

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 08-896

RETIRED JUDGE: USE OF HONORIFIC TITLES BY RETIRED JUDGE SERVING PART-TIME IN ACTIVE-DUTY STATUS WHILE PRACTICING LAW

ISSUES

1. May a retired judge serving part-time in active-duty status while practicing law be listed by name as "of counsel" in her law firm's Yellow Pages advertisement? **Answer:** Yes.
2. May the active-retired judge include her former judicial title in the Yellow Pages advertisement? **Answer:** No.
3. May the active-retired judge list her former judicial positions, i.e., district, circuit, and/or appellate, in the Yellow Pages advertisement? **Answer:** No.
4. May the active-retired judge be denoted as "Honorable"? **Answer:** No.

FACTS

A judge, who will soon be taking active-retirement status, asks the above-listed questions regarding post-retirement use of her pre-retirement judicial status in a Yellow Pages advertisement of the law firm with which she will be associating as "of counsel."

DISCUSSION

The specific provisions of the Alabama Canons of Judicial Ethics that apply to an active-retired judge are determined by whether the judge is serving full-time or part-time in a judicial capacity. The canons that apply to a part-time active-retired judge are specified in Section D(2) of the canons' Compliance provisions, which states:

Retired and supernumerary justices or judges, who are serving part-time on the

Supreme Court or on either of the courts of appeals or on any circuit court or district court in the state, in an active duty status, shall be required to comply with all of these Canons, except Canon 5C(3), D, E, F, G and Canon 6C.

An active-retired judge who is serving full-time must comply with all canonical provisions. Advisory Opinion 90-392. In addressing the questions submitted by the requesting judge, the Commission assumes that, when active-retired, the requesting judge will be serving part-time in a judicial capacity.

In regard to Question 1, a part-time active-retired judge is specifically exempted, by Section D(2) of the Compliance provisions, from the application of Canon 5F's prohibition against practicing law. A part-time active-retired judge is permitted to engage in the practice of law if such does not fall within that conduct prohibited by Canon 5C(1), i.e., financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of her judicial duties, or exploit her judicial position. Advisory Opinion 06-862. Furthermore, the judge may be identified by name as "of counsel" to the law firm. The mere use of the judge's name would not exploit her former judicial position. *Cf.* Advisory Opinion 96-619 (signing a letter in which the judge offers for sale a children's book he authored does not exploit his judicial position if he does not use his title or office).

The determination of the remaining questions, i.e., whether the requesting judge may include, with that "of counsel" designation, any distinction as a former judge, is governed by several canons applicable to an active-retired judge. Canon 1 requires that a judge uphold the integrity and independence of the judiciary. Canon 2C includes the provision that a judge should not lend the prestige of her office to advance the private interests of others. This

prohibition against a judge's use of the prestige of the judicial office includes the requirement that a judge not use the prestige of her former office. See Texas Advisory Opinion 128. Canon 5C(1) provides, in part, that a judge should refrain from financial and business activities that tend to exploit her judicial position.

Although the Commission has not addressed the specific concern of use of honorific titles by a part-time active-retired judge, it finds guidance in Advisory Opinion 06-862's prohibiting an active-retired judge from using her judicial position or title in fund-raising activities. The Commission reasoned that such use would permit the use of the prestige of her office for the purpose of soliciting funds.

The Commission's advisory opinions regarding part-time judges are also noteworthy because the pertinent canonical provisions discussed here also apply to part-time judges. In Advisory Opinion 07-890, the Commission advised that a part-time municipal judge may not appear periodically on a commercial television station's morning news show even though such appearance would be with the intent to educate the public about legal matters and explain current legal issues. The Commission relied on Canons 2C and 5C(1). The Commission likewise applied Canon 2C in advising a part-time municipal judge, in Advisory Opinion 84-228, that he should not appear as a judge in a clothing store advertisement. See also *In re Judicial Disciplinary Proceedings Against Laatsch*, 299 Wis.2d 144, 727 N.W.2d 488 (2007) (a part-time municipal judge was reprimanded for highlighting his judgeship in his law practice's Yellow Pages advertisement; he sought to use the prestige of his judicial office to advance his private interests, and he exploited his judicial position); New York Advisory Opinion 03-34 (a part-time judge may not allow his law firm's website to indicate his judicial title; the website is a product of the firm itself and is obviously intended as a

promotional, commercial product aimed at possible consumers of legal services in the public at large); Cynthia Gray & Nancy Biro, *An Ethics Guide for Part-Time Lawyer Judges* 19 (1999) (the letterhead of a law firm with which a part-time judge is affiliated may not in any way refer to the judge's position; a part-time judge's announcement of the opening of a private practice may not allude to his identity as a judge; a part-time judge's newspaper advertisement for his law practice may not contain the judge's title), and authorities cited therein.

