

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2007-01 Request No. 925
Issued February 8, 2007

Facts

The inquiring attorney has served as the probate judge in a municipality but was not re-appointed to the position. The inquiring attorney now seeks to represent clients before the municipality's probate court.

Issue Presented

May an attorney who was the former probate judge in a municipality represent clients before the same probate court?

Opinion

An attorney who was the former probate judge in a municipality may represent clients before the municipality's probate court provided that he/she does not represent anyone in connection with a matter in which he/she participated personally and substantially as the probate judge.

Reasoning

Rule 1.12 of the Rules of Professional Conduct entitled "Former Judge or Arbitrator" is applicable to this inquiry. Rule 1.12 states:

- (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, arbitrator or law clerk to such a person, unless all parties to the proceeding consent after consultation.
- (b) A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or arbitrator.

- (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 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 appropriate tribunal to enable it 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.

The Comment to Rule 1.12 notes that “participated personally and substantially as a judge” means more than exercising “remote or incidental administrative responsibility that did not affect the merits.” Comment 1.12.

The Panel concludes that the inquiring attorney, a former probate judge in a municipality, may represent clients in matters before the same probate court provided that he/she does not represent anyone in connection with a matter in which he/she participated personally and substantially as the probate judge. A prohibited representation under this rule may be undertaken with the consent, after consultation, of all parties to a 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.