Conflict Checks Are Risk Management … Are Yours Actually Working?

Conflict of interest failures are consistently among the top five causes of legal malpractice claims — and they're among the most preventable.

The Conflict Check Gap

Most law firms believe their conflict check process is adequate. Most firms also experience conflict check failures. These two facts coexist because conflict check systems tend to be evaluated on whether they exist, not whether they actually catch conflicts. The difference between a process that looks functional and one that genuinely protects the firm is where most of the exposure lies.

Common failure modes include: conflict checks run on the primary client name but not on adverse parties or related entities, new matters opened before the conflict check is completed because of business pressure, attorneys who don't input prior representations accurately into the firm's system, and acquired or merged practices that haven't been fully integrated into the firm's conflict database. Each of these gaps represents potential exposure.

The Post-Merger Conflict Problem

For firms that have grown through merger or acquisition, conflict check complexity compounds significantly. Combining two firms means combining two conflict databases, and those databases are rarely compatible, complete or structured consistently. In the period immediately following a merger, conflict check processes are frequently stressed precisely when they need to perform at their highest level.

The risk isn't hypothetical. Claims have arisen from situations where attorneys at a newly combined firm represented adverse parties in ongoing litigation, without realizing it because the conflict system didn't flag relationships that existed at the legacy firm. These claims are difficult to defend and can involve significant damages, particularly if sensitive information from one representation was accessible by attorneys now representing the other side.

What Underwriters Look for at Renewal

Professional liability underwriters pay close attention to conflict check processes during the renewal underwriting process. Specifically, they want to know whether the firm has a written conflicts policy, what technology the firm uses, how the process is supervised, how often it's tested or audited, and how the firm manages conflicts during lateral hire intake and post-merger integration.

Firms that can speak specifically and confidently about their conflict check process tend to get better underwriting outcomes than firms that describe the process vaguely or inconsistently. This is one area where operational risk management directly affects insurance economics.

A Word From Gallagher

Gallagher's law firm practice team regularly supports clients in preparing for professional liability renewals, including helping firms articulate their risk management processes in the way underwriters find most credible. If your firm has grown through lateral hires or merger activity, a conflict system review before your next renewal can be a meaningful investment. Contact us to learn more.

Connect with us

ANDREW HAUGEN
M: (516) 434-9407
E: andrew_haugen@ajg.com

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