

OPINION NO. 94-011**Syllabus:**

An attorney registered in inactive or retired status pursuant to Gov. Bar R. VI, §§2-3 remains "in good standing before the Ohio supreme court" for purposes of retaining office as a notary public under R.C. 147.03 if that attorney meets the standards set by the court for issuance of a certificate of good standing. The current practice of the court is to issue a certificate of good standing whenever an attorney is not subject to any disciplinary action, is in compliance with Gov. Bar R. X governing continuing legal education, and is registered in compliance with Gov. Bar R. VI.

To: George Voinovich, Office of the Governor, Columbus, Ohio
By: Lee Fisher, Attorney General, March 18, 1994

You have requested an opinion on behalf of the Ohio Notary Commission regarding the status of an attorney's commission as a notary public when the attorney is registered as inactive or retired pursuant to Gov. Bar R. VI.¹ Specifically, you ask whether, assuming all other requirements of R.C. 147.03 for maintaining a commission as a notary public are met, such attorneys continue to be "in good standing before the Ohio supreme court" within the meaning of R.C. 147.03 so that they can maintain their commissions.

Attorney Registration Status

Article IV, §2(B)(1)(g) of the Ohio Constitution confers upon the Ohio Supreme Court original jurisdiction regarding "[a]dmission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law." Pursuant to this constitutional directive, the Supreme Court Rules for the Government of the Bar of Ohio address in a comprehensive manner each of the foregoing matters. In particular, all attorneys admitted to the practice of law in Ohio are required to register with the Clerk of the Ohio Supreme Court. Gov. Bar R. VI. Attorneys in active status must file a certificate of registration biennially, together with the required fee, and keep the Attorney Registration Office apprised of any address

¹ Your written request referred to attorneys "retired from the practice of law and no longer earning continuing legal education credits." Members of your staff have clarified that the inquiry is specifically concerned with attorneys in inactive or retired registration status.

changes. Gov. Bar R. VI, §1(A), (D). Pursuant to Gov. Bar R. X, attorneys in active status are also subject to continuing legal education (CLE) requirements.

As an alternative to active status, an attorney may register as inactive or retired, pursuant to the following provisions of Gov. Bar R. VI:

SECTION 2. Inactive Attorneys

An attorney who is admitted to the practice of law in Ohio may be granted inactive status by applying to the Clerk for an exemption from payment of the registration fee at the time the attorney files a Certificate of Registration. Until the attorney requests and is granted reinstatement of active status, an inactive attorney shall not be entitled to practice law in Ohio; hold himself or herself out as authorized to practice law in Ohio; hold nonfederal judicial office in Ohio; render any legal service for an attorney granted active status; occupy a nonfederal position in this state in which the attorney is called upon to give legal advice or counsel or to examine the law or pass upon the legal effect of any act, document, or law; be employed in the Ohio judicial system in a position required to be held by an attorney; or practice before any nonfederal court or agency in this state on behalf of any person except himself or herself.

SECTION 3. Retired Attorneys

(A) An attorney who is admitted to the practice of law in Ohio and is sixty-five years of age or older may be granted retired status by applying to the Clerk for retired status at the time the attorney files a Certificate of Registration. An attorney who is granted retired status shall be exempt from all the requirements of Section 1 of this rule for as long as the attorney is registered under retired status. Until the attorney requests and is granted reinstatement of active status, a retired attorney shall not be entitled to practice law in Ohio; hold himself or herself out as authorized to practice law in Ohio; [restrictions continue in language identical to that of Section 2, above].

Pursuant to Gov. Bar R. X, §3(E)(6), attorneys registered as inactive or retired are exempt from the CLE requirements of Rule X.

Meaning of "In Good Standing Before the Ohio [S]upreme [C]ourt" for Purposes of R.C. 147.03

R.C. 147.03 states:

An attorney admitted to the practice of law in this state by the Ohio supreme court shall hold his office as a notary public as long as he is a resident of this state or has his principal place of business or primary practice in this state, he is *in good standing before the Ohio supreme court*, and the commission is not revoked. (Emphasis added.)

The qualification "in good standing before the Ohio supreme court" is not defined for purposes of R.C. 147.03, nor does such a definition appear elsewhere in the Revised Code. Further, as the Ohio Supreme Court has jurisdiction over "[a]dmission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law," Ohio Const. art. IV, §2(B)(1)(g), the General Assembly may not establish or define the standards by which the court considers an attorney to be in good standing. *See generally In re Nevius*, 174 Ohio St.

