

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: JOSLYN RENEE ALEX**

**DOCKET NO. 17-DB-035**

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**REPORT OF HEARING COMMITTEE # 20**

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**INTRODUCTION**

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel (“ODC”) against Joslyn Renee Alex (“Respondent”), Louisiana Bar Roll Number 18760.<sup>1</sup> ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.18 and 4.2.<sup>2</sup>

**PROCEDURAL HISTORY**

The formal charges were filed on June 28, 2017. Respondent filed an answer to the charges on August 17, 2017, through her counsel Jo Ann Nixon. The hearing of this matter began on December 6, 2017. On that date, Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Respondent appeared with counsel, Jo Ann Nixon. Because of a concern Ms. Nixon might have a conflict the hearing was continued to and completed on October 9, 2018, with Leslie J. Schiff completing the representation of Respondent.

For the following reasons, the Committee finds it has been proven by clear and convincing evidence that Respondent violated Rule of Professional Conduct 4.2 and recommends Respondent be suspended from the practice of law for one year, six months deferred. Respondent should be placed on probation during the deferred period of the suspension. Respondent should reimburse

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<sup>1</sup> Respondent was admitted to the practice of law in Louisiana on October 7, 1988. Respondent is currently eligible to practice law in Louisiana.

<sup>2</sup> See the attached Appendix for the text of these Rules.

whoever was responsible for paying Mr. Jordan and EAN, LLCs' defense costs incurred after May 31, 2016; and pay all costs of this proceeding. Reimbursement and costs to be paid not later than the conclusion of Respondent's probation. The Committee finds the Office of Disciplinary Counsel did not prove by clear and convincing evidence that Respondent violated Rule 1.18

### **FORMAL CHARGES**

The formal charges read, in pertinent part:

Respondent is Ms. Joslyn Renee Alex, Bar Roll #18760. Respondent was born on November 8, 1961 and was admitted to practice law in Louisiana on October 7, 1988. The Complainant in the instant matter is Mississippi attorney Donna P. Green, Esq., opposing counsel. Complainant advised the ODC that she represented a client by the name of Mr. Kyle Jordan, a defendant in the litigation captioned *Riley Mouton v. EAN Holdings, LLC*, et al, 2012-10489, in the 15th JDC, Parish of Acadia. Complainant filed an answer to the original petition on behalf of Mr. Jordan on September 9, 2013, a copy of which was provided to Respondent. At that time, Respondent was placed on notice that Complainant was counsel for Mr. Jordan.

Complainant moved for summary judgment in the matter, which motion was set for hearing by the court on May 31, 2016. Respondent sent to Complainant a copy of her Opposition Memorandum on May 18, 2016. Attached to Respondent's memorandum was a supporting affidavit that had been signed by Complainant's client, Mr. Jordan.

Complainant provided documents to the ODC establishing that from 2013 to 2016, Respondent was sent several notices that Mr. Jordan was represented by Complainant. A review of the documents by Respondent would have clearly established that Mr. Jordan was represented by counsel. Furthermore, Complainant advised the ODC that Mr. Jordan had told her that he had met with Respondent prior to the filing of the suit to discuss the matter in which Respondent then named him as a defendant. Such an act by Respondent conflicted her under Louisiana Rules of Professional Conduct Rule 1.18.

Respondent appeared at the ODC office for a sworn statement in the matter. Respondent's statement confirmed that she had met with Mr. Jordan and advised him about the case prior to her filing suit and naming him as a defendant in the action. Additionally, Respondent met with Mr. Jordan while he was represented by Complainant for the purpose of having him sign a supporting affidavit for the benefit of Respondent's client. The affidavit was signed without notice to Mr. Jordan's counsel and Mr. Jordan was not placed on notice by Respondent that he was signing an affidavit against interest.

Respondent, by engaging in communication with a represented party, Mr. Jordan, regarding the ongoing litigation, as well as engaging in prior

communication with Mr. Jordan about the case before Respondent named him as a defendant in the action, has violated LRPC Rules 1.18 and 4.2.

