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Conflict-Checking Systems: Three Great (and Cheap) Ways to Effectively Manage Conflict Checking

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The purpose of a conflicts check is to ensure that your commitment to your client's matter will not be distracted by your commitment to any other person. Many attorneys believe that this commitment can be upheld by a brief moment of thought, comparing their client's circumstances to that of the firm's other clients, at the time they are being retained for their services.

Professional liability insurers and risk management professionals continually stress the importance of a conflict-checking system in law firms to help identify potential conflicts at the time the attorney-client relationship is established. Consistently, it has been shown that a check for conflicts-of-interest that does not include the use of a thorough list or database will leave the firm vulnerable to an embarrassing, and potentially negligent conflict-of-interest problem.

Establishing a reliable conflict-checking system in your firm can be a relatively easy thing to do. However, the system is only as good as the information that is put into it. Therefore, creating the conflict-checking system and maintaining it should be viewed as an ongoing and permanent commitment to securing your client's confidence and your devotion to their best interests will never be questioned.

The elements necessary for conducting an effective conflicts check in your law practice are:

- Establishing a thorough, well-maintained list of names;
- Ensuring that the conflict-checking procedure becomes a part of firm's routine;
- Everyone in the firm is trained in the procedure and involved in the system.

The best conflict-checking system is one that will work, and that the members of the firm will find easy to use and maintain. There is nothing inherent in a computer-based conflicts program that makes it superior to a well-maintained manual system. However, since a computer-based conflicts system can conduct a thorough check rather quickly, it is more likely to be used routinely by the firm, and it is less likely to overlook a single name buried in a large database.

A Forms-Based Conflict System

In a forms-based conflict system, you search for conflicts by checking a list of the firm's clients (current and former), a list of "other parties," and a list of lawyers who have represented other parties involved in your client matters. These searches must be conducted prior to the new client signing a retention agreement with your firm.

The primary conflict review occurs when you check the client list. You are looking to see if any person who is an adverse party to a new matter is currently being represented by the firm in another matter, or has been represented by the firm in the past.

If a review of the client list reveals no potential conflicts, you should then review the other parties list and the lawyer list to see if there are any relationships involving the

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firm's current or past legal matters that the new client would probably want to know about.

The best way for the law firm to establish and maintain these lists is to keep them in three separate binders. The client list in the first binder is updated every time a new client retains the firm to handle a legal matter. A Client Data Sheet containing basic information about that client is added to the binder in alphabetical order, and is permanently stored in the binder.

The second and third binders containing lists of other parties and lawyers are always being updated as a client's matter is ongoing. As you learn of new parties and individuals, as well as attorneys that become involved in your client's matter, you fill out a short Conflicts File Memorandum form indicating the name of the person and their relationship to the legal matter involving one of your clients.

Be aware that of the three binders described above, it is the list of other parties related to your legal matters that will easily become the largest volume. Knowing exactly which names to add to that list can change depending upon the areas of practice that you are involved in. The list should include any person significantly involved in any of your legal matters, as well as any individual closely associated with the firm. The parameters described here are wide and may include witnesses, heirs, and parties, as well as investigators, adjusters, and the third-party vendor who fixes the firm's computers. (For further guidance about the names that should be included in this list, see the Conflict Parties list included in MLM's online library.)

Remember, a conflict of interest can be waived by your client if the individual agrees to the waiver after you have fully disclosed the potential conflict to them. Therefore, if you are on the fence as to whether a conflict of interest does exist, advise your prospective client of the relationship you have discovered in your search, and let them decide whether the connection is too close for their comfort.

Using Software to Search for Conflicts

One common misunderstanding involving law office software is that there is a category of software products called "conflict checking software." Although there are a handful of software programs that purport to be used exclusively for conflicts checking, for the most part, there are no software titles available for lawyers to perform this exclusive task.

