NEW YORK STATE BAR ASSOCIATION
ANNUAL MEETING

COMMITTEE ON PROFESSIONAL DISCIPLINE
ETHICS PRESENTATION

"CONDUCT OF SUSPENDED AND DISBARRED ATTORNEYS"

JANUARY 24, 2001

NEW YORK MARRIOTT MARQUIS

MONOGRAPH
PREPARED BY:

MICHAEL S. ROSS, ESQ.
LaROSSA & ROSS
41 MADISON AVENUE
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A. Introduction.

One of the most difficult issues relating to the suspension and disbarment of attorneys in New York State, is precisely what such attorneys can do after they are formally prohibited by Court order from "practicing law." But unlike other states -- which either through statute or court decisions clearly define the "practice of law" in the context of post-suspension or post-disbarment conduct -- guidance in New York on this issue is scant and unpersuasive to say the least.

The lack of clarity in New York on this issue creates serious problems. For the suspended or disbarred the attorney, the lack of clarity places him or her in the position of possibly violating the law and court order by engaging in prohibited practices. For the attorney who wishes to employ the suspended or disbarred attorney, there is the fear of violating of Disciplinary Rules and perhaps statutes as well. Finally, the possibility of engaging in the

prohibited practice of law by a suspended or disbarred attorney jeopardizes the possibility of future reinstatement.

As discussed below, I submit that that there is inadequate guidance by the Appellate Divisions concerning the acceptable and unacceptable employment of attorneys who are suspended or disbarred, with respect to activities such as the administrative and nonlegal work which is done on a day-to-day basis in law offices. In analyzing this issue, I have intentionally not utilized the term "paralegal" in my discussion, because that term is subject to a very broad, and often confusing, interpretation. Indeed, paralegal institutes currently train their students to do legal research, draft memoranda, meet with clients, cover calendar calls, etc., all ostensibly under the supervision of an attorney. In this regard, if one were to consider whether a suspended or disbarred attorney could act as a paralegal in the broadest sense of the word, then surely the answer would be "no."

Instead, in this monograph I have utilized the notion of a suspended or disbarred attorney performing purely administrative work on an "in-office" basis, with the understanding that this individual is not drafting legal documents, filling out legal-type documents, performing legal research, interacting with clients, etc. Viewed in this purely administrative setting, and not in the context of the amorphous term "paralegal," the issue of what

administrative or nonlegal activities a suspended or disbarred attorney may perform can be more clearly understood and analyzed.

As set forth below, with regard to the issue of whether a suspended or disbarred attorney can do in-office administrative work, the law gives little guidance; bar associations give either no guidance or ego-driven ipse dixits; and court decisions seem divergent and of little use. At the end of the day, because of the Judiciary Law's silence on the issue, it appears that although a suspended or disbarred attorney cannot perform acts traditionally associated with the practice of law, he or she is legally permitted to perform administrative-type work that does not involve interacting with attorneys or clients in a manner traditionally associated with giving legal opinions, drafting legal papers, etc.

B. The Relevant Law.

The Rules of the Appellate Division, First Department (22 N.Y.C.R.R. section 606.13(a) (and its counterpart in the other Appellate Divisions)), state that a disbarred, suspended or resigned attorney must comply fully and completely with the letter and spirit of sections 478, 479, 484 and 486 of the Judiciary Law relating to attorney practice.[1] Section 478 establishes that it is

[1]Section 603.13(a) states in pertinent part:

> Disbarred, suspended and resigned attorneys shall comply fully and completely with the letter and spirit of sections 478, 479, 484
>
> (continued...)

unlawful for any person to practice law or to appear as an attorney or counselor, to furnish attorneys or counsel, or to otherwise hold himself out as an attorney without having been admitted to practice in New York; section 479 prohibits the solicitation of business on behalf of an attorney; section 484 establishes that non-lawyers may

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(...continued)

> and 486 of the Judiciary Law relating to practicing as attorneys at law without being admitted and registered, and soliciting of business on behalf of an attorney at law and the practice of law by an attorney who has been disbarred, suspended or convicted of a felony.

