

# Sharing Space

by John J. Brandt



Attorneys beginning their careers and established lawyers who have left a law firm frequently seek to reduce costs and participate in friendly and educational environs by sharing space with other attorneys.

The practice of office sharing is recommended for all younger lawyers. Office expenses for a young attorney are significant. Equally important are the assistance and sage advice of more experienced attorneys. Having said that, attorneys who begin the practice of office sharing—and attorneys willing to share their offices—should be cognizant of ethical and legal implications. First, it is suggested that an attorney place a clause in his or her representation agreement explaining that lawyers in adjoining offices are not practicing law as a partner or associate of the attorney. Second, ensure that your nameplate is separated from other lawyers' nameplates on the office door and in the building directory. Hopefully, this will rebut any suggestion that you and the other attorneys are part of the same firm.

If you are paying part of the cost of a receptionist, make certain that he or she distinguishes your law practice from the other lawyers in the same suite (for example, have her intone "Sam Smith's Law Office" instead of "Law Offices"). Be careful about commingling client files. The better practice is to maintain your client files in a separate space—preferably in your own office.

Whether you can represent a client adverse to a client represented by one

of your office mates can be a vexing question. In comparing Legal Ethics Opinion 1416 with LEO 1578, it is seen that an attorney who leases space to a commonwealth's attorney and shares a law library, a common waiting room and a receptionist who answers phones for both offices may not represent criminal defendants prosecuted by that commonwealth's attorney. The LEO finds such conduct would violate Rule 1.6 of the Virginia Rules of Professional Conduct because "it would be extremely difficult for the attorney to preserve the confidence and secrets of his clients."

Interestingly, a subsequent LEO 1578 reaches a different conclusion in a case in which the leasing commonwealth's attorney maintained a separate street number and entrance. The door stated "City of \_\_\_\_\_," and there was no sharing of common areas, receptionist or law libraries. Importantly, neither the attorneys' clients nor staffs had access to each other's space. The VSB Ethics Committee was concerned not only with the preservation of client confidences, but also with avoiding even the appearance of impropriety as it relates to influencing a "public official." It found the factual predicate was sufficiently distinguishable from that presented in LEO 1416 that problems of "client confidentiality and public perception of impropriety are not present here." Therefore, the arrangement was found to be proper.

Attorneys who share space, but not with a public official, would seem to face only the issue of "confidentiality of information," as addressed under Rule

1.6 of the Virginia Rules of Professional Conduct. If two lawyers share space with a common waiting room, common receptionist and common law library, LEO 943 suggests it would be inappropriate for one lawyer to represent a wife and the other a husband in a divorce action because of the appearance of impropriety, although the representations would technically be permissible if both parties consent in writing. However, the wife and husband would probably be suspicious that their respective attorneys would discuss confidential matters and would have access to each others' files. Thus my admonition is, "Don't do it unless it's truly necessary and you obtain consent."

As far as legal responsibility is concerned, there should be no liability attached to an attorney who is simply sharing office space with a colleague, if the colleague's client sues for legal malpractice. This is particularly true where the attorneys have separated their names on the office door and in the building directory, and if they have separate letterheads. Apparent or ostensible agency does not exist under these circumstances, and the doctrine is not recognized in Virginia anyway. See *Sanchez v. Medicorp Health System*, 270 Va. 299, 308, 618 S.E.2d 331, 335-36 (2005) (hospital not vicariously liable for negligence of emergency room physician-independent contractor).

Office sharing is economical, collegial and educational. Try it—but also be prudent—and you'll like it.