OPINION NO. 02-04
(September 2002)

The State Bar of Arizona's Committee on the Rules of Professional Conduct continues to receive inquiries from members of the Bar regarding the confidentiality that is to be given unsolicited e-mail from would-be clients. Prior opinions regarding the Internet and e-mail do not squarely address this issue. In an effort to assist members of the Bar in determining their duties, this Opinion considers a hypothetical situation. It does not attempt, however, to address all of the ethical issues associated with unsolicited e-mail.

SUMMARY

An attorney does not owe a duty of confidentiality to individuals who unilaterally e-mail inquiries to the attorney when the e-mail is unsolicited. The sender does not have a reasonable expectation of confidentiality in such situations. Law firm websites, with attorney e-mail addresses, however, should include disclaimers regarding whether or not e-mail communications from prospective clients will be treated as confidential. [ERs 1.6, 1.7] [Dissent Attached]

FACTS[1]

An employee of XYZ Company (herein "Employee") believes that his managers are abusive to him and that the work environment is hostile. Employee writes a letter to the Human Resources Department at XYZ Company but receives no satisfactory response. Employee then, from his home, signs on to the Internet and finds the names of 11 employment lawyers. He has never met or spoken with any of them. Employee then e-mails each attorney saying that he is looking for a plaintiff's employment lawyer to represent him against XYZ Company, which he names in the e-mail. He also attaches to the e-mail a copy of the letter that he previously sent to the Human Resources Department at XYZ Company.

One of the 11 lawyers receiving the Employee's e-mail is outside counsel for XYZ Company (herein "Outside Counsel"). That lawyer questions whether he may forward the e-mail with the attachment to XYZ Company. Outside Counsel maintains an e-mail address, but does not have a website or advertisement on the Internet.

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QUESTIONS PRESENTED

1. Is an attorney-client relationship created between Outside Counsel and Employee through the unsolicited e-mail?

2. Whether Outside Counsel ethically may forward the e-mail to XYZ Company without first advising the sender?

3. If an attorney-client relationship was not formed, does Outside Counsel owe any duties to Employee as a prospective client?

RELEVANT ETHICAL RULES

ER 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c) and (d) or ER 3.3(a)(2).

* * * *

ER 1.7. Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

ER 1.8. Conflict of Interest: Prohibited Transactions

* * * *

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.

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OPINION

Formation of the Attorney-Client Relationship

In Arizona, communications between a client and his/her attorney[2] are considered confidential and privileged if "the communication [was] made in the context of the attorney-client relationship and [was] maintained in confidence." *See Alexander v. Superior Court,* 141 Ariz. 157, 162, 685 P.2d 1309, 1314 (1984) (quoting Casenote, 19 Ariz.L.Rev. 587, 592 (1977)). *See also* A.R.S. § 12-2234. Whether information communicated to an attorney by a prospective client is confidential depends, at least in part, if an attorney-client relationship was created.

The test adopted in Arizona to determine whether an attorney-client relationship was formed is a subjective one, where "the court looks to the nature of the work performed and to the circumstances under which the confidences were divulged." *Alexander,* 141 Ariz. at 162 (quoting from Developments of the Law – Conflicts of Interest in the Legal Profession, 94 Harv.L.Rev. 1244, 1321-22 (1981)). *See also Westinghouse Elec. Corp. v. Kerr-McGee Corp.,* 580 F.2d 1311 (7th Cir. 1978), *cert. denied,* 439 U.S. 955 (1978). An attorney-client relationship is proved "by showing that the party sought and received advice and assistance from the attorney in matters pertinent to the legal profession." *Matter of Petrie,* 154 Ariz. 295, 299, 742 P.2d 796, 800 (1987). *See also Foulke v. Knuck,* 162 Ariz. 517, 520, 784 P.2d 723, 726 (App. 1989).

