



Confidences of Prospective Clients

There are duties of confidentiality about what a prospective client tells you that linger even after that person decides to hire someone else. Although you may not feel much of a sense of loyalty to somebody who has rejected you in favor of another lawyer, our ethical rules provide differently. And if you think the consequences of breaching the loyalties so imposed will not be much to worry about, you may want to talk to lawyer Christopher Cicero.

In a recent case that got national attention in the sports sections of major newspapers,¹ Cicero was sanctioned by the Ohio Supreme Court for violations of Ohio's counterpart to Arizona's ER 1.18.² This deals with prospective clients that, among other things, limits a lawyer in using or revealing information learned during discussions she has with someone about the possibility of forming a lawyer-client relationship which, for whatever the reason, does not come to pass.


Cicero had been contacted by Edward Rife after Rife's home had been raided by federal law enforcement officials, who seized a quantity of Ohio State University football memorabilia as part of a drug-trafficking investigation. This included an MVP trophy, Big Ten Championship rings, autographed jerseys and the 2009 Wisconsin game ball, all of which implicated Ohio State football players, past and present, in whatever illegal schemes Rife was suspected of. At their initial meeting, Rife disclosed to Cicero the identity of the items seized as well as the name of one of the former football players involved. While Rife was still in the process of deciding on which lawyer to hire, Cicero, without telling Rife he was planning it or getting Rife's consent, sent an unsolicited email to Jim Tessel, the then-head coach of the Ohio State University football team, informing him that Rife had been to his office and had made the disclosures about the memorabilia, implying that team members were involved in selling the items and that "if Rife retains me I will try to get these items back."

The court opinion does not tell us whether Cicero knew Tessel other than by reputation, or what Tessel's response was, but does state that it considered Cicero's motive for making the contact one of selfish "self-aggrandizement"—that is, to show off for a local celebrity. In any event, Rife ended up with other counsel, and Cicero ended up with a Bar complaint, although we are not told who initiated the process.

The Ohio Board of Commissioners on Grievances and

Discipline concluded that Rife met the definition of "prospective client" found in Rule 1.18, found that Cicero had improperly revealed information learned while discussing Rife's case with him, and then suspended Cicero's license for six months. Cicero's fortunes took a turn for the worse when he appealed his suspension to the Ohio Supreme Court; the court found Cicero's attempts to show that he did not talk to Rife as a potential client to be "disingenuous and not credible," and proceeded to increase the length of his suspension to one year. "Prospective clients trust that their confidences will be protected when they engage in an initial consultation with an attorney," the court stated. "Cicero's almost immediate dissemination of the detailed

information that Rife provided [at their meeting] directly violated that trust."³

It is important to remember that ER 1.18 incorporates the confidentiality provisions of both ER 1.6 (Confidentiality of Information) and ER 1.9 (Duties to Former Clients). This means that unless ERs 1.6 and 1.9 would permit disclosure of what was discussed between you and the person who ultimately shows the poor judgment in hiring someone else, what you learned during the consultation must remain confidential and cannot be used by you to the disadvantage of that person or otherwise revealed to third parties. 

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A new Ethics Opinion is on p. 61. Ethics Opinions and the Rules of Professional Conduct are available at www.azbar.org/Ethics



David D. Dodge provides consultation to lawyers on legal ethics, professional responsibility and standard of care issues. He is a former Chair of the Disciplinary Commission of the Arizona Supreme Court and practices as David D. Dodge PLC in Phoenix.

endnotes

1. *Disciplinary Counsel v. Cicero*, 134 Ohio St. 3d 311 (2012)
2. Rule 42, ARIZ.R.S.C.T.
3. 134 Ohio St. 3d at ¶13.