

Guidelines on the Practice of Law by Retired Judges

Directive # 2-97

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(Supersedes Directive #7-95)

Issued by:

James J. Ciania

Administrative Director

At its Administrative Conference of March 3, 1997, the Supreme Court approved the following changes to Guideline (7) of the Guidelines on the Practice of Law by Retired Judges:

(7) A retired judge may not accept fee generating court appointments, e.g., appointments to serve as a receiver, condemnation commissioner, guardian ad litem, mediator, [or] arbitrator, or discovery master except as arbitrator in the statutory or court approved arbitration programs. This is not intended to preclude a retired judge from accepting a fee generating position as a mediator, arbitrator or discovery master where the parties to the case initiate the appointment, select the retired judge who is to be appointed, establish the fee arrangement, and the court's only participation is to memorialize their agreement in an appropriate order. Such memorialization shall be by the Assignment Judge. A retired judge may accept fiduciary appointments at the specific request of interested family members (e.g., Administrator C.T.A.) provided same do not contravene any of the other restrictions set forth in this memorandum.

Guidelines on the Practice of Law by Retired Judges

The Supreme Court has authorized issuance of the following guidelines which illustrate the extent of the restriction upon the practice of law by a retired judge who has retired under the provisions of the *Judicial Retirement System Act* (N.J.S.A. 43:6A-1, *et seq.*).

(1) A retired judge may be associated in the practice of law with other attorneys. A retired judge's name may appear on the letterhead, on the office door but not in the firm name. A retired judge may not sign any papers filed in court, including pleadings. In any cases tried by the firm before a jury, the retired judge's name should not be referred to in the presence of the jury. The restrictions on the practice of law by the retired judge are personal and do not extend to those with whom the judge may be associated in the practice of law; R. 1:15-4 does not apply to retired judges. Retired judges should be aware of N.J.S.A. 52:13D-17.2c, which precludes any involvement with a casino licensee by a firm with which a retired judge is associated for a period of two years from the date of retirement.

(2) A retired judge may not serve as an attorney in any contested matter in any court of the State of New Jersey. This prohibition includes participating in the actual conduct of any proceeding before the court, appearing at counsel table during the course of a court proceeding, and serving therein either as associate counsel or counsel of record.

Office work in connection with pending or proposed litigation is not prohibited.

Thus, pleadings may be drafted, interrogatories framed and answered, and briefs, motions and other papers may be prepared. It is not permissible, however, for the retired judge's name to appear on any papers, including any indication that the judge is "of counsel", "on the brief" or is connected in any way with the litigation. Similarly, a retired judge may participate in out-of-court settlement discussions, or in the taking of depositions prior to trial, but may not participate in any settlement conference before the court (whether in open court or in chambers), nor should reference be made in any courthouse conferences to the fact that the judge has personally been involved in such negotiations, nor should the judge participate in any court proceeding with regard to any depositions the he or she may have taken.

(3) Subject to the provisions of paragraph (7) infra a retired judge is not precluded from serving as attorney for a decedent's estate or as an executor, guardian, trustee, or in any other fiduciary capacity, provided that in any litigation which may develop in the course of the performance of such duties the judge is represented by other counsel, who may be a member of the firm with which the judge is associated. A retired judge may not handle any other uncontested matters in any court, including those which require only approval of ex parte orders or other papers which may be considered pro forma and require little if any exercise of judicial discretion.

(4) A retired judge may not serve as attorney in any contested or uncontested matters before either State or local administrative agencies, boards and tribunals exercising a discretionary or quasi-judicial function, except before the Transfer Inheritance Tax Bureau when acting as attorney for the estate and not specially retained. A retired judge may not represent parties before auto arbitration panels.

(5) A retired judge may not serve as attorney for any person before a county ethics committee, a committee on character, or any other committee or body appointed by the Supreme Court.

(6) A retired judge may practice before the federal courts or federal agencies, whether within or without the State.

(7) A retired judge may not accept fee generating court appointments, e.g., appointments to serve as a receiver, condemnation commissioner, guardian ad litem, mediator [or] arbitrator, or discovery master except as arbitrator in the statutory or court approved arbitration programs. This is not intended to preclude a retired judge from accepting a fee generating position as a mediator, arbitrator or discovery master where the parties to the case initiate the appointment, select the retired judge who is to be appointed, establish the fee arrangement, and the court's only participation is to memorialize their agreement in an appropriate order. Such memorialization shall be by the Assignment Judge. A retired judge may accept fiduciary appointments at the specific request of interested family members (e.g., Administrator C.T.A.) provided same do not contravene any of the other restrictions set forth in this memorandum.

(8) It is improper for a retired judge to appear in a New Jersey court as an expert witness (such as to testify as to reasonableness of attorney fees) or in any court as a character witness.

(9) It is improper for a retired judge to appear in court to testify as an expert witness in legal malpractice cases or as to a standard of conduct by a lawyer in related matters.

(10) A retired judge may serve as legal adviser to a public agency, if the duties and responsibilities of such position do not contravene these guidelines. Generally, the role of a retired judge associated with a public agency should be of the same nature as

that of a retired judge acting as "of counsel" to a law firm. A retired judge should not act as chief counsel to a public agency (e.g., county counsel), since such a role would directly involve the judge in the conduct of litigation involving the agency. Further, it would be inappropriate for a retired judge to appear at a public meeting as an adviser to a public agency. Such an appearance may give rise to a suspicion that the judge is attempting to use the judge's status to advance the position of the agency.

EDITOR-S NOTE

No change has been made the original text.