

another man. When the attorney realizes she already represents the husband in this matter, what can the attorney do with the information she has learned from this email? Does she owe any duty to keep the wife's secret?

The Committee concluded that the attorney owes no duty to the wife, since her detailed email was unsolicited and because the wife used "mere contact information provided by the law firm on its website," which does not create a "reasonable expectation that the information contained in the email will be kept confidential."

Key to this analysis is (1) whether the firm's website "creates a reasonable belief that the law firm is specifically inviting or soliciting the communication of confidential information" and (2) "whether it is reasonable for the person providing the information to expect that it will be maintained as confidential."

The Opinion's next hypothetical firm runs afoul of this test by including a form on its website that specifically asks potential clients to share the details of their claims in exchange for an evaluation of the case. When a firm receives information via these communications, even where the firm declines to represent the potential client, Rule 1.6 imposes a duty of confidentiality with respect to any information gleaned from the form.

Just as with a live interview of a prospective client, a lawyer has a duty to protect the confidences of prospective clients who submit information via the firm's website. What's more, Rule 1.7(a)(2) imposes a material limitation conflict on the lawyer, who will not be able to represent any adverse parties due to the duty of confidentiality owed to the potential client who contacted him online.

The Committee's simple solution? A "click-through" disclaimer that requires website visitors to agree to disclaimer terms before being allowed to submit any information through an online form. A lawyer should clearly inform online visitors that no attorney-client relationship will result from this communication and that the lawyer cannot guarantee that information shared via the website will be kept confidential.

Whether the disclaimer is sufficiently clear and conspicuous to be effective is the question on which some authorities particularly focus. *Barton v. U.S. Dist. Court for Cent. Dist. of California*, 410 F.3d 1104, 21 Law. Man. Prof. Conduct 290 (9th Cir. 2005) (attorney-client privilege attached to information people supplied via Web site soliciting information, notwithstanding disclaimer on site stating that no formal lawyer-client relationship was being formed; disclaimer was "potentially confusing to clients" regarding lawyers' confidentiality obligations); California Formal Ethics Op. 2005-168, 21 Law. Man. Prof. Conduct 584 (information in e-mail submitted via link in firm's Web site could not be disclosed, notwithstanding disclaimer that it would not create "confidential relationship"; disclaimer was "potentially confusing to a lay person").

A disclaimer "won't make a difference" if a lawyer in an online forum answers "fact-specific legal questions." A 2010 ABA ethics opinion which offers helpful guidance on the issue. The opinion explains that attorneys "who answer fact-specific legal questions may be