

1 **Rule 1.18. Duties to Prospective Client.**

2 (a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship
3 with respect to a matter is a prospective client.

4 (b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a
5 prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to
6 information of a former client.

7 (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to
8 those of a prospective client in the same or a substantially related matter if the lawyer received
9 information from the prospective client that could be significantly harmful to that person in the matter,
10 except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph,
11 no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue
12 representation in such a matter, except as provided in paragraph (d).

13 (d) When the lawyer has received disqualifying information as defined in paragraph (c),
14 representation is permissible if:

15 (d)(1) both the affected client and the prospective client have given informed consent, confirmed
16 in writing, or;

17 (d)(2) the lawyer who received the information took reasonable measures to avoid exposure to
18 more disqualifying information than was reasonably necessary to determine whether to represent the
19 prospective client; and

20 (d)(2)(i) the disqualified lawyer is timely screened from any participation in the matter and is
21 apportioned no part of the fee therefrom; and

22 (d)(2)(ii) written notice is promptly given to the prospective client.

23 **Comment**

24 [1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other
25 property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations with a
26 prospective client usually are limited in time and depth and leave both the prospective client and the
27 lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive
28 some but not all of the protection afforded clients.

29 [2] A person becomes a prospective client by consulting with a lawyer about the possibility of forming
30 a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or
31 electronic communications, constitute a consultation depends on the circumstances. For example, a
32 consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in
33 any medium, specifically requests or invites the submission of information about a potential
34 representation without clear and reasonably understandable warnings and cautionary statements that
35 limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In
36 contrast, a consultation does not occur if a person provides information to a lawyer in response to
37 advertising that merely describes the lawyer's education, experience, areas of practice, and contact

38 information, or provides legal information of general interest. Such a person communicates information
39 unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the
40 possibility of forming a client-lawyer relationship, and is thus not a "prospective client". Moreover, a
41 person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective
42 client."

43 [3] It is often necessary for a prospective client to reveal information to the lawyer during an initial
44 consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must
45 learn such information to determine whether there is a conflict of interest with an existing client and
46 whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from
47 using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides
48 not to proceed with the representation. The duty exists regardless of how brief the initial conference may
49 be.

50 [4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering
51 whether or not to undertake a new matter should limit the initial consultation to only such information as
52 reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest
53 or other reason for non-representation exists, the lawyer should so inform the prospective client or decline
54 the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under
55 Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the
56 representation.

57 [5] A lawyer may condition a consultation with a prospective client on the person's informed consent
58 that no information disclosed during the consultation will prohibit the lawyer from representing a different
59 client in the matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly so
60 provides, the prospective client may also consent to the lawyer's subsequent use of information received
61 from the prospective client.

62 [6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from
63 representing a client with interests adverse to those of the prospective client in the same or a
64 substantially related matter unless the lawyer has received from the prospective client information that
65 could be significantly harmful if used in the matter.

66 [7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule
67 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent,
68 confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be
69 avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and
70 written notice is promptly given to the prospective client. See Rule 1.0(m)(requirements for screening
71 procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or
72 partnership share established by prior independent agreement, but that lawyer may not receive
73 compensation directly related to the matter in which the lawyer is disqualified.

74 [8] Notice, including a general description of the subject matter about which the lawyer was consulted,
75 and of the screening procedures employed, generally should be given as soon as practicable after the
76 need for screening becomes apparent..

77 [9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a
78 prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or
79 papers to the lawyer's care, see Rule 1.15.