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2 (This opinion is a DRAFT Opinion and is subject to revision or withdrawal
3 until it is finalized by the Ethics Committee – October 5, 2009)
4

5 LEGAL ETHICS OPINION 1852

6 EMPLOYMENT LIMITATIONS
7 FOR SUSPENDED/REVOKED
8 LAWYERS

9 In this hypothetical, Attorney C was a partner with Abbott, Booth & Costello from 1990
10 through 2000. Attorney C formed a new law firm in 2000, Costello, Dell & Edwards. Attorney
11 C resigned from Costello, Dell & Edwards on May 15, 2007, which is now Dell & Edwards. On
12 May 15, 2007, Attorney C was convicted of a felony for alleged actions taken on behalf of a
13 client while employed by Abbot, Booth & Costello in 1995. As of yet, Attorney C has not been
14 contacted by the Virginia State Bar and still holds a valid Virginia State Bar license. Attorney C
15 assumes his license will be suspended or revoked in the future and seeks advice on the
16 permissible extent of his involvement with both former firms and other law firms, such as
17 Xander, Young & Zimmer, where there has been no past association by Attorney C. Attorney C
18 also seeks advice on his ability to own and operate a company that provides non-legal project
19 management and business management services and whether the entity can enter into contracts
20 and provide services to his former law firm and/or any other lawyers, law firms or professional
21 corporations.
22

23 QUESTIONS PRESENTED
24

25 1) Which of these dates triggers the employment prohibition in Rule 5.5(a): (i) the date of
26 the alleged acts which resulted in a felony conviction; (ii) the date of the felony
27 conviction; or (iii) the date of suspension or revocation by the Virginia State Bar? More
28 specifically, does Rule 5.5(a) prohibit Dell & Edwards from employing Attorney C
29 during the term of Attorney C's suspension or revocation?
30

31 2) Does Rule 5.5(b) prohibit Xander, Young & Zimmer from employing Attorney C in a
32 capacity other than "consultant, law clerk or legal assistant" and can the firm permissibly
33 undertake the representation of former clients of Attorney C during the term of his
34 suspension or revocation?
35

36 3) Is Attorney C prohibited from owning and operating, or simply being employed by,
37 Costello Management, LLC, an entity created to provide non-legal project management
38 and business management services? Can the entity enter into contracts and provide
39 services to either Attorney C's former law firm and/or any other lawyers, law firms or
40 professional corporations?
41

42 APPLICABLE RULES & OPINIONS
43

44 The appropriate and controlling rules relative to this hypothetical are Rules 5.5(a) and
45 (b).¹ Also pertinent to the Committee's analysis are LEOs 1260, 1490 and 1514.

¹ Rule 5.5. Unauthorized Practice Of Law; Multijurisdictional Practice of Law.

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47 ANALYSIS OF THE QUESTIONS PRESENTED

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50 In answering the first question, the propriety of Attorney C's employment by Dell &
51 Edwards is dependent upon the determination of the "date of the acts which resulted in
52 suspension or revocation." In your hypothetical, the alleged acts which resulted in suspension or
53 revocation are actions or omissions that occurred in the course of Attorney C representing the
54 client in 1995 that led to the felony conviction. Assuming this is correct and applying the "date
55 of the acts which resulted in suspension or revocation," i.e., 1995, Attorney C may not be
56 employed in any capacity by either of Attorney C's former law firms. In other words, the trigger
57 date for the employment prohibition in Rule 5.5(a) is really the date of the alleged misconduct
58 resulting in suspension or revocation of the lawyer's license, not the date of the felony conviction
59 nor the date that the Disciplinary Board suspends or revokes Attorney C's license. The actual
60 determination, however, of the "date of the acts which resulted in suspension or revocation" is
61 both a factual and legal determination outside the purview of this Committee.

