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INTRODUCTION

For law firms, conflicts searching is a complex process with high stakes. Unfortunately, following a predetermined checklist and ticking off the boxes is **not enough.**

CHECK LIST
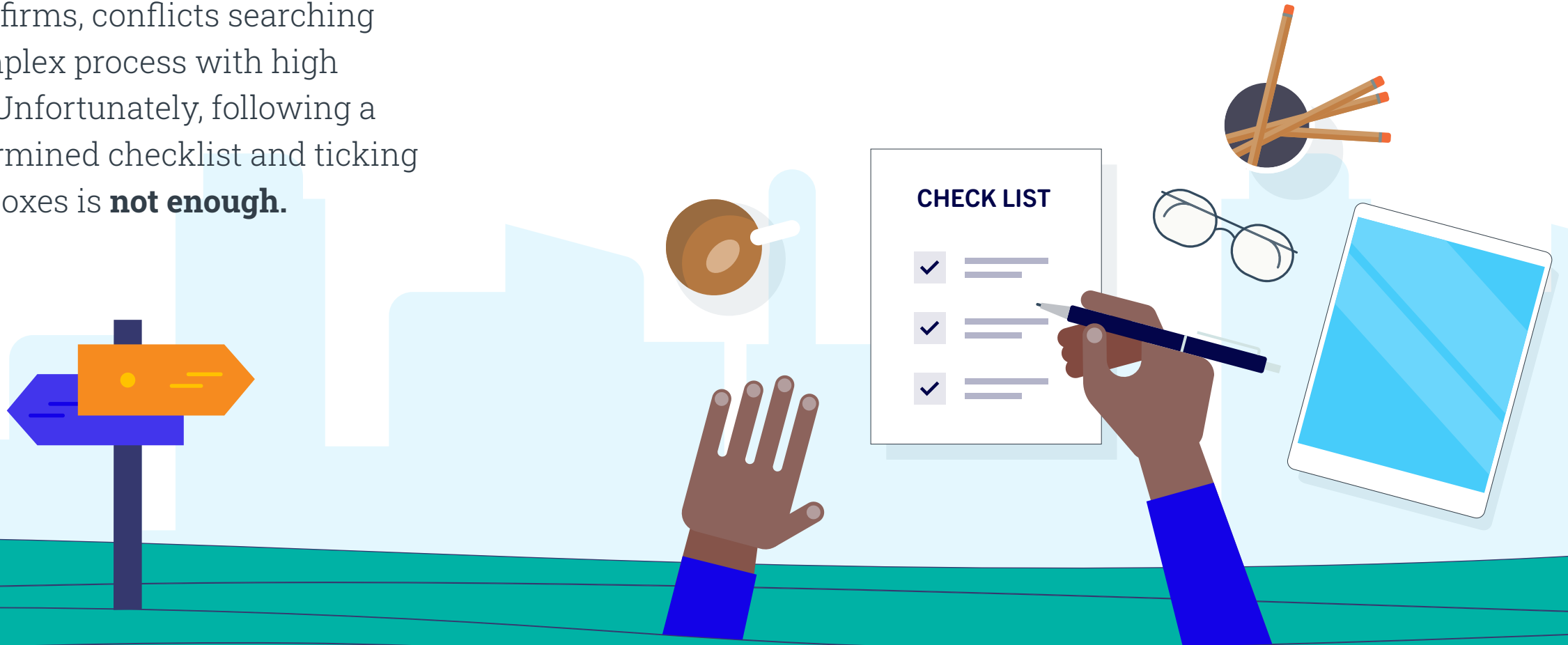
Conflicts are not always obvious, and missing those that are more obscure can present big problems for the firm. Because at the heart of it all, the "why" of conflicts searching is less to protect the firm than to protect the client – to protect their interests by protecting their information.

The goal of each conflicts search is to unravel a complex web of relationships between people and companies to determine whether taking on new work or hiring a particular lawyer has the potential to compromise a client's interests or raise ethical or other business concerns.