The Arizona Supreme Court has explained the subjective test by stating, "where a person holds an objectively reasonable belief that a lawyer is acting as his attorney, relies on that belief and relationship, and the lawyer does not refute that belief, we will treat that relationship as one between attorney and client in bar disciplinary matters."[3] *Matter of Pappas,* 159 Ariz. 516, 522, 768 P.2d 1161, 1167 (1988). *See also* 7 Am. Jur. 2d Attorneys at Law, § 118. The relationship may be implied from the parties' conduct. *Id.* The fact that a consultation is relatively brief does not negate the establishment of an attorney-client relationship. *See* Ariz. Op. 74-10.

In applying the test, Arizona courts have considered the following factors: (1) the would-be client sought and received advice/assistance from a lawyer; (2) the nature of the services rendered; (3) the circumstances under which confidences were divulged; (4) the client's reasonable belief that an attorney-client relationship existed; (5) the client's expectation of confidentiality; and (6) payment of a fee. *See Foulke v. Knuck,* 162 Ariz. 517, 520, 784 P.2d

[2] For purposes of this Opinion, it is assumed that the entity, XYZ Company, was the client of Outside Counsel and not its managers and employees. Typically, the lawyer's professional duties are owed to the entity and not its constituents. *See* ER 1.13.
[3] The same test was applied by Arizona courts in non-bar disciplinary matters. *See Research Corp. Technologies v. Hewlett Packard Co.,* 939 F.Supp. 697 (D. Ariz. 1996); *Alexander,* 141 Ariz. 157; *Foulke v. Knuck,* 162 Ariz. 517, 784 P.2d 723 (App. 1989); and *Hrudka v. Hrudka,* 186 Ariz. 84, 919 P.2d 179.

723, 726 (App. 1989); and *Matter of Petrie,* 154 Ariz. 295, 299; and *Hrudka v. Hrudka,* 186 Ariz. 84, 919 P.2d 179 (1995). Application of the subjective test necessarily requires a case-by-case determination.

For example, in *Hrudka* a wife petitioned for dissolution of her marriage from husband. The wife spoke to a mutual friend, an attorney in Phoenix, about helping her find a domestic relations lawyer. The friend suggested that wife interview three attorneys. Accompanied by her attorney friend, wife met with attorney Derickson at the Phoenix law firm of Burch & Cracchiolo. The focus of the meeting was to gage attorney Derickson's domestic relations experience. During the consultation, cursory discussions regarding the parties' property and pre-nuptial agreement occurred, and the wife's concern that husband might try to conceal property was discussed. Wife requested that no one learn that she was contemplating dissolution. The attorney never opened a file, never charged the wife, and did not render any legal advice. *Hrudka,* 186 Ariz. at 88-89.

Later, husband retained attorney Lindholm at Burch & Cracchiolo to represent him in the dissolution proceedings. Lindholm had represented husband previously. Wife sought to disqualify husband's attorney from representing husband in the proceedings. The Arizona Court of Appeals held that no attorney-client relationship was formed. The Court specifically pointed out that attorney Derickson was one of several interviews made by the wife; little, if any, personal information was revealed during the interview; the attorney did not bill wife or receive a fee; wife did not demonstrate a reasonable expectation that any information revealed would remain confidential; and the facts did not support a reasonable belief that a relationship was created. *Hrudka,* 186 Ariz. at 89.

In the present situation, like *Hrudka,* little, if any, personal information was revealed to Outside Counsel by the e-mail. The letter to the Human Resources Department had already been divulged to XYZ Company. The only additional information divulged, according to the inquiry, was Employee's desire to find a plaintiff's employment attorney to represent him against XYZ Company. There is no demonstration of a reasonable expectation, however, that this information would remain confidential. Employee did not request that the information be held confidential. To the contrary, the same information was generally delivered to ten other attorneys. These facts do not suggest a legitimate expectation of confidentiality.

Additionally, no fee was paid, no consultation occurred, no advice was given, and no services were rendered by Outside Counsel. Employee did not give any indication that a relationship had been formed or that he relied upon the belief that the relationship had been formed. Furthermore, Outside Counsel never agreed to consider forming a relationship. The facts presented are insufficient to establish a reasonable belief by Employee that Outside Counsel was his attorney. Accordingly, it is the Ethics Committee's opinion that an attorney-client relationship was not formed under the standards adopted in Arizona.

