

Tip of the Month

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Prospective Client Conflicts Can Cost You Business: Avoid Conflicts Using Reasonable Intake Procedures

Model Rule of Professional Conduct 1.18 defines prospective clients and imposes obligations on lawyers to protect information shared by those prospective clients. Sometimes, the rule requires lawyers to turn down work that they might otherwise have accepted because the lawyers didn't think ahead when interviewing prospective clients – I consulted with a law firm in that position just last week. Business is difficult enough to cultivate without giving it away through lax client intake procedures.

Luckily, the ABA's Standing Committee on Ethics and Professional Responsibility recently published [Formal Opinion 510](#), titled "Avoiding the Imputation of a Conflict of Interest When a Law Firm is Adverse to One of its Lawyer's Prospective Clients", which provides guidance that will protect you, your firm, and your prospective and current clients.

In short, the rule disqualifies a lawyer "from representing another client who is adverse to the prospective client in the same or a substantially related matter if the lawyer received from the prospective client "disqualifying information"—i.e., information that could be significantly harmful to the prospective client in the matter." However, if the lawyer "took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client," and the firm takes specified procedural precautions, then the lawyer's conflict of interest is not imputed to others in the lawyer's firm."

The Opinion advises lawyers:

When obtaining preliminary information before undertaking a representation, a lawyer who seeks to minimize the risk of law firm disqualification should obtain from the prospective client only information reasonably necessary to determine whether the engagement is one permitted under the rules (including whether the engagement is one within the lawyer's capabilities), and whether it is one which the lawyer is willing to accept. The prospective client should be cautioned at the outset of the initial consultation not to volunteer information pertaining to the matter until after the lawyer has determined whether the rules would permit the representation, whether the lawyer is able to handle the matter, and whether the client and lawyer can come to terms. If the lawyer learns disqualifying information and has failed to take reasonable measures to avoid receiving more disqualifying information than reasonably necessary for these purposes, and no representation ensues, the lawyer's conflict will be imputed to the lawyer's firm: not only the lawyer but also other lawyers in the firm will be disqualified from representing a client adverse to the prospective client in the same or a substantially related matter without the prospective client's informed consent.