

**Michigan Department
of
Attorney General**

**Conflicts and Financial
Disclosure Packet**

Instructions

Please complete the Michigan Department of Attorney General Conflicts and Financial Disclosure Packet by following these instructions.

1. Read the Michigan Department of Attorney General Conflict Wall Policy (pp. 1-4).
2. Read Michigan Rules of Professional Conduct (pp. 5-8)
 - ☐ Rule 1.7 Conflict of Interest: General Rule
 - ☐ Rule 1.9 Conflict of Interest: Former Client
 - ☐ Rule 1.10 Imputed Disqualifications: General Rule
 - ☐ Rule 1.11 Successive Government and Private Employment and
 - ☐ Rule 5.3 Responsibilities Regarding Nonlawyer Assistants
3. Read and sign the Michigan Department of Attorney General Conflict Wall Policy and Michigan Rules of Professional Conduct – Rule 1.7, Rule 1.9, Rule 1.10, Rule 1.11 and Rule 5.3 Receipt and Acknowledgment Form (p. 9).
4. Complete the appropriate Conflicts Screening Questionnaire for Lawyers or Non Lawyers, including the Conflict Wall Screening –History of Case Involvement chart (pp. 10-12) if applicable.
5. Read Michigan Civil Service Commission Rule 2-8.3 "Disclosure." (pp. 13-14).
6. Complete the Michigan Civil Service Rule Acknowledgment Form (p. 15).
7. **Please return only** the following pages to the Attorney General's Human Resources Office **within three days of receipt of this packet**. A self-addressed envelope has been included for your convenience.
 - ☐ **Page 9:** Michigan Department of Attorney General Conflict Wall Policy and Michigan Rules of Professional Conduct - Rule 1.7, Rule 1.9, Rule 1.10, Rule 1.11 and Rule 5.3 Receipt & Acknowledgment Form
 - ☐ **Pages 10-12:** Conflicts Screening Questionnaire and chart
 - ☐ **Pages 15:** Michigan Civil Service Acknowledgement Form.

Michigan Department of Attorney General Conflict Wall Policy

Policies and Procedures: Conflict Wall Policy

Effective Date: 06/26/2018

Supersedes: 9.02, 9.03, 9.04, (12/23/1998), 09/13/07

Consistent with the Michigan Rules of Professional Conduct (MRPC), specifically MRPC 1.7, 1.9, 1.10, 1.11, and 5.3, Michigan Formal Ethics Opinion R-4 (September 22, 1989) and *People v Davenport*, 280 Mich 464 (2008), the Department has adopted this Conflict Wall Policy. This Policy requires conflict of interest screening for all incoming staff members prior to working for the Department. It also outlines the establishment of conflict walls for both incoming staff members and existing staff when the existence of, or the potential for, a conflict of interest arises between the staff member and the Department, or divisions within the Department. Conflicts arise under a variety of circumstances, such as where a staff member represented an adverse party prior to his or her working for the Department, litigation arises involving a party or issue with which the staff member has a personal interest, or because separate divisions within the Department represent two adversaries in a particular matter. The purpose of this Policy is to prevent conflict disqualification of the Department in any matter where one or more conflicts occur and to facilitate departmental compliance with applicable ethical standards.

- A. **Application.** This Policy applies to everyone in the Department.
- B. **Conflict Notice by New Staff Members.** Before beginning work for the Department, incoming staff members shall give written notice of all matters (including clients, files, and investigations) in which they may have a conflict of interest warranting establishment of a conflict wall pursuant to the MRPC. Incoming staff members, including all volunteers and law clerks, are required to execute an acknowledgment of compliance with the Conflict Wall Policy established by the Department. See Conflict Notice and Acknowledgment Form located on AG SharePoint.
- C. **Conflict Notice by Existing Staff Members.** In the event that a staff member develops a potential or actual conflict of interest on any matter, the staff member shall give immediate written notice of such conflict to his or her immediate supervisor, stating the case name and docket number, or any other relevant identifying information, and the reason for the conflict. Once notice is given, staff shall act in accordance with the provisions of this Policy.

D. Establishment of Conflict Walls. Conflict walls shall be established when a staff member discloses the existence of a potential or actual conflict of interest to assure compliance with the MRPC and to avoid the Department's imputed disqualification from a pending matter. In the case of new staff members, conflict walls shall be established on the incoming staff member's first day of work for the Department. When the conflict involves an existing staff member, the wall shall be established as soon as possible when the notice of the conflict is given. Once the conflict wall is established, the staff member becomes a "screened" staff member and shall not have access to the screened file or any of its contents. The screened staff member shall not discuss the file with other staff, unless consistent with the Rules of Professional Conduct.

