

**American Bar Association
CPR Policy Implementation Committee**

Variations of the ABA Model Rules of Professional Conduct

**Rule 1.12: Former Judge, 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 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.

Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see

	<p>http://www.abanet.org/cpr/jclr/home.html.</p> <p>Comments not included.</p> <p>*Current links to state Rules of Professional conduct can be found on the ABA website: http://www.abanet.org/cpr/links.html*</p>
AL Effective 2/19/09	<p>(a) Replaces “or law clerk...neutral” with “arbitrator, mediator, other third-party neutral, or law clerk to such a person;”</p> <p>(b) Deletes everything after “arbitrator;” In second sentence changes “or other adjudicative officer” to “other adjudicative officer or arbitrator;” changes “lawyer involved” to “attorney involved;”</p> <p>(c)(2) Deletes “parties and any;” changes “enable them” to “enable it.”</p>
AK Effective 4/15/09	<p>(c)(2) Changes last clause, beginning with “and,” to: “and to any tribunal considering the matter.”</p>
AZ Effective 12/1/03	Same as MR
AR Effective 5/1/05	Same as MR
CA Current Rule	<p>[California’s Rules of Professional Conduct are structured differently from the ABA Model Rules. Please see California Rules : http://calbar.ca.gov/calbar/pdfs/rules/Rules_Professional-Conduct.pdf]</p>
CO Effective 1/1/08	<p>Does not adopt (c)(2) but adds (2) and (3):</p> <p><i>(2) the personally disqualified lawyer gives prompt written notice (which shall contain a general description of the personally disqualified lawyer’s prior participation in the matter and the screening procedures to be employed), to the parties and any appropriate tribunal, to enable the parties and the tribunal to ascertain compliance with the provisions of this Rule; and</i></p> <p><i>(3) the personally disqualified lawyer and the partners of the firm with which the personally disqualified lawyer is now associated, reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.</i></p>
CT Effective 1/1/07	<p>(a): deletes “and substantially”</p> <p>(b): deletes both instances of “and substantially”</p>
DE Effective 7/1/03	Same as MR
District of Columbia Effective 2/1/07	<p>Title: Third-Party Neutrals</p> <p>(a): changes cross-reference to paragraph (e), deletes “as a judge or other adjudicative officer or law clerk to such a person or” and replace “informed consent, confirmed in writing” with “their informed consent after</p>

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	<p>disclosure”</p> <p>(b): deletes “as a judge or other adjudicative officer or,” ends paragraph after first sentence</p> <p>Adds (d) If a client requests in writing that the fact and subject matter of a representation subject to paragraph (a) not be disclosed by submitting the signed statements referred to in paragraph (c), such statements shall be prepared concurrently with undertaking the representation and filed with Bar Counsel under seal. If at any time thereafter the fact and subject matter of the representation are disclosed to the public or become a part of the public record, the signed statements previously prepared shall be promptly submitted as required by paragraph (c);</p> <p>(e): same as MR (d).</p>
<p>FL Effective 5/22/06</p>	<p>(a): adds “Representation of Private Client by Former Judge, Law Clerk, or Other Third-Party Neutral.” to beginning</p> <p>(b): adds “Negotiation of Employment by Judge, Law Clerk, or Other Third-Party Neutral.” to beginning</p> <p>Replaces “lawyer for a party” with “attorney for a party” in first sentence and “lawyer involved” with “attorney involved” in second sentence</p> <p>(c): adds “Imputed Disqualification of Law Firm.” to beginning</p> <p>(c)(1): adds “directly” before “apportioned”</p> <p>(d): adds “Exemption for Arbitrator as Partisan.” to beginning</p>
<p>GA* Effective 1/1/01</p>	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>Title: “Former Judge or Arbitrator;”</p> <p>Change “gives informed consent” to “consents after consultation” throughout;</p> <p>(a) Deletes “or as an arbitrator...neutral;”</p> <p>(b) Deletes “or as an arbitrator...neutral;” adds “or arbitrator” after “other adjudicative officer” in two instances; adds to end: “or arbitrator. In addition, the law clerk shall promptly provide written notice of acceptance of employment to all counsel of record in all such matters in which the prospective employer is involved;”</p> <p>(c)(2) Replaces “parties...to enable them” with “appropriate tribunal to enable it;”</p> <p>Adds to end: “The maximum penalty for a violation of this Rule is a public reprimand.”</p>
<p>HI* Effective 1/1/94</p>	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>Title: “Former Judge or Arbitrator;”</p> <p>(a) Deletes clause, “Except as stated;” adds “arbitrator” after “adjudicative officer” in several instances; deletes clause “or as...neutral;” changes “lawyer” to “attorney;”</p> <p>Does not have MR (d).</p>
<p>ID</p>	<p>Same as MR</p>

