Conflicts of Interest 2024 **December, 2024**

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The general rule governing conflicts of interest is almost identical in Iowa, Minnesota, Wisconsin, and Nebraska:

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a

former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in [a] writing [signed by the client]. [Wisconsin includes the words shown in brackets.]

Iowa adds the following provision:

(c) In no event shall a lawyer represent both parties in dissolution of marriage proceedings.

Obviously, the text of the rule gives little practical guidance for the attorney. During this program, we will look at some cases construing this rule in a variety of situations.

Joint Representation

Obviously, one lawyer cannot represent two clients if the two clients are A and B, the plaintiff and defendant in the case *A v. B*. Indeed, this is the one case in which the conflict may never be consented to. But in many cases, it is both necessary and desirable for one attorney to represent two clients in a related matter. Therefore, it is not uncommon for one attorney to represent both plaintiffs in a civil case, if their claims are both based on the same theory and their interests are aligned. But when undertaking any joint representation, it is important to keep in mind that a time might come when those interests are no longer aligned. At such time as the parties have a dispute, then the lawyer's responsibilities to one of the clients may be limited by the responsibilities to another.

For example, in a perfect world, an attorney in Minnesota, Wisconsin, or Nebraska could agree to represent both spouses in a divorce proceeding, as long as they've agreed upon everything and amicably come to the lawyer's office to draw up the necessary papers. Minnesota, for example, has provisions for a joint petition for dissolution of marriage. See, for example, the court's pro se instructions for filing in cases without children and cases with children.

In states such as Minnesota, an attorney could theoretically jointly help the clients fill out these forms. This is probably a bad idea, because of the risk inherent in any divorce case that one spouse will become disgruntled and raise some claim against the other spouse. This could be accompanied by a claim that the lawyer was favoring the other spouse during the joint representation. The better practice seems to be codified by the Iowa rule, which forbids joint representation in all divorce cases.

See also In The Matter of Disciplinary Proceedings Against Widule, 660 N.W.2d 686 (Wis. 2003).Attorney had ongoing consulting relationship with one client which later became involved in dispute with second client.

Driver and Passenger

Figueroa-Olmo v. Westinghouse Elec. Corp., 616 F. Supp. 1445 (D.P.R. 1985):

> Given the possibility of negligence of the deceased, Westinghouse contends that non-heir plaintiffs should have the opportunity to present a case against the other plaintiffs who are heirs of the driver or of the passengers in the truck for their part in causing the accident while the heir plaintiffs should have the opportunity to litigate among themselves the other decedents' negligence in order to reduce their own and protect their compensation instead of resting their entire case against Westinghouse. It understands that this problem arose from the moment that all these plaintiffs with potentially conflicting interests sought advice from this law firm and this single firm made all the decisions on how to channel their claims.

See also, In the Matter of Thornton, 421 A.2d 1 (D.C. 1980)

Joint Representation of Criminal Co-Defendants

In re Disciplinary Action Against Coleman, 793 N.W.2d 296 (Minn. 2011):

> The potential for conflict of interest in representing multiple defendants in a criminal case is so serious that a lawyer should, as a general rule, decline to represent more than one codefendant. The critical question is the likelihood that a difference in interests of the codefendants may occur, and if it does, whether it would materially interfere with the exercise of the lawyer's independent judgment in pursuing litigation strategies that should be pursued on behalf of each client. Thus, when a lawyer presents a unified defense and the risk of adverse effect is minimal, the conflict may be waived by each codefendant…..
>
> It should have been obvious to Coleman that a conflict of interest existed. At the outset, neither S.A. nor E.M. admitted to possessing a firearm in the car. Since a firearm was found in the car by police, either S.A.'s or E.M.'s denial at trial of possession of the firearm would implicitly accuse the other of possession of the firearm, creating a battle of credibility between the two clients. Thus, both clients would have an incentive to change their story, or accuse or cast doubt upon the other.

In criminal cases, the issue also assumes a Constitutional dimension, since the accused has the right to the effective assistance of counsel, which presumably includes a lawyer who is not burdened by a conflict of interest. Seem Holloway v. Arkansas, 435 U.S. 475 (1978) (defendant objected to joint representation) and Cuyler v. Sullivan, 446 U.S. 335 (1980) (error preserved even though no objection made).

