

A RISK MANAGEMENT CHECKLIST FOR LAWYERS WHO WISH TO SHARE OFFICE SPACE



Entering into an office sharing arrangement can be quite beneficial for all involved, particularly if all the associated ethical, malpractice, and insurance coverage concerns are responsibly addressed up front. Here's one reason why. Malpractice policies typically exclude coverage for all claims that arise out of or in connection with any act, error, or omission committed by an attorney with whom an insured shares office space and who is not an insured under the insured's policy. Stated another way, if your independent office mate gets sued for malpractice and you are named in that suit and were not involved with or even aware of the client who filed that suit, your policy would provide no coverage for this claim. Unfortunately, this is one of the risks that just comes with a decision to share office space. The good news is the risk of having to deal with something like an uncovered claim can be mitigated. The following checklist can help you get there.

1) **Review applicable state bar ethics opinions on office sharing to make certain the arrangement and all internal policies and procedures are compliant with your ethical obligations.**

2) **Focus on Clear Indicia of Separation to Avoid Becoming a "Firm by Estoppel"**

- No common advertising or shared branding! All signage, letterhead, business cards, directory listings, websites, and any other advertising should never make it appear that the lawyers in the shared space are practicing together. This means terms such as "association," "affiliated," or "of counsel" should not be used unless those wanting to use such terms intend to hold themselves out as a firm.
- Each separate practice should have a distinct firm name, email domain, logo, phone number (where possible), and web presence.
- Mandate the use of engagement agreements by all that clearly state each lawyer in the shared space operates as an independent law practice.
- Maintain separate trust accounts and operating accounts.

3) **Prioritize Confidentiality and Information Security**

Physical Premises

- Maintain separate lockable offices, file cabinets, and storage spaces.

Internal Policies and Procedures

- Prohibit common staff personnel from opening mail, taking detailed messages, receiving or sending faxes and substantive email or text messages in order to avoid the loss of attorney-client privilege.
- Ensure clients cannot overhear privileged discussions by establishing an office wide policy that prohibits the following:
 - Talking about client matters near or in any public space to include the reception area, conference rooms, and hallways;
 - Leaving client file materials in any shared space such as a conference room, kitchen, or breakroom;
 - Leaving client file materials in places like an unlocked shredding bin, common garbage can, or a shared fax machine;
 - Leaving office doors open when visiting with a client in person or on the phone.

- Prohibit separate practitioners from taking on common clients absent a formal co-counsel agreement.
- Establish a process for conflict checks and prohibit separate practitioners from taking on adverse parties absent client consent obtained in advance and in writing.

Technology & Digital Security

- Password protect all computers and mobile devices in accordance with the provisions of a strong password policy.
- No shared networks absent network segmentation, firewalls, and strict access controls.
- Maintain separate email systems, case-management software, cloud storage, and backups.

Reception & Support Staff

- Require signed confidentiality agreements with all staff.
- Train staff on how to avoid cross-disclosure of information and appropriately handle misdirected calls, mail, or other client communications.
- Ensure that shared staff never open mail or have access to any confidential or privileged information.
- Ensure that reception staff never introduce the lawyers as being “with the same firm.”

4) — **Have a Written Office Sharing Agreement – Risk Management Issues Worth Addressing Include:**

- Establishing who has a say in deciding who can practice in the shared space and under what conditions and who will handle the administrative responsibilities of any shared staff.
- Establishing who will be responsible for the purchase, maintenance, repair, and replacement of shared office equipment and furnishings.
- Setting forth dispute resolution procedures, termination rights, notice periods, and exit obligations.
- Requiring that everyone purchase and maintain an appropriate level of malpractice coverage.

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