



RISK MANAGEMENT INSIGHTS

by Rian Jorgensen, JD

OFFICE SHARING: Equal but Separate Should be the Goal

Given law firms' fluid real estate needs, they often find themselves with either too much or too little space. When a firm has unused offices, it often makes good sense to sub-let to sole practitioners, resulting in a classic "win-win." The solo is able to access the larger firm's professional office space and infrastructure at a reasonable cost, and the firm receives rent payments to help defray its fixed costs.

Office sharing does, however, raise potential liability and ethical concerns that need to be addressed. Unfortunately, malpractice insurers' claim files are filled with matters arising from office sharing arrangements, where the alleged wrongful acts of one of the firms are imputed (with varying degrees of success) to the other.

By way of example, Jane Jones, a trusts and estates lawyer, sublets space from Ready & Able, a 10-attorney business litigation firm. Clem Client comes to the office to see Ms. Jones in order to have a will executed. Mr. Client unfortunately dies soon thereafter, and an error is discovered in the will, which will cost the estate several million dollars in taxes. The malpractice suit is duly filed against Ms. Jones, and Ready & Able is also named in the complaint (frustratingly, from its perspective, since the attorney-client agreement was between Ms. Jones and Mr. Client).

Ready & Able's ability to quickly get out of this suit will depend heavily on how many degrees of separation they can show from Ms. Jones. If she called in a Ready & Able attorney to briefly meet with Mr. Client and consult on an issue, no matter how minor, the firm

would have difficulty getting dismissed. The following factors will also likely have a significant impact on a fact-finder's analysis:

1. Signage

Does the entryway clearly denote "Law Offices of Jane Jones," or is "Ready & Able" the only visible sign?

2. Telephone

Does Ms. Jones have a separate telephone line for which the receptionist answers "Law Offices of Jane Jones," or does she "piggyback" off of Ready & Able's main number?

3. Letterhead

Does Ms. Jones have separate letterhead? Is she also listed on Ready & Able's letterhead (or web site) in an attempt to show that the firm has a trusts & estates practice?

A key risk management step for attorneys on either side of an office sharing arrangement is to ensure that the other firm has equivalent (or at least appropriate) malpractice insurance limits. If Ms. Jones only carried a \$500,000 limit, and Ready & Able has \$5 million, the plaintiff's lawyer will be that much more likely to name Ready & Able in search of a deep pocket, given Ms. Jones' policy's inadequate limit to make the aggrieved plaintiff whole.

Attorneys contemplating these arrangements should always take a step back and view the situation from a client's perspective, with the goal of ensuring that it is only one office that is being shared, and not the other attorney's liability exposure as well.

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