

Opinion No. 06-03
October 12, 2006

Topic: A sitting judge wants to advertise his/her availability as a future mediator three weeks before retirement from the bench.

Digest: A judge may not advertise future availability as a mediator or arbitrator.

References: In re Associate Judge Arthur Rosenblum, 3 Ill. Cts. Com. 9 (1993); PepsiCo v. McMillen, 764 F.2d 458 (7th Cir. 1985); In re Scott, 377 Mass. 364, 386 N.E.2d 218 (1979); Illinois Supreme Court Rule 62B; Illinois Rules of Professional Conduct Rule 1.12; Illinois Judicial Ethics Committee (IJEC) Opinion No. 04-01; IJEC Opinion No. 98-4; Commentary to Canon 4 G. of the ABA Model Code of Judicial Conduct (1990); Shaman, Lubet, Alfini, Judicial Conduct and Ethics, §7.21 and 7.23 (1997); PepsiCo v. McMillen, 764 F.2d 458 (1985).

FACTS

The inquiring judge (Judge A) has a term of office that will expire on December 5. Judge A is not a candidate for retention for an additional term and, hence, will leave judicial office effective December 6. After leaving the bench, Judge A will conduct mediations and arbitrations through a commercial mediation/arbitration service (service). Before leaving the bench, the service would like to announce in print advertisements that Judge A will be joining it starting December 6th. The announcement would be in the form of display advertising and a mailing to lawyers approximately three weeks prior to Judge A's retirement.

QUESTION

Whether a judge may advertise post retirement availability as a mediator or arbitrator?

OPINION

A judge may not lend the prestige of judicial office to advance private interests. Illinois Supreme Court Rule 62B. A judge may not exploit the prestige of the judicial office to advance his own interests or the interests of the judge's family. IJEC Opinion No. 98-4 (citing Commentary to Canon 4 G. of the ABA Model Code of Judicial Conduct (1990); Shaman, Lubet, Alfini, Judicial Conduct and Ethics, § 7.21 p. 233

(1997)); but see In re Associate Judge Arthur Rosenblum, 3 Ill. Cts. Com. 9, 30-31 (1993) (use of the judicial letterhead in correspondence in the midst of a criminal proceeding and termination of a lease against judge's tenant insufficient to show that judge attempted to exploit his position as a judge); IJEC Opinion No. 04-01 (June 15, 2004) (mentioning judicial office in a letter to a school in the midst of disciplinary proceedings against his child did not violate the Code).

When a judge seeks future employment as a lawyer, it implicates ethical issues even when the headhunter does not tell the judge about the potential employment opportunities. PepsiCo v. McMillen, 764 F.2d 458, 460 (7th Cir. 1985) (headhunter soliciting future employment for a judge from law firms litigating matter before that judge); Judicial Conduct and Ethics, § 7.23 p. 244; see also Illinois Rules of Professional Conduct Rule 1.12.

The solicitation of future business by the service using the name and title of the judge to attract business raises similar ethical concerns. Even where the judge is not aware of the lawyers and litigants who respond to the advertisement, an objective and fully informed person could reasonably question the neutrality of a judge whose agents are in active contact with a party or litigant negotiating his future employment as a mediator. Cf. PepsiCo v. McMillen, 764 F.2d 458, 460 (7th Cir, 1985).

CONCLUSION

A judge may not advertise his future availability as an arbitrator or mediator while still serving on the bench