Louisiana State Bar Association
Rules of Professional Conduct Committee

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Sharing Office Space with Non-Lawyers

> *Lawyers are sometimes presented with opportunities to share office space with non-lawyers. For example, the opportunity may be based upon an offer—innocently generous or calculatingly mercenary—from a non-lawyer in response to the need of the lawyer for office space. A similar but different opportunity might also present itself as a result of extra space in the lawyer's office and a desire to offer that space to others, whether for extra income or simply gratis. Regardless of the circumstances, while the Louisiana Rules of Professional Conduct do not specifically prohibit a lawyer from sharing office space with a non-lawyer, there are a number of serious ethical concerns present in the scenario that should prompt a lawyer to be very cautious whenever contemplating such an office-sharing arrangement.*

While clearly not an absolute necessity—particularly given the freedom and mobility provided by fairly recent leaps in technology[2]—most lawyers still prefer to practice law from a dedicated

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[2] With the advent and proliferation of laptop computers, portable printers, wireless networks, cellular telephones, e-mail, the Internet, personal digital assistants ("PDA's") [such as the "Blackberry"] and increasingly-lower costs for items of this nature, there is an ever-expanding population of lawyers who do not need or desire to have a regular/traditional office for the practice of law.

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office environment. An office can provide, in some sense, the traditional/anticipated setting for client consultations and meetings, an impetus for regular, good and consistent business practices and, arguably for some, a key element of the public image and professional identity sought to be projected by the lawyer. Against this backdrop, there are a number of common scenarios involving lawyers and office space that present questions of legal ethics that the Committee believes lawyers should consider carefully whenever making decisions regarding office space.

A. Lawyer-in-Need/Non-Lawyer With Extra Office Space

Upon graduating from law school and being admitted to the Bar, some lawyers—especially those who choose or who are left no choice other than to be solos—are faced with the prospect of having to locate and acquire office space, oftentimes out of desperation and as quickly as possible. Like the Hollywood archetype of the naïve bumpkin arriving suddenly in the midst of the bustling, "dog-eat-dog" environment of the ominous big city, new lawyers can suddenly find themselves facing real-life offers and opportunities that are overwhelming, enticing and sometimes seemingly too good to be true. There is also, unfortunately, always someone ready, willing and eager to exploit someone who has a freshly-minted license to practice law. With the pressing need for an office to begin practicing, the new lawyer might even be offered office space free-of-charge by a non-lawyer who suggests matter-of-factly that "it might come in handy to have a lawyer around".

It is at this point, of course, that the lawyer should—hopefully—have a silent alarm sounding in the recesses of his/her brain and a strange disturbance in the "gut" prompting a thoughtful, more in-depth evaluation of the offer being presented. The lawyer should consider and ask the would-be benefactor for clarification regarding why and how the non-lawyer believes that the lawyer might "come in handy" while sharing office space with the non-lawyer. Faced with not only the need for an office but the goal of actually obtaining a client to begin practicing what has been

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anticipated in theory for at least the last three years, the lawyer should momentarily set aside the perceived golden opportunity to "land" and represent an apparently successful business person as a client and ask "*What are you expecting from me in return?*", keeping in mind that a number of ethics rules are currently "sitting on the sidelines" ready to be called into the "game", depending upon the answer(s) to that question.

Confidentiality

Foremost among the ethics rules to be considered would be the lawyer's obligation to keep client information confidential, as per Rule 1.6 of the Louisiana Rules of Professional Conduct. The rule states that the lawyer shall not reveal, under all but exceptional circumstances[3], information relating to the representation of a client unless the client gives informed consent or the disclosure is impliedly authorized in order to carry out the representation. While even the "greenest" of lawyers will generally know that the lawyer should not reveal client information under most circumstances, the less obvious methods of improperly revealing client information may not easily come to mind amidst offers of free or low-cost office space.

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[3] Rule 1.6(b) of the Louisiana Rules of Professional Conduct provides a number of exceptions to the general rule of confidentiality:

> *…A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:…(1) to prevent reasonably certain death or substantial bodily harm;…(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;…(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;…(4) to secure legal advice about the lawyer's compliance with these Rules;…(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or…(6) to comply with other law or a court order…*

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Sharing office equipment, such as computers, printers, fax machines, telephones, copiers, etc., may also unintentionally lead to an easy opportunity to share the confidential information of clients in violation of Rule 1.6—through careless stewardship of client information and/or through the curious eyes of others not directly associated with or employed by the lawyer. Close monitoring of these potential "leak points" is critical to maintaining the confidentiality of client information and thereby avoiding infraction of Rule 1.6. Similarly, the offer/opportunity to share file storage areas (either digital or hard-copy) and/or other common areas within the office (e.g., a waiting room, kitchen, conference room, etc.) also would be a possible weak point in maintaining client confidentiality. While there is nothing *per se* improper with sharing these things, the risk of loss of client confidential information is increased every time something office-related is shared with the non-lawyer.

