



Guide for Preventing Conflicts of Interest

This guide provides procedures for establishing and maintaining a conflict-of-interest database. The goal is to ensure that the firm identifies and prevents potential conflicts before accepting new clients or matters, and to manage conflicts that arise during representation.

Establish and Maintain a Conflict Database

The firm should develop and maintain a computer database to identify all potential conflict situations. All appropriate parties and counsel in new or existing matters should be checked for conflicts against this system.

The following information for every matter handled by the firm should be entered in the conflict database:

1. Identification of the following individuals and entities:
 - Client(s), including maiden name or other legal names used, and both the insured client and the insurer in insurance defense cases.
 - Parents, subsidiaries, and affiliates of corporate clients and adverse parties.
 - Adverse parties, including parties who are not technically adverse at present but are likely to become adverse to the client in the future.
 - Adverse counsel, including individual attorneys and their firm(s).
 - Co-parties
 - Co-parties' counsel
 - Experts
 - Major witnesses
 - Spouses and immediate family members of key clients and adverse parties.
2. A description of the firm's participation in the matter:
 - Contract
 - Defense
 - Tax or Estate
 - Prosecution
 - Potential claim
 - Transactional
 - Corporation
 - Expert/Consultant
3. Matter Information:
 - Subject matter or issue (e.g. real estate dispute)
 - Government agencies/regulatory bodies involved
 - The date the file was opened
 - The date the file was closed
 - The name of the partner responsible for the matter
 - The name(s) of the "work attorney(s)" on the matter
 - Case name [as later assigned]
 - Case number [as later assigned]

Conducting Conflict Checks

Conflict checks for all prospective new clients and matters should be run before the firm accepts any new representation. The following details the procedures for conducting these checks:

- The information entered into the conflict database for the new matter is obtained when the partner(s) seeking to accept new work submits a completed new file memo.
- A new file memo is an internal document used to formally request permission to open a new client matter. It serves as the single, authoritative source document for inputting all relevant names and parties into the firm's conflict database.
- The attorney or secretary completing the new file memo must do so carefully, paying particular attention to providing the correctly spelled names of all clients, adverse parties and their counsel, and co-parties and their counsel. Accurate role designations are also critical to obtaining accurate conflict reports.
- While responsibility for initial preparation of new file memos may be delegated to qualified support staff, ultimate responsibility for confirming the accuracy of the information provided rests with the partner responsible for the matter.
- All new matters in which the firm is to represent more than one party must be approved in advance by the Managing Partner. No multiple representations may be accepted without the informed written consent of each client.

Resolving Potential Conflicts

When the conflict check process identifies any actual or potential conflicts of interest, immediate action is necessary to ensure ethical compliance and protect client interests.

- **New matters:** If any actual or potential conflicts are identified, requiring disclosure, informed consent, ethical barriers or other prophylactic actions, the case must be submitted to the Managing Partner for approval before the representation can begin.
 - Where consent is necessary, it must be confirmed by the affected client(s) in writing.
 - If the conflict is determined to be non-waivable, the firm must decline the representation.
- **Existing Matters:** If potential conflict situations arise in existing matters, the following steps must be considered:
 - The affected client(s) must be notified where appropriate.
 - A formal ethical screen (information barrier) must be immediately implemented if it is determined to be an appropriate mitigating action.
- **All Matters:** The Managing Partner should be consulted for advice on resolving potential conflicts and for assistance in drafting appropriate disclosure letters and written consent forms.
 - If a conflict cannot be resolved or waived, the firm must withdraw from the affected representation in compliance with ethical rules.

Updating the Conflict Database

As parties and counsel frequently change during the life of a matter, continually updating the conflict database is critical to maintaining its accuracy and ensuring ethical compliance. All attorneys are responsible for reporting whenever a new party and/or counsel enters a matter so a conflict check can be run and the information added to the database.

To support this effort, conflict reminders should be sent to the responsible partner in all matters at the following stages:

- The filing of an amended complaint or cross-complaint.
- The filing of a substitution of counsel.
- The addition of any new expert, major witness, or related entity.
- Every six months.

Unrepresented Persons in Existing Matters

When communicating with unrepresented persons in existing matters, the following steps should be taken:

1. Always ensure the unrepresented person understands that the firm is not representing their interests and that the firm's client is the only party represented.
2. Confirm that the unrepresented person understands they cannot rely upon the firm's advice or actions.
3. Attorneys must make reasonable efforts to correct any misunderstanding the unrepresented person may have regarding the firm's role.
4. Confirm these statements in writing as appropriate, especially where the unrepresented person is adverse to the client's interests.

Conflict Checking Procedure for New Personnel

The firm must follow a procedure before extending any offer of employment to identify and resolve potential conflicts related to the candidate's prior work history.

1. Before any offer of employment is made for any position, the candidate is given the appropriate conflict of interest form by the person doing the hiring. The form must specifically request the names of all prior law firms and clients. The candidate must be warned not to reveal any confidential client information while completing the form.
2. The completed form should be returned immediately to have a check run in the conflict database. The partner reviews the information and sees that necessary follow-up is accomplished, paying particular attention to whether former clients are adverse to the firm's current clients on the same or a substantially related matter.
3. If potential conflicts are discovered, the offer should be contingent on the firm obtaining written consent from the affected client(s). Signed consents should be attached to the applicant's personnel file after acceptance.
4. If a conflict exists, the firm must implement a formal, documented ethical screen (information barrier) immediately to prevent conflicts of interest from being imputed to the firm.

