

# BUILDING ETHICAL WALLS USING MODERN TECHNOLOGY

## BOTS, BITS & BYTES - MAKING LEGAL TECH WORK FOR YOU AND NOT THE REVERSE

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**As law firms grow and add additional practice areas, it is inevitable that the potential for conflicts and the unintended disclosure of confidential client information will become greater.** To avoid this serious ethics violation risk, a mechanism has been developed to preserve and protect the confidences and secrets of a client and to avoid conflicts of interest. That mechanism is known as an ‘ethical wall’ (also referred to as a ‘Chinese wall’), and lawyers and their staff are under a duty to build such walls. We will examine how to build ethical walls and the role that modern technology plays in achieving that goal.

## Screening for Conflicts

An ethical wall is essentially a screening mechanism designed to protect a client from a conflict of interest by automatically preventing one or more lawyers within a firm from participating in any matter involving that client. The rationale behind the building of ethical walls is to prevent information obtained while representing a client from being disclosed to employees in the firm who represent other clients who may benefit from the information. Hence, the notion of a metaphorical ‘wall’ being created between the holders of information—lawyers or paralegals—and colleagues who represent interests that conflict.

## How the Mechanics Work

Creation of an ethical wall is generally accomplished by prohibiting specific lawyers and paralegals from having any connection with a particular matter, and by banning discussions with prohibited individuals within the firm regarding that matter, and by educating all members of the firm about the separation of the lawyers and paralegals from that particular matter. The need for building ethical walls has become greater in the post-pandemic era, where there has been an increase in lateral hires which concomitantly increases the risk for attorneys carrying with them

potential conflicts to their new firm.

## A Special Risk for Paralegals

It is not just attorneys who are likely to bring with them the potential for conflicts when joining a new firm, but also paralegals. In fact, as more paralegals tend to become freelancers or ‘hired guns’ working for different firms at one time or for multiple firms within a short period of time, the issue of building ethical walls around them is particularly important. When a firm hires a new paralegal who formerly worked for opposing counsel or for the opposing client, the entire firm must be made aware that an ethical wall is to be erected around that paralegal.

Accordingly, no one in the firm may:

- (1) discuss the case in the presence of the paralegal;
- (2) allow the paralegal to access any documents related to the restricted information, including current or archival files; and
- (3) engage in any discussions with the paralegal regarding prior work on the case or work that the paralegal’s previous firm may have provided. If such steps are not taken, then the firm risks disqualification from representing a client. Notably, paralegals themselves are not in a position to determine whether a potential conflict exists, and therefore, it is up to their supervising attorney to make that determination.

**“CONFLICTS OF INTEREST MIGHT DISQUALIFY AN ENTIRE LAW FIRM FROM REPRESENTING CLIENTS WHO ARE ADVERSE TO EACH OTHER IN UNRELATED MATTERS. PROPOSED AMENDMENTS TO THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT WOULD ALLOW THE USE OF AN ETHICAL WALL IN CERTAIN CIRCUMSTANCES TO AVOID VICARIOUS DISQUALIFICATION AND ALLOW REPRESENTATION OF CLIENTS WITH CONFLICTING INTERESTS IN UNRELATED MATTERS.”**

**—Jennifer Becker, Partner at Long & Levit, and a member of the California Bar Board of Legal Specialization in Legal Malpractice**

## Types of Limitations

Ethical walls can operate in two different modes: in one case, default viewing parameters can be set for new matters coming in according to the attorney name or according to the code pertaining to the type of case. Another mode provides for viewing privileges set according to individual matter level. Although basic contact information is typically not restricted by ethical walls, such information as notes, documents, and even calendar events related to the matter will be screened. Users accessing ethical wall systems should be assigned passwords that have various levels of privilege.

