

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

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

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

14 (c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that  
15 lawyer is associated may knowingly undertake or continue representation in the matter  
16 unless:

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

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

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

22 Comment

23 [1] This Rule generally parallels Rule 1.11. The term "personally and substantially"  
24 signifies that a judge who was a member of a multimember court, and thereafter left  
25 judicial office to practice law, is not prohibited from representing a client in a matter  
26 pending in the court, but in which the former judge did not participate. So also the fact  
27 that a former judge exercised administrative responsibility in a court does not prevent  
28 the former judge from acting as a lawyer in a matter where the judge had previously  
29 exercised remote or incidental administrative responsibility that did not affect the merits.  
30 Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such  
31 officials as judges pro tempore, referees, special masters, hearing officers and other

32 parajudicial officers, and also lawyers who serve as part time judges. Compliance  
33 Canons A(2), B(2) and C of the Model Code of Judicial Conduct provide that a part-time  
34 judge, judge pro tempore or retired judge recalled to active service, may not “act as a  
35 lawyer in any proceeding in which he served as a judge or in any other proceeding  
36 related thereto.” Although phrased differently from this Rule, those rules correspond in  
37 meaning.

38 [2] Like former judges, lawyers who have served as arbitrators, mediators or other  
39 third-party neutrals may be asked to represent a client in a matter in which the lawyer  
40 participated personally and substantially. This Rule prohibits such representation unless  
41 all of the parties to the proceedings give their informed consent, confirmed in writing.  
42 See Rule 1.0(e) and (b). Other law or codes of ethics governing third-party neutrals may  
43 impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

44 [3] Although lawyers who serve as third-party neutrals do not have information  
45 concerning the parties that is protected under Rule 1.6, they typically owe the parties an  
46 obligation of confidentiality under law or codes of ethics governing third-party neutrals.  
47 Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be  
48 imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

49 [4] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph  
50 (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share  
51 established by prior independent agreement, but that lawyer may not receive  
52 compensation directly related to the matter in which the lawyer is disqualified.

53 [5] Notice, including a description of the screened lawyer’s prior representation and  
54 of the screening procedures employed, generally should be given as soon as  
55 practicable after the need for screening becomes apparent.

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