Formal Ethics Opinion
KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-455
Issued: May 20, 2022

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at http://www.kybar.org/237), before relying on this opinion.

Subject: **How does a potential client who confers with a lawyer about hiring the lawyer to represent the potential client in a matter become the lawyer's Prospective Client, and what are the ethical ramifications to the lawyer and the lawyer's present, and future clients?**

Question 1: **How does a potential client become a "prospective client"?**

Answer: **See Discussion on Page 5**

Question 2: **What are the suggested best practices in conducting an initial interview and conflicts check?**

Answer: **See Discussion on Page 6**

Question 3: **What might a lawyer do to avoid being disqualified if someone makes a unilateral disclosure of their confidential information?**

Answer: **See Discussion on Page 7**

Question 4: What is "significantly harmful" prospective client information?

Answer: **See Discussion on Page 8**

References:

Rules of Supreme Court of Kentucky

SCR 3.130(1.18); SCR 3.130(1.7); SCR 3.130(1.9); SCR 3.130(1.10); SCR 3.130(1.13); Vermont R. Prof. Cond. 1.18.

Cases

Lovell v. Winchester, 941 S.W.2d 466 (Ky. 1997); *Marcum v. Scorsone*, 457 S.W.3d 710 (Ky. 2015); *In re Faller*, 2014 Bankr. LEXIS 2949, 2014 WL 338564 (Bankr. W.D. Ky., July 8, 2014).

Ethics Opinions:

KBA E-418 (Nov. 2001); ABA Formal Opinion 10-457 (August 5, 2010); ABA Formal Opinion 492 (June 9, 2020)

SCR 3.130(1.18) - Duties to prospective client - was adopted by the Supreme Court of Kentucky and made effective on July 15, 2009.[1] Since that time there have only been a few cases that

[1] Kentucky Supreme Court Order 2009-5 (April 16, 2009).

illustrate the Rule's requirements and there has been very little guidance on its application; hence, the Committee deems it appropriate to provide Kentucky lawyers with this guidance.

A lawyer's ability to enter into a lawyer-client relationship with a prospective client is limited primarily by three Rules of Professional Conduct, specifically, SCR 3.130(1.7), Conflict of Interest: Current Clients,[2] SCR 3.130(1.9), Duties to Former Clients,[3] and SCR 3.130(1.10) Imputation of conflicts of interest: general rule.[4] Absent the informed consent, confirmed in

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[2] SCR 3.3130(1.7).
(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 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 writing. The consultation shall include an explanation of the implications of the common representation and the advantages and risks involved.

[3] SCR 3.130(1.9).
(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.
(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

[4] SCR 3.130(1.10).
(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
(2) any lawyer remaining in the firm has information protected by Rules 1. 6 and 1.9(c) that is material to the matter.
(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
(d) A firm is not disqualified from representation of a client if the only basis for disqualification is representation of a former client by a lawyer presently associated with the firm, sufficient to cause that lawyer to be disqualified pursuant to Rule 1.9 and:

writing, of each affected client, Rule 1.7 precludes a lawyer and his/her law firm from undertaking a representation of a "prospective client" if the proposed representation would be directly adverse to a current client of the lawyer or his/her law firm (even if the representation of that current client is unrelated to the proposed new matter), or if the "prospective client" is an adverse party in another ongoing representation of the lawyer or his/her law firm. *See* SCR 3.130(1.7(a)(1) and (b)); SCR 3.130(1.10(a)). Likewise, absent a former client's informed consent, confirmed in writing, a lawyer may not represent a prospective client who is materially adverse to the lawyer's former client's interests in the same, or a substantially related matter. *See* SCR 3.130(1.9(a)). However, while a lawyer may be disqualified under Rule 1.9's "former client" conflict rule, that disqualifying conflict is not imputed to the rest of the lawyer's law firm if the disqualified lawyer is screened from participation in the matter, is apportioned no part of the fee therefrom, and written notice of the screening procedure is provided to the former client. *See* SCR 3.130(1.10)(a) and (d); *see also* KBA E-418 (Nov. 2001) with respect to screening procedures under Kentucky's version of Rule 1.10(d).