## Increased Court Scrutiny

The need for increased inquiry into and effective implementation of a firm's ethical walls was recently underscored by the federal court. In *United States v. Glenmark Pharmaceuticals, USA*, 2:20 CR 00200 (RBS) (E.D.P.A.), a DOJ antitrust price-fixing prosecution against Glenmark and Teva Pharmaceuticals, the DOJ asked the court to assess the adequacy of ethical walls that the law firm of Morgan, Lewis & Bockius put in place as a result of its current representation of Glenmark and prior representation of Teva in the criminal matter, as well as its current representation of

both companies in parallel civil cases. As part of its assessment, the DOJ requested that Morgan Lewis submit written answers to over 40 questions about the details of its internal ethical wall procedures, including how it staffs and manages its ethical walls in light of Pennsylvania ethical rules and how it was handling the issue of fee-sharing between attorneys working on both matters.

The government also requested that Glenmark and Teva answer similar sets of questions regarding their understanding of the procedures, including whether each company had consulted with independent counsel.





This extensive inquiry, especially the questions directed to Morgan Lewis concerning its own internal procedures for implementing ethical walls, went beyond the typical Curcio hearing procedure and signaled that firms might have to implement stricter procedures in certain cases to assure the government and courts of their ability to follow ethical rules.

## The Technology that Exists

Like many regulatory encumbrances, building ethical walls at first seems like it would pose an almost insurmountable burden on law firms. However, as with many solutions to today's seemingly oppressive practice requirements, the answer lies with innovative technology. One such aid is Intapp, a Palo Alto, California developer of Walls 7.0., a leading services industry solution enabling

compliance with confidentiality requirements. Intapp serves FINTECH organizations as well as law firms and claims to provide market-leading performance enhancements to support closed security models. Other similar providers of ethical walls systems include Workplace Security Manager and AGAT, a partner of Microsoft, Cisco, and other technology providers.

Although our modern world has as a cornerstone of progress the breaking down of barriers and tearing down of walls, when it comes to confidential client information, it seems that firms cannot build (ethical) walls fast enough.

## Executive Summary

### 1. The Issue

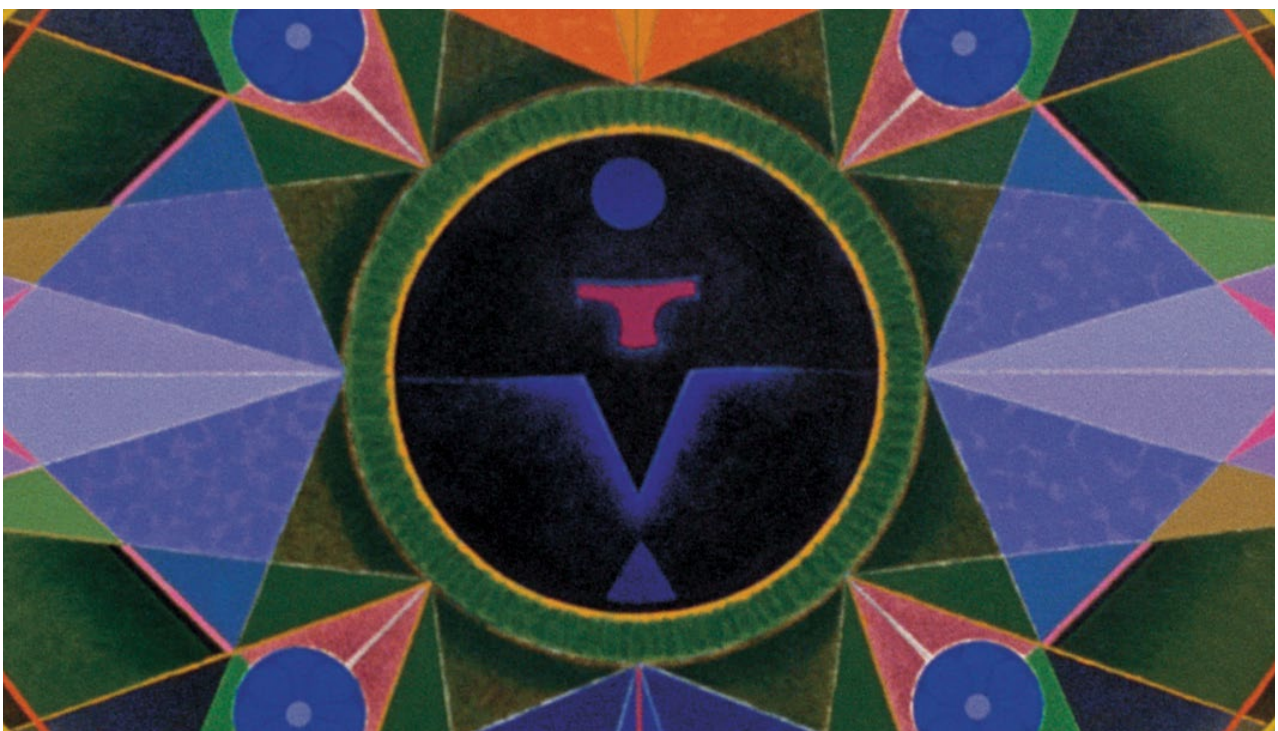
How to build ethical walls in a law firm using modern technology?

