

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-20**  
Issued: May 1964

***This opinion was decided under the Canons of Professional Ethics, which were in effect from 1946 to 1971. Lawyers should consult the most recent version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion***

**Question:** May a Circuit Judge who has not been reelected to office participate as an attorney in a case which had been filed in his court while he was Circuit Judge, but he was not called upon to pass on the merits of the case, but only on perfunctory motions not concerning the merits of the action?

**Answer:** Yes.

**References:** Canon 36

**OPINION**

This question comes under the provisions of Canon 36 of the Canons of Professional Ethics, which reads as follows:

A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity.

A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ.

A judge or a lawyer should at all times avoid by every means any action which would cause the general public to question the propriety of his actions, or which would tend to cause doubt in the mind of the public as to our judicial process.

In view of the fact that this question arises in any case where a judge retires from judicial office, this question becomes of great importance to any lawyer who finds himself in this position and who must, of necessity or choice, return to the active practice of law. Great care should be exercised by any former judge to avoid any semblance of influence or favor in accepting employment, in any cases which were pending in his court prior to the date of his retirement.

In the question submitted, however, and the facts as stated therein, it would appear that as judge of a Circuit Court no motion or other matter which went to the merits of the cause of action was passed upon in any manner. Under this strict interpretation of the

question, it is the Opinion of the Committee that in such a proceeding it would not be unethical or improper for a Circuit Judge who has not been reelected to office to participate in such a case or cases when he has not been called upon to pass in any manner upon the relative merits presented in the cause of action filed in his court prior to the time of his retirement from office.

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***Note to Reader***

*This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.*