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<p>CONFLICTS OF INTEREST Eugene A. G. Cipparone and Ted Tjaden Release No. 5, December 2024</p>
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A practical guide that analyzes conflict of interest dilemmas. Find solutions regarding issues of loyalty and confidentiality with *Conflicts of Interest: Principles for the Legal Profession*. This service is designed as a handbook and covers all major legal areas regarding conflicts of interest. The text includes: guidance on and practical resources for identifying and resolving conflict of issues; thorough analysis of the rules governing legal ethics; and resources for managing conflicts arising in legal practice.

What’s New in this Update:

This release features fully revised and updated Chapter 14 Analyzing Conflicts of Interest and Chapter 16 Public Interest Advocacy and Independent Counsel.

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Highlights:

- **Bias and Conflicts of Interest—This chapter, Chapter 14, has been rewritten and updated—**Bias is a state of mind in which the decision-maker is not open to persuasion on the basis of evidence or submissions. It involves a “leaning, inclination, bent or predisposition towards one side or another or a particular result” and “represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction” that “is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.” Throughout this discussion it is important to remember the interplay between bias and conflict of interest. It is an intricate relationship since bias can be both a cause and a consequence of a conflict of interest. A bias may lead a decision-maker to a conflict of interest by influencing their choices in favor of personal interests. Conversely, a conflict of interest may reveal or exacerbate existing biases, whether conscious or unconscious. Although these terms are sometimes used interchangeably and often converge in jurisprudence involving the potential disqualification of a decision-maker, bias and conflict of interest can be distinguished in the following manner: bias is a state of mind of the decision-maker involving a predisposition towards something or someone. Evidence of an individual’s closed state of mind, and the consequent impact on the impartiality and fairness of the decision being made is behind the determination of bias. In contrast, the concept of “conflict of interest” receives different attention in the cases because it is associated with the exercise of an individual’s judgment regarding relationships, interests and duties. A reasonable apprehension of bias and a conflict of interest may converge when a conflict of interest arises as a result of concerns about a decision-maker’s interests or their relationships with other parties.
- **Public Interest Advocacy and Independent Counsel—*Amicus Curiae*—**In addition to updating the chapter generally, the author has added a new section on *Amicus Curiae*. Even though *amicus curiae* (or “friends of the court”) are usually appointed under rules of court relating to intervenors, *amicus* counsel are generally not parties to the action but instead play an advisory role to the court (and indirectly to the parties), unlike intervenors who are usually parties to the lawsuit. In addition to *amicus curiae* being appointed under rules of court or rules governing administrative tribunals, judges also have inherent jurisdiction to appoint *amicus curiae* to assist the court. The precise role of *amicus* counsel may be set by the court or tribunal that makes the appointment, shaped by the needs of the case. There is no “one size

fits all” role for *amicus* counsel whose role may be as minimal as having someone on “stand by” to assist if the need arises, and may expand to cross-examining witnesses and making submissions.

Legislation, Code of Professional Conduct and Related Highlights:

None.

Practice Notes:

None.

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