

THE ETHICS OF CREATING THE ONE-STOP SHOP



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Between the COVID-19 pandemic and inflationary woes, it is, of course, quite natural for professionals of all stripes to try to save on operational expenses.

One of the most obvious places to save is the cost of office space. But while some co-tenants may be a good mix as they combine resources, other combinations might face regulatory or professional ethics restraints. For lawyers looking to enter into the shared-office arrangement with other professions—or even with other legal practices—there are some do's and don'ts that must be carefully weighed.

Giving the Wrong Impression

The ever-growing phenomenon of co-working spaces clearly indicates that it is an advantage for professionals in need of away-from-home workspaces. However, alongside the benefits come various risks for lawyers. Let's clarify at the onset that there is no absolute ethical prohibition on shared suite arrangements between lawyers and non-lawyers or between firms. However, that does not mean that there aren't limitations and ethical considerations that must be followed.

Client confusion as to the relationship between the lawyer and the other firms sharing the space is one risk that the lawyer must take steps to prevent. Even giving the impression that the lawyer is part of a firm that he is not in practice with or that he is affiliated with a non-lawyer firm poses an ethical problem. And, if one's co-tenants did not also abide by the same precautions, there exists the possibility that a claim against them might possibly inure to your own practice under various theories of either a general partnership or, otherwise, creating a 'reasonable belief' of association. Accordingly, lawyers in a shared-space arrangement must make it perfectly clear that they

are an independent firm in no way affiliated with other professionals sharing the same space.

Minimizing the Risks

The attorney can and must take certain steps to eliminate or at least minimize the risk of confusion in the public's mind. Among those steps are disclaimers in correspondence, prominent signage within the office space, distinct entries on the building's lobby directory, and, in the event that the two businesses share a common receptionist, separate telephone lines must be installed so that no client comes to believe that their lawyer's practice and the other tenant's operations are one and the same. Even business cards at the receptionist's desk must be displayed separately and apart from one another.

The lawyer in a shared-office arrangement must also be mindful of not misleading the public as per the ABA's Model Rules of Professional Conduct, Rule 7.1, which provides that a lawyer 'shall not make any false or misleading communication about the lawyer or the lawyer's services.' The comment to Rule 7.1 further clarifies that a firm's name, letterhead, and professional designation constitute communications that must not be false or misleading, and, the firm name may be deemed misleading

Executive Summary

> The Issue

What are the ethical issues that can arise when a lawyer enters into a shared-office arrangement?

> The Gravamen

While not prohibited altogether, sharing office space with an unrelated firm or with a non-lawyer business is nevertheless governed by strict rules of ethics.

> The Path Forward

Understand the ramifications, including the possibility of breaching ethics rules and/or offering the wrong impression to the public before deciding on sharing office space with another legal or business entity.

if an association with another firm is even implied, but no association exists.

State Bar Codes

While state Rules of Professional Conduct vary from state to state, as noted above, lawyers are generally permitted to share office space with other law firms and non-lawyer firms. The Michigan State Bar Committee on Professional and Judicial Ethics, for example, allows a Michigan lawyer to use any location as a law office—even if shared with non-lawyers—as long as the lawyer has a dedicated office space distinct from the other business's operations. The 'separate and distinct' element was more precisely defined when a Michigan State Bar Committee found that an arrangement whereby an attorney used an office and conference room on an infrequent and short-period basis did not maintain a space dedicated to the attorney. Despite his rather sporadic use, that was not enough to meet the 'separate and distinct from the other businesses' element required by the bar.

Similar provisions are found in the professional ethics codes of other states, such as Louisiana, where the State Bar Association Rules of Professional Conduct Committee has issued the opinion that lawyers are permitted to share space with non-lawyers as long as they strictly abide by all ethical obligations as to confidentiality and professional independence. In particular, they must be sure not to engage in conduct that might assist in the

unauthorized practice of law by the non-lawyer.

Maintaining Confidentiality

Aside from the public perception issues, there exists the very real possibility that a lawyer might—albeit inadvertently—breach his or her duty of client confidentiality. The client file left out might pose one level of exposure within the context of a suite that only serves the firm. However, if left by a common copier or FAX machine that is accessed by others—whether a neighboring law firm or non-lawyer—a serious breach of confidentiality can arise. Ideally, separate entrances are preferred where feasible because some observers have raised the issue of the lawyer admitting clients to the office during the business hours of the other business that shares the reception area. According to that opinion, a client arriving in plain view for an appointment with his lawyer might be enough to trigger ethical problems. Obviously, the lawyer should not at any time take client phone calls in a shared common area nor within earshot of any 'outsiders' whether a co-tenant, their staff or visitors, or the lawyer's own other clients.

Other Mines in the Minefield

An additional risk that lawyers might face is the issue of improper referrals. The ABA's Model Rules 7.2(b)(4) and 7.3(a) might rather easily be overstepped when accepting an improper referral from a co-tenant or, perhaps,

Action

1 Separate and Distinct:

In any shared-office arrangement, the lawyer must make absolutely certain that his or her practice is clearly identifiable as separate and distinct from that of any co-tenant in the eyes of the public.

2 Risk Reduction:

Among the undertakings that the lawyer must perform to avoid the risk of confusion with another practice or business is to state the same clearly on all communications, to maintain distinct signage, and to ensure that the practice's own separate phone line is answered by the common receptionist.

3 Professional Ethics Codes:

The lawyer must be fully versed in the professional ethics of the ABA and of his or her own state bar as pertains to office sharing with other practices and non-attorneys.

4 Beware of Improper Referrals:

Because the shared office environment particularly lends itself to possible violations of the rules regarding improper referral and solicitation, the attorney must be especially mindful of this and put in place measures to avoid same.

casually soliciting business in the lunchroom. State ethics rules also typically cover referrals, solicitation, and how legal business is transacted.

A lawyer considering entering into a shared office arrangement should also notify his or her malpractice insurance agent as to the proposal since certain policies might not cover a vicarious liability claim if the lawyer omitted such an intention or fact on the application.

In sum, although not prohibited, the lawyer must carefully weigh the inherent risks both as to perception and confidentiality obligations before deciding to office with a co-tenant.

“WHEN SHARING OFFICE SPACE WITH A NON-LAWYER, IT’S IMPORTANT THAT THE PUBLIC BE ABLE TO TELL THE DIFFERENCE BETWEEN THE TWO BUSINESSES.”

—KESHARA COWANS,
BAR COUNCIL WITH THE
FLORIDA BAR



Further Reading

1. <https://lalegaethics.org/may-i-share-office-space-with-nonlawyers/>
 2. <https://amatacorp.com/blog/lawyers-sharing-office-space-with-non-lawyers-is-it-a-good-idea>
 3. <https://www.dentons.com/en/insights/newsletters/2022/april/28/practice-tips-for-lawyers/how-lawyers-can-share-office-spaces-in-an-ethical-way>
 4. <https://firmvo.com/perilous-pairings-why-sharing-office-space-with-non-lawyers-is-an-ethical-minefield-for-attorneys>
 5. <https://www.legalfuel.com/can-i-share-an-office-space-with-a-non-lawyer/>
 6. <https://recordgrabber.com/blog/lawyers-and-shared-office-space/>
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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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