E. Department Screening Notice. Simultaneous with notification to the affected division or divisions, notice shall be circulated or electronically transmitted to all department staff members advising that a conflict wall has been established, identifying any screened staff member(s) and the matter screened, and specifying the conduct appropriate to observe the conflict wall.

F. Prohibitions Against Screened Staff Members. When a department staff member is screened from a matter, other department staff members shall:

1. Exclude the screened staff member from any participation in the screened matter.
2. Refrain from discussing the matter in the presence of the screened staff member.
3. Prevent the screened staff member from viewing any documents or material relating to the screened matter.
4. Refuse to receive any confidential information from the screened staff member concerning the screened matter, unless consistent with the Rules of Professional Conduct.

G. Management of Screened Files. Once a conflict is identified, the affected divisions in the Department shall physically label all hard copy files relating to the screened matter. The label shall identify who is screened from the file so that there will be no question regarding who may view the contents of the file. The file shall be placed in a physically segregated area marked with special coding. Any electronic or computer-generated material related to the file shall be marked accordingly and access to that file shall be denied to any screened staff member. A conflict wall alert note shall be placed in the electronic Legal Files record providing the same information as that placed on the physical file.

H. Instructions to Staff in Charge of Screened File. The staff person or their assistants shall do the following:

1. Attach the full-size goldenrod sheet to the outside of the appropriate file.
2. Affix the magnetic holder to the outside of the file cabinet drawer containing the appropriate file.
3. Complete the Conflict Screening Notice to Court (Div Conflict) or Conflict Notice to Court (New Employee) and file with appropriate court/tribunal.
4. Create an Alert Note for the appropriate file(s) in Legal Files. This will pop up every time the record is opened in Legal Files.
5. Remove the conflict employee from the list of users in the appropriate file in Legal Files (if applicable).
6. Provide written confirmation of compliance with the procedures identified in 1-5 to the Ethics Officer and support staff.

I. Notice to Tribunal and Interested Parties. Department attorneys handling matters in which a conflict wall is established shall promptly give notice to the appropriate tribunal. See Notice of Screening Device Form located in AG SharePoint.

J. Conflicts Between Department Divisions.¹ Should a conflict arise between two or more divisions, such as when the Department agrees to represent clients or advance positions that are in conflict, divisions are required to comply with sections D through I of this Policy unless the conflict involves cases assigned to the Public Service and Special Litigation Divisions. Because the Public Service Division stands alone and is geographically separated from the Special Litigation Division and because these two divisions generally advance conflicting positions or represent competing parties, these two divisions are exempted from complying with sections D through I when in conflict but shall institute the following screening provisions:

1. Identify and treat employees assigned to, or supervising the work of, the competing division as "screened" and, with respect to the screened

¹ See *Attorney General v Michigan Public Service Commission and Detroit Edison Co*, 243 Mich App 487 (2000), for a discussion of the circumstances that create a conflict of interest when the Attorney General acts as a party litigant in opposition to an agency that the Department also represents in the same case. Some situations require an independent special assistant attorney general be appointed.

matter, treat such employees in the same manner as if they were employed by a law firm or entity representing an opposing party.

2. Refrain from discussing the screened matter in the presence of the screened staff members, except as would occur in the ordinary course of the representation if the screened member were employed by a law firm or entity representing an opposing party.
3. Take necessary steps to prevent the screened staff members from viewing documents or material relating to the screened matter, except as would occur in the ordinary course of the representation if the screened member were employed by a law firm or entity representing an opposing party. Such steps should include preventing access to computer files maintained by competing divisions by screened staff members, and limiting screened staff members from access to the file areas of the competing divisions.
4. Establish work-product review procedures, such as litigation approvals and appellate reviews, which assure that supervisory staff members are not simultaneously reviewing material from the screened divisions.

Department supervisors must determine whether any additional notices and procedures are required under the applicable Rules of Professional Conduct.

K. Situations Not Covered by This Policy or Questions Relating to Conflict Wall Procedure. Any situations not covered in this Policy or questions relating to this Policy should be directed to the staff member's direct supervisor and the Department's Ethics Officer.

