

**Rule 5.3.1 [1-311] Employment of Disbarred,  
Suspended, Resigned, or Involuntarily Inactive Lawyer  
(Commission's Proposed Rule Adopted on June 26, 2015 – Clean Version)**

- (a) For 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 §§ 6007, 6203(d)(1), or California Rule of Court 9.31(d).
  - (4) "Resigned member" means a member who has resigned from the State Bar while disciplinary charges are pending.
  - (5) "Restricted lawyer" means a member whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.
- (b) A lawyer shall not employ, associate in practice with, or assist a person\* the lawyer knows\* or reasonably should know\* is a restricted lawyer 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 that constitute the practice of law.
- (c) A lawyer may employ, associate in practice with, or assist a restricted lawyer 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 lawyer in attending 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, associating in practice with, or assisting a person\* the lawyer knows\* or reasonably should know\* is a restricted lawyer, 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 restricted lawyer will not perform such activities. 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, associating with, or assisting 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, associate in practice with, or assist a restricted lawyer 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) When the lawyer no longer employs, associates in practice with, or assists the restricted lawyer, the lawyer shall promptly serve upon the State Bar written\* notice of the termination.

### **Comment**

If the client is an organization, the lawyer shall serve the notice required by paragraph (d) on its highest authorized officer, employee, or constituent overseeing the particular engagement. (See Rule 1.13.)

**Proposed Rule 5.3.1 [1-311] Employment of Disbarred, Suspended,  
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Synopsis of Public Comments**

**TOTAL = XX**    **A = X**  
**D = X**  
**M = X**  
**NI = X**

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI <sup>1</sup>	Rule Section or Cmt.	Comment	RRC Response
2016-25a	McCue, Martin	No	M	5.3.1	Some parts of this rule should also apply to employment of lawyers who have voluntarily elected inactive status. Using only the concept of “involuntary inactivity” creates a gap in the rule that does not make sense. A person who elects inactive status should not practice while inactive. They need not be “restricted” by an outside authority.	Proposed rule 5.3.1 is intended to regulate lawyers who are under some form of disciplinary sanction not to practice law, i.e., those lawyers who are <i>involuntarily</i> inactive. Proposed rule 5.5 (b), on the other hand, regulates activities by those lawyers who are not admitted to practice law in California for other reasons, including those who <i>voluntarily</i> go on inactive status. The strict regimen of 5.3.1 is inappropriate for this latter group of lawyers, who can voluntarily elect to go back on active status.

<sup>1</sup> A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED