RULE 1.12: FORMER JUDGE, ARBITRATOR, MEDIATOR, OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in division (d), 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) 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.

(c) If a lawyer is disqualified by division (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless both of the following apply:

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

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(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] This 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 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, magistrates, special masters, hearing officers, and other parajudicial officers, and also lawyers who serve as parttime judges. Part III of the Application section of the Ohio Code of Judicial Conduct provides that a parttime judge shall not “act as a lawyer in any proceeding in which the judge served as a judge or in any other related proceeding.” Although phrased differently from this rule, the provisions 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 forbids 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. Lawyers who serve as mediators and other third-party neutrals also are governed by 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, division (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this division are met.

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

[5] Notice of the screened lawyer’s prior representation and that screening procedures have been employed, generally should be given as soon as practicable after the need for screening becomes apparent. When disclosure is likely to significantly injure the current client, a reasonable delay may be justified.

[6] By its terms, Rule 1.12(b) prohibits a lawyer from negotiating for employment with a party or lawyer involved in a matter in which the lawyer is presently acting as an adjudicative officer or neutral, during the time that the lawyer has such a role. The lawyer should not negotiate for such employment during the pendency of the matter, regardless of whether the lawyer is active in the matter at the time that the employment opportunity arises, except where the lawyer’s role has completely ended. Thus, a lawyer who, while acting as an independent mediator, attempted to settle a matter that remains pending is not prohibited from negotiating for employment with one of the parties or one of the lawyers in the matter after the mediation has concluded but while the case is still pending. If the lawyer were to be hired, however, Rule 1.12(a) would prohibit the lawyer from being involved in the matter on behalf of a party, and Rule 1.12(c) would effect the disqualification of the rest of the firm, absent effective screening and notice to the other parties and the tribunal.

**Comparison to former Ohio Code of Professional Responsibility**

Rule 1.12 addresses the duty of arbitrators, mediators, other third-party neutrals, and former judges to promote public confidence in our legal system and in the legal profession. DR 9-101(A) and (B) prohibit a lawyer from accepting private employment in a matter upon the merits of which the lawyer acted in a judicial capacity or the lawyer had substantial responsibility while the lawyer was a public employee. Because the same potential for misunderstanding exists with respect to lawyers acting as arbitrators or mediators, EC 5-21 recommends that lawyers be prohibited from thereafter representing in the dispute any of the parties involved in the mediation or arbitration. Rule 1.12 codifies the aspirational goal of EC 5-21, creates a standard for disqualification of a lawyer who “personally and substantially”
participated in the same matter while serving as a judge, mediator, arbitrator, or third party neutral, establishes an informed consent standard by which the lawyer may avoid personal disqualification, and provides a process through which the personally disqualified lawyer’s firm may avoid disqualification.

**Comparison to ABA Model Rules of Professional Conduct**

Rule 1.12 is substantively identical to Model Rule 1.12. Comment [6] has been added to provide further clarification regarding application of the rule.