

**American Bar Association
CPR Policy Implementation Committee**

Variations of the ABA Model Rules of Professional Conduct

RULE 1.18: DUTIES TO PROSPECTIVE CLIENT

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

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

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

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

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

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

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

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

Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see

http://www.americanbar.org/groups/professional_responsibility/policy/mrpc.html.

Comments not included.

*Current links to state Rules of Professional conduct can be found on the ABA website:

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	<p>http://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest.html.</p> <p>** Highlight indicates adoption of Ethics 20-20 Commission August 2012 and February 2013 Rule amendment(s): black-letter or Comment.</p>
AL Effective 2/19/09	Does not adopt
AK *Amendment effective 10/15/2017	Same as MR
AZ *Amendment Effective 1/1/16	<p>(d) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or:</p> <p>(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and</p> <p>(2) written notice is promptly given to the prospective client, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the prospective client’s material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the prospective client about the screening procedure; and</p> <p>Adds (3): the personally disqualified lawyer and the partners of the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.</p>
AR *Amendment effective 6/26/2014	(b): Deletes “that” before “information”; retains “learned in the consultation” after “information”
CA Current Rule	[California’s Rules of Professional Conduct are structured differently from the ABA Model Rules. Please see California Rules : http://calbar.ca.gov/calbar/pdfs/rules/Rules_Professional-Conduct.pdf]
CO *Amendment effective April 6, 2016	(c) Replaces “that person in the matter” with “the prospective client.”
CT *Amendments effective 1/1/2015	<p>(a): adds “or communicates” after “discusses” and “concerning” before “the possibility”</p> <p>(d)(2)(i): deletes “and is apportioned no part of the fee therefrom”</p>
DE *Amendments	Same as MR

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effective 3/1/2013	
District of Columbia Effective 2/1/07	(b): replaces language after “consultation with “except as permitted by Rule 1.6” (c): replaces “information” with “confidence or secret,” deletes “that could be significantly harmful to that person in the matter” (d): replaces “disqualifying information as defined in paragraph (c)” with “a confidence or secret from the prospective client” (d)(1): deletes “confirmed in writing” Does not have MR (d)(2) (d)(2): same as MR (d)(2)(i) but deletes language after “matter” Does not have MR (d)(2)(ii)
FL Effective 5/22/06	(a): adds to beginning “Prospective Client.” (b): adds to beginning “Confidentiality of Information.” (c): adds to beginning “Subsequent Representation.”, replaces “significantly harmful to” in first sentence with “used to the disadvantage of,” replaces “under this paragraph” in the second sentence with “under this rule” (d): adds to beginning “Permissible Representation.”
GA* Effective 1/1/01	<i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i> Does not have
HI Effective 1/1/14	(a): Changes “consults” to “discusses” (b): Changes “learned information from” to “had discussions with”; adds “learned in the consultation” after “reveal information” (d): Adds at beginning: “Representation is allowed with consent or screening.” (d)(1): Changes “informed consent” to “consent after consultation” (d)(2): Replaces “took reasonable measures to avoid exposure” to “did not obtain more disqualifying information than was reasonably necessary”
ID *Amendments effective 7/1/2014	(b): Similar to MR but retains language “learned in the consultation” after “reveal that information”
IL *Amendment Effective 1/1/2016	(d)(1) Deletes “confirmed in writing;” Adds to end of paragraph, “that lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;” Deletes (d)(2)(i) and (ii).
IN Effective 1/1/05	Same as MR prior to Ethics 20-20 changes
IA *Amendments effective 1/1/2013	Same as MR
KS	Adds “Client-Lawyer Relationship” to title

