

Preventing Conflicts of Interest in Complex Commercial Litigation

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The basic rules of conflicts of interest are no secret to litigators. Under the rules of professional conduct, lawyers may not take on a matter adverse to another client without first obtaining a waiver of conflicts of interest. A waiver is also needed to take on a matter adverse to a former client that is substantially related to work done for that former client. Some conflicts cannot be waived. Checking conflicts on potential new matters happens every day at most law firms. But in complex litigation, conflicts that may not be apparent at the beginning of a case can arise later – after the lawyers on the case have stopped thinking about checking for them. Trial lawyers must be vigilant for signs of latent or hidden conflicts not just when they take on new work, but throughout the representation.

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