## **EVIDENCE**

### **Hearing December 6, 2017**

#### **Examinations**

- Donna Green
- Kyle Jordan

#### **Exhibits**

##### **ODC :**

- Exhibit 1 Sworn Statement Transcript of Joslyn Renee Alex By ODC On September 29, 2016 With The Following Exhibits (1a-1d) (Admitted)
- Exhibit 1a Complaint Filed Against Joslyn Renee Alex Received By ODC On May 31, 2016. (Admitted)
- Exhibit 1b Correspondence To Respondent From ODC Dated September 20, 2016 Confirming Sworn Statement. (Admitted)
- Exhibit 1c Correspondence To ODC From Respondent Dated September 9, 2016 - Response To Complaint. (Admitted)
- Exhibit 1d Affidavit From Investigator Robin K. Mitchell Of Service Of Subpoena And Other Documents Regarding Respondent's Sworn Statement. (Admitted)
- Exhibit 2 Correspondence From ODC Dated October 10, 2016 To Complainant Donna Powe Green Requesting Further Information Regarding Her Complaint. (Admitted)
- Exhibit 3 Correspondence And Documentation From Complainant To ODC Dated October 18, 2016. (Admitted)
- Exhibit 4 Correspondence To Respondent From ODC Dated January 5, 2017 Attaching Correspondence/Documentation Received From Complainant Requesting Response. (Admitted)
- Exhibit 5 Correspondence From To ODC From Respondent Dated February 7, 2017. (Admitted)

- Exhibit 6 Affidavit From ODC Investigator Robert W. Harrison. (Denied)
- Exhibit 7 Excerpt From Riley Mouton Deposition Dated October 5, 2015. (Admitted)

**RESPONDENT:**

- Exhibit 1 Through 218 Containing The Sworn Statement Of Joslyn Alex Dated September 15 29, 2016 And The Court Of Appeal, Third 16 Circuit, Record Dated 2/23/2017. (Admitted)

**Hearing October 9, 2018**

Examinations

- Kyle Jordan
- Riley Ray Mouton
- Joslyn Alex

Exhibits

The following exhibits were erroneously identified as ODC's exhibits in the October 9, 2018 hearing transcript. They should have been identified as respondent's exhibits.

**RESPONDENT:**

- Exhibit A Uniform Motor Vehicle Crash Report (Admitted-Pending Redaction Order)
- Exhibit B Statement (Admitted-Pending Redaction Order)
- Exhibit C Affidavit of Kyle Jordan (Admitted-Pending Redaction Order)

**FINDINGS OF FACT**

1. Respondent was admitted to the practice of law on October 7, 1988.
2. Respondent has been suspended from the practice of law on two prior occasions for violations of the Rules regarding managing her trust account.<sup>3</sup>

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<sup>3</sup> Tr. Oct. 9, 2018, hearing p. 117.

3. Respondent filed suit on behalf of Riley Mouton naming Kyle Jordan and EAN Holdings, LLC as defendants liable for damages allegedly sustained in an automobile accident occurring May 11, 2011. The caption of the suit was *Riley Mouton v. EAN Holdings, LLC*, et al, 2012-10489 15th JDC, Parish of Acadia, State of Louisiana.<sup>4</sup>
4. Complainant, Donna P. Green, is an attorney at law admitted to practice in the states of Louisiana and Mississippi.<sup>5</sup>
5. Complainant undertook the representation of Kyle Jordan in the lawsuit filed by Respondent.<sup>6</sup>
6. Complainant filed pleadings on behalf of Kyle Jordan to include an answer, exceptions, and a motion for summary judgment on behalf of Kyle Jordan. Complainant propounded discovery on behalf of Kyle Jordan to include interrogatories and notices of depositions. Respondent was sent copies of all pleadings and papers filed on behalf of Kyle Jordan by Complainant as required by the Louisiana Code of Civil Procedure. On all such pleadings and papers Complainant was unambiguously identified as counsel for Kyle Jordan.<sup>7</sup>
7. Respondent communicated with Complainant about a possible settlement of the case.<sup>8</sup>
8. Complainant took the deposition of Riley Mouton in Respondent's presence at Respondents office on October 5, 2015. Complainant identified herself as counsel for defendants and the transcript of the deposition identifies Complainant as counsel for Kyle Jordan.<sup>9</sup>

