

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MARCH 10, 2025

ADVISORY OPINION 25-966

RETIRED JUDGE: USE OF PREVIOUS JUDICIAL TITLE IN LETTERHEAD OF LAW FIRM

ISSUE

May a judge allow his or her former judicial title to be used in the letterhead of his or her law firm where the judge practices law, mediates, and serves as a private judge?

Answer: No.

FACTS

A recently retired circuit judge has joined a law firm. The judge intends to litigate and mediate cases and serve as a private judge. The judge has received certifications from the Alabama Dispute Resolution Center as a mediator and private judge and is currently listed on its rosters for both services. Although the judge is classified as a retired-active judge with the Alabama Administrative Office of Courts, the judge does not, at this time, intend to accept any appointments. The judge also currently serves as a part-time municipal judge.

DISCUSSION

A retired judge serving on a part-time active-duty status (“retired-

active judge”), must comply with all Canons except Canons 5C(3), D, E, F, G, and 6C.¹ Compliance with the Canons of Judicial Ethics § D(2). Because a retired-active judge is not exempt from all provisions of Canon 5C, the judge’s business and financial activities must comply with the applicable provisions of that Canon. Canon 5C(1) provides, “A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.”

In Ala. Jud. Inquiry Comm’n Op. 08-896, the Commission advised a retired-active judge that she could not include her formal judicial title or any former judicial positions that she held and could not use the title “Honorable” in front of her name in her law firm’s letterhead. The Commission concluded, “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 financial and business activity that tends to exploit her former judicial position.” *Id.*

¹ Because the inquiring judge asks explicitly about the use of the title “Retired Circuit Judge,” this opinion relies on § D(2) of the Compliance provisions pertaining specifically to part-time active-duty retired judges. This opinion does not apply to retired judges who are not serving on an active-duty status as those judges are not

required to comply with any of the Canons. Compliance, § D(1). Additionally, this opinion does not rely on provisions that would be applicable to the inquiring judge as a part-time municipal judge, though the provisions applicable to part-time judges and retired-active judges are almost identical.

The Commission noted, however, that other jurisdictions had reached a different conclusion for judges who provided alternative dispute resolution (“ADR”) services.² *Id.* Some jurisdictions have advised or declared that a judge may include the title “Retired Judge” or “Former Judge” in solicitations or advertisements in connection with the judge’s ADR practice. Md. Jud. Ethics Comm. Op. 2008-14; Wash. Jud. Ethics Op. 02-17; *see also* Ohio R. Prof’l Conduct 8.2 (effective June 1, 2014). On the other hand, many jurisdictions have advised that a judge may not use the title “Retired Judge” or “Former Judge” in solicitations or advertisements, including letterhead and business cards, but may make factual statements about his or her prior judicial service. Ariz. Jud. Ethics Advisory Comm. Op. 16-02; Minn. Bd. on Jud. Standards Op. 2015-1; Ky. Jud. Ethics Op. JE-115 (2007); *see also* Mich. Standing Comm. on Prof’l & Jud. Ethics Op. RI-375 (2016); N.Y. Joint Advisory Op. 09-59/09-86; Fla. Bar Standing Comm. on Advert. Op. A-09-1; Penn. Bar Ass’n Comm. on Legal Ethics & Prof’l Resp. Op. 93-73; Tex. Comm. on Jud. Ethics Op. 155 (1993); *see generally Former judge’s use of judicial title*, JUDICIAL CONDUCT REPORTER, Fall 2017, at 21.

The Commission recognizes that many retired-active judges offer a variety of services, including legal, arbitration, mediation, and private judging, either as a solo practitioner or by joining a firm that offers one or a combination of those services. Additionally, the Commission recognizes that its previous advice was issued before the enactment of Ala. Act 2012-266 which allowed for the creation and use of private judges. To be qualified as a private judge, one must “have served in the capacity of judge for at least six consecutive years.” Ala. Code § 12-11A-2(a)(1) (West, Westlaw current through the end of the 2024 Regular Session.) Additionally, the case over which the private judge is to be appointed must be “one over which the court in which the former judge served would have had subject matter and monetary jurisdiction.” *Id.* at (b)(2). Thus, for retired-active judges who offer private judging services, their prior judicial service is directly related to their qualifications to offer those services. Indeed, jurisdictions that have concluded that a retired-active judge may refer to his or her judicial title have recognized that biographical information regarding the judge’s former service “is offered to indicate the former judicial officer’s experience as a factfinder.” Wash. Jud. Ethics Op. 02-17.

