

1981 WL 158223 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 7, 1981

***1 Re: State Trial Court Judges Practicing Law After Retirement**

The Honorable Thomas W. Ridgway
Judge
Superior Courts
P. O. Box 805
Monroe, Georgia 30655

Dear Judge:

In your letter of March 10, 1981, you requested an opinion as to whether judges of state trial courts of general jurisdiction may practice law after they retire and begin receiving their state pensions. [Section 9-8-120\(4\) of the South Carolina Code of Laws \(1976\)](#) provides:

No justice, or judge while drawing retirement compensation shall engage in the practice of law if such practice shall involve appearing in the courts of this state before a jury, administrative tribunal or judge or shall involve appearing before the Supreme Court of this State.

This provision is part of the Act creating a retirement system for South Carolina judges and solicitors and is obviously intended to prevent such persons from receiving retirement benefits while they also receive income from a private law practice. While this statute has not been construed by the courts, I do not believe that it would apply to retired judges from other states.

The Code of Judicial Conduct, Rule 33 of the Rules of the South Carolina Supreme Court, provides in its Compliance section that:

A retired judge who receives the same compensation as a full-time judge on the court from which he retired and is eligible for recall to judicial service should comply with all provisions of this Code except Canon 5G, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges.

As to full-time judges, Canon 5F provides that a judge should not practice law. Therefore, it would be ethically improper for a retired judge, receiving the same compensation as a full-time judge and subject to recall to the bench, to practice law in this State.

If, however, the retired judge is receiving less than full-time compensation, he is not required to comply with Canon 5F. See, Compliance Section A(1), Rule 33 of the Rules of the South Carolina Supreme Court. Compliance Section A(2) does provide some limitation on a judge's ability to practice law by providing that a judge:

Should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

It should be pointed out that the Court's Rule 33 is the ABA's Code of Judicial Conduct, which has been adopted by most states. In my opinion, it would be applicable to a judge who retired from the bench in a state other than South Carolina but desired to practice in this State.

Finally, in order to engage in the practice of law in South Carolina, a judge must, of course, be admitted to practice law in this State. South Carolina has no reciprocity agreement with other states; therefore, a judge from another state would be required to comply with the Supreme Court's Rules for the Examination and Admission of Persons to Practice Law in South Carolina.

*2 I hope this information will be of assistance to you. With cordial best wishes, I am

Very truly yours,

Richard B. Kale, Jr.

Senior Assistant Attorney General

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