

**FREQUENTLY ASKED QUESTIONS (FAQS) FOR LAWYERS
WHO ARE SUSPENDED, DISBARRED, INACTIVE, OR HAVE RESIGNED
FROM MEMBERSHIP (“DISQUALIFIED LAWYERS”)**

[These FAQs are neither legal advice nor an ethics opinion, and are not a substitute for your obligation to review and adhere to the requirements of [MCR 9.119](#), the Michigan Rules of Professional Conduct (MRPC), statutes, court rules, ethics opinions, and/or case law.]

1. Is there a court rule that a disqualified lawyer should review before the effective date of an order of suspension or disbarment, transfer to inactive status, or resignation from State Bar of Michigan (“SBM”) membership?

Yes. [MCR 9.119](#) specifically deals with the conduct of lawyers who are suspended, disbarred, inactive, or who have resigned from membership of the SBM (“disqualified lawyer[s]”).

2. If a disqualified lawyer has been suspended for non-payment of bar dues and is subject to a disciplinary suspension, does [MCR 9.119](#) apply to the disqualified lawyer?

Yes. If a disqualified lawyer has been suspended from the practice of law for non-payment of bar dues (administrative suspension) and is subject to a disciplinary suspension, the disqualified lawyer must comply with [MCR 9.119](#).

3. If a disqualified lawyer has been suspended for non-payment of bar dues, does [MCR 9.119](#) apply to the disqualified lawyer?

Yes. [MCR 9.119](#) applies if a disqualified lawyer has active client matters as of the effective date of the order of suspension. If a disqualified lawyer has been suspended for non-payment of bar dues, the disqualified lawyer is not an active member of the SBM and, therefore, may not engage in the practice of law. Rule 3(A) of the Rules Concerning the State Bar of Michigan ([SBR](#)).

4. What are the duties of a disqualified lawyer under [MCR 9.119](#)?

A disqualified lawyer has the following duties under [MCR 9.119](#):

- a. A disqualified lawyer must notify clients in all active matters of the following: (i) the status as a disqualified lawyer; (ii) the effective date of the disqualification; (iii) the inability to act as a lawyer; (iv) the process for retrieval of the representation file(s); (v) the option to seek legal advice/counsel and representation by successor counsel; and (vi) the address to which all correspondence may be directed. See [MCR 9.119\(A\)\(1\)-\(6\)](#);
- b. In all pending litigation, by the effective date of the discipline, the disqualified lawyer must provide notice to the tribunal and other parties of the disqualification. The

disqualified lawyer must either file a motion to withdraw or, with the client consent, file a substitution of counsel. See [MCR 9.119\(B\)](#); and,

- c. Within fourteen days after the effective date of the order of disqualification, the disqualified lawyer must file proof of compliance in the form of an affidavit with the Attorney Discipline Board (ADB) and serve a copy on the Grievance Administrator, including a copy of the disclosure notices and mailing receipts. A disqualified lawyer claiming not to have any clients must file an affidavit so stating. Records of compliance must be maintained. See [MCR 9.119\(C\)](#).

5. May a disqualified lawyer's former law firm continue to represent existing clients?

Yes. If the disqualified lawyer was part of a firm, the firm may represent the existing clients upon the clients' written consent.

6. May a disqualified lawyer provide legal services to existing clients after entry of an order of suspension or disbarment but before the effective date of the disqualification?

Yes. Unless ordered otherwise, after the entry of a discipline order but prior to its effective date, a disqualified lawyer may attempt to complete on behalf of any existing client all matters that were pending on the entry date. See [MCR 9.119\(D\)](#).

7. May a disqualified lawyer provide new legal services to existing clients during the period between the entry of an order of suspension or disbarment but prior to the effective date of the order?

No. Unless ordered otherwise, after the entry of a discipline order but prior to its effective date, a disqualified lawyer may not accept any new retainer or engagement as an attorney for another in any new case or legal matter of any nature, unless specifically authorized by the chairperson of the Attorney Discipline Board for good cause shown. This precludes the provision of new legal services to existing clients as well as retention by new clients even if the representation could be completed prior to the effective date of the order of discipline. See [MCR 9.119\(D\)](#).

8. What is a disqualified lawyer prohibited from doing after becoming disqualified?

A disqualified lawyer is prohibited from providing legal services, having contact with legal clients or potential legal clients, appearing as an attorney on behalf of clients in administrative or adjudicative proceedings, or holding out as an attorney in any way. [MCR 9.119\(E\)](#).

9. May a disqualified lawyer work as a paralegal or a law clerk?

Yes. So long as the disqualified lawyer has no contact with clients or witnesses, the disqualified lawyer may work as a paralegal or law clerk.

10. May a disqualified lawyer attend a court or administrative trial to provide assistance to the trial lawyer?

Yes. A disqualified lawyer may provide assistance to the trial lawyer during a court or administrative trial, so long as the disqualified lawyer does not appear on behalf of the client and avoids contact with the client, and all interested persons involved in the proceeding are notified that the disqualified lawyer is not eligible to practice law.

11. May a disqualified lawyer research legal issues and prepare memoranda regarding such research?

Yes. A disqualified lawyer may research legal issues and prepare research memoranda, so long as the disqualified lawyer is providing such services to lawyers and not clients.

12. May a disqualified lawyer perform pro bono legal work?

No. Whether a disqualified lawyer may perform or may not perform certain work depends on the nature of the work and not whether or not the individual is paid for the work. A disqualified lawyer shall not provide pro bono legal work, because such conduct by a disqualified lawyer constitutes the unauthorized practice of law.

