

WHEN THE ROBES COME OFF:

**REFLECTIONS ON THE PRACTICE OF LAW BASED ON
PERSPECTIVES FROM BOTH SIDES OF THE BENCH**

MAY 17, 2016

NYIPLA ANNUAL MEETING

PANELISTS

Moderator: **Hon. Garrett E. Brown, Jr. (Ret.)**

Former Chief Judge, U.S. District Court for the District of New Jersey

- **Hon. Joseph Farnan, Jr. (Ret.)**

Former Chief Judge, U.S. District Court for the District of Delaware

- **Hon. John C. Lifland (Ret.)**

Former Judge, U.S. District Court for the District of New Jersey

- **Hon. John Hughes (Ret.)**

Former Magistrate Judge, U.S. District Court for the District of New Jersey

LIFE BEFORE AND AFTER THE BENCH

ETHICAL ISSUES RELATED TO SEEKING POST-JUDICIAL EMPLOYMENT

- A sitting judge should recuse him or herself when a former judge appears as counsel before the court in which they once held office.

Committee on Codes of Conduct Advisory Opinion No. 70 (2009)

- Appearance of impartiality of a judge when a former colleague appears as counsel
- Former judge's special knowledge of a presiding judge's practices or viewpoint
- Fixed recusal period may provide a solution depending on the court
- Key question: Can the sitting judge fairly disregard the relationship with his or her former colleague?

ETHICAL ISSUES RELATED TO SEEKING POST-JUDICIAL EMPLOYMENT

- A former judge acting as counsel should not be referred to as “judge” in court papers or proceedings.

Committee on Codes of Conduct Advisory Opinion No. 72 (2009)

- Question of integrity and impartiality of the judicial process
- Presiding judge and a lawyer before the court should not have the same title
- Different state rules about using prior judicial status in attorney advertising and firm letterhead
- Concern about implication to clients that a lawyer can offer special influence because of prior service as a judge

ETHICAL ISSUES RELATED TO SEEKING POST-JUDICIAL EMPLOYMENT

- A judge contemplating resignation or retirement followed by a return to practicing law should take steps to avoid the appearance of impropriety or affect the court's ability to handle its docket.

Committee on Codes of Conduct Advisory Opinion No. 84 (2016)

- Recusal on any matter in which a law firm appears once discussions have begun
- Consider avoiding attendance at meetings and social functions with a future employer until resignation is effective
- Consider how the timing of the announcement of future employment might negatively impact the court to advance the private interests of the future employer

**SURPRISING ASPECTS
OF POST-JUDICIAL PRACTICE**

MORE THAN JUST MEDIATION

ETHICAL ISSUES RELATED TO FORMER JUDGES ACTING AS THIRD-PARTY NEUTRALS

- ABA Model Rule 1.12(a)

Former Judge, Arbitrator, Mediator Or Other Third-Party Neutral

1.12(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

SELECTING A MEDIATOR

GUIDANCE FOR PRACTITIONERS

THANK YOU