

# The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE

65 SOUTH FRONT STREET, 5<sup>TH</sup> FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370

Fax: 614.387.9379

www.supremecourt.ohio.gov

RICHARD A. DOVE  
SECRETARY

MICHELLE A. HALL  
SENIOR COUNSEL

OPINION 2013-3

Issued June 6, 2013

**NOT CURRENT: See subsequent amendments to Prof. Cond.  
R. 8.2, effective June 1, 2014**

## Use of Judicial Titles by Former Judges

**SYLLABUS:** Former judges may not use judicial titles while practicing law, engaging in law-related or other business activities, working in government or other public sector positions, or providing charity or community services. Former judges serving as retired assigned, acting, and private judges may use judicial titles in case-related entries, orders, decisions, and correspondence. Former judges are permitted to describe past judicial service and experience in communications such as biographical sketches, resumes, and curricula vitae. This opinion only applies to the affirmative use of judicial titles by former judges, and not the honorific use of judicial titles by others. Judges subject to the Code of Judicial Conduct, however, must make reasonable efforts to ensure that former judges involved in proceedings as lawyers, parties, or witnesses are not addressed by judicial titles in the proceedings.

**QUESTION PRESENTED:** Is it appropriate for former judges to use judicial titles after leaving the bench?

**APPLICABLE RULES:** Rules 5.7, 7.1, 7.5, and 8.4 of the Ohio Rules of Professional Conduct; Rules 1.2, 1.3, and 2.4 of the Code of Judicial Conduct

### OPINION:

#### *Introduction*

*"We need education in the obvious more than investigation of the obscure."*<sup>1</sup>

- Oliver Wendell Holmes, Jr., former associate justice of the U.S. Supreme Court

<sup>1</sup> Oliver Wendell Holmes, Jr., *Law and the Court*, in *Collected Legal Papers* 291, 292-93 (1920).

The Board has been asked to evaluate whether the current Rules of Professional Conduct permit former judges to use judicial titles after leaving the bench. In Advisory Opinion 93-8, the Board determined that it is ,improper...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.' Ohio Sup. Ct., Bd. of Comm'rs on Grievances and Discipline, Op. 93-8 (Oct. 15, 1993), at syllabus. Opinion 93-8 addresses the use of judicial titles under the Code of Professional Responsibility, which the Supreme Court of Ohio repealed effective February 1, 2007. The Board relied upon DR 2-102(A)(1) (prohibiting public communications containing false, misleading, deceptive, self-laudatory, or unfair statements) and DR 9-101(C) (prohibiting statements or implications that a lawyer is able to improperly influence a tribunal, legislative body, or public official) to find that a former judge should not use judicial titles while engaged in the private practice of law.

In Advisory Opinion 93-8, the Board only considered the use of judicial titles by former judges upon return to the ,private` practice of law. This opinion will address former judges' use of judicial titles in a variety of contexts, including while engaged in the practice of law in any setting, in the provision of law-related or other business services, and when serving as a retired assigned, acting, or private judge. We will not discuss the use of judicial titles in judicial campaigns, which is governed by specific provisions found in Jud.Cond.R. 4.3 (*see also* Jud.Cond.R. 4.3, Comment [3]). For purposes of this opinion, a judicial title consists of the words ,judge` or ,honorable` appearing prior to a name regardless of whether ,judge` or ,honorable` is capitalized or accompanied by modifiers such as ,former` or ,retired.` Stated another way, ,judicial title` includes, but is not limited to, the following: ,Judge X`,`Honorable X`,`Hon. X`,` Former Judge X`,` Retired Judge X`,` and ,Judge X (Ret.).<sup>2</sup>

*,Once a Judge, Always a Judge`*

The typical justification provided when a former judge refers to himself or herself using a judicial title is the adage ,once a judge, always a judge.` This adage is referenced in social etiquette rules, usually on questions regarding the proper title to be used in correspondence or introductions. The reliance on ,once

---

<sup>2</sup> The Code of Judicial Conduct defines ,judge` as a ,lawyer who is authorized to perform judicial functions within a court, including an officer such as a magistrate, court commissioner, or special master.` Code, Application(I)(B). Accordingly, a ,judicial title` would also include ,Justice` and ,Magistrate.`

a judge, always a judge,' however, is misplaced in modern American legal and judicial ethics. The adage is actually a restatement of the long-standing convention that British judges are generally not permitted to return to the practice of law. See Follansbee, *The English Lawyer of To-Day*, 10 Am. Law. 8, 12-13 (1902); Judiciary of England and Wales, *Becoming a Judge*, <http://www.judiciary.gov.uk> (accessed May 14, 2013).