Sharing office staff—such as a receptionist, administrative assistant or bookkeeper—would pose additional risks for compromise of client confidentiality. A person employed primarily by a non-lawyer may not realize, understand or have had the opportunity to be educated regarding the special ethical limitations that apply to a law practice. At the very least, a lawyer contemplating use of such shared support staff should ensure that those staff persons are educated, trained and instructed by the lawyer regarding the lawyer's ethical obligations—and, therefore, those of a lawyer's staff—under the Louisiana Rules of Professional Conduct.[4] If the lawyer does not take the time to make a commitment to ensure the education and training of non-lawyer support staff, the lawyer should endeavor to avoid using the services of non-lawyer support staff rather than risk harm to clients and/or incur disciplinary consequences that might occur as a result of the loss of client confidential information.

Professional Independence of the Lawyer

[4] Rule 5.3 of the Louisiana Rules of Professional Conduct sets forth the responsibilities of a lawyer regarding non-lawyer assistants.

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Rule 5.4 of the Louisiana Rules of Professional Conduct is concerned, in great part, with the professional independence of the lawyer, defining limitations on permitting non-lawyers to share legal fees and/or to direct the lawyer's professional judgment in rendering legal services to others.[5] In simplest terms, the lawyer cannot normally share legal fees with non-lawyers nor can the lawyer permit a non-lawyer to share equally—as a partner or other business associate—in the lawyer's practice of law. It is not inconceivable that the non-lawyer offering office space has perhaps imagined that having a lawyer "in-house", under the same roof, perhaps within the same suite of offices, might serve to enhance the non-lawyer's own business repertoire of products and/or services. The non-lawyer might envision, for example, offering and selling business entity formation packages—such as new partnerships, LLCs and/or incorporations—in addition to the basic bookkeeping and accounting already being offered to the non-lawyer's clientele, since the lawyer will now "be around the office" and able to help out with these simple tasks. If anything, so the "pitch" might go, it would be a good way for the new lawyer to get some experience and develop some skills in doing this type of legal work while making some desperately-needed cash.

That, of course, is the ethical problem being presented by this scenario—the non-lawyer is perhaps expecting to market and/or re-sell the lawyer's legal services for a profit under the auspices of the non-lawyer's business while the lawyer is effectively indentured and manipulated professionally by virtue of the "free office space" being provided by the non-lawyer. The lawyer facing a generous offer of office space with a non-lawyer, therefore, should consider whether the opportunity presented might be or later become a "wolf in sheep's clothing"—if it looks like the offer will have a variety of "strings" attached, those "strings" may result in serious ethical problems for the lawyer, particularly if the lawyer will be expected to help out with or contribute legal services in some accessory fashion to the non-lawyer's business and/or clientele.

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[5] Rule 5.4 of the Louisiana Rules of Professional Conduct.

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Unauthorized Practice of Law

Equally relevant, the lawyer who might be faced with this "golden opportunity" may also naively aid in or even be unknowingly expected in some fashion to facilitate the non-lawyer's unauthorized practice of law. Rule 5.5(a)[6] states that "*...A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, **or assist another in doing so**...*" [emphasis added]. Rule 5.5(e)(3)[7] states:

> *...For purposes of this Rule, the practice of law shall include the following activities:...(i) holding oneself out as an attorney or lawyer authorized to practice law;...(ii) rendering legal consultation or advice to a client;...(iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;...(iv) appearing as a representative of the client at a deposition or other discovery matter;...(v) negotiating or transacting any matter for or on behalf of a client with third parties;...(vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law...*

Louisiana Revised Statutes 37:212 and 37:213, when read together, provide the legislative definition and legal limits of the practice of law within this State. Of particular pertinence to this opinion, R.S. 37:213(A)[8] essentially prohibits anyone who is not first duly and regularly licensed and admitted to practice law by the Supreme Court of this State from: "*...(2) Furnish[ing] attorneys or counsel or an attorney and counsel to render legal services...(4) Render[ing] or furnish[ing] legal services or advice...[or] (7) In any manner advertise[ing] that he, either alone or together with any other person, has, owns, conducts, or maintains an office of any kind for the practice of law...*" The would-be office benefactor may not be aware of—or even care about—the ethical and/or legal implications of what might be envisioned for and with the newly-licensed

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[6] Rule 5.5(a) of the Louisiana Rules of Professional Conduct.

[7] Rule 5.5(e)(3) of the Louisiana Rules of Professional Conduct.

[8] Louisiana Revised Statute 37:213(A).

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officemate. Naturally, as a licensed lawyer, the would-be beneficiary will be presumed to know better and, more critically, will be risking that newly-minted license to practice law by engaging in any conduct that violates Rule 5.5.[9] In short, the lawyer should be very cautious and reasonably skeptical about any proposed business venture or business-sharing arrangements that might accompany the offer to share space with the non-lawyer—if it sounds too good to be true, chances are great that unfortunate disciplinary consequences are not far behind.

