

Confidentiality for Prospective Clients
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Maintaining client confidentiality is a fundamental principle of the lawyer-client relationship. “The confidentiality rule . . . applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.” Rule 1.6, cmt. 3, Minnesota Rules of Professional Conduct (MRPC). It is widely understood that a lawyer must keep a client’s information confidential, but perhaps less widely known is that information provided by a prospective client to a lawyer also must be kept confidential.

A prospective client is defined as one who discusses with a lawyer the possibility of forming a lawyer-client relationship. Rule 1.18(a), MRPC. Prospective clients often must reveal confidential information during an initial consultation, even if only enough to allow the lawyer to determine whether a conflict of interest exists with an existing client. Restatement Third, the Law Governing Lawyers sec. 15 cmt. c (2000). Rule 1.18(b), MRPC, prohibits a lawyer from using or revealing any such information learned in a consultation with a prospective client except as Rule 1.9, MRPC, would permit with respect to a former client.

Lawyers have been admonished for violating Rule 1.18(b), MRPC. In one case, a prospective client called lawyer Smith (not his real name) seeking general information about family law issues, including possibly commencing a dissolution action and seeking temporary custody of his child. The prospective client provided Smith with information concerning his understanding of his wife’s current situation. The prospective client also indicated to Smith that his wife was seeing another man and provided identifying details about the other man without disclosing his name. Smith informed the prospective client that a conflict check needed to be completed before anyone in the firm could represent him and that he himself did not handle family law matters.

After speaking with prospective client, Smith called the respondent, another lawyer in the firm, as he believed the respondent’s brother may have been the man referred to who was personally involved with the prospective client’s wife, and intimated that this other man and the prospective client’s wife may be moving in together. After speaking with Smith, the respondent called his brother and confirmed that he knew the

prospective client's wife, who was with the respondent's brother when the call occurred. The respondent then divulged the prospective client's information to his brother, which was in turn immediately conveyed to the prospective client's wife and led her to believe the prospective client was filing for divorce. This prompted her to send the prospective client a text message denying an intimate relationship with the respondent's brother and any intent to move in with him. A few days later, the prospective client learned that the respondent was the brother of his wife's male friend.

The sharing of information between Smith and the respondent, and the respondent and his brother, and his brother and the prospective client's wife, contributed to further deterioration of the relationship between the prospective client and his wife. The respondent's conduct in calling his brother and revealing the prospective client's confidential information violated Rule 1.18(b), MRPC. The respondent was issued an admonition for his isolated and nonserious misconduct.

Prospective clients need to be able to freely and honestly communicate with a lawyer without fear that the lawyer may disclose their information to others or, as in this case, to others within their law firm who then disclose the information to people outside the firm. The lawyer may, however, wish to limit what information is obtained from prospective clients and thus minimize this risk.

This case illustrates the need to protect information learned from a prospective client during an initial consultation, regardless of the brevity or method (i.e., in person, by telephone, via e-mail, etc.) of the consultation. Rule 1.18, MRPC, should be reviewed, as it defines and clarifies a lawyer's professional duties to a prospective client, including the duty to protect information.