Section 478 of the Judiciary Law states:

> It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself in a court of record in this state, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state . . . .

not appear in court, prepare any instruments affecting the disposition of property, prepare pleadings of any kind, or practice in any court or before any magistrate in New York courts of record. Under section 486 any attorney who has been disbarred, suspended or convicted of a felony and who "does any act forbidden by the provisions of this article" is guilty of a misdemeanor.

Pursuant to Judiciary Law section 90(2), the Appellate Division must insert into each suspension order a provision that the attorney must "thereafter ... desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee." Thus, a suspended attorney is prohibited from making an appearance "before any court, judge, justice, board, commission or other public authority" and from giving to another any opinion "as to the law or its application, or of any advice in relation thereto." Id.[2]

The Judiciary Law, however, is completely devoid of any definition as to what constitutes the "practice of law."

[2]Judiciary Law section 90, subdivision 2, requires that orders of suspension and disbarment include a provision that the individual "desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another." Subsection 2 continues to specifically address prohibited misconduct which clearly comes within the definition of law, such as appearing before a court and giving legal opinions. Thus, section 90(2) seems to define what is traditionally considered the unauthorized practice of law, but does not seem intended to prevent a suspended or disbarred attorney from acting as the agent or employee of an attorney, because to do so would prevent suspended or disbarred lawyers from being janitors or even painters in the employ of a law firm.

Furthermore, it does not provide any guidance as to what types of jobs a suspended or disbarred attorney may perform. Although the courts have made several case specific determinations as to what does or does not constitute the "practice of law," there is no consensus among the opinions as to what, in broad terms, is allowed pursuant to the Judiciary Law and thus, no rule for a suspended or disbarred attorney to follow.

The New York State Court of Appeals has defined the "practice of law" solely as it relates to the representation of clients or providing advice to clients. Specifically, the Court has held that "[t]he 'practice' of law reserved to duly licensed New York attorneys includes the rendering of legal advice as well as appearing in court and holding oneself out to be a lawyer. El Gemayel v. Seaman, 72 N.Y.2d 701, 536 N.Y.S.2d 406 (1988)(citing Spivak v. Sachs, 16 N.Y.2d 163, 166, 263 N.Y.S.2d 953 [1965]). The court has further defined the "practice" of law to include "advice or services ... rendered to particular clients" and not merely provided to the public in general. El Gemayel, 536 N.Y.S.2d 406, 409 (citing Matter of New York County Lawyer's Ass'n v. Dacey, 21 N.Y.2d 694, 287 N.Y.S.2d 422 (1967)), rev'g on dissenting opn. below 28 A.D.2d 161, 283 N.Y.S.2d 984 (holding that publishing a book on "How to Avoid Probate" does not constitute the unauthorized "practice of law").

Indeed, in 1992, the Court of Appeals held that publishing a law-related article and using the letters "J.D.," does not constitute the practice of law prohibited by a suspension order. Matter of Rowe, 80 N.Y.2d 336, 590 N.Y.S.2d 179 (Ct. App. 1992). In its discussion, the court defined "[t]he practice of law" as "the rendering of legal advice and opinions to particular clients" and held that the article, which addressed the right to refuse treatment, was permissible as an exercise of the First Amendment because it "sought only to present the state of the law to any reader interested in the subject" and "neither rendered advice to a particular person nor was intended to respond to known needs and circumstances of a larger group." Id. at 341, 590 N.Y.S.2d at 182.

