

89

OFFICE SHARING AND VIRTUAL OFFICES

Adopted September 21, 1991

Revised and reissued March 12, 2018

Introduction and Scope

Sharing office space is a common, time-honored method of association among practicing lawyers. It may provide reduced operating costs, collegiality among lawyers, and a convenient source of lawyers to fill in for one another when one is sick or on vacation. At the same time, office-sharing arrangements allow lawyers to retain the financial independence and control over their practices valued by sole practitioners not sharing offices. Recently, lawyers have been utilizing “virtual” offices, in which an attorney performs most work from a home office or other location while renting or using other shared spaces to, for instance, meet with clients or take depositions. Using offices in executive-suite-style facilities has also become popular among lawyers. While deriving benefits from these arrangements, lawyers should be aware of the potential ethical problems they may present.

Syllabus

This opinion addresses the following ethical issues that can arise in office-sharing arrangements under the Colorado Rules of Professional Conduct (Colo. RPC or the Rules): conflicts of interest in violation of the duty of loyalty to clients; preservation of client confidences; and use of letterheads and names. Factual patterns illustrating common problems are included to demonstrate the application of general ethical principles to specific areas of concern.

Lawyers sharing offices may represent clients with conflicting interests only if the representation does not violate the rules governing conflicts. For example, the financial, business, and operating relationships among the lawyers must not create conflicting interests that could violate the current-client and former-client conflict rules. Whether a conflict exists will often turn on whether office-sharing lawyers are deemed to be practicing in a single “firm,” so that their conflicts are imputed to each other. Where there is a conflict that is imputed to office-sharing lawyers, they may nevertheless represent clients with conflicting interests if each lawyer can adequately represent the interest of the client, and if each client gives informed consent, confirmed in writing, to the representation.

Office-sharing lawyers must take precautions to avoid disclosure of client confidences and information related to the representation of clients in all matters. Office-sharing lawyers should be particularly attentive when they or their employees have access to each other’s file storage and/or have shared reception areas, staff, computer, or telephone equipment. Important factors to consider in protecting confidentiality are sharing of staff and equipment and the over-

lap in the areas of practice between the lawyers. The more shared equipment and staff or the larger the overlap in areas of practice, the greater the potential for inadvertent disclosure of client confidences and secrets.

Finally, office-sharing lawyers must scrupulously avoid any representation to the public that there is a professional corporation, partnership, associate, or other law firm or employment relationship between or among them when no such relationship exists. Otherwise, an office-sharing lawyer may mislead the public that the other lawyer in the office bears some additional responsibility for the office-sharing lawyer's legal services.

Analysis

I. Conflicts of Interest

The Rules require that lawyers be loyal to their clients and that the lawyers be free from influences that may affect such loyalty. Colo. RPC 1.7; Colo. RPC 1.8; Colo. RPC 1.9; *Allen v. Dist. Court*, 519 P.2d 351 (Colo. 1974). Comment 1 to Colo. RPC 1.7 notes that “[l]oyalty and independent judgment are essential elements in the lawyer's relationship to a client.”

A. Imputed Disqualification

Rule 1.0(c) defines a “firm” as including “a partnership, professional company, or other entity or a sole proprietorship through which a lawyer or lawyers render legal services.” Comment [2] to that rule addresses office-sharing lawyers:

Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

Colo. RPC 1.10 governs imputation of conflicts of interest to lawyers in a firm. Colo. RPC 1.10(a) states that no lawyers who are currently associated in a firm “shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.” Comment [3] to Colo. RPC 1.10 notes:

The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case [is] owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

Ethics opinions issued by other states have relied upon rules of imputed disqualification to disqualify one office-sharing lawyer from representing a particular client when another lawyer in the same suite of offices represents the adverse party. *See generally* “Sharing Office Space,” *Laws. Man. on Prof. Conduct (ABA/BNA) § 91:607* (2017).

Accordingly, office-sharing attorneys generally should avoid representing clients with actual or potential conflicting interests to each other. Rule 1.7(a)(1) prohibits a lawyer from representing a client that is directly adverse to another client. Under Colo. RPC 1.7(a)(2), a lawyer may not represent a client if there is a concurrent conflict of interest, which includes “a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.” These rules require a lawyer to decline proffered employment unless each affected client waives the actual or potential conflict after giving informed consent, confirmed in writing. Colo. RPC 1.7(b). Rule 1.9(a) requires a lawyer who has represented a former client to decline employment from a “person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.” While the representation of adverse or formerly adverse parties in an office-sharing situation may not violate the Rules, lawyers should recognize that representation in such circumstances is fraught with ethical pitfalls. The lawyer also must consider the conflict concerns expressed in Colo. RPC 1.7(a)(2).

