

Flying Solo

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*One of the first questions a solo practitioner asks is where am I going to practice? Am I working from home or do I get an office? Do I share with other lawyers? Nancy Byerly Jones, the former Practice Management Advisor in North Carolina and now a consultant wrote a terrific chapter on office sharing and executive suites in the book **Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer**, 4th Edition. Solo's should consider the points she raises when determining what physical office arrangements (if any) they should have for their practice.*

The Essentials of Office Sharing and Executive Suites

Nancy Byerly Jones

INTRODUCTION

Office sharing offers many advantages to lawyers and continues to grow in popularity. Much of the credit belongs to soaring rental and purchase costs, as well as to the decrease in suitable space in many localities. Also, many lawyers with healthy incomes prefer office sharing to more conventional setups, as it provides an instant network of lawyers or other professionals (such as accountants or insurance agents). Office sharing provides a “family” of familiar faces each day—something many solos find they miss when going it alone. On the other hand, office sharing has its share of hidden time bombs for lawyers who fail to do their homework before entering such arrangements and for those who refuse to take common-sense precautions while sharing space.

This chapter focuses on smart “must-dos” for office sharing, and on ways to avoid (or defuse) potential time bombs. It is not meant to be all-inclusive; rather, it serves as a starting point and as food for thought. It applies to those who are considering sharing space, as well as to those who already share space and need to conduct a “health check” of their current situations. Finally, this chapter briefly discusses the executive-suite option—sometimes called the instant office—that falls within the office-sharing family. Although traditional office sharing and executive-suite options are two different concepts, they both require that similar safeguards be taken to protect lawyers from the potential hazards of sharing space with folks who are not members or employees of their firms.

You May Want to Consider Office Sharing If . . .

- You are on a tight budget.
- You are financially stable and healthy and want to be a solo, but not at the cost of sacrificing the chance to be around and network with other lawyers and professionals.
- It provides you access to certain equipment or amenities you could not otherwise have (such as a receptionist, a secretary, conference rooms, a more sophisticated telephone system, voice mail, fax and copy machines, a popular and convenient location, and/or traditional or online libraries).
- You have unused space that could be rented to bring in additional income.
- You want to “test-drive” working around certain folks to determine whether you want to eventually form a firm together.
- You need more time to develop your practice before establishing a permanent office home.
- It just feels right!

Short “Hot List” of Must-Dos

- Have a written office-sharing agreement.
- Inform and educate clients.
- Avoid partnership-like actions or appearances.

- Protect client confidentiality at all times.
- Be respectful of others' property and space.

THE WRITTEN AGREEMENT

This is definitely not the fun part of forming an office-sharing arrangement, but it is an essential element. As with partnership agreements, the office-sharing contract should cover every possible scenario, in addition to the more traditional terms like rent and shared costs. If a potential office mate balks at or makes fun of your efforts to have a written agreement, it should be the only signal you need to run—not walk—from involvement with that person.

As lawyers, we would never advise our clients to enter contractual relationships without documents that clearly and thoroughly set forth all the terms. Why would we demand less for ourselves? We humans can disagree and hit stalemates with one another from time to time, in spite of the best efforts and intentions. It is only wishful thinkers who believe that a shake of the hands is all that's needed. Wouldn't it be nice if our world worked that way? The truth, however, is that it doesn't, and we are fooling ourselves if we think we are unique and that common-sense documentation rules don't apply to us.

Checklist of Agreement Terms (Not Intended as All-Inclusive!)

- A strict prohibition against any lawyer representing the shared office as a partnership in any manner—impliedly or otherwise
- A requirement that all lawyers carry professional-liability insurance—preferably with the same insurer, the same deductible amount, and the same limits—and that all insurers are appropriately notified of the office-sharing arrangement
- A requirement that all parties send to all clients engagement letters that include clear statements regarding the status of their legal entity (that is, sole proprietorship, and not in partnership with others), and that all clients acknowledge their receipt and acknowledgment of their engagement letters by signing and returning duplicate copies to the responsible lawyer