L. Violations. Any violation of this Policy shall be reported immediately to an employee's supervisor, the Department's Ethics Officer, and the Chief Deputy Attorney General and appropriate corrective measures undertaken to address the violation.

(Revised and approved on 06/14/2018)

Michigan Rules of Professional Conduct

RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

RULE 1.9 CONFLICT OF INTEREST: FORMER CLIENT

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

(b) Unless the former client consents after consultation, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated has previously represented a client

(1) whose interests are materially adverse to that person, and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

RULE 1.10 IMPUTED DISQUALIFICATIONS: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9(a), or 2.2. If a lawyer leaves a firm and becomes associated with another firm, MRPC 1.10(b) governs whether the new firm is imputedly disqualified because of the newly hired lawyer's prior services in or association with the lawyer's former law firm.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, is disqualified under Rule 1.9(b), unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer, and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

RULE 1.11 SUCCESSIVE GOVERNMENT AND PRIVATE EMPLOYMENT

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(c) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as an attorney for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for private

employment in accordance with Rule 1.12(b).

(d) As used in this rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in this rule, the term "confidential government information" means information that has been obtained under governmental authority and that, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public.

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed by, retained by, or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the relevant facts and the specific conduct ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed or has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**Michigan Department of Attorney General Conflict Wall Policy
and
Michigan Rules of Professional Conduct – Rule 1.7, 1.9, 1.10,
Rule 1.11, and Rule 5.3
Receipt and Acknowledgment Form**

I certify that I have received and read the Michigan Department of Attorney General Conflict Wall Policy, as well as Michigan Rules of Professional Conduct Rule 1.7, 1.9, 1.10, 1.11, and 5.3. Additionally, I certify that I comprehend the rules' implications and my responsibilities under them.

Employee Signature

Date

Employee Name *(Please print clearly)*
Date

Expected Start

Title

Division

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MICHIGAN ATTORNEY GENERAL

Dana Nessel, Attorney General

Conflicts Screening Questionnaire for Lawyers/Clerks

Name: _____ Date: _____
(Please Print Clearly)

Pursuant to the Michigan Rules of Professional Conduct (MRPC), unless permitted by law an attorney shall not participate in any matter in which the lawyer had previously participated personally and substantially prior to joining the Department of Attorney General. See MRPC 1.11(c). To ensure compliance with the MRPC and Department policies, please provide the following information:

1. Aside from your pending position with the Department of Attorney General, are you currently engaged in the practice of law? If yes, please list the name(s) of the attorney, firm, government law office, or other entity with whom you are currently engaged in the practice of law and the dates of employment.
2. If you practiced law in any capacity prior to the employment listed in response to question #1 please list the name of the employer and the dates of employment.
3. If your answer to either question 1 or 2 is yes, did you participate in the representation of any party in which the State of Michigan, any of its agencies, officers, or employees was also a party? Aside from the answers to questions 1 and 2, have you ever participated as a judge, arbitrator, mediator, adjudicative officer, or as a law clerk, in a matter in which the State of Michigan or any of its agencies, officers, or employees were a party? If yes, please list your role and the name of the person on whose behalf you were working. To the extent you are able, please include the case name and the court the case was assigned.

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4. Is there any other matter, including financial matters, or person(s), or entity that might reasonably present a conflict of interest or otherwise limit your ability to perform work at the Attorney General's Office including representing a state agency, or representing an individual state employee?

5. If the answer to any of these questions is yes, please identify all files in which you had participated personally and substantially before your employment with the State of Michigan. Please include all: party names, dates, attorneys involved, judges involved, and the courts in which the cases took place. **Use the chart on the following page for your convenience. If you believe the listing is extensive, please contact the Ethics Officer for guidance.**

6. Please list all former employer(s), including your employer before taking this position, along with dates of employment.

7. If you are planning on working or volunteering while employed with, or interning for, the Department of Attorney General, please indicate the name of the organization and your hours of work.

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Conflict Wall Screening - History of Case Involvement

Please identify all files in which you had participated personally and substantially before your employment with the State of Michigan. Please include party names, dates, attorneys involved, judges involved, and the courts in which the cases took place. If more space is necessary, please attach additional sheets.

Party Name: Plaintiffs	Party Name: Defendants	Date(s) Involved	Attorneys Involved	Judge(s) Involved	Court(s)

☐ NO – I DO NOT HAVE ANY CASE HISTORY

-OR-

☐ YES – I HAVE CASE HISTORY and have disclosed it on the above chart, attaching additional sheets as necessary.

