



Practice Resource

Model conflicts of interest checklist

This checklist is designed to help you evaluate your firm's procedures for detecting conflicts of interest and raise questions that could help you avoid conflicts problems.

	Yes	No
1. Do you have a system for discovering conflicts of interest?	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you have routine procedures to obtain basic conflict of interest information before opening a file?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you check for any potential conflicts prior to receiving confidential information from a potential client?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you circulate information on the identity of new and prospective clients throughout the firm regularly and frequently?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you have a central file index, either in a file book, card system or computerized list of all files?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does your central file index include the following information?		
• client name	<input type="checkbox"/>	<input type="checkbox"/>
• affiliates or partners of client	<input type="checkbox"/>	<input type="checkbox"/>
• "also known as" name	<input type="checkbox"/>	<input type="checkbox"/>
• directors or officers of client	<input type="checkbox"/>	<input type="checkbox"/>
• adverse parties	<input type="checkbox"/>	<input type="checkbox"/>
• co-plaintiffs or co-defendants	<input type="checkbox"/>	<input type="checkbox"/>
• known relative of client and other parties	<input type="checkbox"/>	<input type="checkbox"/>
• common law spouses of client and others	<input type="checkbox"/>	<input type="checkbox"/>
• lawyers for any names in the index	<input type="checkbox"/>	<input type="checkbox"/>
7. If a potential conflict is detected, does your firm have one or more lawyers assigned the responsibility of determining whether a conflict does exist?	<input type="checkbox"/>	<input type="checkbox"/>
8. If a potential conflict is found, do you either decline to take the case or notify the client of the potential conflict in writing subject to the duty of confidentiality owed to another person? See Code rule 3.3-1, including Commentary [1] to [6] and rule 3.3-2.	<input type="checkbox"/>	<input type="checkbox"/>
9. Are your conflicts procedures expressed in writing so that all your staff are aware of them?	<input type="checkbox"/>	<input type="checkbox"/>

- | | Yes | No |
|---|--------------------------|--------------------------|
| 10. Does your firm have one person responsible for maintaining the central file index? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Have you discussed the meaning of “client” and “conflict of interest” (as defined in rule 1.1-1) and the conflicts rules in section 3.4 of the <i>Code of Professional Conduct for British Columbia</i> (Code) within your firm? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Have you considered the meaning of the duty of loyalty: the duty to avoid conflicts of interest, the duty of commitment to the client’s cause, and the duty of candour? See for example <i>Canadian National Railway Co. v. McKercher LLP</i> ; 2013 SCC 39; <i>R. v. Neil</i> 2002 SCC 70 and <i>Strother v. 3464920 Canada Inc.</i> 2007 SCC 24. | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Do you have a standard letter for conflict disclosures that takes into consideration the duty of confidentiality to existing and former clients? See Code rule 3.3-1, including Commentary [1] to [6] and rule 3.3-2. | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Have you or members of your firm read the cases referred to in Code section 3.4 and the annotations on the website and other relevant conflicts cases? | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. If you share office space with a lawyer who is not a member of your firm, do you have a policy on acting against clients adverse in interest in accordance with Code rules 3.4-42, 3.4-43, 3.4-1 Commentary [8] (g), 3.4-17, Commentary [2], and 3.3-1, Commentary [7]? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. If you are asked to represent clients jointly (e.g. spouses, joint purchasers), do you provide them with the advice required by Code rules 3.4-5 and 3.5-6? | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. Do you act for two or more clients in the same matter without consent in writing? See Code rule 3.4-7. | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Is there a substantial risk that your loyalty to or representation of a client would be materially and adversely affected by your relationship with the client, or interest in the client or the subject matter? Consider whether your relative, partner, employer, employee, business associate or friend has a financial interest which would reasonably be expected to affect your professional judgment. See Code rules 3.4-3.4-1, Commentary [8](d)(e) and 3.4-26.1. | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. Do you represent opposing parties in “friendly” litigation where there seem to be no opposing interests? | <input type="checkbox"/> | <input type="checkbox"/> |

Your answers to questions 1-16 should be YES. Your answers to questions 17-19 should be NO.

Failure to give the preferred answer does not always mean you have a problem, but it does suggest you should evaluate your practice and procedures. It also suggests that you should re-read Canon 2.1-3(b) and (g), section 3.3 and section 3.4 of the Code.