



Ohio Board of Professional Conduct

OPINION 2019-11

Issued October 4, 2019

Withdraws Adv. Op. 2005-5

Representation by Former Magistrate of Parties in Post-Decree Matters

SYLLABUS: Absent informed consent, confirmed in writing, a former magistrate, now practicing law, is prohibited from representing a person in post-decree matters (such as modifying child custody, parenting time, or child support, or defending or initiating a contempt order to enforce a prior court order) when he or she served as a magistrate in the person's original divorce or dissolution action. As a matter of law, and regardless of the presence of informed consent, if the former magistrate personally participated in the matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other substantial exercise of administrative discretion, the former magistrate is prohibited from representing the person for twelve months after his or her public employment.

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

65 SOUTH FRONT STREET, 5TH FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370 Fax: 614.387.9379

www.bpc.ohio.gov

HON. JOHN W. WISE

CHAIR

PATRICIA A. WISE

VICE-CHAIR

RICHARD A. DOVE

DIRECTOR

D. ALLAN ASBURY

SENIOR COUNSEL

KRISTI R. MCANAU

COUNSEL

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QUESTION PRESENTED: May a former magistrate, now practicing law, represent a person in post-decree matters (such as modifying child custody, parenting time, or child support, or defending or initiating a contempt order to enforce a prior court order) when he or she served as magistrate in the person's original divorce or dissolution action?

APPLICABLE RULES: Prof.Cond.R. 1.12.

OPINION: This opinion addresses the post-employment restrictions applicable to former magistrates under Ohio law.

Ohio Rules of Professional Conduct

Prof.Cond.R. 1.12 limits the ability of a lawyer to accept representation in matters the lawyer participated in as a judge or adjudicative officer. 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 unless all the parties to the proceeding give informed consent, confirmed in writing. Prof.Cond.R. 1.12(a). The term “adjudicative officer” in the rule includes magistrates. *Id.*, cmt. [1]. The use of the language “personally and substantially” indicates that a former judicial member of a multimember court who has left the bench is not prohibited from representing a client in a matter pending in the court, if the judicial member did not participate in the matter while on the bench. *See id.* Furthermore, if a judicial member previously exercised administrative responsibility in a court, the former judicial member is not prohibited from acting as a lawyer in a matter where the member exercised remote or incidental administrative responsibilities that did not affect the merits. *See id.*

The word “matter” is not defined in the Rules of Professional Conduct, but case law is instructive. In a case decided under the Ohio Code of Professional Responsibility, a former judge received a public reprimand when seven years after granting an uncontested divorce as a judge, he privately represented one of the parties to the divorce and filed a motion in the proceeding. *Disciplinary Counsel v. Christ*, (1996), 74 Ohio St.3d 308. The former judge explained at the disciplinary hearing that his involvement in the uncontested divorce was limited to signing the final judgment entry which he considered to be perfunctory and insufficient to bar his subsequent private employment. *Id.* at 309. The Court however, disagreed and found him to be in violation of the prior disciplinary rule. *Id.*

Consistent with the Supreme Court’s decision in *Christ*, the Board’s view is that a person who served as a judge or magistrate in the original divorce or dissolution action has acted upon the merits in his or her official capacity, even if the involvement was limited to signing agreed upon entries. The Board concludes that any subsequent post-decree matters (such as a modification of child custody, parenting time, child support, or defending or initiating a contempt order to enforce a prior court order) are the same matter for purposes of Prof.Cond.R. 1.12. Thus, the former magistrate must obtain informed consent, confirmed in writing, from all parties to the proceeding to subsequently represent a party in that proceeding.

Ohio Ethics Law

The Ohio Ethics Law contains additional limitations on a former magistrate's practice of law. A former magistrate is prohibited from representing a client for twelve months following his or her public employment if he or she served as a magistrate in the client's original divorce or dissolution action. R.C. §102.03(A)(1) states, "[n]o present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion." If the magistrate had any personal participation through the above listed actions, the magistrate is prohibited from accepting private representation of a client in the matter for twelve months after employment, regardless of whether the parties to the proceeding provide informed consent.

CONCLUSION: A former magistrate who leaves court employment and enters the private practice of law must consider both ethical and legal obligations. Former magistrates are subject to post-employment restrictions, both through the Rules of Professional Conduct and Ohio Ethics Law. The Board advises that a former magistrate, now practicing law, is prohibited for twelve months after employment from representing a person in post-decree matters when he or she served as magistrate in the person's original divorce or dissolution action. Upon informed consent of all interested parties, confirmed in writing, a former magistrate may represent a client after serving as a magistrate in the person's original divorce or dissolution action so long as twelve months have passed since his or her government employment.