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<sup>4</sup> ODC Exhibits 1A and 3.

<sup>5</sup> Tr. Dec. 6, 2017 hearing p. 35.

<sup>6</sup> Tr. Dec. 6, 2017, hearing p. 36.

<sup>7</sup> ODC Exhibit 3 .

<sup>8</sup> Tr. Dec. 6, 2017, hearing pp. 59-61.

<sup>9</sup> ODC 7.

9. On October 26, 2015, Respondent e-mailed Complainant asking for available dates to depose Kyle Jordan.<sup>10</sup>
10. On or about March 30, 2016, based on the deposition testimony of Riley Mouton, Complainant mailed the clerk and Respondent a motion for summary judgment seeking dismissal of Riley Mouton's claims against Mr. Jordan. As per the Louisiana Code of Civil Procedure, Respondent was provided with a copy of the Motion for Summary Judgment and accompanying memorandum again identifying herself as counsel for Kyle Jordan.<sup>11</sup>
11. The motion for summary judgment was set for hearing on May 31, 2016.<sup>12</sup>
12. In April, 2016, Respondent communicated with Kyle Jordan and had him sign an affidavit on April 22, 2016.<sup>13</sup>
13. On or about May 19, 2016, Complainant received a call from Respondent's office asking to continue the hearing set for May 31, 2016, because of a conflict. Complainant advised she would accommodate counsel provided Respondent's office would obtain a new hearing date, confirm it in writing and waive service so there would be no additional expense to her clients.<sup>14</sup>
14. After concluding this telephone conversation, Complainant opened her mail and saw Respondent's opposition to the motion for summary judgment, to include Mr. Jordan's affidavit.<sup>15</sup>

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<sup>10</sup> ODC Exhibit 3.

<sup>11</sup> ODC Exhibit 3.

<sup>12</sup> Tr. Dec. 6, 2017, hearing pp. 65-66.

<sup>13</sup> ODC Exhibit 1A ( the affidavit is at p. 53 of the exhibit), and Respondent Exhibit C.

<sup>14</sup> Tr. Dec. 6, 2017, hearing pp. 65-66.

<sup>15</sup> Tr. Dec. 6, 2017, hearing p.66.

15. Shortly afterwards Respondent's office called back to advise the motion could be heard on June 27, 2016. Complainant, shocked at seeing Mr. Jordan's affidavit, asked to speak to Respondent who was not available.<sup>16</sup>
16. Eventually Respondent responded by telephone, apologized explaining she had not realized Mr. Jordan was represented, would withdraw the affidavit, and probably withdraw from the case.<sup>17</sup>
17. Respondent did file a motion to withdraw the opposition and affidavit and to withdraw from the case on or about May 25, 2016.<sup>18</sup>
18. Given these developments Complainant advised the court the case could not be heard on May 31, 2016. Complainant was concerned her clients' motion would be left in limbo indefinitely she filed pleadings to reset the motion for hearing on June 27, 2016.<sup>19</sup>
19. Complainant drove from her office in Hattiesburg, Mississippi, to Crowley, La. for the hearing on June 27, 2016. Respondent did not appear on the 27<sup>th</sup>. The pending motions were continued to late August, 2016, at which time Respondent was allowed to withdraw and apparently the motion to strike and motion for summary judgment were granted.<sup>20</sup>
20. Complainant did not consent to Respondent's communications with her client.<sup>21</sup>
21. Respondent admits she violated Rule 4.2.<sup>22</sup>
22. Respondent admits her justification for violating Rule 4.2 has no basis in fact or law.<sup>23</sup>

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<sup>16</sup> Tr. Dec. 6, 2017 hearing pp. 67-68.

