

ETHICS ADVISORY PANEL
OPINION #93-99 REQUEST #444
Issued February 23, 1994

The inquiring attorney shares office space with four (4) independent attorneys. The inquiring attorney maintains his/her own stationery and business account, however, he/she shares both telephone lines and secretarial services with the other attorneys. Two (2) of the attorneys with whom the inquiring attorney shares office space are employed as assistant city solicitors for City X. The inquiring attorney asks whether he/she is prohibited from representing clients before various forums of City X including City X's Council, Zoning Board, Municipal Court and District Court. The inquiring attorney further queries whether the propriety of the proposed representation is dependent upon the distinction between those forums that are "adversarial" versus those that are "administrative."

As an initial matter, any distinction between those forums whose functions are either adversarial or administrative is not relevant to the Panel's analysis.

Rule 1.10 addresses the issue raised by this inquiry and provides in part as follows:

Rule 1.10 Imputed Disqualifications: -

(a) 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 Rules 1.7, 1.8(c), 1.9 or 2.2.

Rule 1.10 imposes a prohibition on a lawyer's ability to represent clients when associated as a law firm if any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

The Comment to Rule 1.10 explains that:

Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in any way suggesting that they are a firm or conduct themselves as a firm they should be regarded as a firm for purposes of the Rules.

The propriety of the inquiring attorney representing clients before the various forums of City X is therefore dependent upon whether the attorneys are regarded as a law firm for the purposes of the Rules of Professional Conduct.

In this case, the Panel is unable to determine whether the attorneys constitute a law firm. Therefore, we are unable to opine as to whether the inquiring attorney may appear before the various forums of City X under the Rules of Professional Conduct.

Under the facts of this inquiry as described by the inquiring attorney, it is unclear whether the attorneys are a law firm as there are a myriad of factors that determine whether lawyers are a law firm. Such factors include whether the lawyers share information, advertise as a firm and the administrative operations of their practices.

Attorneys sharing office space who are not associated together as a law firm, either as a partnership or a professional corporation, must use separate names, letterheads, building directory listing, business cards and announcements. They should also maintain separate files, bank accounts and other financial records. See, Rhode Island Disciplinary Board Policy: Rules Relating To Attorneys Sharing Office Space, revised and approved April 28, 1992. See also, "Are You Representing Your Firm As A Partnership When It's Not," by A. David Tammelleo, Esquire, Rhode Island Bar Journal, March, 1988, p.14. for a concise distinction between law firms and office sharing.

In the event a law firm does exist, the inquiring attorney must be mindful of the rules regarding conflict of interest, Rule 1.7 entitled "Conflict of Interest: General Rule" and Rule 1.9 entitled "Conflict of Interest: Former Client."

The inquiring attorney must make the determination of whether the law firm is a true law firm or an office sharing arrangement under the above described considerations. Given this uncertainty, the Panel is unable to opine as to whether the inquiring attorney may appear before the various forums of City X under the Rules of Professional Conduct.