

Rule 1.18. Duties to Prospective Client.

1 (a) A person who discusses with a licensed paralegal practitioner the possibility of forming a
2 licensed paralegal practitioner-client relationship with respect to a matter is a prospective client.

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

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

15 (d) When the licensed paralegal practitioner has received disqualifying information as
16 defined in paragraph (c), representation is permissible if:

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

19 (d)(2) the licensed paralegal practitioner who received the information
20 took reasonable measures to avoid exposure to more disqualifying information than
21 was reasonably necessary to determine whether to represent the prospective client; and

22 (d)(2)(i) the disqualified licensed paralegal practitioner is timely screened from any
23 participation in the matter and is apportioned no part of the fee therefrom; and

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

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26 Comment

27 [1] Prospective clients, like clients, may disclose information to a licensed paralegal
28 practitioner, place documents or other property in the licensed paralegal practitioner's custody, or
29 rely on the licensed paralegal practitioner's advice. A licensed paralegal practitioner's
30 consultations with a prospective client usually are limited in time and depth and leave both the

31 prospective client and the licensed paralegal practitioner free (and sometimes required) to
32 proceed no further. Hence, prospective clients should receive some but not all of the protection
33 afforded clients.

34 [2] A person becomes a prospective client by consulting with a licensed paralegal
35 practitioner about the possibility of forming a licensed paralegal practitioner-client relationship
36 with respect to a matter. Whether communications, including written, oral, or electronic
37 communications, constitute a consultation depends on the circumstances. For example, a
38 consultation is likely to have occurred if a licensed paralegal practitioner, either in person or
39 through the licensed paralegal practitioner's advertising in any medium, specifically requests or
40 invites the submission of information about a potential representation without clear and
41 reasonably understandable warnings and cautionary statements that limit the licensed paralegal
42 practitioner's obligations, and a person provides information in response. See also Comment [4].
43 In contrast, a consultation does not occur if a person provides information to a licensed paralegal
44 practitioner in response to advertising that merely describes the licensed paralegal practitioner's
45 education, experience, areas of practice, and contact information, or provides legal information
46 of general interest. Such a person communicates information unilaterally to a licensed paralegal
47 practitioner, without any reasonable expectation that the licensed paralegal practitioner is willing
48 to discuss the possibility of forming a licensed paralegal practitioner - client relationship, and is
49 thus not a "prospective client". Moreover, a person who communicates with a licensed paralegal
50 practitioner for the purpose of disqualifying the licensed paralegal practitioner is not a
51 "prospective client."

52 [3] It is often necessary for a prospective client to reveal information to the licensed paralegal
53 practitioner during an initial consultation prior to the decision about formation of a licensed
54 paralegal practitioner - client relationship. The licensed paralegal practitioner often must learn
55 such information to determine whether there is a conflict of interest with an existing client and
56 whether the matter is one that the licensed paralegal practitioner is willing to undertake.
57 Paragraph (b) prohibits the licensed paralegal practitioner from using or revealing that
58 information, except as permitted by Rule 1.9, even if the client or licensed paralegal practitioner
59 decides not to proceed with the representation. The duty exists regardless of how brief the initial
60 conference may be.

61 [4] In order to avoid acquiring disqualifying information from a prospective client, a licensed
62 paralegal practitioner considering whether or not to undertake a new matter should limit the
63 initial consultation to only such information as reasonably appears necessary for that purpose.
64 Where the information indicates that a conflict of interest or other reason for non-representation
65 exists, the licensed paralegal practitioner should so inform the prospective client or decline the
66 representation. If the prospective client wishes to retain the licensed paralegal practitioner, and if
67 consent is possible under Rule 1.7, then consent from all affected present or former clients must
68 be obtained before accepting the representation.

69 [5] A licensed paralegal practitioner may condition a consultation with a prospective client
70 on the person's informed consent that no information disclosed during the consultation will
71 prohibit the licensed paralegal practitioner from representing a different client in the matter. See
72 Rule 1.0(f) for the definition of informed consent. If the agreement expressly so provides, the
73 prospective client may also consent to the licensed paralegal practitioner's subsequent use of
74 information received from the prospective client.

75 [6] Even in the absence of an agreement, under paragraph (c), the licensed paralegal
76 practitioner is not prohibited from representing a client with interests adverse to those of the
77 prospective client in the same or a substantially related matter unless the licensed paralegal
78 practitioner has received from the prospective client information that could be significantly
79 harmful if used in the matter.

80 [7] Under paragraph (c), the prohibition in this Rule is imputed to other licensed paralegal
81 practitioners as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if
82 the licensed paralegal practitioner obtains the informed consent, confirmed in writing, of both the
83 prospective and affected clients. In the alternative, imputation may be avoided if the conditions
84 of paragraph (d)(2) are met and all disqualified licensed paralegal practitioners are timely
85 screened and written notice is promptly given to the prospective client. See Rule 1.0(m)
86 (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened
87 licensed paralegal practitioner from receiving a salary or partnership share established by prior
88 independent agreement, but that licensed paralegal practitioner may not receive compensation
89 directly related to the matter in which the licensed paralegal practitioner is disqualified.

90 [8] Notice, including a general description of the subject matter about which the licensed
91 paralegal practitioner was consulted, and of the screening procedures employed, generally should
92 be given as soon as practicable after the need for screening becomes apparent.

93 [9] For the duty of competence of a licensed paralegal practitioner who gives assistance on
94 the merits of a matter to a prospective client, see Rule 1.1. For a licensed paralegal practitioner's
95 duties when a prospective client entrusts valuables or papers to the licensed paralegal
96 practitioner's care, see Rule 1.15.

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