Solicitation and Paid Referrals

Another "red flag" to be considered, in addition to worrying about professional independence and unauthorized practice of law, would be offers of referrals of clients with some vague discussion and/or expectation of compensation or reciprocation. Rule 7.2 of the Louisiana Rules of Professional Conduct states, in pertinent part, that "*...A lawyer shall not give anything of value to a person for recommending the lawyer's services...*" Rule 7.3(a)[10] also provides that "*...A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain...*" Although, on first glance, the lawyer is arguably being given office space by the non-lawyer, rather than being asked for anything in return, it sometimes happens that the gift of office space is really just a "red herring" or "loss-leader" intended to mask the non-lawyer's true hopes/plan to profit vicariously from someone else's law license.

Why not? The non-lawyer shares in the potential fruits of the lawyer's labors with virtually none of the risks. In that environment, it simply stands to reason that the more business the non-lawyer can direct to and channel through the "in-house" lawyer, the more bountiful the potential

[9] Rule 5.5 of the Louisiana Rules of Professional Conduct.

[10] Rule 7.3(a) of the Louisiana Rules of Professional Conduct.

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fruits or by-products might be. As such, while the non-lawyer may not be asking for any rent or attempting to participate directly in the management of the clients' cases, the potential is still there for the non-lawyer to ask for—if not demand—some "kick-back" or other form of compensation for all of the new business being driven through and/or handed to the lawyer. Even when motives are well-intentioned and not heavily driven by self-interest, non-lawyers simply may not know or understand that lawyers are ethically prohibited from soliciting new legal business directly—or through others acting on their behalf—from persons with whom they have no family or prior professional relationship. The lawyer, then, should be wary of the non-lawyer's keen interest and aggressive optimism regarding the lawyer's potential for success while taking advantage of this "free office space", especially if the non-lawyer is selflessly promising to help the lawyer to get started and to make some money.

Business Transactions with Clients

Even if all of the other ethical concerns as noted above are anticipated and carefully managed, the lawyer should also consider and be careful about the non-lawyer benefactor/landlord who also happens to be or becomes the lawyer's client, given the potential conflict of interest that might arise whenever a lawyer engages in business transactions with a client outside of the scope of the matter which is the basis for the lawyer-client relationship. Rule 1.8 of the Louisiana Rules of Professional Conduct covers a variety of situations in which a lawyer might become involved financially with a client and wherein the lawyer might face disciplinary consequences if not careful in observing the limitations set forth within the rule.

Primarily, a lawyer must not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: 1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; 2) the client is advised in writing of the desirability of seeking and is

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given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and 3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.[11] As such, a lawyer contemplating a proposed office-sharing arrangement with a non-lawyer who is also a client should not enter into any business arrangements in that regard without first observing and adhering to the requirements of Rule 1.8(a).

B. Lawyers with Extra Office Space

Having nearly all of the same potential ethical pitfalls as the situation where a non-lawyer offers office space to a lawyer would be the scenario where a fortunate lawyer chooses to "take in" a non-lawyer (perhaps a long-time client and/or trusted friend) who may be "down on his luck" and in need of a place to do business for a while or perhaps the scenario where the lawyer ends up with an over-abundance of office space and is looking to defray some of the overhead by subleasing a spare office or two within the same office suite to a non-lawyer. Just as with the generous non-lawyer landlord, the lawyer/would-be office benefactor must take great care with protection of client confidences, maintaining professional independence, avoiding solicitation, paid referral and/or unauthorized practice of law schemes and in properly confecting any business arrangements with the non-lawyer client/would-be tenant according to Rule 1.8(a)[12]. While things may begin on an optimistic, friendly basis, the lawyer should remember that his/her law license (and the fear of potential disciplinary consequences) may unavoidably be used as a leveraging tool within a space-sharing arrangement gone sour. As a result, the lawyer should think carefully about setting the specific parameters of the proposed office-sharing arrangements

[11] Rule 1.8(a) of the Louisiana Rules of Professional Conduct.
[12] Rule 1.8(a) of the Louisiana Rules of Professional Conduct.

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from the beginning in accordance with the concerns noted above in an effort to avoid trouble later on.

Conclusion

Lawyers are sometimes presented with opportunities to share office space with non-lawyers. For example, the opportunity may be based upon an offer—innocently generous or calculatingly mercenary—from a non-lawyer in response to the need of the lawyer for office space. A similar but different opportunity might also present itself as a result of extra space in the lawyer's office and a desire to offer that space to others, whether for extra income or simply gratis. Regardless of the circumstances, while the Louisiana Rules of Professional Conduct do not specifically prohibit a lawyer from sharing office space with a non-lawyer, there are a number of serious ethical concerns present in the scenario that should prompt a lawyer to be very cautious whenever contemplating such an office-sharing arrangement.

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