In Ohio, former judges are not prohibited from returning to the practice of law. Even in the federal judiciary, where judicial appointments are regarded as lifetime appointments,<sup>3</sup> the 'once a judge, always a judge' adage does not carry the day. Noting that 'federal judges \*are+ returning to the practice of law in increasing numbers,' the U.S. Judicial Conference issued an advisory opinion captioned '*Use of Title 'Judge' by Former Judges*.' U.S. Jud. Conf., Comm. on Codes of Conduct, Op. No. 72 (June 2009) at 1. Relying on Canon 2A of the Code of Conduct for U.S. Judges (promoting public confidence in the integrity and impartiality of the judiciary), the Conference's Committee on Codes of Conduct concluded that sitting judges 'should ensure that the title 'judge' is not used in the courtroom or in papers involved in litigation before them to designate a former judge, unless the designation is necessary to accurately describe a person's status at a time pertinent to the lawsuit.' *Id.* 'Once a judge, always a judge,' has no basis in the rules of legal or judicial ethics. Rather than rely on common law parlance, in this opinion we will scrutinize former judges' use of judicial titles under the guidance of the Rules of Professional Conduct (Rules) and the Code of Judicial Conduct (Code).

### *Returning to the Practice of Law*

The analysis of whether a former judge may use a judicial title while engaged in the practice of law begins with Prof.Cond.R. 7.5, which states that 'a+ lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1.' Prof.Cond.R. 7.1 governs all communications concerning a lawyer's services:

A lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation

---

<sup>3</sup> Federal judges 'hold their offices during good behavior.' U.S. Constitution, Article III, Section 1.

of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.

In addition, it is professional misconduct for a lawyer to violate the Rules or ,engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.` Prof.Cond.R. 8.4 (a) and (c). It is also professional misconduct to ,state or imply an ability to influence improperly a government agency or official.` Prof.Cond.R. 8.4(e).

When a lawyer leaves judicial office, regardless of the reason, and returns to the practice of law, the lawyer is no longer a judge. The lawyer does not hold a judicial commission from the governor or perform judicial functions, and is not paid a judicial salary or subject to the Code. A lawyer's use of a judicial title is a ,professional designation` for purposes of Prof.Cond.R. 7.5, and therefore subject to the prohibition against false or misleading communications contained in Prof.Cond.R. 7.1. The Board remains of the opinion that a lawyer who formerly served as a judge should not use a judicial title while engaged in the practice of law. Such use of a judicial title is false and misleading in violation of Prof.Cond.R. 7.1 and constitutes conduct involving dishonesty, fraud, deceit, or misrepresentation under Prof.Cond.R. 8.4(c). Identifying oneself as a judge in the practice of law further implies to clients and the public an ability to influence the courts and other public entities or officials, which is prohibited by Prof.Cond.R. 8.4(e).

The Board stands by its position in Advisory Opinion 93-8 that a former judge's use of a judicial title in the practice of law ,creat\*es+ the appearance that an attorney can use the prestige of past judicial experience to assure a client's success` and ,falsely indicates to clients and others that a former judge has influence over others to achieve desired ends or favorable treatment for the client.` Unlike in Opinion 93-8, the Board does not limit this conclusion to the ,private` practice of law. Lawyers practice law in a variety of environments, not just private firms, and the Board's present view is that a former judge who uses a judicial title in any legal practice setting violates Prof.Cond.R. 7.1, 7.5, 8.4(a), 8.4(c), and 8.4(e). *Accord* Am. Bar Assn. Commt. on Ethics and Prof'l Responsibility, Formal Op. 95-391 (Apr. 24, 1995); Fla. Bar, Standing Commt. on Advertising, Op. A-09-1 (June 25, 2009). As artfully stated by an assistant ethics counsel for the American Bar Association, ,\*t+he use of honorific titles by ex-judges in the practice of law causes professional and ethical problems. Judicial

titles are not portable. They stay with the position, not the individual. Former judges must gracefully relinquish the prestige of judicial office when they step down to return to practice before the bench rather than behind it.' Pitulla, *Trading on Titles*, 6 No. 4 Prof. Law. 14, 15 (1995).

