Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2026-07
Issued August 13, 2026

FACTS

Several years ago, an individual (the "Wife") seeking to file a personal injury action on behalf of her husband was referred to the inquiring attorney for potential representation. The Wife's claims centered on the allegedly injurious operations and development activity of a quasi-state entity (the "Entity") occurring on an ongoing basis near her home. During the intake process, the inquiring attorney—and possibly his or her associate—discussed with the Wife the nature of the Wife's inquiry, the feasibility of representation, anticipated litigation costs, and potential funding sources. The inquiring attorney states that at no time did he or she determine or provide a concrete case valuation, however. The inquiring attorney ultimately declined the representation due to the anticipated litigation expense, the Wife's concomitant inability to obtain adequate funding, and the inquiring attorney's then-current law firm's capacity limitations.

Recently, the inquiring attorney came under consideration to represent the Entity. Concerns have been raised regarding whether the inquiring attorney's past interactions with the Wife constitute a conflict of interest prohibiting the inquiring attorney from representing the Entity.

ISSUE PRESENTED

The inquiring attorney asks whether a conflict of interest exists prohibiting him or her from representing the Entity?

OPINION

It is the Panel's opinion that a conflict of interest does not presently exist prohibiting the inquiring attorney from representing the Entity.

REASONING

Because the Wife actively sought representation from the inquiring attorney, 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 . . ."). Accordingly, the inquiring attorney owes the Wife the following duties enumerated 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.

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

The Panel finds that the facts as described by the inquiring attorney satisfy the second, significantly-harmful information prong of Rule 1.18(c). According to the inquiring attorney, he or she discussed with the Wife the nature of the Wife's inquiry, the feasibility of representation, anticipated litigation expenses, and potential funding sources. The information received led the inquiring attorney to decline the representation due to the anticipated cost of litigation, the Wife's lack of funding, and the limited capacity of the inquiring attorney's firm at that time. Although the inquiring attorney did not make a concrete valuation of the case, the quantum of information exchanged during the consultation is sufficient, in the Panel's opinion, to trigger this prong of Rule 1.18(c). See Rhode Island Supreme Court Ethics Advisory Panel Op. 2025-15.

With that said, the Panel finds that the other prong of Rule 1.18(c) is not met here. To be sure, the interests of the Wife and the Entity are undoubtedly materially adverse, given the Wife's claims that the Entity's ongoing operations and development activity have caused and continue to cause personal injury to her husband. See id. However, the Panel is unaware of any pending matter, substantially related or otherwise, involving the Wife and the Entity. See Rule 1.9, Comment [3] (defining "substantially related matters" to mean "[m]atters . . . involv[ing] the same transaction or legal dispute or . . . a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter"). Therefore, the Panel finds that this prong of Rule 1.18(c) is not met.

On the facts as described by the inquiring attorney, then, the Panel concludes that no conflict exists under Rule 1.18 rendering the inquiring attorney unable to represent the Entity. Should a matter arise involving both the Entity and the Wife, however, the Panel cautions the inquiring attorney that this calculus may change. 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").

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[1] That an associate of the inquiring attorney may have conducted interviews with the Wife, not the inquiring attorney personally, does not affect 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").