

## Conflicts of Interest Self-Assessment

GENERAL RISK CONTROL PROCEDURES	YES	NO	COMMENTS
Does my law firm maintain a conflicts of interest checking system?			
Is the system used by everyone in the law firm, all the time?			
Are the following names entered into the system?: <ul style="list-style-type: none"> <li>▪ Clients, relatives of staff, subsidiaries of clients, and aliases;</li> <li>▪ Primary contact persons at entity clients;</li> <li>▪ Opposing parties and opposing counsel (and their law firms);</li> <li>▪ All close family members of lawyers and staff who work at other law firms, legal departments, government agencies and client offices.</li> <li>▪ Expert witnesses and major fact witnesses;</li> <li>▪ Non-parties at fault;</li> <li>▪ Former clients;</li> <li>▪ Prospective clients;</li> <li>▪ Individuals, entities and insurance companies paying clients' legal fees; and,</li> <li>▪ Vendors to the firm (landlord, IT company, ethics counsel, cleaning service, insurance agent).</li> </ul>			
Is law firm staff trained to re-run a conflicts check every time a new party, a non-party at fault, new counsel, or new expert/key fact witness is added to a proceeding or a new proceeding commences?			
Is law firm staff also trained to re-run a conflicts check when entity clients experience changes in management or ownership?			
Does my law firm review its conflicts of interest system on a periodic basis to confirm that categories of information entered into it still make sense?			
Has my law firm assigned one lawyer and one staff person responsibility for reviewing and maintaining the conflicts checking system?			
Are conflicts checks run at least once a year for every matter regardless of whether there have been any new names entered into the system?			
Does my law firm regularly distribute a new client/matter list to everyone in the law firm?			
Does my law firm have a disinterested partner or conflicts committee evaluate any conflicts identified prior to opening the matter?			
Does my law firm send non-engagement letters where a non-waivable conflict exists or where my law firm decides not to take on the representation?			
Does my law firm send written engagement letters to clients clearly documenting the scope of the representation, as well as any legal services that my law firm has not agreed to provide?			
Does my law firm's standard engagement letter contain an advance conflicts waiver?			
Does my law firm website contain a disclaimer and warning that sending e-mails directly to the firm does not constitute an attorney-client relationship and that confidential information should not be transmitted to the law firm and will not be kept confidential?			
Do my law firm's paper intake forms, if any, contain a disclaimer that the disclosure of information on the form is for the purposes of conflicts checking and does not establish an attorney-client relationship?			
Has my law firm trained its staff, including receptionists, paralegals, administrative assistants and others who have contact with prospective clients, about guarding against the unintentional creation of an attorney-client relationship?			

PROSPECTIVE CLIENTS CONFLICTS	YES	NO	COMMENTS
Did a person consult with me about the possibility of forming an attorney-client relationship?			
Did I: <ul style="list-style-type: none"> <li>▪ Limit the discussion to information needed for the conflicts check?</li> <li>▪ Advise the prospective client not to reveal any highly sensitive information and that the information transmitted was simply for the purpose of checking for conflicts?</li> <li>▪ Condition the discussion on the person's consent that "no information disclosed during the consultation will prohibit me from representing a different client in the matter?"</li> </ul>			
Are a client's interests materially adverse to those of the prospective client in the same or a substantially related matter?			
Could the information provided by the prospective client be significantly harmful to a client in the same or a substantially related matter?			
If a client's interests are materially adverse to the prospective client, have both the prospective client and the current client provided informed consent to the representation, confirmed in writing?			
If I am disqualified from the representation: <ul style="list-style-type: none"> <li>▪ Did I take reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary?</li> <li>▪ Was I timely screened from my law firm's participation in the matter?</li> <li>▪ Was the client timely notified?</li> </ul>			
CURRENT CLIENT CONFLICTS	YES	NO	COMMENTS
Will the client representation be directly adverse to another client?			
Is there a significant risk that my representation of one or more clients will be materially limited by my responsibilities to another client, a former client, a third person or by a personal interest?			
Notwithstanding the existence of a conflict of interest, do all of the following statements apply (such that the representation may proceed): <ul style="list-style-type: none"> <li>▪ I reasonably believe that I will be able to provide competent and diligent representation to each affected client;</li> <li>▪ The representation is not prohibited by law;</li> <li>▪ The representation does not involve the assertion of a claim by one client against another client in the same litigation or other proceeding before a tribunal; and</li> <li>▪ Each affected client has given informed consent, confirmed in writing.</li> </ul>			
If the client is a corporation, have I advised any constituents of the entity company that I do not represent them as well?			
If someone else is paying the legal fees for a client or I will have regular contact with a third party (family member, friend, etc.) who is assisting in the representation, does the engagement letter specify that I do not represent those individuals as well?			
If someone else is paying the legal fees for a client or I will have regular contact with a third party (family member, friend, etc.) who is assisting in the representation, did I send a non-engagement letter to such individuals clarifying that they are not my clients?			

