

Modified from:

To Share and Not Share Alike: Office Sharing  
Ethical and Malpractice Issues

The Missouri Bar  
SOLO AND SMALL FIRM CONFERENCE

June 13, 2003

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10:45-11:45 AM

### **INFORMAL ADVISORY OPINIONS**

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*Although an effort has been made to summarize the important facts of the question, not all details are included in each summary. Therefore, these summaries should be used only for general guidance. Only summaries are available; actual copies of the opinion request and answer are not available.*

*For a searchable database and information on requesting opinions, go to:  
<http://www.mobar.org/opinions>.*

### **OPINION 990120**

**QUESTION:** Attorney is renting office space from a law firm and there is a landlord tenant relationship. They share a common reception area. The firm's receptionist answers Attorney's telephone calls only when Attorney's number is forwarded to do so. One of the members of the law firm is a municipal judge and another is a city prosecutor. May Attorney represent individuals charged with violations in the areas where the firm members act as the prosecutor and municipal judge?

**ANSWER:** The arrangement Attorney has described does not, on its face, prohibit Attorney from representing individuals charged with ordinance violations in either of those municipalities. In an office sharing arrangement, it is important to be certain that people who come into contact with the offices understand that they are separate offices. This should be addressed in signs and possibly in the set up of the reception area. It

should also be addressed in the manner in which the telephone is answered, even when Attorney has forwarded Attorney's calls to the firm's telephone number. Attorney also has an obligation to maintain confidentiality as to Attorney's files and other information. In order to accomplish such confidentiality Attorney's files must be secure. If Attorney has taken these steps, the firms will be treated as separate. Therefore, Attorney will not have a conflict.

## **OPINION 980220**

**QUESTION:** Attorney is involved in an office sharing agreement with three other attorneys. Each person pays all expenses relating to their practice and each contracts separately with clients. They do share common overhead expenses. They are also networked together on the same computer system and everyone on the network can access all of the client files for all of the attorneys. The attorneys are the sole occupants of a stand alone building and the sign in front of the building lists the names of all attorneys and the words "Law Office". There is one receptionist answering the telephone for all four attorneys. Currently, each attorney has their own stationery with their name at the top. Should Attorney list the names of the other attorneys on Attorney's stationery? If so, what is the proper way to list these names?

**ANSWER:** Under Rules 4-7.1 and 4-7.5(f), if Attorney is in an office sharing arrangement, all stationery, signage, etc., should indicate that Attorney is completely separate. If Attorney includes the other attorneys on Attorney's letterhead, it would give a contrary impression. If Attorney has a separate practice, it is not appropriate for the other attorneys to have access to confidential information regarding Attorney's clients. This applies to electronic information in the computer system, paper files, incoming and outgoing fax materials, etc. Attorney should take immediate steps to make any necessary changes to comply with the requirements of Rule 4-1.6 regarding confidentiality.

## **OPINION 980030**

**QUESTION:** Attorney's firm rents office space to an attorney who is not a member of the firm and is not "of counsel." Attorney's firm operates on the same computer network, therefore they can e-mail messages to one another and all have access to all client files stored on the computer. Because the office-sharing attorney and the firm have some mutual clients Attorney would like to add the office-sharing attorney to the network. Although the office-sharing attorney would only be able to look at e-mail specifically directed to that attorney, it would be possible to look at the firm's client files. The firm and the office-sharing attorney would agree not to look at each other's files. May Attorney's firm allow the office-sharing attorney to join the network under this agreement? If not, would the result be different if the office-sharing attorney became "of

counsel" to the firm? If not, should the paper files of Attorney's firm be locked so that the office-sharing attorney cannot gain access to them?

**ANSWER:** Attorney may not allow the office-sharing counsel to join Attorney's computer network without blocking access to Attorney's client files. The result would be different if that attorney were "of counsel" to Attorney's firm. Office-sharing counsel should not have physical access to Attorney's paper files at times when those files are unattended

## **OPINION 970192**

**QUESTION:** Attorney enters into an office sharing arrangement. Attorney would have a separate telephone number, but the fax number would be the same. It would appear on business cards, letterhead and the bar directory. Would this be a problem? Should Attorney get a separate fax line as well?

**ANSWER:** It is not required that Attorney have a separate fax line in an office sharing arrangement. However, Attorney must be able to assure confidentiality of materials received or sent on a shared fax machine. Similar concerns apply to other shared machines, such as a copy machine, and shared areas, such as a conference room.

**ADDITIONAL OPINIONS:** Other informal advisory opinions on the topic of office sharing are available on The Missouri Bar's website: 970119, 970035, 970007, 960219, 960093, 950212, 950169, and 950026. <http://www.mobar.org/opinions>

## **WHERE ARE THE HAZARDS?**

**ENTRANCE AND COMMUNICATIONS OUTSIDE THE OFFICE:** The signage for the office must make it clear that there are multiple independent firms within the office space. Similarly, letterhead, advertising, announcements, etc., must make the independence of the firms clear to an objective observer having first contact with any of the firms.

**RECEPTION AREA:** The hazards in this area relate to confidentiality. As separate firms, each firm must keep client information confidential from the other firms. Discussions between staff and clients and between staff can violate the duty to maintain confidentiality if they take place in a way that can be overheard. Additionally, phone messages should not be left lying around to be inadvertently viewed by the wrong person.

**CONFERENCE ROOM & LIBRARY:** Documents left lying while doing research or working on a matter may violate the duty of confidentiality. Policies should be developed

to limit access during times when papers need to be left out or other methods should be developed to avoid inadvertent access to confidential materials by someone outside the firm. The conference room should be equipped so that confidential discussions can be held without being overheard.

**SHARED COMPUTERS:** A shared computer or a shared computer network creates confidentiality concerns. It is possible to share a computer or a computer network. However, it is essential that confidential information be protected by passwords or other methods.

**COPY & MAIL ROOM:** Once again, confidentiality is the primary concern. Documents left lying at shared machines or work spaces may violate the duty of confidentiality. Similarly, documents left in the trash may be a problem.

**FILE ROOM:** A shared file room creates a greater hazard for breaches of confidentiality than separate file areas. Documents may be left around waiting to be filed. In a commonly accessible file storage area, file cabinets should be secured when unattended.

**LUNCH ROOM:** Confidentiality is the concern. Documents may be left lying. Inappropriate discussions may occur because people have their guard down. A telephone call taken in the lunch room may be overheard by those outside the firm.

**SHARED PARALEGAL AND SECRETARIES:** If the various firms take cases against one another, staff cannot be shared on such matters. Shared staff must be well educated and supervised to avoid inadvertent disclosure of confidential information outside the firm.

**ATTORNEY OFFICES:** Confidentiality must be maintained here, as well. In a situation in which confidential communications will occur within attorney offices, the offices must be such that those communications cannot be overheard by those outside the office, including those in adjacent offices.