<sup>17</sup> Tr. Dec. 6, 2017 hearing p. 69.

<sup>18</sup> Tr. Dec. 6, 2017 hearing p. 74 and ODC Exhibit 1A pp. 54-59.

<sup>19</sup> Tr. Dec. 6, 2017 hearing p. 74.

<sup>20</sup> Tr. Dec. 6, 2017 hearing pp. 75-76.

<sup>21</sup> Tr. Dec. 6, 2017, hearing p. 67.

<sup>22</sup> Tr. Oct. 9, 2018, hearing p. 120.

<sup>23</sup> Tr. Oct. 9, 2018, hearing p. 120.

23. Respondent's violation of Rule 4.2 violated her duty to the legal system, Complainant, and the profession.
24. Respondent's violation of Rule 4.2 was knowing and intentional.<sup>24</sup>
25. Respondent knew that Mr. Jordan was represented by Complainant when she contacted him to get him to sign an affidavit against his interest.<sup>25</sup>
26. Respondent's misconduct caused actual harm to Mr. Jordan and EAN Holdings, LLC in that it delayed the granting of the motion for summary judgment for two to three months, required Complainant to appear in Crowley, Louisiana, and her clients to incur additional costs and expense as a result of Respondent's misconduct.<sup>26</sup>
27. The facts out of which the Rule 4.2 violation occurred were contemporaneous with one of Respondent's trust account violations.<sup>27</sup>

## **RULES VIOLATED**

### Rule 4.2

Respondent admits she violated Rule 4.2 and that her justification for doing so has no basis in law or fact. Aside from her admission, the evidence is uncontracted that Respondent communicated with Mr. Jordan when she knew he was represented by counsel and without his attorney's consent.

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<sup>24</sup> See 4 thru 12 above.

<sup>25</sup> Tr. Oct. 9, 2018, hearing pp. 110-116; and 4 thru 12 above.

<sup>26</sup> Tr. Dec. 6, 2017, hearing pp 64-70 and 73-76.

<sup>27</sup> Tr. Oct. 9, 2018, hearing pp. 123-124.



### Rule 1.18

The evidence on this charge is conflicting. After carefully considering all of the evidence the Committee finds the ODC failed to prove by clear and convincing evidence that Respondent violated her duty to Mr. Jordan as a prospective client.

Mr. Jordan testified after the accident he took Mr. Mouton to Respondent's office. Respondent was representing him on a social security claim and had represented him in the past on criminal matters.<sup>28</sup> He talked to Respondent "one on one" about what happened in the accident and then she sent him out to the waiting room and met with Mr. Mouton while he waited. He told her everything about how the accident happened. He signed the affidavit at Respondent's direction because he considered her to be his lawyer for the auto accident case.<sup>29</sup> According to Mr. Jordan Respondent never told him she didn't represent him for the auto accident, didn't tell him she was suing him, or that the affidavit was to be used to oppose a motion for summary judgment filed on his behalf.<sup>30</sup>

Respondent denies undertaking the representation of Mr. Jordan for the automobile accident. Respondent testified Mr. Jordan approached her in the courtroom in Jennings, handed her a copy of the accident report, and asked her to represent him. She told him she'd review it and then he could come to her office in Breaux Bridge to discuss taking the case. When she reviewed the accident report she saw that Mr. Jordan was the driver and recorded as saying he'd "overcorrected" in response to a phantom vehicle. Respondent concluded that made Mr. Jordan "liable" and she would undertake Mr. Mouton's representation and would sue Mr. Jordan. Respondent insists she told Mr. Jordan she could not represent him.<sup>31</sup> Respondent's testimony is

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<sup>28</sup> Tr. Dec. 6, 2017, hearing pp. 104-107.

