

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 92-4**

Issued February 14, 1992

*[Not Current-subsequent rule amendments to Gov. Bar R. V, VI, and X; e.g., effective Jun. 6, 2002, the language “render any legal service for an attorney granted active status” was removed from Gov. Bar R. V §2 and §3]*

**SYLLABUS:** Attorneys with “inactive” or “retired” registration status may serve as attorney members of certified grievance committees of bar associations provided that they perform the same or similar functions that the lay members perform, namely activities that do not constitute the practice of law; that they do not hold themselves out as authorized to practice law; and that they abide by the restrictions placed upon them by the governing bar rules.

Attorneys with “inactive” or “retired” registration status may lecture on legal subjects at programs that offer continuing legal education credit, so long as they meet the standards for lecturers set forth by the Commission on Continuing Legal Education. Attorneys with “inactive” or “retired” registration status, who lecture at programs offering continuing legal education credit, should not hold themselves out as authorized to practice law in Ohio.

Attorneys with “inactive” or “retired” registration status may not perform the duties of a paralegal or student law clerk because of the express requirement of the Supreme Court of Ohio that these attorneys may not render any legal service for an attorney granted active status.

The decision as to whether attorneys with “inactive” or “retired” registration status may serve on boards and commissions of the Supreme Court of Ohio, or on governing bodies or committees of bar associations or other attorney groups, in the absence of an applicable governing bar rule, should be left to the appointing authority.

**OPINION:** This opinion addresses four questions regarding proper activities for attorneys who have been granted “inactive” or “retired” registration status.

1. May an attorney who is registered “retired” or “inactive” serve as a member of a certified grievance committee of a bar association?



2. May an attorney who is registered “retired” or “inactive” lecture on legal subjects at programs which offer continuing legal education credit.
3. May an attorney who is registered “retired” or “inactive” perform the same duties as a paralegal or student law clerk in a law firm?
4. May an attorney who is registered “retired” or “inactive” serve on boards and commissions of the Supreme Court of Ohio, or on governing bodies or committees of bar associations or other attorney groups?

### General Discussion

There are several different categories of attorney registration set forth in Rule VI of the Supreme Court Rules for the Government of the Bar in Ohio. Section 2 of Governing Bar Rule VI governs the category of “inactive” status. Section 3 governs “retired” status.

Under the most recent amendments to Rule VI, effective January 1, 1992, an attorney granted “inactive” or “retired” registration status

shall not be entitled to practice law in Ohio; hold himself or herself out as authorized to practice law in Ohio; hold nonfederal judicial office in Ohio; render any legal service for an attorney granted active status; occupy a nonfederal position in this state in which the attorney is called upon to give legal advice or counsel or to examine the law or pass upon the legal effect of any act, document, or law; be employed in the Ohio judicial system in a position required to be held by an attorney; or practice before any nonfederal court or agency in this state on behalf of any person except himself or herself.

Gov.Bar R. VI § 2 and § 3.

### Question 1

Certified Grievance Committees are empowered, through Rule V Section 5 (a) of the Supreme Court Rules for the Government of the Bar, to conduct disciplinary investigations and file complaints when it finds probable cause that misconduct has occurred or that a condition of mental illness exists. The appointment of Certified Grievance Committee members is addressed within the rule.

A Certified Grievance Committee sponsored by one or more bar associations, or a bar association may provide, by its constitution, regulations, or rules, for the appointment of lay persons as members of a grievance committee, provided the majority of such committee shall consist of **attorneys at law admitted to the practice of law by the Supreme Court.**

Gov.Bar R. V S 5(a) (emphasis added).

Section 2 of Governing Bar Rule VI, begins with the language “[a]n attorney who is admitted to the practice of law in Ohio may be granted inactive status by applying to the Clerk for an exemption from payment of the registration fee at the time the attorney files a Certificate of Registration.” Similarly, Section 3. states “[a]n attorney who is admitted to the practice of law in Ohio and is sixty-five years of age or older may be granted retired status by applying to the Clerk for retired status at the time the attorney files a Certificate of Registration.” Thus, even though attorneys with “inactive” or “retired” registration status may not practice law they are persons admitted to the practice of law and fall within the technical requirement of Governing Bar Rule V that the majority of such committee be attorneys at law admitted to the practice of law.

Accordingly, the Board's opinion is that attorneys with “retired” or “inactive” registration status may serve as attorney members of certified grievance committees of bar associations provided that they perform the same or similar functions that the lay members perform, namely activities that do not constitute the practice of law; that they do not hold themselves out as authorized to practice law; and that they abide by the restrictions placed upon them by the governing bar rules. Since many of the activities of certified grievance committees do not constitute the practice of law, “inactive” or “retired” status attorney members can effectively contribute to the work of the certified grievance committees.

### Question 2

Continuing legal education activities to be approved for credit must meet certain standards. These standards, entitled Attorney Continuing Legal Education Regulations, are set forth by the Commission on Continuing Legal Education under the authority granted by Rule X (B) (1) of the Supreme Court Rules for the Government of the Bar.

Currently, there is no requirement that lecturers at programs granting continuing legal education credit be attorneys with “active” registration status. The requirement of Regulation 406 (c) is that “[t]he program leaders or lecturers shall be qualified by education, or have the necessary practical skill to conduct the program effectively.” Therefore, the Board concludes that attorneys with “inactive” or “retired” registration status may lecture on legal subjects at programs which offer continuing legal education credit, provided that they meet the standards of the Commission on Continuing Legal Education. Attorneys with “inactive” or “retired” registration status, who lecture at programs offering continuing legal education credit, should not hold themselves out as authorized to practice law in Ohio.

### Question 3

Governing Bar Rule VI Sections 2 and 3 unequivocally states that attorneys with “inactive” or “retired” registration status shall not be entitled to “render any legal service for an attorney granted active status.” (Emphasis added). This restrictive language became effective September 1 1991. Prior to September 1, 1991, “inactive” status attorneys were governed by former Governing Bar Rule VI (8) stating that “such in active attorney shall not be entitled to practice law nor hold himself out as authorized to practice law nor hold judicial office in this State until such time as he requests and is granted reinstatement of active status.” The former rule did not contain the language “render any legal service for an attorney granted active status.” There was no category for “retired” status prior to September 1, 1991.

The language of the current rule sweeps broadly with a restrictive intent. Although Rule VI underwent amendment in January 1, 1992, the prohibitions regarding rendering any legal service remains intact. Therefore, the Board advises that attorneys with “inactive” or “retired” registration status may not perform the duties of a paralegal or student law clerk because of the express requirement of the Supreme Court of Ohio that these attorneys may not “render any legal service for an attorney granted active status.” Gov.Bar R. VI §§ 2 and 3.

The Board acknowledges that in Opinion 88-18 it advised that providing legal research and writing services exclusively for lawyers and law firms is not considered engaging in the practice of law. Ohio Sup.Ct, Bd. of Comm’rs on Grievances and Discipline, Op. 88-18 (1988). However, in light of the current language of Governing Bar Rule VI Sections 2 and 3, Opinion 88-18 should not be interpreted as authorization for attorneys with “inactive” or “retired” registration status to perform the services of a paralegal or law clerk.

Question 4

Question 4 asks whether attorneys with “inactive” or “retired” registration status may serve on boards and commissions of the Supreme Court of Ohio, or on governing bodies or committees of bar associations or other attorney groups. The Board's advice is that the decision as to whether attorneys with “inactive” or “retired” registration status may serve on boards and commissions of the Supreme Court of Ohio, or on governing bodies or committees of bar associations or other attorney groups, in the absence of an applicable governing bar rule, should be left to the appointing authority.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.**