Practitioners owe duties to clients, the courts and the administration of justice, free from the influence of personal bias. Conflicts arise when these duties diverge.

Conflicts can be categorised broadly as:
- a) Actual conflict – the conflict is occurring now;
- b) Potential conflict – the conflict may occur in the future.

Practitioners should also be aware that a perception of conflict by a former client may prevent a practitioner from continuing to act (this is particularly relevant in family law matters where a “lower threshold” is applied).

1. Conflicts between current and former clients:

A practitioner must be conscious of the duties and obligations owed to both current and former clients. These duties and obligations extend past the contractual obligations of the retainer. A conflict of interest will arise where relevant confidential information has been obtained, or where the practitioner owes a duty of loyalty.

1.1 Relevant Confidential Information:

Client information must be both confidential and relevant. Confidential information may comprise of;
- a) the facts specific to the client’s matter; or
- b) what is known as “getting to know you factors”, for example: the client’s personality or attitude to litigation.

There must also be a real and sensible belief (by a former client) or an actual risk that the confidential information will be used to the former client’s detriment.

1.2 Duty of loyalty

The principle of the duty of loyalty preserves the client’s right to the undivided commitment of the practitioner, by restraining the practitioner from preferring one client over another.

This duty arises where a practitioner intends to or does act against a former client in the same or related matter. In the absence of relevant confidential information, a practitioner may still not be able to act against a former client due to the application of this principle.

A duty of loyalty may continue after the termination of the retainer.

1.3 Perception of conflict (proper administration of justice)

A perception of conflict may arise, even where it is established that confidential information has not been obtained (or the information has subsequently lost its confidentiality) or where there is no possible risk of misuse of that information. A practitioner may be required to cease acting if a reasonable and informed member of the public, who is aware of all the facts, would believe that the proper administration of justice would not be done if that practitioner were to continue to act.

2. Acting for multiple clients:

There is no general prohibition against acting for multiple clients in the same matter, however it is generally not advisable to undertake simultaneous representation (even in non-litigious matters). Practitioners must assess in the circumstances, the potential for the various clients’ interests to diverge.
Acting for multiple parties in criminal law matters is often not advisable considering the nature of the representation and the likelihood that the clients’ interests may diverge at a later date. (refer to LIV Guidelines in the Representation of the Co-Accused)

3. **Practitioner’s Personal Interests:**

A practitioner must act in the best interests of the client and remain independent, unaffected by bias or the practitioner’s personal interests. This is because the practitioner is considered to be in a dominant position, where the exercise of undue influence, (intentional or otherwise) places the interests of the practitioner in conflict with the duties owed to the client.

4. **Imputed Knowledge:**

Duties to the client are not only owed by the individual practitioner, but also by the firm. Accordingly, a rebuttable presumption exists whereby a conflict involving an individual practitioner will extend to the firm, unless the firm can provide satisfactory evidence that the presumption should not apply. Such evidence may include the operation of an effective Information Barrier.

The requirements of an effective Information Barrier are onerous and should be constructed with regard to the particular circumstances of each matter and in consultation with the Information Barrier Guidelines.

These principles apply despite the difficulties which may be caused for practitioners moving between firms or where firms amalgamate.

*Adopted by the Council of the Law Institute of Victoria on 25 September 2009.*