560, 562, 191 N.E.2d 166, 169 (1963) ("all matters relating to the discipline and reinstatement of attorneys ... are exclusively under the control of the judicial branch"); *accord Hecht v. Levin*, 66 Ohio St. 3d 458, 613 N.E.2d 585 (1993). Thus, by employing the phrase "in good standing before the Ohio supreme court" in R.C. 147.03, the General Assembly is indicating an attorney whom the court considers to be in good standing and, of necessity, that the criteria for such good standing are those set by the court itself.

The term "in good standing" appears in several of the Supreme Court Rules for the Government of the Bar of Ohio. Attorneys who are admitted to the practice of law in other jurisdictions, but not in Ohio, may be permitted to practice in Ohio for specified purposes if such attorneys provide, *inter alia*, a certificate of good standing from the jurisdictions where they are admitted to practice. Gov. Bar R. I, §8(C)(5) (applicants for admission to practice without examination); Gov. Bar R. VI, §4(A) (applicant for corporate status); Gov. Bar R. IX (temporary certification); Gov. Bar R. XI (limited practice by foreign legal consultants). Further, attorneys admitted in Ohio must be in good standing to qualify for certain activities. Gov. Bar R. I, §4(A) (Board of Bar Examiners); Gov. Bar R. II, §1(B) (supervising legal interns); Gov. Bar R. V, §9(A)(3) (monitoring an attorney on disciplinary probation); Gov. Bar R. VII, §5 (signing complaint alleging unauthorized practice of law); *see also* CLE Reg 602 (hearing examiner); S. Ct. Prac. R. VII, §§5, 6 (co-signing motion for attorney not admitted in Ohio to present oral argument before the Ohio Supreme Court).

None of the rules cited above defines the term "in good standing." On the other hand, none of these rules equates that term with a particular registration status. A staff member of the Clerk of the Ohio Supreme Court has informed a member of my staff that it is the Clerk's current practice to issue a certificate of good standing for an attorney, when so requested, if that attorney is not subject to any disciplinary action, is in compliance with Gov. Bar R. X governing CLE requirements, and is registered in compliance with Gov. Bar R. VI. Registration in inactive or retired status does not prevent an attorney from being in good standing. If an attorney who has registered as inactive or retired meets the above criteria, the court considers that attorney to be in good standing.²

² Whether a particular attorney in inactive or retired status is in good standing is, of course, a question of fact that must be determined by the court itself. Since Gov. Bar R. X expressly exempts inactive and retired attorneys from CLE requirements, such attorneys will always be in compliance with that rule. It should be noted, however, that in order to be registered in compliance with Gov. Bar R. VI and to avoid disciplinary action, an inactive or retired attorney may not practice law in Ohio or hold himself or herself out as authorized to practice law in Ohio. Gov. Bar R. VI, §§2, 3. Although acting as a notary public does not constitute the practice of law and, therefore, is not a prohibited activity for purposes of Gov. Bar R. VI, it is common for an attorney notary public to utilize a seal or stamp embossed with the titles "attorney at law" and "notary public," the attorney's printed name, and the notation "my commission has no expiration date, 147.03 ORC." To the extent that use of the title "attorney at law" without qualification could be construed as holding oneself out as authorized to practice law in Ohio, it might be prudent for an attorney registered in inactive or retired status to so qualify the title "attorney at law" in order to avoid a violation of Gov. Bar R. VI, §2 or §3. The question of whether an attorney registered in inactive or retired status may use the unqualified title "attorney at law" when acting as a notary public is beyond the scope of my authority to determine, however, and should be directed instead to the Board of Commissioners on Grievances and Discipline of the Supreme Court pursuant to Gov. Bar R. V, §2(C).

Conclusion

It is, therefore, my opinion, and you are hereby advised that an attorney registered in inactive or retired status pursuant to Gov. Bar R. VI, §§2-3 remains "in good standing before the Ohio supreme court" for purposes of retaining office as a notary public under R.C. 147.03 if that attorney meets the standards set by the court for issuance of a certificate of good standing. The current practice of the court is to issue a certificate of good standing whenever an attorney is not subject to any disciplinary action, is in compliance with Gov. Bar R. X governing continuing legal education, and is registered in compliance with Gov. Bar R. VI.