13. May a disqualified lawyer share legal fees for legal services performed by another lawyer?

No. A disqualified lawyer shall not share legal fees for legal services performed by another lawyer, if the legal services were performed during the period of disqualification. [MCR 9.119\(F\)](#).

14. May a disqualified lawyer accept a referral fee?

A disqualified lawyer cannot earn legal fees for work performed while disqualified and cannot share in the profits of a law firm with respect to profits earned during the period of disqualification. [MCR 9.119\(F\)](#); [MRPC 1.5\(e\)](#); Ethics Opinions [RI-270](#), [RI-030](#), and [RI-019](#).

A disqualified lawyer may receive payment for work performed as a lawyer prior to the time of disqualification. Additionally, a disqualified lawyer may receive an agreed upon referral fee for a matter referred prior to disqualification, so long as the disqualified lawyer performed all services required by the referral agreement prior to disqualification. *Id.*

If a disqualified lawyer refers a matter prior to disqualification, but was required by the referral agreement to perform services during a period of disqualification and was, therefore ineligible to perform those services, the referring lawyer may be compensated on a *quantum meruit* basis for services performed prior to disqualification or after reinstatement. *Id.*

A disqualified lawyer who refers a matter during the period of disqualification may not receive a referral fee.

15. As a disqualified lawyer whose name appears in the law firm name, what duties does the disqualified lawyer have regarding the law firm name?

If the disqualified lawyer's name is in the law firm name, that lawyer has a duty to ensure that communications about the firm name are not false, fraudulent, misleading, or deceptive. See [MRPC 7.1](#) and [7.5](#). For example, it would be misleading for the disqualified lawyer to permit continued use of letterhead, signage, business cards or internet-based communications which state or imply the availability of the disqualified lawyer to perform legal services. A lawyer must take all reasonable measures to alter the content or to discontinue the use of any form of communication that advertises the disqualified lawyer's availability or holds out the disqualified lawyer as eligible to practice law.

16. May a disqualified lawyer continue a professional corporation?

No. It is the unauthorized practice of law for a disqualified lawyer to be a member of a professional corporation, which constitutes an improper holding out as authorized to practice law. A professional corporation organized to provide legal services must not include members who are not licensed to provide the professional services offered by the corporation. All members of a professional corporation who are licensed in Michigan must be active members in the State Bar of Michigan, which includes having paid and being current on membership dues. [MCL 450.1286](#); [MCR 9.119\(E\)\(4\)](#); [SBR 3\(A\)](#); and [SBR 4\(C\)](#).

17. What are the duties of a disqualified lawyer regarding an IOLTA or non-IOLTA trust account?

A disqualified lawyer must properly disburse or otherwise transfer all client and fiduciary funds in the lawyer's possession, custody or control and close all IOLTA and non-IOLTA trust and fiduciary accounts. Upon notice of an impending disqualification from the practice of law, a lawyer should take prompt action to begin winding down the lawyer's law practice. To close an IOLTA or non-IOLTA trust account, the lawyer should:

- a. Fully reconcile the account.
- b. Contact the bank to determine whether there will be any charges associated with closing the account. If a closing fee will be assessed, deposit sufficient funds to cover the closing fee into the account. Do not use client funds to cover this fee.
- c. Prepare and send final client bills, if necessary.
- d. Disburse funds belonging to clients. Send clients their final bill or prepare cover letters refunding any advance payment of fee that has not been earned and advance payment for costs not incurred. [MRPC 1.16\(d\)](#).

- e. Disburse funds belonging to the lawyer (earned fees, reimbursement for costs advanced) and deposit into the lawyer's business account.
 - f. Once all outstanding checks have cleared, close the account. Note: The lawyer is not required to provide notification to the Michigan State Bar Foundation that the account has been closed. The financial institution will do so.
 - g. Shred unused checks and deposit slips once the account is closed to prevent fraud and protect against mistakenly using checks and deposit slips from the closed account.
 - h. Keep the IOLTA check register, client ledgers, bank statements, and other records for at least five years. Ethics Opinion RI-038.
18. May a disqualified lawyer engage in self-representation (pro se), *i.e.*, to collect earned fees from a former client or defend against a lawsuit when sued personally?

Yes.

19. What obligations does a disqualified lawyer have if licensed to practice in another jurisdiction and/or admitted to practice before an agency, state court in another jurisdiction (*e.g.*, pro hac vice admission), a federal court, or a federal administrative agency?

A disqualified lawyer should review the rules of the other jurisdictions, agencies and/or courts to determine whether there is a self-reporting obligation and any other requirements.

20. How may a disqualified lawyer seek reinstatement?

If the disqualification is less than 180 days, the requirements of [MCR 9.123\(A\)](#) must be met. If the disqualification is 180 days or more, the requirements of [MCR 9.123\(B\)](#) and [MCR 9.124](#) must be met. If the lawyer has been disqualified for three years or longer, the lawyer must be recertified by the Board of Law Examiners pursuant to [MCR 9.123\(C\)](#). A lawyer who has been disbarred may seek reinstatement after five years. [MCR 9.123\(D\)\(2\)](#).

21. May a reinstated lawyer engage in the practice of law?

Yes. However, the reinstated lawyer must also meet all of the requirements of [SBR 3](#) and [4](#). Per [SBR 3](#) and [4](#), active membership includes having paid and being current on membership dues.

22. May a lawyer whose license has been suspended for 180 days or longer file a petition for reinstatement before expiration of the order of discipline?

Except as otherwise provided under [MCR 9.123\(D\)\(2\)](#), a disqualified lawyer whose license has been suspended may file a petition for reinstatement 56 days before the end of the suspension term. [MCR 9.123\(D\)\(1\)](#).