

Office Sharing: The Promise and the Pitfalls

By James Slayton and Jim Calloway

JAMES SLAYTON'S TOP 10 RULES REGARDING OFFICE SHARING

Remember last week, you returned from the courthouse wondering about a certain point of law which was raised by the court. You go to your office mate(s) or partner(s), and talk about it.¹ What's that you say? You don't have a partner or an office mate? Well you are in the majority of attorneys practicing in the state. Did you know that 63 percent of OBA members are solo practitioners or have only one office-mate?² Did you know 84 percent of OBA members are in offices of four or less? Here is the percentage which completely surprised me: only nine percent of all OBA members are in firms of 10 or more.

This same OBA survey tells us more than 27 percent of all metropolitan attorneys are solo, and another 28 percent have only one partner. The non-metropolitan numbers are even higher. More than 41 percent of non-metropolitan attorneys are solo and another 40+ percent have only one partner. The bottom line is the solo and/or small firm setting is dominating in our industry, and it is in all likelihood here to stay. What the survey does not tell us (because they did not ask,) is what type of office situation these one and two member firms utilize. It is my guess that most, if not all, are in some type of office sharing arrangement. Someone is the landlord and everyone else is a tenant.

Office sharing has many advantages. Some are reviewed below. Some are not. Without any type of formal survey it is my belief the main

reasons for office sharing are: 1) economy of scale; 2) simplicity and 3) availability of additional resources.

So exactly what is the best office sharing arrangement? It can be just about anything you want it to be. It is completely up to you. You can rent or lease from another solo or firm, or you can be the primary party liable on a lease or on a mortgage and have other attorneys rent space from you. I have observed it many ways. You can have a written or oral agreement. Each has its good and bad points. As attorneys we all have our own ideas of which one is best. But remember now you are dealing with your livelihood, your business, your own paycheck. It gets personal at this level. A *good* attorney understands this is a business.

I am not here to tell you to go and enter into a lease for a large space and try to find tenants, nor am I telling you to go to every attorney you know and ask for space to rent. Everyone must make their own decision regarding the type of office arrangement they choose. There are just a few rules which seem to transverse all small or solo office sharing situations, and most of these rules center around common courtesy. There are many decisions which go into picking the correct location, landlord, or co-tenants. What type of practice do they have? Is there a high risk of conflicts, and a low risk of referrals, or a low risk of conflict with a high probability of referrals? If there are tenants already in place, what has been the turnover and why? There are many questions to ask and many different possible answers.

The following is a short outline, in no order of importance, of some points that I believe are the major issues of office sharing:

1) Own your own practice. Specifically this goes to telephone numbers and computer systems. Although you can share some equipment, telephone systems, etc., the telephone number itself needs to be yours. If, for some reason you want to move, you don't want your number staying at the old address. It is your link to most of your new business and all of your old or existing business. As to computer systems, make sure and keep your data separate. Being tied into a master server and a print server may keep your startup costs down, but it leaves you trapped with someone else's system, which includes software, upgrades, and repairs. It can also be a major issue when the time comes to move. You also need to keep your data separate for the issue(s) of security and ethical reasons.

2) Office Sharing Situations have 'special' ethical repercussions. It is probably a good rule of thumb not to take a case when someone else in the same office is on the other side. Not only are there ethical questions, it can ruin a good working office situation. There are ethical decisions regarding the issue of office sharing out there so find them, read them and understand them. Your type of office situation also plays a part in this decision but overall it is probably a very good idea to avoid this problem. It is very hard to put up a 'paper wall' when one of the best reasons to office share is to have someone to bounce ideas around. (See number five below.) Subject to how 'tight' a group you are in, it may also be a good idea to do conflict checks with each other.



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Make sure your clients also understand who your partners are. Better yet make sure your clients understand who your partners aren't.

3) Understand there is a difference between friends, co-workers and someone else's staff. Just because you have nothing to do or want to waste the next 30 minutes you don't have a license to take over someone's secretary or another attorney or paralegal for 30 minutes. This does not mean you are not to be friendly, just appreciate the fact that someone else is paying for their time. This is not to be confused with asking questions or

other 'what-if' situations. See number five below.

4) Someone has to be in charge of things. This includes items such as the coffee pot, the copy machine, the fax machine, research materials and anything else that is shared. Also you have to plan on having more than one person as the notary. You can not notarize your own signature and many times people are out of the office. Become part of the team and take charge of something.

5) One of the great things about office sharing is having someone to answer your questions. But remember, if you ask a question of another, respect their opinion. You may disagree, and you may want to do a short "what if" debate, but don't argue with them about it. That does not mean you can't discuss an interesting point of law. It just means that every point of law is not worth hours of discussion. Also remember you are dealing with your client's confidential information. Make sure your

office mates understand this and/or use hypothetical type situations.

6) Always offer to help with the little things. There are few things more wasteful than an attorney going to the courthouse just to file a pleading, only to run into other attorneys from the same office who are also there just to file a pleading. It is a massive waste of time to see all your office mates at the same courthouse when one could have done it all. Offer to help and expect the same in return. For a few of the finer points see number seven below.

