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Lawyers and Their Leases

Pitfalls and Protections of Sharing Office Space

WHEN SHARING OFFICE SPACE with other lawyers, avoid vicarious liability for the malpractice of a co-tenant or being disqualified from taking a case because it conflicts with a client represented by the lawyer in the next office. The ethical rules concerned are:

- ER 7.5(d)—Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.
- ER 1.10(a)—Lawyers in a firm shall not knowingly represent a client when any of them practicing alone would be prohibited from doing so under the Ethical Rules.[1]

To whom does this apply? The Comment to ER 1.10 defines the term *firm* to include lawyers sharing office space if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm.

Can a lawyer ethically rent space with other lawyers as co-tenants or rent space from a law firm even though the lawyer and the law firm represent potentially adverse interests? Yes.[2]

But problems arise when the files of the lawyer are available to be seen by a lawyer's co-tenants or when the firm name, stationery letterhead or the manner in which the receptionist answers the telephone implies that there is some sort of relationship between the lawyers sharing offices. The worst result in violating either ER 7.5 or 1.10 is that a lawyer may be held vicariously liable for the negligent acts of a co-tenant if the appearance of the shared office to the client constitutes a partnership by estoppel.[3]

Several recent articles point out the problems involved in office sharing and indicate that they are of increasing concern to the profession; these problems even have become one of the subjects of a proposed change to the Model Rules of Professional Conduct. This change would make space-sharing lawyers a "law firm" if they fail to take adequate measures to protect confidential information of their respective clients.[4] An excellent treatment on the ethical concerns of sharing office space is found in ABA/BNA *Lawyer's Manual on Professional Conduct* ¶ 91:601 (1998). These articles offer the following suggestions, among others, that lawyers should take to avoid vicarious liability and/or disqualification under ER 1.10.

- Office-sharing lawyers should avoid naming or organizing themselves in a way that implies there is a partnership or other professional association where none exists.
- Office-sharing lawyers should use individual letterhead, business cards and telephone numbers.
- The ethical rules regarding division of fees and preservation of client confidences and secrets must be strictly observed. This may require a review of office procedures for files, mail handling, telephone messages

and facsimiles to make sure client confidentiality is maintained.

- Lawyers sharing offices should have their receptionist answer the telephone in a manner that conveys separation between the firms involved. For example, answering the telephone "Law Offices of Joe Smith" is an effective way of reminding clients that Mr. Smith is separate from the Law Offices of John Peabody, the firm with whom Joe shares space. Using separate telephone numbers makes this easy to do and is less confusing than having one telephone number that is answered "Law Offices."
- If an office-sharing lawyer has a cotenant help him on a case, he should get the client's written consent first, just as he would if he were going to associate with a lawyer working in another office. If the office-sharing lawyers split fees, be sure to follow ER 1.5(e) regarding division of fees among lawyers.
- Last but not least, office-sharing lawyers should use a written office-sharing agreement.

In view of the large number of solo practitioners and the high cost of office space, office-sharing arrangements will continue to be a popular alternative for many lawyers. We need to remember that the Rules of Professional Conduct are far-reaching and that thoughtfulness and planning are often required to communicate the separateness of a lawyer's practice to clients and to the public.

ENDNOTES

1. Arizona Rules of Professional Conduct, Rule 42, Rules of the Arizona Supreme Court.
2. ABA Informal Opinion 1486 (February 8, 1982).
3. See *Atlas Tack Corp. v. DiMasi*, 637 N.E.2d 230 (Mass. 1994) (summary judgment for lawyer reversed because of question of fact whether office-sharing attorney was partner by estoppel. The defendant lawyer's name was used with that of his alleged partner on office signage and letterhead, describing their relationship as "a professional corporation").
4. See 86 *ABA Journal* 74 (June 2000) and *Ohio Lawyer* 26 (March/April 2000).

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