While the ethical burden to avoid conflicts of interest is the professional responsibility of each attorney, law schools don't spend much time on the subject. (**Source:** lawpracticetoday.org) To add to the complexity, unrelated to conflicts involving attorneys, firms also face pressures to avoid taking certain kinds of business for reasons that might be regulatory, political, or something else.

Each of these considerations is fundamental to a new business intake analysis. In an increasingly complex business landscape, to adequately protect both the organization and its clients, centralizing the acceptance process and incorporating technology to optimize conflicts searches is becoming a necessity for law firms.

THE STAGGERING COST OF OVERLOOKING CONFLICTS IN THE NEW CLIENT INTAKE PROCESS

As labor-intensive as the conflicts search process may be, conflicts teams know they can't cut corners. Missing a conflict can have **severe repercussions** for a law firm. This isn't just a hypothetical risk — it's happening in the real world.

In ***RevoLaze v. Dentons US (2022),*** Dentons was forced to pay a $32.3 million conflict of interest settlement. Dentons is a massive global firm that operates under the Swiss verein structure, in which multiple firms around the world share a brand but keep their finances separate.

The conflict resulted from this quasi separation, when Dentons US took RevoLaze's patent infringement case ***against*** Gap, Inc., and Dentons' verein affiliate in Canada ***represented*** Gap, Inc. According to a Bloomberg Law article, the three-judge panel found that verein firms aren't separate when it comes to conflicts checks.

The judges wrote:

"We find Dentons US' membership in a verein, with a common conflicts base, that shares client confidential information throughout the organization, is irreconcilable with Dentons US' contention that it was separate from Dentons Canada."

While settlements that size are uncommon, costly consequences of overlooked conflicts — from being disqualified from a case to forfeiting fees, even losing reputation and clients — happen frequently. Most often these punitive effects, or even just an uncomfortable conversation with a client, could have been prevented with a thorough and effective conflicts search.

Although liabilities for the law firm can result from missed conflicts, the client suffers in these situations, too. Thus, identifying and resolving ethical and business issues before problems arise and protecting their client's interests and information is critical to a law firm's success.

WE FOUND THEM, NOW WHAT?

The importance of identifying any conflict of interest during the new client intake process or lateral hiring process is evident. Of course, some representations and hires are prohibited by conflicts of interest; but not every conflict means a firm can't take on the work or hire the employee. In practice, most can be resolved through client consent, disclosures, or the screening of individuals from specific information.
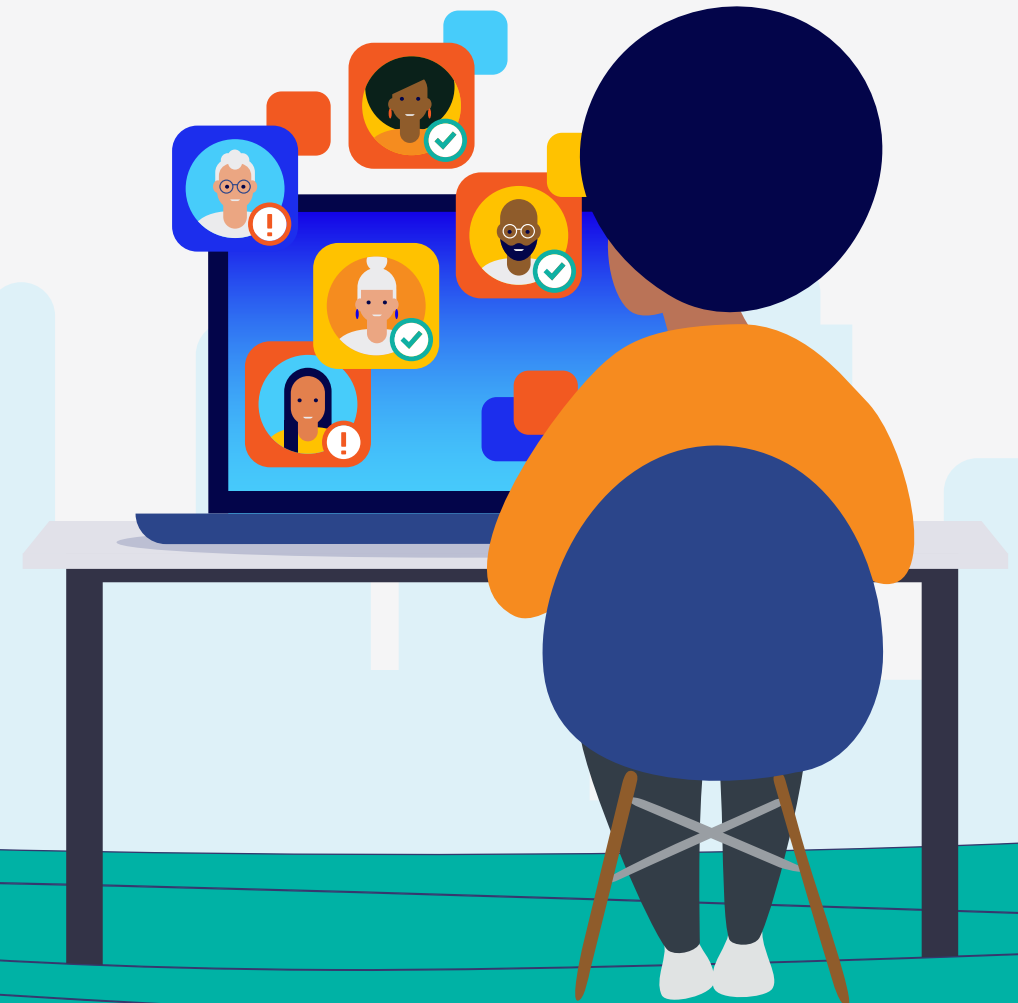
Obtaining client consent about an identified ethical conflict can be delicate. The client needs to be informed enough to meaningfully allow the firm to undertake the conflicting representation but not be given any information that would compromise the lawyer's duty of confidentiality to other parties. Clients may not object to their firms taking on non-contentious conflicting matters as long as their information isn't shared with anyone working on the conflicting matter.

