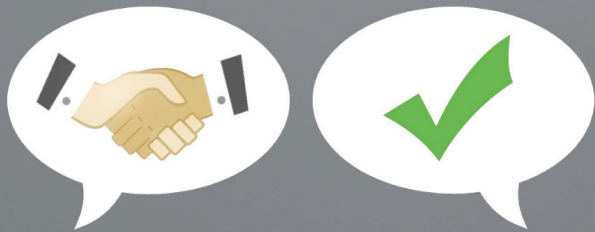


IDENTIFYING AND ADDRESSING CONFLICTS OF INTEREST



BY KIRALYN LOCKE AND STEVEN SITEK

We have all experienced conflicts in our lives. Like that one time you invited your two best friends to a party without realizing they both dated the same person (awkward). Or when you tried to go vegan but found yourself in a staring contest with a piece of maple bacon (spoiler: the bacon won). Conflicts are everywhere, from deciding who gets the TV remote control at home to figuring out the last piece of pizza at a group dinner (unless everyone is from Minnesota, in which case no one will eat the last piece). But while these everyday conflicts might lead to a few laughs (or tears), the stakes get much higher when we talk about conflicts of interest in the legal field.

In the world of law, conflicts of interest can lead to more than just a heated debate over the TV remote. Conflicts of interest can compromise the integrity of legal proceedings, affect the fairness of outcomes, and ultimately undermine public trust in the legal system. Understanding and navigating these conflicts is crucial for lawyers, judges and clients alike.

Conflicts of interest can arise in many situations. While a complete discussion on all possible conflicts of interest would be impossible in this brief article (and would certainly *conflict* with the word limitations of the same), this article will delve into common conflicts of interest and how they can be addressed.

CONFLICTS BETWEEN EXISTING CLIENTS

Pursuant to Minn. R. Prof. Cond. 1.7, a lawyer may not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest occurs when: (1) the representation of one client will be directly adverse to another client, or (2) there is a significant risk that the representation 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.

TO DETERMINE WHETHER A SPECIFIC SITUATION CONSTITUTES A CONFLICT, OR WHETHER A CONFLICT MAY BE WAIVED, IT IS IMPORTANT TO REVIEW THE APPLICABLE RULES OF PROFESSIONAL CONDUCT OR CONSULT WITH AN ETHICS LAWYER.

Examples of direct adversity are not difficult to identify. Let's imagine you represent Peaceful Patrick in a matter against Kindhearted Kyle. You cannot simultaneously represent Confident Casey in a matter against Peaceful Patrick. This is true even when the matters have nothing to do with one another.

It is sometimes harder to spot situations when there is a "significant risk" that a conflict might arise. This could possibly occur when representing two beneficiaries of a trust in a trust dispute. While the beneficiaries may initially appear to be on the same page about what they want, it is possible that their interests could diverge in the future. Perhaps one beneficiary believes they are entitled to the entirety of their grandmother's prized maple bacon collection, leaving the second beneficiary with nothing. At this point, a conflict would be present.

CONFLICTS BETWEEN EXISTING AND FORMER CLIENTS

Pursuant to Minn. R. Prof. Cond. 1.9, a lawyer who has formerly represented a client in a matter may not subsequently 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.

An example of this might arise when you previously represented Developer Dan in a real estate transaction. Ten years later, Evictor Ed wants to hire the lawyer to foreclose upon Developer Dan's property. This could create a conflict of interest.

CONFLICTS THAT ARISE WHEN LAWYERS CHANGE LAW FIRMS

Conflicts can also arise when a lawyer moves from one law firm to another. Let's imagine there is a lawyer who typically represents grocery stores. This lawyer wants to quit her job and work at a law firm that typically sues grocery stores. A conflict of interest could arise if any of the lawyer's previous or existing clients are adverse to any of the new law firm's previous or existing clients.

To vet such conflicts, law firms need to be proactive when hiring new attorneys. Law firms should be sure to assess conflicts of interest *prior* to extending job offers to potential new hires.

HOW TO ADDRESS CONFLICTS OF INTEREST

Some conflicts, but not all, are able to be waived by the clients, so long as they provide informed consent in writing. The way this is accomplished is through a conflict waiver.

One example of a waivable conflict is contained in Minn. R. Prof. Cond. 1.9. The full text of the rule states: "A lawyer who has formerly represented a client in a matter shall not thereafter 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, confirmed in writing.*"

In this situation, you could obtain a conflict waiver. A conflict waiver is a document which contains the following information: (1) the circumstances giving rise to the conflict or potential conflict, (2) the material risks arising from that conflict, and (3) the reasonably available alternatives to the proposed course of conduct, undertaking the conflicted representation, and (4) all parties understand and agree to waive the conflict.

Remember, not all conflicts are waivable. To determine whether a specific situation constitutes a conflict, or whether a conflict may be waived, it is important to review the applicable rules of professional conduct or consult with an ethics lawyer.

CONCLUSION

While everyday conflicts can be amusing, conflicts of interest in the legal world are no laughing matter. Next time you find yourself faced with a potential conflict, be sure to ask yourself whether the situation truly is a conflict and if so, whether it is waivable. When in doubt, reach out (to us!).

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