In order to avoid ethically impermissible conflicts of interest, lawyers in office-sharing situations should take several precautionary steps. First, they should ascertain, to the extent possible, the nature of the practices of other lawyers sharing the same suite to determine whether any actual or potential conflicts are likely to arise.¹ In some office-sharing situations, the lawyers represent different types of clients because the lawyers practice in different areas of law and there is little if any chance of a conflict arising. If the office-sharing lawyer determines that areas

¹ If office-sharing lawyers have the same type of practices, they may wish to consider establishing a regular conflict check procedure in order to ascertain whether an actual or potential conflict exists. If this were done, however, office-sharing lawyers should obtain from each of their respective clients consent to disclosure of the client’s identity so that such a conflict check could occur. Colo. RPC 1.6; CBA Formal Op. 99, “Use of Credit Cards to Pay for Legal Services” (1997) (confirming that even a client’s identity may be information related to the representation under Rule 1.6(a)).

of conflict may exist,² the lawyer can decline employment in all cases of possible conflict or can take certain precautions to ensure that the office-sharing arrangement will not be considered an “affiliation” or “firm” for purposes of imputed disqualification. The more lawyers in an office-sharing arrangement present themselves to the public in a way suggesting they are a firm, the more likely the vicarious disqualification rules will apply.

To reduce the likelihood of being viewed as a firm, the office-sharing lawyer should take various measures to ensure that his or her practice is completely separate and distinct from that of other lawyers in the shared office and that there are no unnecessary financial entanglements. A lawyer must restrict access to client files and information from other office-sharing lawyers. If, however, the lawyer wants another lawyer in the suite to provide temporary coverage during absences from the office, then restricted access might not be possible; in that event, the clients should consent to the temporary coverage arrangement and restricted access may not be necessary. Additionally, the lawyers should protect client information from disclosure by restricting computer, telephone, fax machine, and copier access. When there is a reasonable possibility of a conflict of interest arising, the lawyer also may wish to discuss the office-sharing situation with the client and inform the client in writing of specific procedures the lawyer has taken to ensure there will be no actual conflict of interest.

Notwithstanding these precautions, the lawyer should be aware that there is a substantial risk of disqualification if, in fact, he or she is “too closely involved with” the other office-sharing lawyers or their clients. *Dean v. Am. Sec. Ins. Co.*, 429 F. Supp. 3 (N.D. Ga. 1976), *aff’d mem.*, 559 F.2d 1214 (5th Cir.), *rev’d on other grounds*, 559 F.2d 1036 (5th Cir. 1977); *see also McMahon v. Seitzinger Bros. Leasing, Inc.*, 506 F. Supp. 618, 619 (E.D. Pa. 1981) (lawyer disqualified from representing plaintiff where lawyer shares office space with a law firm that represented defendant in a substantially related matter); CBA Informal Opinion I, “Office Sharing with County Attorney” (1972) (inappropriate for lawyer to appear before the Board of County Commissioners if he shares office space with County Attorney).

B. Financial Arrangements and the Exercise of Independent Judgment

When lawyers share office space, they usually have financial relationships with each other. Examples of such financial relationships include:

- A young lawyer beginning a practice may commit to work a certain number of hours each month for an established attorney who provides free office space and services in exchange;
- Office-sharing lawyers may be jointly liable on a lease and may share other overhead costs as well; and
- One lawyer may own or rent offices that he or she rents to a second lawyer.

² Given the circumstances of office-sharing lawyers, the Committee believes that the practice of doing conflict checks in and of itself should not be construed as making them more like a firm for purposes of imputed disqualification.

Shared financial arrangements between and among office-sharing lawyers can be advantageous to all of the lawyers involved. However, these financial arrangements can create potential leverage that one lawyer may use against the other, especially in situations where the attorneys represent clients with actual or potential conflicting interests. And “a lawyer may not allow related business interests to affect representation.” Colo. RPC 1.7, cmt. [10].

