

Philadelphia DAO Conflicts Policy



Effective Date: March 2018

The DAO recognizes that, from time to time, attorneys have been hired and will continue to be hired who have previously been involved in various capacities in handling Criminal matters. The DAO also recognizes that current case law and the Canons of Professional Responsibility are somewhat imprecise in defining conflicts as relates to prosecutors and, therefore, we have devised a Screening Procedure whose goal is to avoid any impropriety or appearance of impropriety while, at the same time, retaining as many cases as possible and avoiding the indiscriminate transfer of cases to the AG or the Federal authorities.

THE POLICY

This Policy shall apply to any case where a member off the DAO staff is involved in a Criminal case wherein:

- Any staff member has previously represented the defendant or a witness;
- Any staff member is an eyewitness to the crime charged;
- Any staff member is the Complainant;
- Any staff member is a close relative of a party or witness;
- A staff member was a Judge who presided over any stage of the proceedings of a case that is on Appeal or Collateral Attack or is up for consideration of Parole, Probation or Commutation;
- This list is not exhaustive. There are other potential conflict scenarios that might require application of the Conflict Protocol. If in doubt, please consult with the Senior Advisor.

THE PROTOCOL

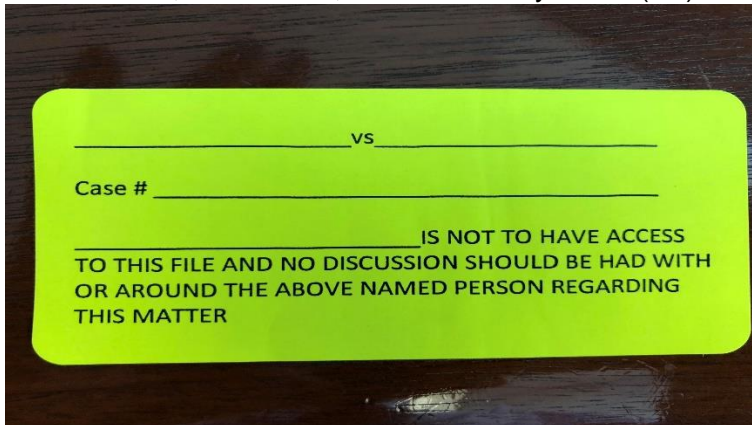
When a staff member becomes aware of the existence of any of the above scenarios, the staff member shall contact the Senior Advisor who will determine, on an ad hoc basis, if the conflict requires referral to another Agency or only screening of the employee. If the Senior Advisor is unavailable, a First Assistant shall make that decision. If referral is required, the First Assistant shall make the necessary arrangements. A formal referral letter will be sent. The First Assistant shall keep a copy of all referral letters and an Agency's acceptance letters in a secure place. In a case where only the screening of the employee is necessary, refer to the procedures below:

SCREENING PROCEDURE

The definition of screening is set out in Model Rule of Professional Conduct 1.0 (k):

*“The isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are **reasonably adequate under the circumstances (emphasis mine)** to protect information that the isolated lawyer is obligated to protect under these Rules or other law.”*

- the personally disqualified lawyer (conflicted lawyer or CL) should be informed of the obligation not to communicate with any of the other lawyers in the DAO with respect to the matter at issue
- other lawyers in the DAO who are working on the matter (assigned lawyer(s) and their supervisors) should be informed that the screening is in place and that they may not communicate with the CL with respect to the matter at issue
- to implement and reinforce the presence of the screening, it may be appropriate in certain instances, to require a written undertaking by the screened lawyer (CL) to avoid any communication with other DAO personnel and any contact with any DAO files or other information relating to the matter at issue
- denial of access by the screened lawyer to DAO files or other information, including information in electronic form, (including but not limited to DAO electronic databases- PARS, PIINS, DAOCMS, eDiscovery [Document Management System], shared network drive, CPCMS) relating to the matter at issue
- placement of a highly visible sticker on each file involving a conflict with information on the file name, file number, and the identity of the (CL) conflicted lawyer



- all communications by and between DAO lawyers on conflicts should be copied to the Senior Advisor.