
ISSUE I

May a former judge serve both as a reserve judge and provide services for hire in a private business as a neutral third person?

ANSWER

Yes.

ISSUE II

May a reserve judge use the title "honorable" in advertising services for hire in a private business as a neutral third person?

ANSWER

No.

FACTS

A former judge would like to serve as a reserve judge and provide services as an arbitrator, mediator, or neutral (mediator, evaluator, assessor, etc.). The former judge also would like to use the title "honorable" in advertising the services.

DISCUSSION

The Committee concludes that the issues presented involve provisions of SCR 60.05(6), SCR 60.07(2), and SCR 60.03(2).

A. SCR 60.05(6) and 60.07(2)

SCR 60.05(6) prohibits a judge from serving as "an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law." SCR 60.07, which is entitled Applicability, provides that all judges shall comply with the Code of Conduct. However, subsection (2) states that reserve judges are exempted from complying with SCR 60.05(6).

The requestor of this opinion framed the issue in terms of "mediator," "arbitrator," or "neutral." SCR 60.05(6) includes services as a "mediator" or "arbitrator." The Committee, however, recognizes that the practice of alternative dispute resolution has expanded to include many other processes analogous to mediation and arbitration. In Wisconsin these processes have been identified and defined in Wis. Stat. §802.12. In that statute entitled "Alternative dispute resolution," the drafters refer to "a neutral third person" as conducting mediation, arbitration, and other "settlement alternatives." In this opinion and in future opinions, the Committee adopts the designation "neutral third person" when referring to mediation, arbitration, or other settlement alternatives as defined in Wis. Stat. §802.12.

The Code of Judicial Conduct expressly prohibits "a judge" as defined in SCR 60.01(8) from providing services as an arbitrator or mediator. The Committee concludes that this prohibition would extend to the provision of any type of service as a neutral third person within the processes defined in Wis. Stat. §802.12, unless expressly authorized by law.

A reserve judge may serve in those capacities described in SCR 60.05(6), in cases which have not been assigned to the judge as a reserve judge, because SCR 60.07(2) states that reserve judges are specifically exempted from the provisions of SCR 60.05(6).

B. SCR 60.03

Wis. Advisory Ops. 97-6 (1997) and 97-6R (1998) state that a reserve judge may not use the title "judge" or "reserve judge" or appear in judicial robes when advertising services as arbitrator or mediator. Such conduct violates SCR 60.03(2) by lending the prestige of judicial office to advance the private financial interest of the former judge now serving as a reserve judge and creates the appearance of impropriety. The Committee concludes that the term "honorable" is prohibited for the same reasons.

CONCLUSION

The Committee concludes that reserve judges may serve as a reserve judge and may serve in nonassigned cases as a neutral third person. A reserve judge may not use the title "honorable" in advertising his or her services for hire as a neutral third person.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 98-6 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 9th day of June, 1998.

Thomas H. Barland
Chair