The First Department has specified several areas which are considered the "practice" of law and are therefore beyond the permissible scope of conduct in which a suspended attorney may engage. However, these specified areas involve obvious violations of the rules. For example, an attorney's representation of a client while the attorney is subject to an order of suspension constitutes unauthorized practice and warrants immediate disbarment. See, e.g., Matter of Glassman, 126 A.D.2d 214, 513 N.Y.S.2d 685 (1st Dept. 1987)(suspended attorney represented a client in connection with the purchase of real estate); Matter of Kaufman, 105 A.D.2d 145, 483 N.Y.S.2d 291 (1st Dept. 1985)(suspended attorney represented client by, inter alia,

executing and submitting an affirmation to the court, preparing motion papers, and conducting examinations before trial); Matter of Javitz, 100 A.D.2d 288, 473 N.Y.S.2d 797 (1st Dept. 1984)(suspended attorney represented clients in real estate litigation); Matter of Teplin, 82 A.D.2d 296, 441 N.Y.S.2d 463 (1st Dept. 1981)(suspended attorney practiced law, maintaining a law office, business cards and letterheads thereby representing himself to be an attorney). Likewise, a suspended attorney who appears in court and participates at trial engages in the unauthorized practice of law, see, e.g., Matter of Anderson, 180 A.D.2d 146, 585 N.Y.S.2d 19 (1st Dept. 1992), as does an attorney who meets with and counsels clients. Matter of Becker, 95 A.D.2d 67, 465 N.Y.S.2d 33 (1st Dept. 1983).

Other "law-related" activities which have resulted in the disbarment of suspended attorneys include negotiating the purchase of a long-term leasehold, Matter of Brill, 131 A.D.2d 3, 519 N.Y.S.2d 816 (1st Dept. 1987); acting as house counsel of a brokerage firm in which the suspended attorney has a controlling interest, Matter of Olitt, 145 A.D.2d 273, 538 N.Y.S.2d 537 (1st Dept. 1989); and negotiating to obtain witness protection for a friend and former client, Matter of Goldberg, 190 A.D.2d 269, 599 N.Y.S.2d 225 (1st Dept. 1993). See also Matter of Parker, 241 A.D.2d 208, 670 N.Y.S.2d 414 (1st Dept. 1998)(holding that an attorney violated D.R. 3-101(A) by aiding a non-lawyer in the

practice of law by allowing a suspended attorney to prepare a contract of sale and appear on the seller's behalf to postpone a foreclosure sale and recognizing "that there is no clear cut definition of the unauthorized 'practice of law' and the nature and scope of activities appropriately permissible to [non-lawyers] ....").

In Matter of Olitt, the attorney had been suspended from the practice of law by the Appellate Division, Second Department. However, he remained in good standing in the United States District Courts for the Southern and Eastern districts where he continued to practice law. 538 N.Y.S.2d 537, 538. During his suspension from the state courts, he acted as house counsel for a brokerage firm in which he had a controlling interest. In order to do so, he registered as an attorney with the New York State Office of Court Administration without providing information about his suspension and without indicating that his practice was limited to the federal courts or federal matters. Id. at 539. In addition, he appeared for the brokerage firm in a law suit filed in State Supreme Court, New York County, and filed the necessary legal papers in connection with the suit in his own name. Id. He further practiced law by providing legal advice to a client who had a claim against another broker and drafting leases and contracts for the brokerage firm. Olitt argued that he had appeared only in arbitration hearings before the New York Stock Exchange on behalf of the company, which,

as a result of his interest in the company, was a pro se appearance and therefore, was allowed under the rules. He further argued that a lay person may practice before the Arbitration Panel. Nonetheless, the Court viewed his conduct as the unlawful "practice of law" and ordered that he be disbarred. Id.

In In re Rosenbluth, a suspended attorney sought permission to continue operating a calendar watching service for New York attorneys during the course of his suspension. 36 A.D.2d 383, 320 N.S.2d 839, 840 (1st Dept. 1971). In its opinion, the First Department importantly noted that "[a] suspended or disbarred attorney holds approximately the same status as one who has never been admitted ... and there are some law related activities which such attorneys have been permitted to engage in." 320 N.Y.S.2d at 840-41 (internal citations omitted; emphasis added). The court listed several permissible activities which suspended or disbarred attorneys may engage in, such as: "aiding an attorney in good standing in the preparation of a law book (and his name may be used)"; "soliciting lawyers for process serving business to be turned over to a process serving firm"; and associating as a principal with a process serving company or being employed by an insurance company as an investigator or adjuster." 320 N.Y.S.2d at 841 (citing A.B.A. Opinions of Committee on Professional Ethics and Grievances Informal Decision C-566 (1962); Association of the Bar of the City of New York, No. 132, No. 147 (1930), respectively).

