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Office Sharing and Professional Responsibility

Introduction

Many lawyers share office space with other lawyers with whom they are not affiliated. Lawyers with solo practices frequently work in office suites in which they have individual offices but share conference rooms, a receptionist and perhaps other support staff, and office equipment, such as copiers and printers with other lawyers. Some lawyers contract with companies such as Regus that provide furnished workspaces for a fee, either to maintain a regular physical presence or, if the lawyers are practicing virtually, to provide receptionist services and a venue for meetings and other occasional activities requiring a formal office. Law firms with vacant offices may sublease space to unaffiliated lawyers.

Office sharing arrangements afford lawyers a variety of professional benefits. They also offer lawyers who might otherwise work in isolation at least some small sense of community. At the same time, office sharing raises professional responsibility concerns that lawyers must appreciate. Fortunately, these concerns are manageable.[1]

Preserving Client Confidentiality

Lawyers' ethical duty of confidentiality is essential to the attorney-client relationship. Indeed, confidentiality is often thought to be the highest professional duty that lawyers owe clients. A lawyer generally may not reveal information related to a client's representation without the client's informed consent, or unless the disclosure is impliedly authorized to carry out the representation. Lawyers' duty of confidentiality is broader than the attorney-client privilege.

Office sharing relationships test lawyers' ability to maintain the confidentiality of client information. Confidentiality challenges manifest themselves in several ways. To start, lawyers who share office space occasionally may want to consult with one another to capitalize on their differing expertise and thereby better address their respective clients' problems. In some instances, they may feel the need to do so to compete with larger firms. For example, one lawyer who shares office space states on his website that he practices in a collegial environment that houses several other lawyers, such that he is not working in a bubble, and can draw on the knowledge of other experienced lawyers without incurring the overhead of a large firm. Of course, unless he speaks hypothetically or otherwise anonymizes information by which a client or client matter could be identified, the lawyer can mine his office mates' wisdom and expertise only with clients' informed consent. The fact that unaffiliated lawyers office together does not license them to share client information among themselves.

1Lawyers seeking guidance on professional responsibility aspects of office sharing may consult a number of ethics opinions, including ABA Comm. on Ethics & Pro. Resp., Formal Op. 507 (2023); Ariz. Formal Op. 01-09 (State Bar of Ariz., Comm. on the Rules of Pro. Conduct 2001); CA Eth. Op. 1997-150, 1997 WL 240818 (Cal. State Bar, Comm. on Pro. Resp. 1997); Colo. Formal Ethics Op. 89 (Colo. Bar Ass'n, Ethics Comm. 2018); CT Eth. Op. 04, 2014 WL 12823983 (Conn. Bar Ass'n, Comm. on Pro. Ethics 2014); D.C. Bar, Ethics Op. 303 (D.C. Bar, Legal Ethics Comm. 2001); IL Adv. Op. 85-14, 1986 WL 378934 (Ill. State Bar Ass'n 1986); MI Eth. Op. RI-249, 1996 WL 381521 (Mich. State Bar, Comm. on Pro. & Jud. Ethics 1996); Mo. Informal Op. No. 950169 (Off. of Legal Ethics Couns. & Advisory Comm. of the Sup. Ct. of Mo. 1995); Neb. Eth. Advisory Op. 89-2, 1989 WL 1803035 (Neb. Jud. Ethics Comm. 1989); NJ Eth. Op. 498, 1982 WL 117856 (N.J. Sup. Ct., Advisory Comm. on Pro. Ethics 1982); NY Eth. Op. 939, 2012 WL 6087183 (N.Y. State Bar Ass'n, Comm. on Pro. Ethics 2012); OH Adv. Op. 2022-11, 2022 WL 10219976 (Sup. Ct. of Ohio, Bd. of Comm'rs on Grievances & Discipline 2022); OH Adv. Op. 2017-05, 2017 WL 4398713 (Sup. Ct. of Ohio, Bd. of Comm'rs on Grievances & Discipline 2017); OR Eth. Op. 2005-50, 2005 WL 5679639 (Or. State Bar Ass'n Bd. of Governors 2005); S.C. Adv. Op. 08-11, 2008 WL 8089795 (S.C. Bar, Ethics Advisory Comm. 2008); Va. Legal Eth. Op. 943, 1987 WL 1378998, at *1 (Va. State Bar, Legal Ethics Comm. 1987); Va. Legal Eth. Op. 754, 1986 WL 1180470 (Va. State Bar, Legal Ethics Comm. 1986). This article draws on these opinions.

In addition, lawyers who share offices may inadvertently reveal client information through conversations in areas where they can be overheard or by leaving documents out in the open. The innocent act of telling a shared staff member certain information about a client may complicate the client's representation.