<sup>29</sup> Tr. Dec. 6, 2017, hearing pp. 109-110.

<sup>30</sup> Tr. Dec. 6, 2017, hearing pp.126-127.

<sup>31</sup> Tr. Oct. 9, 2018, hearing pp 79-84.

corroborated by that of Mr. Mouton who insisted that he heard Respondent tell Mr. Jordan she couldn't represent him, that Mr. Jordan did not discuss the details of the accident with Respondent, and that he understood he would be suing Mr. Jordan for causing the accident.<sup>32</sup>

Mr. Jordan testified Respondent met with both he and Mr. Mouton and Respondent asked how the accident happened. Mr. Jordan testified they took turns telling her what happened and then Respondent told him to leave the room and she remained with Mr. Mouton.<sup>33</sup> Mr. Mouton says the three of them never met to discuss how the accident happened. Instead the three of them met briefly at which time Respondent told Mr. Jordan she couldn't represent him and then took him, Mr. Mouton, back to her office to discuss the accident.<sup>34</sup>

### SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

- (1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the lawyer acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to the legal system, Complainant, and the profession.

She acted knowingly and intentionally. The reason Respondent contacted Mr. Jordan was to get him to sign an affidavit to defeat the motion for summary judgment his lawyer had filed on his behalf. Because Mr. Jordan was represented, a deposition would be the only way Respondent could ethically elicit sworn testimony from him. Respondent knew Complainant represented Mr.

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<sup>32</sup> Tr. Oct. 9, 2018, hearing pp.65-74.

<sup>33</sup> Tr. Oct. 9, 2018 pp. 35-36.

<sup>34</sup> Tr. Oct. 9, 2018 hearing p. 71.

Jordan in late October 2015, when she asked Complainant for available dates to take his deposition but did not follow up.

Six months later, in early April 2016, Respondent received the motion and accompanying memorandum prepared and filed by Complainant as Mr. Jordan's lawyer. Instead of contacting Complainant, again, for available dates Respondent communicated directly with Mr. Jordan in clear violation of Rule 4.2. Respondent's justification that she thought he was unrepresented because he had not been served or his motion was not supported by his affidavit is not credible in light of the un-contradicted evidence she knew he was represented by Complainant.

Respondent's misconduct caused actual harm in that to Mr. Jordan and EAN Holdings, LLC in that it delayed the granting of the motion for summary judgment for two to three months, required Complainant to appear in Crowley, Louisiana in June and August 2016, and her clients to incur additional defense costs as a result of Respondent's misconduct.

The *ABA Standard 6.32 for Imposing Lawyer Sanctions* suggests that suspension is the baseline sanction for Respondent's misconduct. Respondent knew that Mr. Jordan was represented, and that communication with him without Complainant's consent was improper. Respondent's improper communication sought to interfere with a legal proceeding by obtaining an affidavit to defeat the motion for summary judgment filed on behalf of Mr. Jordan and EAN Holdings, LLC. Respondent's misconduct caused injury to EAN Holdings, LLC and Mr. Jordan by delaying the granting of summary judgment in their favor and the additional expense associated with that delay.

Aggravating Factors:

1. Two prior disciplinary sanctions the prosecution of which at least one occurred contemporaneous with the facts out of which this violation took place.

Mitigating Factors:

1. Respondent expressed remorse and attempted to rectify her misconduct when confronted by Complainant on May 19, 2016.

Complainant testified Respondent apologized and advised she'd file a motion to strike the offending affidavit and opposition and possibly withdraw from the case. She filed such motions on May 25, 2016. Unfortunately Respondent did not appear for the hearing on the motions set for June 27, 2016, delaying the disposition of the matter for another sixty days and requiring an additional court appearance by Complainant.

