



## **MAINTAINING YOUR CONFLICT OF INTEREST SYSTEM**

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The Pennsylvania Rules of Professional Conduct, 1.7 through 1.9, deal specifically with Conflict of Interest. It is a common area of daily law firm management which is fraught with traps which can have serious consequences for the unwary firm. A complete and reliable Conflict of Interest database requires consistent care and feeding.

For a solo or very small firm, conflict avoidance is relatively easy to control with a minimum of care and diligence. Typically, staff and attorneys are easily made aware of potential new matters. As long as due diligence is exercised to uncover and identify all of the parties involved, potential conflicts are readily identified. The smaller the firm, the easier the conflict management.

When a firm is larger, or segmented into distinct departments or offices, or experiences significant turnover of professional staff, identifying conflicts becomes much more difficult. First, the related parties may not be readily apparent or disclosed to those unfamiliar with the file. And typically, matters in other departments are not given the same level of attention as new matters in one's own department. As a result, potential conflicts can go undetected.

One particular area which is often overlooked in the care and feeding of conflict systems concerns a firm's employees, and their relatives and business affiliations. Would your conflict system tell you if the spouse of one of your secretaries was the adverse party in a lawsuit? If that secretary works in another department, possibly on another floor or in another office from the attorney handling the matter, is it possible or even likely the conflict may go undetected? Although you may be able to easily separate the employee from any information or documents related to the case, thereby technically resolving the conflict, (and of course have both parties sign a waiver), would your firm really be comfortable handling this lawsuit? How would it make your employee feel?

Do you require your employees to disclose information that would be useful for your conflict system? Nowadays, for example, spouses often have different names. You may not necessarily recognize the name unless it is in your conflict database. Your employee may have outside interests and side-line investments or management roles of which you are unaware. In-laws and their businesses may show no apparent connection to your employee.

When you hire a new employee, do you request they disclose cases they've been associated with at a prior firm? Do they sign an agreement with you to promptly disclose any relationships which may exist with current or new matters? Do you cross reference their prior firm(s) in your database and search for any possible relationships to determine if they must be screened from any on-going matters? Do you inquire and enter into your database information regarding outside ventures, and names and business entities of immediate family members?

There are certainly issues which arise in the asking of these questions. Can you make disclosure of this type of information mandatory? Probably not, unless and until it is relevant to a potential matter being opened. Employee's have a right and expectation to privacy about their outside interests and family business. If the information is disclosed to you voluntarily, how is it maintained? Is confidentiality an issue for the employee?

Some firms compromise and ask for information on a voluntary basis, and require disclosure of non-arms length relationships for any members of the legal team assigned to the new matter. Others require the information, which is confidentially reviewed by a committee, which in turn determines what is relevant to place in the conflicts database. And at some firms the information entered into the database concerning employees and their relatives is deleted when the employment ceases.

At a minimum, you should ensure that those attorneys and staff members who serve as directors or officers of outside organizations are tied to those organizations in your database. And it is recommended that employees who receive free or discounted services from the firm, as a fringe benefit, be entered as clients in your database. And the names of all of your attorneys and paralegals should be included.

As a final word of caution, which will appear self-evident to most who read this, but unfortunately is not to all: be sure that when you circulate information regarding potential new matters, you include ALL names of related parties. That includes not just the name of the adverse party (e.g. Smith v. Jones), but all the



related parties, including directors, officers, and even significant stockholders. If additional parties are identified downstream (typical in areas like banking and real estate, for example) they should be separately circulated as they become known, and added to the database as soon as identified.

Maintaining a firm's conflict system requires consistent effort and on-going diligence. Failure to do so can result in embarrassment, loss of clients, and possible claims for legal malpractice. It is important that all members of the firm pay particular attention in this area, and receive proper training at your firm regarding your procedures. Don't assume that someone "with experience" doesn't need a review of your expectations and procedures in this vital area of firm management.

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