

Conflicts of Interest

Beverly A. Michaelis
Jennifer L. Meisberger
Practice Management Advisors | Professional Liability Fund
September 1, 2015

© 2015 Oregon State Bar Professional Liability Fund, all rights reserved. The information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund. This information does not establish, report, or create the standard of care for attorneys in Oregon. Readers should conduct their own appropriate legal research.

MCLE FORM 1: Recordkeeping Form (Do Not Return This Form to the Bar)

Instructions:

Pursuant to MCLE Rule 7.2, every active member shall maintain records of participation in **accredited** CLE activities. You may wish to use this form to record your CLE activities, attaching it to a copy of the program brochure or other information regarding the CLE activity.

Do not return this form to the Oregon State Bar. This is to be retained in your own MCLE file.

| | | | |
|---|--|---|--|
| Name: | | Bar Number: | |
| Sponsor of CLE Activity: | | | |
| Title of CLE Activity: | | Program Number: | |
| Date: | Location: | | |
| <input type="checkbox"/> <i>Activity has been accredited by the Oregon State Bar for the following credit:</i> <div style="text-align: center;"> ___ General ___ Prof Resp-Ethics ___ Access to Justice ___ Child Abuse Rep. ___ Elder Abuse Rep. ___ Practical Skills ___ Pers. Management Assistance </div> | <input type="checkbox"/> Full Credit. <i>I attended the entire program and the total of authorized credits are:</i> <div style="text-align: center;"> ___ General ___ Prof Resp-Ethics ___ Access to Justice ___ Child Abuse Rep. ___ Elder Abuse Rep. ___ Practical Skills ___ Pers. Management Assistance </div> | <input type="checkbox"/> Partial Credit. <i>I attended _____ hours of the program and am entitled to the following credits*:</i> <div style="text-align: center;"> ___ General ___ Prof Resp-Ethics ___ Access to Justice ___ Child Abuse Rep. ___ Elder Abuse Rep. ___ Practical Skills ___ Pers. Management Assistance </div> | |

***Credit Calculation:**

One (1) MCLE credit may be claimed for each sixty (60) minutes of actual participation. Do not include registration, introductions, business meetings and programs less than 30 minutes. MCLE credits may not be claimed for any activity that has not been accredited by the MCLE Administrator. If the program has not been accredited by the MCLE Administrator, you must submit a Group CLE Activity Accreditation application (See MCLE Form 2.)

Caveat:

If the actual program length is less than the credit hours approved, Bar members are responsible for making the appropriate adjustments in their compliance reports. Adjustments must also be made for late arrival, early departure or other periods of absence or non-participation.

Conflicts of Interest

TABLE OF CONTENTS

| | Page # |
|---|--------|
| PRESENTATION | |
| Slides | 1 |
| CONFLICT TRACKING PROCESS | |
| Names to be Added to Conflict List..... | 12 |
| Request for Conflict Search and System Entry | 13 |
| CONTRACT LAWYERING | |
| Limiting Exposure to Conflicts: What are the Rules? | 14 |
| Limiting Exposure to Conflicts: Steps to Take | 15 |
| RESOURCES AVAILABLE FROM THE PLF | |
| Forms | 16 |
| CLEs | 17 |
| SPEAKERS | |
| Biographies..... | 18 |

BEVERLY A. MICHAELIS
JENNIFER L. MEISBERGER

CONFLICTS OF INTEREST

BEST PRACTICES



TOPICS

- Limiting exposure to conflicts
- Establishing a reliable system
- Understanding conflict tracking
- Special concerns
- Resources