Many jurisdictions allow for information screening as a resolution to conflicts arising from a lateral hire. The new attorney can join the firm, but with disclosures to affected clients and policies preventing that attorney's access to specific information.

Implementing an ethical screen or informational barrier that prevents the sharing of client or matter information with specific people used to be a manual process. Firmwide memos would circulate, announcing and then reminding employees of who couldn't

work on what. Physical filing cabinets could be restricted, but people were responsible for ensuring that the screens were upheld. As information became primarily electronic, technology for creating information barriers supplemented law firms' manual and physical screens.

Policy-based security around client and matter information offers a way to alleviate client concerns about confidentiality and protect client information. Some clients may insist that access to their information is restricted to only those who need it.

Why use policy-based information security?

In an age of rampant cybersecurity threats, every law firm should have some way of controlling user access to help secure critical content across multiple repositories. Policy-based security allows firms to manage access by user, project, or matter for greater flexibility, to avoid exposing sensitive corporate and client data to cybercriminals.

Adaptable access controls also help protect client interests by enabling law firms to:

✓ Implement need-to-know security and information barriers at scale

✓ Respond quickly and effectively to client and regulatory audits

ACHIEVING THE IDEAL BALANCE

Conflicts of interest and other business intake considerations present law firms with a serious dilemma. Firms are at risk of jeopardizing new business opportunities if their process is so thorough that the acceptance of a proposed matter is delayed beyond a reasonable period. Excessive fear of conflicts could cause them to lose out on a potentially outstanding new hire, as well.

Accuracy and efficiency in a conflicts search are key to facilitating fast and effective client intake. Conflicts teams earn the firm's trust when they can quickly and correctly spot issues and escalate potential problems without inundating attorneys with false alarms.

Information restriction can also create friction in a law firm. Attorneys access the collective knowledge of the firm by sharing in one another's experience. Information is arguably the firm's greatest asset, and if it is locked away

its value depreciates. At the same time, unauthorized access to data, or accidental conveyance of information, is a serious problem for the firm and its clients.