Stating that the activities listed above appeared to be "equally, if not more, law-related than respondent's chosen activity," the Rosenbluth court granted the request and allowed the suspended attorney to continue operating his calendar watching service. 320 N.Y.S.2d at 841. However, the court also noted that the dissent, which did not agree that this activity was permissible, relied, in part, upon Matter of Katz, 35 A.D.2d 159, 315 N.Y.S.2d 97 (1st Dept. 1970), which involved the employment of a suspended attorney by a City Marshal. The court ruled that "[a] City Marshal's 'work is closely allied with the courts and judicial proceedings' and 'his duties include the enforcement of court orders' and related activities .... Running a calendar watching service does not entail such duties or activities." 320 N.Y.S.2d at 841 (citing Katz, 35 A.D.2d at 160, 315 N.Y.S.2d at 98).

This line of cases seem to be reflected in the May 24, 2000 decision by Justice Caesar Cirigliano in People v. Jakubowitz, Ind. No. 3867/99 (Bronx Co. Sup Ct. 2000). In Jakubowitz, the defendant was an attorney who had been disbarred in 1993 by the First Department, but who met with members of the public, held himself out as an attorney and undertook to prepare, file and prosecute a mechanic's lien on behalf of a client, and was to be paid $4,000.00 for these efforts. He was indicted for violating Judiciary Law section 478, proscribing the unauthorized practice of law. The defendant moved to dismiss the indictment on the ground that

Section 478 was unconstitutional vague. Justice Cirigliano noted that while

> Judiciary Law section 478 is not a model of clarity, it clearly prohibits a non-licensed individual from practicing law in this state as follows: to appear as an attorney in a court of record in this State, to render legal services, or to hold himself out as being entitled to practice law as aforesaid or in any other manner. Moreover, the prohibited practice of law includes the rendering of legal advice and preparation of legal papers in New York even if performed out of court with respect to foreign law. [citations omitted] While there are grey areas in the law -- such as attending a conference in New York and negotiating there on behalf of a client [citation omitted] -- which might render the prosecution of a defendant who inadvertently overstepped such bounds inappropriate on constitution grounds, this is not such a case. Since at least 1957, the preparation in New York of legal documents for filing out of state and the hold out of oneself as an attorney has been prohibited. [Citation omitted] Defendant cannot therefore claim surprise.

Having discussed the various decisions by the courts on the issue of the unauthorized practice of law by suspended and disbarred attorneys, let me turn my attention to the fog-like thicket of bar association opinions which relate to this issue. The New York City Bar Association's Opinion 1998-1 (1998) addressed, albeit in not a particularly helpful manner, the question of "[u]nder what circumstances, if any, may an attorney in good standing employ a disbarred or suspended attorney to work in a law office." It concluded that:

> [I]t is clearly improper for a lawyer or law firm to employ a disbarred or suspended attorney in any capacity related to the practice of law. What acts constitute the

> unauthorized practice of law is a question of law for the Appellate Division.

Association of the Bar of the City of New York, No. 1998-1.

New York City Opinion 1998-1 noted that New York County Opinion 666 (1985) "is not as deferential, holding that an attorney may not employ a disbarred lawyer as a law clerk whose functions would include the conduct of pre-trial depositions and the attendance at real estate closings on behalf of the inquiring attorney." Association of the Bar of the City of New York, No. 1998-1. That City Bar Opinion also stated that "Nass. Co. 92-15, suggested that an adjudication of the question of what a disbarred or suspended attorney may do in a specific instance might be obtained by motion in the Appellate Division." Furthermore, the City Bar Opinion concluded by noting:

> It is worth repeating that N.Y. County 666 declined to opine on whether a disbarred lawyer might properly be employed by a law firm as a process server, messenger, secretary[3] or investigator; and we concur that only the Appellate Division, on proper application, can decide such an issue or, for that matter, whether there are circumstances in which a disbarred attorney might be able to act as a paralegal while 'desist[ing] and refrain[ing] from the practice of law in any form.
>
> ...

