

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 93-8

Issued October 15, 1993

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: It is improper under DR 2-101 (A) (1) and DR 9-101 (C) of the Ohio Code of Professional Responsibility for a former judge returning to private law practice to use statements as to prior judicial positions held or titles such as "Judge," "Honorable," or "Former Judge" on letterheads or business cards in connection with the practice of law. However, on professional announcement cards or law directory listings it would not be improper for a former judge returning to private law practice to include a factual statement of prior judicial positions held.

OPINION: This opinion addresses whether it is ethical for a former judge returning to private law practice to use statements as to prior judicial positions held or titles such as "Judge," "Honorable," or "Former Judge" on letterheads, business cards, professional announcement cards, or law directory listings in connection with the practice of law. The Board begins by noting that this issue is not relevant to retired judges in Ohio who are eligible for recall to judicial service since they are prohibited from practicing law. See Compliance Section, Code of Judicial Conduct.

The applicable rules within Ohio's Code of Professional Responsibility are Disciplinary Rules 2-101 (A) (1), 9-101 (C), and 2-102 (A). Disciplinary Rule 2-101 (A) (1) prohibits the use of public communication that "[c]ontains any false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement." Disciplinary Rule 9-101 (C), prohibits the appearance of impropriety by requiring that "[a] lawyer shall not state or imply that he [she] is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official." Disciplinary Rule 2-102 (A) requires that professional cards, professional announcement cards, office signs, letterheads, or similar professional notices be dignified in form and comply with the standards set forth for professional cards in DR 2-102 (A) (1), for professional announcement cards in DR 2-102 (A) (2), for office signs in DR 2-102 (A) (3), and for letterhead in DR 2-102(A)(4).

Over twenty-five years ago, the Committee on Ethics and Professional Responsibility of the American Bar Association advised that it is improper for a former judge to use the title "Judge" on stationery after leaving the bench. American Bar Association, Informal Op. 1006 (1967). At that time, the ABA also advised that a former judge should not encourage others to address him or her as "Judge," should not place his or her previous title on an office door, and should not sign pleadings with the prefix of "Judge" in front of his or her name. Id.

Several states also advise against a former judge's use of titles such as "Judge," "Honorable," or "Former Judge" in private practice, based on ethical concerns regarding misleading or deceptive communication, self-laudation, impropriety, or improper influence. For example, the Florida Bar advises that a former judicial officer should not use the title "judge" in the private practice of law. Florida Bar, Ops. 87-9 (1987), 73-27 (1973), 70-63 (1971). The Iowa Bar advises that it would be improper for a retired judge to use the title "Judge" or "The Honorable" or any similar connotation on stationery or professional notices. Iowa State Bar Ass'n, Op. 80-49 (1980). The State Bar of Michigan advises that if a retired judge is actively engaged in the practice of law, the use of stationery noting former judicial positions would be improper because of the implication that the lawyer may be in a position to influence former judicial colleagues to act favorably with regard to a client's matter. State Bar of Michigan, Op. CI-850 (1983). In contrast, the State Bar of Arizona advises that information regarding a retired judge's prior experience does not constitute a "false or misleading communication" and may be included on letterhead. State Bar of Arizona, Op. 87-1 (1987).

This Board's opinion is that a former judge's use of statements as to prior judicial positions held or titles such as "Judge," "Honorable," or "Former Judge" on letterheads and business cards in connection with the practice of law creates an appearance of impropriety and is misleading. Such communication creates an appearance that a former judge's previous public position is being used to influence others or to further his or her private practice of law. Such communication on letterhead and business cards is also misleading to a client by creating the appearance that an attorney can use the prestige of past judicial experience to assure a client's success. Further, the use of such title on letterhead and business cards is irrelevant to handling of a legal matter for a client. It falsely indicates to clients and others that a former judge has influence over others to achieve desired ends or favorable treatment for the client.

However, a distinction can be made between information appropriate for a letterhead or business card and information appropriate for a professional announcement card or a professional law directory. Professional announcement cards and professional law directory listings are generally not used in corresponding with clients and others regarding legal matters, but rather are used to announce changes and disseminate factual information to the profession. Although the use of titles such as "Judge," "Honorable," or "Former Judge" would not seem appropriate on professional announcement cards or professional law directory listings, the Board does not find it to be misleading or to create an appearance of impropriety for a former judge returning to private law practice to include on professional announcement cards or professional law directory listings a factual statement of prior judicial positions held.

In conclusion, this Board advises that it is improper under DR 2-101 (A) (1) and DR 9-101 (C) of the Ohio Code of Professional Responsibility for a former judge returning to private law practice to use statements as to prior judicial positions held or titles such as "Judge," "Honorable," or "Former Judge" on letterheads or business cards in connection with the practice of law. However, on professional announcement cards or law directory listings it would not be improper for a former judge returning to private law practice to include a factual statement of prior judicial positions held.

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.