



Ohio Board of Professional Conduct

OPINION 2022-11

Issued October 7, 2022

Withdraws Adv. Op. 1991-09

Lawyers Sharing Office Space, Nonlawyer Staff, and Dividing Fees

SYLLABUS: A lawyer may share office space, computer equipment, and support staff with other lawyers in an office sharing arrangement. A lawyer in an office sharing arrangement may divide fees with another lawyer in the office subject to the Rules of Professional Conduct.

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Ohio Board of Professional Conduct

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APPLICABLE RULES: Prof.Cond.R. 1.1, 1.5, 1.6, 5.3

QUESTIONS PRESENTED:

- 1) Whether there are restrictions on the division of fees among lawyers who have separate law practices in the same building, but who collaborate on legal matters;
- 2) Whether in order to protect information related to the representation of a client, lawyers with separate law practices in the same building must maintain separate filing and computer systems inaccessible to other lawyers and nonlawyer staff;
- 3) Whether it would be proper for lawyers who maintain separate law practices to share nonlawyer staff.

OPINION:

Many lawyers choose to practice law in a shared office arrangement that includes the sharing of nonlawyer staff, resources, and expenses. These arrangements may lead to opportunities for the lawyers to consult among themselves or divide fees on client matters in which the lawyers decide to co-counsel.

Division of Fees and Lawyer Collaboration

The Rules of Professional Conduct do not prohibit lawyers in separate legal practices from dividing fees or from collaborating on legal matters as co-counsel. Because the lawyers are not in the same firm, they may only divide fees pursuant to Prof.Cond.R. 1.5(e)(2). The rule describes the division of fees in proportion to the services performed or in circumstances when each lawyer assumes joint responsibility for the representation. Fees can be shared by lawyers not in the same firm and in a shared office arrangement only if four conditions are satisfied: 1) the division of fees is proportional to the services performed by each lawyer or the lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client; 2) the client has given his or her written consent; 3) a written closing statement is signed by the client and each lawyer; and 4) the total fee is reasonable. Prof.Cond.R. 1.5(e). It is recommended that each lawyer and client retain a copy of the completed document signed by all parties. Adv. Op. 2016-11. *See also* R.C. 4705.15 (written fee agreement in contingent cases.)

In addition to dividing fees as co-counsel, it is not uncommon for lawyers in a shared office arrangement to occasionally and informally consult or assist one another about a matter without billing time to a specific client. This type of informal consultation does not result in the lawyers constituting a law firm. Prof.Cond.R., *Terminology*, cmt.[2]. However, when a lawyer consults with another lawyer, he or she must be careful not to divulge confidential client information that may reveal the identity of a client or privileged information. "A violation of Rule 1.6(a) is not avoided by describing * * * a 'hypothetical,' if there is a reasonable likelihood that a third party may ascertain the identity or situation of the client from the facts." *See* ABA Formal Opinion 480 (March 6, 2018).

Maintaining Confidential Client Information

Because of the nature of a shared office arrangement, lawyers must always be mindful of the duty to maintain the confidentiality of information related to the representation of clients. Prof.Cond.R. 1.6. Thus, it is imperative that lawyers in a shared office arrangement act competently to protect the confidentiality of clients' information. Prof.Cond.R. 1.6, cmt. [18]. Lawyers should use reasonable efforts to prevent an inadvertent or unauthorized disclosure or access to information related to the representation of a client and exercise precautions to prevent information from coming into the hands of unintended recipients, including other lawyers and staff in the shared office space. Prof.Cond.R. 1.6, cmt.[18],[19].

Inadvertent or intentional access to confidential client information by all lawyers in an office sharing arrangement may lead to the conclusion that the lawyers constitute a single law firm. *See Winblad v. Deskins*, 150 Ohio App.3d 527, 2002-Ohio-7092 (2d. Dist.) (an appearance the lawyers shared access to confidential client information and other factors led to the conclusion the lawyers constituted one firm for disqualification purposes.) Steps recommended to be taken by lawyers in a shared office arrangement to protect client information and avoid the appearance of constituting a firm include 1) segregating and securing electronic and physical client files from other lawyers' filing systems; 2) maintaining all in-person, telephonic, electronic, and written communications with or about clients in a manner and method to prevent inadvertent disclosure; and 3) ensuring that staff and lawyers avoid communications with or about clients in waiting and common areas. In addition, each lawyer in the office sharing arrangement should instruct and train his or her nonlawyer staff on the procedures and processes that are to be followed to safeguard confidential client information. Prof.Cond.R. 5.3, cmt.[1].

Computer Systems

A shared office arrangement may consider the use of shared computer and server network if adequate safeguards are put in place. N.Y. St. Bar Ass'n. Ethics Op. 939. In order to prevent unauthorized access to client information, each computer connected to a shared network should be secured by individual credentials and other security measures to prevent lawyers or staff from accessing the data and files on a

network belonging to others. If practicable, access to administrative rights to the server or computers should be limited by the use of independent information technology contractors. The lawyers should ensure that any contractors with administrative rights are given adequate instruction and supervision concerning their obligation not to disclose information related to the representation of clients. Prof.Cond.R. 5.3, cmt.[2]. Lastly, all lawyers in the law firm must maintain the requisite technological competency to ensure the confidentiality of their files and data on a shared server system is maintained. Prof.Cond.R. 1.1, cmt.[8].

Sharing of Nonlawyer Staff

Nonlawyer staff in a shared office arrangement may be assigned to multiple lawyers. The nonlawyer staff must understand that a lawyer's duty of client confidentiality applies equally to the staff when under the supervision of a lawyer. Prof.Cond.R. 5.3(b). Consequently, shared staff cannot disclose client related information with other staff and lawyers, unless their respective lawyers are co-counseling on a matter. If two lawyers in a shared office arrangement are representing adverse clients in a matter, the same nonlawyer staff person should not be assigned to both lawyers during the representation. Ky. Ethics Op. E-406 (November 1998). When lawyers choose to share nonlawyer staff, the Board recommends a written procedure be developed for the nonlawyer staff to identify potential conflicts.