Minnesota Rule of Criminal Procedure 17.03:

> Subd. 5. Dual Representation. When 2 or more defendants are jointly charged or will be tried jointly under subdivisions 2 or 4 of this rule, and 2 or more of them are represented by the same attorney, the following procedure must be followed before plea and trial.
>
> (1) The court must:
>
> (a) address each defendant personally on the record;
> (b) advise each defendant of the potential danger of dual representation; and
> (c) give each defendant an opportunity to question the court on the complexities and possible consequences of dual representation.

(2) The court must elicit from each defendant in a narrative statement that the defendant:

(a) has been advised of the right to effective representation;
(b) understands the details of defense counsel's possible conflict of interest and the potential perils of such a conflict;
(c) has discussed the matter with defense counsel, or if the defendant wishes, with outside counsel; and
(d) voluntarily waives the constitutional right to separate counsel.

(Even though Iowa does not have this provision in its Rules of Criminal Procedure, the same general principles apply, since this is largely a codification of the U.S. Supreme Court cases cited above.)

Representation of Insured and Insurer

Pine Island Farmers v. Erstad & Riemer, 649 N.W.2d 444 (Minn. 2002):

> Thus, it is clear that in an insurance defense scenario, defense counsel has an attorney-client relationship with the insured. A number of jurisdictions have gone a step further, holding that the insured is defense counsel's sole client, and prohibiting defense counsel from forming an attorney-client relationship with the insurer. *See, e.g. [cases from Arkansas, Connecticut, and Montana].* The court of appeals arguably endorsed this view when it broadly held that "the insured is the sole client of the defense attorneys hired by the insurer." . . . However, we have never gone so far as to hold that defense counsel cannot have an attorney-client relationship with both the insured and the insurer, *see Kleman,* 255 N.W.2d at 235; *Friesen's, Inc. v. Larson,* 443 N.W.2d 830, 831 (Minn.1989), and we decline to do so now.

Shelby Mut. Ins. Co. v. Kleman, 255 N.W.2d 231 (Minn. 1977):

> Appellant Kleman moved that the court below enjoin the firm from representing Gary in any manner or in any proceedings regarding the automobile accident in question, because of an alleged conflict of interest It is suggested that if the insurance company prevailed in this action, Gary would be left without insurance coverage and would be responsible for a judgment rendered against him. At a hearing on the motion, however, counsel for the insurance company assured the

> court, as it did this court at oral argument, that the company would provide Gary insurance coverage under the policy. At the suggestion of appellant's counsel, Gary had conferred with an independent attorney about the need for separate counsel and was advised that it was unnecessary in these circumstances. The court asked Gary if he consented to his present representation in light of these developments, and, upon his affirmative answer, denied appellant's motion.

Representation of Organization and Principals Within Organization

See also Rule 1.13.

Bottoms v. Stapleton, 706 N.W.2d 411 (Iowa 2005), was an action by a minority shareholder against both the majority shareholder and the corporation. The Iowa Supreme Court held that the attorney could represent both the majority shareholder and the company: "We are convinced the defendants' attorneys are not disqualified from representing both defendants simply because the plaintiff has asserted separate claims against these defendants."

But the court distinguished Rowen v. LeMars Mut. Ins. Co. of Iowa, 230 N.W.2d 905 (Iowa 1975): "It is also well established that a potential conflict of interest exists when the same law firm attempts to represent the nominal corporate defendant in a derivative action while at the same time representing the corporate insiders accused of wrongdoing."

Business Transactions Between Clients

In Iowa Attorney Disciplinary Board v. Wright, 840 N.W.2d 295 (Iowa 2013):

> While representing Floyd Lee Madison in a criminal case in 2011, Wright was presented with documents purporting to evidence that Madison was the beneficiary of a large bequest from his long-lost cousin in Nigeria. Madison represented to Wright that upon payment of $177,660 in taxes owed on the inheritance in Nigeria, the sum of $18,800,000 would be released to Madison. He asked Wright to represent him in securing the transfer of the funds from Nigeria. In consideration for a fee equal to ten percent of the funds recovered, Wright agreed to represent Madison in the Nigerian transaction.

The attorney then contacted other clients known to have funds available and arranged for these clients to lend the money. Much to everyone’s surprise, the money from Nigeria never materialized. The Supreme Court conceded that “Wright is not the first

Iowa lawyer who has become entangled in a deception with ostensible Nigerian connections."

Among other things, the Supreme Court concluded "Wright's undisclosed contingent fee interest in Madison's inheritance claim constituted a pecuniary interest that was adverse to the interests of" the other clients.