The ABA's Ethics 2000 Commission and the KBA Ethics 2000 Committee recommended the adoption of Rule 1.18 because of a concern that important events could occur during the period of time in which a lawyer and a prospective client were considering whether to form a lawyer-client relationship and, therefore, it was appropriate to protect a potential client's confidential information during the pre-retention period. It was in response to these concerns that the Supreme Court of Kentucky adopted SCR 3.130(1.18), as follows.[5]

> (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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(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no specific part of the fee therefrom; and
(2) written notice is given to the former client.
(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

[5] Before Kentucky's adoption of Rule 1.18, Kentucky courts recognized that persons who consult a lawyer are afforded some protections. *See*, *e.g*., *Lovell v. Winchester*, 941 S.W.2d 466 (Ky. 1997), overruled on other grounds by *Marcum v. Scorsone*, 457 S.W.3d 710 (Ky. 2015) (overruling *Lovell* and other cases that had approved the "appearance of impropriety" standard as a basis for disqualification of counsel). In *Lovell*, the appellants met with a lawyer about the possibility of representing them about a possible claim against the seller of land they had purchased. The appellants visited the lawyer at his office; discussed their claim; and left their original documents related to the transaction with the lawyer. The lawyer declined the representation and returned the documents to appellants who retained other counsel. When the lawyer appeared for the seller in the litigation, appellants sought the lawyer's disqualification. Based on the now-rejected "appearance of impropriety" standard, the Kentucky Supreme Court mandated that the trial court disqualify the lawyer and, in doing so, noted: "Consultation with a lawyer may ripen into a lawyer/client relationship the precludes the lawyer from later undertaking a representation adverse to the individual who consulted him. The lawyer/client relationship can arise not only by contract but also from the conduct of the parties. Courts have found that the relationship is created as a result of the client's reasonable belief or expectation that the lawyer is undertaking the representation. Such a belief is based on the conduct of the parties. The key element in making such a determination is whether confidential information has been disclosed to the lawyer." *Lovell*, 457 S.W.3d at 468.

(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).
(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:
(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or;
(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
(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
(ii) written notice is promptly given to the prospective client.

Because Rule 1.18 precludes a representation if a prospective client's interest is directly adverse to a current client, or materially adverse to a former client in the same, or a substantially related matter, lawyers are faced with a quandary as to how to obtain a minimal amount of information from a person, a potential client, before agreeing to represent that person, and, thereby, give that person the status of a prospective client. Before proceeding with an in-depth review of Rule 1.18 we should note that Kentucky Rule 1.18 differs, just slightly, from the current ABA Model Rule 1.18.

Kentucky Rule 1.18(a), as adopted in 2009, and as it remains today, applies to a potential client "who discusses with a lawyer the possibility of forming a client lawyer relationship" while subparagraph (b) prohibits a lawyer from using or revealing "information learned in the consultation, … ." Further, the Supreme Court's official Commentary uses the word consultation and not discusses, other than in subparagraph (a). In 2012, the ABA substituted the word consultation for discusses in subparagraph (a) and explained that this revision "was not intended as a substantive change," as "the amendment clarified that communications that could constitute a 'discussion' or a 'consultation' could be written, oral or electronic." Hence, while one might conclude that the ABA felt that the word discusses was more informal than consultation, we believe the ABA explanation should be accepted and that we in Kentucky do not have a lower standard for forming the prospective client relationship. Said another way, a lawyer who has discussions with a potential client in a setting where it is unlikely that neither the person nor the lawyer would have a good faith belief that a consultation on a matter of law is occurring ripens into a situation where the person then attains the status of being a prospective client.

The important point is, notwithstanding the different words discusses and consultation, we feel that a "facts and circumstances" test must be applied to determine whether a "discussion" ripens into a "consultation" and then whether a "prospective client relationship" is created. For example, does the discussion occur in the lawyer's office and, at the time of the meeting, did the potential client deliver documents for the lawyer's review? Was the potential client acting in good faith to acquire legal advice or was the potential client's actions an attempt to disqualify the lawyer? Did the discussion occur at a place or at a time when a confidential communication

could not reasonably have been expected to occur, such as at a social gathering, a sporting event, or other public place. Nonetheless, we note that different words are used, and we suggest that a careful lawyer be prepared to avoid those situations where a person's conversations with the lawyer ripen into the creation of a prospective client. For example, the prudent lawyer would have developed an appropriate phrase, such as, "well, I'm afraid to discuss your matter in this environment where we could not be sure our conversation will not be overheard, or without knowing all the facts and giving effect to recent developments in the law it seems that, in general, the law might impose the following type of obligation." The point is that we lawyers need to be mindful to be aware of how simple a person's simple questions or comments or email may ripen into the creation of a prospective client situation which would then have conflict ramifications.

It is important to note that Rule 1.18 applies only to those discussions between the lawyer and the prospective client when a formal lawyer-client relationship is not established. In this instance it is appropriate for the lawyer to communicate with the prospective client by letter or email the fact of non-representation. If the prospective client and the lawyer agree to the representation, then any conflict issues arising thereafter will be resolved under Rule 1.7 with respect to a current client or Rule 1.9 with respect to a former client.