7) Don't take advantage of someone else's kindness (See number six above). It is one thing to file an entry of appearance or other pleading; something else to pay for and file a new petition, set the temporary order, get a judge's signature and deliver it all to a process server. Again, this situation may be acceptable, if all parties walk in with their eyes open and with the understanding you will do the same. Common courtesy goes farther than anything else.

8) If you share expenses, pay on time. The other person is not making any money on copies or the long distance or the fax machine or the coffee and probably not making money on the rent – just breaking even. They have to pay the payments or the phone line to the fax machine gets cut off, the coffee is not replaced or the copier is repossessed. Think of it this way: When the new copy machine comes in it may not include you as an operator and your coffee cup may turn up missing! On the other hand if the money is due to you understand sometimes people forget to write that check. (Did you send them a bill?) It is ok to remind them but common courtesy goes father than anything else (they may have been busy!) Remember the most common reason for office sharing is to save money. This is done by sharing overhead. The key word here is share – and in a timely fashion.

9) Understand the difference between a law

partnership and office sharing. I use this analogy: a law office partnership is two or more people sharing the same checkbook. An office sharing situation is two or more people sharing the same front door. Your office mates have their own business/practice to run. Common courtesy goes farther than anything else.

10) Common courtesy goes farther than anything else. Has this been said before?

This list does not cover all the issues of office sharing. Much more could be written regarding the different types of legal relationships that can emerge from office sharing as well as types of leases and other written and/or oral agreements that may be involved. Many more pages could be written solely on the issue of ethics. Additionally there could be bar journals filled with horror stories of office sharing arraignments gone bad. Just keep in mind that in most cases just a little thoughtfulness and advance planning, as well as common courtesy, can take what could be a trying situation and make it one which leads to a very enjoyable and profitable office sharing arraignment.

JIM CALLOWAY'S OFFICE SHARING IN A NUTSHELL

Office sharing with other attorneys can be very beneficial to the solo attorney. It can be also useful for the attorney who only wants to practice part-time. Typically the rental payment will allow access to any resources in addition to the actual office such as the law library, fax machine, copier (the tenant will likely pay on a per copy basis,) receptionist, client waiting areas, kitchen, restrooms and so forth.

These arrangements can prove beneficial to all concerned as it is unlikely that all of the lawyers will want to use a law book, the conference room or the kitchen at the same time. A solo practitioner who is not office sharing will have to pay for these types of items whether they are being utilized or not. In addition, associating with other attorneys may provide valuable



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client referrals and some peers with whom to discuss legal strategies and interpretations. Perhaps the greatest difficulty in being a "true" solo practitioner is finding other attorneys with whom to "brainstorm" or seek advice without compromising client confidences.

A beginning lawyer may also be able to negotiate a rent reduction in return for a few hours of services to the landlord attorney each month for things like filing or routine court appearances.

However, there are several possible problem areas with office sharing arrangements. An attorney's reputation is his or her most important asset. You should be aware that many attorneys will tend to make assumptions about you personally based on the reputations of the attorneys with whom you choose to office share. It is important that you investigate the attorneys with whom you may be intending to office share as to their reputation in the legal community.

You may also find that the attorneys from whom you seek to sublet or office share are reluctant to enter into a written agreement. This is typically because they are as unsure as to whether the arrangement will work out on a long term basis. In addition, all attorneys are typically busy and no one wants to take the time to draft an agreement.

However, you are going to make a significant investment in moving into a location, perhaps installing a phone line and having business cards and stationary and envelopes printed. In most circumstances, unless you have known the attorney for a long time, you would want some memorandum or written contract and you would want to be entitled to some reasonable amount of notice even if the arrangement proves unsatisfactory to the other attorney (or to you).

Typically, you will find that if you agree to draft the agreement, subject to the other attorney's approval, these concerns can all be adequately and fairly addressed. The leasing attorney should be sure to specify in the agreement what is included in the monthly rental charge and what requires additional payment (such as copies). For a true office sharing agreement between co-equal attorneys, it is also important to spell out what is to be paid for collectively and what is the individual obligation of the attorney.

If purchases of equipment are to be made jointly, there should be some writing as to who owns them or what procedure is used to make a division in the event of a split. If you are not careful, the termination of an office sharing arrangement can have all of the aspects of the property settlement part of a divorce case.

Perhaps the most troubling concern about

office sharing arrangements is the potential for ethical dilemmas or for exposure for liability for the malpractice of another attorney.

Even if you are not truly a partner with another attorney, you may still find yourself in legal jeopardy based on a claim that the client believed he was represented by a partnership. Evidence supporting this allegation could include answering the telephone with a firm name, having a

stationary with all of the lawyers' names on it or referring to one another as "partner" in front of the client. You may find that your malpractice insurance carrier will refuse to insure you if there is letterhead, a sign or a receptionist answering the telephone combining several attorney's names. The best initial solution to the malpractice exposure is to require that all of the attorneys who are sharing offices obtain



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malpractice insurance with the same carrier and in similar limits and to provide proof of coverage to each other.

The following language in an office sharing agreement might serve to prevent some future troubles.