[3]In many ways, the question of whether a suspended or disbarred attorney may work in a law office as a "secretary" is closely related to the question of whether a former attorney may perform in-office administrative work -- which is the key unanswered question in this area.

> It is clearly improper for a lawyer or law firm to employ a disbarred or suspended attorney in any capacity related to the practice of law. What acts constitute the unauthorized practice of law is a question of law for the Appellate Division."

Association of the Bar of the City of New York, No. 1998-1. (Emphasis added.)

In Nassau County Opinion No. 95-15 (1995), the Committee on Professional Ethics of the Bar Association of Nassau County addressed the "[p]ropriety of employing a suspended attorney to draft pleadings, contracts, trust agreements and wills, and to perform legal research as a 'litigation analyst,' and [the] duty to report [the] employing attorney and/or suspended attorney to appropriate authorities." The Opinion, citing American Bar Association ("A.B.A.") Opinion 1434, unpublished Opinion 7 of the A.B.A. Ethics Committee, and Opinion 666 of the New York County Lawyers' Association, concluded that "the statutory and code provisions ... impliedly place greater restrictions upon the ability of a disbarred lawyer from earning a living by use of his or her training and talent and experience than are encountered by non-lawyers generally."

The Nassau County Opinion, noted that notwithstanding Judiciary Law §§ 478, 486 and 90(2) and D.R. 3-101(A), Ethical Consideration 3-6 contemplates that it is permissible for lawyers to "delegate[] tasks to clerks, secretaries and other lay persons

acting under the attorneys' supervision."[4] Citing to its previous opinion, No. 92-15, the Opinion stated that "these are questions of law that are beyond the jurisdiction of this Committee" and declined to respond to the inquiry. However, the Committee noted that "the inquiring attorney may be able to seek guidance on this issue from the Appellate Division that issued the order of suspension." But see American Bar Association, Informal Ethics Op. 1434 (stating that a lawyer may not employ a disbarred attorney, even to perform "nonlegal" work such as office work".)

In addition to the confusion stemming from the New York Judiciary law and various opinions issued by courts and Bar Associations within the state, the conduct which constitutes the unauthorized practice of law varies greatly in other jurisdictions across the country. See Charles W. Wolfram, Modern Legal Ethics § 15.1.4 (1986). In general, a suspended lawyer has no greater power to practice law than a non-lawyer, and the same conduct constitutes unlawful practice for both. See, e.g., In re Eisenberg, 96 Wis.2d 342, 291 N.W.2d 565 (1980) (appearance before administrative agency on behalf of corporation of which suspended

[4]D.R. 3-101(A) states that "[a] lawyer shall not aid a non-lawyer in the unauthorized practice of law." Ethical Consideration 3-6 states that "[a] lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently."

lawyer was president and sole shareholder is unauthorized practice); Farnham v. State Bar, 17 Cal.3d 605, 131 Cal. Rptr. 661, 552 P.2d 445 (1976) (holding that suspended lawyer has no greater power to practice law than a non-lawyer and that by drafting legal documents and giving legal advice suspended lawyer engaged in unauthorized practice).

By way of non-exhaustive examples, a number of states permit suspended attorneys to act as law clerks, including Florida, California, Delaware, Kansas, Michigan, North Dakota and Oregon. In re Mitchell, 901 F.2d 1179, 1186 and n.11-n.17 (3d Cir. 1990); see, e.g., In re Wilkinson, Kan. S.Ct., No. 67, 413 (1992)(holding that "[a] suspended attorney is permitted to work as a law clerk, investigator, paralegal, or in any capacity as a non-lawyer for a licensed attorney-employer if the suspended lawyer's functions are limited to work of a preparatory nature under the attorney-employer's supervision and does not involve client contact")(emphasis added); Florida Bar v. Thompson, 310 So.2d 300, 87 A.L.R.3d 272 (Fla. 1975)(holding that a suspended attorney may act as "a law clerk or investigator for members in good standing of The Florida Bar")[5]; In re McKelvey, 82 Cal.App. 426, 255 P. 834