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Effective 7/1/04	
IL Effective 1/1/2010	(a) Deletes “confirmed in writing.”
IN Effective 1/1/05	(a): changes the wording to: “...a judge or other adjudicative officer, arbitrator, mediator or other third-party neutral, or law clerk to such a person, ...” (b): changes the wording to: “...A lawyer serving as a law clerk to any such person may...” and “...but only after the lawyer has notified the law clerk’s employer.”
IA Effective 7/1/05	Same as MR
KS Effective 7/1/07	Same as MR
KY Effective 7/15/09	(b) Changes “lawyer” to “attorney;” Adds after “third-party neutral:” “This rule does not prohibit an arbitrator, mediator, or third-part neutral from negotiating future cases.”
LA Effective 3/1/04	Same as MR
ME Effective 8/1/09	(a) Deletes language after “third-party neutral;” Deletes (c)(2) and replaces with: <i>(2) the parties and any appropriate tribunal gives their informed consent, confirmed in writing, describing the means by which compliance with the provisions of this rule will be achieved.</i>
MD Effective 7/1/05	Same as MR
MA Rules effective 9/1/08	(a) Adds “arbitrator, mediator” before “or law clerk;” replaces language after “to such a person” with “unless all parties to the proceeding consent after consultation;” (b) Adds to end, “arbitrator, or mediator.”
MI* Rules effective 10/1/88	<i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i> Title: “Former Judge or Arbitrator;” (a) Inserts “or arbitrator” after “adjudicative officer;” (b) Changes “lawyer” to “attorney for a party;” deletes “mediator or...neutral;” adds “or arbitrator” to end.
New Proposed 11/24/09	Same as 1988 Rule

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MN Effective 10/1/05	Same as MR
MS Effective 11/3/05	(b): adds “or as a law clear to such a person” after “adjudicative officer,” ends paragraph after “third-party neutral” (c)(1) and (2): retains former MR
MO Effective 7/1/07	(c)(1) Adds “timely” before “screened.”
MT Effective 4/1/04	add reference to “settlement master” in addition to mediator, arbitrator or other third party neutral.
NE Effective 9/1/05	Same as MR
NV Effective 5/1/06	Same as MR
NH Effective 1/1/08	Deletes languages after “third-party neutral.”
NJ Effective 1/1/04	Includes “Or Law Clerk” in the title. Switches order of MR (b) and (c) (d) An arbitrator selected as a partisan of <u>by</u> a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.
NM Effective 11/2/09	Changed to Rule 16-112; (a) Renamed “ A. Subsequent representation in related matters; ” Replaces “paragraph (d)” with “Paragraph D;” Adds “arbitrator” after “adjudicative officer;” (b) Renamed “ B. Negotiation for employment; ” Adds “or arbitrator” after “adjudicative officer;” (c) Renamed “ C. Imputation of conflict to firm; screening; ” Replaces “paragraph (a)” with “Paragraph A;” (d) Renamed “ D. Arbitrator. ”
NY Effective 4/1/09	Changes title to: “Specific conflicts of interest for former judges, arbitrators, mediators or other third-party neutrals;” (a) <i>A lawyer shall not accept private employment in a matter upon the merits of which the lawyer has acted in a judicial capacity;</i> (b) is similar to MR (a) but references paragraph (e) instead of (d); adds clause before “a lawyer shall not:” “and unless all parties to the proceeding give informed consent, confirmed in writing;” divides everything after “substantially as” into two subparagraphs: <i>(1) an arbitrator, mediator or other third-party neutral; or</i> <i>(2) a law clerk to a judge or other adjudicative officer or an arbitrator, mediator or other third-party neutral;</i>