"The undersigned lawyers agree that they are all solo practitioners who are pooling to share office expenses but are not a partnership. Each attorney agrees to use his best efforts to ensure that all clients that he or she represents understand that there is no existing law partnership. All attorneys agree that they will not represent clients without a written fee agreement and that all such written fee agreements shall all contain the following language: "Client understands that he/she is contracting only with the attorney whose name appears herein and that the attorney is not in a partnership with the other attorneys located in the same office suites. Only the attorney whose name appears herein is responsible for the client's case."

Author's disclaimer: This is suggested, untested language and no warranty is made or implied.

Potential conflicts of interest are another area of significant concern in an office sharing relationship. There are significant economic benefits that occur from office sharing. An attorney should accept that there will be some detriments and some cases that the office sharing situation will render you unable to handle. It is not the purpose of this article to discuss conflicts of interest in depth. These matters are generally discussed in the Rules of Professional Conduct Rules 1.7, 1.8, 1.9 1.10 and 2.2.



“ Potential conflicts of interest are another area of significant concern... ”

Since lawyers who are merely sharing expenses are not considered to be a law firm, many attorneys are often not as concerned about conflicts of interest as they would be in a partnership context. They should be. As a practical matter, many of the most significant potential conflicts of interest will be recognized by the clients or perceived even when they do not in fact appear. If the lawyer down the hall represents the wife in the divorce case, you are probably not going to convince the husband that you can adequately and fairly protect his interest. Frankly, you should not even try to convince him and then represent him.

It is theoretically possible to construct a "Chinese wall" between yourself and another lawyer in the office sharing relationship. This is a risky course of action, however, and is not recommended as a general rule. Before even considering that course of action, you should consider the

anticipated fee that might be earned in relation to the potential problems with a later claim of malpractice or ethical violation, the extent to which such representation could affect your relationship or future referrals with the other attorney, the difficulty in securing client confidentiality under such situations and the personal pain that a bar complaint would cause.

Both lawyers would have to ensure that the files were stored and locked in such a location that the other lawyer or her staff could not have access to the client's confidential information. If a receptionist is shared, clients must be cautioned to not leave messages with the receptionist and even such things as sharing the same copy machine could prove to be a problem. Having the attorney's computers networked where they can share files is another problem area. In fact the *District of Columbia*

Bar Association Ethics Opinion 303 (adopted Feb. 20, 2001) states that the above measures are required in any office sharing arrangement.

Hopefully after an examination of the facts the attorneys will conclude that this is a situation that is would be better to be safe than sorry. See *Colorado Bar Association Ethics Committee Formal Opinion 89* (Adopted Sept. 21, 1991, amended April 19, 1992) for a discussion of the many issues involved when office sharing attorneys represent clients with conflicting interests.

The "safe" way is to agree in advance that the lawyers will observe the same conflict of interest rules as if they were in a partnership, even though they are not. However, they should be aware that many bar associations have issued ethics opinions that are very restrictive regarding office sharing situations.

Most important office sharing tip: My most important office sharing tip echoes Mr. Slayton's. Your phone number is your lifeline for business. You will certainly be passing out business cards with your phone number on them and sending letters. You may be doing some advertising where your phone number is presented. Former satisfied clients who wish to refer you new business will typically do so by the phone number on the business card from your prior representation.

It is well worth the investment and expense in an office sharing or subletting arrangement to pay for an additional telephone line for you with your own phone number that you may take with you should the relationship dissolve. This can be done either with a telephone that actually rings on your secretary's desk or it can just be one of the multiple lines that 'the receptionist' answers for all of the lawyers. Your office mates will probably appreciate the additional telephone line and will appreciate your business foresight.

A separate telephone line will also allow you to have all of your long distance calls billed to

one number so that splitting up the long distance phone calls between lawyers will not take any of your time. Although business telephone lines are a significant expense this is an important investment into the stability of your future practice.

(Authors' Note: This article was originally prepared as two papers presented at the 2004 OBA Solo and Small Firm Conference. Since office sharing arrangements are becoming more common among some Oklahoma lawyers, both papers are presented here in shortened format to give a wide range of opinions. The opinions expressed herein are those of the authors and not the Oklahoma Bar Association. Even the authors reserve the right to change their minds next week.)

1. You can also post these questions on the OBA-NET but that is a topic for another paper.

2. OBA 2002 Membership Survey, 73 OBJ 3413 (Dec. 7, 2002).

ABOUT THE AUTHORS

James Slayton's law practice has emphasis in the areas of probate, real property, collection and domestic/family law. He also serves as an administrative law judge for the Oklahoma State Department of Health and the Oklahoma Department of Mental Health and Substance Abuse. He received a bachelor's degree in business administration from OU in 1976 and a J.D. from the OCU School of Law in 1986.



Jim Calloway is the director of the OBA Management Assistance Program and manager of the OBA Solo and Small Firm Conference. As a member of the ABA, he serves as chair of the ABA TECHSHOW 2005 board, on which he has served as a board member for the past three years. He has made over 200 presentations across the country on law office management, legal technology, ethics and business operations.