

Conflicts of Interest Policy – Edwin F. Mandel Legal Aid Clinic

Overview

Part I: Conflicts Checks with New Client Matters

Part II: Conflicts Checks with Addition of New Attorneys, Clinic Students, and Staff

Appendix: New Client Matter Information Form

Appendix: Excerpts from Illinois Rules of Professional Conduct

Overview

The Illinois Rules of Professional Conduct (the “Rules”) require attorneys to avoid or appropriately handle conflicts of interest. Conflicts can arise due to attorneys’ ethical duties to current or former clients. Conflicts that apply to one attorney within a firm can also be imputed to other attorneys within the firm under Rule 1.10. When conflicts arise, in many instances an attorney may continue with representation notwithstanding the conflict by getting client consent and meeting the other criteria set forth in the Rules. In some situations, ethical screens can be created and maintained to screen off an attorney with a personal conflict with a client matter, and to permit other attorneys within the firm to proceed with representation. Some conflicts, however, are not waiveable, and in those cases representation must be declined.

It is an important part of ethical legal practice to check for conflicts and to handle them in accordance with the Rules. Clinic faculty and students alike are subject to these obligations.

The clinics that make up the Law School’s clinical program are organized into seven distinct, autonomous units, each with its own faculty and support staff, with each unit constituting a separate firm for conflicts purposes. These units are:

- (1) EDWIN F. MANDEL LEGAL AID CLINIC, which includes the following practice areas:
 - Abrams Environmental Law Clinic
 - Civil Rights Clinic: Police Accountability
 - Criminal and Juvenile Justice Project Clinic
 - Employment Law Clinic
 - Federal Criminal Justice Clinic
 - Housing Initiative Clinic
 - International Human Rights Clinic
 - Mental Health Advocacy Clinic
- (2) INNOVATION CLINIC
- (3) KIRKLAND & ELLIS CORPORATE LAB CLINIC
- (4) JENNER & BLOCK SUPREME COURT & APPELLATE ADVOCACY CLINIC
- (5) INSTITUTE FOR JUSTICE CLINIC ON ENTREPRENEURSHIP
- (6) EXONERATION PROJECT CLINIC, and

(7) YOUNG CENTER IMMIGRANT CHILD ADVOCACY CLINIC.

Decisions about which clients to represent, and decisions that occur within the context of client representation, are made within each of the seven units by that unit's clinical faculty.

In addition, there are two clinics, separate from the units listed above, in which students work on behalf of clients in a supervised field placement at an outside agency and take a companion seminar at the Law School. These are the Poverty and Housing Law Clinic, and the Prosecution and Defense Clinic.

This [Conflicts of Interest Policy](#) is for the Edwin F. Mandel Legal Aid Clinic only. Students in clinics that are not part of the Edwin F. Mandel Legal Aid Clinic should consult with their clinic supervisors for guidance on how to complete conflicts checks for their clinic.

Part I: Conflicts Checks with New Client Matters

- Completing the New Client Matter Information Form. In undertaking a new client matter, each clinical project must obtain the information listed on the [New Client Matter Information Form](#). The completed New Client Matter Information Form must be timely submitted to your project assistant, either prior to client engagement or as soon as practicable afterwards.
- Run searchable terms through Clio. The project assistant will input each searchable element of the New Client Matter Information Form into the Clio search box at the top right of the Clio screen. The searchable elements are indicated on the New Client Matter Information Form as underlined, italicized items.
 - The project assistant will make a PDF of the results of each search. The project assistant will then combine each PDF search result into one PDF containing all the results. The project assistant will email the PDF containing the combined search results to the supervising attorney for review.
- Supervising attorney review and action steps. The supervising attorney will review the PDF of combined search results for conflicts.

