

## Potential Conflicts of Interest, Lateral Attorneys, and Paralegals, screening waves: Procedure-Screening

The **first conflict procedure** is **screening**.

# Screening

An effective, ethical screen should include the following components, all of which should be:

- 1** In place prior to the disqualified attorney beginning work at the new firm (or, if the potential conflict arises after the disqualified attorney has begun work at the firm, it should be in place before excepting a new matter or as soon as the conflict is discovered).
- 2** Described in a Screening Memorandum provided to and signed by the disqualified attorney, as well as any firm attorneys or staff that have been, or are anticipated to be, working on any of the affected client matters.

**For all matters (whether closed or open):**

The **Chinese Wall** will be described in a **Screening Memorandum provided to and signed by the disqualified attorney**, as well as any firm attorneys or staff that have been or are anticipated to be, working on any of the **affected client matters**.



All **attorneys** and **non-attorney staff** (paralegals, secretaries, assistants, interns, etc.) at the new firm are **strictly forbidden** from having any discussions or other communications, by electronic mail or otherwise, with the **disqualified attorney regarding the representation**, and the **disqualified attorney** must be similarly **forbidden** from **communicating** about any **aspect of the matter** with any new firm

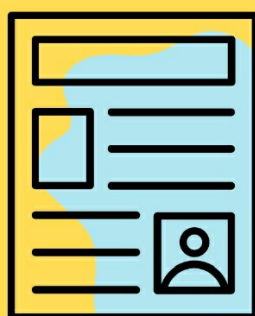
lawyer, paralegal, assistant, or other staff.

The **disqualified attorney** must be **barred** from access to any firm files **relating** to the **representation**, including files **Clio** or other electronic files, and all of the new firm's files in the matter must be **kept secure** in **rooms** or **cabinets** that will be **locked** and to which the **disqualified attorney cannot** have **access**. The **optimal** approach is to have all **electronic files pertaining** to the matter **password protected** or otherwise subject to limited access, but the case decisions in Connecticut and elsewhere do not (yet) reflect any trend that the courts will insist on such measures. **Software vendors offer** various **products** to law firms seeking to **"quarantine"** **electronic data** in client files subject to a screen.



The **disqualified attorney** must **not** have **kept** or **maintained** any **material concerning** the **former client**, and **no such materials** may be **shared** with attorneys or staff at the new firm.

All Firm files on the matter should be **marked** with **brightly colored** written **notices indicating** that the **disqualified attorney/paralegal may not** be **permitted** access to such files.



The **Firm's newsletter** should **include** no **reference** to the matter.

**Certifications of compliance** with these **Rules** and with the screening procedures will be **provided** to the **former client** by the **screened lawyer** and by a **partner of the firm**, at **reasonable intervals** upon the **former client's written request** and upon the **termination** of the **screening procedures**.







Once a matter is screened, the **Owners** will **decide when screening procedures** should be **terminated**, if ever.

If the new **attorney** is an **equity member**, he or she should **not derive compensation** from the file at issue.



**Important Note:** There are **additional screening procedures** that need to be **done** for **active (open) matters**

## Potential Conflicts of Interest, Lateral Attorneys, and Paralegals, screening waves: Procedure–Screening Continued

**Additional procedures** must be **taken** for **conflicts** involving **active (open) matters**.

### Additional steps for active (open) matters:

If feasible, the **disqualified attorney** should be **physically located in an area** removed from firm attorneys and staff working on the matter.

If possible, **for example**, the matter could be handled by a remote attorney or an attorney located at another office.



**Copies of the Screening Memorandum** should be **provided** to **any additional lawyers, paralegals, or assistants** who **subsequently** are **assigned** to the matter.






All **outside vendors, experts, agents, and other personnel engaged** by the firm to work on the matter should be **required to sign a certification** that they have **read** and will **comply with** the **terms** of the **Screening Memorandum**.



The **Owner** should **inform affected clients** about the **potential conflict** in a **manner** that **complies** with **Rule 1.10**. This should be **completed prior** to the day the **new attorney** **begins** work at the firm, or, in the event, a **“Potential New Matter”** **creates** the **conflict**, **before accepting the matter**, or in the **event** of a **“Late Discovery of Potential Conflict,”** as **soon as the conflict is discovered**.

The **Owner** should **inform** the **existing**  **client** or **PNC** of the **issue** and the **measures taken** to **protect** the **former client’s confidence** so that our **client/PNC** can **decide** whether he or she is **comfortable**.



**Important Note:** After the **screening procedures** are **complete**, it's time to move to the **waiver procedures**.

## Declining Representation

### RATIONALE:

We **document all calls** and **meetings** with prospective new clients (“PNCs”), even those that **do not** result in the firm representing the prospective client.

This is true regardless of whether we have **declined to represent** the PNC or because the PNC has **declined to retain us** or has merely refused to return the engagement letter.



