

# Conflict of Interest Considerations in an Oil and Gas Practice

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1

## When does a conflict become a prohibited conflict?

Your clients may have conflicts with each other:

- Clients may be antagonistic against each other (personal conflicts)
- Clients may compete against each other in the marketplace (economic conflicts)
- One client may be a material witness in a lawsuit involving another client (litigation conflicts)



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2

## Conflicts of Interest – In General

You have an “interest” subject to a “conflict” when the relationship between you and a third party requires the following:

- **Loyalty**
  - Faithfulness to commitments or obligations
  - Advance the other party’s interest over anyone else’s, including your own
- **Good Faith**
  - Duty of Care
- **Independent Judgment**
  - Can you advise without having to show deference to another client?
  - Can you exercise professional judgment in considering alternatives or foreclosing courses of action that reasonably should be pursued on behalf of the client?

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3

Oil Company employs Landman Brokerage A to run title for planned projects in Wilson County and Landman Brokerage B to run title for planned projects in Dimmit County.

- **Oil Company** – Does it create an “interest” subject to a “conflict”?
  - Any loyalty concerns?
  - Any duties of care?
  - Any effect on independent judgment?
- **Landman Brokerage A** – Does it create an “interest” subject to a “conflict”?
  - Loyalty? – Must show loyalty to Oil Company
  - Duty of care? – Yes
  - Exercise of independent judgment?
- **Landman Brokerage B** – Does it create an “interest” subject to a “conflict”?
  - Loyalty? – Must show loyalty to Oil Company
  - Duty of care? – Yes
  - Exercise of independent judgment?

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4

What if we add a few more facts?:

- Oil Company is operator on lands where title is being ran (Operator recently purchased leases). ExploreCo is a non-operator in the same leases and lands and is considering acquiring Oil Company's interest. Both Oil Company and ExploreCo employ Landman Brokerage A to run title in the same lands.
- While Landman Brokerage A is running title, a top-leasing Third Party sues both Oil Company and ExploreCo in attempt to get lease terminated due to lack of producing quantities from well.
- Attorney examines title based on Landman Brokerage B's work and drafts an oil and gas title opinion for Oil Company. The oil and gas title opinion contains a title requirement concerning a complex series of transactions in the chain of title and requires a stipulation of interest from the affected parties and instructs Oil Company to suspend proceeds attributable to this interest until title requirement is satisfied. One of the affected parties in the title requirement wants to hire the Attorney's law firm to represent them in a trespass to try title action concerning the facts addressed in the title requirement against the other parties named in the title requirement.

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5

## **AAPL Code of Professional Ethics, Section 2**

The Land Professional shall exercise the utmost good faith and loyalty to his employer (or client) and shall not act adversely or engage in any enterprise in conflict with the interest of his employer (or client). Further, he shall act in good faith in his dealings with the industry associates.

AAPL Standards of Practice:

- Adherence to a high standard of conduct in fulfilling his fiduciary duties to a principal
- Avoiding business activity which may conflict with the interest of his employer or client or result in the unauthorized disclosure or misuse of confidential information

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6

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