

Practical Considerations for Those Facing Suspension or Disbarment

Facing suspension or disbarment may look like the end of the road at the time, but it can often be the beginning of a new (and sometimes) improved chapter in a formerly admitted attorney's professional and personal life.

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For most individuals who get caught up in the attorney discipline system, a suspension or disbarment can feel like the end of the world. However, in practical term, it is not the end of the world, nor for most people can it be. Life goes on. Attorneys facing suspension or disbarment need to figure out how they are going to deal with the next chapter in their lives and feed themselves and their families.

Formerly admitted attorneys, those who have been disbarred or suspended, can find gainful employment in the legal world and elsewhere. Remember that attorneys are highly trained critical thinkers, and the skill sets that make successful attorneys can be very attractive to many employers.

Moreover, a suspension or disbarment is not necessarily the end of a legal career. Most attorney suspensions are “administrative” suspensions, meaning that the suspensions are due to a failure to timely or properly complete the attorney registration process or failure to complete required CLEs. These suspensions can usually be dealt with quickly, as long as the suspen-

sion is not ignored, the attorney complies with the requirements for formerly admitted attorneys, and the suspended attorney does not engage in the practice of law while suspended. Reinstatements from suspensions for less than a year are also relatively routine and fairly simple, as long as the attorney has complied with the requirements for suspended attorneys.

In cases where a suspension exceeds a year, the process is more complicated, but many reinstatement petitions are successful. There are bad acts that can cause the Pennsylvania Supreme Court to determine that misconduct was so extreme as to bar readmission itself, but those cases are few and far between. Attorneys are readmitted each year from both multiple-year suspensions and disbarments. So far this year, published opinions from the Disciplinary Board show two reinstatements granted from disbarment, six reinstatements from suspensions exceeding one year, one reinstatement from a six-month suspension, and three denials of reinstatements.

How to Handle Becoming a Formerly Admitted Attorney

Pennsylvania Rule of Disciplinary Enforcement 217 is the guiding light for formerly admitted attorneys. The first thing to keep in mind is that under Rule 217(d)(1), orders for suspension, disbarment, administrative suspension, or transfer to inactive status usually take effect 30 days after they are entered (unless due to disability, retroactive, or otherwise specified). If you receive an order of administrative suspension, it can be easily be taken care of within that 30-day window before the order becomes effective. All that is required to keep the order from going into effect is a payment of the fees owed and submission of a relatively simple form. However, once the order becomes effective, you have to stop practicing as of the effective date and, to practice again, you must submit proof that you have complied with all of the requirements of Rule 217.

Rule 217 requires formerly admitted attorneys to promptly give notice of their suspension or disbarment to all clients represented in pending matters, including litigation and administrative proceedings, and the attorneys for each adverse party in litigation or proceedings, by use of the Forms DB-23 (nonlitigation notice) and DB-24 (litigation notice). These forms can be sent by any method that provides proof of receipt. They may be delivered in person, but the attorney must secure a signed receipt. They can be delivered by electronic mailing with some form of acknowledgment from the client other than a “read receipt” or by mailing by registered or certified mail return receipt requested. You are required to file copies of the notices

and receipts with the Board Prothonotary and to serve copies on the Office of Disciplinary Counsel (ODC). The formerly admitted attorney is also required to notify all persons or their agents/guardians to whom a fiduciary duty is or may be owed at any time after suspension and “all other persons to whom you may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that you continue as an attorney in good standing.”

The formerly admitted attorney must notify any other tribunal, court, agency or jurisdiction in which he/she is admitted to practice. If a client in a litigation matter does not obtain alternative counsel before the suspension takes effect, the attorney should move to withdraw.

If suspended for more than one year, disbarred, temporarily suspended under Rules 208(f) or 213(g), or placed on disability inactive status under Rules 216 or 301, the formerly admitted attorney must resign all appointments as personal representative, executor, administrator, guardian, conservator, receiver, trustee, agent under a power of attorney or other fiduciary position. On the other hand, if suspended for a year or less, the formerly admitted attorney is permitted to complete existing appointments and accept new appointments as personal representative, executor, administrator, guardian, conservator, receiver, trustee, agent under a power of attorney, or other fiduciary position. However, the formerly admitted attorney must give written notice of his suspension to appointing judges, courts and others and give all interested parties an opportunity to consider replacing the

attorney or enlisting another person to serve as the fiduciary.