### 2. The Gravamen

The risk of accidental or incidental disclosure of confidential client information is greater than ever, and to avoid this serious ethics violation, firms must take all available measures to put up barriers to the unwanted disclosure of such information.

### 3. The Path Forward

The technology exists to erect ethical walls around staff members and documentation that could otherwise lead to the disqualification of a law firm from handling the needs of a particular client or clients.



## Action Items:

### 1 Mind the Urgency:

No practitioners in a firm of any size should be under the misconception that ethical walls are only for Big Law firms with varied practice groups.

### 2 New Employee Scrutiny:

Whether the new employee coming on board is a lawyer or a paralegal, any staff members who have previously worked on other cases must be queried as to the potential for a conflict of interest.

### 3 People and Document Quarantines:

Once the need for building an ethical wall has been determined for a person and/or data, such measures must be strictly enforced, including the banning and of even casual discussions with prohibited individuals regarding the sequestered matter.

### 4 Deploy the Technology:

As adherence to ethical wall building becomes a matter of strict judicial scrutiny, law firms must utilize the latest technology that exists in order to avoid disqualification and possibly sanctions.

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## Further Readings

1. <https://definitions.uslegal.com/e/ethical-wall/>
2. <https://www.lawinsider.com/clause/ethical-wall>
3. <https://training.intapp.com/elearnings/walls-admin-essentials/>
4. <https://bresslerriskblog.com/consulting-conflicts-ethical-walls-client-relationships-pitch-and-experience-management-regulatory-compliance/>
5. <https://www.lawpracticetoday.org/article/ethical-walls-support-firm-growth-post-pandemic-economy/>





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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions. Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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- ▶ Our core team of experienced US attorneys is based in Israel and works US hours. The breadth of experience of our attorneys ensures high-quality, cost-effective results across a wide range of legal, compliance, and regulatory matters.
- ▶ GreenPoint's methodology and proven track record of achieving client objectives has resulted in a broad base of clients in the United States, ranging from Fortune 500 insurance companies to solo practitioners, law firms, in-house law departments, and legal publishers. GreenPoint attorneys are selectively recruited and deployed based on possessing demonstrable subject matter expertise covering a broad spectrum of substantive US laws and regulations. The work product of our attorneys is thoroughly vetted internally before delivery to client. Adherence to quality, value and flexibility is at the core of our foundation.

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- ▶ GreenPoint Global provides litigation support, finance and technology solutions to insurers, law firms, banks, and in-house law departments through our subject matter experts and process specialists.
- ▶ Founded in 2001 and headquartered in Rye, New York, GreenPoint has grown to over 500 employees with a global footprint. We have a stable and growing client base that ranges from small and medium-sized organizations to Fortune 1000 companies worldwide. Our production and management teams are located in the US, India, and Israel with access to deep pools of subject matter experts. Our greatest strength is our employee-base of experienced lawyers, paralegals, process specialists, financial analysts, and software developers. We have leading edge software development capabilities with over 50 professionals on staff, working on internal and client projects.
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