

Conflicts of Interest

Identify, Avoid and Resolve Real & Potential Conflicts of Interest Prior to Undertaking the Representation...

Be sure that there are no competition problems. Especially in these days of mergers and multi-subsidary companies, you may be unaware of possible conflicts; there may even be unimagined conflicts such as an existing client not wanting you to handle any other company in its business for fear of losing a competitive edge.

- Is there a potential conflict with existing clients?
- Will taking the work preclude the firm from handling other, possibly more significant matters?
- Will the representation itself create potential conflicts?
- What are the client's preferences and policies about what constitutes a conflict and how to resolve or avoid one?
- Does our computerized client database reveal any conflicts of interest under the Rules of Professional Responsibility, which we might encounter if we won this engagement?
- If there are any formal or informal conflicts of interest, will the client comfortably waive the conflicts and allow us to undertake the representation?
- Are there any other legal, industry or marketing reasons not to represent this client on this particular engagement?
- If we clear conflicts, but one arises later, will we discuss how this will be handled before undertaking representation to insure waivers?

Proposed Guidelines to Handle & Resolve Potential Conflicts

- 1. FIRM is asked by a new client to represent them in a regulatory matter before the _____ or other court or regulatory body.**

If the issues or technologies are closely related, our standard practice is to decline the representation of the new client, absent informed consent and some protection such as a “Chinese wall” to ensure that the clients can be comfortable in knowing that information of one client cannot be used to enhance another.

- 2. FIRM is asked by an existing or long standing client to represent them in a regulatory matter before the _____ or other court or regulatory body.**

This is the scenario we have faced in the past. COMPANY has often waived the conflict and allowed us to undertake the representation knowing that any and all competitive business practices will remain highly confidential under all circumstances.

- 3. FIRM is asked by an existing, long standing and/or new client to represent them in a lawsuit against COMPANY.**

This situation represents an obvious ethical conflict, and the firm could not undertake such a representation.

- 4. FIRM is asked to represent a new client in litigation against one of COMPANY’S strong allies in a field in which COMPANY has a strong business interest.**

This scenario does not present an ethical conflict. Whether the firm would undertake the representation would depend on its relationship to the other client and with COMPANY.

- 5. FIRM is asked to represent a traditional competitor of COMPANY in a lawsuit against a company other than COMPANY.**

We do not believe this situation presents an ethical issue. Absent objection from COMPANY, we would feel free to undertake the representation.

- 6. FIRM is asked by a new client to undertake regulatory representation in a business field or on an issue in which COMPANY has no current position but which COMPANY anticipates that it will enter in the near future.**

This situation does not present an ethical conflict. Absent a specific, justifiable objection from COMPANY, the firm would feel free to take on the new representation. Of course, we would take steps to ensure that if COMPANY later desired that the firm represent it in a related field, we would be able to protect the interests of both clients.