In the world of law office software, conflicts checking tools are commonly available in case management software programs. The connection between conflicts checking and case management software makes sense. After all, if you take the time to enter detailed information about your clients, former clients, witnesses, opposing counsel, interested parties and just about everyone else who has ever come in contact with the firm in a software program, what it starts to resemble is a large database of firm information that can be used for several purposes – including conflicts checking.

Since case management products became affordable for use in small law offices in the days of Windows 95, this category of software has rapidly secured its spot as the hub of a law firm's information system. Case management software performs two vital functions for a law practice: it is a comprehensive database of information concerning the firm's clients, and it also serves as a calendaring/docket-control system that can be accessed throughout the firm.

The manufacturers of case management software understand that lawyers want to have the ability to quickly and easily perform conflict checks across the program's entire database. Therefore, performing a conflict check in a case management program is usually as simple as pushing a single button after entering a name to search for within the system. The searches are so quick and so thorough, that after determining that the name "John Smith" was not found in the lists of current clients, former clients, and other parties, it will then search the calendars of the lawyers in the firm, and even the note pads within the electronic client files to see if someone has come in contact with the name in an informal way.

For those lawyers interested in the conflicts-checking features of case management software but don't have an interest in establishing a firm-wide database program, you may want to consider purchasing a single-user version of a case management application and use it exclusively for maintaining the conflicts database. With this type of set-up, the software program would be installed on one workstation within the firm, and the computer user would become the firm's designated conflicts checking clerk.

Case management software comes with many dynamic features for tracking client information all throughout the firm – but there is no requirement that the purchaser use the software for all that it can do. Just as many users logon to Microsoft's Outlook for nothing more than to send and receive e-mail, it would be okay if your firm purchased a case management software product simply for its conflict-checking abilities.

A Simplified Tool That You Already Own

Not all automated conflict checking systems for law firms need to be in a specialized software application. Did you know that you can create a simple, searchable database in any word processing program? By taking advantage of the search features in your word processor you can easily create a dynamic conflict checking tool.

To create this simple database in Microsoft Word, start by creating a table in your document by selecting "Insert/Table" from the "Table" menu. Indicate in the Insert Table screen that you want your table to have 8 columns and 100 rows, and then click OK. When the table is inserted in the word document, label the tops of each column as follows: No., Date, Contact, File, Matter Type, Relation Code., File Status, Misc. Information.

Once the table is created with column headings, it should be permanently saved in the firm's computer network. As new files are opened at the firm, enter names of persons related to the matter in the table just as you would enter them in the binders of your forms-based conflict system. Over time, the document will become quite lengthy as the names of many persons associated with your case files are added to the table. (To add more rows to the table, put your cursor in the bottom right cell and click the Tab key. Let the table get as long as you like.)

You need not worry about searching for potential conflicts in such a long list because your word processor has a quick search tool for finding a needle in a haystack. In Microsoft Word 97 or 2000, the search tool can be found if you click on the "Edit" menu and choose "Find." After that, just enter the name you are searching for, and if the name appears somewhere in the table, it will be indicated during the search.

If the name of an individual that is about to retain your firm appears somewhere on the list, you may have a potential conflict of interest with another matter. It is up to the attorney who is assigned to the matter to determine if a conflict of interest exists, using the criteria in ABA Model Rule 1.7 and your local rules of professional conduct.

The conflict checking database you create in your word processor is really no different than the manual, form-based system – it just holds more information, has an easy search feature, and does not need to be printed and kept in binders. Like all databases, it should be back-up regularly on tape or disk and copies of the backup should be kept off-site. The system meets the needs of most small law firms, but larger firms should consider employing the larger database capabilities found in case management software.

Todd Scott is Vice president of Risk Management and Member Services at Minnesota Lawyers Mutual Insurance Company, a professional liability carrier that provides insurance products and risk management services for lawyers in 37 states. For further information on this topic or any other malpractice avoidance or legal ethics topic, check out MLM's web site at www.mlmins.com, or contact Todd at 800-422-1370.

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