

2004 Pension Lawyers Association Conference
15 - 17 February 2004
Cape Town International Convention Centre

CHANGING TOMORROW
SHARING KNOWLEDGE AND EXPERIENCE.
PREPARING FOR THE FUTURE.

Topic: Conflicts of Interest

Speaker: Jonathan Mort

Employer /

Organisation: Director - Edward
Nathan & Friedland

Conflicts of Interest

- Definition: “Where the interests of a fund are in conflict with the interests of the service provider or in conflict with the interests of another existing or former fund of the service provider.”
- Flows from the fiduciary obligation
 - Pension Funds Act, No. 24 of 1956;
 - *Jowell v Bramwell Jones* 1998 (1) SA 836 (W);
 - Financial Institutions (Protection of Funds) Act, No. 28 of 2001;
 - Erisa
- Different conflicts of interest according to the fiduciary obligation owed.

Conflicts of Interest

Special features of the fiduciary relationship between a service provider and a fund.

- Loyalty to the interests of the fund.
- Service provider cannot profit at the expense of the fund.
- Service provider must respect the confidentiality of the fund.
- Service provider must not allow conflict of interest situation to arise.

Different types of conflicts of interest

- Existing client conflict.
- Former client conflict.
- Personal conflict.
- Commercial conflict.
- Judicial conflict.

Chinese Walls

Specific problems

- Umbrella funds, preservation funds and retirement annuity funds.
- Multi-disciplinary services and beauty parades.
- Trustee responsibility to ensure that conflicts of interest do not arise in relation to the service providers.
- Gifts and indirect benefits.
- Free services by service providers.

Conflicts of Interest

- Perception is as important as the reality.
- Not all conflicts of interest can be managed – some can only be dealt with by being removed.

THANK YOU FOR LISTENING