

**Rhode Island Supreme Court  
Ethics Advisory Panel Op. 2018-04  
Issued December 13, 2018**

FACTS

The inquiring attorney is a former judge who resigned and who has resumed the practice of law. He/she seeks the Panel's guidance regarding representing clients in matters that are before the court in which he/she served as a judge.

ISSUE PRESENTED

May the inquiring attorney, who was a former judge, represent clients in matters before the court on which he/she served as a judge?

OPINION

The inquiring attorney, a former judge, may represent clients in matters before the court on which he/she served as a judge, provided that the attorney does not represent clients in matters in which he/she participated personally and substantially as a judge.

REASONING

Rule 1.12 of the Rules of Professional Conduct entitled "Former judge, arbitrator, mediator or other third-party neutral" is applicable to this inquiry. Rule 1.12 states as follows:

(a) Except as stated in paragraph (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 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 therefrom; and

(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.

Rule 1.12 only applies to representation in connection with the *same* matter in which a lawyer participated as a judge. ABA Annotated Model Rules of Professional Conduct, at 222 (8<sup>th</sup> ed. 2015). This is less restrictive than Rule 1.9 on former-client conflicts, which prohibits a lawyer, absent consent, from representing a client whose interests are adverse to a former client if the matters are the *same or substantially related*. Id. Participation on the merits of a case and participation in settlement discussions are considered personal and substantial. Id. While administrative responsibilities may also trigger Rule 1.12, Comment [1] to Rule 1.12 clarifies that “participated personally and substantially as a judge” means more than exercising “remote or incidental administrative responsibility that did not affect the merits.” See R.I. Ethics Advisory Panel Op., 2007-01 (2007).

The Panel notes that Rule 1.12 does not impose a one-year waiting period before a former judge may practice before the court on which he/she served. Other law, however, namely the State Ethics Code, requires such a waiting period.

The Panel concludes that the inquiring attorney, a former judge who resigned, may represent clients in matters before the court on which he/she served as a judge, provided that the inquiring attorney does not represent clients in connection with matters in which he/she participated personally and substantially as a judge. A prohibited representation under Rule 1.12 may be undertaken with the informed consent, confirmed in writing, of all parties to the proceeding.

The Panel’s guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under the State Ethics Code or any other rules, regulations or laws that may have bearing on the issues raised by this inquiry.