Closely Related Entities

Discotrade Ltd. v. Wyeth-Ayerst Intern., Inc., 200 F. Supp. 2d 355 (S.D.N.Y 2002):

> As elaborated above, we find that Dorsey & Whitney suffers from a conflict of interest by representing Discotrade in this action because it presently represents a close corporate affiliate of WAII, Pharmaceuticals. As Pharmaceuticals has expressly declined to waive the conflict, see Ryan Aff. Ex. G, we hereby disqualify the law firm of Dorsey & Whitney from representing Discotrade in the present matter.

Representation of Adverse Party in Unrelated Matter

Memphis & Shelby County Bar Ass'n v. Sanderson, 378 S.W.2d 173 (Tenn. App. 1963) represents a relatively easy case. In that case, the wife came into the attorney's office and paid him $50 to represent her in a divorce case. The $50 was marked as being for court costs, and she agreed to pay a fee of $250.

A few months later, the husband came into the attorney's office to talk about the divorce case. It turned out that he had a workman's compensation case, and he decided to hire the attorney to represent him in that case.

The attorney later insisted that the wife agreed that he could represent the husband in the unrelated case. It's unclear how much weight the court placed on this alleged consent. Even though the court found that the wife's testimony was not very convincing, it found a violation based upon the attorney's own testimony.

> It was the opinion of the court below [which was affirmed] that Mr. Sanderson would not have been in a position to vigorously and capably pursue Mr. Martin for divorce, alimony and child support with consequent citations for contempt and resulting punishment and at the same time devote his time properly to the interest of Mr. Martin

> in the workmen's compensation claim; that the interests of the two parties were decidedly antagonistic.

In Iowa Sup. Ct. Atty. Disciplinary Board v. Howe, 706 N.W.2d 360 (Iowa 2005), the attorney, a part-time city attorney, "billed both the city and [defendant] for his dual representation" in a case where he was acting both as a prosecutor on some charges, and negotiating a plea agreement as defense attorney on others. He "admitted at the hearing that his facilitation of the disposition of the three city charges through a plea agreement was wrong," and the Supreme Court agreed. A somewhat more difficult issue was his later representation of the defendant in a later administrative proceeding regarding his driver's license. Citing Rule 1.11, the Court held that this was also improper.

Representing Both Buyer and Seller

Board of Prof. Ethics & Conduct v. Wagner, 599 N.W.2d 721 (Iowa 1999), quoting Charles Wolfram, Modern Legal Ethics § 8.5, at 434 (West 1986):

> [A] lawyer's simultaneous representation of a buyer and a seller in the same transaction is a paradigm of a conflict of interest. Beginning with such basic elements as determining the price and describing the property to be sold, what one party gets the other must concede. Terms of payment, security for unpaid balances, warranties of quality and of title, date of closing and risk of loss in the interim, tax consequences, and a host of other details should be addressed by each party or the party's adviser in a well-thought-out transaction. When the transaction is a large one—such as the purchase and sale of a residence, commercial property, or a business—the transaction typically becomes further complicated because the additional interests of banks, brokers, tenants, and title insurance companies may intrude.

Former Clients

See also Rule 1.9.

In Jesse v. Danforth, 485 N.W.2d 63 (Wis. 1992), the attorney had been retained by 23 physicians to form a corporation. A few years later, that attorney was retained by a plaintiff to pursue a medical malpractice claim against one of those physicians. The Wisconsin Supreme Court held that there was no conflict of interest under the facts of the case:

> We thus provide the following guideline: where (1) a person retains a lawyer for the purpose of organizing an entity and (2) the lawyer's involvement with that person is directly related to that incorporation and (3) such entity is eventually incorporated, the entity rule applies retroactively such that the lawyer's pre-incorporation involvement with the person is deemed to be representation of the entity, not the person.

Estate Planning: Representing Testator and Beneficiary Who Will Be Disinherited

ABA Formal Opinion 05-434 (Dec. 8, 2004) deals with the situation of an attorney who is asked to draft a will. The effect of that will is to disinherit the testator's son, who is a client in an unrelated matter. The opinion holds that this is not a conflict of interest, because the son is not "directly adverse" to the father. Without more, there is no conflict of interest in that situation:

> A potential beneficiary, even one who has been informed by the testator that he has been named in a testamentary instrument, has no legal right to that bequest but has, instead, merely an expectancy. Thus, except where the testator has a legal duty to make the bequest that is to be revoked or altered, there is no conflict of legal rights and duties as between the testator and the beneficiary and there is no direct adverseness.