If the formerly admitted attorney is suspended for more than one year, disbarred, temporarily suspended under 208(f) or 213(g), or placed on disability inactive status, then he is required to close every IOLTA, trust, client and fiduciary account and disburse or transfer all client and fiduciary funds. This is not required if a suspension does not exceed one year. Likewise, if suspended for more than a year or disbarred, the formerly admitted attorney is required to cancel all advertising (best practices includes taking down all web presence in your control— including removing all references to being an attorney from social media including Facebook and LinkedIn). It is important to maintain proof of compliance with these requirements in order to establish eligibility for reinstatement.

All formerly admitted attorneys are required to stop using any form of communication that expressly or implicitly conveys eligibility to practice law in the state courts of Pennsylvania, including but not limited to professional titles, letterhead, business cards, signage, websites and references to admission to the Pennsylvania Bar. If the formerly admitted attorney has an email address that implies he or she is a lawyer (jdoesq@lawtiger.com), then that email address must not be used after suspension. It is important to be vigilant and not have anything that identifies a formerly admitted attorney as “attorney” or “esquire.” Common oversites include social media, email addresses, and automatic signatures.

If suspended for more than a year or disbarred, the formerly admitted attorney is required to return to the Disciplinary Board his most recent Pennsylvania attorney’s license card and surrender all certificates of admission and certificates of good standing in his possession.

A formerly admitted attorney must not accept any new cases or retainers after entry of an order, but may wind up, complete, or transfer matters during the 30 days after the order. It is important to keep in mind that the other Rules of Professional Conduct still apply, so the formerly admitted attorney must not unilaterally dispose of cases. Clients must still make informed decisions about the disposition of cases (best practice is to get the client decision in writing). The formerly admitted attorney must also promptly provide successor counsel with the file. A formerly admitted attorney may not share in any fee for legal services performed by any other attorney, following suspension, but you may be compensated for the reasonable value of services rendered and disbursements incurred prior to the effective date of the suspension. The client should not have to pay any more than if there was no substitution of counsel required.

If suspended for more than one year or disbarred, the formerly admitted attorney must complete form DB-25d, statement of compliance within 10 days after the effective date of the order. The formerly admitted attorney must file DB-25d with the Board Prothonotary and serve a copy on the ODC. If suspended for one year or less or temporarily suspended under Pa. R.D.E. 214, the formerly admitted attorney must complete and file form DB-25ts, statement

of compliance within 10 days after the effective date of the order.

A formerly admitted attorney may not engage in any form of law-related activities except in accordance with the requirements of Pa. R.D.E. 217(j). If the formerly admitted attorney is engaged at a law firm, then notice must be provided to the board under Rule 217(f). The only law-related activities that may be conducted by a formerly admitted attorney are:

- Legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents.
- Direct communication with the client or third parties limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages.
- The formerly admitted attorney must clearly indicate in any communication that he or she is a legal assistant and identify the supervising attorney.
- Accompanying a member in good standing to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance.

Activities that formerly admitted attorneys are explicitly prohibited from engaging in include:

- Any law-related activity for a law firm, organization or lawyer if the

formerly admitted attorney was associated with that law firm, organization or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension.

- The note to this rule permits formerly admitted attorneys to engage in “general office support activities” in these offices- as long as they do not engage in “law-related” activities.
- Performing law-related services from an office that is not staffed by a supervising attorney on a full time basis.
- Performing any law-related services for any client who in the past was represented by the formerly admitted attorney.
- Representing himself or herself as a lawyer or person of similar status.
- Rendering legal consultation or advice to a client.
- Appearing on behalf of a client.
- Negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction.
- Receiving, disbursing or otherwise handling client funds.