Finally, we note the uniqueness of Kentucky's version of Rule 1.10(d) with respect to using screening procedures and written notice of those procedures to prevent imputed disqualification due to a former client conflict. Other jurisdictions either have no such screening rule or have a rule that expressly limits the rule's applicability to situations in which the disqualifying conflict arises from a lawyer leaving one law firm and joining another. By its terms, Kentucky Rule 1.10 is more generous. With that in mind, among current clients, former clients, and prospective clients, it is the current clients who are necessarily to be afforded the greatest protections with respect to the lawyer's duty of loyalty and duty of confidentiality, to be followed by former clients who are afforded more limited protections than those of a current client, and prospective clients being afforded even more limited protections. As noted herein, by its terms, Rule 1.18(d)(2) conditions a law firm's use of notice and screening to prevent imputed disqualification with respect to a prospective client on the tainted lawyer's taking "reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client." However, Rule 1.10(d) regarding use of screening to prevent imputed disqualification for former clients, for whom greater protections should be afforded, does not impose such condition. Therefore, the prudent Kentucky lawyer and his/her law firm – when employing screening procedures in the context of a prospective client conflict – should, in their screening letter, reference *both* Rule 1.10(d) with respect to former clients *and* Rule 1.18(c) with respect to prospective clients.

Question 1

How does a potential client become a "prospective client"?

A person[6] becomes a "prospective client" by discussing with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter; however, not every communication

[6] A under appropriate circumstances an entity may also be deemed a prospective client. In particular, Rule 1.13(a) and Commentary thereto recognize that an entity may be a client and necessarily must act through one or more of the entity's constituents. Therefore, Rule 1.18 is likely to apply to an entity if an entity's constituent with authority to retain counsel "discuss" or "consult" with a lawyer about the possibility of forming a lawyer-client relationship.

with a lawyer, whether in-person or by electronic means, constitutes a discussion within the meaning of the Rule. As stated above, in order for a communication, however it occurs, to come within the boundaries of the Rule, which would then make a person a prospective client, depends on the facts and circumstances surrounding the exchange of information.

If during the discussion the lawyer requests or invites a potential client to provide confidential information without giving the person an effective warning not to disclose confidential information and the potential client proceeds to provide the attorney with confidential information that is significantly harmful to such person, then it is most likely that the person will become a prospective client. On the other hand, if a person who is not acting in good faith communicates confidential information unilaterally, or after first receiving a warning not to make a disclosure of confidential information or without any reasonable expectation that the lawyer is willing to discuss the possibility of representing the person, then the potential client should not be considered a prospective client. *See* Supreme Court Comment (2).[7] Further, a person who discloses or communicates information to a lawyer must have a *bona fide* intent of retaining the lawyer or a good faith intention to seek legal advice, a person who does not should not be deemed a "prospective client."[8]

Question 2

What are the suggested best practices in conducting an initial interview and conflicts check?

In order to avoid a situation where a potential client becomes a "prospective client," the lawyer should seek to limit the amount of information obtained from a potential client until after the lawyer has completed an initial conflicts check. The careful lawyer, or the lawyer's staff person who has been trained to handle incoming contacts, would advise the potential client that before being permitted to hear the details of their situation that the firm (or lawyer) requires that the sole purpose of their preliminary discussion is to do a basic conflicts check, such discussion does not generate an attorney-client relationship, but appropriate follow-up action will occur as soon as possible.

A potential client could be advised to disclose the general nature of the dispute or planning issue; for example, does the potential client's matter pertain to a personal injury; divorce/child custody issue; dispute over the ownership of property and, if so, the nature of the property involved; or an estate or trust dispute between a fiduciary and a beneficiary, etc. A prudent lawyer could advise a potential client as follows: "do not tell me any of your case or matter specific confidential information at this point – rather, only give me a simple description of the nature of the matter and the names of the persons involved in the matter."[9] The potential client should be advised not to disclose any factual information until after giving sufficient information to allow a conflicts check to be completed so as not to create a conflict with an

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[7] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).

[8] Some states require a good faith communication with the lawyer. *See* Vt. R. Prof. Cond. 1.18.

[9] *See* SCR 3.130(1.18) Comment (4). In 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.

existing client. For example, of the type of initial information that may be desired see the suggested Conflict Consultation Form which is attached as Exhibit to this Opinion.

Question 3

What might a lawyer do to avoid being disqualified if someone makes a unilateral disclosure of their confidential information?