- An agreement not to take adversarial positions in a case unless in strict compliance with your jurisdiction's applicable ethical rules and opinions
- A statement of the necessity to protect client confidentiality at all times, and a requirement that each lawyer provide an appropriate number of locked file cabinets, install office door locks, and take other similar measures to ensure the confidential safekeeping of client files and property
- A clear understanding of what, if any, office equipment is to be shared, who is to provide the equipment, who is responsible for its repair and maintenance, and how the other lawyers will be charged for use of the equipment
- A clear understanding of the sharing, if any, of office personnel and all related issues (for example, the establishment of work priorities, the payment of all relevant salaries, a no-nonsense prohibition against any form of sexual harassment, payments for continuing education courses and the like, and the rules and procedures for hiring, training, supervising, and, if necessary, firing office personnel)
- An agreement to take full responsibility for informing and training all personal staff members, including temporary help, about how to respond properly to clients' and others' questions so they never give the impression that the lawyers are a partnership
- A detailed outline of all financial responsibilities of each individual lawyer and of the group collectively, and of the ramifications if payments are not made on time or as otherwise agreed (for example, interest charge or eviction)
- A plan for sharing traditional and online libraries, conference rooms, and the like (for example, a procedure for reserving conference rooms, and how scheduling conflicts are to be handled)
- A clear understanding of responsibilities regarding day-to-day office maintenance and cleanup
- An acknowledgment that as with all other successful, worthwhile relationships (personal and professional) proper attention, monitoring, and needed adjustments must be given to the office-sharing situation; a further acknowledgment that if problems are ignored for too long, or if relationships are neglected or taken for granted, then relations will deteriorate and potentially cause harm to the lawyers, their practices, their staff members, and their clients

- A mechanism for breaking “ties” when there are only two lawyers or when an equal number of the participants hold opposite opinions when trying to reach decisions that must be jointly made
- An acknowledgment that if the participating lawyers make client referrals to one another (perhaps because cases are outside one’s area of expertise, or one has a heavy caseload), there is an inherent risk that the referral will result in some clients liking the other lawyer so well that they decide to retain him or her for all future legal work
- An agreement regarding how to handle matters if the foregoing situation occurs (for example, the other lawyer refuses to accept new legal matters from the client after the close of the referred case, or the referring lawyer agrees to accept the client’s choice graciously and without any resentment)
- Provisions clearly stating the duration of the agreement, as well as renewal options, if any
- An agreement about what, if any, input each party will have in selecting future new office mates
- The terms for handling dissolution of the office-sharing arrangement (for example, the amount of advance written notice required by each party to the agreement, the manner of dividing or compensating for shared equipment, a decision about whether the departing office mate or the landlord/owner has responsibility for finding a substitute tenant, and the decision about whether to use mandatory mediation or arbitration when agreement cannot be reached on certain issues)

INFORMING AND EDUCATING CLIENTS

All clients should be informed at their initial consultation—whether in person or by phone—that the lawyer is not in partnership, or any other kind of law firm relationship, with the other lawyers in the office. Likewise, engagement letters should include a clear statement regarding the legal structure of the lawyer’s practice setting (that is, sole proprietorship). Clients should be reminded not to leave confidential materials or messages with anyone but their own lawyer and others who work for their lawyer. These types of reminders should be repeated often to remind clients of their shared responsibility in helping protect their confidential information.

Whenever two or more lawyers in the office work on a case together, their clients' permission should be received before any work is commenced on the case. Additionally, all clients should be clearly informed in writing of how the responsibilities for the case will be divided between or among the lawyers. Clients should be instructed to make separate payments to the individual lawyers as itemized for them on their statements. It is also important to check the requirements and prohibitions of any other applicable ethical rules in your jurisdiction regarding joint representation by associated counsel.

Clients should be informed immediately when their lawyer moves to a different office and should be given the new phone and fax numbers, mailing address, street address, and directions to the new location. If the lawyer has moved into another office-sharing situation, another letter should be sent to all clients informing them that this new relationship is not a partnership (see above) and explaining all confidentiality safeguards they should take.

AVOIDING THE APPEARANCE OF A PARTNERSHIP

Ethical and common-sense precautions should be taken to ensure that the public is not misled into thinking the lawyers are a partnership or any other form of a corporate or similar entity. There are some lawyers who don't mind giving the impression that they are in partnership with their office-sharing peers. They perhaps are just sloppy when it comes to preventive practices. Or, they may think it gives them more prestige or gives outsiders the impression that they are part of a larger firm. Such tactics, however, can backfire on lawyers in many ways, including being named as a defendant in a malpractice action because of the negligence of their alleged "partner." The bottom line: A lawyer should never do anything that tends to indicate that a partnership exists—and any lawyer who does shouldn't be surprised when those same habits and actions are used by a good plaintiff's lawyer to prove a partnership existed and, therefore, so does joint-and-several liability!

