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CONFLICTS OF INTEREST

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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 delivers a comprehensive overhaul of Chapter 8 – rewritten, reorganized, and retitled “Conflicts of Interest by Practice Area”. The revised chapter includes updated commentary, case law and academic literature by practice area.

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Highlights:

Conflicts of interest can arise in any area of law but tend to predominate when lawyers represent more than one client. For example, there are some specialized areas of practice where conflicts of interest have become part of the institutional setting. These specialized areas of practice include bankruptcy and insolvency law, family law, insurance, real estate and wills and estates law, where conflicts of interest tend to arise more frequently than other practice areas. This is so because of the duties inherent in the relationships between and among the various parties.

But conflicts can arise in any area of practice and there are many variables which give rise to what can be described as “systemic” conflict of interest issues. The first is the nature of the transaction that occurs between the parties. In real estate matters, for example, the parties may use an intermediary, a real estate agent, who has an interest in earning a commission by selling the property, and a bank that will provide a mortgage to the buyer. In some situations, it may be appropriate for one lawyer to act for multiple parties, but since the parties to the transaction may have different motives, conflicts can arise.

A conflict of interest can exist even though the interests of the parties initially coincide. There is a myth, largely due to the use of “conflict” in “conflict of interest” that for a conflict of interest to exist there must be an adverse interest at stake or some form of contentious proceedings. The drafting of a separation agreement in a family matter or the preparation of a partnership agreement, particularly if there are several parties involved, can in fact give rise to a conflict of interest. The parties may share the same goals and objectives, but they may in fact disagree, or have divergent interests, in achieving these goals. The basic principles of adequate disclosure and consent remain the same as they do for matters that are contentious. The rules of professional conduct recognize that, in addition to the existence of a real or actual conflict of interest, there may be the appearance of a conflict of interest or the potential for a conflict of interest to occur.

Legislation, Code of Professional Conduct and Related Highlights:

None.

Practice Notes:

None.

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