[5]But, in Florida, an attorney "practiced law" in violation of an order removing him from the roster of attorneys authorized to practice in bankruptcy court by assisting debtors in preparation of their bankruptcy schedules and petitions and by advising them regarding their bankruptcy. In re Corbett, 145 B.R. 332 (Bkrtcy.
(continued...)

(1927)(holding that attorney did not violate suspension by working as an employee of another attorney performing research, drafting pleadings, and writing briefs)(emphasis added); Matter of Frabizzio, 508 A.2d 468 (Del. 1986)(holding that a suspended lawyer "may perform the tasks usually performed by law clerks and by paralegals ... except that he may not have direct contact as a law clerk or paralegal with clients, witnesses, or prospective witnesses"); Grievance Administrator v. Chappell, 418 Mich. 1202, 344 N.W.2d 1 (1984)(holding that Attorney Discipline Board's power to suspend attorney does not include power to bar respondent from "working as an agent, clerk or employee of a licensed attorney").[6]

(...continued)
M.D. Fla. 1992).

[6]In Colorado, providing consulting services involving legal areas or issues is not the "practice of law" if a consultant does not enter an appearance or perform direct legal services. Dietrich Corp. v. King Resources Company, 596 F.2d 422 (10th Cir. 1979). The collection of claims is also not considered the practice of law. Sequa Corp. v. Lititech, Inc., 780 F. Supp. 1349 (D. Colo. 1992)(citing Thibodeaux v. Creditor's Service, Inc., 191 Colo. 215, 551 P.2d 714 (1976). A management firm acting as a company's agent to supervise, manage and direct the litigation of approximately 1800 separate products liability cases was not practicing law, even though it coordinated and managed attorneys who submitted periodic reports and approved costs and attorney fees before they were incurred, where the firm neither entered an appearance in the cases nor rendered direct legal services or advice. Sequa Corp., 780 F. Supp. 1349. In Illinois, a disbarred attorney may work as a law clerk. See In re Schelly, 94 Ill.2d 234, 446 N.E.2d 236 (1983) (lawyer hired disbarred attorney as law clerk to prepare case files, update docket book, and request continuances; instead clerk actually tried cases. The lawyer was found to have aided in the unauthorized practice of law by failing to supervise -- but the
(continued...)

Indeed, the Third Circuit has held "that an attorney suspended from the bar of this court can have no contact with this court, its staff, or a client in any proceeding before this court, except if the attorney is representing only himself or herself as a party[7], but may act as a law clerk or legal assistant under the close supervision of a member in good standing of the bar of this court." Mitchell, 901 F.2d at 1185 (emphasis added).

Additionally, the Fifth Circuit has stated that "a suspension amounts to a temporary disbarment. Suspended lawyers ... can research law but can't have any client contact." Christi Harlan and Milo Geyelin, Suspended Lawyer Held In Criminal Contempt For Continuing Practice, Wall St. J., May 8, 1992, at B7 (citing In re Strauss, 5th Cir., 91-3446). In In re Strauss, the suspended

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(...continued)
court did not fault him for hiring the disbarred attorney as a clerk.) However, the drafting of a simple complaint and uncomplicated petition for dissolution of marriage, which required some degree of legal knowledge or skill constituted the practice of law under Illinois law. U.S. v. Hardy, 681 F. Supp. 1326 (N.D. Ill. 1988). In New Mexico, laypersons may perform legal services when they are incidental to another transaction only when "difficult or doubtful legal questions are not involved." State Board of New Mexico v. Guardian Abstract and Title Co., Inc., 91 N.M. 434, 575 P.2d 943 (1978). Under Tennessee state law, the unauthorized "practice of law" is limited to an appearance as an advocate in a representative capacity. T.C.A. §§ 23-3-101, 23-3-103; In re Clemmons, 151 B.R. 860 (Bkrtcy. M.D. Tenn. 1993).