Rule 1.18's Commentary (2) provides that a person who unilaterally provides confidential information to a lawyer without having a reasonable expectation that the lawyer is willing to discuss representation is not entitled to the protections of Rule 1.18. Hence, as stated above, as a Best Practice, the lawyer should advise a potential client, either verbally or in writing, that the potential client's disclosure of basic information for doing a conflicts check does not establish a lawyer-client relationship.

If the lawyer advises the client not to disclose the potential client's confidential information and the client does so anyway, then the lawyer should, as explained in the Introduction, immediately proceed to an effective screening procedure as provided by Rule 1.18(c) and Kentucky's unique Rule 1.10(d).

With regards to a law firm's website, ABA Formal Opinion 10-457 (August 5, 2010) addresses many of the lawyer's concerns and the following concluding paragraphs of the ABA Opinion are worthy of careful consideration:

> Warnings or cautionary statements on a lawyer's website can be designed to and may effectively limit, condition, or disclaim a lawyer's obligation to a website reader. Such warnings or statements may be written so as to avoid a misunderstanding by the website visitor that (1) a client-lawyer relationship has been created; (2) the visitor's information will be kept confidential; (3) legal advice has been given; or (4) the lawyer will be prevented from representing an adverse party.
>
> Limitations, conditions, or disclaimers of lawyer obligations will be effective only if reasonably understandable, properly placed, and not misleading. This requires a clear warning in a readable format whose meaning can be understood by a reasonable person. If the website uses a particular language, any waiver, disclaimer, limitation, or condition must be in the same language. The appropriate information should be conspicuously placed to assure that the reader is likely to see it before proceeding.
>
> Finally, a limitation, condition, waiver, or disclaimer may be undercut if the lawyer acts or communicates contrary to its warning.

We note with favor the following type of conspicuous disclaimer.

> We welcome e-mails, but do not send confidential information by e-mail. Sending us e-mail does not create an attorney-client relationship. We do not have any obligation to keep information you send us confidential unless and until we check for potential conflicts of interest and agree to represent you.

A law firm may use a professional answering service that is available to potential clients "24-7," and this answering service provides a live voice ready to take a potential client through a careful intake process. Specifically, the trained receptionist takes a first-time caller through a list of predetermined questions which are designed to extract personal and case information so that

the lawyer might assure that a potential client's confidential information is not disclosed without first giving the lawyer the opportunity to do a conflicts check. This is not to suggest that a lawyer is required to contract with a professional answering service or have all incoming calls routed through the lawyer's secretary; rather, this is a suggestion as to how a lawyer might consider means to limit the amount of information he/she may initially receive from a potential client.

The key is for the prudent lawyer to understand the problem that is created when getting too much information too early in the discussion. The lawyer who has carefully circumscribed his firm's website or has used a trained intake receptionist will have acted reasonably to minimize the risk that he/she would be precluded from continuing a representation adverse to the "prospective client" or from taking a new matter adverse to the "prospective client."

Question 4

What is "significantly harmful" prospective client information?

Rule 1.18(c) limits its application to those situations where a lawyer learns a potential client's confidential information that (1) arises out of the same or a substantially related matter and (2) is significantly harmful to the potential client. The phrase significantly harmful is not defined by the Rule but it qualifies the lawyer's duties toward prospective clients when no client-lawyer relationship is established and distinguishes these duties from duties owed to clients.

ABA Formal Opinion 492 (June 9, 2020) explains "significantly harmful" as follows:

> Information that is typically viewed as "significantly harmful" includes, for instance, "views on various settlement issues including price and timing"; "personal accounts of each relevant event [and the prospective client's] strategic thinking concerning how to manage the situation"; an "18-minute phone call" with a "prospective client-plaintiff [during which a firm] "had 'outlined potential claims'" against defendant and "'discussed specifics as to amount of money needed to settle the case'"; and a presentation by a corporation seeking to bring an action of "the underlying facts and legal theories about its proposed lawsuit." Other recognized categories of significantly harmful information include: "sensitive personal information" in a divorce case; "premature possession of the prospective client's financial information"; knowledge of "settlement position"; a "prospective client's personal thoughts and impressions regarding the facts of the case and possible litigation strategies," and "the possible terms and structure of a proposed bid" by one corporation to acquire another.