In any of these cases, we want to have a **record of the contact**:

- To document to PNCs that we are **not representing** them so they cannot later claim that we were their lawyers and we have somehow failed to protect their interests.
- So we have a **record** to use if we later need to **rebut** any **claim** that we should be **conflicted out of representing adverse parties** to the PNC.
- For our **conflict-checking system**.

For each initial consultation that **does not result** in us **representing** the PNC, the owner will send **A Declination Letter** to the PNC.

The declination letter can be **attached** to an **email message**. **(Let's link this for easy template access)**



# Most Common Conflict of Interest Controversies

**Confidentiality  
Concerns**



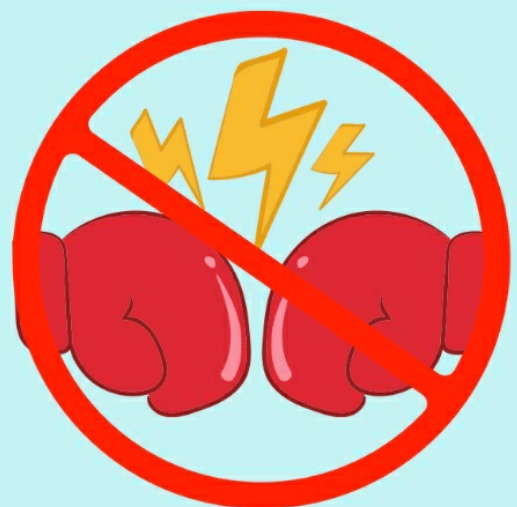
**Loyalty  
Concerns**



**Zero-sum Game  
Concerns**



**Concerns About  
Pulling Punches**





The **most common** conflict of interest controversies arises because of one of the following concerns.

1. **The confidentiality concern.** A lawyer is required to keep information about each client confidential. The result of representing Client A may be that the lawyer knows something that would be useful for Client B but that the lawyer may not disclose or use to Client A's disadvantage because of the confidentiality obligation to Client A.
2. **The loyalty concern.** A lawyer may not both represent and act adverse to a client, even in the course of representing another client.
3. **The zero-sum game concern.** In a dispute between A and B, often what A gets, B loses. Thus, if one lawyer represents both A and B, the lawyer will constantly be put in the position of benefitting one client at the expense of the other.
4. **The concern about pulling punches.** In the representation of Client A, a lawyer may not take an action or fail to act out of either a desire not to offend or harm Client B, or to protect the lawyer's self-interest.

The **owner** and **all firm associates** will **remain vigilant** regarding these **concerns**.

The owner, in deciding how to proceed when a possible conflict is uncovered, must be **convinced** that **none of the above concerns are applicable**.

If this is the case, the fact that a **"hit"** has been noted is **not an automatic bar** to taking a case from a prospective new client.

## Did Not Attend Scheduled Consult



**External Policy:** We understand that sometimes things come up **unexpectedly** therefore we strive to give individuals who do not show up for their scheduled appointment the **benefit of the doubt**. However, we also understand that when one person schedules they are **denying another potential client** the **opportunity** to come in for a much-needed consult as well. Therefore, we will **follow up** with the **potential client** to offer them another opportunity to come in, but if the individual fails to come in again, we will **not** offer them a **third opportunity**.

**Internal Policy:** The Firm seeks to be **understanding** and will always give the **potential client** the benefit of the doubt on the **first no-show** but recognizes that if the individual does it a second time, it is a red flag that the person **does not value their legal problem** or **value a legal team** and therefore we will **not push** for a further **reschedule**.

## TRACKING AND FOLLOWING UP WITH NO SHOW PNCS

The Sales Team shall track all leads and tag any potential new client without notice who does not attend a scheduled consult.

## Contact the PNC

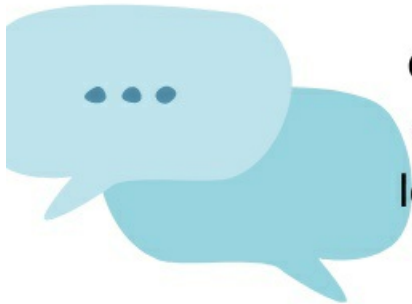
The Intake Specialist will contact the individual to ask about rescheduling and learn why the person could not make the scheduled appointment.



## Client Responses

Generally, potential clients will give no answer (which means try them again later, or will answer and will give one of two answers:


- "Stop Calling
- "Please Reschedule".



## Second Reschedule

If they reschedule and fail to attend the second scheduled appointment, then the potential client will be removed from the leads list.



Let's talk to  about **sales opportunities** when someone **cancels/reschedules appointments**.



## Client Intake Procedure

One of the **most important types** of calls that will come to the Receptionist will be from **Prospective New Clients** ("PNCs").

A **promptly answered/returned, polite, and empathetic call** with us helps **set the stage** for the level of **attention** and **care** that **we give our clients** and is one of the things that **sets us apart from our competition**.



When a caller is **identified** as a **PNC**, the **Receptionist** shall ask them if they can be placed on a **brief hold** in order to be **transferred to** the **Client Resource Coordinator**, whose role is to speak to first-time callers and assist with getting them started.