LIMITING EXPOSURE

TO CONFLICTS OF INTEREST

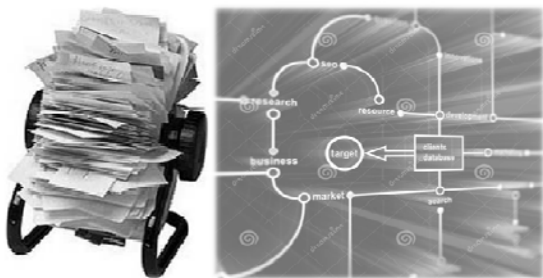
KEEP THE BASICS IN MIND

1. Don't rely on memory
2. Pick a party
3. Decline dual roles
4. Limit contract scope
5. Avoid becoming a defacto firm



ESTABLISHING A RELIABLE SYSTEM

TO TRACK ALL PARTIES



DIY SOLUTIONS



- ✓ Outlook
- ✓ Excel
- ✓ Access or other database
- ✓ Searchable address book

TRADITIONAL CASE MANAGEMENT

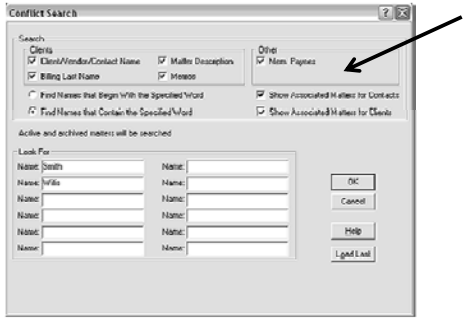
PC/Windows

Mac

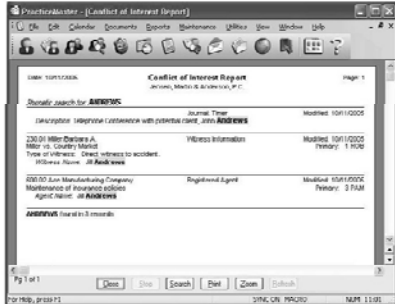
- | | |
|---|---|
| <ul style="list-style-type: none"> ▪ Amicus Attorney ▪ PracticeMaster ▪ ProLaw ▪ Time Matters ▪ And More ... | <ul style="list-style-type: none"> ▪ Daylite ▪ LAWSTREAM ▪ Legal Suite |
|---|---|

http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/casemanagementcomparison.html

SEARCHING CASE MANAGEMENT SOFTWARE



CASE MANAGEMENT SEARCH RESULTS



CLOUD-BASED CASE MANAGEMENT

1. Clio
2. Rocket Matter
3. MyCase
4. And more...



<https://www.osbpif.org/resources/save-money-with-discounts.html>

STAND-ALONE SOLUTIONS

- Client Conflict Check
- RTG Conflicts
- Legal Software Systems

<https://www.osbpif.org/resources/save-money-with-discounts.html>


| PROS | CONS |
|---|--|
| <ul style="list-style-type: none"> ▪ Free cheap ▪ Easy ▪ Available | <ul style="list-style-type: none"> ▪ Size-limited? ▪ Exportable? ▪ Unwieldy ▪ No documentation |

UNDERSTANDING CONFLICT TRACKING

WHO | WHEN | HOW

WHO TO TRACK

| | |
|-------------------|--------------------|
| ▪ Clients | ▪ Declined Clients |
| ▪ Adverse Parties | ▪ Prospects |
| ▪ Related Parties | ▪ Pro Bono Clients |
| | ▪ Firm Members |



WHEN TO RUN A CONFLICT CHECK

1. At first contact
2. After intake
3. When a new party enters the case

HOW TO: CONFLICT FIELDS

| FIELDS | |
|---------------|---------------------|
| Date opened | Client contact info |
| Matter name | Conflict names |
| Matter number | Description |
| Attorney | Date closed |
| Client name | Date destroyed |

HOW TO: POTENTIAL TRAPS

- William, Bill, or Willy?
- Former Names
- SSN | TIN
- DOB
- 123 ABC Street



HOW TO: RELATIONSHIPS MATTER

*Remember to specify
the relationship to the client*



SPECIAL CONCERNS

FIRMS | OFFICE SHARES | CONTRACT LAWYERING

LAW FIRMS



*Circulate
new matter
lists weekly*

FIRM TRANSITIONS

- Joining a firm?
- Leaving a firm?
- Keep your own list



OFFICE SHARES

1. Screen for conflicts if you share employees
2. Assure confidentiality
3. Avoid becoming a “defacto” firm



OSB Formal Opinion 2005-50

CONTRACT LAWYERING

FULL ACCESS
All firm conflicts imputed to you?

