

## **Sharing Space Also Can Mean Sharing Risk**

Often, a group of attorneys will share office space to trim overhead expenses, share resources, enhance their public image or simply enjoy a little camaraderie. While such arrangements can help make a lawyer's practice more profitable and fulfilling, they present risks the participants may fail to recognize.

In particular, depending upon their interactions with their clients and each other, lawyers sharing space can create an apparent partnership that may, in turn, place them at risk to be found vicariously liable for their officemates' torts. Sharing space also makes protecting confidentiality a greater challenge.

Legal malpractice plaintiffs tend to sue not only the individual attorney handling (or mishandling) their case, but also the attorney's firm and any other lawyer who appears to be even partly responsible. This is especially true if the lawyer actually providing the services is uninsured or underinsured.

If the circumstances in which a client interacts with an attorney reasonably lead the client to believe – or suggest to a court that the client could believe – that the representation was provided by a partnership of attorneys, the collection of attorneys ultimately may be liable for one another's professional torts, whether or not they are a legal partnership. Lawyers in de facto partnerships (also known as apparent partnerships or partnerships by estoppel) are subject to claims of vicarious liability just like those in formally constituted partnerships.

Factors considered in determining whether a partnership by estoppel has arisen include: how the group of attorneys hold themselves out to the public in general and to the individual client in particular; how well the group of attorneys maintain their separateness vis-à-vis one another; and generally what efforts they make to avoid confusion about their relationship.

### **Create autonomy, clarity**

The first step in avoiding the creation of de facto partnerships is for all lawyers and firms in the shared space to respect the autonomy of each practice in the office. If the lawyers think of themselves as a single firm, their clients are likely to do the same. And a court is very likely to agree. But, if the lawyers act like the separate entities that they are, they strengthen the argument that they should not be lumped together as one unit.

To this end, do not share confidential client information with officemates who are not part of your firm without first getting consent from the client. Lawyers who don't respect the autonomy of their separate firms might speak to officemates about a client's matter without that client's consent. A single receptionist who opens mail or takes messages for all the various firms in the office is exposed to confidential information from each firm. Papers may be left in shared conference rooms or copy machines. Such confidentiality breaches can lead to the waiver of the attorney/client or the attorney work-

product privileges, breach of fiduciary duty claims, or ethical complaints. They also raise the likelihood that the group of attorneys will be found to be a de facto partnership, because the attorneys appear to be treating themselves like one big law firm.

To avoid this, provide all staff – shared and otherwise – with clear instructions that they are not to discuss any client information, no matter how trivial, with anyone other than those in the firm to whom the client is connected. Further, they should not openly discuss any matters or leave any case materials in common areas like the library, lobby, conference rooms, restrooms, copy areas or hallways. Written guidelines distributed to everyone in the office can help establish clear boundaries, as will periodic training.

### **Avoid potential conflicts**

If you want to have an officemate cover a court call for you, or some other aspect of the representation, you must get client consent and follow all applicable ethics rules regarding fee-sharing with unaffiliated lawyers.

Also, take extra care to avoid breaches of confidentiality if lawyers in the same space represent opposing parties. The risk that confidences will be shared, or other ethical improprieties will occur, is increased greatly in such situations. For those lawyers found to be in de facto partnerships, representing opposing sides could be an ethical violation. Informal sharing of confidential information also can cause conflicts problems. If you informally assist another lawyer's client, you are likely to fail to include that fact in your own conflicts database. Later on, if you are asked to take on a representation adverse to that client, you will not be alerted to the conflict and may face disqualification, or worse, as a result.

### **Choose your words wisely**

Be very careful how you communicate your relationship with the other lawyers to the public in general and to your clients individually. Avoid any communications that would tend to suggest affiliations with other lawyers that you do not actually have. For instance, use separate letterhead for each entity in the office space. Make sure that all door signs or marquees clearly indicate the various separate firms. And instruct your office receptionists to refer to each firm separately, including answering phones with the individual firm name rather than a collective phrase like, "law offices."

Along these lines, do not list lawyers as "of counsel" on your letterhead, business cards or signs, unless you intend to be fully affiliated with that attorney for ethical and professional liability purposes. While "of counsel" may have no definite precise meaning in law, it suggests an ongoing association suggestive of a partnership or employer/employee relationship in which to ground a claim of vicarious liability. It may seem to be a good marketing ploy, but it will widen the reach of potential liability in a way you never wanted or intended.

### **Choose officemates wisely**

Document your office sharing arrangement in a detailed written agreement. Include a confidentiality agreement that establishes that all officemates will endeavor to protect all client confidences, adhere to ethical rules, and maintain the separation of the various entities in the office space. It also is wise to include provisions that require

consent of all other officemates before any one of the firms may sublet any space to any additional attorneys.

Finally, before agreeing to share space with other attorneys – whether you will be the landlord or a lessee – investigate to determine that your prospective officemates have no disciplinary problems, are financially sound, and will be likely to adhere to good office procedures and practices. And make sure that they are adequately insured, even to the extent of requiring evidence of professional liability insurance as a condition of the written office sharing agreement.

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