

STATE OF MAINE  
SUPREME JUDICIAL COURT  
AMENDMENT TO  
THE MAINE RULES OF PROFESSIONAL CONDUCT

**2014 Me. Rules 13**

Effective: November 1, 2014

All of the Justices concurring therein, the following amendment to the Maine Rules of Professional Conduct is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in understanding of the amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 1.12 of the Maine Rules of Professional Conduct is amended to read as follows:

**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.
- (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:

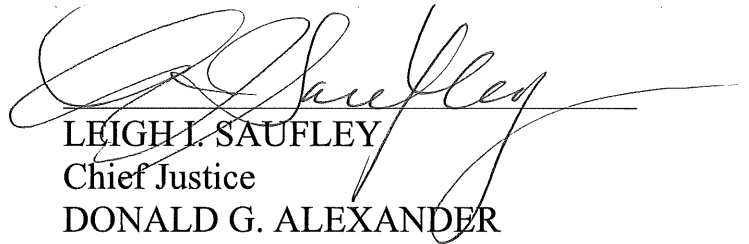
- (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
  - ~~(2) the parties and any appropriate tribunal gives their informed consent, confirmed in writing, describing the means by which compliance with the provisions of this rule will be achieved~~ written notice is promptly given to the parties and any appropriate tribunal to enable them to confirm 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.

#### **Advisory Note – October 2014**

The Task Force recommendation for subsection (c)(2) varied from the Model Rule, requiring informed consent for the screening of a former judge, arbitrator, mediator or other third-party neutral. The recommendation was adopted by the Supreme Judicial Court. The requirement of informed consent, confirmed in writing, created an unintended consequence: By withholding consent—even without any grounds for challenging the screening procedures adopted—an opposing party could exercise an absolute veto to a firm representing a client in a matter in which a lawyer in that firm previously participated personally as a judge, law clerk, arbitrator or other adjudicative officer. The present amendment is not meant to diminish a consumer protective approach. But it is meant to clarify that opposing parties have a right to address perceived shortcomings in screening procedures only, not an absolute right to withhold consent to an opponent's choice of counsel. Notice to opposing parties and the tribunal should include a description of the implemented screening, giving opposing parties and the tribunal the opportunity to confirm compliance with the Rule. Disagreements between parties as to the adequacy of screening should be addressed to the appropriate tribunal, which could be the tribunal adjudicating the matter that is the subject of the representation, the tribunal that formerly employed the judicial officer or law clerk subject to this Rule, or judicial or bar regulatory bodies.

Dated: October 7, 2014

FOR THE COURT<sup>1</sup>

A handwritten signature in black ink, appearing to read "L. Saufley", is written over a horizontal line. The signature is fluid and cursive, extending to the right of the line.

LEIGH I. SAUFLEY

Chief Justice

DONALD G. ALEXANDER

WARREN M. SILVER

ANDREW M. MEAD

ELLEN A. GORMAN

JOSEPH M. JABAR

JEFFREY L. HJELM

Associate Justices

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<sup>1</sup> This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.