

MAINE STATE LEGISLATURE

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Judge's Practice after Retirement
4 M.R.S.A. 103
4 M.R.S.A. 5
4 M.R.S.A. 159-A

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December 5, 1978

Honorable Harold Rubin
Justice, Superior Court
Sagadahoc County Courthouse
Bath, Maine 04530

Dear Justice Rubin:

This responds to your request for an opinion on two questions regarding interpretation of 4 M.R.S.A. § 103. Specifically, you have asked:

1. Do the provisions of the last sentence of the first paragraph of 4 M.R.S.A. § 103 bar a retired Justice of the Superior Court from appearing as an attorney or counsellor representing a defendant in a criminal prosecution if he wishes to continue to receive retirement benefits, and
2. If the answer to question 1 is in the affirmative, does the bar on representing criminal defendants extend to the members of any law firm with which a retired Justice might associate himself.

We answer your first question in the affirmative and your second question in the negative.

The last sentence of 4 M.R.S.A. § 103 reads as follows:

"The right of any justice drawing such compensation to continue to receive it shall cease immediately, if he acts as attorney or counsellor in any action or legal proceeding in which the State is an adverse party or has any interest adverse to the person or persons in whose behalf he acts."

Similar provisions apply to the retirement benefits of Justices of the Supreme Judicial Court, 4 M.R.S.A. § 5, and Judges of the Maine District Court, 4 M.R.S.A. § 157-A.

Except for editing changes, this prohibition remains basically unchanged from its wording as enacted by the provisions of P.L. 1941, c. 263. The legislative debates indicate that the law was enacted as a reaction to retired Justice Pattangall appearing on behalf of a criminal defendant in a highly publicized embezzlement case. The principal legislative debate in the House, Legislative Record, House, April 11, 1941, pp. 979-984, indicates the clear intent of the Legislature that retired Justices be barred from appearing as an attorney or counsellor in a role adverse to the State.

The restriction appears to be personal to retired Justices and intended to condition their retirement compensation from the State upon their not appearing in court proceedings adverse to the State. We do not construe the prohibition to extend to all members of a law firm with which a retired Justice may become associated. In this connection, we would note that we are aware of at least three instances where retired Justices of the Supreme Judicial or Superior Courts serve in of counsel capacity to law firms which, on occasion, appear in cases where the law firm's position is adverse to that of the State of Maine.

I hope this information is helpful.

Sincerely,



DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec

cc: Honorable Vincent McKusick