

Maryland Judicial Ethics Committee

Opinion Request Number: 2003-26

Date of Issue: January 13, 2004

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Retired Judge Not To Identify Judicial Status On Decision in Extra-Judicial Mediation or Arbitration Proceeding or on Letterhead for Extra-Judicial Activity

Issue: May retired judges identify their judicial status, *e.g.*, as a “retired judge,” when signing off on opinions or decisions rendered in extra-judicial mediation and arbitration proceedings and on letterhead utilized for extra-judicial activities?

Answer: No.

Facts: A retired judge, subject to recall pursuant to Article IV, § 3A of the Maryland Constitution, provides extra-judicial arbitration and mediation services for compensation. Such services generate some correspondence in addition to written opinions and decisions. The judge asks whether this judicial status can be reflected in signing off on arbitration and mediation decisions. Also, the judge would like to print letterhead to be used in the arbitration and mediation activities and for personal correspondence. In addition, the judge inquires about the continued use of court memo pads.

Discussion: For the purposes of this opinion a “judge” is a resigned or retired judge who is subject to and approved for recall for temporary service under Article IV, § 3A of the Maryland Constitution. A recalled judge is vested with the full powers of an acting judge, and with certain stated exceptions, the provisions of the Code of Judicial Conduct applies to such judges. One such exception permits the judge to act as a private arbitrator or mediator.

Because the judge is engaged in both judicial activities and extra-judicial activities, there is interplay between Canon 2 (Avoidance of Impropriety and the Appearance of Impropriety) and Canon 4 (Extra-Judicial Activities). We see no problem with the identification of the judge’s status on letterhead, including the use of official or generic court stationery, used for communications directly related to judicial activities during a period of recall for temporary service.

In regard to extra-judicial activities, however, the judge must avoid even the appearance of impropriety and not use the prestige of the office to advance the judge’s personal interests or to advance the private interests of others. Therefore, we believe it is inappropriate for extra-judicial correspondence to be written on letterhead identifying the writer as a retired judge. In other words, if it would have been inappropriate to send the correspondence on official judicial letterhead while an active judge, it should not be sent by the judge on personal letterhead identifying the sender as a retired judge.

We recognize that judges are expressly permitted to engage in extra-judicial arbitration and mediation activities but private arbitration and mediation are necessarily separate from judicial proceedings. To be sure, the parties and their counsel seeking such services often consider judicial experience an important qualification for an arbitrator or mediator. Therefore, past judicial service, like other past experience, could appropriately be reflected on the judge’s résumé and probably will

Maryland Judicial Ethics Committee

Opinion Request Number: 2003-26

Date of Issue: January 13, 2004

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 2 of 2

be known to the parties. Nevertheless, judges, individually or in association with others, perform these services for a fee, and thus, the providing of such services constitutes financial or business dealings benefitting the judge, and perhaps others. When such extra-judicial activities are engaged in by a judge, the judge should not reflect judicial status in the opinions, decisions, or on the letterhead used for related correspondence.