**PNCs** are the **lifeblood** of any law firm.

The **Client Resource Coordinator** is to follow these procedures meticulously.

### **First, focus on your attitude and tone.**

**Project confidence** and a **willingness** and **desire to help** the **PNC**.

**Show empathy**, especially if the reason they are calling is because of a **serious personal** or **legal problem**.



Regardless of what they ask, always convey by word and tone that **we can help them!**

There are numerous stories of PNCs who have called law firms, and upon hearing **the receptionist** say that she didn't know whether the Firm handled the type of case they wanted to bring to the Firm, the PNC hung up and called another firm.

**A key phrase to remember is, "We focus our practice on family law."**

**After putting the caller at ease and assuring them that we can help, make sure to get all of their contact information.**



**Obtain the PNC's:**

- Best phone numbers (they may give you multiple)
- Email address(es)
- Physical home address

**Ask questions and take notes!**

**Ask how they found us.**

Were they **referred** to us **by another client** or a **friend**, or did they **find us online**?



Ask them **why they are calling**.

**Take notes.**

If they **express** any **second thoughts** about whether to go forward, say,  
"I am not an attorney but based on what you have told me, I am sure that you do not want to try and handle this by yourself, and you certainly cannot just ignore the problem. We can and will help you, so I want to schedule you for a consultation."

### **Answer any of the PNC's Questions.**

Be **ready** to **answer their questions**.

Always have on hand for **quick reference** the **law firm's full and proper name, website address, and physical address**.



**Know** the **names of all** of our **practice areas**, the **names of all** of the **lawyers**, and **which lawyers handle each practice area**.

Since it is **not our policy** to **share** with **PNCs who they will be meeting with**, this is **good to know for calendaring** but **should not be shared** with the PNC if possible.



### **Gently Guide the conversation.**

If the **caller** seems **unfocused** and wants to tell you years' worth of backstory, **gently bring them back to the current situation at hand.**



**“Let me ask you some questions so we can get some information that will be most useful for you when you have your Goal and Planning Conference.”**

This **can be a hard call for the PNC** to make, especially with divorce.

**Be patient and reassuring if they cry.**

**Answering your fact-finding questions can be therapeutic** for some callers.

### **In all instances, be positive and encouraging.**



If they express **embarrassment** about their situation, a **key reassurance** is to say they are **smart to make this call** to find out what their options are, **do the right thing** for themselves (and their children), etc.

## Dragon Training Plan:

**Dragon / Director of Client Services Onboarding & Sales Training Plan:**



### **Week 1 & 2:**

New Employee On-Boarding Days 1 & 2 (see "First and Second Day Agenda" doc).

New **Dragon/DCS observe current Dragon** (or other mentor/manager) on Sales Consults week 1 (Days 3-5) & week 2 **as they work through their training** modules (below).

### **Week 3:**

**Sales Consult Role-Play** and **prepare for running consults live** begins.

### **Week 4:**

**Sales & Marketing Director/mentor/current Dragon** observes new DCS on **sales consultations** beginning this week and **provides active, constructive feedback** after each consultation.

**Re-assess and adjust** for additional time of **new sales team members observing** the **Sales & Marketing Director/mentor/manager** running **consultations live** for **continued learning**.

### **Week 5- Week 6:**

**New Dragon** goes **"live"** with running consultations, Sales & Marketing

Director/mentor/manager observing 2-3 days/week, **decreasing observation to 1 day/week by week 7.**

**Week 7 – 8:**

**Cross-Training For Intake Back-Up**

1. **Observe** the **Intake Team on sales calls** taking active **notes** and **asking questions** after each call.
2. **Read** and **review Intake Scripts** with the Director of Sales & Marketing
3. **Role Play** Sales Intake Calls

**Week 9 – 10:**

**Field live sales calls** with the **Director of Sales & Marketing**, observing for **support**

- Review calls and actively **ask questions/provide feedback immediately** following.



## Adoption Guidelines for Sales Team

### Martial Status:

**Are the adoptee(s) married or not married?**

If the **adoptee(s) are not married**, a **home study** will be **conducted**.



If there is a **home study**, then it will be **an extra 1k** (not affecting our cost).

**FM:** "If marriage is something your thinking about doing, then it will make the process a bit fast and less expensive."

### Donors:

Is there an anonymous donor or not?

If so, we need to **terminate parental rights**, and the actual **adoption** part is often done in **1 hearing, sometimes 2**.



In CT presumption, a **child born** into a **marriage** is a **child OF the marriage**.

That **presumption** is **rebuttable by biology**.

**Example:** If I wasn't biologically related to Charlie, and Jess was, I should still adopt Charlie.

**Adoption** is the **only way** to really **recognize** the **three** of you are **all connected**.



The reason it matters for gay couples is because, clearly, they **cannot both** be **biologically related**.

This may matter if **bio mom dies**.

A child of the marriage in CT is a child of the marriage.

Full faith and credit clause of the US constitution.