AILF INSIGHTS · BUILDING A FIRM

Conflicts of interest: a practical ethics guide for law firms

How Indian law firms should identify and manage conflicts of interest, protect confidentiality and build a culture of professional ethics.

A lawyer's value rests on trust. The client must be certain that the advice is given in the client's interest alone and that what is said in confidence stays there. In a chamber, one person carries these duties. In a firm, they must be built into systems.

The duties in brief

The Bar Council of India's standards of professional conduct require an advocate, among other things:

- to make full and frank disclosure to the client of any interest in the matter;
- not to act for the opposite party after having advised or acted for one side;
- to uphold the client's interests fearlessly by fair means;
- not to disclose communications made by the client in the course of the engagement.

The law of evidence separately protects professional communications between client and advocate.

How conflicts arise in firms

- Two partners are approached by opposing sides in the same dispute.
- The firm is asked to act against a former client in a related matter.
- A lateral hire brings knowledge of an opponent's confidential affairs.
- A partner has a personal or financial interest in a client's counterparty.
- Two clients of the firm compete for the same asset.

A workable system

1. One database. Record every client, counterparty and related entity for every matter.

2. A check before acceptance. No matter is opened until the check is complete.

3. A decision-maker. Name a partner or committee to resolve doubtful cases.

4. Disclosure and consent. Where the rules allow the firm to act, explain the position to the clients concerned and record their informed consent.

5. Information barriers. Where appropriate, separate teams and files. Barriers support the rules. They do not replace them.

6. Lateral hire screening. Ask every new lawyer about previous matters before joining.

Confidentiality in daily work

Most breaches are careless, not deliberate: a conversation in a lift, papers left in a court corridor, a file sent to the wrong address, a client's name mentioned to impress. Train everyone, including clerks and interns.

Technology

Client data placed in any online tool, including artificial intelligence services, must be handled with the same care as paper. Know where the data goes and who can see it.

Culture

Rules are followed where seniors follow them. When a partner declines a profitable matter because of a conflict, juniors learn more than any training can teach.

Why it pays

Clients test these systems before they engage a firm. Sound ethics is not a cost of doing business. It is the business.

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