

Private Enforcement
Conference:
Class Action Conflicts

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Puzzle:

Why don't conflicts of interest in class actions routinely result in disqualification?

Conflicts of Interest: Examples

▶ Named Plaintiff Objects to Settlement.

▶ Class Counsel Represent Objector.

Conflicts: Traditional Rules

• Current Client: duties of undivided loyalty and confidentiality.

• Former Client: duty of confidentiality → prophylactic.

• Hot Potato Rule.

Solution

• Why don't conflicts in class actions routinely result in disqualification?

• Courts adapt the rules to the class context.

Conflicts Rules: Adapted to Class Context

Courts say: **balancing**.

Courts do:

• Duty of **confidentiality**, not undivided loyalty.

• Not prophylactic: **actual harm** → confidential info adverse to client.

• No Hot Potato Rule.