

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2008-14

**Date of Issue:** May 14, 2008

■ Published Opinion    □ Unpublished Opinion    □ Unpublished Letter of Advice

Retired Judge May Identify Judicial Status When Soliciting for Work as an Arbitrator or Mediator

**Issue:** May a retired judge, subject to recall, solicit for alternative dispute resolution, stating that he or she is a retired judge with “X” years of judicial experience?

**Answer:** Judges<sup>1</sup> may identify their judicial status.

**Facts:** A retired judge, subject to recall, pursuant to Article IV, §3A of the Maryland Constitution, wishes to provide extra-judicial arbitration and mediation services for compensation. The judge wishes to state, in solicitations for those services, the judge’s status as a retired judge with 18 years of experience.

**Discussion:** In recent years, the Judiciary has encouraged alternative dispute resolution (“ADR”) to provide a means for citizens to resolve conflicts creatively, without the expense and delay that may result from limited court resources. The Court of Appeals has recently revised Canon 4F of the Code of Judicial Conduct (Extra Judicial Activities; Service as arbitrator or mediator) to authorize retired judges to perform ADR services, with certain limitations.

Over time, courts have recognized the public’s need to know about legal services. For example, the Court of Appeals has amended the Maryland Lawyers’ Rules of Professional Conduct to authorize lawyer advertising. Rule 7.2. In doing so, the Court recognized that advertising can fulfill the public’s need for information about legal services. Rule 7.2, Comment [1].

Concomitantly, there is a strong public interest in making citizens aware of ADR and whom they may engage to perform those services. A factual, accurate notation that one is a retired judge is an appropriate means of announcing that one is available and qualified to perform such services. A judge may thus indicate his or her judicial status in solicitations to serve the public interest.

Judges are in a unique position within the Judiciary in that they are authorized to exercise the powers of judges, when recalled, and to engage in the extra-judicial exercise of ADR at other times. All judges are required to conduct themselves so as to avoid even the appearance of impropriety. Canon 2. Judges who perform ADR must scrupulously adhere to the bright line between functions at all times. For example, once a judge

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has been engaged to perform ADR services, he or she is acting as an arbitrator or mediator – not as a judge. Accordingly, signing opinions and decisions, as a judge, is misleading.

Moreover, a specific number of years of judicial experience is not itself an indication of qualification. One who has served on the bench for five years may be as qualified to perform ADR as one who has served for 15 years. For this reason, the Committee concludes that it is not appropriate to indicate the number of years of service of the retired judge.

The Committee previously issued [Opinion 2003-26, January 13, 2004], which dealt with the identification of judicial status in performing ADR, prior to the revision of Canon 4F. Much of that opinion has been rendered obsolete by this opinion and, therefore, is withdrawn.

**Application:** The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the requestor described in this opinion, to the extent of the requestor’s compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this opinion.

Additionally, this opinion should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If you engage in a continuing course of conduct, you should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.

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<sup>1</sup> For purposes of this opinion, the terms “judge” and “judges” whenever used alone without modifier, mean a retired judge, subject to recall, pursuant to Article IV, §3A of the Maryland Constitution.