
E-86-2 Office sharing arrangement

Facts

Lawyer A is a recent law school graduate who has opened a law office. A contacts Lawyer B who owns and operates law offices of B, a multi-member law firm which has been in operation for several years. B proposes the following arrangement whereby B would show A the ropes.” B would turn over a substantial number of cases to A. In turn, A would turn over half of all the fees earned in those cases referred by B, to B. A would assume full responsibility and B would have no input on how the referred cases are to be processed. Further, A would rent space from B in B’s building, and B would provide phone answering services for A. A is to maintain separate malpractice insurance, get his or her own secretary, purchase his or her own share of supplies and pay his or her own share of the phone bill.

After a period of several months, the proposed arrangement would end in order that A could establish his or her own reputation. A would get his or her own letterhead, but continue to rent from B, use B’s phone-answering services and receive a substantial number of cases referred by B. A also would continue to turn over half of the fees earned on those cases to B. A’s practice in every other way would be separate and distinct.

Questions

1. Is the proposed office-sharing arrangement ethically permissible?
2. Under Wisconsin Supreme Court Rule 20.13 may A turn over to B half of the fees earned by A both before and after the proposed arrangement ends?
3. After the proposed arrangement ends and A establishes his or her own separate and distinct practice, may A handle any cases in which B would have a conflict of interest?

Opinion/Advice

1. The Wisconsin State Bar Committee on Professional Ethics addressed the ethical concerns of attorney office sharing arrangements in Memorandum

Opinion 2/78, 57 Wis. Bar Bull. 102 (June 1984). An arrangement whereby office space and/or secretarial help is “shared” is permissible provided such an arrangement does not create the appearance of a partnership where none exists. *Id.*; see SCR 20.08(3). This prohibition also extends to arrangements that create the impression that a lawyer is an associate of a firm when in fact he or she is not. Memorandum Opinion 2/78, 57 Wis. Bar Bull. 102 (June 1984). See also ABA Model Code of Professional Responsibility Ethical Consideration 2-13.

Based upon the facts as submitted, it is unclear whether A would actually be an associate of B’s law firm. If A would not be an associate of B’s firm, such an impression would be created if A is placed on B’s letterhead. Furthermore, sharing the same phone-answering services may create the impression that A is an associate or partner of B’s firm if a separate line is not provided for A or if the telephone is not answered in such a manner as to belie that impression. Accordingly, the proposed office-sharing arrangement would not be ethically permissible unless A is actually an associate of B’s firm.

2. SCR 20.13(1) states that a “lawyer may not divide a fee for legal services with another lawyer who is not a partner in or associate of his or her law firm . . . unless:

a. The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made [and]

b. The division is made in proportion to the services performed and responsibility assumed by each [and]

c. The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.” *Cf.* Model Rule of Professional Conduct 1.5(e).

Under SCR 20.13(1), if A is an associate of B’s law firm a division of fees may be made in any manner provided the total fee is not excessive or unreasonable. See SCR 20.12(1). However, if A is not an associate or partner in B’s law firm, a division of fees is permissible only if the three requirements under SCR 20.13(1) are met. See ABA Formal Opinion 204 (Nov. 23, 1940) (“Where an attorney merely brings about the employment of another attorney, but renders no service and assumes no responsibility in the matter, a division of fees is improper.”) See also SCR 11.01 20.09(2) and (3) and Wis. Stat. sec. 757.295.

Accordingly, it would not be permissible for A to turn over to B any of the fees earned by A either before or after the proposed arrangement ends if A is not an associate of B's firm unless the three requirements under SCR 20.13(1) are met.

3. Under Memorandum Opinion 2/78, 57 Wis. Bar Bull. 102 (June 1984) the rule which prohibits any lawyer in a law firm from accepting employment if another lawyer in that firm is required to decline employment (SCR 20.28(4)) extends to lawyers sharing office facilities. Thus, A could not handle any cases in which B would have a conflict of interest if an ethically permissible officesharing arrangement is to be followed.