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62

63 As to your second question, Rule 5.5(a) is precise in its prohibition of Attorney C
64 working "in any capacity" for a firm he had previously been associated with "at any time on or
65 after the date of the acts which resulted in a suspension or revocation." Further, Rule 5.5(b)
66 provides restrictions regarding the representation of Attorney C's former clients where Attorney
67 C is employed as a "consultant, law clerk or legal assistant." The prohibition in this rule clearly
68 bars Attorney C's employment as a "consultant, law clerk, or legal assistant," but is silent about
69 employment in other capacities in a law firm, i.e., bookkeeper, receptionist or office manager.
70 The Committee opines that Xander, Young & Zimmer may employ Attorney C in the capacities
71 specifically listed in Rule 5.5(b) as well as in any position or title, regardless of name, if the
72 work is typically performed by a "consultant, law clerk or legal assistant," however, the firm
73 then may not represent any former client of Attorney C or his former law firm.² Conversely, it
74 would be permissible under Rule 5.5(b) for Xander, Young & Zimmer to employ Attorney C in
75 any other capacity except as a "consultant, law clerk or legal assistant" and continue to represent
76 former clients of Attorney C or his former law firm.

76

(a) A lawyer, law firm or professional corporation shall not employ in any capacity a lawyer whose license has been suspended or revoked for professional misconduct, during such period of suspension or revocation, if the disciplined lawyer was associated with such lawyer, law firm, or professional corporation at any time on or after the date of the acts which resulted in suspension or revocation.

(b) A lawyer, law firm or professional corporation employing a lawyer as a consultant, law clerk, or legal assistant when that lawyer's license is suspended or revoked for professional misconduct shall not represent any client represented by the disciplined lawyer or by any lawyer with whom the disciplined lawyer practiced on or after the date of the acts which resulted in suspension or revocation.

² See LEO 1514. The Committee enumerated various functions that if performed by a suspended lawyer would be a violation of Rule 5.5(b) (DR:3-101(C)), which include: clerical duties involved in the preparation of Warrants, Garnishments, pleadings and other legal papers; communications with personnel in various Clerk's Offices; communication with personnel employed by collection clients; routine duties normally associated with debt collection; routine accounts of money collection on behalf of collection clients; and calculation of fees and preparation of bills.

77 In response to question three, this Committee opined in LEO 1260 that Rule 5.5(a)
78 (DR:3-101(B)) would act as a bar to a law firm's retention of an adjusting firm where the firm's
79 former disbarred partner was "the Chief Executive Officer providing administrative services to
80 the insurance adjusting company and the specific employee who would provide to the law firm
81 the services as described.... The Committee is of the view that the rule expressly prohibits
82 former attorney 'X' from rendering any services to the two attorneys who are currently principals
83 in the law firm of A, B, and C but who were formerly associated in the law firm which was
84 founded by former attorney 'X.'" LEO 1260.

85
86 In LEO 1491, however, the Committee opined that a lawyer who only provided sporadic
87 referrals to a law firm, together with a sublease arrangement, was not in "association" with the
88 law firm as to prohibit the lawyer from later working for the law firm or owning an interest in a
89 title company that provides non-legal services to clients of the law firm. Consequently, relying
90 on the analysis in these former opinions, Attorney C cannot be associated or employed in any
91 capacity with a company that provides services to Dell & Edwards; however, nothing would
92 prohibit Attorney C from owning or being employed by an entity that provided non-legal
93 services to any other law firm or company.

94 95 CONCLUSION

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97 Rule 5.5(a)'s language "the date of the acts which resulted in suspension or revocation"
98 means the date of the alleged misconduct or acts upon which the lawyer's suspension or
99 revocation is based. Determination of the actual date is both a factual and legal determination
100 made by a disciplinary tribunal and beyond the Committee's purview.

101
102 A law firm may not employ *in any capacity* a suspended or revoked lawyer if the
103 disciplined lawyer was associated with that firm on or after the dates of the acts which resulted in
104 suspension or revocation. A law firm not subject to the hiring prohibition in Rule 5.5 (a) may
105 hire the disciplined lawyer as a consultant, law clerk or legal assistant provided the hiring firm
106 does not then represent any former or current clients of the disciplined lawyer or clients of the
107 lawyers or law firms prohibited from hiring the disciplined lawyer in any capacity.

108
109 Further, nothing would prohibit the suspended or disbarred lawyer from owning or being
110 employed by a business providing non-legal services as long as that business did not provide
111 services to one of the lawyer's former law firms.

112
113 This opinion is advisory only and not binding on any court or tribunal.
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