

**WSBA NWSidebar**  
**Posted: July 19, 2021**

## **Federal Court Looks at Prospective Client Rule**

**By Mark J. Fucile**  
**Fucile & Reising LLP**

The federal district court in Seattle recently discussed the prospective client rule—RPC 1.18—in denying a motion to disqualify a law firm. *Collins v. Nova Association Management Partners LLC*, No. C20-1206-JCC, 2021 WL 2184879 (W.D. Wash. May 28, 2021) (unpublished), involved Fair Debt Collection Practices Act and related claims by condominium unit owner against his owners association and its management company. The federal case, in turn, arose out of earlier litigation in King County Superior Court over association assessments due. In the King County litigation, Collins had approached two lawyers at a law firm separately with several months in between about the possibility of representing him. Collins, however, did not hire the law firm on either occasion. Instead, he retained other counsel and the King County litigation eventually settled.

When Collins filed the later federal case, a third lawyer from the same law firm Collins had contacted earlier appeared for the defendants. At that point, Collins moved to disqualify the law firm arguing in the alternative that (1) he was a client of the law firm based on the earlier contacts or (2) he had been a prospective client under RPC 1.18 and had disclosed, in the phraseology of the

rule, “significantly harmful” confidential information during those contacts. The Court denied the motion.

In doing so, the Court dismissed the first argument out of hand in light of the fact that Collins had retained other counsel shortly after meeting with the first law firm lawyer. The Court then turned to RPC 1.18. The Court agreed that Collins met the broad definition of prospective client under RPC 1.18(a): “A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.” Under RPC 1.18(c), a lawyer who has acquired material confidential information from a prospective client is generally precluded from later representing the opposing party in the same or a substantially related matter if the use of the confidential information would be “significantly harmful” to the prospective client. The Court, however, found that Collins failed to meet this standard because the information disclosed was either not relevant or was already in the public record.

From the opinion, it does not appear that screening was considered. RPC 1.18(d)(2) allows a law firm to unilaterally screen a lawyer who had a preliminary contact with a prospective client from the matter involved and permits other lawyers at the firm to represent the opposing party with screening in place. In this context, screening can be a useful risk management tool as long as the

preliminary contact is recorded in the firm's conflict system to alert other firm lawyers later of the need for screening if they take on the opposing party.

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is a member of the Oregon State Bar Legal Ethics Committee and the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB *Ethical Oregon Lawyer*, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.