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## Office Sharing Pitfalls

Office sharing is defined generally as an arrangement between two or more lawyers or small firms to share a common office space or sometimes supporting staff, including receptionists or assistants. Pursuant to the arrangement, each lawyer or firm contributes to the rent of the space and the wages of the shared staff. Office sharing is permitted by the Supreme Court Rules for the Government of the Bar of Ohio and the Ohio Rules of Professional Conduct.

Sharing office space wields many advantages. It reduces overhead and can provide an attorney with a professional network that would otherwise be unavailable in an independent or a home office. However, all too often attorneys entering such arrangements make unintentional mistakes that can have both legal and ethical consequences. By taking just a few precautions attorneys can prevent potentially catastrophic problems down the road. This article examines several common mistakes made in the office sharing world and provides prevention guidance.

### Common Pitfalls

#### *Pitfall #1: Partnership by Estoppel*

Gov. Bar. R. III permits attorneys to practice as a legal professional association, corporation, legal clinic, limited liability company, or limited liability partnership as alternatives to traditional partnerships as long as the name of the organization complies with Rule of Professional Conduct 7.5. Rule 7.5 states that lawyers “may state or imply that they practice in a partnership or other organization only when that is the fact.” “Smith and Jones,” is not a permitted representation unless Smith and Jones actually practice law together. The “use of a disclaimer such as ‘not a partner-

ship’ or ‘an association of sole practitioners’ does not render the name or designation permissible.”

Related is Rule of Professional Conduct 7.1, which prohibits a lawyer from making misleading statements about his or her services. As a result, lawyers sharing office space should not share a letterhead because doing so could lead to claims that the lawyers are liable for the malpractice of the others. Further, door space and building directories should all separately identify the lawyers or firms occupying the office space.

#### *Pitfall #2: Insurance*

Lawyers sharing office space should not share a professional liability policy. Sharing professional liability insurance creates a risk of violating Gov. Bar. R. III(4) concerning the required limits of professional liability insurance. There is also a risk that you may have no coverage for misrepresenting that an office sharing arrangement is an organization the equivalent of a law firm.

#### *Pitfall #3: Fee Agreement/Retainers*

Lawyers sharing office space should have clear fee and retainer agreements with their respective clients. Lawyers should also make sure that the client understands who will be providing the legal representation and, if applicable, clearly identify any co-counsel who is also sharing the office space.

#### *Pitfall #4: Accounts*

One of the more obvious precautions that, nevertheless, gets some lawyers in trouble is the client trust account (IOLTA). Attorneys sharing office space must have their own operating and client trust accounts, and should not share trust accounts.

*Pitfall #5: Fee Sharing*

Lawyers sharing office space should not share fees with other lawyers in the office without client consent and compliance with the strict requirements of Rule of Professional Conduct 1.5.

*Pitfall #6: Confidentiality*

Lawyers sharing office space need protocols and procedures to assure client confidences and preservation of the attorney-client privilege particularly where there is shared office staff. Client files should be kept secure. For example, separate fax lines will prevent the unintentional disclosure of confidential information.

*Pitfall #7: "Of Counsel" Relationships*

Although there is no prohibition on lawyers who share office space from serving as "of counsel" to others sharing the office space, consideration should be given to the risks and potential liabilities and public impressions such an association could create.

*Pitfall #8: Referrals*

Lawyers sharing office space who may refer matters to other lawyers in the shared space should document the referral in writing so it is

clear to the client who will be representing the client and doing the legal work. If the referring lawyers will not maintain supervisory control over the client's representation, the lawyer does not want to give the client the impression that supervision will occur because of proximity of location.

*Pitfall #9: Shared Staff*

Generally, sharing staff is not an ethical violation, but the shared staff must be instructed on the dos and do-nots mandated by the ethical rules. A shared secretary cannot have access to any confidential information and must take care to not give the impression that the offices are one entity when answering the phone. Simple greetings such as "law offices" should be used.

**The Consequences**

Failing to protect yourself in an office-sharing arrangement has very real ramifications. Consider the case of *Estate of Dorothy Holmes v. Ludeman* (Oct. 5, 2001), 6th Dist. No. L-00-1294, 2001 Ohio App. LEXIS 4501, wherein an estate sought to hold three attorneys liable for the theft and misappropriation of estate assets by another attorney with whom they had shared office space. The attorneys asserted

there was no written partnership agreement, that profits and losses were not shared, and that they made independent business decisions.

The appeals court, however, found there remained a genuine issue of material fact as to whether the attorneys were partners when the estate argued that, among other things, all the attorneys and support staff had access to client files; the attorneys would decline representation of adverse clients; new clients were "equitably divided" among the four attorneys by the office staff; the attorneys would cover for one another if an attorney was unavailable; fee-sharing occurred; and there was a "firm account" for office expenses. A full reading of *Ludeman* is encouraged for a full list of factors considered by the Sixth District in finding an issue of fact as to creation of a partnership by estoppel.

Nobody wants to expose him- or herself to a partnership's liability without also reaping a partnership's benefits. If the risk and reward of a partnership is desirable, the lawyers should officially affiliate. If it is not, follow the ethical rules and take the necessary precautions.