*Providing Law-Related Services in Conjunction with the Practice of Law*

After leaving the bench, former judges may engage in a variety of law-related services, either in conjunction with a law practice or in separate endeavors. Prof.Cond.R. 5.7 indicates when a lawyer is subject to the Rules in the provision of law-related services and states in pertinent part as follows:

(a) A lawyer shall be subject to the Ohio Rules of Professional Conduct with respect to the provision of law-related services, as defined in division (e) of this rule, if the law-related services are provided in either of the following circumstances:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients;

(2) in other circumstances by an entity controlled or owned by the lawyer individually or with others, unless the lawyer takes reasonable measures to ensure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

Prof.Cond.R. 5.7(e) defines 'law-related services' as 'services that might reasonably be performed in conjunction with the provision of legal services and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.' Examples of law-related services include 'providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical, or environmental consulting.' Prof.Cond.R. 5.7, Comment [9]. Acting as a third-party neutral, such as a mediator or

arbitrator, is another example of a law-related service. See Prof.Cond.R. 2.4 and Comments [1]-[5].

If it is not possible to differentiate a former judge's law-related business from his or her law practice, Prof.Cond.R. 5.7(a)(1) dictates that all of the Rules apply to the provision of law-related services. In the alternative, a former judge may operate a law-related business while maintaining a separate law practice, or the former judge could leave the practice of law and engage solely in a law-related business. In these situations, the Rules will apply unless the former judge advises the recipient of the law-related services that the services are not legal services and the protections associated with the client-lawyer relationship are not operative. Prof.Cond.R. 5.7(a)(2). The promotion of the law-related services must also in all respects comply with Rules 7.1 to 7.3, dealing with advertising and solicitation. Prof.Cond.R. 5.7, Comment [10].

When Prof.Cond.R. 5.7 indicates that the Rules apply to a former judge's law-related business, the propriety of using judicial titles in conjunction with the law-related business follows the same analysis as in the use of judicial titles upon return to the practice of law. Like a former judge's use of judicial titles in the practice of law, the use of such titles in a law-related business is false and misleading under Prof.Cond.R. 7.1, constitutes conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Prof.Cond.R. 8.4(c), and implies an ability to influence the courts and other public entities or officials as prohibited by Prof.Cond.R. 8.4(e).

*Providing Law-Related Services Distinct from the Practice of Law; Engaging in Other Business, Employment, or Non-Profit Activities*

Again, under Prof.Cond.R. 5.7, the Rules do not apply to the provision of law-related services when the services are administered separately from the practice of law and the lawyer advises the recipient of services about the nonlegal nature of the services and the lack of a client-lawyer relationship. Even in these circumstances, the conduct of a lawyer involved in the provision of law-related services is subject to those rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4. Prof.Cond.R. 5.7, Comment [2]. Prof.Cond.R. 8.4 is not limited to the lawyer-client relationship; it reaches conduct outside the practice of law. Bennett, Cohen & Whittaker, *Annotated Model Rules of Professional Conduct*, 606, 613 (7<sup>th</sup> Ed. 2011). See also Rules, Preamble at [3]; Am.

Bar Assn. Commt. on Ethics and Prof'l Responsibility, Formal Op. 336 (June 3, 1974); *Disciplinary Counsel v. Carroll*, 106 Ohio St.3d 84, 2005-Ohio-3805 (lawyer disciplined for conduct that occurred while working in a nonlegal position for a state agency). Accordingly, a former judge using a judicial title is subject to Prof.Cond.R. 8.4 regardless of whether the former judge uses the title in a law-related business or other for-profit venture. The reach of Prof.Cond.R. 8.4 likewise extends to a former judge's nonlegal or non-law-related work in the government or public sector and activities associated with charity or community groups.

Whether a former judge identifies himself or herself using a judicial title in a law-related business operated separately from a law practice, another for-profit business, a government or other public sector position, or in charity or community work, we are unable to envision a scenario in which the title would not violate Prof.Cond.R. 8.4(c) or (e). To state it simply, a former judge is not a judge. Judges are elected or appointed to a public office, occupy that office for a period of time, and then vacate the office either voluntarily or involuntarily. Because a former judge no longer holds office, a judicial title is not needed for identification purposes. Invariably, the use of a judicial title outside of judicial service is for personal gain or advantage or to create a benefit or recognition for another. Lawyers should 'demonstrate respect for the legal system' and 'further the public's understanding of and confidence in the rule of law and the justice system.' Rules, Preamble, at \*5+ and \*6+. Continued use of judicial titles by former judges is not consistent with these overarching ideals. The Board is of the opinion that under Prof.Cond.R. 8.4(c) and (e), a former judge is prohibited from using judicial titles in the provision of law-related or other businesses that are distinct from the practice of law, government or other public sector work, and in charity or community service activities.