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*Amendments effective 3/1/2014	
KY Effective 7/15/09	Same as MR prior to Ethics 20-20 changes
LA *Amendment effective 4/1/2015	Same as MR
ME Effective 8/1/09	Same as MR prior to Ethics 20-20 changes
MD Effective 7/1/05	(d): Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.
MA Amendment Effective 7/1/2015	Same as MR
MI *Amendment effective Sept. 1, 2018	Identical.
MN Amendment effective 4/1/15	(b) Replaces “learned information from” with “consulted with”; adds “that” before “information” and after adds “obtained in the consultation”
MS Effective 11/3/05	Did not adopt
MO Effective 7/1/07	(d)(2) Last clause, starting with “the disqualified lawyer” is similar to MR (d)(2) combines MR (d)(2) and (d)(2)(ii). Does not adopt MR (d)(2)(i).
MT Effective 4/1/04	See Montana Rule 1.20 for Duties to Prospective Clients Amends (a) to read: “A person who consults with or has had consultations with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.” Amends (b) to read “Even when no client-lawyer relationship ensues, a lawyer who has had consultations with a prospective client shall not use or reveal information learned in the consultation(s), except as Rule 1.9 would permit with respect to information of a former client. (c) Same as MR Amends (d) to read: “Representation is permissible if both the affected client

	and the prospective client have given informed consent, confirmed in writing, or: (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is promptly given to the prospective client.”
NE Effective 9/1/05	Same as MR prior to Ethics 20-20 changes
NV *Amendments Effective 4/4/2014	<p>Adds (e) A person who communicates information to a lawyer without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, or for purposes which do not include a good faith intention to retain the lawyer in the subject matter of the consultation, is not a “prospective client” within the meaning of this Rule.</p> <p>Adds (f) A lawyer may condition conversations with a prospective client on the person’s informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. If the agreement expressly so provides, the prospective client may also consent to the lawyer’s subsequent use of information received from the prospective client.</p> <p>Adds (g) Whenever a prospective client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:</p> <p>(1) The lawyer or law firm shall promptly furnish (by mail if requested) the written information described in Rule 1.4(c).</p> <p>(2) The lawyer or law firm may furnish such additional factual information regarding the lawyer or law firm deemed valuable to assist the client.</p> <p>(3) If the information furnished to the client includes a fee contract, the top of each page of the contract shall be marked “SAMPLE” in red ink in a type size larger than the largest type used in the contract and the words “DO NOT SIGN” shall appear on the client signature line.</p>
NH Effective 1/1/08	<p>(b) Changes “had discussions with” to “received and reviewed information from;” deletes “learned in the consultation;”</p> <p>(d)(2)(a) and (b) are equivalent to MR (d)(2)(i) and (ii).</p>
NJ *Amendments effective April 14, 2016	<p>Title is “Prospective Client”</p> <p>(a) (MR b): A lawyer who has had communications in consultation with a prospective client shall not use or reveal information acquired in the consultation, even when no client-lawyer relationship ensues, except as RPC 1.9 would permit in respect of information of a former client.</p> <p>(b) is similar to MR (c), but does not include the last sentence of MR (c) and refers to “former prospective clients.”</p> <p>(c) is similar to MR (d). The first sentence of (c) is from last sentence of MR (c). The exception for screening is like the Ethics 2000 August 2001 draft.</p> <p>(d) (MR a): A person who communicates with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a “prospective client” and if no client-lawyer relationship is formed, is a “former prospective client”.</p>
NM *Amendment effective	<p>Changed to Rule 16-118;</p> <p>(a) Renamed “A definition of “prospective client;””</p> <p>(b) Renamed “B. Confidential information;” Replaces “Rule1.9” with “Rule 16-109 of the Rules of Professional Conduct;”</p>

