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## Wisconsin Formal Ethics Opinion E-00-02: Sharing Office Space with Unrelated Entities

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*Professional ethics opinion E-00-02 considers lawyers sharing office space, support staff, and equipment with unrelated entities.*

Under what conditions may a lawyer or law firm share office space, staff, and equipment with lawyers not in the same firm or with nonlawyers?

### **Opinion**

The Rules of Professional Conduct do not prohibit lawyers from sharing office space, support staff, or equipment with either another lawyer or a nonlawyer provided adequate protection is taken to protect clients' interests.

**Client confidentiality.** An obvious client interest at risk in such an arrangement is the protection of client confidences. *See* [SCR 20:1.6\(a\)](#). When lawyers share space with anyone outside their firm, they must ensure that persons not associated with the law firm cannot intentionally or inadvertently access client files, in-person communications between lawyers and clients, mail, telephone, fax, email, answering machines, voice mail, and other forms of communications that may contain confidential or privileged information. The appropriate steps to ensure such protection depend on the particular circumstances in place. Such steps may include procedures such as keeping all files in closed or locked files or in lawyers' offices; securing the receipt, transmission and handling of correspondence, fax transmissions, or similar documents in such a way as to prevent them from being inadvertently viewed by unauthorized personnel; restricting access to telephones or other means of communication by unauthorized personnel; dividing office space to avoid the inadvertent disclosure of confidential information; and training personnel on appropriate confidentiality protocols. It is important for lawyers to realize that even the negligent or inadvertent disclosure of privileged communications between lawyer and client could defeat the lawyer-client privilege. *See* Wis. Stat. [§ 905.03](#).

**Representation of the relationship with nonrelated entities.** When lawyers or law firms share office space with another entity they must not mislead the public about the relationship between the two entities - such as that they are affiliated or the same entity - when that is not the case. When lawyers not in the same law firm share office space there is a material risk that the public will assume they are part of the same entity unless specific efforts are made to clarify that they are practicing as separate entities.

If lawyers or law firms associate only for the purpose of sharing office space, equipment, personnel, or other resources, they may not share the same letterhead. They may not denominate themselves as "Smith & Jones," for example, in stationary, business cards, signage, entrances, or advertising and promotional materials. *See* [SCR 20:7.5 \(d\)](#) ("Lawyers may state or imply that

they practice in a partnership or other organization only when that is the fact"), [SCR 20:7.1\(a\)](#), and Wisconsin Ethics Opinion E-90-1. Use of disclaimers such as "not a legal partnership" does not necessarily avoid a violation of these Rules. If a group of lawyers want to appear to be a law firm, they must be a law firm.

Whether an association between lawyers actually constitutes a law firm is a question of law that is beyond the authority of this committee to opine. However, the existence of such a relationship may be evidenced by such facts as the existence of a formal legal status (for example, partnership, service corporation, or LLC), the use of a common trust account, a common policy of malpractice insurance coverage, joint work on cases, and sharing the income, profits, and liabilities of the common enterprise.

**Conflicts of interest.** When lawyers who are not in the same law firm share office space, they must be sensitive to the circumstances of their relationship that may give rise to conflicts of interest. These circumstances may arise when their business or personal relationships may preclude them from effectively representing their respective clients whose interests may be adverse to each other or when the relationship between them may otherwise materially limit their representation of a client, [SCR 20:1.7\(b\)](#), or when confidential information may be so important or sensitive that the lawyers in an office sharing arrangement cannot adequately ensure the degree of protection of sensitive information that their clients may require, [SCR 20:1.6\(a\)](#). *See* ABA Informal Opinion 1486. Should such conflicts arise, they may be subject to written client waiver with the proper disclosure and consultation. The committee withdraws E-86-2 which is superseded by E-00-02.

**Sharing office staff.** Office staff may work for multiple lawyers and law firms who share office space. *See generally* E-86-13. When they do, however, the lawyers must be sure that staff understand that the entities are separate, do not share their respective clients, and that this imposes obligations of special care with respect to protecting the confidences of the separate clients, the risk of conflicts of interest, and the duty to make clear to the public that the lawyers and law firms are separate entities. *See* [SCR 20:5.3\(b\)](#) ("A lawyer having direct supervisory authority over a non-lawyer shall make reasonable efforts to make sure that the person's conduct is compatible with the professional obligations of the lawyer"). If the lawyers share a receptionist, the receptionist should answer the phone with a general greeting such as "law offices" instead of "Jones and Smith." *See* [SCR 20:7.5\(d\)](#).

Lawyers not in the same law firm sharing a receptionist pose a more limited risk of violating the Rules of Professional Conduct. However, when lawyers not in the same law firm share secretaries, legal assistants, or other staff who have access to sensitive or privileged client documents, more serious risks to the interests of clients may arise.

**Sharing fees.** Lawyers who are not in the same firm but who share office space may still from time-to-time co-counsel on a legal matter and as a result may share legal fees. Generally, they should provide separate bills for the services they each perform to clients to avoid the impression that they are in the same law firm. However, with proper explanation to the client of the nature of the relationship between separate law firms, the firms may send out a joint bill or a bill from one of the firms in which the lawyers share in the fee. Any sharing of a fee among lawyers not in the

same firm is subject to restriction in [SCR 20:1.5\(e\)](#). A division of fees proportional to the services performed by each lawyer is permitted so long as the overall fee is reasonable, the client does not object to the division after notice, and the client is informed if the fee will increase as a result of the involvement of multiple counsel. If the division of fees is not in proportion to the services performed by each lawyer, the lawyers must - with the written agreement of the client - assume joint responsibility for the matter. *See* Wisconsin Ethics Opinion E-00-01 (Division of fees between lawyers not in the same firm - joint responsibility for the representation in [SCR 20:1.5\(e\)](#)).