

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

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[Corrected Copy]

Directive # 5-08
(supersedes Directive #7-04)

**To: All Judges and Justices,
Including Retired Judges and Justices**

From: Philip S. Carchman, P.J.A.D.

**Subject: Guidelines on the Practice of Law by Retired Judges –
Reissuance (with One Revision)**

Date: March 24, 2008

This Directive reissues the **Guidelines on the Practice of Law by Retired Judges**, which previously were most recently issued by Directive #7-04 (May 17, 2004). This supersedes that prior Directive.

In 2006 the Supreme Court adopted amendments to Rule 1:40-4(b) to change the initial number of hours of mediation provided at no cost to the parties from three hours to two hours. That amendment necessitated a conforming amendment to Guideline 7, simply changing the word “three” to “two”. That word change is the only substantive revision to the Guidelines effected by this Directive (albeit a bit belatedly).

The Supreme Court has authorized reissuance of these Guidelines, which set out the limitations on the practice of law by former judges who have retired under the provisions of the Judicial Retirement System Act (N.J.S.A. 43:6A-1 et seq.).

Guideline 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 prohibits any representation of, appearance for, or negotiation on behalf of a casino licensee or an applicant to be a casino licensee by a firm, partnership, or corporation with which a retired judge is associated for a period of two years from the date of retirement unless (a) the retired judge is associated with the firm, partnership or corporation in a position considered "of counsel" that does not entail any equity interest in the firm, partnership, or corporation; and (b) the retired judge is screened for that two-year period from personal participation in any such representation, appearance, or negotiation.

Guideline 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 that he or she may have taken.

Guideline 3. Subject to the provisions of Guideline 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 that 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 that 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.

Guideline 4. A retired judge may not serve as attorney in any contested or uncontested matters before either State or local administrative agencies, boards, or 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.

Guideline 5. A retired judge may not serve as attorney for any person before a District Ethics Committee, a Committee on Character, or any other committee or body appointed by the Supreme Court.

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

Guideline 7. A retired judge may not accept fee-generating court-initiated appointments, e.g., appointments to serve as a receiver, condemnation commissioner, guardian ad litem, mediator, arbitrator, or discovery master except as set forth below.

A retired judge may accept fee-generating court-initiated appointments in the following circumstances only:

- (a) as an arbitrator in the statutory or Court-approved arbitration programs, as set forth in R. 4:21A-1 et seq.;
- (b) as a mediator in the Statewide Civil Mediation Program, and in the Court-approved presumptive mediation pilot program, provided that the retired judge meets the experiential and training requirements set forth in Rules 1:40-12(a), 1:40-4(e)(1) and 1:40-12(b) and provided that the retired judge agrees to be subject to the same conditions that are applicable to all other mediators in the program, e.g., providing the first two hours of mediation at no cost to the litigants pursuant to R. 1:40-4(b) and Appendix XXVI ("Guidelines for the Compensation of Mediators Serving in the Civil Mediation Program").

This guideline 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 such appointments do not contravene any of the other restrictions set forth in this Directive.

Guideline 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.

Guideline 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.

Guideline 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.

P.S.C.

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