

EXHIBIT "D"

Proposed Amendment to Tennessee Supreme Court Rule 8, Adding a new rule

Rule 5.8

RELATIONSHIP WITH DISBARRED, SUSPENDED AND DISABLED LAWYERS

With respect to a person who is disbarred or whose law license is suspended or transferred to disability inactive status:

(a) a lawyer or Law Firm shall not employ, retain, or associate professionally with a person who is disbarred or whose license is transferred to disability inactive status with pending disciplinary complaints to perform any function prohibited in subsection (c) or permitted in subsection (d) of this Rule.

(b) a lawyer or Law Firm shall not employ, retain, or associate professionally with a person whose license to practice law is suspended if the person was associated with such lawyer or Law Firm at any time on or after the date of the acts which resulted in the suspension through and including the date of suspension.

(c) a lawyer or Law Firm shall not employ, retain, or associate professionally with a person whose license to practice law is suspended or transferred to disability inactive status to perform the following on behalf of the lawyer's client:

(1) render legal consultation or advice;

(2) appear on behalf of or represent a client in any hearing or meeting before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner or hearing officer;

(3) appear on behalf of or represent a client at a deposition or other discovery matter;

(4) negotiate or transact any matter for or on behalf of a client with third parties;

(5) otherwise engage in activities that constitute the practice of law or the law business;

(6) provide through the lawyer's office or law firm law-related services as denoted in RPC 5.7(b); or

(7) receive, disburse or otherwise handle client funds.

(d) subject to the provisions of this rule and any order suspending a lawyer's license, transferring a lawyer's license to disability inactive status with no pending disciplinary complaints or denying reinstatement of a license, another lawyer may employ, retain, or associate professionally with a person whose license is suspended or transferred to

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disability inactive status with no pending disciplinary complaints to perform research, drafting or clerical duties including, but not limited to:

- (1) legal work of a preparatory nature such as legal research, the assembly of data and other information, drafting of pleadings, briefs and other documents;
- (2) direct communication with a client or with third parties regarding matters such as scheduling, updates, confirmation of receipt, or sending of correspondence and messages; or
- (3) accompanying a lawyer who will appear in a representative capacity such as attending a deposition, other discovery matter, negotiation or other meeting for the limited purpose of providing assistance to the lawyer.

COMMENT

[1] Both the necessary consequences of discipline or disability and the public trust and confidence in the adequacy of a self-regulated profession require that there be special rules on employment of former lawyers who have been disbarred or whose license has been suspended or transferred to disability inactive status, whether in this or any other jurisdiction.

[2] The Rule permits employing of certain suspended or disabled lawyers to do research, drafting or clerical work and not legal work and sets forth examples of permissible and impermissible activities. To that extent this rule replaces FEO 83-F-50. Among the impermissible activities are the practice of law or law business both of which are defined by judicial precedent and by TCA Title 23, Chapter 3, Part 1. The Rule does not preclude a lawyer from employing a suspended or disabled lawyer as a paralegal so long as the duties are consistent with subsections (b) (c) and (d).

[3] Nothing in this rule prohibits a lawyer who is disbarred from seeking to undertake activities permitted under this Rule through reinstatement under Tennessee Supreme Court Rule 9, Section 19 or through seeking to modify or alter a court order disbarring a lawyer.

[4] The lawyer’s responsibility to supervise a formerly licensed lawyer under this Rule may be enhanced by the circumstances under which the employee was formerly licensed to practice law. In addition, special circumstances may be addressed in an order suspending a license or transferring a license to disability inactive status and for lawyers seeking reinstatement of their active status under Tennessee Supreme Court Rule 9 § 19.

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DEFINITIONAL CROSS-REFERENCES

"Firm" and "Law Firm" See RPC 1.0(d)

"Knows" See RPC 1.0(f)

"Law- Related Services" See RPC 5.7 (b)