Information barriers should therefore be implemented as soon as the need is identified to protect the client, but — so that knowledge management at the firm is not hindered unnecessarily — only to the extent that circumstances require.

Technology can assist with striking this balance. Applications that work together seamlessly allow conflicts results to

drive the creation of information barriers. Solutions should allow for precise and granular access restrictions in addition to the more sweeping "need-to-know" policies required by some clients. Visibility into existing information barriers can inform the boundaries of conversation between members of the firm around business acceptance issues.

This kind of integration is facilitated by taking a platform approach to matter life cycle management.
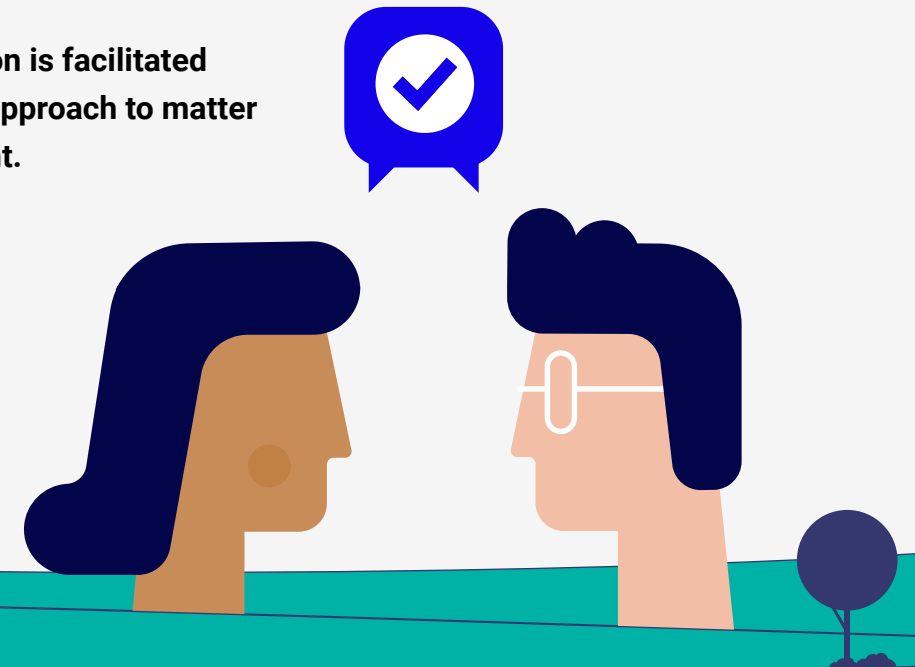
A PLATFORM APPROACH

The life cycle of a matter begins with the initial contact from the client. Information is collected about the nature of the work, the parties involved, the financial aspects of the matter, and the client's engagement requirements. This data being relevant to different groups in the firm, an application that processes matter data as it is entered and surfaces information to the appropriate group or person for a conflicts/risk review is usually the first requirement.

A conflicts searching application takes the matter data and searches against existing firm relationships, external sanctions lists, and corporate tree information. Results of that search need to be analyzed and potentially resolved, which may involve communication about clients and matters, with insight into existing information barriers surfaced in the conflicts application.
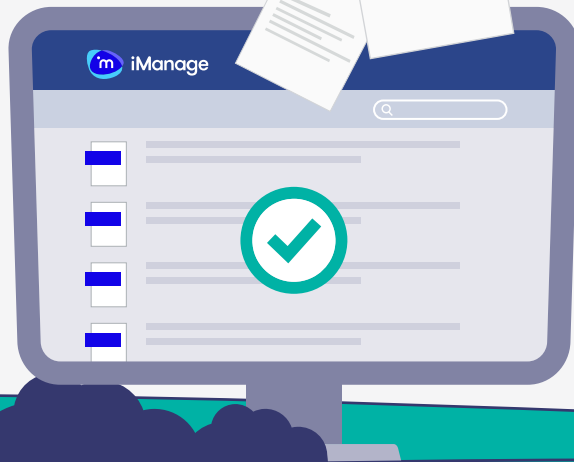
Ideally, any new information barrier needs identified through the conflicts check process can be set up to apply the moment the matter is created. And any documents generated by or gathered through the intake process should be able to flow through to the client or matter file, as appropriate, without having to open a different system. All steps in the process can be achieved effectively and efficiently through a single, scalable platform.

