

Conflicts: How to Prevent Desperation from putting your Firm at Risk

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Introductions

- **John Esvelt**
 - Director of Risk Management
- **Fraser Milner Casgrain**
 - Six offices
 - 500+ attorneys
 - Practices – Transactional and Litigation

Introductions

- **Shawn Knight**
 - Director of New Business Intake and Records
- **Vinson & Elkins Overview**
 - Thirteen Offices (8 International)
 - 700 attorneys
 - Practices – Transactional and Litigation

Agenda

- Why is this a timely topic?
- Why should I care about conflicts?
- Areas of vulnerability
- How to identify areas of vulnerability
- Suggestions for how to deal with areas of vulnerability
- Q&A

Why is this an important topic?

- It is timely
- Economic pressures can create a different work environment
 - staff cuts
 - pressure to add business
 - different clients
- Consequences with conflicts are great

Types of Conflicts

- **Current Clients**
 - Direct adversity
 - Corporate family members
 - Confidential information
 - Organizational
 - Issue/positional



Types of Conflicts

- **Former Clients**
 - Related matters
 - Representing competitors
 - Confidential information
- **Prospective Clients/Non-clients**
 - Confidential information
- **Personal Interest**

Why should I care about conflicts?

There are expensive consequences!

- Malpractice Claims
- Sanctions/Court Disqualification
- Lawsuits
- Harm to your firm's reputation
- Forfeiture of fees
- Loss of current/future work

How do I know if my firm is vulnerable?

- For what percentage of clients do you have executed engagement letters?
- For what percentage of clients do you have “General” matters where work can be hidden?
- Analyze how long clients take to pay
- Periodic audit/review of processes and the above
- Have your insurance carrier review your processes

Areas of Vulnerability

Some areas are vulnerable even in “normal” times --

- Certain practice groups
 - IP
 - Bankruptcy
- Relying on the attorneys for information about matter/parties
 - Incomplete
 - Misspellings
 - Not adding parties when join the matter/lawsuit

Areas of Vulnerability

- Not getting executed engagement letters (including payment issues, defining the client, etc.)
- Corporate family issues
- Lateral hires
- Temporary attorneys
- Close Corporations

Areas of Vulnerability

The vulnerability of some areas may increase in frequency in rough economic climate or aftermath--

- Certain practice groups
 - Bankruptcy
 - Intellectual Property
- Fake clients

Areas of Vulnerability

- Clients looking for someone to blame/companies in distress (tricky area)
- Clients changing lawyers
- Taking work outside specialty area

Dealing with areas of Vulnerability

- Do everything you can to establish the identity of your prospective client
- Get a specific, executed engagement letter
- Require second (or third!) partner to approve new clients
- Require New Business Intake Committee or Risk Partner to approve new clients

Dealing with areas of Vulnerability

- Require second partner approvals on opinion letters and other documents
- Do not allow “General” matters
- New Business Report periodically (daily if possible)
- Be wary of potential clients changing lawyers in middle of deals and raising money from third parties

Dealing with areas of Vulnerability

- Do not skimp on OFAC and AML checks
- Make use of “yellow flags” and other items to draw attention
- Review and revise your existing procedures
- If short-staffed, review your Business Continuity Plan for ideas on how to maintain standards

Dealing with areas of Vulnerability

- Encourage a periodic review of existing clients
- Make sure staff is well-trained (quality and speed)
- Work with other departments on these areas:
 - Lawyers as business advisors (Marketing - website, bios)
 - Deals where clients want to transfer money through your escrow account, and the like (Financial Services)
 - Unusual or exotic business, transactions with no business purpose (Practice Groups)
 - Your software (IT)
 - Your conflicts processes (GC)

Summary

- Know your clients! Know what the work is!
- Maintain your standards even when it is difficult
- Have multiple or designated partners review new work
- Early attention is best
- Do not be afraid to warn the attorneys/GC

Questions?