12/31/2015	<p>(c) Renamed “C. Certain representations prohibited;” Replaces “paragraph (b)” with “Paragraph B of this rule” and “paragraph (d)” with “Paragraph D” in two instances;</p> <p>(d) Renamed “D. When representation is permitted;” Replaces “paragraph (c)” with “Paragraph C.”</p>
<p>NY *Amendments Effective 1/1/2017</p>	<p>(a) Adds to beginning “Except as provided in Rule 1.18(c), a”; adds quotes around “prospective client”</p> <p>Does not adopt MR (d)(2)(i);</p> <p>Adds:</p> <p><i>(i) the firm acts promptly and reasonably to notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;</i></p> <p><i>(ii) the firm implements effective screening procedures to prevent the flow of information about the matter between the disqualified lawyer and the others in the firm;</i></p> <p><i>(iii) the disqualified lawyer is apportioned no part of the fee therefrom;</i></p> <p><i>and</i></p> <p>Adds (c)(3):</p> <p><i>(3) a reasonable lawyer would conclude that the law firm will be able to provide competent and diligent representation in the matter.</i></p> <p>Adds (e):</p> <p><i>(e) A person is not a prospective client within the meaning of paragraph (a) if the person:</i></p> <p><i>(1) communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship; or</i></p> <p><i>(2) communicates with a lawyer for the purpose of disqualifying the lawyer from handling a materially adverse representation on the same or a substantially related matter.</i></p>
<p>NC *Amendment effective October 2, 2014</p>	<p>(d) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or:</p> <p>(1) the disqualified lawyer is timely screened from any participation in the matter; and</p> <p>(2) written notice is promptly given to the prospective client.</p>
<p>ND * Amendment effective July 1, 2016</p>	<p>(d): replaces “disqualifying information as defined in paragraph (c)” with “significantly harmful information”</p> <p>(d)(1): changes end to “have given consent”</p> <p>(d)(2): changes “disqualifying information” to “significantly harmful information;”; adds “and notice is promptly given to the prospective client” to end</p> <p>(d)(2)(i) and (ii): does not have</p>
<p>OH Amendment Effective</p>	<p>(d): adds to end “either of the following applies”</p> <p>(d)(2): adds to end “both of the following apply”</p>

4/1/2015	
OK Effective 1/1/08	Same as MR prior to Ethics 20-20 changes
OR Effective 12/1/06, and effective 1/1/14	(a) A person who discusses consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client. (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with learned information from a prospective client shall not use or reveal that information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.
PA *Amendments effective 11/21/2013	Paragraph (a) is identical. (b) deletes “that” before “information”; adds “which may be significantly harmful to that person” after “information”. (c) PA changes “received” to “learned” (d) PA changes “received disqualifying” to “learned”; (d)(1) PA deletes “confirmed in writing” (d)(2) “all of the following apply” MR (d)(2) is similar to (d)(2)(i): Deletes “the lawyer who received the information” and replaces with “the disqualified lawyer”; deletes “and” at end. MR (d)(2)(1) is similar to (d)(2)(ii): Deletes “timely”
RI Effective 4/15/07	Same as MR prior to Ethics 20-20 changes
SC Effective 10/1/05	(a) A person with whom a lawyer discusses the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client only when there is a reasonable expectation that the lawyer is likely to form the relationship.
SD *Amendment effective 7/1/2018	Identical
TN Effective 1/1/2011 Amendment effective March 6, 2017	(d)(2)(i) Deletes language after “any participation in the patter;” Adds (e) <i>When no client-lawyer relationship ensues, a prospective client is entitled, upon request, to have the lawyer return all papers and property in the lawyer’s possession, custody, or control that were provided by the prospective client to the lawyer in connection with consideration of the prospective client’s matter.</i>
TX	Does not adopt.
UT *Amendment effective May 1, 2015	Identical
VT	(a) Adds clause, “in good faith,” after “a person who;”

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Effective 9/1/09	(b) Adds after “except as:” “Rule 1.6 would require or permit or as Rule 1.9.”
VA Effective 1/1/04	Does not adopt
WA Amendment Effective Sept. 1, 2016	(b): adds to end “or except as provided in paragraph (e)” (c): changes to “except as provided in paragraphs (d) and (e)”; adds “or LLLT” after “a lawyer” in the second sentence; also in the second sentence, adds “or paragraph (c) of LLLT RPC 1.18” after “under this paragraph”; adds “or LLLT” after “which that lawyer”. Adds (e) A lawyer may condition conversations with a prospective client on the person’s informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. The prospective client may also expressly consent to the lawyer’s subsequent use of information received from the prospective client.
WV *Amendment effective 1/1/2014	Same as MR
WI *Amendment effective Jan. 1, 2017	Identical
WY *Amendment effective 10/6/14	(d)(1): Adds “a” before “writing” and adds “signed by the client” after

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