- A memorandum must be sent to all personnel involved in the matter. The memo must advise that the new employee is to remain uninvolved in and isolated from the matter.
- The employee will be denied access to any physical documents and computer access must be restricted to prohibit access to all case-related documents.
- All firm members must be formally notified of the screen and the prohibition on discussing the case in the person's presence.
- Warning labels should be affixed to the case files involved, identifying the employee who is not allowed access.

Note: The partner hiring the employee is responsible for ensuring these procedures are followed before any job offer is extended, or that offers are made expressly contingent upon compliance.

Positional Conflicts

A positional or issue conflict is a situation where the firm is called upon to take opposing positions on issues for different clients. Position conflicts are of particular concern in the areas of corporate law, intellectual property, insurance coverage and professional liability defense.

- If a member of the firm becomes aware of a potential positional or issue conflict, he or she should consult with the other affected partner(s) and the Managing Partner.

Business Conflicts

Business conflicts are situations where, because of business relationships with certain clients, the firm's ability to represent other clients may be limited. If a member of the firm becomes aware of a business conflict, he or she should immediately bring it to the attention of the firm's Managing Partner and the other involved partners.

- For example, an important client may expect the firm's undivided attention in cases where other clients of the firm are also defendants. By meeting the expectations of one client the firm may risk its relationships with other clients.

Declined Engagement Conflicts

Even when the firm declines a potential engagement, confidential information may have been received that could prevent the firm from later representing an adverse party in a related matter.

To proactively identify such potential conflicts, the firm's conflict database must be updated with information on these prospective clients. The information about the declined client (using the same data points as the New File Memo) must be entered into the conflict-of-interest database at the time the firm declines representation of the matter.

- For example, the firm interviewed a potential client seeking a divorce but subsequently declined representation. The firm may have received confidential information about the matter during the initial interview, thus, the firm would be conflicted out of later representing the other spouse.

LegalFuel Template Letters

Client Communications Forms and Letters

Templates Available:

- Disengagement Letter
- Terminating Client Representation Letter

Client Fee Agreements and Letters of Representation

Templates Available:

- Conflict Waiver Joint Representation of Multiple Clients
- Notice of Waiver of Conflict
- Non-Engagement Letter Due to Conflict of Interest

Client Intake Forms

Templates Available:

- Conflict of Interest Search Form
- Request for Conflict Search and System Entry

Internal Firm Operation Forms and Info

Template Available:

- Pre-Employment Conflict of Interest Form

Florida Bar Rules That May Affect Conflict Checking

RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS

(a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer must not represent a client if:

- (1) the representation of 1 client will be directly adverse to another client; or
- (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Informed Consent. Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

(d) Lawyers Related by Blood, Adoption, or Marriage. A lawyer related by blood, adoption, or marriage to another lawyer as parent, child, sibling, or spouse must not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except with the client's informed consent, confirmed in writing or clearly stated on the record at a hearing.

(e) Representation of Insureds. Upon undertaking the representation of an insured client at the expense of the insurer, a lawyer has a duty to ascertain whether the lawyer will be representing both the insurer and the insured as clients, or only the insured, and to inform both the insured and the insurer regarding the scope of the representation. All other Rules Regulating The Florida Bar related to conflicts of interest apply to the representation as they would in any other situation.

RULE 4-1.9 CONFLICT OF INTEREST; FORMER CLIENT

A lawyer who has formerly represented a client in a matter must not afterwards:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;

(b) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or

(c) reveal information relating to the representation except as these rules would permit or require with respect to a client.

RULE 4-1.10 IMPUTATION OF CONFLICTS OF INTEREST; GENERAL RULE

(a) Imputed Disqualification of All Lawyers in Firm. While lawyers are associated in a firm, none of them may knowingly represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7 or 4-1.9 except as provided elsewhere in this rule, or unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) Former Clients of Newly Associated Lawyer. When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(c) Representing Interests Adverse to Clients of Formerly Associated Lawyer. When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(d) Waiver of Conflict. A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in rule 4-1.7.

(e) Government Lawyers. The disqualification of lawyers associated in a firm with former or current government lawyers is governed by rule 4-1.11. Representing an Organization

Relevant Ethics Opinions:

OPINION 93-8

An attorney representing two clients in a litigated matter must move to withdraw if the interests of the two clients become adverse. If the court denies the attorney's motion to withdraw, Rule 4-1.16(c) requires the attorney to continue the representation despite the conflict.

OPINION 87-1

A lawyer may represent multiple codefendants having a potential conflict of interests only if he reasonably believes the representation of any one of them will not be adversely affected by the lawyer's responsibilities to the others, and if each consents after consultation. Multiple representation is impermissible if an actual conflict exists.

OPINION 86-5

A law firm that hires a nonlawyer who was employed by an opposing law firm has a duty not to seek or permit disclosure by the employee of the confidences or secrets of the opposing firm's clients. The firm from which the employee departs has a corresponding duty to admonish the employee that he or she is obligated to preserve the confidences and secrets of the clients.

OPINION 73-2

So long as no client's confidences are violated, a law firm may ethically represent a client referred to it by another law firm which had been forced to disassociate itself from two clients because of a conflict of interest. Any referral fee paid to the referring attorney must be based solely upon the work done before the conflict developed.

Note: Florida Bar Rules are subject to periodic updates. For the most current version of the Rules Regulating The Florida Bar, visit: <https://www.floridabar.org/rules/rtrfb/>

For questions regarding Florida Bar Rules or Ethics Opinions, please contact Ethics at 800-235- 8619.