

## **Alabama Rules of Professional Conduct**

### **Client-Lawyer Relationship**

#### **Rule 1.12.**

##### **Former Judge or Arbitrator, Mediator, or Other Third-Party Neutral.**

(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, mediator, other third-party neutral, 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 the 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 multi-member arbitration panel is not prohibited from subsequently representing that party.

[Amended eff. 6-23-2008.]

#### **Comment**

This Rule generally parallels Rule 1.11. The term “personally and substantially” signifies that a judge who was a member of a multi-member 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, referees, special masters, hearing officers and other para-judicial officers, and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2) and C of the former 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.

### **Comparison with Former Alabama Code of Professional Responsibility**

Paragraph (a) is substantially similar to DR 9-101(A), which provided that a lawyer “shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.” Paragraph (a) differs, however, in that it is broader in scope and states more specifically the persons to whom it applies. There was no counterpart in the former Code to paragraphs (b), (c) or (d).

With regard to arbitrators, EC 5-20 stated that “a lawyer [who] has undertaken to act as an impartial arbitrator or mediator, ... should not thereafter represent in the dispute any of the parties involved.” DR 9-101(A) did not permit a waiver of the disqualification applied to former judges by consent of the parties. However, DR 5-105(C) was similar in effect and could be construed to permit waiver.

**Note from the reporter of decisions:** The order amending Rule 1.8, the Comment to Rule 1.8, Rule 1.10(a), the Comment to Rule 1.10, Rule 1.12, Rule 1.14, the Comment to Rule 1.14, the Comment to Rule 3.2, Rule 3.6, the Comment to Rule 3.7, Rule 3.9, and Rule 4.4 is published in that volume of *Alabama Reporter* that contains Alabama cases from 983 So.2d.