

## Thinking about “Retirement”? Explaining the Differences Between Inactive vs. Retired Status

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Whether it’s hitting the “pause” button or considering leaving the practice of law altogether, the pandemic has likely caused more lawyers to consider “retirement”. According to the recently-released 2021 ABA Profile of the Legal Profession<sup>1</sup>, one-third of lawyers over the age of 62 have changed their retirement plans and among those lawyers, more than half (53%) said the pandemic delayed retirement. Just under half (47%) said it hastened their retirement. Loss of income was identified in the survey as the major factor likely impacting senior lawyers’ plans, with 36% saying they made less money during the pandemic and only 18% reporting making more money. While the ABA report surveyed only older lawyers on the question of retirement, the pandemic will likely cause more lawyers, not just those over the age of 62, to rethink their career paths.

With 2021 drawing to a close and registration for 2022 gearing up, this is the time of year typically when lawyers thinking about leaving the active practice of law weigh their registration options. For lawyers seeking to “retire” from the practice of law, Supreme Court Rule 756 provides for most lawyers three registration options<sup>2</sup>: remain on Active status, go on Retired status, or take Inactive status. Before going off Active status, a lawyer should understand the differences between Inactive and Retired status and how those choices could impact their future plans.

### Inactive vs. Retired Status and the Practice of Law

Under Supreme Court Rule 756(b) Master Roll, a lawyer listed on the master roll as on Inactive or Retired status is prohibited from practicing law or holding himself or

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<sup>1</sup> The 2021 ABA Profile of the Legal Profession is a 140-page compilation of statistics and trends, as of July 1, 2021, in 11 areas, including demographics, law schools, judges and legal technology, including a chapter highlighting the impact the COVID-19 pandemic on different demographic groups within the profession. The findings are from a survey of more than 4,000 ABA members in Fall 2020 and a follow-up survey of nearly 1,400 senior lawyers in March 2021. Download a [PDF of the 2021 ABA Profile of the Legal Profession](#) or view the report at [www.ABALegalProfile.com](http://www.ABALegalProfile.com).

<sup>2</sup> Supreme Court Rule 756(a)(8) Permanent Retirement Status, adopted by the Supreme Court on June 5, 2012, allows lawyers facing minor misconduct charges to petition the Court for permanent retirement status — except that a lawyer who is granted permanent retirement status may not thereafter change his or her registration designation to active or inactive status, petition for reinstatement pursuant to Rule 767, or provide *pro bono* services as otherwise allowed under Rule 756(k). Also, the ARDC can file a motion to place a lawyer on disability inactive status pursuant to Rule 757 Transfer to Disability Inactive Status Upon Involuntary Commitment or Upon Judicial Determination of Legal Disability Because of Mental Condition. No lawyer transferred to disability inactive status may engage in the practice of law until restored to active status by order of the court.

herself out as authorized to practice law in Illinois, except for *pro bono* legal services provided to a legal aid organization under the prescriptions of IL S.Ct.Rule 756(k).

Deciding on whether to go on Inactive versus Retired status depends on the lawyer's short- and long-term plans. If a lawyer thinks that he or she **might** want to resume the practice of law sometime later, going on Inactive status makes more sense. Inactive status is designed for periods of time when the lawyer will not be using their license to practice law. If the lawyer is convinced that he or she will likely **never** return to the practice of law, Retired status is the probable choice.

### **Registration and Fees**

The difference between Inactive and Retired status for annual registration and fees is as follow:

#### **Yearly Registration**

**Inactive:** Yes. To maintain Inactive status under IL S.Ct.Rule 756(a)(5), a lawyer must register each year with the ARDC and pay the Inactive status registration fee. If a lawyer fails to do so, the lawyer will lose that registration status.

**Retired:** No. Once a lawyer goes on Retired status, there is nothing further the lawyer needs to do each year, unless the lawyer is providing *pro bono* legal services under IL S.Ct.Rule 756(k). See *Pro Bono Service infra*.

#### **Yearly Fees**

**Inactive:** \$121.00 (as of 2021)

**Retired:** No.

#### **Registration information on ARDC website**

**Inactive and Retired:** Address and phone number information is not available on the ARDC website for lawyers or retired judges who are on Inactive or Retired status. The ARDC website will continue to display the lawyer's full licensed name, date of admission to the Illinois bar, and registration status.

