Top Five Tips for Conflict of Interest Checking

Paul Purdue, Affinity Consulting Group

Hundreds of systems exist for conflict checking in law firms. Some have existed for decades, while others didn't become possible until law firms began using PCs.

When my father started practicing law as a patent attorney 60 years ago, you would often hear one of the two senior partners yell from their office down the hall, "Has anyone ever heard of so-and-so?" This was how his firm used to check for conflicts of interest. Back then it was a fast way to get an answer though it may make you cringe nowadays ("What if someone were in court... or the bathroom?")

Times have changed, but not as much as you might think. Many law firms essentially use the same method though via email rather than yelling down the hallway — plus a Microsoft® Excel spreadsheet to track responses and follow up with laggards. This modern method may be more defensible, but it's slower. Speed is more important than ever, especially for a non-billable task like conflict checking. Plus a prospective client is likely shopping around.

The good news is that technology exists today that's just as fast as yelling down the hallway but far more accurate. In this article, I'll discuss the top five technology tips for foolproof conflict of interest checking.

1. Use Practice Management Software Rather Than Manual Methods

Nobody's memory is good enough to consider all possible conflicts of interest. As I get older, I can't even remember what I ate for breakfast — and I always eat the same meal!

A growing number of law firms use a practice management system to keep track of people, calendars, documents, email, and much more. These systems represent the logical starting place for a thorough conflict of interest search, given the information they contain.

It's not a good idea to search your billing software because its data set is less complete than what you will find in your practice management system. Your billing software contains the names of your clients and perhaps opposing parties. By contrast, your practice management system contains every person and entity that crosses your firm's path.

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Assuming that conflicts only entail clients is myopic and potentially dangerous. Instead, conflicts often consist of people related to your clients. Your practice management system should show you everyone tied to a case, not just your client. Using a billing system instead of a practice management system will not show these related people unless they happen to be mentioned in a bill.

2. Make Sure You Can Search Phonetically

My surname is Purdue like the school, not the poultry company. I tell people this all of the time and yet they still spell it "Perdue" rather than "Purdue."

The English language is rife with homonyms. For this reason, the conflict of interest search tool in your practice management system must have the ability to find a phonetic match rather than simply an exact match.

You should also have the option to turn off phonetic searching. When you search for conflicts, you will encounter instances when you need to find an exact match just as you will have instances when you need to find phonetic matches.

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3. Make Sure You Can Search All Documents, Including Email

When searching for conflicts, you need the ability to search all your firm's documents. This includes email. It's not enough to search a list of contacts tied to cases, fee entries, and calendar items. Often, the only reference to a certain person involved in a matter is located in a document or in an email message.

To avoid leaving yourself unnecessarily exposed, make sure your practice management system offers document management and email integration, and that the conflicts tool searches this data.

4. Make Sure You Can Search Across Clients and Contacts Past and Present

People sometimes ask me, "Can we archive these old cases and these old contacts? I don't want to see them in our practice management system." Yes, you do. Historical data is the key to a good conflict of interest search. Well-designed practice management software can hide the old data so you don't always see it, but you want it in there to provide you with the most complete search results.

Searches should include both clients and contacts, even those not tied to a case. For example, your practice management system should track people who may have inquired about retaining your firm but didn't, either because they rejected you or vice versa (perhaps because of a conflict).

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And of course you should enter and link every person who comes into contact with a matter. This includes experts, plaintiffs, defendants, guardians, children,

grandchildren, beneficiaries, judges, co-counsel, opposing counsel, adjusters, arresting officers, etc. You get the idea. The benefits go far beyond the scope of a conflict of interest search because you can always find someone when you need to contact them.

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It bears mentioning that your practice management system should offer a unified search -- that is, it should search email and documents as well as active, closed, and all other contacts and matters simultaneously. In other words, it should work like Google®, which as of a few years ago began listing images, videos, etc. along with its traditional search results.

5. Make Sure You Can Drill Down to Specific Records From the Resulting Report

The data that the computer provides is just the tip of the conflicts iceberg. The real work takes a little bit of digging. A truly helpful report enables you to click on items and drill down to the underlying record. Anything short of this capability requires extra legwork — otherwise known as a waste of your valuable time. Your goal is to determine if a conflict exists or not, as fast as you can, while being as thorough as possible.

The best practice management systems also include the ability to send a message to other users with links directly to the records in question. This feature enables you to poll your colleagues about a potential conflict that you're unsure about. Because your practice management system contains everyone who works at your firm, you'll see which of your colleagues to contact about a potential conflict.

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Get to Work Quickly

Searching for conflicts of interest is not exactly the most exciting aspect of a law practice, but it's critical because of ethical obligations. Yelling down a hallway is more fun than using a modern practice management system as described above, but the latter will yield more accurate results and enable you to engage new clients quickly — before they hire another law firm. People with legal problems want you to get to work on them quickly.

But don't deprive yourself of some fun. Yell down the hallway to let everyone know that you've signed up a new client.

Paul Purdue is a Senior Engagement Specialist at Affinity Consulting Group (affinityconsulting.com). He's a self-proclaimed "infrastructure nerd." Paul incorporated his first legal tech company (Attorney Computer Systems) in 1980, the same year he graduated from High School, and in 2020 moved his team to Affinity Consulting.