



## Keeping Your Office Sharing Arrangements with Other Lawyers Squeaky Clean Under the Ethics Rules

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These days there are lots of advantages to going solo without “going it alone.” If you are a solo lawyer just starting out, sharing office space will allow you to pool resources, save money and ease the isolation of practicing alone. But before entering into an office sharing arrangement with another lawyer it is imperative that you know exactly what you can and can not share, whether it be rent, computers—or even clients. Since the ethics rules don’t always address the issues head-on, it’s a good idea to keep an eye out for ethics opinions in your jurisdiction that address the nitty gritty of office sharing arrangements. Lawyers should also be mindful that sharing office arrangements with non-lawyers is a separate issue that subjects lawyers to distinct ethics requirements.

### Maintaining Professional Independence

When sharing office space with other lawyers you must maintain professional independence *and* ensure that the public is not misled into thinking that you share a professional affiliation with others in your office when such is not the case. ABA Model Rule 7.5 (Firm Names and Letterheads) generally prohibits lawyers from practicing under a false or misleading firm name or letterhead. Solos who share office space should take note of subsection (d) of that Rule, which prohibits lawyers from stating or even implying that they practice in a partnership or other organization except “when that is the fact.” Comment [2] to Rule 7.5 specifically forbids lawyers who share office facilities but who are not in fact associated with each other in a law firm from using a name such as “Smith and Jones,” since that denomination suggests they are practicing together in a law firm. The same is true for combining letterhead, business cards, directory listings or signage, since the public may be misled into thinking that you are practicing in a partnership or other professional affiliation in violation of Rule 7.5.

Office-sharing solos who have attempted to circumvent Rule 7.5 by suggesting that they are operating within an informal affiliation of attorneys have not met with success. For example, a New York City Bar ethics opinion determined that it was improper for lawyers in an office sharing arrangement to describe themselves as “Law Offices at X Square,” while a Utah ethics panel found it improper for lawyers sharing an office to describe themselves as “an association of solo practitioners.” New York City Ethics Op. 1995-8 (1995); Utah Ethics Op. 86 (1988).

Thinking about making your officemate “of counsel” to your solo practice instead? Such a decision could spell ethics trouble as well, since most jurisdictions consider it inappropriate to use the term “of counsel” to refer to a lawyer who merely shares office space. Lawyers may hold themselves out as “of counsel” and law firms may hold themselves out as “affiliated with” or “associated with” other law firms or lawyers only when the relationship supports that claim. According to ABA Formal Ethics Opinion 90-357—Use of Designation “Of Counsel” (1990), a lawyer may not be called “of counsel” to a firm unless the lawyer and firm enjoy “a close and continuing relationship,” which involves “frequent and continuing contact.” Although daily contact is not required, according to the ABA ethics committee the relationship requires more than a mere availability “for occasional consultations.” The ABA has published two other ethics opinions that

shed further light on the topic of firm relationships, including ABA Formal Op. 94-388—Relationships Among Law Firms (1994), and ABA Informal Op. 84-351—Letterhead Designation of ‘Affiliated’ or ‘Associated’ Law Firms (1984).

### **Avoiding Conflicts**

Lawyers sharing office space should also be aware of the dangers of simultaneously representing clients whose interests are adverse, particularly where it appears to the public that the lawyers’ offices are affiliated. To avoid the appearance of a conflict of interest, offices should be structured and managed in a way that does not allow for confidences to be shared. Although the representation of adverse clients by office-sharing lawyers is not generally prohibited *per se*, many ethics authorities discourage such arrangements and may require client consent. In extreme cases even client consent may not cure the conflict arising from the relationship of the office-sharing lawyers. For example, a Maryland ethics authority refused to allow a lawyer for one party in an adoption proceeding to refer the other party to a lawyer who leased office space and secretarial, receptionist, and accounting services from him, even though the birth parents were willing to consent to the adoption given the office arrangement. Maryland Ethics Op. 91-43 (6/19/91).