LIMITED ACCESS
Conflicts limited to the contract assignments you accept

Oregon RPC 1.10
Choosing a Contract Attorney: Tips for Establishing a Working Relationship
<https://www.osbar.org/publications/bulletin/11.febmar/practice.html>

HOW TO: CONTRACT LAWYERS

1. Keep your own conflict system
2. Maintain independent contractor status
3. Document scope of assignment
4. Don't share firm resources
5. Avoid contact with other files

RESOURCES

FORMS | CLES

RESOURCES

- Conflict practice aids
- Contract lawyering practice aids
- Departing a firm resources
- Engagement, disengagement, nonengagement
- File management | Intake
- Office Sharing
- CLEs

Contact Us

PLF Practice Management Advisors

www.osbplf.org

503-639-6911 - 800-452-1639

Beverly Michaelis
Jennifer Meisberger
Sheila Blackford
Hong Dao

beverlym@osbplf.org
jenniferm@osbplf.org
sheilab@osbplf.org
hongd@osbplf.org



*and
confidential*

TYPES OF NAMES TO BE ADDED TO CONFLICT LIST

(This is not a complete list.)

| | | | |
|--|---|--|--|
| <p style="text-align: center;"><u>Litigation</u></p> Insured Plaintiff(s) Guardian ad Litem Expert Witness(es) | <p style="text-align: center;"><u>Corporate/Business/Real Estate</u></p> Owner(Spouse/Partner) Buyer(s) Partner(s) Shareholder(s) Key Employees | <p style="text-align: center;"><u>Probate</u></p> Insurer Defendant(s) Spouse/Partner Lay Witness(es) | <p style="text-align: center;"><u>Estate Planning</u></p> Subsidiaries/Affiliates Seller(s) Officer(s) Director(s) Property Address Taxlot ID Number Any opposing party in a transaction |
| <p style="text-align: center;"><u>Domestic Relations</u></p> Client Children | <p style="text-align: center;"><u>Workers' Compensation</u></p> Injured Worker Employer | <p style="text-align: center;"><u>Personal Representative</u></p> Spouse or Partner/Children/Heirs/Devises Trustee/Guardian/Conservator | <p style="text-align: center;"><u>Criminal</u></p> Client Witness(es) |
| <p style="text-align: center;"><u>Your Firm</u></p> All Lawyers Spouses or Partners/Parents/Siblings/ In-laws/Children | <p style="text-align: center;"><u>Bankruptcy</u></p> Client Creditors | <p style="text-align: center;"><u>Other</u></p> Declined clients and adverse parties, if known Prospective clients Agencies or individuals for whom you provide investigation work, such as Oregon State Bar Professional Responsibility Board | |

Include all clients in your conflict system, including pro bono clients and individuals advised through volunteer work at pro bono agencies such as Legal Aid Services of Oregon.

When listing an individual, be sure to include all known names (i.e., former or maiden names). When listing lawyers and employees of the firm, consider including contract attorneys, temporary workers, and freelancers. You can also include the firm's key vendors or service providers in the conflict system.

REQUEST FOR CONFLICT SEARCH AND SYSTEM ENTRY

FILE NAME _____

CLIENT/COMPANY NAME _____

CLIENT MATTER _____ RESPONSIBLE ATTORNEY _____

RELATED PARTIES

NAME

RELATIONSHIP

- NEW MATTER (to open new file)
- ADDITIONAL INFORMATION (to update file)
- SEARCH ONLY (do not add information)

Requested by _____ Request Date _____

NO CONFLICTS FOUND

NAMES FOUND AS FOLLOWS:

Searched by _____ Search Date _____

CONTRACT LAWYERS AND CONFLICTS

Limiting Exposure to Conflicts – What are the Rules?

Confidentiality and Conflicts

“Any contract attorney that you hire is subject to Oregon’s Rules of Professional Conduct, including confidentiality with regard to the assigned project.

Unfettered Access to All Client Files = Imputed Conflict of Interest

But what about your other client files? **If the contract attorney has unfettered access** to your other client files, either hard copies or on your computer network, **you run the risk of an imputed conflict of interest.** ORPC 1.10 states that a lawyer associated with a firm shall not knowingly represent a client when any member of the firm would be prohibited from doing so.

Limited Access to Files = Conflicted Out Only on the Contract Assignments You Accept

A lawyer who works with a firm on a limited basis is not considered a member of the firm unless the facts of the particular situation dictate otherwise. ORPC 1.0(d). However, it is prudent to ensure that a contract attorney does not have access to files to which he or she is not assigned, to minimize the risk of disqualification. Also, make sure that the contract lawyer maintains his or her own conflict database.”