I certify that the above information is truthful, complete, and correct. If I learn of any more information I have not already disclosed, I will immediately inform my supervisor so that instant action can be taken to erect a conflict wall.

Employee Name *(Please print clearly)*

Employee Signature

Date

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Michigan Civil Service Rules

2-8.3 Disclosure

(a) Personal and financial interests.

- (1) **Disclosure.** At least annually, an employee shall disclose to the employee's appointing authority all personal or financial interests of the employee or members of the employee's immediate family in any business or entity with which the employee has direct contact while performing official duties as a classified employee.
- (2) **Action by appointing authority.** If an appointing authority determines that the personal or financial interests of an employee or the employee's immediate family represent an unacceptable conflict of interest with the employee's state duties, the appointing authority may take any of the following actions to eliminate the conflict:
 - (A) Require appropriate actions by the employee or the employee's immediate family regarding the personal and financial interests.
 - (B) Change the employee's job, including, but not limited to, imposing a lateral job change, demoting the employee, changing reporting relationships, changing work locations, or reassigning specific tasks.
 - (C) Separate the employee from the classified service if the conflict cannot be eliminated.

(b) Supplemental employment.

- (1) **Disclosure and approval required.** An employee must report all supplemental employment to the employee's appointing authority and must receive approval from the appointing authority to engage in supplemental employment.
 - (A) **Employees.** Before engaging in supplemental employment, an employee must disclose the nature and extent of the supplemental employment to the employee's appointing authority. Thereafter, an employee must report all supplemental employment at least annually as required by this rule, applicable regulations, and the appointing authority.
 - (B) **Newly-hired employees.** A newly-hired employee who is already engaging in supplemental employment at the time of hire must disclose the nature and extent of the supplemental employment as required by an appointing authority.
 - (C) **Changes.** If there is a change in approved supplemental employment, the employee must disclose the nature and extent of the change to the employee's appointing authority within 14 calendar days.
- (2) **Action by appointing authority.** If an appointing authority determines that supplemental employment (1) interferes with the employee's attendance or efficiency or otherwise conflicts with the satisfactory performance of the employee's state duties or (2) represents an unacceptable conflict of interest with the employee's state duties, the appointing authority may take any of the following actions:
 - (A) Withhold or withdraw approval to engage in supplemental employment.
 - (B) Require the employee to modify, limit, or terminate the supplemental employment.
 - (C) Change the employee's job, including, but not limited to, imposing a lateral job change, demoting the employee, changing reporting relationships, changing work locations, or reassigning specific tasks.
 - (D) Separate the employee from the classified service if the conflict cannot be eliminated.

- (3) **Service in the uniformed services; exception.** An employee is not required to obtain approval to engage in supplemental employment in the uniformed services. However, unless precluded by military necessity, an employee must give advance written or verbal notice to the appointing authority of any absence from state duties for service in the uniformed services.
- (4) **Applicants.** As part of the appraisal process, an appointing authority may require an applicant to disclose the nature and extent of all employment that the applicant intends to continue as supplemental employment after the applicant is hired into the classified service.

Michigan Civil Service Rule Acknowledgement Form

I certify that I have been notified that I am subject to Section 2-8.3 of the Civil Service Commission Rules and:

☐ **NO – I HAVE NO INTEREST** – I have no personal knowledge that I, or members of my immediate family, have personal or financial interests in any business or entity with which I have direct contact while performing my official duties as a classified employee.

-OR-

☐ **YES – I HAVE AN INTEREST** – I have, or a member of my immediate family has, a personal or financial interest in the following business or entity with which I have direct contact: _____

I certify that I have read Michigan Civil Service Rule 2-8.3, and I comprehend its implications and my responsibilities under the rule. Additionally, I certify that the above information is complete and truthful. I also understand that I have an obligation to revise this statement as necessary in accordance with this rule.

Employee Signature

Date

Employee Name *(Please print clearly)*

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Questionnaire for Thumbnail Sketches of Assistant Attorneys General to appear in the
Biennial Report of the Attorney General.

Name: _____

Legal Residence: _____

Name of Colleges or Universities attended and Degrees received:

Date of Admission to practice law: _____

Date Appointed Assistant Attorney General: _____

P Number: _____

If Veteran, indicate which war: _____

Division assigned: _____