Some of the precautions to be taken include the following:

- Outdoor signs that clearly delineate separate lawyer offices (for example, one sign for lawyer John Doe—"Law Office of John Doe, Attorney at Law"—and another sign for

the office-sharing lawyer, Jane Smith—"Law Office of Jane Smith, Attorney at Law")

- Organization of interior space to emphasize separate offices
- Separate telephone lines, answered not as, "Law Offices," but as, "Law Office of John Doe"
- Separate filing systems not accessible to anyone but the responsible lawyer and his or her staff
- Colored-coded files, if sharing staff, to minimize erroneous filings and confidentiality problems
- Proper training and supervision of staff to ensure they do not say or do things that imply a partnership exists
- Rules that prevent entering closed doors without knocking first, and other rules that minimize the appearance of inadequate safeguards to protect confidentiality in the presence of clients and other visitors (for example, overheard discussion between lawyers regarding their cases)
- Separate mail and fax reception procedures, and precautionary measures regarding shared copier or fax machines to protect client confidentiality
- Client engagement agreements that inform clients of the solo status of their lawyer
- An office-sharing agreement signed by all parties, acknowledging and agreeing to the terms of the arrangement, including how each lawyer will take steps to ensure the group is not perceived as a partnership

EXECUTIVE SUITES

The renting of an executive suite (often called the instant office) is an ideal arrangement for many lawyers, such as those working out of their homes primarily, traveling lawyers who need temporary space, or lawyers considering opening a branch office in the area after a trial period. Executive suites can be found in all major cities, and in many smaller communities as well.

Most office-sharing professionals must be responsible for furnishing, equipping, and staffing their offices. Executive suites, on the other hand, do not require large capital investments and often come completely equipped, furnished, and staffed. In addition, some executive-suite

operations have an impressive array of amenities for their tenants, such as discounted car rental and hotel rates, courier services, language interpreters, insurance options, Web site design and monitoring services, publication services, and videoconferencing.

In addition to the suggestions discussed above, some other questions to ask when considering an executive-suite and/or office-sharing arrangement include the following:

- What kind of turnover rate does the group have with staff members?
- Who supervises and trains the staff?
- Does the receptionist answer the phone and greet outsiders in a professional and courteous manner?
- How soundproof are the offices and conference areas?
- What do prior tenants say about the facility, its owners and occupants, and other matters? (Get references.)
- Does the Better Business Bureau have any former or pending complaints against the service provider?
- What kind of security is offered, both for tenants and for valuables left overnight?
- Is the parking adequate, safe, and close by?
- What kind of impression will the facilities and outside grounds make on clients?
- Is there adequate handicap access both into and within the building?
- What type of external signage is available, if any?
- How are complaints and repairs handled in terms of responsiveness and timeliness?

CONCLUSION

Renting an executive suite offers many advantages, including financial savings, overall convenience, and no setup worries. Likewise, office sharing helps keep expenses down, as well as giving a lawyer the option of outfitting and decorating his or her personal office space (within, of course, the limits of any terms of the office-sharing agreement).

Both arrangements open many options for lawyers, but, like anything else, it is critical to do your homework before obligating yourself to either situation. If time permits, you would be wise to conduct a thorough investigation of all possible options in addition to office sharing or renting an executive suite (such as creating a home office, or purchasing an office condominium). Besides giving thoughtful consideration to these and other issues discussed in this chapter, it is perhaps even more important to ask yourself the following questions:

- How flexible am I?
- Am I really good at sharing?
- Do I function well within a group, or do groups frustrate and annoy me?
- Will I want to “hog” any shared staff members or equipment?
- Do I handle conflict situations in a positive and constructive manner, or do I tend to brood over things without searching for or initiating a productive resolution?
- Am I willing to practice “safe” office sharing, or will I sport a “Don’t bother me with that stuff” attitude when it comes to creating and signing an office-sharing agreement, reviewing any applicable ethics rules and opinions, or taking the necessary extra steps to ensure client confidentiality is protected?
- Given my manner and all my personal and office habits—the good, the bad, and the ugly—would I be a good office-sharing candidate? Why?

If you decide that office sharing is the best option for you and your office, then do all your homework, dot all the “i”s and cross all the “t”s, and enjoy the experience. With the right preparation and attitude, it can be one of the most enjoyable experiences in your professional career. Office sharing brings with it the chance to create mutually beneficial, loyal, and supportive networks, the opportunity to learn from others, and the financial savings that result when sharing expenses. Done right, office sharing offers all these benefits while allowing sole practitioners to maintain the independence they so highly value.

If you want to read more, you can order the book at <http://tinyurl.com/yqa3bk> or purchased selected chapters at <http://tinyurl.com/6f5b7n>. If you have questions, drop me an e-mail: mark@robertsonwilliams.com