Other judicial advisory commissions have addressed the use of honorific terms by a retired judge who remains governed by the canons. Those advisory bodies have concluded that a retired judge may not use honorific titles because such practice lends the prestige of the judicial office to advance private interests and also involves the judge in financial and business dealings that exploit the judicial position. See, e.g., South Carolina Advisory Opinion 6-1987 (the name of a retired judge, who is subject to the canonical provisions that apply to a part-time judge, may not appear in a law firm's letterhead as "Retired [name of judge] Judge" nor may he designate himself on other public communications as being a retired judge); Texas Advisory Opinion 155 (a retired judge who is subject to recall may not use the title "Judge" in his law practice, i.e., on letterhead, in directories, or in any other public way related to the practice of law). See also Kentucky Advisory Opinion JE-110 (neither a senior judge, governed by the canons, nor his business associates in his realtor/auctioneer company may refer to him, in relation to his new career, as "Judge" in any advertisements or in public). In regard to "Honorable," see also Washington Advisory Opinion 02-17, advising that former judicial officers may not use "Honorable" or "Hon." in advertising offering mediation and arbitration services because that title attaches to

the judicial office and not to an individual who formerly served as a judicial officer.¹

¹ Although the use of honorific terms by retired judges who provide mediation services is not before the Commission here, the Commission notes that some jurisdictions have observed a different rule for that situation. *See, e.g.*, Maryland Advisory Opinion 2008-14 (a retired judge, subject to recall, may state that he is a retired judge when soliciting for his alternative-dispute-resolution business, given the judiciary's encouragement of ADR, the strong public interest in publicizing ADR and the providers of those services, and the judge's unique position, i.e., authorized to exercise the powers of a judge, when recalled, and to engage in the extra-judicial exercise of ADR at other times; however, it is not appropriate for the judge to indicate the number of years of judicial service); Washington Advisory Opinion 02-17 (a former judge may use the title "Judge" in advertising his mediation and arbitration services; such information is offered to indicate his experience as a factfinder, and it is not misleading or a misrepresentation of his qualifications to serve in this capacity when the title is accompanied by the words "retired," "ret.," or "former," which clearly indicates that he no longer serves as a sitting judge). *See also* Kentucky Advisory Opinion JE-115 (although the Supreme Court has promoted mediation as a valuable tool for economical disposition of controversies, a senior judge, governed by the canons, could not advertise his mediation services by advertising himself as a "Senior Judge" or "Retired Judge" or by appearing in his judicial robe in advertisements; however, he is permitted to state in his advertisements that he has "23 years of judicial experience" or is "experienced as a trial and appellate judge" because these strictly factual statements of judicial experience place him on a "level playing field" with others who are in the ADR business, and allow a prospective customer to select a mediator through the use of common criteria).

After consideration of the authorities noted, the Commission concludes that it is improper for a part-time active-retired judge to utilize or allow her law firm to utilize her pre-retirement judicial status in its Yellow Pages advertisement or in any other promotional advertisement that is directed at the general public for the purpose of or the effect of soliciting legal business. As an active-retired judge, the requesting judge must avoid all impropriety and all appearance of impropriety and must expect to be the subject of constant public scrutiny. Commentary to Canon 2. Irrespective of the judge's intentions, any reference to the judge's former judicial positions may reasonably lead to the inference that she is utilizing her former positions to attract clients and thereby engaging in a financial and business activity that tends to exploit her former judicial positions. Thus, the requesting judge may not include her former title, judicial positions she has occupied, or "Honorable" in the Yellow Pages advertisement.

As a final note, a judge who is presiding in a case in which a retired judge appears as counsel should insure that the title "Judge" is not used, in the courtroom or in papers involved in the litigation, to refer to the retired judge. United States Advisory Opinion 72.² Such honorific designation diminishes the degree of confidence in the integrity and impartiality of the judiciary and demeans the court as an institution. *Id.* *See also* New York Advisory Opinion 90-60 (a judge's calling a retired judge "Judge" or "Your Honor" during a proceeding creates the appearance of impropriety or favoritism, particularly for lay persons, who may feel disadvantaged if their lawyer is not also a retired judge); ABA Formal Opinion 95-391 (a former judge should not encourage others to refer to

² An exception is allowed where the use of the title is necessary to accurately describe a person's status at a time pertinent to the lawsuit. United States Advisory Opinion 72.

him as “Judge X” or “Your Honor” in the courtroom or otherwise in connection with legal pleadings).

information, you may contact the Judicial Inquiry Commission, P.O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043.

REFERENCES

Alabama Canons of Judicial Ethics, Canons 1, 2C, 5C(1), and 5F; Section D(2) of the Compliance provisions; and Commentary to Canon 2.

Alabama Advisory Opinions 07-890, 06-862, 96-619, 90-392, and 84-228.

In re Judicial Disciplinary Proceedings Against Laatsch, 299 Wis.2d 144, 727 N.W.2d 488 (2007).

Arizona Advisory Opinion 03-06.

Kentucky Advisory Opinions JE-115 and JE-110.

Maryland Advisory Opinion 2008-14.

New York Advisory Opinions 03-34 and 90-60.

South Carolina Advisory Opinion 6-1987.

Texas Advisory Opinions 155 and 128.

Washington Advisory Opinion 02-17.

United States Advisory Opinion 72 (1982).

ABA Formal Opinion 95-391.

Cynthia Gray & Nancy Biro, *An Ethics Guide for Part-Time Lawyer Judges* 19 (1999).

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further