Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2025-15
Issued December 12, 2025

FACTS

The inquiring attorney agreed to represent the family of a nursing home resident who had recently fallen and died (the "Decedent"). Approximately one (1) week later, the intake department at the inquiring attorney's law firm conducted an interview of a prospective client who described him- or herself as a nurse who had worked at the same nursing home at which the Decedent had fallen and died (the "Nurse"). The Nurse sought representation because a resident to whom he or she may have incorrectly administered medication had fallen and died, thereby potentially threatening the status of his or her nursing license and exposing her to potential civil liability. Although the Nurse did not mention the resident's name during the intake interview, other information he or she did divulge—such as the dates on which the medication had been allegedly incorrectly administered—led the inquiring attorney to strongly believe the Nurse was referring to the Decedent.

The inquiring attorney reports that the intake interview was conducted entirely by office staff and no attorney from his or her law firm had or has since spoken to the Nurse. Nonetheless, he or she wonders whether the Nurse's interview creates a conflict requiring him or her to withdraw from representing the Decedent's family.

ISSUE PRESENTED

The inquiring attorney asks whether the Nurse's intake interview creates a conflict under the Rules of Professional Conduct requiring him or her to withdraw from the representation of the Decedent's family?

OPINION

It is the Panel's opinion that the Nurse's intake interview does create a conflict under the Rules of Professional Conduct requiring the inquiring attorney to withdraw from the representation of the Decedent's family.

REASONING

As an initial matter, because the Nurse actively sought representation from the inquiring attorney, it is clear he or she is a prospective client within the meaning of Rule 1.18 of the Rules of Professional Conduct. See Rule 1.18(a) (defining "prospective client" to mean "[a] person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter . . ."); see also Rule 1.18, Comment [2] (recognizing that a prospective client must have a "reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship . . ."). Thus, the inquiring attorney owes the Nurse the duties expounded in Rule 1.18:

> (a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
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> (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.
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> (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).
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> (d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:
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> (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:
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> (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
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> (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
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> (ii) written notice is promptly given to the prospective client.

Rule 1.18 recognizes that while "[p]rospective clients . . . may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice," interactions between attorneys and prospective clients "usually are limited in time and depth [thereby] leav[ing] both the prospective client and the lawyer free (and sometimes required) to proceed no further." Rule 1.18, Comment [1]. Thus, such interactions principally serve to "assist[] the lawyer in determining whether there is a conflict of interest with an existing or a former client, and whether the lawyer will undertake the representation." Rhode Island Supreme Court Ethics Advisory Panel Op. 2016-06; see Rule 1.18, Comment [3] (observing that a prospective client must "reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship" to assist the lawyer in determining "whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake").

In furtherance of this purpose, Rule 1.18 places certain limitations on an attorney's use of information gleaned from a prospective client. First, Rule 1.18(b) prohibits an attorney from "us[ing] or reveal[ing] information learned in the consultation" pursuant to Rule 1.9 (applicable to former clients) "[e]ven when no client-lawyer relationship ensues" from the interaction. Second, Rule 1.18(c) prohibits an attorney and his or her associates from "represent[ing] 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," with certain exceptions set forth in Rule 1.18(d)(1) and (2).

It is this second limitation, under Rule 1.18(c), which is of relevance here.[1] Its applicability turns on two (2) factors. First, the interests of the Decedent's family and the Nurse must be materially adverse in the same or a substantially related matter. Second, the inquiring attorney must have received information from the Nurse that could be significantly harmful to him or her in the matter.

The Panel finds that the facts as described by the inquiring attorney satisfy both prongs of Rule 1.18(c). First, there exists the substantial risk that the interests of the Decedent's family and of the Nurse are materially adverse in the same matter due to the Nurse's potential involvement in the Decedent's death. See Rhode Island Supreme Court Ethics Advisory Panel Op. 2025-13; see also Rule 1.7, Comment [6]. Second, such information would undoubtedly be of significant harm to the Nurse in this matter, as it would bear on both the Nurse's possible liability in a civil action as well as the risk of losing his or her nursing license. Together, these facts are sufficiently disqualifying to trigger Rule 1.18(c)'s prohibition on representation here. See Rule 1.18, Comment [6] (noting that "the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter").

Further, the Panel finds that such disqualification may not be mitigated by either exception set forth in Rules 1.18(d)(1) and (2). Rule 1.18(d)(1) provides that an attorney may continue to represent an existing client despite receiving disqualifying information from a prospective client if "both the affected client and the prospective client have given informed consent, confirmed in writing," for the representation. "Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest." Rule 1.7, Comment [14]. Here, the directly adverse nature of the parties' interests precludes the possibility of consent. See Rhode Island Supreme Court Ethics Advisory Panel Op. 2025-13; see also Rule 1.7, Comment [16] (recognizing that certain "conflicts . . . are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal").

Rule 1.18(d)(2) provides that an attorney's receipt of disqualifying information may be overcome if he or she "took reasonable measures to avoid exposure to more disqualifying

[1] That staff members in the intake department of the inquiring attorney's law firm conducted the Nurse's intake interview, not the inquiring attorney personally, has no effect on the forthcoming analysis. It is the inquiring attorney's knowledge of the information in question, not its origins, which triggers Rule 1.18. See Rule 1.0(f) (defining "knowingly," "known," and "knows" to mean "actual knowledge of the fact in question [which] may be inferred from circumstances").

information than was reasonably necessary to determine whether to represent the prospective client . . . ." The Panel finds that the facts as described by the inquiring attorney demonstrate he or she received far more information than was reasonably necessary to determine whether a conflict may exist between the Nurse and one or more of his or her existing clients. See Rule 1.18, Comment [4] (advising that "[i]n order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose"). Given the close temporal proximity between the inquiring attorney's accepting the representation of the Decedent's family and the occurrence of the Nurse's intake interview, the Panel believes the interview should have been terminated as soon as the Nurse identified him- or herself as having worked in the same nursing home in which the Decedent had fallen and died. That the Nurse described additional, specific facts directly bearing on the matter—including the timing and potential cause of the Decedent's death—decisively tips the scales against applying the exception in Rule 1.18(d)(2) here.

It follows that, given the applicability of Rule 1.18(c) to this matter, the inquiring attorney's sole remedy is to withdraw from the representation of the Decedent's family. Withdrawal from and termination of a representation is governed by Rule 1.16. Subsection (a)(1) authorizes withdrawal when "the representation will result in violation of the rules of professional conduct or other law . . . ." The evident conflict of interest arising due to the Nurse's intake interview sunders the inquiring attorney's ability to effectively represent either the Decedent's family or the Nurse with the appropriate zealousness and commitment. See Rule 1.16, Comment [1] (observing that a lawyer should not accept or continue a representation "unless it can be performed competently, promptly, without improper conflict of interest and to completion"); see also Rule 1.18, Comment [4] (advising that "[w]here the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation").

In withdrawing from the representation, the Panel urges the inquiring attorney to take all reasonable steps required by Rule 1.16(d) to mitigate the consequences to the Decedent's family of his or her withdrawal, including, but not limited to, providing notice to them of his or her intention to terminate representation—thereby permitting them time to select replacement counsel—returning their papers and property, and refunding any unearned fees or expenses, if any. This is a non-exhaustive list of mitigation steps; the particular circumstances of the matter may require additional efforts. See Hazard, Hodes, Jarvis, and Thompson, The Law of Lawyering, § 21.18 n. 56, pg. 34 (2023).