

**Louisiana State Bar Association  
Rules of Professional Conduct Committee**

**PUBLIC Opinion 07-RPCC-013<sup>1</sup>**

August 9, 2007

**Sharing Office Space Without Sharing Liabilities and Conflicts**

*The practice of sharing office space with fellow lawyers is permissible and does not bring with it any “associational” hazards, provided it is done correctly. Special care must be exercised to ensure that client confidences are preserved and that the public is not left with the impression that a law firm exists where there is none. Should such safeguarding measures fail, the lawyer may be deemed to be sharing not only office space with his or her colleagues, but malpractice liability and conflicts of interest as well.*

Many lawyers, especially solo practitioners and those just beginning their careers, find it an attractive option to share office space with others. The advantages of office-sharing – both financial and professional – are apparent. By dividing rent and making common use of equipment, personnel, and other resources, the costs of maintaining a practice are kept to a minimum. Less experienced lawyers who wish to practice on their own, moreover, may look to their office-mates for guidance that otherwise may not be available to them. However, the same aspects of communal offices that make them convenient and beneficial also could give rise to serious ethical risks. Although such arrangements are allowable under the Louisiana Rules of

---

<sup>1</sup> The comments and opinions of the Committee—public or private—are not binding on any person or tribunal, including—but not limited to—the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board. Public opinions are those which the Committee has published—specifically designated thereon as “PUBLIC”—and may be cited. Private opinions are those that have not been published by the Committee—specifically designated thereon as “NOT FOR PUBLICATION”—and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or for citation. Neither the LSBA, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

Professional Conduct, office-sharing, when implemented haphazardly, can compromise confidentiality, create unexpected conflicts of interests and engender vicarious professional liability among the participating lawyers.

With an eye toward assisting practitioners in maximizing the utility of office-sharing without becoming ensnared in unintended adverse consequences, the approach of this opinion is pragmatic. The first part of the opinion illustrates the folly of office-sharing gone awry, with reference to two Louisiana cases, *Gravois v. New England Ins. Co.*, 553 So. 2d 1034 (La. App. 4<sup>th</sup> Cir. 1989) and *United States v. Cheshire*, 707 F. Supp. 235 (M.D. La. 1989). Against the backdrop of that case study, the second part offers a variety of suggestions that may be used to keep separate the practices of office-sharing lawyers.

#### **A. The Potential Problems**

Due to the nature of the office-sharing arrangement, *i.e.*, working in close physical proximity among other lawyers with unaffiliated practices, the most pronounced hazards are the inadvertent sharing of malpractice liability and conflicts. Malpractice liability was the subject of *Gravois*. In that case, a lawyer uninvolved with a representation was sued based on the wrongdoing of another lawyer with whom he shared office space.<sup>2</sup> In defense, the lawyer maintained that no partnership existed, explaining that the two shared an office, but not fees or business losses. On the other hand, the court noted that the lawyers' letterhead, office door, and telephone and legal directory listings bore both lawyers' names, "Wegmann and Longenecker." Malpractice insurance was obtained under the same title. Nonetheless, the court ultimately determined that no partnership existed.

---

<sup>2</sup> At the behest of his office mate, the lawyer allegedly notarized a procuration unauthorized by the client. That accusation is immaterial for purposes of this discussion.

Whether there was a partnership by estoppel appeared to be a closer question. In the final analysis, however, the *Gravois* court once again sided with the office-sharing lawyer. Primarily based on the fact that profits and losses were not shared and the client's inability to prove detrimental reliance on the appearances of a partnership, the court held that the lawyer was not vicariously liable for any malpractice his colleague may have committed.

The lawyers in *Cheshire* were not as fortunate. There, a lawyer represented a criminal defendant after having represented the government's key witness in a substantially related matter and was disqualified as a result. Also at issue was whether the other defendant's counsel, who shared an office with the conflicted lawyer, should be similarly disqualified pursuant to Rule 1.10, the rule governing "imputed" conflicts for lawyers associated in the same law firm.<sup>3</sup> As in *Gravois*, there was little question that the lawyers in fact practiced independently from one another, maintaining separate bank accounts, files, clients, secretaries and office staff. But also as in *Gravois*, the lawyers additionally shared common stationary labeled "Marabella, Fournet, and Hardlcka, an Association of Attorneys at Law." Notwithstanding the similarities between the facts of the cases, the *Cheshire* court (possibly because the requirements for a claim predicated on partnership by estoppel were not in play) ruled differently. The association was treated as a law firm for purposes of Rule 1.10 and the second lawyer was disqualified as well.

