

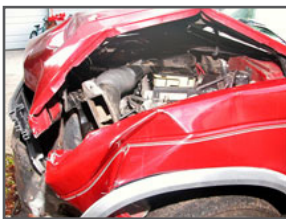


Feature

## Avoiding Conflicts of Interest: Experts Speak Out on Conflicts Checks

By Ursula Furi-Perry

Whether they're due to a new client, new representation for an existing client, or a lateral hire, regular checks for conflicts of interest have become an essential part of a firm's operations. "The idea is to be able to allow the firm to identify...a situation which gives rise to an actual conflict of interest, or could potentially rise to a conflict of interest down the line," explained Richard E. Flamm, Esq., expert on conflicts of interest and author of *Lawyer Disqualification: Conflicts of Interest and Other Bases*. "The proper conflicts check depends on a number of factors, including the jurisdiction you're in and the size of the firm," Flamm said.



The importance of conflicts checks is increasingly apparent, and the repercussions for failure to do them properly are increasingly severe. "There have been situations where courts have taken larger firms to task for not doing conflicts checks," said Flamm. "If a

conflict arises during the course of a litigated case, it virtually always will result in disqualification, or the courts will inquire into the conflict and order the firm to withdraw." If a firm fails to do so, it may face a malpractice suit and severe damage to the firm's reputation. Courts have also ordered firms to repay clients in light of conflicts of interest.

A number of firms, particularly larger ones, are tackling potential conflicts of interest by hiring conflicts specialists or analysts who may devote their entire workdays to conflicts checks. "We maintain a database that contains all of the firm's client matter info," said Beth Hartke-Faircloth, Conflicts Department Manager at Jenner & Block, LLP. "We're responsible for clearing all new clients and matters to the firm, and we're the first people contacted within the administration to get the ball rolling." Conflicts specialists may draft waiver letters, interview lateral attorney and legal staff hires, gather and analyze information, and help implement screens around potentially "tainted" employees. Typically, conflicts analysts have top-notch research skills and some legal experience—"the same skills that entry-level law librarians would have," Hartke-Faircloth said.

While nothing beats having a conflicts analyst on hand, doing so is simply not feasible for many firms. Conducting conflicts checks often falls on the shoulders of an associate or qualified non-attorney, who may be inexperienced in the task. "A conflicts check is only as good as the person inputting the

info," said Flamm. "These days, firms are concerned about a lot more detail." Experts recommend continuous education and reading about conflicts of interest. "Become knowledgeable about what conflicts are and how they arise," recommended Flamm. "If you don't know what to look for, a conflict could surface that could have been avoided."

Legal staff must be vigilant about doing the task right. "Be assertive and aggressive [about getting information,]" Flamm advised. "Meet with every partner, and get as much info as you can about who has been represented in the past." For new hires, a thorough background check is highly recommended—and that doesn't just apply to attorneys. The rules may be different for secretaries, paralegals, and other non-attorney employees, but "they can still bring in a conflict," Flamm said. If a conflict of interest or potential for one is found during a check, most experienced legal staff will turn to an attorney. "The decision of whether it's a conflict or not is a legal decision," Hartke-Faircloth explained. "We will heighten awareness to the attorney, but it's ultimately the attorney's decision."

But the person behind the conflicts check is only half of the equation: the firm's database and other methods of checking for conflicts and managing data are equally important. "If you're just starting out, to do a good conflict check, you're only as good as the database you're using," said Hartke-Faircloth. "Almost every larger firm has conflicts software in varying degrees of sophistication," said Flamm. Smaller firms may often opt for a self-established computer database or even an old-fashioned conflicts card catalog. Whatever the option, legal staff conducting conflicts checks must know their firm's system and gather all information that the system requires for each new client, matter or representation, and hire.



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“Even today, with all the discussion of conflicts of interest, the seriousness of the problem is still underestimated,” Flamm believes. With trained employees and reliable databases in

place, proper conflicts checks can help firms stay out of hot water.

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