



# Ohio Board of Professional Conduct

## **OPINION 2017-4**

Issued April 7, 2017

(Update and Withdrawal of Former Opinion 2005-5)

### **Legal Representation of a Client by Former Magistrate**

**SYLLABUS:** Under Ohio Ethics Law, a former magistrate is prohibited for 12 months after leaving the bench from representing a client in a matter in which he or she personally participated in as a government employee. Thereafter, under the Rules of Professional Conduct, a former magistrate may not represent a client in a matter over which the former magistrate presided while on the bench, unless all parties give informed consent, confirmed in writing. If the former magistrate is disqualified, then no lawyer in the former magistrate's firm may represent that client, unless the former magistrate is timely screened and receives no part of the fee, and written notice is provided to the parties and tribunal.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



# Ohio Board of Professional Conduct

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**QUESTION PRESENTED:** Is it proper for a former magistrate, now privately practicing law, to represent a client in post-decree matters (modifying child custody, parenting time, or child support, and defending or initiating a contempt order to enforce a prior court order) when he or she served as magistrate in the client's original divorce or dissolution?<sup>12</sup>

**APPLICABLE RULES:** Prof.Cond.R. 1.12; R.C. 102.03(A)

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<sup>1</sup> This opinion analyzes the substantially same question addressed by former Adv. Op. 2005-5, but does so under the Ohio Rules of Professional Conduct.

<sup>2</sup> Although this question involves the conduct of a domestic relations magistrate, the advice in this opinion applies to all magistrates, no matter the court.

**OPINION:** Prof.Cond.R. 1.12 limits the ability of a former judicial officer to represent some clients after the officer's judicial service ends. Specifically, a lawyer is prohibited from representing a client in a matter in which "the lawyer participated personally and substantially as a judge or other adjudicative officer" unless all parties give informed consent, confirmed in writing. Prof.Cond.R. 1.12(a).

"Substantial" indicates a "matter of real importance or great consequence." Prof.Cond.R. 1.0(m). A magistrate presiding over a divorce or dissolution involves personal and substantial participation under Prof.Cond.R. 1.12(a). Therefore, informed consent confirmed in writing from all parties is required for a former magistrate to represent a client in a post-decree matter where the former magistrate presided over the divorce or dissolution. However, a former magistrate, who was appointed by a judge in a multi-member court, is not prohibited from representing a client in a matter pending before another judge in that court, for whom the magistrate did not serve or have personal and substantial participation in the matter. Prof.Cond.R. 1.12, cmt. [1].

If a former magistrate is disqualified from a representation under Prof.Cond.R. 1.12(a), then no lawyer in the former magistrate's firm may represent that client unless the former magistrate is timely screened from participation, takes no part of the fee in that matter, and written notice is promptly provided to the parties and tribunal. Prof.Cond.R. 1.12(c). "Screening" requires the firm of the former magistrate to implement reasonable procedures to ensure that the former magistrate does not participate in the matter and to protect the information. Prof.Cond.R. 1.0(l).

Additionally, under the Ohio Ethics Law, a former magistrate is prohibited for 12 months from representing a client on any matter in which the former magistrate personally participated as a public official. Participation means action "through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion." R.C. 102.03(A)(1). If the former magistrate presided over the divorce or dissolution, he or she would not be permitted to participate in the post-decree matter for 12 months after leaving the bench, even with informed consent from all parties.

**CONCLUSION:** Under the Ohio Ethics Law, a former magistrate is prohibited for 12 months from representing a client in a matter in which the former magistrate personally

participated as a magistrate. R.C. 102.03(A)(1). After that time, a former magistrate, who now is in private practice, may not represent a client in a post-decree matter in which he or she participated personally and substantially as a magistrate, unless all parties give informed consent, confirmed in writing. Prof.Cond.R. 1.12(a). If the former magistrate is disqualified under Prof.Cond.R. 1.12(a), then another lawyer in his or her firm may not represent that client unless the former magistrate is screened, takes no part of the fee in the matter, and written notice is promptly provided to the parties and the tribunal. Prof.Cond.R. 1.12(c).