Excerpted from Heidi O. Strauch, “Choosing a Contract Attorney: Tips for Establishing a Working Relationship,” *Oregon State Bar Bulletin* (February/March 2011)

<https://www.osbar.org/publications/bulletin/11febmar/practice.html>

CONTRACT LAWYERS

Limiting Exposure to Conflicts – Steps to Take

- Set-up and maintain your own conflict list or database. Do not share a conflict system with other lawyers who are not members of your firm.
- Protect your status as an independent contractor. Conflicts are imputed to employees and firm members. Contract lawyers “working for or with a firm on a limited basis” are not considered members of a firm unless the facts of a particular situation dictate otherwise. Oregon RPC 1.0(d).
- Use contract project intake sheets to gather necessary information, including conflict names.
- Open a separate file for each discrete assignment/matter.
- Screen for conflicts before accepting new assignments.
- Document the results of your conflict check and retain the results in your file.
- Add the new assignment to your existing conflict list or database. Include the usual information (see PLF practice aid: Conflict of Interest Systems – Procedures, available on the PLF Web site, www.osbplf.org) and add:
 - Name of the hiring attorney and relationship as hiring attorney
 - Name of the opposing counsel and relationship as opposing counsel
 - Note or comment identifying this as a contract assignment
- Document the scope of your assignment and your role as a contract lawyer by sending a letter of understanding to the hiring attorney.
- Avoid contact with client files outside the scope of your assignment.
- Be mindful of sharing firm resources that could expose you to client information outside the scope of your assignment.
- Document declined assignments.
- If you acquire confidential information about a declined matter, include it in your conflict system.
- Keep conflicts of interest in mind if you work for a hiring attorney on a continuing basis.
 - Each underlying client is deserving of a conflict check
 - Each underlying matter/discrete assignment is deserving of a conflict check
 - If you learn of new parties during the course of an assignment, run another conflict check and document the results
- Document your disengagement by sending a closing letter.
 - It is permissible to take a case against a former client with disclosure and consent. See the PLF practice aids – Disclosure and Consent Letters and Disclosure and Consent Checklists – available on the PLF Web site, www.osbplf.org.

RESOURCES

FORMS

www.osbplf.org > Practice Management > Forms

Conflicts of Interest

Checklist for Avoiding Phantom Clients
Conflict Disclosure and Consent Letters
Conflict Informed Consent Checklists
Conflict of Interest Self Audit
Conflict of Interest Systems-Procedures
Declined Prospective Client Information Sheet
Disclosure Form ORPC 1: Lawyer Engages in Business Transaction with Client
Request for Conflict Search and System Entry

Contract Lawyering

Contract Lawyers Checklist
Contract Lawyers: Independent Contractors or Employees?
Contract Project - Letter of Understanding
Contract Project Intake Sheet
Letter Declining Contract Project
Project Assignment

Departing a Firm

Articles - Departing a Firm
Checklist for Departing Lawyers
Checklist for Lawyers Leaving an Exempt Position and Entering Private Practice
Departing a Firm - OSB Formal Ethics Opinions
Email Communications for Departing Attorneys
Joint Letter from Firm and Departing Attorney
Joint Letter from Firm and Departing Attorney - Authorization to Transfer File
Partners Departing a Firm
Separate Letter from Departing Attorney
Setting Up Automated Email Replies in Outlook 2007, 2010, and 2013

Disengagement Letters

Disengagement Letter Declining Further Representation
Disengagement Letter Standard Closing Letter
Disengagement Letter Unpaid Fees
How to Fire a Client

Engagement Letters and Fee Agreements

Contingent Fee Agreement - Advanced
Contingent Fee Agreement - Basic
Engagement Letter
Engagement Letter - Existing Client with New Matter

RESOURCES

FORMS

www.osbplf.org > Practice Management > Forms

Engagement Letter and Fee Agreement - Advanced
Engagement Letter and Fee Agreement - Basic
Fee Agreement - Authorization to Charge Credit Card
Fee Agreement - Earned Upon Receipt
Fee Agreements Generally
OSB Model Explanation for Contingent Fee Agreement
Retainer Agreement

File Management (Intake and other Resources)