- If a conflict exists, the supervising attorney will resolve it in accordance with the ethical rules to permit the representation to move forward, if permissible under the Rules. If resolution of the conflict involves waiver letters, ethical screens, or other steps, the supervising attorney or clinic student will save a record of the steps taken to Clio in the appropriate client matter area. The Appendix contains excerpts of the most commonly relevant Illinois Rules of Professional Conduct, but ***attorneys and students must consult the Rules and the Comments in their entirety to assess and resolve conflicts.*** The supervising attorney will consult with the Director of Clinical and Experiential Learning as needed and will notify the Director of the steps taken to resolve the conflict. If the conflict cannot be or is not resolved, the supervising attorney will decline the representation or, if representation has already begun, will withdraw as soon as practicable under the Rules.
- If no conflict exists, the supervising attorney will inform the project assistant by email, and the conflicts check is then complete. Normally, supervising attorneys will respond within 48-72 hours after receiving the search results. The project assistant will follow up with the relevant supervising attorney as needed until a response is received. The project assistant will save the responsive email to the appropriate client matter in Clio so that a record exists of having done the conflicts check. The project assistant will also save the completed New Client Matter Information Form to the appropriate client matter in Clio.
- Duty to update conflicts checks. Each supervising attorney has a duty to update existing conflicts checks when material changes occur in the underlying client matter, such as the addition of plaintiffs or defendants, or identification of key witnesses. The process for running updates is the same as the process for running the initial conflicts check, except that only the updated information needs to be searched.
- Saving records of conflicts checks and results to Clio. All records saved to Clio relating to conflicts check matters must have the word “Conflicts” in the title or subject line, to facilitate searches within Clio of conflicts checks and related steps. Upon the completion of a conflicts check, the project assistant will ensure that the client matter in Clio contains (i) the email from the supervising attorney confirming there are no conflicts, (ii) the completed New Client Matter Information Form; and (iii) if conflicts did exist and were resolved, a record of how they were resolved, and copies of any waiver letters obtained.

Related Issues

- Populating the Clio database. The conflicts check system is only as good as the database supporting it. Supervising attorneys have a duty to make sure the Clio database has the relevant information on their currently active client matters. Relevant information includes the information contained on the New Client Matter Information Form.
- Project assistants and clinic students are available to assist with entering information into Clio, as determined by the supervising attorney

Part II: Conflicts Checks with Addition of New Mandel Clinic Attorneys, Students, and Staff

All new attorneys, clinic students and staff in Mandel Legal Aid must disclose necessary information concerning potential conflicts relating to past clients at prior places of employment. A conflicts check is then run to identify any conflicts arising from past clients or prior places of employment.

Instructions for Students

Step 1: To be completed by day 5 of the quarter in which the student enrolls:

In Clio, create a new **“Contact”** listing your name as the contact name. To do this, click on the **“Contacts”** tab, and then **“New Person”**, and enter your name and other contact information. Click **“Save New Person”**. Next, click **“Contacts”**, then find your name in the alphabetical list, and click on your name. (You can also search to find your name, in the “search your practice” box in the upper right of the screen). With your contact information now open, click **“Notes,”** and then click **“Add”**. A new Notes field will pop up.

In the “Subject” line, type “employers and major clients”

In the “Note” Line, type the names of your past and present employers, and also the major clients for whom you did legal work. These should include law firms and other legal employers:

- where you worked prior to law school
- where you worked during your law school summers,
- where you worked or are working during the law school year, whether on a paid or volunteer basis
- with whom you have accepted a position that will start in the summer or after you graduate.

Step 2: To be completed after day 5 and before day 10 of the quarter in which the student enrolls:

All clinic students must run a conflicts check within Clio when they start in the clinic, to see if the student’s employers and major clients pose any potential conflict. To do this, the student must take the following steps:

- enter each employer and major client into the search box at the top right of the Clio screen.
- make a PDF of all the search results
- if the search results yielded no potential conflicts, email the PDF to their clinical supervisor, with a cover email stating that there were no potential conflicts
- if the search results did yield hits that could be potential conflicts, email the PDF to their clinical supervisor, with a cover email requesting an appointment to discuss the hits.