For lawyers on Inactive status, malpractice insurance disclosure will continue to be displayed on the ARDC website as Inactive status lawyers are required to answer the question of malpractice insurance, along with other practice-related questions, during the annual registration process.

### **Exemption from MCLE Requirements**

**Inactive and Retired:** Yes. Lawyers registered as Inactive or Retired are exempt from MCLE requirements. IL S.Ct.Rule 791(a).

**Reporting Exemption:** The ARDC Registrar reports a lawyer's registration status to the Illinois MCLE Board and the Board records if a lawyer qualifies for an exemption based on Inactive or Retired registration status. Lawyers do not report this exemption themselves. According to the Illinois MCLE Board's website, the Illinois MCLE Board records the exemption shortly after the lawyer's compliance deadline but before the reporting deadline or the reporting period.

**Impact on *Pro Bono* Service:** Lawyers registered as Inactive or Retired under IL S.Ct.Rule 756(a)(5) or (6) and authorized to provide *pro bono* services under IL S.Ct.Rule 756(k) still qualify for an exemption from their MCLE requirements.

**Note to Inactive:** To qualify for an exemption based on Inactive status, a lawyer must maintain Inactive status under IL S.Ct.Rule 756(a)(5), which means registering annually with the ARDC and paying the required registration fee.

### ***Pro Bono* Service**

Under IL S.Ct.Rule 756(k), a lawyer registered as Inactive or Retired under IL S.Ct.Rule 756(a)(5) or (a)(6), and is not disbarred or otherwise suspended from the practice of law in any jurisdiction, is authorized to provide *pro bono* legal services for an approved not-for-profit legal services organization, governmental entity, law school clinical program, or bar association sponsoring entity. Forms and instructions on to apply for *pro bono* service authorization can be found on the ARDC website at <https://registration.iardc.org/attyreg/registration>.

A list of approved *pro bono* sponsoring entities is available on the Illinois Legal Aid Online website at [www.illinoislegalaid.org](http://www.illinoislegalaid.org).

Notifications from lawyers and sponsoring entities of the end of a lawyer's participation in a *pro bono* program may be made by letter and should also be mailed, faxed, or emailed to the ARDC Registration Department.

### **Returning to Active Status**

A lawyer on Inactive or Retired status can request at any time to change their status back to Active status but the biggest difference comes in the amount of fees that will be owed in returning to Active status.

**Inactive** - An Inactive lawyer may request to resume Active status by submitting written or online notification of the intent to do so, and by paying the difference between the inactive status registration fee and the registration fee required pursuant to paragraphs (a)(1) through (a)(3) of Supreme Court Rule 756(a). See IL S.Ct.Rule 756(a)(5).\*

**Retired** - A Retired status lawyer may request to resume Active status by submitting written or online notification of the intent to do so, and by paying the fee required for the current year for that registration status, plus the reinstatement fee, including any deferred reinstatement fee, required by paragraph (i) of Supreme Court Rule 756. See IL S.Ct.Rule 756(a)(6).\*

### **Earned Legal Fees and Referral Agreements**

Fees earned prior to assuming Retired or Inactive status can be paid to the lawyer, who is not otherwise disbarred or suspended, after the lawyer has gone on Retired or Inactive status. Cf. IL S.Ct.Rule 764(h) (compensation a disciplined lawyer may receive on a *quantum meruit* basis for legal services rendered prior to the effective date of the order of discipline); ILRPC Rules 1.17 (sale of a law practice) and 5.4 (compensation to lawyer paid out in a law firm separation or retirement agreement); *see also* Illinois Judicial Ethics Committee Opinion No. 94-12 (May 16, 1994) (judge may accept payment for legal fees earned as a lawyer prior to becoming a judge).

Similarly, lawyers on Inactive or Retired status can receive fees for referral agreements made while on Active status but paid out after the lawyer has gone on Inactive or Retired status<sup>3</sup>. *See* Elane v. St. Bernard Hospital, 284 Ill.App.3d 865, 220 Ill.Dec. 3, 672 N.E.2d 820 (1996) (fee arrangement involving a referring lawyer who later becomes a judge is enforceable as long as it is consistent with IL RPC Rule 1.5's provisions as to client consent and the assumption of legal responsibility by the referring lawyer).

