Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2018-02
Issued September 13, 2018

FACTS

The inquiring attorney presents a question relating to the sharing of legal staff by unaffiliated attorneys who share office space. The inquiring attorney, a solo practitioner, proposes to sublease office space in his office suite to a lawyer, also a solo practitioner, who is nearing retirement and who is winding down his law practice. With the winding-down of his practice, the other lawyer is not able to continue to pay his secretary, who now works about thirty hours per week for him. The inquiring attorney states that he/she could use more support staff, and the two lawyers propose that the secretary would work forty hours per week, that is, twenty hours per week for each lawyer, with each lawyer paying her for twenty hours. The inquiring attorney, who has a very busy law practice, foresees that over time, the secretary will be working more hours for him/her, and that the he/she will be responsible for most of her wages. The inquiring attorney also foresees that the secretary will work full time for him/her after the other lawyer retires.

Computer professionals will load the other lawyer's information and documents into the inquiring attorney's computer, and will place restrictions on access between the two law practices. The secretary for the other lawyer will have access to electronic information of both law practices.

The two lawyers have law practices in very different areas of law. The other lawyer's law practice centers on estate planning, probate, and misdemeanor cases in district court, while the inquiring attorney concentrates his/her practice on workers' compensation cases and personal injury matters in Rhode Island and in Massachusetts. The attorneys will have separate letterheads, separate fax machines, and separate hard copy files. Both lawyers currently occupy separate offices in the same building and will retain separate signs. The inquiring attorney believes that this arrangement will allow the other attorney, who has had an illustrious legal career, to continue practicing law while he is winding down his practice.

ISSUE PRESENTED

The inquiring attorney seeks the Panel's guidance about an office sharing arrangement in which the inquiring attorney and another attorney will share a computer and a secretary.

OPINION

The inquiring attorney may have an office sharing arrangement with another attorney in which the lawyers will share a computer and a secretary. Because the common employee will have access to protected client information of both lawyers, the two law practices will be treated as one firm for conflicts of interest purposes under Rule 1.10.

REASONING

Unaffiliated lawyers may share office space. Such arrangements can provide very practical benefits to the solo practioner, as the facts of this inquiry demonstrate. The caveat is that separate firms practicing together may be regarded as a single law firm for conflicts of interest purposes, specifically the imputation of conflicts of interest under Rule 1.10 of the Rules of Professional Conduct. Whether two or more lawyers are regarded as a firm depends on the specific facts in each case. Rule 1.10, Comment [1].

Rule 1.10 provides:

> **Rule 1.10. Imputation of conflicts of interest: General rule.** (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 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.
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> (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
> (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
> (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
> (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

> (1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
> (2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.
> (d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
> (e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

The comment to the definition "Firms" in the ABA Model Rules of Professional Conduct explains:

> Whether two or more lawyers constitute a firm within paragraph (c) 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 a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

In 2007, the Rhode Island Supreme Court adopted the ABA definition of "Firms" and its comment, and added the following to Comment [2] to Rhode Island Rule 1.10:

> Further, any two or more lawyers who, by signs, letterhead, or any form of advertising, list their names in succession will likely be regarded as a firm for the purposes of these Rules, notwithstanding disclaimers such as "an association of independent attorneys."

To avoid being construed as one firm for conflicts of interest purposes, each lawyer who shares office space and expenses should protect the confidentiality of client information; should maintain his or her own letterhead, business cards, telephone number, separate files, bank accounts and financial records; and should not create an impression to the public that a partnership or other professional relationship exists. See R.I. Supreme Court Ethics Advisory Panel Opinion 94-12 (1994) (listing last names on letterhead with phrase "an association of independent attorneys" suggests a partnership to the public and is not permitted by the Rules); Pa. Bar Association Committee on Legal Ethics and Professional Responsibility Op. 2017-27 (2017) (to avoid being treated as one firm lawyers should protect client information by not sharing staff, phone lines, fax machines, copies or reception areas; and signage and letterhead should be separate); D.C. Bar Association Legal Ethics Committee Op. 303 (2001) (lawyers may share office space without forming one firm provided arrangement does not compromise each lawyer's client information or the independence of each lawyer).

In the office-sharing arrangement in the instant inquiry, the lawyers propose to share a secretary and a computer. Sharing a computer will not ordinarily subject the lawyers to Rule 1.10 provided the lawyers take steps to protect their clients' information, such as secured and limited access, and separate passwords. See N.Y. State Bar Association Committee on Professional Ethics, Op. 939 (2012) (two unaffiliated solo practitioners who share office space may share computer with reasonable precautions to protect confidentiality, including separate passwords). In the facts before the Panel, there will be restricted computer access between the two law practices, with the exception that the common legal assistant will have access to electronic information, and likely other client information, of both lawyers.

The Panel concludes that the proposed office-sharing arrangement is permissible. Because the common employee will have access to protected client information of both lawyers, the Panel concludes that the two practices will be treated as one firm for conflicts of interest purposes under Rule 1.10. See Oregon State Bar Legal Ethics Committee Op. No. 2005-50 (2005) (imputation of conflicts of interest if lawyers share employee with access to client information.)