

Avoiding Conflicts of Interest



Conducting deep, wide, and ongoing background checks will help you keep your law firm in the clear.

Conflict-based malpractice claims are among the most rapidly increasing problem areas in the legal profession. In small law firms, where employees frequently work on a contract basis, maintaining a clear understanding of everyone's associations can be a difficult and risky business. If you don't have a thorough process for tracking contacts, a conflict will turn up sooner or later. There's bound to be someone who knows someone who worked with someone you might be representing, and if that happens, you could be forced to resign the case and all your hard work will go to waste. Your firm might even become another malpractice statistic.

Certified Public Accountants who face a similar challenge have instigated best practices for avoiding conflicts of interest. Independence checks are performed on all employees—full-time and contract workers—on a regular basis and no employee can be involved with a client if there is a questionable connection. To keep this information viable, employees are asked to sign disclosure documents as frequently as every quarter.

Six degrees of reparation

When you're searching the background of a new client or employee, you need to go way beyond the name on their business card or resume. Look deep into every connection and area of interest to bring all possible sources of conflict to the surface. Research nicknames and other aliases, businesses they've worked for or with in any capacity, and personal interests which could be problematic later on. For example, you would not want to hire an attorney who is a member of Green Peace to represent a client who is being sued for an oil spill.

Who needs to check

Monitoring for conflicts is less critical for transactional law firms where cases are typically straight forward and resolved within 60 days or so. For real estate, estate planning, immigration law, and similar short-term contracts, conducting a single conflict check at the beginning of the case is usually sufficient.

Diligence is far more crucial for litigators. If you are on the plaintiff side, your relationship with the client could go on for years. During this time, you will be dealing with multiple parties and as you're doing discovery and finding witnesses, you'll need to run conflict checks on every new contact. Otherwise, you might find yourself defending a client who you once used as a witness to sue someone else.

A good checking system is essential

Even in small firms it is impossible to properly check for conflicts of interest without some kind of electronic database. You want that database to be easily searchable and enable you to designate a consistent protocol within your firm that will help you store comprehensive information and retrieve it quickly.

Look for a system that doesn't just perform searches on the database you're keeping—where you've entered newly recognized parties and things like that—but also lets you search external resources. Also insist on reporting capabilities that will provide you with tangible proof that you've run all the necessary checks.

A good conflict-checking system will detect possible conflicts of interest before representation. Nevertheless, some conflicts may arise during representation. Every lawyer should develop policies for handling conflict situations as they arise.

What makes a conflict-system effective? A practice management advisor for the Oregon State Bar Professional Liability Fund specifies seven must-haves:

1. The system is integrated with other office systems.
2. The system provides for easy access to conflict data for everyone in the office.
3. Checks are conducted at the three key junctures: before the initial interview, before a new file is opened, and when a new party enters the case.
4. Searches check for spelling variations of names.
5. Conflict entries show the party's relationship with the client.
6. All parties connected with a case are entered into the system.
7. Conflict searches are documented in the file.

Know who to trust

At LexisNexis we are committed to helping you spend more time practicing law and less time worrying about the business of law.

We have a number of solutions that take the headaches out of conflict checking. Leading the list is Time Matters® practice management software that lets you check multiple databases. This is key because you simply can't find all the information you need in just one place. For example, if your firm adds a new lawyer to the team and that lawyer provides an Excel® spreadsheet, document, or database with names of related parties on cases they were involved with, you can link that information to Time Matters to ensure more accurate and efficient conflict checks.

In addition to checking for existing clients and matters, PCLaw® billing and accounting, another leading LexisNexis® solution, also checks related records such as phone calls, notes, billing records, etc., to give you a well-rounded picture.

It is important to note that conducting conflict of interest searches in a firm requires some structure and guidelines to ensure the best results. Where conflicts are limited to an existing database, PCLaw and Juris® software will automatically record inquiry phone calls and related parties to provide a record you can refer to during your conflict checks.

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