

Screening form can help avoid tactical conflicts

On occasion, a party will intentionally contact or attempt to meet with one or more lawyers for the sole purpose of creating a conflict that will prevent the lawyer(s) from acting for another party on a pending matter.

Despite the bad intentions of the individual making these contacts, the lawyer(s) contacted may not be able to act for the other party, especially if confidential information was disclosed.

This behaviour occurs quite frequently in the family law area and in specialized areas of the law where there are a limited number of experts. In smaller communities this can be very frustrating as such behaviour can make it difficult or even impossible for someone to retain a local lawyer. And when a client is looking for a lawyer with specialized expertise, choices may be limited. In both cases it means that a lawyer or firm must turn away a matter that they could otherwise have handled.

To prevent these tactical conflicts from occurring, law firms should have clear and established procedures to screen all incoming calls and inquiries for potential conflicts. Staff and lawyers should be on the lookout for these types of calls, especially on family law matters. They should be trained to collect enough information to evaluate potential conflicts, while at the same time being sensitive not to ask for or collect confidential information. An intake conflicts screening form can help ensure that the appropriate information is collected to identify possible conflicts.

The [Conflicts of Interest Toolkit](#) created by the CBA Conflicts of Interest Task Force has a model conflicts screening form in [PDF](#) and [Word](#) formats.

When it appears that a caller may be trying to create a tactical conflict, this should be carefully confirmed and if so, a non-engagement letter should be sent to the caller.

On your firm's general voicemail greeting and, if appropriate, on individual lawyers' voicemail greetings, consider including a warning for callers not to leave confidential information. And on your firm's website, include statements that warn site visitors that unsolicited information or materials sent to the firm or left on voicemail will not be guaranteed confidentiality, and that access to or use of the site or firm voicemail does not create a solicitor-client relationship.

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