

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral.

(a) Except as stated in paragraph (e~~d~~) and in Rule 2.4(c), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person, or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) For two years after retirement from judicial service, a former appellate judge or justice may not appear as counsel before the court in which the judge or justice last held office.

(c~~b~~) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(d~~e~~) If a lawyer is disqualified by paragraph (a) no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee from that matter; and

(2) written notice is promptly given to the parties and any appropriate tribunal.

(e~~d~~) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment

[1] With the exception of paragraph (b), t~~t~~his Rule generally parallels Rule 1.11. The term
“personally and substantially” signifies that a judge who was a member of a
multimember court, and thereafter left judicial office to practice law, is not, after a period
of two years, prohibited from representing a client in a matter pending in the court, but
in which the former judge did not participate. So also the fact that a former judge
exercised administrative responsibility in a court does not prevent the former judge from
acting as a lawyer in a matter where the judge had previously exercised remote or
incidental administrative responsibility that did not affect the merits. Compare the
Comment to Rule 1.11. The term “adjudicative officer” includes such officials as judges
pro tempore, referees, special masters, hearing officers and other parajudicial officers,
and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2) and C of
the Model Code of Judicial Conduct provide that a part-time judge, judge pro tempore
or retired judge recalled to active service, may not “act as a lawyer in any proceeding in
which he served as a judge or in any other proceeding related thereto.” Although
phrased differently from this Rule, those rules correspond in meaning.

[2] Like former judges, lawyers who have served as arbitrators, mediators, or other third-
party neutrals may be asked to represent a client in a matter in which the lawyer
participated personally and substantially. This Rule prohibits such representation unless
all of the parties to the proceedings give their informed consent, confirmed in writing.
See Rule 1.0(f) and (b). Other law or codes of ethics governing third-party neutrals may
impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

[3] Although lawyers who serve as third-party neutrals do not have information
concerning the parties that is protected under Rule 1.6, they typically owe the parties an
obligation of confidentiality under law or codes of ethics governing third-party neutrals.
Thus, paragraph (d~~e~~) provides that conflicts of the personally disqualified lawyer will be
imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0(o). Paragraph (d~~e~~)(1)
does not prohibit the screened lawyer from receiving a salary or partnership share

54 established by prior independent agreement, but that lawyer may not receive
55 compensation directly related to the matter in which the lawyer is disqualified.

56 [5] Notice, including a description of the screened lawyer's prior representation and of
57 the screening procedures employed, generally should be given as soon as practicable
58 after the need for screening becomes apparent.

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