## **B. The Solutions**

As the analyses in these cases suggest, determining whether the line separating mere office-sharing from other types of associations has been crossed is a fact-laden inquiry, one of degree

---

<sup>3</sup> Rule 1.10(a) of the Louisiana Rules of Professional Conduct reads: "*While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 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.*"

that balances the factors indicative of separateness against those indicative of a traditional law firm. Several measures protective of both lawyer and client are commonly recommended to better the odds that nothing more than mere office-sharing will be found to have occurred:

- ***Avoid financial entanglements.*** Perhaps most importantly, lawyers sharing office space cannot use the same trust account and should avoid maintaining communal bank accounts of any kind. By the same token, and precisely because they are not practicing together in the same law firm, any agreement between the lawyers to share fees must comport with Rule 1.5(e), which, among other things, requires the client to consent in writing to a joint representation and to be advised in writing of each lawyer's share in the fee.<sup>4</sup> The terms of how expenses will be divided and shared among the lawyers should also preferably be reduced to writing, with all third-party contracts and other agreements for services, supplies, equipment, staff, etc., executed using only an individual lawyer's name, rather than jointly using the names of two or more of the office-sharing lawyers.
- ***Labels matter.*** Rule 7.5(d) instructs that "...*Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact...*"<sup>5</sup> It is the opinion of the Committee that having stationery, office signs, letterhead, etc., that give the appearance of a law firm where there is none would be prohibited by Rule 7.5. Likewise, the tests for vicarious malpractice liability and imputed disqualification, in part, turn upon whether the lawyers have held themselves out to the public as a single law firm. For these reasons, the office-sharing lawyers should make arrangements for their

---

<sup>4</sup> Rule 1.5(e) of the Louisiana Rules of Professional Conduct: "...*(e) A division of fee between lawyers who are not in the same firm may be made only if:...(1) the client agrees in writing to the representation by all of the lawyers involved and is advised in writing as to the share of the fee that each lawyer will receive;...(2) the total fee is reasonable; and...(3) each lawyer renders meaningful legal services for the client in the matter...*"

<sup>5</sup> Rule 7.5(d) of the Louisiana Rules of Professional Conduct.

own separate letterhead, business cards, telephone listings, and building-directory listings. If a receptionist and telephone number are to be shared, the receptionist should be instructed to answer the telephone with a generic greeting, such as “law office.” Any designation or title that could be reasonably construed to imply that the lawyers practice together should be rejected and avoided.<sup>6</sup>

Along these same lines, it should be noted that “Of Counsel” is a broad term used to describe an array of relationships, including lawyers who: (1) practice with a firm on a basis different from the firm’s other lawyers; (2) are retired but remain part of the firm for limited and/or periodic consultation; or (3) have migrated laterally with the expectation of being made a partner in short order. Regardless of the nature of the relationship, any lawyer designated “Of Counsel” must have a “*close, regular, personal*” relationship “*entailing frequent and continuing*” contact with the law firm.<sup>7</sup> Lawyers simply sharing office space fall short of satisfying this requirement and, accordingly, should not bestow the title on one another.

- ***Protect Client Confidences.*** Aside from creating unanticipated malpractice exposure and conflicts, office-sharing also can endanger client confidences. To reduce the danger, lawyers sharing office space should restrict access to client files, avoid sharing computer systems without appropriate security and policies in place, and ensure office mates cannot access others’ telephone conversations.

---

<sup>6</sup> By way example, the following designations, some of which evidence the lawyers’ intention to disclaim a partnership, have been declared misleading: “A Legal Association”; “Association of Solo Practitioners” or “Independent Practitioners”; and “X, Y, and Z, Law Offices of Independent Practitioners.” See ABA/BNA Lawyer’s Manual on Professional Conduct Reference Manual, Sharing Office Space, ABA-BNA-MOPC 91:601 (2003).

<sup>7</sup> See, e.g., ABA Formal Op. 90-357 (1990).

- ***Other Measures.*** Generally speaking, aside from the suggestions listed above, office-sharing lawyers should use common sense to take any other action, appropriate to their particular circumstances, to dispel the notion that a law firm has been formed by virtue of the arrangement. For instance, carrying joint malpractice insurance likely will support a presumption that the lawyers are in partnership. Additionally, if at all possible, a lawyer seeking to share office space may wish to do so only with those who practice in different areas of the law. Provided measures like these are instituted, lawyers should be able to accomplish office-sharing without inviting unintended ethical problems.

### **C. Conclusion**

The Committee believes that the practice of sharing office space with fellow lawyers is permissible and does not bring with it any “associational” hazards, provided it is done correctly. Special care must be exercised to ensure that client confidences are preserved and that the public is not left with the impression that a law firm exists where there is none. Should such safeguarding measures fail, the lawyer may be deemed to be sharing not only office space with his or her colleagues, but malpractice liability and conflicts of interest as well.