Based on the foregoing, it is the opinion of the Commission that a

² Alternative dispute resolution includes arbitration, mediation, and private judging.

retired-active judge providing legal, non-legal, or both services may not use his or her previous judicial title in the letterhead of his or her firm, even if modified to indicate the judge's status as a retired judge. A retired-active judge may, however, include his or her prior judicial service along with other biographical information. The Commission is not persuaded that a public policy of encouraging alternative dispute resolution justifies allowing one to exploit his or her previous judicial title by using that title in connection with the judge's provision of those services, especially where the retired-active judge is not acting in any judicial capacity. The Commission recognizes, however, that a retired-active judge's previous judicial experience may be directly relevant to his or her qualifications to offer certain services, such as with private judging. Moreover, in the Commission's view, stating factual, biographical information regarding a retired-active judge's experience that is already available as part of the public record does not tend to exploit the judicial office in violation of Canon 5C(1).

Thus, a retired-active judge may include his or her prior judicial service along with other previous work experience, including the office or offices held by the retired-active judge, the number of years that the retired-active judge served, and the court or courts on which the judge served. A retired-active judge may not, however, use the title "Judge,"

even where modified by "Retired" or similar language, in letterhead or on business cards, social media accounts, websites, signature blocks, or in any advertisements or solicitations for the judge's firm. For example, a judge may not be identified in the name of his or her firm or on the firm's website, in the firm's letterhead or other stationary, or in any other advertisements or solicitations as a judge. In other words, the judge should not allow his or her name to be used with a modified form of his or her previous judicial title. The judge may, however, include a statement in a biographical section about the judge to the effect of, "Previously served as a judge for [X] years in the [Y] Judicial Circuit." To the extent that it is inconsistent with this opinion, Advisory Opinion 08-896 is overruled.

Notwithstanding the Commission's advice in this opinion, retired-active judges should remember that they are also subject to Canon 2A's requirement that they "respect and comply with the law." This includes the Alabama Rules of Professional Conduct. The Commission's advisory opinion authority is limited to the application of the Canons of Judicial Ethics; thus, it may not provide advice as to the application of the Rules of Professional Conduct. Rule 18, Ala. R.P. Jud. Inquiry Comm'n. The Commission notes, however, that this opinion is consistent with previous guidance concerning the use of

judicial titles under the Alabama Rules of Professional Conduct. *See generally* Roman A. Shaul, *Judicial Titles Are Not Portable—They Stay with the Position, Not the Individual*, 81 THE ALA. LAW. 306 (July 2020). If a retired-active judge's conduct, even if consistent with this opinion, would violate the Rules of Professional Conduct, then the retired-active judge's conduct is prohibited by Canon 2A.

REFERENCES

Alabama Act 2012-266.

Alabama Canons of Judicial Ethics 2A, 5C(1), Compliance § D(2).

Ala. Code §§ 12-11A-2(a)(1), (b)(2).

Alabama JIC Advisory Opinion 08-896.

Ala. R.P. Jud. Inquiry Comm'n 18.

Arizona Judicial Ethics Advisory Committee Opinion 16-02.

Florida Bar Standing Committee on Advertising Opinion A-09-1.

Former judge's use of judicial title, JUDICIAL CONDUCT REPORTER, Fall 2017, at 21.

Kentucky Judicial Ethics Opinion JE-115 (2007).

Maryland Judicial Ethics Committee Opinion 2008-14.

Michigan Standing Committee on Professional and Judicial Ethics Opinion RI-375 (2016).

Minnesota Board on Judicial Standards Opinion 2015-1.

New York Joint Advisory Opinion 09-59/09-86.

Ohio R. Prof'l Resp. 8.2.

Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility Opinion 93-73.

Roman A. Shaul, *Judicial Titles Are Not Portable—They Stay with the Position, Not the Individual*, 81 THE ALA. LAW. 306 (July 2020).

Texas Committee on Judicial Ethics Opinion 155 (1993).

Washington Judicial Ethics Opinion 02-17.

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 18 of the Alabama Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P.O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; email: jic@jic.alabama.gov.