In a recent Oregon opinion, lawyers who shared office space were permitted to represent opposite parties in a lawsuit—but only as long as they refrained from holding themselves out to the public as members of the same firm, respected their individual clients’ confidences and secrets, and maintained separate files. Oregon Ethics Op. 2005-50 (8/05). However, the Oregon panel emphasized that if the lawyers shared even a single common employee who was privy to the confidences and secrets of both lawyers, the representation of adverse parties would be prohibited.

Lawyers sharing office space who are perceived as practicing in a partnership or other professional affiliation also risk being disqualified from representing adverse parties under the ethics rule regulating imputed disqualification. ABA Model Rule 1.10 (Imputation of Conflicts of Interest: General Rule) prevents a lawyer from representing a client that any other lawyer in his or her firm is prohibited from representing under the conflicts rules unless certain requirements are met. For example, in Monroe v. City of Topeka, 988 P.2d 228 (1999) a Kansas court found that lawyers who shared office space, a telephone, fax number and mailing address conducted themselves as a firm, and thus came within the purview of Rule 1.10 for disqualification purposes.

### **Sharing Fees**

As a new lawyer or solo practitioner it may be especially advantageous for you to either refer a case to another lawyer or affiliate with co-counsel on a case and agree to share fees. Since lawyers who merely share office space are not considered members of the same firm, if you decide to share legal fees the agreement must comport with the requirements of subsection (e) of ABA Model Rule 1.5 (Fees) or a state equivalent. Model Rule 1.5(e) allows lawyers to divide fees in two ways. First, fees may be divided on the basis of the proportion of services rendered. Alternatively, if the division of fees will not be based upon the allocation of services rendered by each attorney, fees may be divided if each lawyer assumes responsibility for the representation as a whole and the client agrees in writing to the participation of each lawyer, including the share of the fee each lawyer will receive. It should be noted, however, that state versions of Rule 1.5 vary, with many requiring that a division of fees be made in proportion to the services performed. Thus, you should check your state’s version of Rule 1.5 to familiarize yourself with local fee-splitting requirements.

### **Protecting Confidences**

Lawyers sharing office space with other lawyers must ensure that the office is physically organized in a way that protects confidential client information. That means keeping separate,

secure systems for files, computers, telephones, and fax transmissions so that other lawyers and their employees are unable to access confidential client information.

What about sharing office personnel? Ethics authorities generally approve of lawyers sharing a receptionist so long as that person does not have access to confidential information and does not foster the perception that the lawyers are operating as a firm. However, states typically address such issues in ethics opinions and may have different requirements. For example, a Kansas ethics panel stated that two law firms in that state could share a receptionist if the files were segregated *and* the arrangement was fully explained to clients. Kansas Opinion 99-01 (3/9/99). If access to faxes was not restricted, the lawyers were required to inform the clients that faxes could be read by someone other than firm members or employees. Additionally, the panel concluded that the firms could not serve as “of counsel” for each other, and must ensure that the receptionist does not imply that they practice as a partnership. A District of Columbia ethics opinion issued in 2001 similarly advised lawyers in that jurisdiction to direct receptionists not to imply that the law firms were affiliated when answering the telephone. The D.C. ethics panel suggested that a proper greeting would be “Law Offices.” D.C. Ethics Op. 303 (2/20/01).

Oh the other hand, most state ethics authorities advise lawyers to avoid sharing office personnel, such as secretaries, who have access to client information. For example, an Indiana ethics panel decided that lawyers who shared office space and a secretary could not represent adverse interests in a matter because it was presumed that the secretary had access to the files of both lawyers. Indiana Ethics Op. U4 of 1990 (undated).

Solos who wish to avail themselves of the benefits of office sharing should focus on maintaining professional independence, avoiding conflicts, protecting client confidences and sharing fees in accordance with the ethics rules. But if one overriding principle prevails, it is this: if you present yourself to the public in a way that suggests that you and your office mates are a firm, or conduct yourselves as a firm, you will be regarded as a firm for purposes of the ethics rules—and that *could* mean ethics complications for the unwary practitioner.

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