[7]The right to litigate pro se does not include the right of a suspended lawyer to litigate on behalf of anyone else as a co-party. See WOLFRAM, supra, p. 11, § 15.1.4.

attorney was disbarred for overtly engaging in the practice of law during the period of his suspension. Subsequent to his suspension, "Strauss hired two associates to handle his case load, oversaw their work, solicited clients, participated in depositions, negotiated and approved settlements and earned fees." Id.

However, a suspended lawyer may not work as a law clerk in Illinois and New Jersey. Mitchell, 901 F.2d at 1186, n.18-19; see also In re Kuta, 86 Ill.2d 154, 427 N.E.2d 136 (1981) (suggesting that suspended lawyers may be barred from activities legitimately performed by non-lawyers if such activities are believed by the public to be customarily performed by lawyers); In re Robson, 575 P.2d 771 (Alaska 1978)(because of prior recognition as a lawyer, suspended lawyer must be particularly prudent in avoiding appearance of holding self out as lawyer).

In addition, lawyers are generally required to refrain from aiding or encouraging the unauthorized practice of law. See, e.g., Matter of Gajewski, 217 A.D.2d 90, 634 N.Y.S.2d 704 (1st Dept. 1995)(attorney disciplined for allowing a disbarred attorney to affix her name to affirmations included in court papers); Matter of Takvorian, 240 A.D.2d 95, 670 N.Y.S.2d 211 (2d Dept. 1998)(holding that even inadvertently aiding a non-lawyer in the practice of law can warrant professional discipline); Matter of Reily, 101 A.D.2d 351, 475 N.Y.S.2d 473 (2d Dept. 1984)(attorney disciplined for "aiding a suspended attorney in the unauthorized practice of law").

The discussion above demonstrates that this area of the law is unclear.[8] Suspended or disbarred attorneys are left in a precarious situation not knowing what type of work they can or cannot perform, even though the law seems to permit on its face the performance of administrative-type work in a law office. This lack of clarity has, in effect, disenfranchised suspended and disbarred attorneys from performing work and earning a living even in situations where the individual is not practicing law as that term is defined by existing law, but rather seeks to perform in-office administrative work where there is little risk to the public.

C. Some Closing Thoughts.

Irrespective of the lack of clarity concerning the reach of section 478 and 22 N.Y.C.R.R. section 606.13(a), and its counterpart in the other three Judicial Departments, there is another way in which the Disciplinary and Grievance Committees, as well as the Appellate Divisions, have in the past, imposed their view concerning an expansive reading of the notion of the unauthorized practice of law. There appears to be an institutional view on quasi-paralegal-type conduct. Stated simply, some disciplinarians have adopted a view over the years -- which have originated with the courts or conversely, been adopted by the

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[8] See generally "Legal Background" to Rule 5.5 of the Annotated Model Rules of Professional Conduct,(4th ed. (1999), pp. 457-58 (collecting cases from various jurisdictions with diverging views on the issue).

courts -- that when a suspended or disbarred attorney works in a law firm performing in-office administrative tasks, this will either cause the committee/court to look askance at the Petition for Reinstatement, or to at least examine the bona fides of the application with greater care.

Obviously, the control over the reinstatement process seems a very poor substitute for a priori guidance by the courts. It makes little sense for an attorney to guess which standards will be applied at the end of a period of suspension or disbarment. Moreover, there seems to be little consensus as to what exactly the views of the Appellate Divisions are, and what institutional view will be exercised by the disciplinary or grievance committee in question.

From all of the discussion above, it is clear that there is a need for clarity concerning what suspended and disbarred attorneys can do during the period of their suspension. Moreover, based upon the discussion, a compelling case can be made that if a broad interpretation of the unauthorized practice of law is to be adopted (i.e., broad enough to include simple in-office administrative work), then such an approach would require an amendment to the Judiciary Law.