	<p>(c) is similar to MR (b) but deletes language after “third-party neutral;” Adds (d): <i>(d) When a lawyer is disqualified from representation under this Rule, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:</i> <i>(1) the firm acts promptly and reasonably to:</i> <i>(i) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;</i> <i>(ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;</i> <i>(iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and</i> <i>(iv) give written notice to the parties and any appropriate tribunal to enable it to ascertain compliance with the provisions of this Rule; and</i> <i>(2) there are no other circumstances in the particular representation that create an appearance of impropriety.</i> (e) is the same as MR (d).</p>
<p>NC Effective 3/1/03</p>	<p>Deleted reference to apportionment of the fee in (c)(1).</p>
<p>ND Effective 8/1/06</p>	<p>Title: Former Judge, Arbitrator, Mediator, Adjudicative Officer, Third-Party Neutral, and Law Clerks (a), changes end: “...unless all parties to the proceeding consent in writing after consultation.” (b): adds “arbitrator, mediator, or other third-party neutral” after “adjudicative officer” both times it is used in second sentence</p>
<p>OH Effective 2/1/07</p>	<p>(c): adds to end “both of the following apply”</p>
<p>OK Effective 1/1/08</p>	<p>Same as MR</p>
<p>OR Effective 12/1/06</p>	<p>(a): adds reference to 2.4(b) (b), adds after “law clerk” in second sentence: “or staff lawyer to or otherwise assisting in the official duties of ...” (c)(1): The limitation on apportionment of fees is not included and screening procedures must be in accordance with the procedures set forth in rule 1.10(c).</p>
<p>PA Effective</p>	<p>(a): worded differently: “...as a judge or other adjudicative officer, <u>third-party neutral (including arbitrator or mediator)</u> or law clerk to such a</p>

7/1/06	<p>person, unless all parties ...”; does not include “confirmed in writing” (b): first sentence: replaces “or as an arbitrator, mediator or other third-party neutral” with “or third-party neutral.”; second sentence: includes reference to “third-party neutral” (c)(1): does not include “timely”</p>
RI Effective 4/15/07	Same as MR
SC Effective 10/1/05	Same as MR
SD Effective 1/1/04	Same as MR
TN Effective 1/1/2011	<p>Changes name to: “Former Judge or Arbitrator”</p> <p>(a) Adds after “law clerk”: “or staff attorney.” Deletes “mediator of other third-party neutral” Replaces “mediator, or other third-party neutral” with “or a law clerk to such a person;”</p> <p>(b) In first sentence, deletes language after “as an arbitrator;” Adds before “law clerk, “staff attorney to a court or as a;” in last sentence replaces “clerk” with “lawyer” and “judge” with “court;” adds to end “or arbitrator;”</p> <p>(c) Deletes (1) and (2) and replaces language after “in the matter unless” with: <i>both the disqualified lawyer and the lawyers representing the client in the matter have complied with the requirements set forth in Rule 1.11(a)(1), (a)(2), and (b)(3) and have advised the appropriate tribunal in writing of the circumstances that warranted the utilization of the screening procedures required by this Rule and the actions that have been taken to comply with this Rule.</i></p>
TX* Effective 3/1/05	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>Rule 1.11 Adjudicatory Official or Law Clerk Replaces “gives informed consent” with “consents after consultation” throughout; (a) Deletes clause, “Except...paragraph (d);” inserts before “participated:” “has passed upon the merits or otherwise participated;” inserts “judge or other” before “adjudicative officer;” deletes “mediator...neutral” and adds instead “or law clerk;” (b) Changes “adjudicative officer” to “adjudicatory official” throughout; inserts “who is an adjudicative official” after “lawyer;” replaces “lawyer” with “attorney;” changes “the lawyer is participating” to “that official is participating;” deletes “as a judge...neutral;” deletes “to a judge or other;” Replaces MR(c) with:</p>

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	<p><i>(c) If paragraph (a) is applicable to a lawyer, no other lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:</i></p> <p><i>(1) the lawyer who is subject to paragraph (a) is screened from participation in the matter and is apportioned no part of the fee therefrom; and</i></p> <p><i>(2) written notice is promptly given to the other parties to the proceeding.</i></p> <p>Does not have MR (d).</p>
UT Effective 11/1/05	(a): adds “and in Rule 2.4(c)” after “paragraph (d)”
VT Effective 9/1/09	Same as MR
VA Effective 1/1/04	Title: same as former MR (a): same as former MR (b): same as former MR
WA Effective 9/1/06	Same as MR
WV* Effective 12/10/08	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>Changes title to “Former Judge or Arbitrator;” (a) Replaces first clause with “Except as stated in paragraph (d);” adds “arbitrator” before “law clerk;” deletes clause, “or as an arbitrator...neutral;” replaces language after “proceeding” with “consent after consultation.”</p>
WI Effective 7/1/07	(a): ends paragraph after “neutral” (d): adds to end “in the matter, provided that all parties to the proceeding give informed consent, confirmed in writing”
WY Effective 7/1/06	(a), changes end: “unless all parties to the proceeding make an informed decision to allow the representation, confirmed in writing signed by the client.” (c)(2), adds after “notice:” “including a description of the screened lawyer’s prior representation and of the screening procedures employed”

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