*Retired Judges Subject to Recall for Service (Retired Assigned Judges or ,RAJs')*

Some former judges function as a 'retired judge subject to recall for service' after leaving the bench. Otherwise known as 'retired assigned judges' or 'RAJs,' these former judges serve temporarily on a court upon designation by the chief justice of the Supreme Court of Ohio. *See* Ohio Constitution, Article IV, Section 6(C); R.C. 141.16. A former judge is eligible for assignment if he or she falls within the definition of a 'retired judge' in the Guidelines for Assignment of Judges (Guidelines), which is 'a person who left service on any court of the state either voluntarily by reason of resignation or retirement or involuntarily by

reason of Article IV, Section 6(C) of the Ohio Constitution \*age+.<sup>4</sup> Guidelines at 1.1(D). RAJs must abide by the Code except for the standard restrictions on fiduciary positions and service as an arbitrator or mediator. *See* Code, Application(II); Guidelines at 3.2(F); Ohio Sup. Ct., Bd. of Comm'rs on Grievances and Discipline, Op. 2005-8 (Aug. 5, 2005). Being subject to the Code, RAJs may not practice law and have a limited ability to engage in financial, business, or remunerative activities. *See* Jud.Cond.R. 3.10 and 3.11. They may only be associated with a law-related or other business if the limitations in Jud.Cond.R. 3.11 are met:

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of or independent contractor for any business entity except that a judge may do any of the following:

(1) Manage or participate in a business closely held by the judge or members of the judge's family;

(2) Manage or participate in a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family;

(3) Write or teach.

An RAJ may serve as an arbitrator or mediator, but to comply with Jud.Cond.R. 3.11, could only serve as an officer, director, manager, general partner, advisor, or employee of, or independent contractor for, an arbitration or mediation business if the business is closely held by the RAJ or the RAJ's family members.<sup>5</sup>

Because an RAJ is appointed by the chief justice to perform judicial duties, compensated for judicial assignments, subject to the Code, and cannot practice law, the Board concludes that an RAJ may use a judicial title within the context

---

<sup>4</sup> 'Retired judge' does not include a person who was removed or suspended without reinstatement from service on any court of the state pursuant to the Rules for the Government of the Judiciary or resigned or retired from service on any court of the state while a complaint was pending against the person under those rules.' Guidelines at 1.1(D).

<sup>5</sup> The Board notes that the Internal Revenue Service treats a sole proprietor as a business owner. *See* Internal Revenue Service, Sole Proprietorships, <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Sole-Proprietorships> (accessed May 14, 2013).

of judicial assignments. Additionally, counsel and litigants must be able to identify the decision-maker in a case involving an RAJ, which would be difficult to do without a judicial title accompanying the RAJ's name. For these reasons, the Board finds that RAJs may employ judicial titles on entries, orders, decisions, case-related correspondence, and letterhead that is used solely for case assignment matters.

From time to time, the chief justice has assigned a former judge, who is not otherwise eligible for assignment to active duty under the Guidelines, to a court for the limited purpose of solemnizing a marriage. *See generally* R.C. 3101.08. Similar to an RAJ's use of a judicial title in case assignments, a former judge assigned to a court to solemnize a marriage would only be permitted to use a judicial title in direct connection with the marriage solemnization.

Regarding closely-held business activities permitted by Jud.Cond.R. 3.11(B)(1) or (B)(2), the Board's opinion is that the Code prohibits RAJs from using judicial titles in conjunction with such activities. Jud.Cond.R. 1.3 states that, 'a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.' Jud.Cond.R. 1.3, Comment [1], explains that, 'it is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.' Comment 1 further states that, 'a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.' When an RAJ identifies himself or herself by a judicial title within a business, the title is being employed to gain a competitive or marketing advantage. The Board believes this is an abuse of the prestige of judicial office bestowed on the assigned judge through appointment of the chief justice.

The Board recognizes that an RAJ may serve as an arbitrator or mediator through a closely-held business permitted by Jud.Cond.R. 3.11. The Board also acknowledges that judicial experience is clearly relevant to the provision of alternative dispute resolution services. However, the abuse of office prohibition contained in Jud.Cond.R. 1.3 applies to all of an RAJ's business activities. The issue is the abuse of the office for personal advantage, not whether the business involves 'judge-like' services such as arbitration or mediation. Whether an RAJ provides law-related services such as arbitration and mediation, or services completely unrelated to the law, the RAJ must not identify or market himself or herself using a judicial title.