Each lawyer must evaluate whether these or other office-sharing-related financial arrangements may impair her or his loyalty and independent judgment to the client; depending on the answer, the lawyer might need to decline to represent the client or might need to obtain the client’s informed consent, confirmed in writing, in order to proceed with the representation. Colo. RPC 1.7(b)(4). Even with disclosure and consent, office-sharing lawyers who represent clients with conflicting interests must be certain that the common financial arrangements will not interfere with their exercise of independent professional judgment, and will not adversely affect their duty of loyalty to their respective clients. Colo. RPC 1.7(a)(2). If each lawyer properly determines that his or her independent professional judgment reasonably will not be affected by the financial arrangement, and the other issues regarding conflicts and confidentiality have been satisfactorily addressed, the lawyers may represent the clients.

II. Preservation of Information Related to the Representation

An office-sharing lawyer, like all lawyers, must not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by one of the exceptions listed in the rules. Colo. RPC 1.6(a). Office-sharing arrangements often include situations where lawyers share or have access to one another’s file cabinets, reception area, conference room, law library, staff, computers, telephones, or fax machines. In each of these situations, there is an opportunity for inadvertent disclosure of client confidences or secrets. To ensure confidentiality, the office-sharing lawyer may need to take certain measures in addition to restricting access to files, such as restricting access between the telephone systems of the separate practices; arranging the reception area and office space such that one lawyer’s secretary is not able to overhear information related to the representation of another lawyer’s clients; not leaving confidential materials in the copier area or library for potential inspection by other lawyers; using security devices to restrict access to computers and other electronic devices; avoiding sharing of staff, particularly secretaries and paralegals, to the extent possible; and informing clients of the space-sharing arrangement and of measures undertaken to avoid any compromise of confidentiality. *See* Ind. State Bar Ass’n Ethics Op. 8 of 1985 (Ind. Op. 8) (office sharing lawyers should use separate phone systems, avoid client communications in areas of office where other lawyers can hear, take care to ensure no client information is available to other lawyers or staff, and inform clients of office sharing arrangement). Similar preventative measures may be necessary for a lawyer practicing in a “virtual” environment if family members or other persons have access to the lawyer’s practice space.

To minimize inadvertent disclosure, each office-sharing lawyer must “make reasonable efforts to ensure that [the conduct of nonlawyers employed or retained by or associated with a lawyer] is compatible with the professional obligations of the lawyer.” Colo. RPC 5.3(b); *see*

also Colo. RPC 5.3, cmt. [2] (“A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client[.]”).

III. Names and Letterheads

Colo. RPC. 7.5(d) prohibits lawyers from stating or implying that they practice in a partnership or other organization unless “that is the fact.” Comment 2 to this Rule states that “lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, ‘Smith and Jones,’ for that title suggests that they are practicing law together in a firm.”

This Committee has concluded that “[i]t is improper to use the term ‘associates’ to describe lawyers, not employees, who share office space and some costs but do not share in responsibility and liability for each other’s acts..” CBA Formal Op. 50, “Definition of Associates as Applied to Lawyers” (1972; addendum issued 1995); *see also* CBA Formal Op. 8, “Office Sharing – Associates” (1959; addendum issued 1995); CBA Formal Op. 9, “Office Sharing – Associates” (1959; addendum issued 1995). Under Colo. RPC 7.1(a), “[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.” Colo. RPC 7.5(a) prohibits a lawyer from using a firm name that violates Rule 7.1.

In some cases, ethics committees have approved a list of lawyers on a sign outside a suite of offices, when the sign states “law offices,” followed by the statement “not a partnership, professional corporation, or professional association.” *See, e.g.,* Dallas Bar Ass’n Legal Ethics Op. 1983-3 (1983); Ind. Op. 8. The Committee believes that such a designation may be helpful in appropriate circumstances to ensure that members of the public do not believe that office-sharing lawyers in fact are practicing in a partnership or professional corporation. However, the Committee also believes that lawyers may list their names on a sign outside an office suite under the term “law offices,” as long as there is otherwise no indication that the lawyers in that suite are practicing in a partnership or professional corporation.

Colo. RPC 7.5(a) extends the prohibition against false and misleading names to letterhead or other professional designations. As with firm names, office-sharing lawyers must take care to ensure that their letterheads, business cards, and directory listings do not falsely or misleadingly suggest to the public that a partnership exists. Thus, office-sharing lawyers should not use joint letterheads, business cards, or directory listings that state, for example, “Alice B. Smith, Attorney at Law, and Harry R. Jones, Attorney at Law,” which could easily be interpreted as suggesting the existence of a partnership. *Laws. Man. on Prof. Conduct*, § 91: 601-603. And lawyers using virtual offices must take care to ensure that their letterheads, business card, and directory listings do not falsely or misleadingly suggest to the public that the lawyer is regularly present at or regularly staffs a physical office that the lawyer in fact rarely uses.