<u>Duties Owed to a Prospective Client</u>

Even though an attorney-client relationship was not formed (thereby making the attorney-client privilege and the ethical standards directly applicable), the question remains as to whether any

duties are owed by an attorney to a prospective client. In the Scope section of the Arizona Rules of Professional Conduct, it is stated that:

> Furthermore, for purposes of determining the lawyer's authority and responsibility, principals of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. *But there are some duties, such as that of confidentiality under ER 1.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established.* Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact. (Emphasis added)

The language of this section indicates that a duty of confidentiality may arise even though an attorney-client relationship is not established, and that this duty is owed to a prospective client.

Duties relating to confidentiality, conflicts of interest, and adverse dealing with respect to a prospective client have been recognized in commentaries and treatises. For example, the duty of confidentiality has been stated to extend to information shared during the preliminary consultation with the lawyer, even though actual employment did not arise:

> A lawyer's fiduciary duties arise from his status as a member of the legal profession and are expressed, at least in part, by the applicable rules of professional conduct. These fiduciary duties, in particular the duty of confidentiality, extend to the preliminary consultation with the lawyer, even though actual employment does not arise.

ABA/BNA Lawyer's Manual on Professional Conduct, § 31.101. Similarly, Professors Hazard and Hodes opine in The Law of Lawyering § 1.6115 that:

> since would-be clients are virtually indistinguishable from "actual" clients during the period in which forming a relationship is under mutual consideration, and since they are much like "former" clients when that period ends with a parting of the ways. In the interim period lawyers are effectively bound by Rule 1.6 to maintain the confidences of their "almost clients," and by Rule 1.8(b) not to use confidential information against them. If no client relationship is formed, Rule 1.9 nonetheless prevents adverse use of information gained during the earlier consultations. Of course, if the unfruitful discussions were truly non-substantive or involved virtually no information specific to the would-be client's situation, the danger that confidentiality will be compromised is

> correspondingly small, and disqualification of the lawyer should not be required.

Extending the duty of confidentiality to prospective clients has also been recognized in case law and ethics opinions of other jurisdictions. *See* ABA Formal Op. 90-358 (9/13/90) (Model Rule 1.6 protects information imparted by a would-be client seeking to engage a lawyer's services); *Nolan v. Foreman,* 665 F.2d 738 (5th Cir. 1982) (attorney's fiduciary duty attached when he entered discussions with the client's parents as to the legal problems with a view toward undertaking representation); *People v. Canfield,* 12 Cal.3d 699 (1974) (information disclosed during a consultation by a person seeking assistance of an attorney with a view to employing him is confidential); California Ethics Op. 1984-84 (attorney has ethical duty not to disclose confidences of prospective clients disclosed during consultation); Michigan Ethics Op. RI-154 (2/1/95) (attorney has a duty to protect and preserve confidences discussed with a prospective client); Maine Ethics Op. 62 (9/4/85) (lawyer who had initial consultation with a prospective client owed duty of confidentiality); *Seely v. Seely,* 129 A.D.2d 625, 514 N.Y.S.2d 110 (1987) (fiduciary relation between lawyer and client extends to initial consultation with prospective client); New York Ethics Op. 685 (3/19/97) (lawyer may not disclose information received during initial consultation); New Jersey Ethics Op. 17 (4/25/94) (fiduciary relationship extends to preliminary consultation with prospective client, even though actual employment does not result); and Ohio Ethics Op. 19-15 (6/14/91) (confidences and secrets of a person who consults with attorney regarding representation are protected).

It appears that Arizona, through the language of the Scope section, has opened the door to imposing at least a duty of confidentiality in favor of prospective clients. Application of ER 1.6 or other fiduciary duties to a prospective client is not, however, automatic. ABA Formal Op. 90-358 (9/13/90) is premised on the assumption that the "would-be client has *consulted* the law firm in good faith for the purpose of obtaining legal representation in the matter." Each of the cases and opinions from other jurisdictions cited above involved *consultation with the prospective client,* or the attorney agreed to consider the relation and information was then divulged by the would-be client. Likewise, the Scope section of Arizona's Rules of Professional Conduct expressly states that the duty of confidentiality arises when the "*lawyer agrees to consider* whether a client-lawyer relationship shall be established." Plainly, some consultation or discussion with the prospective client as well as the lawyer agreeing to consider the relationship is required, before the fiduciary obligations will arise.

