

**Colorado Supreme Court  
Judicial Ethics Advisory Board (C.J.E.A.B.)  
C.J.E.A.B. ADVISORY OPINION 2006-09  
(Finalized and effective December 13, 2006)**

**ISSUE PRESENTED**

The requesting judge is a full-time judge who will be retiring soon. When he retires, he will be asking to be included in the Senior Judge Program. He also will be available for private mediation services. He asks when he may start to schedule private mediation cases. He further asks whether, assuming he may set private mediations before he retires, he should or must inform counsel in a case that currently is before him that he has set a private mediation with opposing counsel on another case after his retirement.

**CONCLUSIONS**

The judge should refrain from setting or hearing private mediations until after he retires as a judge.

**APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT**

Canon 2 provides that a judge should avoid impropriety and the appearance of impropriety in all the judge's activities.

Canon 5C(1) restricts a judge from engaging in financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judge's duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

Canon 5E specifies that a judge should not act as an arbitrator or mediator, except as provided for in Canon 8, which allows senior judges to serve as mediators and arbitrators.

**DISCUSSION**

Under Canon 5, a sitting judge may not engage in business and financial dealings that might adversely reflect upon his impartiality or involve the judge in frequent transactions with the attorneys or others who appear before him. Under Canon 2, judges are directed to avoid an appearance of impropriety and partiality. Because of the clear mandate of Canon 5E, the Board does not interpret the judge's request as contemplating that any mediations would occur before the judge retires.

Nevertheless, in the Board's view, the judge's requested course of activity would conflict with both Canons. Here, the requesting judge wishes to schedule private mediations, and

he anticipates that at least some such mediations would involve attorneys who currently appear before him. If the judge were to begin setting such mediations before he steps down, attorneys and parties appearing before him might perceive that other attorneys and parties who had scheduled private mediations with the judge upon his retirement could receive preferential treatment. Even if the judge were not paid in advance for his services, as sometimes occurs in private mediations, for the judge to contract with attorneys who appear in his courtroom to provide private mediation services for which he would later be compensated would involve financial and business dealings that could reflect adversely on the judge's impartiality. Accordingly, we conclude that the judge should not begin setting private mediations until after he has retired as a full-time judge.

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 13th day of December, 2006.