Illustrations

To facilitate the analysis of the application of these rules to office-sharing situations, the Committee considers four scenarios:

Scenario One

The office-sharing lawyers have the same area of practice, namely, domestic relations. One lawyer represents the husband, while the other seeks to represent the wife in the same divorce action. In this situation, there is a heightened likelihood of a conflict of interest arising. The lawyers must disclose the office-sharing arrangement to the clients, and allow the clients the opportunity to decide whether to waive an actual or potential conflict. In order for each client to intelligently waive any actual or potential conflict, the client must be given adequate information about material risks regarding the conflict and the safeguards for preservation of information related to the representation of the client. If adequate safeguards are in place, as discussed below, the second office-sharing lawyer may be able to exercise independent professional judgment on behalf of the wife. On the other hand, if adequate safeguards are not in place, the office-sharing lawyers may be considered “affiliated” or “a firm” for imputed disqualification purposes. In that event, the second office-sharing lawyer must refrain from representing the wife. If the office-sharing lawyers have taken steps to restrict access to each other’s client files, telephone calls, and fax transmissions, and the lawyers do not share the same staff, there is a reduced likelihood of access to confidential information.

In sum, where office-sharing lawyers are practicing in the same or similar areas, the risk of conflicts of interest and disclosure of client information is greatest.

Scenario Two

The office-sharing lawyers have completely different types of practices, but share staff, phone lines, and equipment, like copy and fax machines. But the office-sharing lawyers discover after the commencement of representation that they are representing clients with directly adverse interests. Here, the attorneys must disclose this fact immediately to the clients. The clients then would need to consent to the disclosed conflict, or the lawyers would be forced to withdraw. In this situation, it is still important that the lawyers establish procedures to avoid disclosure of information related to the representation of a client.

Scenario Three

The office-sharing lawyers practice in the same or similar areas. Because each is a sole practitioner, they agree to fill in for one another when the other is sick, on vacation, or out of town. The need for conflict checks in this situation is heightened because (a) the lawyers will necessarily have access to at least some information relating to the representation of each other’s clients, and (b) their agreement to fill in for one another strongly suggests that, at least for some purposes, these lawyers are operating as “a firm,” and thus are subject to the rules of imputed disqualification. A conflict check system is advisable to ensure that other lawyers in the suite are not representing clients with actual or potential conflicts.

Moreover, the office-sharing lawyers must include a provision in retainer agreements or otherwise obtain each client’s informed consent that other office-sharing lawyers may substitute for the retained lawyer when necessary, and, therefore, that information related to the representa-

tion of the client may be revealed. By virtue of such an arrangement, the client thereby consents to representation by his or her retained lawyer and by the other office-sharing lawyers. The effect of such a provision in the retainer agreement would be to extend the notion of “a firm” and to authorize the office-sharing lawyer to disclose the client’s identity and otherwise share information concerning the client’s legal matter with other office-sharing lawyers.

Scenario Four

The office-sharing lawyer leases space from another office-sharing lawyer. The two lawyers represent clients with an actual or potential conflict with the other. In this scenario, as discussed above, if a conflict arises, the office-sharing lawyer may be required either to decline employment or to provide full disclosure to the client, accompanied by the client’s consent, because either lawyer’s independent professional judgment could be compromised by the existence of the landlord-tenant relationship. Thus, if the lawyer-landlord were to threaten the lawyer-tenant, directly or indirectly, with unfavorable treatment under the lease relationship in the event of an unsuccessful outcome for the landlord’s client, the lawyer-tenant might not be able to exercise his or her professional judgment properly on behalf of the client. Similarly, a lawyer-landlord might not be able to properly exercise professional judgment on the client’s behalf if the lawyer-tenant threatened to move out in the event his or her client didn’t fare well. In these situations, it is proper for each lawyer to disclose the lease relationship and its implications for the representation to the client so that the client may intelligently decide whether to continue the representation and give informed consent, confirmed in writing, to the representation.

Conclusion

Office sharing is a common way for lawyers to share facilities, to reduce operating overhead, and to foster collegiality. However, lawyers should be vigilant about the ethical issues inherent in office-sharing situations, particularly conflicts of interest, protection of information related to the representation of a client, and the potential for misleading clients and others. Because of the variety of office-sharing relationships, the different client interests at stake in each instance, and the interplay of these several ethical duties, lawyers should thoroughly analyze the facts in each situation as they determine the proper course of conduct.