Hot Potato Doctrine

Picker International, Inc., v. Varian Associates, Inc., 670 F. Supp. 1363 (N.D. Ohio 1987)("a firm may not drop a client like a hot potato, especially if it is in order to keep a far more lucrative client."

But see a case in which the conflict arose without the fault of the law firm: Gould, Inc. v. Mitsui Mining & Smelting Co., 738 F. Supp 1121 (N.D. Ohio 1990):

> The court has broad discretion in determining whether counsel should be disqualified in ongoing litigation…. However, the law requires the discretion to be exercised wisely, and with due regard to lawyers' ethical standards. The issue arising from the application of these standards cannot be resolved in a vacuum, and the ethical rules should not be blindly applied without consideration of relative hardships. Disqualification questions are intensely fact-specific, and it is essential to approach such problems with a keen sense of practicality as well as a precise picture of the underlying facts.

Consent in Dual Representation Cases

ABA Comment 29 to Rule 1.7:

> In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment, and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

Since clients can consent to conflicts of interest, it might be a good practice to have clients specifically acknowledge and consent to the potential conflict of interest in any case of joint representation. If doing so, the attorney should be mindful that the consent must comply with the requirements of Rule 1.7(b). For example, in Wisconsin, the consent must be signed by the client.

Attorney as Member of Labor Union

Santa Clara County Counsel Attys. Assn. v. Woodside, 869 P. 2d 1142 (Cal. 1994):

> We are asked to decide whether the right of local government employees to sue a public agency for violations of the Meyers-Milias-Brown Act (MMBA, Gov. Code, § 3500 et seq.) extends to attorneys who are employed in the office of the Santa Clara County Counsel (County Counsel), or whether the duty of loyalty imposed upon these attorneys towards their client, the County of Santa Clara (County), precludes such a suit. We conclude that the MMBA authorizes the suit, and that the suit is not prohibited for any

constitutional reason. Further, we conclude that the County is statutorily forbidden from discharging attorneys for exercising their right to sue under the MMBA, although the County is still free to rearrange assignments within the County Counsel's office in order to ensure that it receives legal representation in which it has full confidence.

Conflicting Positions in Different Cases

Normally, there is no conflict when an attorney takes two conflicting positions in two unrelated cases. But there might be problem areas, such as conflicting positions regarding the disposition of a particular piece of property.

See, for example, Fiandaca v. Cunningham, 827 F.2d 825 (1st Cir. 1987)(in class action involving two groups of inmates, location of new facility to settle case pitted one class against another).

Other Related Rules

Rule 1.6: Confidentiality:

"A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated" elsewhere in the rule.

However, as the ABA comment states, "Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions." Therefore, a lawyer **shall** reveal information if the lawyer believes it is necessary to prevent the client from committing a criminal or fraudulent act that will result in death or serious bodily injury or substantial financial or property damage. Note, some states, such as Nebraska, use the word "may" instead of "shall" in the previous rule. Other states, such as Iowa, use somewhat different wording with a similar effect.

Note that in states such as Minnesota with the word "shall," this rule does not provide any "safe harbor". In certain cases, the information must remain confidentiality. In other cases, the information must be disclosed. There is no gray area in which the information may be disclosed. (Wisconsin has a small gray area in which information may be disclosed, but in which disclosure is not necessary.)

A lawyer may also reveal client confidences "to secure legal advice about the lawyer's conduct under these rules." and "to comply with other law or a court order". However, in the case of a court order, the ABA comment points out that even then, "the lawyer must consult with the client about the possibility of appeal".

Rule 1.8: Specific Conflict of Interest Rules

Attorney's Personal Interests

A lawyer may not enter into a transaction with a client in which he acquires an interest adverse to the client (such as a security interest), unless the transaction is fair and reasonable, the client is advised in writing to obtain outside advice, and the client gives written consent.

Gifts from clients (including testamentary gifts)

In Minnesota, Iowa, and other states using the language of the model rules, a lawyer shall not prepare an instrument giving himself or herself (or a parent, child, sibling or spouse) any substantial gift from a client. There is an exception when the "client is related to the donee."

Wisconsin has a much more specific rule. In Wisconsin, a lawyer may not "solicit any substantial gift" from a client, or prepare an instrument (such as a will) giving a gift to the lawyer unless all of these requirements are met:

1. The client is a relative and "natural object of the bounty of the client".

2. There is no reasonable ground to believe the instrument will be contested, or that the public will "lose confidence in the integrity of the bar".

