Bonnie Frost Co-Authors New Jersey Law Journal Legal Ethics & Attorney Discipline Article, Examining Rules of Professional Conduct in "Lawyers Have a Duty of Confidentiality, Even to Prospective Clients"

Einhorn Barbarito partner Bonnie Frost, who has been involved in the New Jersey ethics system for more than 20 years, published "Lawyers Have a Duty of Confidentiality, Even to Prospective Clients," in the *New Jersey Law Journal*, with co-author William A. Krais, who has served on the *District X Ethics Committee*.

Leading up to an analysis of the pending matter The People of New York v. Trump, the authors raise the subtle but significant role of RPC 1.18 which states that "an attorney may be disqualified from representing a current client adverse to a former prospective client." This duty to a prospective client mimics the duty of confidentiality attorneys owe to their actual clients under RPC 1.6(a): "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation ..."

First, the authors explain O Builders & Assoc. v. Yuna Corp. of N.J., the leading New Jersey case addressing an attorney's obligations under RPC 1.18, wherein the New Jersey Supreme Court stated: "A lawyer who has been consulted by a former prospective client will be disqualified if and only if two factors exist in combination: the matter of the consultation and the matter then adverse must be the same or substantially related, and the information the lawyer received during the consultation must be significantly harmful to the former prospective client in the now adverse matter." The burden of establishing these factors, the court noted, rests with the party seeking disqualification.

The authors next review the appellate court's decision in Greebel v. Lensak, wherein the court applied RPC 1.18 in the context of a family matter, and disqualified an attorney based on prior consultations with the opposing litigant.

Returning to *The People of New York v. Trump*, in which Stormy Daniels (aka Stephanie Clifford) is likely to be a key witness for the prosecution, the authors explain that Clifford had previously consulted with, but did not hire, Trump's attorney Joe Tacopina. Clifford's legal team requested Tacopina's disqualification from the current lawsuit based on conflict of interest per RPC 1.18. The Court rejected the argument without explanation, which the co-authors suggest could be because Clifford is a witness rather than an adversary in this matter, or because the information she had shared in the consultation, now in the public domain, was not significantly harmful to her now.

For the full analysis of these cases, please read "Lawyers Have a Duty of Confidentiality, Even to Prospective Clients" here.