Lawyers cannot earn fees or enter into referral agreements while on Inactive or Retired status.

### **Firm Names**

IL RPC Rule 7.5(a) specifically recognizes that a lawyer may practice under a trade name, and Comment [1] notes that "any firm name including the name of a deceased partner is, strictly speaking, a trade name." While a trade name can be a useful means of identification, it can be misleading if the firm name misrepresents either the nature of the underlying entity or the relationship of the lawyers to that entity, implying an affiliation with other lawyers that doesn't exist. IL IRPC Rule 7.5(d); *see In re Burkhart*, M.R. 25174, 2009 CH00099 (IL S.Ct. March 19, 2012) (lawyer suspended and placed on probation for improperly using a deceased lawyer's name in the law

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<sup>3</sup> Under IL S.Ct.Rule 764(h), a disciplined lawyer may not receive any compensation related to the referral of a legal matter to the lawyer or attributed to the "good will" of the lawyer's former law practice.

firm name where the lawyer and deceased lawyer were never partners or members of the same firm).

When a living partner withdraws from a partnership to retire from the practice of law (as opposed to practicing elsewhere), and is not disbarred or suspended from the practice of law, Illinois ethics opinions support the view that the firm can continue to use the name of a retired partner in the firm name as long as the firm is a bona fide successor of the firm of which the retired partner was a member, using the name is authorized by law or contract and, most importantly, the public is not misled. See ISBA Opinion No. 03-02 (Jan. 2004) (law firm's name may contain the name of a retired partner or one who has an "of counsel" relationship to the firm, provided the firm takes reasonable steps to show that partner's status) and ISBA Opinion No. 865 (April 1984) (law firm may not show on its letterhead or in advertising that the firm was formerly known by a name which includes the name of a suspended lawyer); see also IL RPC Rule 7.5(c) (law firm name cannot include the name of a lawyer holding public office when not actively and regularly practicing with the firm). To avoid misleading the public, ethics opinions counsel that the firm using the name of a retired lawyer should take reasonable steps to show that he or she is retired, such as by indicating on the firm stationery the years during which he or she practiced. See ISBA Op. No. 03-02.

While there is abundant authority addressing how a firm may use the name of a partner who dies or retires, it is less clear whether a firm may continue to use the name of a named partner who has not severed ties with the firm altogether and is on Inactive status. See ISBA Opinion No. 20-04 (May 2020) (a law firm's name should not include the name of a non-practicing lawyer except for deceased or retired lawyers). Rather, a law firm's name may retain the name of a former partner who has an "of counsel" relationship to the firm (see ISBA 03-02 (Jan. 2004)); however, to use the term "of counsel", the former partner must be on Active status in order to be available to the firm for consultation and advice. See "[The 'Of Counsel' Relationship: What It Means and Why It Matters](#)" (Aug. 24, 2021) on ARDC website.

## Resources:

- **ARDC Registration Department:**

- <https://registration.iardc.org/attyreg/registration;>

- **E-mail:** [registration@iardc.org](mailto:registration@iardc.org)

- **Phone:** (312) 565-2600; (800) 826-8625 (from within Illinois only)

- **Fax:** (312) 565-0997 - Attn: Registration Department

- **Mailing Address:** ARDC Attention: Registration Department

- 130 East Randolph Drive, Suite 1500, Chicago, IL 60601

- **ARDC Practice Transition Resources:**  
<https://www.iardc.org/EducationAndOutreach/SuccessionPlanningAndPracticeTransitions>
- **Pro Bono Opportunities:** Go to the Illinois Legal Aid Online website ([www.illinoislegalaid.org](http://www.illinoislegalaid.org)) which also maintains a [list](#) of approved pro bono sponsoring entities.
- **Illinois MCLE Exemption:** Go to the Illinois MCLE Board website ([www.mcleboard.org](http://www.mcleboard.org)) under the “MyMCLE” tab for Attorneys