3. The amount of the gift is reasonable and natural.

Since these are similar to the common-law rule in other states regarding the validity of the gift, it would probably be wise for attorneys in other states to follow the more restrictive Wisconsin rule.

Until a case is concluded, a lawyer may not receive literary rights based upon the representation.

A lawyer may not provide financial assistance to a client, other than advancing certain costs and expenses.

If a lawyer's fee is paid by someone other than the client, all of the following requirements must be met:

1. The client must consent (Wisconsin includes an exception to this rule if the lawyer is appointed at government expense). (In Wisconsin, if the lawyer is being paid by an insurance company or similar, then the prior agreement with the insurance company meets the consent requirement.)

2. It does not interfere with the lawyer's independence.

3. Confidential information is maintained properly.

Aggregate Settlements

If a lawyer is representing more than one party, then any aggregate settlement must be approved by all of the clients.

Waiving Claims Against Attorney

A lawyer may not ask a client to prospectively waive malpractice claims (unless the client is independently represented when making that waiver) or to agree not to report the lawyer's conduct to disciplinary authorities.

Proprietary Interest of Attorney

A lawyer may not acquire a proprietary interest in a cause of action, except for the following:

1. An attorney's lien for his or her fee, if authorized by law.
2. A reasonable contingent fee in a civil case.

Sexual Relationship With Client

A lawyer may not have sexual relations with a client (unless the relationship predated the legal representation). This includes the person(s) who supervise the lawyer, in the case of an institutional client.

Imputed Conflicts of Interest

With the exception of the last paragraph, these prohibitions also apply to all lawyers in the same firm. (For more details, see Rules 1.10 – 1.12.)

Rule 1.9: Duties to former clients

A lawyer who has represented a former client may not represent another person in the same or substantially related matter without the informed written consent of the former client. Wisconsin adds that such consent must be signed by the former client.

If the firm in which a lawyer had represented a person, then the lawyer may not represent a person materially adverse to that person about whom the lawyer had acquired certain confidential information.

Note: As the ABA comments state, with respect to the former client of a former firm, "the Rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel."

A lawyer may not use information relating to the representation of a former client to the former client's disadvantage, unless as otherwise permitted by the rules (or when the information has become generally known).

A lawyer may not reveal information relating to a representation of a former client (other than would be permitted with respect to a current client).

Rule 1.10: Imputed Disqualification.

In general, if a lawyer in a firm is prohibited from representing a client under Rule 1.7 or 1.9, then the same prohibition extends to all lawyers in the firm. There are two exceptions to this disqualification:

1. The other lawyers in the firm are not disqualified if the prohibition is based on a personal interest of the prohibited lawyer, and there is not a significant risk that the representation by the other lawyers would be materially limited.

2. If the lawyer is disqualified under Rule 1.9 (duties to former clients), then the other lawyers are not disqualified if all three of the following conditions are met:

a. The personally disqualified lawyer performed only minor and isolated services in the earlier matter, and only with the former firm.

b. That lawyer is screened from any participation in the new matter, and receives no fee from it.

c. Written notice is given to the former client.

In general, if a lawyer is no longer part of a firm, then the firm is not disqualified because the former member's having represented a client. However, the former firm might be disqualified in one of the following four situations:

1. The matter is the same or substantially related to the matter in which the formerly associated lawyer represented the client.

2. One of the firm's remaining lawyers has certain confidential information.

3. The conflict has been waived, in the same manner as the waiver under Rule 1.7.

4. In the case of Government lawyers, a different rule (1.11) applies.

Rule 1.11: Special rules regarding former and current government officers and employees.

Rule 1.9(c) (use of information gained from a previous representation) does apply in the case of a former government attorney. Also, in general, such a lawyer may not represent a client in connection with a matter in which that lawyer participated personally, unless the government agency gives its written informed consent.

If one lawyer in a firm is disqualified under the previous paragraph, then the firm is also disqualified, unless both of the following conditions are met:

1. The disqualified lawyer is screened, and shares no portion of the fee.
2. Written notice is given to the government agency.

If a lawyer has gained confidential government information about a person during his government employment, then he may not represent a private client whose interests are adverse to that person, if the information could be used to that person's material disadvantage. In this case, the lawyer's firm may represent such a client, if the disqualified lawyer is screened and does not share in the fee.

Current government lawyers are bound by Rules 1.7 and 1.9. Such a lawyer may not participate in matters in which he participated outside of government, unless the agency gives its written informed consent.