We note that in some jurisdictions lawyers are deemed to possess "significantly harmful" information when they acquire intimate knowledge of the prospective client's views and impressions of the litigation that could not have been obtained elsewhere, and this may include a party's assessment of its own claims and risk tolerance, its settlement authority, and its strategic vision to manage any litigation. However, a mere conclusory statement of harmfulness is generally not enough to substantiate a party's position that the information disclosed is significantly harmful. For example, a party's statement that the information is "non-public" is not necessarily synonymous with confidential or privileged information because even information that is not generally available to the public can be discovered. The point is that information cannot be significantly harmful to a prospective client if: (1) it can be procured from

an alternate source; or (2) it is most likely to be revealed during discovery, which, of course, is what a court may need to consider as an item of information that is likely to be discovered.

In the case of *In re Faller*,[10] a bankruptcy matter from the Western District of Kentucky, the Court explained how a diligent law firm avoided the application of Rule 1.18. The firm sent a letter to the potential client which had a heading "Non-Engagement of Law Firm." The letter advised Faller that the firm had "not investigated [his] case" and "(was) expressing no opinion as to its merits." In addition, the firm had records indicating there was no retention of Faller's materials. Faller alleged that his conversations with the firm's lawyers in the courthouse, and by telephone requesting advice regarding the same issues involved in the present action, caused him to be a prospective client. The attorneys advised the Court that they had no information about Faller and the lawyer who talked to Faller had left the firm. The Court denied Faller's motion to disqualify the firm because Faller failed to establish that he revealed anything to the attorneys that would be significantly harmful, and no client relationship was established.

Conclusion

A prospective client is a person who consults a lawyer about the possibility of forming a client-lawyer relationship. SCR 3.130(1.18) governs whether the consultation limits the lawyer or the lawyer's firm from accepting a new client whose interests are materially adverse to the prospective client in a matter that is the same or substantially related to the subject of the consultation, even when no client-lawyer relationship results from the consultation. Further, a lawyer is prohibited from accepting a new matter if the lawyer receives information from a prospective client that could be significantly harmful to a prior prospective client in the new matter. Whether information learned by the lawyer could be significantly harmful is a fact-based inquiry which depends on a variety of circumstances surrounding the disclosure of the prospective client's confidential information which includes whether the prospective client was acting in good faith, the extent of the information disclosed, duration of the communications and the potential harm to the prospective client by the disclosure of the client's confidential information. The inquiry does not require the prospective client to reveal confidential information; however, a mere conclusory statement by the prospective client of harmfulness is not enough to substantiate a position that the information is significantly harmful. Further, even if the lawyer learned information that could be significantly harmful, the lawyer's firm can accept the new matter if the lawyer receiving the information is promptly screened from the new matter or the prospective client provides informed consent, as set forth in Model Rule 1.18(d)(1).

[10] 2014 Bankr. LEXIS 2949, 2014 WL 338564 (Bankr. W.D. Ky., July 8, 2014).

CONFLICT CONSULTATION FORM[11]

TO BE COMPLETED ON OR **BEFORE** INITIAL MEETING

WARNING NOTICE

This form is used to determine if a lawyer should accept a person as a client. It is best if the potential client is advised not to give the attorney (or staff member) any confidential information until after an initial conflicts check has been completed. Advise potential client that anything sent to the attorney is not confidential nor becomes subject to the attorney-client privilege unless the attorney agrees to represent the potential client. It is best to advise the potential client that providing the attorney with the following information does not create an attorney-client relationship, and the potential client acknowledges an understanding of this explanation and agrees.

Name & Address of Potential Client: _____

Phone Number:_____; Email: _____

Alternate Contact Name & Phone Number: _____

Are you a previous client? _____. If yes what was the lawyer's name _____

Names of Opposing Parties in this Matter: _____

Name of Opposing Attorneys in this Matter: _____

Names of Any Persons On Your Side: _____

Names of Any Businesses Involved in this Matter:_____

Served with Legal Papers: _____ When: _____ Court Date: _____

What County: _____ Other Side's Name: _____

Have you talked to another lawyer about this matter; if so, what is that attorney's name and may we contact that attorney? _____

LAWYER – STAFF PERSON FOLLOW-UP

Advice Given That A Conflicts Check Will Be Made and Return Call Or Email Sent: _____

Adverse or Associated Party(ies) Checked: _____ OK?_____

Conflicts List Checked: _____ OK? _____

Non-Client Interview List Checked : _____ OK? _____

Date & Conflict Check Completed By: _____

Note To Reader

[11] This form was prepared by the KBA Ethics Committee as an aid to attorneys who will consider their obligations to Prospective Clients under SCR 3.130(1.18). This form has not been approved by the Supreme Court of Kentucky nor the KBA and it is not a required or mandatory form.

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. This Rule provides that formal opinions are advisory only.