The platform approach to new business intake should do more than identify and resolve conflicts of interest, facilitate business acceptance reviews, and apply information barriers **— it should provide the right balance between speed and transparency, and between access and security.**

iManage

EXPLORE iMANAGE SECURITY POLICY MANAGER AND CONFLICTS MANAGER

iManage offers a fully integrated matter life cycle platform that delivers all the capabilities discussed in this ebook. By leveraging iManage Security Policy Manager from within your iManage solution and adding iManage Conflicts Manager, you can better safeguard your clients' information and better meet your ethical obligations.
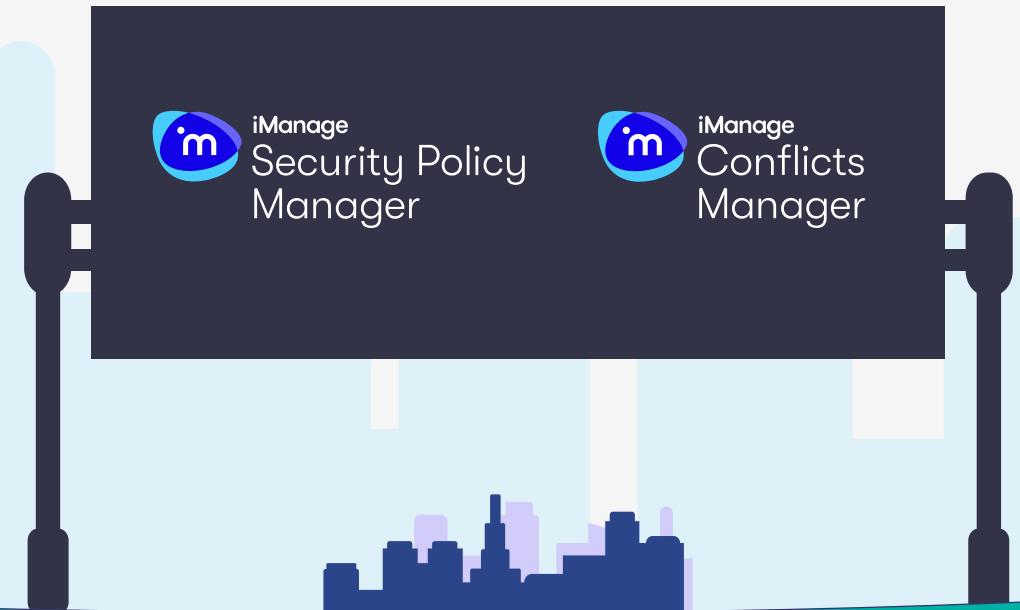
iManage Security Policy Manager allows organizations to enforce need-to-know security and information barriers at scale to meet the growing needs of client, regulatory, and company obligations without sacrificing user productivity and system performance. You and your team work from an intuitive, role-based interface that provides anywhere, anytime access.

iManage Conflicts Manager is a sophisticated conflicts check solution that provides firms with a 360-degree view of all types of conflicts, automated issue spotting, interactive multi-device clearance options, and comprehensive audit history. It helps you enhance risk management, streamline your conflicts checking process, and achieve a competitive advantage.

The seamless integration between these platform applications enables you to run a conflicts search in Conflicts Manager and see an icon that indicates any clients or matters for which there is an applicable information barrier. As the need for new barriers are identified,

Conflicts Manager allows for policy updates without leaving the application. Putting this functionality at the fingertips of your conflicts team saves time, facilitates compliance and increases the quality of your conflicts search results.

iManage
Security Policy
Manager

iManage
Conflicts
Manager

Learn More

Learn how iManage can help your organization safeguard intellectual property, meet ethical obligations, and onboard new employees and clients efficiently during the client intake process.

Contact us for a free demo of iManage Conflicts Manager and iManage Security Policy Manager today.

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Making knowledge work