How to Conduct a Conflict Check

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Conflicts of interest for lawyers are a significant concern. This is emphasised during our legal education—the ethics courses and professional conduct exams thoroughly cover the topic. Additionally, we must attend Continuing Professional Development (CPD) sessions on it regularly. Therefore, it's crucial to have a robust conflict check process in place at your law firm.

What is a conflict check at a law firm?

Basically, conflict of interest rules state that you can't represent a client whose interests are adverse to your own or to a former client. There are several provisions in the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* ('***Conduct Rules***') that impose duties on you to avoid conflicts of interest.

Some lawyers say that the worst thing to happen if you botch a conflict check is that you find out too late. At that point, either someone else takes over the case, or you convince the affected clients to sign waivers. That's probably true in most cases. In others, the delay in swapping out counsel or chasing conflict waivers can harm your client (consider a client waiting on a payoff in an injury case or with an upcoming statute of limitations deadline).

Besides, there's the appearance of impropriety. These days, that's enough to get your name plastered all over the internet by an angry former client bitter about you representing his ex-spouse in a new matter. You don't want to deal with that. An attorney conflict check software will help you spot the issue and prepare before you're surprised with bar complaints and internet reviews.

What counts as a law firm conflict of interest?

You have a conflict of interest when you are serving or attempting to serve two or more interests which aren't compatible. It may be described in the following way.
A practitioner (which includes a law practice) has a conflict of interest when the practitioner serves or attempts to serve two or more interests which are not able to be served consistently or honours or attempts to honour two or more duties which cannot be honoured compatibly and thereby fails to observe the fiduciary duty owed to clients and to former clients.

The NSW Law Society discusses in this document that a conflict of interest can arise broadly where:

- you act for both parties in a matter: such as for two or more parties to a conveyancing or commercial transaction; for two parties on the same side of the record in litigation; or for insured and insurer;
- you act against a former client having previously acted for that party in a related matter (in which you may also have acted for your present client) (although the description of this as a conflict of interest has been said to be inaccurate when essentially it should be described as involving only the duty of confidentiality owed to a former client);
- your own interest is involved, for example where you act in a transaction in which you or a company in which you or an associate is involved or has an interest; or where for some other reason your own interests or an associate's may conflict with your client's, such as where you may be a material witness in your client's matter.

Common mistakes with law firm conflict checks

The most common mistake with a law firm conflict check is simply not doing it. A lot of attorneys rely on memory. This is obviously a bad idea. Names change, memories fade, and if you do any volume work at all, you'll lose track of the people you talked to last week, let alone from years' prior.

Another common misstep is to maintain inadequate records. Many attorneys maintain a simple list of their own former clients. However, usually not of associated parties, opposing parties, or the contacts of fellow attorneys in their current and former places of employment.

(A great way to avoid mistakes with conflict of interest checks is to use a practice management system like Clio to keep track of all relevant matters and client information for you to support robust conflict checks. Try Clio for free today.)

Creating a conflict check process at your law firm

The starting point for a law firm conflict check is to maintain a database of all relevant contacts. This means former clients, opposing parties, etc. Here's a list of things you should track for accurate conflict checking:

- Full legal name;
- Maiden and married names;
- Nickname(s);
- Date of birth;
- Address;
- Phone;

For businesses, you'll want to include:

- Business name;
- Officers and directors;
- Partners;
- Trade names;
- Place of incorporation

Not all of this information will change over time. If you come across a close match, at least you can cross-reference birth dates, maiden names, etc. that require further investigation.

A conflict of interest check should be done before a consult is scheduled. If you do a lot of phone consults, whomever at your law firm first answers the phone should run the above information through your database. You'll want to check the potential client and opposing party for close matches, misspellings (John, Jon, Johnathan, Jonathan), and former names. Once the check is complete, record the results of the check, including the date and time the check was done.

If a conflict is flagged, or even suspected, the person answering the phone can schedule a follow-up call with the attorney to discuss the matter. Indicate that the firm has time to investigate (and to evaluate whether the case is worth dealing with conflict waivers).

How long does a conflict check take?

The time it takes to properly conduct a thorough conflict check varies depending on a number of factors such as the complexity and comprehensiveness of your law firm's database and the specific conflict-checking system you use. Using a manual process, a conflict check could take hours.

Using technology to help with law firm conflict checks

n the old days, folks would tell young lawyers to break out three binders, or three stacks of notecards, and track clients, opposing parties, and associated contacts in the three respective places. That sounds a bit like sending a telegraph, or tapping out a 30-page memo on a typewriter.

These days, you will probably use technology to help maintain a database of contacts and conduct an attorney conflict check. Here are a few tools that can help with the conflict checking process.

Spreadsheets

The most common method, I'd suspect, and the one a few firms I've worked with use, is an Excel spreadsheet filled with contacts. Things such as name, address, phone, date of birth, relationship to the firm, former names, etc. are recorded. Do a simple "CTRL+F" or "CMD+F" and start typing in variants of names, nicknames, etc. Make a note in the file or intake notes that a conflict check was run, who ran it, and what date and time it was completed.

The biggest downside of this is that Excel can bog down hard when you have a few attorneys with hundreds of former clients, and there's tons of room for human error. Personally, we'd routinely freeze our PCs doing a simple search.

Practice management solutions

For Clio Manage customers, there is a built-in search function at the top of the practice management suite. So long as you have entered the relevant information into the client and matter fields, and created related contacts for opposing and other parties, searches of just a few characters should pull up relevant results.

Also, if you're on Clio's Advanced and Complete plans, you'll be able to search for text within documents and their meta descriptions, adding extra peace of mind.

Conflict check software

You can also use tech tools that are specifically designed to make the conflict-check process faster, easier, and more accurate.

How can a conflict check software help you save time?

Legal conflict check software automates the process of cross-referencing clients and matter details against your database so that your firm can then easily address any potential areas of conflict that are detected. By automatically taking care of this time-consuming part of the process and helping to identify possible conflicts of interest, conflict check software speeds up the overall process while reducing the chance of manual error.

Pick a law firm conflict checking system (and actually use it)

It isn't news to lawyers that they need to have a conflict check system in place. We all heard it in law school, during bar prep, and at countless CLEs. However, more lawyers are switching firms throughout their careers. Keeping a meticulous record of who

you've represented and any other relevant contacts is more critical than ever.

Law firm conflict checking comes down to one thing

At the heart of it, law firm conflict checking is about consistency. Whether you use a dedicated tool, spreadsheet, or even binders, make sure to update your database regularly. Be thorough with your searches, and keep a record of any conflict checking you do for each case. Your practice—and your clients—will thank you.

And of course, don't hesitate to make it easier on yourself by putting everything into a cloud-based legal practice management solution like Clio. Book a demo today to see it in action.

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