



Multiple Law Firm Affiliations

An ethics opinion from the Ohio Supreme Court¹ is a sure indication that the practice of law has changed quite a bit from when many of us graduated from law school. The opinion states essentially that a lawyer can simultaneously be a partner in, or “of counsel” to, two or more separate law firms. You read that correctly, and, in case you are as surprised as I was, it’s the same conclusion arrived at by the clear majority of jurisdictions that have considered the question.²

When and how a lawyer can simultaneously affiliate with more than one law firm has concerned the legal ethics community for a number of years. The thinking has gone from “no way”³ to “OK” if it’s just being “of counsel” to multiple law firms,⁴ to it being appropriate for a lawyer to be a partner in one firm and “of counsel” to another,⁵ to a lawyer “not being prohibited” from being a partner in more than one firm.⁶ In short, what was once thought to be improper—as potentially misleading and confusing to the public, as a threat to lawyer–client confidences, as creating innumerable conflicts of interest, and as threatening lawyers’ professional independence⁷—is now considered acceptable as long as the Rules of Professional Conduct are complied with by the lawyers and the firms involved and clients are appropriately advised and, when so required, agree.⁸

For starters, here are the most obvious of the ethical issues a “multifirm” lawyer needs to be aware of:

- Whether he is a partner, associate or of counsel, the multifirm lawyer will owe a fiduciary duty to each of the firms with which he is affiliated. So which firm will get the next client he brings in? If he has a solo practice and a big-firm practice, won’t he have an incentive to steer new business to his solo practice where he presumably will get to keep more of the fees he generates? Wouldn’t that violate his fiduciary duty to the other firm? It’s important for the firms involved to get this issue figured out right away.
- The effect of two or more firms sharing the same lawyer is to make them effectively a single firm for conflicts of interest purposes, imputing that lawyer’s conflicts disabilities to every lawyer in each of the firms with which he is affiliated.⁹ Moreover, it’s clear that screening cannot be used in these situations to isolate the infected lawyer and to allow one of the firms to escape the imputed conflict.¹⁰
- ER 1.5(e) requires client agreement, confirmed in a writing signed by the client, when lawyers not in the same firm divide a fee. So how does a multifirm lawyer handle this one? Answer: Carefully. Authorities are split on this issue,¹¹ and there is no Arizona rule or opinion to look to for help.

The safe way is to assume that clients will need to agree on how the fee is divided when a multifirm lawyer is working on their cases. The engagement letter can disclose that a lawyer affiliated with several firms will be working on the case and that he will be paid as the firms have previously agreed, which will presumably be in accordance with ER 1.5(e).

- The affiliations of the lawyer who is going to work on the client’s matter may be important to the client, especially if he has had a bad experience with an “affiliated firm” or is involved in litigation where the opponent is represented by an affiliated firm, or for any other reason that the client may have in not wanting his name or the representation

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associated with that firm. It may accordingly be good practice to disclose the lawyer’s affiliations, which would incidentally avoid any claim that you didn’t comply with the obligations found in ER 1.4 (Communication) and ER 7.1 (Communications Concerning a Lawyer’s Services). These rules together require a lawyer to consult with a client about the means by which the client’s objectives will be accomplished, to explain a matter to the extent so as to permit the client to make informed decisions regarding the representation, to inform the client about any conflicts that need to be waived, and to avoid making or knowingly permitting to be

Ethics Opinions and the Rules of Professional Conduct are available at www.azbar.org/Ethics



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made on the lawyer's behalf a false or misleading communication about the lawyer or the lawyer's services.

Some of us may look at the authorities in the endnotes and wonder if we, as a profession, are really still in Kansas anymore. As the profession takes on more of the trappings of the business world, we need to be reminded occasionally that the Rules of Professional Conduct are still the starting point when we approach and evaluate new ways of practicing law. In this regard, remember that most if not all of the ethical problems discussed here can be resolved with an appropriately drafted ER 1.5(b) engagement letter. [87](#)

endnotes

1. Opinion 2013-1 (Simultaneous Practice in Multiple Firms), Board of Commissioners on Grievances & Discipline, Supreme Court of Ohio (April 4, 2013).
2. Tom Mason & Semra Mesulam, *Legal Polygamy: Ethical Considerations Attendant to Multiple Law Firm Affiliations*, 29 LAW. MAN. PROF. CONDUCT 75 (2013).
3. ABA Formal Ethics Op. 330 (1972); Advisory Op. 89-35, Board of Commissioners on Grievances & Discipline, Supreme Court of Ohio (Dec. 15, 1989).
4. ABA Formal Ethics Op. 90-357 (1990).
5. N.Y.C. Formal Ethics Op. 1995-9 (1995).
6. ABA Informal Ethics Op. 83-1499 (1983); District of Columbia Ethics Op. 338 (2007); *and see* authorities from other jurisdictions collected at Ohio Ethics Op. 2013-1, *supra* note 1, at 4-5.
7. *See* Ohio Ethics Op. 89-35, *supra* note 3.
8. Mason & Mesulam, *supra* note 2, at 5.
9. ABA Formal Ethics Op. 90-357 (1990); N.Y.S. Ethics Op. 793 (2006); *and see* ER 1.10 (Imputation of Conflicts of Interest: General Rule), Arizona Rules of Professional Conduct.
10. N.Y.S. Ethics Op. 876 (2011).
11. Mason & Mesulam, *supra* note 2, at 4-5.