



THE NEW ELLIS GROUP

Monday Monday

Connecting the Dots with Karen Kaplowitz



*Helping you create and reinforce the habits of successful career building,
gleaned from my work as a business development strategist, trainer and coach*

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Navigating Conflicts of Interest. There are several standard scenarios that plague rainmakers when they are trying to bring in new work. The most common is that the process for checking conflicts in many firms remains cumbersome and time-consuming. The firm's database spits out potential conflicts which can take a lot of time to track down even if most of the lawyers involved are reasonably responsive and often they are not. The second most common problem arises when the conflicts check turns up a concrete conflict and the question is how to handle it. The partner with the existing client/matter that creates the conflict often resists seeking a waiver of the conflict out of either legitimate or excessive fear of alienating the existing client. The partner with the potential new matter may be, or appear to be, indifferent to the potential alienation of the existing client by asking for a waiver. All of this drama normally plays out in a frenzied manner because there is time pressure to respond to the client about whether the firm will take the new matter. To navigate conflicts of interest with more ease, consider these strategies:

- Check conflicts before investing a lot of effort in pursuit of a new client. You cannot anticipate all conflicts but you can identify obvious ones.
- Give notice to partners who may be impacted by clients you are pursuing to ease subsequent discussions and perhaps create an estoppel against later objections.
- Make sure you understand the firm's process for checking conflicts and particularly the process, formal or informal, for resolving disputes among partners over conflicts.
- Determine if there is someone in the firm who can assist you in chasing down partners to get answers about potential conflicts that are flagged.
- Always check if your firm has required the affected client to sign a standard advance conflict waiver. Large firms often try to get such waivers though many clients resist signing them.
- Try to get a full picture of the importance of the existing client to the firm and to the lawyer whose cooperation you need to obtain a conflict waiver.
- Do not press for conflict waivers in situations in which the applicable ethics rules prohibit waivers. Not every conflict is waivable.

Dealing with thorny conflicts of interest is inevitable, especially in large firms. Handling such situations well can help you avoid poisoning relationships with clients, prospective clients, and partners.

Example: A partner was thrilled when she was asked to handle a new matter by a client whose work she had pursued for over a year. But when she submitted a new matter form to the firm, she got back an extensive list of potential conflicts. Because she was relatively junior, she asked her practice group leader for guidance on how to deal effectively-- and fast-- with the potential conflicts. Her practice group leader advised her to send out a description of the new matter and the client to each of the other lawyers identified in the conflicts check and to copy him. He recommended that she give a deadline for responses on the conflicts and that she state that he had agreed to help resolve any conflicts issues. He also recommended that if there were any thorny issues, to ask to see the existing clients' retainer letters so she could review the scope of engagement as well as any standard advance waiver language. One partner initially responded that under no circumstance did he want to ask his client for any kind of waiver. The practice group leader encouraged that partner to back off of his categorical refusal to consider a waiver and they ultimately worked out the issues.

There is no way to avoid difficult conflicts issues but you can avoid some of the frustration involved in resolving the issues with some strategic planning.