

**SUPREME COURT INVITES
COMMENTS CONCERNING LSBA PROPOSAL**

The Supreme Court of Louisiana would be interested in receiving comments concerning proposed changes to Rule 5.5 of the Rules of Professional Conduct. The suggested changes, which were passed by the Louisiana State Bar Association House of Delegates and approved by the Board of Governors, address when and under what circumstances lawyers may have a contract or employment relationship with disbarred and suspended lawyers. As proposed, Rule 5.5 of the Rules of Professional Conduct would read:

Rule 5.5 Unauthorized Practice of Law

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;
- (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law;
- (c) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment; or
- (d) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, during the period of suspension, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.

The registration form provided for herein shall include:

- (1) The identity and bar roll number of the suspended attorney sought to be hired;

- (2) The identity and bar roll number of the attorney having direct supervisory responsibility over the suspended attorney throughout the duration of employment or association;
- (3) A list of all duties and activities to be assigned to the suspended attorney during the period of employment or association;
- (4) The terms of employment of the suspended attorney, including method of compensation;
- (5) A statement by the employing attorney that includes a consent to random compliance audits, to be conducted by the Office of Disciplinary Counsel, at any time during the employment or association of the suspended attorney; and
- (6) A statement by the employing attorney certifying that the order giving rise to the suspension of the proposed employee has been provided for review and consideration in advance of employment by the suspended attorney.

For purposes of this Rule, the practice of law shall include the following activities:

- (a) Holding oneself out as an attorney or lawyer authorized to practice law;
- (b) Rendering legal consultation or advice to a client;
- (c) Appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;
- (d) Appearing as a representative of the client at a deposition or other discovery matter;
- (e) Negotiating or transacting any matter for or on behalf of a client with third parties;
- (f) Receiving, disbursing, or otherwise handling client funds;

- (g) Otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

Upon termination of the suspended attorney, the employing attorney having direct supervisory authority shall promptly serve upon the Office of Disciplinary Counsel written notice of the termination.

Comments are invited concerning whether or not this suggested rule change should be adopted. In addition, the Court invites comments which are directed toward whether the rule should be retroactive in nature. That is, in the event the rule change is adopted, should the rule apply retroactively to disbarred and suspended lawyers who are already working for lawyers or law firms? Alternatively, should the rule apply only to (1) lawyers who are suspended or disbarred after the effective date of any rule change; and (2) lawyers who are suspended or disbarred as of the effective date, but who are not currently working for lawyers or law firms?

Interested persons may forward comments through e-mail transmittal to comments@lasc.org. Comments may also be mailed to Deputy Judicial Administrator/General Counsel Timothy F. Averill at:

1555 Poydras Street, Suite 1540
New Orleans, LA 70112-3701

Comments should be forwarded no later than Friday, February 16, 2001.