FORMER CLIENT CONFLICTS	YES	NO	COMMENTS
Am I representing a client in a matter that is the same or substantially similar to a matter in which I represented a former client, and the current client's interests are materially adverse to the former client's interests?			
Has the former client given informed consent, confirmed in writing, to my representation of the client?			
Did a law firm with which I was formerly associated previously represent a person with interests materially adverse to my current client?			
Did I acquire material information about the matter when I was with that law firm?			
Would the disclosure of confidential information regarding a former client serve to disadvantage of the former client?			
Has the information regarding my former client become "generally known" or is it otherwise permissible to disclose it?			
PERSONAL CONFLICTS OF A LAWYER	YES	NO	COMMENTS
Have I entered into a business transaction with a client or knowingly acquired an ownership, possessory, security or other pecuniary interest adverse to a client?			
Were the transaction and the terms under which I acquired the interest fair and reasonable to the client?			
Were the transaction and terms under which I acquired the interest fully disclosed and transmitted to the client in a writing that could be reasonably understood by the client?			
Did I advise the client in writing to seek the advice of independent legal counsel regarding entering into the transaction, and was the client given a reasonable opportunity to seek such advice?			
Did the client give informed consent, in a writing signed by the client, to the essential terms of the transaction and my role in the transaction, including whether I was representing the client in the transaction?			
Did I solicit a substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving me or a person related to me, any substantial gift?			
Is the recipient of the gift related to the client (ie. spouse, child, grandchild, parent, grandparent or other close family member)?			
Have I made or negotiated an agreement giving myself literary or media rights to a portrayal or account based in substantial part on information relating to the representation?			
<p>Have I provided financial assistance to a client in connection with pending or contemplated litigation, other than:</p> <ul style="list-style-type: none"> <li>▪ An advance of court costs and expenses of litigation, the repayment of which is contingent on the outcome of the matter; or</li> <li>▪ A payment of court costs and expenses of litigation on behalf of the client, where the lawyer represents an indigent client.</li> </ul>			
Have I agreed to accept compensation for representing a client from one other than the client, without the client's informed consent, where my independent professional judgment or the attorney-client relationship is affected?			
Have I entered into an agreement prospectively limiting my liability to a client for legal malpractice where the client was not independently represented in making the agreement?			

<b>PERSONAL CONFLICTS OF A LAWYER (CONTINUED)</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
Have I settled a claim or potential claim for legal malpractice liability with an unrepresented client or former client?			
Did I advise the unrepresented client or former client in writing of the desirability of seeking the advice of independent legal counsel regarding that matter and give them a reasonable opportunity to seek such advice?			
Have I acquired a proprietary interest in the cause of action or subject matter of litigation I am conducting for a client, other than a lien authorized by law to secure my fee or expenses or a contract for a contingent fee in a civil case?			
Have I had sexual relations with a client, other than in a consensual sexual relationship that commenced prior to the time the attorney-client relationship was formed?			
<b>OBTAINING INFORMED CONSENT</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
Have I advised the client(s) of the nature of the conflict?			
Have I advised the client(s) of the risks and benefits of granting the conflict waiver and the alternatives?			
Have I advised the client(s) as to what will happen if an actual conflict arises?			
Have I advised the client(s) of their right to consult with independent counsel regarding this conflict waiver?			
Have the client(s) had sufficient time to retain and consult with independent counsel prior to providing a conflict waiver?			
Have the client(s) given informed consent to waive the conflict, in writing?			
Does the written waiver note all of the above factors in its language?			
<b>JOINT REPRESENTATIONS</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
Am I representing two or more clients jointly in a transaction or litigation?			
Are the interests of the clients currently aligned?			
Do I reasonably believe I can competently represent each of these clients in this matter?			
Have the parties already become antagonistic with each other?			
Is contentious litigation or negotiations between the co-clients either imminent or contemplated?			
How likely is it that a conflict of interest between the co-clients will develop later?			
Can my impartiality be maintained?			
Have I explained the risks and benefits of representing the clients jointly?			
Have the clients given informed consent to the joint representation, confirmed in writing?			
Have I discussed with the clients how confidentiality will be addressed among the co-clients?			
Do I have a written engagement letter which explains how information will be shared among the clients?			

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