The Restatement of the Law Governing Lawyers (Proposed Final Draft No. 1) is consistent with this view. It anticipates a duty of confidentiality attaching only after discussion with the lawyer:

> § 27 Lawyer's Duty to Prospective Client
>
> When a person *discusses with a lawyer the possibility of forming a client-lawyer relationship* for a matter or matters, and no such relationship ensues, the lawyer must:
>
> (1) protect the person's confidential information by:

(a) not subsequently using or disclosing confidential information *learned in the consultation,* except to the extent permitted with respect to confidential information of a client;

* * * *

(3) use reasonable care to the extent the lawyer gives the person legal advice or provides other legal services for the person.

A rationale for extending ER 1.6 and other duties to prospective clients, and its limitations, lies in the need for a potential client to reveal confidential information in the consultation after the lawyer has agreed to consider forming a relationship. ER 1.6 is intended to encourage clients to communicate fully and frankly with the lawyer, even as to embarrassing or legally damaging subject matter. This encourages open discussions so that advice can be given based upon a full disclosure. *See* Comment to ER 1.6.

Declining would-be clients who foist "confidences" and "secrets" upon unsuspecting attorneys outside of a consultation will not detract from the purposes of ER 1.6 when the attorney has not agreed to consider the relation. However, in the context of attorney websites and Internet advertising, further consideration must be given. If the attorney simply maintains an e-mail address, then declining to extend certain duties of confidentiality to unsolicited e-mail is consistent with the principles explained above. On the other hand, if the attorney maintains a website without any express limitations on forming an attorney-client relation, or disclaimers explaining that information provided or received by would-be clients will not be held confidential, the analysis changes. The absence of express disclaimers suggests that the attorney may have implicitly "agreed to consider" forming a relation. Under these circumstances, duties of confidentiality may arise. Accordingly, the use of appropriate disclaimers with a website may be essential to prevent unsolicited e-mail from being treated as confidential.

The facts presented in the hypothetical reveal that no consultation has occurred, no advice was given, and no discussion occurred with Employee. Rather, the would-be client unilaterally forwarded information to Outside Counsel and ten other attorneys without any request regarding confidentiality. Outside Counsel did not agree to consider the relationship, nor did he ever have that opportunity before receiving the e-mail. Accordingly, it would appear that the unsolicited e-mailing of a request for representation to Outside Counsel does not present a legitimate expectation of confidentiality concerning the information presented and no duty under ER 1.6 has arisen. The purposes of ER 1.6 are not discouraged by declining a would-be client the benefits of confidentiality when no steps are taken to maintain the confidence of information and the attorney has not "agreed to consider" the relationship.

A search of ethics opinions from other jurisdictions has revealed only one matter which approaches the factual scenario presented by this inquiry. Although it concluded that duties of confidentiality arose under its facts, the principles supporting that opinion also support the limitation of that duty under the circumstances of this inquiry. In Philadelphia Ethics Op. 96-2, the inquiring attorney was one of a number of attorneys on a referral panel (known as LRIS) for

employment discrimination cases. A governing body (known as CLS) would refer a client to the panel with a potentially fee-generating employment discrimination case. The inquiring attorney (along with other attorneys on the panel) received a fully detailed description of each case compiled by the CLS along with other materials relating to the potential case. The inquiring attorney keeps all such referral papers in a chronological file called "Potential Files."