Jud.Cond.R. 3.11 permits RAJs to write and teach, which could occur in the context of both for-profit and non-profit enterprises. There may be situations in which it is appropriate for an RAJ to use a judicial title when writing or teaching. As stated in Jud.Cond.R. 1.3, Comment [4]:

Special considerations arise when judges write or contribute to publications of for-profit entities. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this rule or other applicable law. A judge who writes or contributes to a publication does not violate this rule by allowing his or her title and judicial experience to be used as a means of identification or to demonstrate an expertise in the subject-matter of the publication.

If an RAJ uses a judicial title in the context of writing or teaching, the title must not be traded upon to generate profit, sales, or exposure for the publisher, sponsor, or the RAJ. As with closely-held business activities, an RAJ may not use a judicial title when writing or teaching to gain a personal or competitive advantage for the RAJ or other persons or entities.

#### *Acting Judges and Private Judges*

Municipal court judges in single-judge courts may appoint a substitute to serve during the ,absence, incapacity, or unavailability' of the judge or to cover vacation periods. R.C. 1901.10(A)(2); 1901.12. County court judges may appoint substitutes if the judge is ,temporarily absent, incapacitated, or otherwise unavailable.' R.C. 1907.14. These appointed substitutes have the ,jurisdiction and powers' of the court and ,shall be styled 'acting judge'.' R.C. 1901.10(A)(2); 1907.14.

Acting judges are subject to the Code, although they are exempt from a number of specific rules. Code, Application(V). Acting judges are permitted to practice law, so an acting judge may not serve as an RAJ. Code, Application(I) and (V). Despite the ability to practice law and an exclusion from a number of Code provisions, acting judges must comply with the prohibition against abusing the prestige of judicial office found in Jud.Cond.R. 1.3. Acting judges may be either lawyers or lawyers who are former judges.

Because acting judges have the ‚jurisdiction and powers‘ of the court while serving as an acting judge pursuant to appointment, it is appropriate for acting judges to employ a judicial title on entries, orders, decisions, and case-related correspondence. To comply with R.C. 1901.10(A)(2) and 1907.14, the title should be ‚Acting Judge.‘ Outside of acting judge responsibilities, whether a lawyer or a former judge, the ‚Acting Judge‘ title should not be used in the practice of law, law-related or other businesses, government or public sector work, or charity and community activities. In these contexts, use of the title would constitute an abuse of the prestige of office in violation of Jud.Cond.R. 1.3. Acting judges must also comply with the Rules, and use of judicial titles outside of acting judge duties would be false and misleading under Prof.Cond.R. 7.1, constitute conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Prof.Cond.R. 8.4(c), and imply an ability to influence the courts and other public entities or officials as prohibited by Prof.Cond.R. 8.4(e).

In contrast to an acting judge, a private judge is a retired judge who registers with the clerk of a common pleas, municipal, or county court to receive referrals for adjudications of civil actions or proceedings and submissions for determination of specific issues or questions of fact or law in any pending civil action or proceeding. R.C. 2701.10. Upon referral of a matter, the private judge ‚shall have all of the powers, duties, and authority of an active judge in which the action or proceeding is pending.‘ R.C. 2701.10(C). If a former judge’s workload allows, he or she may act as both a private judge and an RAJ. *See* Guidelines at 3.2(F).

Because private judges have ‚all of the powers, duties, and authority of an active judge,‘ a private judge may use a judicial title on entries, orders, decisions, and case-related correspondence. A private judge who serves as an RAJ is subject to the Code of Judicial Conduct, which will govern the use of judicial titles in activities outside of private judging. Former judges who work both as a private judge and an RAJ should consult our previous discussion of an RAJ’s use of judicial titles. A former judge who serves solely as a private judge is not subject to the Code, and his or her use of judicial titles would be scrutinized under the Rules, also as previously discussed in this opinion.