The purpose underlying the ethical restriction on a lawyer's communication with a party known to be represented by another lawyer and its analogues is to protect the sanctity of the attorney-client relationship and by so doing, to safeguard the integrity of the profession and preserve public confidence in our system of justice. *State v. Gilliam*, App. 4 Cir.1999, 748 So.2d 622, 1998-1320 (La.App. 4 Cir. 12/15/99), rehearing denied, writ denied 769 So.2d 1215, 2000-0493 (La. 9/29/00)

The case of *In re Debose-Parent*, Sup.2004, 869 So.2d 80, 2003-2422 (La. 2/20/04), offers some guidance as to the appropriate sanction. In that case the Supreme Court approved a sanction of suspension of six months with all but two months deferred. The unauthorized communication in that case was not as significant or damaging as was the case for Mr. Jordan and EAN Holdings, LLC. Respondent in this case intentionally obtained sworn testimony from Mr. Jordan to defeat the motion for summary judgment. This was an interference with the outcome of a legal proceeding, delayed dismissal of the suit against Mr. Jordan and EAN Holdings and almost certainly cost them additional defense costs.<sup>35</sup>

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<sup>35</sup> The record is silent as to what additional costs were incurred on behalf of Mr. Jordan and EAN Holdings, LLC. However Complainant was required to file additional pleadings to get the case out of limbo when Respondent

ABA Standard 6.32 suggests:

Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system **when the lawyer knows that such communication is improper, and causes injury ... a party to or causes interference or potential interference with the outcome of the legal proceeding.** (emphasis supplied)

Therefore it is the recommendation of this Committee that Respondent be suspended from the practice of law for one year with six months deferred. Respondent should be placed on probation during the deferred period of the suspension. Respondent should reimburse whoever was responsible for paying Mr. Jordan and EAN, LLCs' defense costs incurred after May 31, 2016, and pay all costs of this proceeding. Reimbursement and costs to be paid not later than the conclusion of Respondent's probation.

### CONCLUSION

The Committee finds Respondent knowingly and intentionally violated Rule 4.2. The Committee recommends Respondent be suspended from the practice of law for one year, six months deferred. Respondent should be placed on probation during the deferred period of the suspension. Respondent should reimburse whoever was responsible for paying Mr. Jordan and EAN, LLCs' defense costs incurred after May 31, 2016, and pay all costs of this proceeding. Reimbursement and costs to be paid not later than the conclusion of Respondent's probation.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Patrick J. Briney, to sign on their behalf.

Lafayette, Louisiana, this 29<sup>th</sup> day of May, 2019.

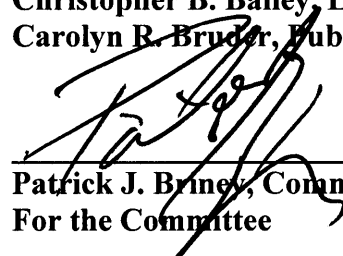
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sought to withdraw and was required to travel to Crowley for an additional hearing when Respondent did not appear on June 27, 2016.

**Louisiana Attorney Disciplinary Board  
Hearing Committee # 20**

**Patrick J. Briney, Committee Chair  
Christopher B. Bailey, Lawyer Member  
Carolyn R. Bruder, Public Member**

**BY:**

  
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**Patrick J. Briney, Committee Chairman  
For the Committee**

## APPENDIX

### **Rule 1.18. Duties to Prospective Client**

- (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.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information except as Rule 1.9 would permit with respect to information of a former client.
- (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.

### **Rule 4.2. Communication with Persons Represented by Counsel**

Unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order, a lawyer in representing a client shall not communicate about the subject of the representation with:

- (a) a person the lawyer knows to be represented by another lawyer in the matter; or
- (b) a person the lawyer knows is presently a director, officer, employee, member, shareholder or other constituent of a represented organization and (1) who supervises, directs or regularly consults with the organization's lawyer concerning the matter; (2) who has the authority to obligate the organization with respect to the matter; or (3) whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.