There are a number of fundamental measures that office-sharing lawyers can take to preserve client confidentiality. These include (1) not discussing client matters in common areas to avoid inadvertent disclosures of client information; (2) closing their office doors when discussing client matters over the telephone or when meeting with clients; (3) ensuring that client files or materials are not left unattended in conference rooms or other common areas; (4) promptly retrieving documents from shared copiers or printers; (5) maintaining a clean desk policy; (6) not sharing or displaying computer passwords where others might see them; (7) installing privacy screens on computer monitors; (8) locking out access to computers when not actively in use; (9) storing clients' paper files in secure filing cabinets or offices; and (10) reminding staff members – especially shared staff members – of their confidentiality obligations. If lawyers' computers are connected to a shared network, their online files or folders should be secured by individual credentials and other appropriate security measures to prevent lawyers or staff from gaining access to information belonging to another lawyer. As a rule, it probably is better for an office to provide a Wi-Fi network that all lawyers can connect to but for the lawyers to maintain individual systems.

Clearly Communicate Lawyers' Relationships

In addition to safeguarding client confidentiality, lawyers who share offices but who are not part of the same law firm must make reasonable efforts to clearly communicate the nature of their relationship to clients, prospective clients, and the public. In short, they cannot give the impression that they are partners in the same law firm or practice in the same firm when that is not so. The need for such clarity flows from Rule 7.1 of the Model Rules of Professional Conduct and state equivalents, which provide that lawyers cannot make false or misleading communications about themselves or their services.[2] A comment to Model Rule 7.1 specifically emphasizes that "[l]awyers may not imply or hold themselves out as practicing together in one firm when they are not a firm . . . because to do so would be false and misleading."[3]

Lawyers who practice in office sharing arrangements should have their own business cards, letterhead, websites (if they have one), and directory listings. They should also practice in their own names or separate firm names. If they advertise their services, they should do so in their own names or in their firm's name. Any office signage should make clear that the individual lawyers working in the space are not associated in a law firm. Ideally, the lawyers should have their own telephone lines that a receptionist can answer in the particular lawyer's name, but it is permissible for a receptionist to answer a common telephone line with a generic greeting such as "law offices" that does not imply the lawyers are practicing together in the same firm, and then transfer callers to the appropriate lawyer.

It may not be possible for unaffiliated lawyers who sublease space from a law firm or who contract for office space with companies such as Regus to have separate signage. Even so, they must take reasonable measures to ensure that clients and prospective clients are not confused about their relationships with other lawyers practicing in the same space. Lawyers can accomplish this by briefly explaining their office arrangements in their engagement letters or by informing clients about the nature of their practice arrangements when inviting them to visit their offices.

Conflict of Interest Considerations

Conflicts of interest are a perpetual concern for all lawyers. A conflict of interest may require a lawyer to decline a desirable representation, withdraw from a representation already underway, or disgorge fees earned in a matter. Conflicts also expose lawyers to professional discipline and professional liability claims. For lawyers in office sharing arrangements, a few conflict of interest considerations stand out.

Imputed Conflicts

Under Model Rule 1.10(a), a lawyer's conflict of interest is generally imputed to all other lawyers "associated in a law firm."[4] The imputation of conflicts of interest rests on the premise that a law firm is essentially one lawyer where client loyalty is concerned or, alternatively, that each lawyer is vicariously bound by the duty of loyalty owed to clients by each lawyer in the firm. Where office sharing lawyers are concerned, the imputation of one lawyer's conflict of interest to other lawyers in the office arrangement will depend on whether the lawyers appear to their clients or to the public as being "associated in a law firm."

Ethics rules do not presume that office sharing lawyers constitute a single law firm for conflict of interest purposes. Rather, whether office sharing lawyers should be treated as being part of a single

2 Model Rules of Pro. Conduct r. 7.1 (Am. Bar Ass'n 2024).
3 Id. cmt. 7.
4 Id. r. 1.10(a).

law firm depends on the facts and circumstances of their arrangement. In *In re Sexson*,[5] for example, the Indiana Supreme Court found that a sole practitioner, David Sexson, was associated in a firm with another lawyer, Rollin Thompson, for purposes of a current client conflict of interest under Rule 1.7. In hindsight, Sexson's and Thompson's association for conflict purposes should have been apparent. They maintained an office in a remodeled house with four other lawyers. All the lawyers shared one secretary, used a common letterhead as stationery, and used three common telephone lines. The lawyers regularly left their offices unlocked and the doors open. Their respective file cabinets could be seen by other lawyers' clients from a common hallway and conversations in the lawyers' individual offices could be heard in the hallway. Consequently, Thompson's conflict of interest in a personal injury case was imputed to Sexson in a separate domestic relations proceeding. And, because Sexson was held to have violated Rule 1.7 by virtue of the imputed conflict, he was subject to professional discipline. He fortunately escaped with only a reprimand – as if that were not bad enough.