Current government lawyers may not negotiate for employment with any person involved in a matter in which he is participating. (There is an exception for current judicial law clerks, subject to conditions.) Wisconsin adds a provision making clear that the conflicts of a current government lawyer are NOT imputed to other lawyers in that agency. However, the lawyer must be screened from any participation in that matter. This explicit Wisconsin rule is based upon ABA comments to the rule, which states that it would
be “prudent” to screen the lawyer.

Rule 1.12: Former judges, arbitrators, mediators, and neutrals.

In general, a lawyer should not represent anyone in a matter in which he or she served as a judge, arbitrator, mediator, or neutral. A lawyer shall not negotiate for employment with such a person (with an exception for law clerks, subject to conditions). In many states, including Minnesota, such a lawyer may participate in the matter, if the conflict is waived.

If a lawyer is disqualified under this rule, then the rest of the lawyer's firm is also disqualified, unless the lawyer is screened and shares no part of the fee, and notice is given.

In general, a partisan arbitrator in a multi-member arbitration panel may subsequently represent that party in the same matter.

Rule 1.13: Organization as client.

A lawyer retained by an organization represents the organization. Therefore, if he becomes aware that some person within the organization is going to act in violation of a legal obligation to the organization, or violate a law that is likely to result in substantial injury to the organization, then the lawyer must act in the best interest of the organization. In general, he must refer the matter to higher authorities within the organization.

If the highest authority within the organization fails to address this matter, and if the lawyer reasonably believes that this will cause substantial injury to the organization, then the lawyer may make limited disclosure, even if the disclosure would otherwise violate Rule

(This does not apply if the lawyer has been retained to investigate a possibleviolation of law or to defend a claim arising out of a violation.)

If the lawyer believes that he has been fired for being a "whistleblower", then he or she is required to bring this information to the attention of the organization's highest authority.

When dealing with officers, directors, employees, etc., the lawyer should explain that the organization is the client, if it is apparent that the organization's interests are adverse to those persons.

In general, the organization's lawyer may also represent officers, employees, etc. But see Rule 1.13(g) regarding required consent.

Rule 1.18: Duties to a prospective client.

A "prospective client" is a person who discusses with a lawyer the possibility of forming an attorney-client relationship.

In general, information revealed in such discussions cannot be used or revealed. (There is an exception only if Rule 1.9 permits revealing it with respect to a former client.)

If the lawyer has learned information that "could be significantly harmful" in those discussions, then the lawyer shall not represent a client with interests that are materially adverse. This prohibition extends to other lawyers in the firm.

There are two exceptions to this rule:

1. The lawyer may represent the client if both the client and the prospective client have given written informed consent.

2. If the lawyer took reasonable measures to avoid exposure to the information, then other lawyers in his or her firm may represent the client. Notice must be given to the prospective client.

Rule 2.3: Evaluation for use by 3rd persons.

A lawyer may evaluate a matter affecting a client for use by someone else, if the lawyer reasonably believes that doing so is otherwise compatible with the relationship with the client.

If the evaluation will adversely affect the client's interests, then the lawyer must first obtain the client's informed consent.

Except as authorized in connection with the evaluation, confidential information remains protected by Rule 1.6.

Rule 2.4: Lawyer serving as 3rd-party neutral.

If a lawyer is serving as a third-party neutral (for example, arbitrator or mediator), the lawyer must inform unrepresented parties that he or she is not representing them. If the party does not understand the lawyer's role, then the lawyer must explain the difference between a third-party neutral and a lawyer representing a client.

Rule 5.7: Responsibilities regarding law-related services.

A "law-related service" is a service that might reasonably be performed with and substantially related to the provision of legal services. However, it is the type of service that can be performed by a nonlawyer and not be prohibited as the unauthorized practice of law.

A lawyer providing such services is subject to the Rules of Professional Conduct in either of the following situations:

1. They are not distinct from the lawyer's provision of legal services to clients

2. If the lawyer fails to take reasonable measures to assure the person obtaining the services knows that they are not legal services, and that the protections of the lawyer-client relationship do not apply.

(Note: This rule has not been adopted in Wisconsin, although Wisconsin has a Rule 5.7 covering an unrelated subject.)

The Iowa commentary to this rule adds: “Certain services that may be performed by nonlawyers nonetheless are treated as the practice of law in Iowa when performed by lawyers, including consummation of real estate transactions, preparation of tax returns, legislative lobbying, and estate planning.”