The inquiring attorney states that he received a referral concerning employee A's potential claim for employment discrimination based on allegations of sexual misconduct by her employer. The inquiring attorney reveals that he has had no direct contact with employee A, there was no communication between his office and CLS or LRIS regarding employee, other than the "Potential Files." When checking his "Potential Files" for possible conflicts on another, unrelated matter, the inquiring attorney's secretary noticed employee A's name and recalled that she is the potential complaining witness in a pending matter in which the inquiring attorney represents a male employee charged by his employer with alleged sexual misconduct complained of by employee A. The secretary brought this fact to the inquiring attorney's attention and he believes that the similarity of charges made by employee A in the referred matter could be useful in impeaching her testimony in the pending matter. The inquiring attorney asked if the information contained in his "Personal Files" regarding employee A can be used against her.

In its analysis, the Opinion recognizes that the Rules of Professional Conduct do not directly address situations posed by a potential client. However, the Pennsylvania Rules of Professional Conduct contain a Scope provision (similar to Arizona's) that was taken from the Model Code. It provides:

> Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties such as that of confidentiality in Rule 1.6 that may attach and the lawyer agrees to consider whether a client-lawyer relationship shall be established.

Under Pennsylvania law, the attorney-client privilege attaches when there has been a professional consultation. To this is added the principle that a potential client can only meaningfully determine whether to enter into an attorney-client relationship when full disclosures can be made in the initial contact and if those disclosures are provided confidentially. The Opinion concluded that the inquiring attorney must consider employee A as a "former client" and that Rule 1.6 confidentiality attached.

This Pennsylvania Opinion reinforces several of the factors which must be present before fiduciary duties are extended to a potential client. First, the potential client must be seeking legal advice and has divulged confidential information to the attorney in that process. Second, the attorney has agreed, in advance, to consider forming a relationship. When this occurs the potential client has a legitimate expectation that confidences and secrets will remain confidential. In the Opinion, the lawyer's agreement to consider a relation with employee A arose through his participation in the referral panel. He had agreed to consider employment discrimination cases referred to him, and then received detailed confidential information. This is not the situation

presented in this hypothetical. Outside Counsel did not in advance, or ever for that matter, agree to consider forming an attorney-client relation. Employee also unilaterally and without ever discussing the matter with Outside Counsel, divulged his desire to retain an attorney against XYZ Company. No legitimate expectation of confidentially would arise from these circumstances.

CONCLUSION

Based upon the foregoing, no duty exists upon Outside Counsel under ER 1.6 to keep confidential the information within or attached to the unsolicited e-mail. Accordingly, Outside Counsel would not violate a duty to Employee by forwarding the e-mail to XYZ Company. The Ethics Committee notes that these conclusions appear to be consistent with the Comments to new ABA Model Rule of Professional Conduct 1.18, regarding ethical duties owed to prospective clients. Arizona has not yet adopted Rule 1.18.

DISSENT TO OPINION NO. 02-04

INTRODUCTORY COMMENT

It is unusual for members of the Committee on the Rules of Professional Conduct (the "Ethics Committee") to draft and disseminate a dissenting opinion. However, keeping in mind that formal opinions of the Ethics Committee do not carry the force of law but are, rather, advisory in nature, and keeping in mind the lively and informed debate among members of the Ethics Committee with regard to this Opinion, a substantial minority of the Ethics Committee members (the "Dissenting Members") felt it appropriate to formally dissent.

Based upon the Ethics Committee's discussion and review of the majority opinion, the Dissenting Members disagree with the majority's conclusion that Outside Counsel[1] had no ethical obligation to maintain in confidence the information he obtained from Employee's e-mail transmission. Rather, the Dissenting Members conclude that Outside Counsel had such a duty and was ethically obligated to refrain from discussing the matter with his client, XYZ Company.[2]

DISCUSSION

The Dissenting Members agree with the general discussion of the case law and ethics opinions from other states presented in the majority opinion. To the contrary, the Dissenting Members believe that many of the decisions and opinions referred to in the section entitled "Duties Owed to a Prospective Client" are particularly informative. These decisions readily demonstrate that attorneys have a clear duty to protect the confidences of a client even though a traditional attorney-client relationship may never come about. ABA Formal Op. 90-358 (9/13/90); *People v. Canfield,* 12 Cal.3d 699 (1974); Michigan Ethics Op. RI-154 (2/1/95); New York Ethics Op. 685 (3/19/97); and Ohio Ethics Op. 19-15 (6/14/91) all appear to be especially instructive.