*Factual Statements about Prior Judicial Service*

Although the Board has identified limited situations in which it is appropriate for a former judge to use a judicial title, the Board believes that former judges should be able to reference and describe their judicial service and experience. As the Board determined in Opinion 93-8, a former judge may use factual statements about prior judicial service in ,professional announcement cards or law directory listings.` The Board previously limited judicial experience descriptions to announcement cards and directory listings because they ,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.` Advisory Opinion 93-8 at 3. Announcement cards and directories were also specifically referenced in the prior Code of Professional Responsibility. *See* DR 2-102 (Professional Notices, Letterheads, and Offices). Given the departure in the Rules from the Code's ,laundry list` of cards, letterheads, signs, and the like,<sup>6</sup> the Board now takes a more expansive view of a former judge's ability to refer to judicial service. Subject to the applicable Rule and Code provisions already considered in this opinion, former judges may include truthful and factual statements describing prior judicial positions in a variety of communications including biographical sketches, resumes, and curricula vitae. In such communications, a former judge may identify oneself as a former judge, so long as this is done with a description following the name that is not in the form of a judicial title.

*Judicial Title Used as an Honorific by Others*

As a final point, the Board appreciates that former judges are often addressed as ,Judge` by others due to habit, customs of etiquette, or a prior relationship. The focus of this Advisory Opinion is the affirmative use of judicial titles by former judges. It should not be interpreted to mean that a former judge has violated the Rules or Code if referred to as ,Judge` by a lawyer, friend, acquaintance, or stranger. Former judges should not require, insist on, or encourage such practice, but the unsolicited use of the honorific ,Judge` or other judicial title by another does not constitute misconduct by the former judge.

If the person referring to another as ,Judge` is a judge subject to the Code, though, and the judicial title is used in a proceeding before the judge,

---

<sup>6</sup> *See* Ohio Sup. Ct., Bd. of Comm'rs on Grievances and Discipline, Op. 2012-2 (June 8, 2012) (Identification of Nonlawyers on Law Firm Letterhead, Websites, and Business Cards).

Jud.Cond.R. 2.4(C) will apply. That rule prohibits a judge from ,convey\*ing+ or permit[ting] others to convey the impression that any person is in a position to influence the judge.` A judge must further ,act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.` Jud.Cond.R. 1.2. Former judges may appear before current judges as lawyers, parties, or witnesses. When the presiding judge addresses a lawyer, party, or witness as ,Judge,` roles are confused, there is a perceived bias in favor of that individual, and the judge's ability to be fair and impartial is called into question. Reading Jud.Cond.R. 1.2 and 2.4(C) together, judges should not, in proceedings before them, refer to former judges using judicial titles. Moreover, judges must make reasonable efforts to ensure that court staff, lawyers, litigants, and witnesses do not address former judges by judicial titles in court proceedings. *Accord* U.S. Jud. Conf., Commt. Code Conduct, Op. No. 72 (June 2009).

## CONCLUSION:

The adage ,once a judge, always a judge,` has no basis in the Rules of Professional Conduct or the Code of Judicial Conduct. In general, a former judge should not refer to himself or herself using a judicial title that consists of the words ,judge` or ,honorable` appearing prior to their name regardless of whether ,judge` or ,honorable` is capitalized or accompanied by modifiers such as ,former` or ,retired.` A former judge's use of a judicial title when engaging in the practice of law violates Prof.Cond.R. 7.1, 7.5, and 8.4(a), (c), and (e). If a former judge provides law-related services and Prof.Cond.R. 5.7 dictates that the Rules of Professional Conduct apply, the use of a judicial title in the law-related business also violates Prof.Cond.R. 7.1, 7.5, and 8.4(a), (c), and (e). In all other settings, including business, government or other public sector entities, and charity or community groups, a former judge must still comply with Prof.Cond.R. 8.4, and refrain from using judicial titles.

Former judges serving as retired assigned, acting, or private judges have judicial authority in designated cases and must be able to identify themselves as the decision-maker in these cases. Thus, they may use judicial titles in case-related entries, orders, decisions, and correspondence. Retired assigned judges and acting judges must comply with the abuse of office prohibition contained in Jud.Cond.R. 1.3, and therefore should not use judicial titles in the provision of law-related or other business services, including arbitration and mediation.

Former judges serving solely as private judges are bound by Prof.Cond.R. 8.4, and should not use judicial titles outside of private judging cases.

It is appropriate for a former judge to use factual descriptions of prior judicial service and experience in communications such as biographical sketches, resumes, and curricula vitae. Additionally, a former judge has not committed misconduct if another person addresses the former judge by a judicial title, provided that the former judge does not require, insist on, or encourage such practice. Under Jud.Cond.R. 1.2 and 2.4(C), judges must make reasonable efforts to ensure that former judges involved in proceedings as lawyers, parties, or witnesses are not referred to by judicial titles in the proceedings.

**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 Ohio Rules of Professional Conduct, the Ohio Code of Judicial Conduct, and the Attorney's Oath of Office.**