As this case illustrates, office sharing lawyers should mitigate the risk of discipline and disqualification due to imputed conflicts by scrupulously protecting the confidentiality of client information, as by closing their office doors when talking with clients and locking their offices when they are away. It is also important that they identify their practices as being independent of their office mates' practices through separate letterhead and business cards. Finally, they should avoid regularly consulting with other lawyers in their office suites about client matters.

Ethics rules do not presume that office sharing lawyers constitute a single law firm for conflict of interest purposes. Rather, whether office sharing lawyers should be treated as being part of a single law firm depends on the facts and circumstances of their arrangement.

Representing Clients with Adverse Interests

If office sharing lawyers properly maintain their respective clients' confidentiality and do not hold themselves out to the public as members of the same firm, it may be possible for them to represent clients with adverse interests – even in the same lawsuit or transaction. Naturally, this determination will ultimately turn on the nature of the matter and the specifics of the office sharing arrangement. Depending on the circumstances, the lawyers may need to disclose to their respective clients the details of their office sharing arrangement, including their efforts to maintain confidentiality, and obtain their clients' informed consent to the representations. The clients' informed consent must be confirmed in writing – ideally on a form signed by the client.[6] If the lawyers share staff, no staff member should have access to information from both adverse clients.

Although it is allowable for office sharing lawyers to represent clients with adverse interests, that does not necessarily mean it is wise to do so. At a minimum, there is always the risk of inadvertent disclosures of client information. In some cases, the prospect of the clients coincidentally meeting in the offices may discourage the lawyers from accepting the representations. For these and other reasons, some ethics authorities caution office sharing lawyers against representing clients with adverse interests despite the permissibility of the practice.[7]

Lawyers who are considering entering into office sharing arrangements may want to first explore to the extent possible the practices of other lawyers in the same suite to evaluate whether conflicts of interest are likely to arise. In some office sharing arrangements, the lawyers practice in different areas of the law and accordingly represent different types of clients, such that there is little chance of adverse representations. In other situations, the lawyers' practices may be sufficiently similar that the potential for adverse representations is very real. If a lawyer considering office sharing is concerned about the prospect of conflicts of interest, he or she might choose to office elsewhere or could instead decide to decline certain types of matters on the theory that the potential rewards do not justify the accompanying complications. If the lawyer opts to practice in an office sharing arrangement in which adverse representations are possible, that choice amplifies the importance of the lawyer protecting client confidentiality and avoiding any conduct that might imply an association with the other lawyers in the suite for purposes of imputed conflicts under Rule 1.10(a).

5 613 N.E.2d 841 (Ind. 1993).

6 In an appropriate case, a lawyer might make these disclosures in the engagement letter for the matter and then require the client to sign the engagement letter.

7 *See*, e.g., S.C. Adv. Op. 08-11, *supra* note 1, at *1; Va. Legal Eth. Op. 943, *supra* note 1, at *1.

Consultations Between Office Sharing Lawyers

It is normal for office sharing lawyers who are friends or whose practices are similar to want to casually consult one another about their respective client matters. "Picking the brain" of a fellow lawyer is a common occurrence in a range of practice settings and frequently benefits clients. As noted earlier, occasionally engaging in informal consultations does not result in the lawyers being "associated in a firm" under Model Rule 1.10(a). Of course, as also highlighted earlier, such consultations potentially jeopardize client confidentiality. More to the immediate point, consultations between office sharing lawyers can create conflicts of interest that prevent a consulted lawyer from representing a current or future client under Model Rule 1.7.

Assume, for example, that Lawyer *A* and Lawyer *B* share an office suite. Lawyer *B* is more experienced than Lawyer *A* and is a good source of practical guidance for Lawyer *A* and others in the suite. Lawyer *A* consults with Lawyer *B* about a transaction or a piece of litigation that Lawyer *A* is handling and, in the process, discloses client information to Lawyer *B*. In that scenario, Lawyer *B* may assume an obligation not to use or reveal the information, which could materially limit Lawyer *B*'s ability to represent a current or future client. This situation is analogous to the duty of confidentiality that lawyers owe prospective clients in other contexts and the conflicts that may result if a lawyer receives too much information from a prospective client during an initial consultation.[8]

Conclusion

Many lawyers share office space with unaffiliated lawyers. For those who do so, it is important to understand the professional responsibility implications of their arrangements. In summary, lawyers who share offices must take reasonable precautions to protect client confidentiality, clearly communicate to clients and the public the nature of their relationships with the other lawyers in the office, and avoid conflicts of interest.

8 ABA Formal Op. 507, *supra* note 1, at 6.

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