After reviewing these and other decisions, the majority opinion concludes that there was no confidential information conveyed to Outside Counsel through any kind of consultative process in which Outside Counsel voluntarily participated. Therefore, the majority concludes, Outside Counsel was free to inform XYZ Company that he had received a communication from Employee through which Employee sought to retain Outside Counsel as his attorney to pursue a lawsuit against XYZ Company.

We respectfully disagree.

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[1] The defined terms used in the majority opinion are used here.

[2] Some, but not all of the Dissenting Members disagree with the majority opinion on a more general basis. Those members are concerned that Employee could, indeed, have had a reasonable expectation that an attorney-client relationship would be established. Such a conclusion would invoke a more broadly-based ethical obligation which may include prohibiting the Outside Counsel from representing XYZ Company in any capacity where the Employee was an adverse party. Because those concerns are not shared by all the Dissenting Members, they are beyond the scope of this dissent.

First, it appears to us that the contact itself should be treated as a confidential communication. The hypothetical fact situation does not state whether Employee continues to be employed by XYZ Company. Certainly, if he/she remains an employee, informing XYZ Company that Employee is actively seeking assistance in commencing legal action against XYZ Company could have a serious impact on Employee's employment. Of course, it is also possible that other negative consequences could follow from such a disclosure. It seems to us quite reasonable, even from an objective point of view, that Employee would believe that his intent to sue XYZ Company was something he expected would be held in confidence.

The Ethics Committee's discussion focused on this question. Both this discussion and the majority's opinion itself seem to be driven by the fact that Employee's contact with Outside Counsel was through e-mail and that Employee contacted more than one attorney. The majority may have reached a different conclusion if the contact had been via telephone or in person or if only one or a smaller number of attorneys had been contacted. The majority apparently concluded that, if contact had been made in that manner, a more extensive "discussion" may have ensued between Employee and Outside Counsel.

We do not believe this to be a meaningful distinction.[3] Employee's intention to seek to retain an attorney to represent him/her in his/her dispute with XYZ Company is no less clearly communicated through e-mail than through a telephone conversation (even using voice mail), regular mail or even a face-to-face meeting. It appears that the majority would have concluded that Outside Counsel *would* be acting unethically if he had passed on this same information to XYZ Company if that information had been conveyed to Outside Counsel in a face-to-face meeting rather that through an e-mail.

We believe it is reasonable for Employee to expect that his communications with Outside Counsel, and any other attorney to whom the e-mail was directed, would be held in confidence. Accordingly, we conclude that ER 1.6(a) prohibits an attorney from communicating to an already existing client information received from a potential client regarding a claim that the potential client may bring against the already-existing client where, as here, it appears that the potential client anticipates that such information would be held in confidence.

Some of those voting with the majority expressed concern that Employee may have been trying to preclude a number of attorneys from representing XYZ Company. We do not believe this to be important for two reasons. First, there is adequate case law and ethics opinions which address such conduct and the resulting implications upon future representation. It need not be addressed here. Second, the Dissenting Members do not take the position that the conduct described here would preclude Outside Counsel from representing XYZ Company in the event Employee actually files a lawsuit. The only information Employee had communicated to Outside Counsel that is confidential is Employee's intention to seek counsel for such a lawsuit. Once the lawsuit

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[3] For example, some members argued that in a face-to-face meeting or in a telephone conversation, Outside Counsel could have stopped Employee from revealing any confidential information once Outside Counsel learned that Employee was employed by XYZ Company. This seems to us to be no different from the situation where a prospective client contacts an attorney by mail or voice mail. The attorney can simply stop reading the information presented once it becomes clear that he may have to decline to represent Employee because of the conflict his representation of XYZ Company presents.

is actually filed, that information is no longer confidential and, thus, would not preclude Outside Counsel from representing XYZ Company.

CONCLUSION

Dissenting Members would have Ariz. Op. 02-04 conclude that Outside Counsel was prohibited by ER 1.6 from disclosing to XYZ Company the information he received in the unilateral e-mail from Employee.

Dissent