If a conflict does exist, the supervising attorney will work with the clinic student to resolve the conflict. This may involve waiver letters, ethical screens, or selection of assignments to ensure the conflict is avoided.

Step 3: Duty to update

All clinic students must update their “Note” on “employers and major clients” whenever there is a material change. For instance, suppose a student works in a clinic during 2L year, and accepts an offer for a summer job at a law firm. The student must update his or her information upon accepting the summer position. When that same student then returns to the clinic during 3L year, the student must update his or her information to add the major clients from over the summer. Updates should be entered within 48-72 hours after the material change (e.g., acceptance of the job offer) occurs. The student must also run a conflicts check on the updated information. To do this, the student must enter the updated information into the Clio search box at the top right of the Clio screen, and any resulting hits must be reviewed with his or her supervising attorney to see if a conflict exists.

Instructions for Attorneys and Staff:

In Clio, find your name under the “**Contacts**” tab, and click on it. Then click “**Notes**,” and then click “**Add**”. A new Notes field will pop up.

In the “Subject” line, type “past employers and major clients”
In the “Note” Line, type the names of your past employers, and also the major clients for whom you did legal work with that past employer.

The project assistant will run a conflicts check on each new attorney and staff member when that person joins the project. To do this, the project assistant will take the following steps for each attorney and staff member:

- enter each employer and major client into the search box at the top right of the Clio screen.
- make a PDF of all the search results
- email the PDF to the supervising attorney (or, if no supervisor within that clinical project, then to the Director of Clinical and Experiential Learning) for review

If a conflict does exist, the supervising attorney or Director will work with the attorney or staff member to resolve the conflict. This may involve waiver letters, ethical screens, or selection of assignments to ensure the conflict is avoided.

Appendix: Edwin F. Mandel Legal Aid Clinic -- New Client Matter Information Form

This form must be completed by the supervising attorney or clinic student for each new client matter in the Edwin F. Mandel Legal Aid Clinic. Each searchable element in the form (identified in underlined italics) will be run through the Clio search function as part of our conflicts check. For all names, also include nicknames if relevant. If any fields are irrelevant or not applicable, leave them blank.

This form is also used to update existing conflicts checks. Updates are needed when material changes occur in a client matter that has already passed a conflicts check. For updates, list the Clio Client Matter Number where indicated, and then fill out only the part of the form with the updated information.

This completed form should be submitted to your project assistant.

Clio Client Matter Number, if one exists: _____

Client(s)/Potential Client(s)

1. Client/Potential Client Name(s):
2. Address(s):
3. Spouse's name, if the client is an individual:
4. Spouse's address, if different:
5. For any client that is an organization,
 - a) key shareholders:
 - b) officers:
 - c) directors:
 - d) executive director or other key employees:

6. Connection to the University of Chicago, if any are known:

If the new matter is a litigation matter

1. Opposing Party:
2. Co-defendant:
3. Co-plaintiff:
4. Expert or other key witnesses:
5. Alleged Victim(s):
6. Opposing Counsel:

If the new matter is a transactional matter

1. Contracting counterparty or counterparties:
2. Financing sources, if relevant:
3. Opposing Counsel:

Any material parties not otherwise listed above:

Appendix: Excerpts from Illinois Rules of Professional Conduct

Below are some of the key Illinois Rules of Professional Conduct that bear on attorney and law student conflicts of interest. These excerpts are not comprehensive. Other rules may also have an impact, depending on the situation. Nor are the Comments to the rules included below. Attorneys and students must refer to the current Illinois Rules of Professional Conduct in their entirety in assessing and resolving conflicts issues. See http://www.state.il.us/court/supremecourt/rules/art_viii/artviii_new.htm

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.9: DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11 and with former judges, arbitrators, mediators or other third-party neutrals is governed by Rule 1.12.

(e) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

Adopted July 1, 2009, effective January 1, 2010.