Rule 217 is the guide for formerly admitted attorneys. Remember that completing these steps promptly, accurately, and completely will be important in the reinstatement process. If you do not promptly, accurately, and completely follow these steps, the ODC will hold it against you when you apply for reinstatement. It is

very important that you document all of these steps you took to comply with Rule 217.

Reinstatement of Formerly Admitted Attorneys

If a formerly admitted attorney is suspended for a year or less, reinstatement is not automatic, and the suspension continues until further order of court. However, the process for reinstatement is quite simple requiring only the submission of appropriate paperwork and payment of the required fee. Under Pa. R.D.E. 218(g)(1), after the term of suspension has expired, the formerly admitted attorney file a verified statement with the board and a filing fee. The verified statement must certify the formerly admitted attorney complied with all the terms and conditions of the order of suspension and of Rule 217, that the formerly admitted attorney paid in full any costs taxed by the board, and the formerly admitted attorney has made any required restitution to the Pennsylvania Lawyers Fund for Client Security.

Upon receipt of the verified statement, the board will certify such fact to the Supreme Court, which will enter an order reinstating the attorney to active status. Rule 218(g)(1) does not apply if:

- Other formal disciplinary proceedings are pending or have been authorized against the attorney.
- The attorney was on retired status, inactive status or administrative suspension for more than three years prior to the suspension order.
- The attorney has not been on active status for more than three years

due to a combination of retired status, inactive status, administrative suspension and/or a term of suspension not exceeding one year and have not been on active status at any time within the three-year period preceding the entry of the order.

- The order of suspension has been in effect for more than three years.

If the formerly admitted attorney was on retired status, inactive status or administrative suspension at the time of the disciplinary suspension, he may file a verified statement and request to be returned to that prior status.

If suspended for more than a year and a day or disbarred, then the formerly admitted attorney must apply for reinstatement. If disbarred, the formerly admitted attorney may not apply for reinstatement until five years after disbarment (unless the disbarment was reciprocal or for disability). If suspended, the formerly admitted attorney may file for reinstatement up to nine months prior to expiration of suspension. However, reinstatements tend to be more successful (at least anecdotally) if the formerly admitted attorney takes some time after suspension is concluded before filing.

An application for reinstatement requires a formerly admitted attorney to file a petition for reinstatement with the Disciplinary Board and a reinstatement questionnaire (Form DB-36). It is important to note that any error or omission in the reinstatement questionnaire will be used by the ODC as evidence for why the attorney is not fit to resume practice. A formerly admitted attorney seeking

reinstatement has the burden of demonstrating by clear and convincing evidence that he/she has the “moral qualifications, competency and learning in law required for admission to practice law.” The formerly admitted attorney:

- Must have paid all fines/restitution and money owed to Lawyers Fund for Client Security; must complete 36 hours of PA CLE courses, 12 of which must be in ethics, and take the Bridge the Gap course.
- Must attach copies of all state and federal tax returns/transcripts during period of suspension/disbarment.

During the suspension/disbarment, it is important to create a record to tell the story of why the formerly admitted attorney is worthy of reinstatement. It is important to maintain learning, and the formerly admitted attorney is well served by keeping track of periodicals regularly read and should consider keeping a journal of what they have read and learned during the period of discipline. It is a good idea to take more CLEs than required. It is important that the formerly admitted attorney tell people he/she wants to use as character witnesses about the circumstances that led to discipline. The formerly admitted attorney should take ownership of what he/she did wrong so in these discussions so their witnesses can truth-fully testify about the formerly admitted attorney’s understanding of the problem and remorse.

Other things that can be done to increase the chance of reinstatement include volunteering; seeking help for emotional/mental health issues and/or dependency/addiction issues; joining communities such as church, home-and-school associations, the volunteer fire department, the public library, etc. An extraordinary step would be to attempt to publish an article on how not to do what the formerly admitted attorney did and lessons learned in the disciplinary process.

Facing suspension or disbarment may look like the end of the road at the time, but it can often be the beginning of a new (and sometimes) improved chapter in a formerly admitted attorney’s professional and personal life. For some, the hard-stop and reboot of discipline can be just what is needed to fix serious problems. If facing these issues, try to face them head-on and put yourself in the best position to succeed in the future.



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