Article: Client Files Revisited
Article: Setting Up an Effective Filing System
Ethics Opinion: No. 2005-125 Producing File/Copy Charges
File Closing Checklist
File Documentation: Memo of Conversation
File Documentation: Memo of Conversation (I Said/They Said)
File Retention and Destruction Guidelines
New Client Information Sheet
New Client Information Sheet with Disclaimer

Office Sharing

Checklist for Creating a Work-for-Rent Agreement
Ethics Opinion 2005-12 Office Sharing - Firm Names
Ethics Opinion 2005-50 Conflicts of Interest - Office Sharers Representing Opposing Parties
Office Sharing Guidelines

Nonengagement Letters

Nonengagement Letter - After Research or Investigation
Nonengagement Letter - After Review
Nonengagement Letter - Awaiting Further Instructions
Nonengagement Letter - Confirming Conversation re Nonrepresentation
Nonengagement Letter - Not Representing/Not Monitoring
Nonengagement Letter - Post Interview Funds Needed

PAST CLES

www.osbplf.org > CLE > Past CLE

Contract Attorneys: Managing Expectations and Getting Paid
Microsoft Outlook 2007 Tips (using Outlook for conflict checking and case management)
Practical Contract Lawyering

SPEAKERS

Beverly A. Michaelis received a BS degree with high honors from Portland State University in 1982 and a JD from the Northwestern School of Law at Lewis & Clark College in 1986. She is a member of the Oregon State Bar, Oregon Trial Lawyers Association, and American Bar Association with over thirty years of experience in the legal field as a lawyer and legal assistant. Ms. Michaelis provides confidential practice management assistance to Oregon attorneys to reduce their risk of malpractice claims, enhance their enjoyment of practicing law, and improve their client relationships through clear communication and efficient delivery of legal services.

Ms. Michaelis practiced with a personal injury firm in Portland and provided pro bono legal services for over eight years in the areas of family law, probate, estate planning, and disability through the Multnomah Bar Association Volunteer Lawyers Project from whom she received an Outstanding Volunteer Award in 1991. Before joining the Professional Liability Fund as a Practice Management Advisor in May 1996, she was Legal Placement Director and Associate Executive Director of the Multnomah Bar Association for eight years. She currently serves on the Oregon State Bar eCourt Task Force.

Ms. Michaelis is a frequent speaker on a variety of practice management, technology, and malpractice avoidance topics for law-related organizations, including the Professional Liability Fund, the Oregon State Bar, the Oregon Trial Lawyers Association, the American Bar Association, and the Legal Talk Network. She is a contributing author to *The Ethical Oregon Lawyer*, published by the Oregon State Bar and *A Guide to Setting Up and Running Your Law Office, Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, and *A Guide to Setting Up and Using Your Lawyer Trust Account* published by the Professional Liability Fund. She is also a regular contributor of articles to the Oregon State Bar Bulletin, the PLF In Brief, and other publications.

In addition to her other duties, Ms. Michaelis manages the PLF social media accounts, CLE and Practice Management website content, and maintains the PLF Forms Library. She blogs at Oregon Law Practice Management and you can follow her on social media or breaking legal news, practice management tips, and the latest developments in technology.

Jennifer L. Meisberger received her BA from the University of Puget Sound and her JD from the University of Oregon School of Law. Ms. Meisberger is a member of the Oregon State Bar, Oregon Women Lawyers, and the Multnomah County Bar Association. She has also served on various Multnomah County Child Welfare Council subcommittees since 2009, and currently serves on the Urgency Group Training Subcommittee, as well as the Multnomah County Citizen Review Panel.

Prior to joining the Professional Liability Fund (PLF) in 2014, Ms. Meisberger spent 6 years in juvenile court representing parents and children in child abuse and neglect cases. She also represented children accused of crimes. She began her work at the non-profit organization, Youth, Rights & Justice, and later moved to a small private practice where she continued to represent parents and children in juvenile court, both through indigent defense and private practice. In 2012, Ms. Meisberger was awarded the Oregon State Bar Juvenile Law Section New Practitioner Advocacy Award, recognizing her as an outstanding juvenile court lawyer in practice for fewer than 5 years.

In her role as a Practice Management Advisor for the PLF, Ms. Meisberger provides practice management assistance to Oregon attorneys to reduce their risk of malpractice claims, and enhance their enjoyment of practicing law. Her assistance is free and confidential.