inactive member, the lawyer shall serve upon the State Bar written notice of the employment, including a full description of

such person's current bar status. The written notice shall also list the activities prohibited in paragraph (b) and state that the disbarred, suspended, resigned, or involuntarily inactive member will not perform such activities. The State Bar may make such information available to the public. The lawyer shall serve similar written notice upon each client on whose specific matter such person will work, prior to or at the time of employing such person to work on the client's specific matter. The lawyer shall obtain proof of service of the client's written notice and shall retain such proof and a true and correct copy of the client's written notice for two years following termination of the lawyer's employment by the client.

- (e) A lawyer may, without client or State Bar notification, employ a disbarred, suspended, resigned, or involuntarily inactive member whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.
- (f) Upon termination of the employment of a disbarred, suspended, resigned, or involuntarily inactive member, the lawyer shall promptly serve upon the State Bar written notice of the termination.

COMMENT

- [1] Paragraph (d) is not intended to prevent or discourage a lawyer from fully discussing with the client the activities that will be performed by the disbarred, suspended, resigned, or involuntarily inactive member on the client's matter. If a lawyer's client is an organization, then the written notice required by paragraph (d) shall be served upon the duly

authorized officer, employee, or constituent overseeing the particular engagement. See Rule 1.13.

- [2] Nothing in this Rule shall be deemed to limit or preclude any activity engaged in pursuant to Rules 9.45 [registered legal services attorneys], 9.46 [registered in-house counsel] 9.47 [attorneys practicing law temporarily in California as part of litigation], 9.48 [non-litigating attorneys temporarily in California to provide legal services], 9.40 [counsel *pro hac vice*], 9.41 [appearances by military counsel], 9.42 [certified law students], 9.43 [out-of-state attorney arbitration counsel program] and 9.44 [registered foreign legal consultant] of the California Rules of Court, or any local rule of a federal district court concerning admission *pro hac vice*.