

# ***Westport Insurance Corporation***

## **Conflict of Interest**

**Lawyers Management Note:** *A recent study of Lawyers claims reported to Westport revealed that Conflict of Interest was the fourth most frequently alleged wrongful act. Listed below are some suggestions to avoid or minimize potential malpractice claims arising out of conflict situations.*

### **Conflicts arising from dealings with former or current clients.**

1. Don't rely on memory to identify current or former clients. Use a manual or computerized centralized conflict checking system to identify conflicts at the start.
2. Within your system, capture the following data (note that this list is just a beginning and should be expanded as needed to reflect your particular practice):
  - Current clients
  - Former clients
  - Opposing parties
  - Declined potential clients
  - Officers, directors and principals of corporate clients
  - Principals or owners of partnerships, general partnerships and limited partnerships
  - Interested non-parties
  - Entities for which firm members serve as directors, officers or managers
  - People related to your firm's attorneys and employees
3. Use engagement letters that clearly identify the client. If there are other interested parties who may need separate counsel, include a recommendation within that letter that those entities may wish to engage separate counsel.
4. Check for conflicts prior to the disclosure of any confidential information.
5. Share new client and potential client information with your firm's attorneys and staff members on a timely basis, preferably within twenty-four hours of first learning of the potential client.
6. If there appears to be a minor conflict, disclose to the client the potential conflict and, if the client consents to the representation, the disclosure should form part of the waiver agreement. Any disclosure should contain the following:
  - A description of the conflict in a manner sufficient for the client to understand the nature and extent of the conflict.
  - The circumstances under which the client may need independent legal counsel.
  - The reasons and events that might cause the firm to withdraw as a result of the conflict.
7. Once the client has reviewed the disclosure, have the client sign a waiver agreement containing the disclosure statement.

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## **Conflicts arising from the lawyer's own adverse interest.**

*(Understand that there may be exclusions or limitations in your professional liability policy for claims arising from transactions stemming from investment or ownership interests in your client's business.)*

1. Avoid investing in your client's business ventures.
2. Avoid acting in a management position for any client's business.
3. Avoid becoming a trustee for your client with discretionary investment power of authority over clients' funds.
4. Avoid being designated a beneficiary or distributee of a client's estate

If you do engage in any of the activities listed above, some of the following suggestions may be helpful in defending malpractice claims should they arise.

1. Provide the appropriate disclosure. Advise your clients to retain separate legal advice to review contracts surrounding transactions.
2. Routinely seek the advice of experts in other fields when making management or investment decisions and document the advice given and your reasoning for following the advice.
3. If serving as a director or officer for any entity, be sure the entity has a directors' and officers' liability policy.
4. Be sure all your actions with regard to transactions surrounding any investment with your client are fair, reasonable and fully explained in writing. Remember that if a problem arises, it will be easy to create a presumption that the lawyer is victimizing his or her clients.