

Does my lawyer have a conflict of interest?

Lawyers have a duty of care to look after their clients' interests. This fact sheet explains how conflicts of interest may arise in your dealings with a lawyer or law practice.

INFORMATION FOR CONSUMERS

Lawyers and law practices are prohibited from acting where a conflict of interest exists, or where there is a perception of a conflict.

There are three common scenarios where a lawyer or law practice may come across a conflict of interest:

- representing one client against a former client;
- representing two or more individual clients with differing interests; or
- where their own business or personal interests differ from those of their client.

These scenarios are explored in further detail below.

Acting against a former client

The lawyer-client relationship does not completely end when a legal matter concludes or when a client changes their lawyer. Lawyers and law practices have ongoing duties to former clients, most obviously the duty of confidentiality.

Lawyers and law practices have an obligation¹ to avoid conflicts between the interests of their current clients and the interests of their former clients. For example, if a lawyer or law practice had knowledge of confidential information about a former client, they should not act against the former client in any matter where that specific information could be used to create an unfair advantage for their new client.

¹ Rule 10 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*

You as a former client

Just because your former lawyer is now on the other side, does not necessarily amount to a conflict of interest. Your former lawyer may be permitted to act for a new client against you if two criteria have been met.

First, your former lawyer must not have any confidential information about you which is relevant to the current matter.

Secondly, your former lawyer must have obtained informed written consent from you that you understand they will be acting for the other side in the matter. You can give your consent to this arrangement if you are confident that no confidential information could be used against you and if you are sure this is a completely separate matter to any previous dealings you had with that lawyer.

Your former lawyer must still be mindful of any duty of loyalty they owe you when acting against you.

Information barriers

Information barriers (commonly termed 'Chinese walls') can be used by law practices to isolate lawyers who do have conflicts. The barrier prevents them from being involved in, or influencing, a matter concerning one of their former clients. The courts recognise² that these information barriers, if enforced effectively, can be sufficient to prevent confidential information from being misused.

Such situations are rare, but may arise, for example, if a lawyer moves from one law practice to another, and their new employer is acting against one of the lawyer's former clients. It can also arise in regional areas where there are few law practices for consumers to choose from.

² See [GILL and WYNNE \(Family Court of Western Australia\)](#)

Acting for more than one client

Lawyers generally should not represent more than one client in the same legal matter. This protects both the lawyer and the clients in the event that the clients' interests diverge, even if their interests start out the same.

There are circumstances where a lawyer or law practice is permitted to act for both sides in a legal matter³. These most commonly occur in business and property transactions and conveyancing. Before the lawyer or law practice commences to act for both sides, they must have formally advised all clients of the arrangements, and all clients must have given their informed consent.

If a conflict does arise between the clients' interests, the lawyer or law practice must cease acting for one or both of the parties immediately. The lawyer or law practice may still represent one party provided their duty of confidentiality is not put at risk and the other party has given their informed consent to the new arrangements.

Lawyers or law practices who fail to obtain fully informed consent from one⁴ or all⁵ clients before commencing to act in a matter risk facing disciplinary action brought by the Victorian Legal Services Commissioner.

Clients' interests conflicting with a lawyer's/law practice's interests

Lawyers and law practices must not allow their own interests to come into conflict with the interests of their clients.

The rules that regulate the legal profession explicitly state⁶ lawyers are not permitted to benefit from their relationship with their client, other than the usual payment for the legal services they have provided. This means that a lawyer must not advise their clients to become involved in their business interests⁷, or the interests of their associates (business partners, friends or relatives).

Lawyers are prohibited from borrowing money from their clients or from a former client of their law practice (save for very limited circumstances).⁸

Lending money to clients is not prohibited; however it may create ethical concerns for the lawyer, particularly if a dispute arises over the repayment of that loan.

Further information

Contact the Victorian Legal Services Commissioner

Tel: 1300 796 344 (cost of a local call)

Email: admin@lsbc.vic.gov.au

³ Rule 11 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*

⁴ See [Victorian Legal Services Commissioner v Christopher Wilson Altus Lawyers](#)

⁵ See [Victorian Legal Services Commissioner v Hume](#)

⁶ Rule 12 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*

⁷ See [Legal Services Commissioner v Needham](#)

⁸ See [Legal Services Commissioner v Adami](#)