

LAW FIRM BREAK UP

Hypotheticals

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Hypothetical 1

You are starting your own law firm, and want to avoid some of the troubles that you have seen at larger law firms for whom you have worked. Among other things, you would like to have every lawyer joining the firm agree not to work for another law firm in the same city for two years after leaving your firm.

May you include such a provision in your partnership or employment agreements?

YES

NO

Hypothetical 2

As your firm's managing partner, you have asked for recommendations from a partnership committee about how to protect the firm and its clients from harm caused by lawyers suddenly leaving the firm (either individually or in groups).

May you include the following provisions in your partnership agreement:

- (a) Partners must provide a sixty-day written notice of their departure, and forfeit all of their capital in the firm if they leave before the end of the sixty days?

YES

NO

- (b) Partners who leave the firm and take clients with them must pay the firm a percentage of those clients' receipts for a one-year period after their departure?

YES

NO

- (c) Partners who leave the firm will be responsible for their pro rata share of any lease payments for the law firm's offices (unless the firm is able to replace the departed lawyers with others to occupy the space)?

YES

NO

Hypothetical 3

One of your firm's founders just left your firm to open up a competing boutique firm just across the street. Her departure was ugly, and as your firm's managing partner you are now being pressured to adopt a partnership provision to withhold retirement benefits from any of your partners who leave under such circumstances and compete with your firm.

(a) May your law firm make the payment of retirement benefits contingent on the retirees' compliance with a non-compete?

YES

NO

(b) Does it matter at what age the retirement benefits begin?

YES

NO

Hypothetical 4

You just became your firm's managing partner, and now face one of the biggest crises that your small firm has ever confronted. Three of your firm's ten lawyers just left, and took all of your firm's paralegals and two of your best secretaries with them. It has become obvious from the way events have unfolded that the withdrawing group had planned all of this many months in advance. The remaining lawyers in your firm are urging you to file a lawsuit against those who left.

Is there any cause of action you can pursue against the lawyers and staff who left your firm?

YES

NO

Hypothetical 5

You represented a local car dealer in all of her estate planning work until she fired you. The client fully paid all of your bills, but hinted that she might sue your firm for malpractice. Your former client has now demanded a copy of your entire file. Your partners are urging you to at least bill the former client for making a copy of the materials if you are obligated to send them to her.

(a) Must you give your former client the file?

YES

NO

(b) May you bill the former client for copying the file?

YES

NO

(c) May you retain a copy of the file over your former client's objections?

YES

NO

Hypothetical 6

You represented a local car dealer in a landlord-tenant dispute until she fired you. You probably should have seen this coming, because she did not pay the retainer she agreed to pay -- and actually has never paid any of her bills. Amazingly, the car dealer now wants the file that you created while representing her.

Must you give your former client the file you generated while representing her?

YES

NO

Hypothetical 7

Your law firm just hired a new finance director, who had previously worked in a corporate setting. After analyzing your firm's trust account procedures, she suggests that your law firm keep approximately \$5,000 of its own money in the trust account -- as a "cushion" to assure that no checks drawn on the trust account will bounce.

May your law firm keep \$5,000 of its own money in the trust account -- as a "cushion" to assure that no checks drawn on the trust account bounce?

YES

NO

Hypothetical 8

Your new finance director has asked for some guidance on whether client retainer payments should be deposited into your firm's trust account or whether they should be deposited into the firm's operating account.

Should the following client retainer payments be deposited into the firm's trust account?

(a) A "true" retainer payment?

YES

NO

(b) A fixed-fee payment for a real estate transaction?

YES

NO

Hypothetical 9

Your firm's commercial real estate practice is finally picking up a bit, and you have several questions about the timing of disbursements from a trust account following a real estate transaction.

- (a) If your best client gives you a check to deposit into your trust account, can you immediately disburse on that check?

YES

NO

- (b) If a client gives you a cashier's check to deposit into your trust account, can you immediately disburse on that check?

YES

NO

- (c) If a client wire transfers money into your trust account, can you immediately disburse on that check?

YES

NO

Hypothetical 10

Some new partners in your law firm have finally convinced you to start accepting credit card payments from clients. However, you wonder how clients' use of credit cards implicates various trust account rules.

(a) Can you accept a client's credit card payment for an outstanding legal bill?

YES

NO

(b) Can you accept a client's credit card payment for a retainer?

YES

NO

(c) Can you accept a client's credit card payment that includes both payment of an outstanding bill and a retainer amount?

YES

NO

(d) If the bank with which you are dealing will only deposit such a combine payment into one account, should the payment go into your firm's trust account?

YES

NO

(e) What should you do if the bank issues a "charge back" (triggered by a client's complaint about your firm) that automatically draws money out of the trust account into which you directed the client's credit card payment?

Hypothetical 11

You just left a large firm at which you had very little interaction with trust accounts, but as a sole practitioner you have had to educate yourself very quickly. You have several questions about so-called "IOLTA" accounts.

- (a) Is it possible to determine the interest paid on the trust account deposits of each client whose money is in your trust account?

YES

NO

- (b) May you pay all interest earned on your trust account deposits to your state bar's IOLTA program, to be used for funding legal aid services to indigent people in your state?

YES

NO

- (c) Must you pay all interest earned on your trust account to your state bar's IOLTA program, to be used for funding legal aid services to indigent people in your state?

YES

NO

Hypothetical 12

With many of your clients facing severe financial hardships, you have had to address several incidents in which your clients' creditors asserted claims against client funds held in your trust account.

(a) Can one of your clients' creditors assert a lien on client funds in your account?

YES

NO

(b) If you receive a letter from one of your clients' creditors claiming that the client has specifically pledged the amount held in your trust account for the benefit of that creditor, must you hold that money even if the client asks you to return it?

YES

NO

(c) If you know that one of your clients is facing financial problems and owes many creditors fairly substantial amounts, must you hold all of the client's trust account amount even if the client asks them to be returned?

YES

NO

Hypothetical 13

Your firm just merged with another firm, and you took the opportunity to carefully review the status of your newly combined trust account. You have discovered that a number of clients sent in retainer checks and then disappeared -- leaving the deposit in your trust account. You have also found that some checks your lawyers wrote in connection with real estate transactions were never cashed by the payee surveyors, couriers, title companies, etc.

(a) Must you try to find the clients who left the money in the trust account?

YES

NO

(b) If your effort to find the missing clients will require some expense, may you withdraw some of their money from the trust account to pay the search expenses?

YES

NO

(c) What should you do with leftover funds for which you cannot locate the client, the payee, etc.?

Hypothetical 14

As part of a total revamping of your firm's marketing focus, you have decided to choose a new name for your law firm. You are considering a number of possibilities, but you want to assure that you comply with the ethics rules.

- (a) May a law firm's name include the name of a retired partner who is still alive, but in a nursing home?

YES

NO

- (b) May a law firm's name include the name of a retired partner who lives in Florida and occasionally drafts or revises wills for her friends?

YES

NO

- (c) May a law firm's name include the name of a former partner who is now a state senator?

YES

NO

- (d) May a law firm's name include the name of a former partner who was practicing at the firm when he was suspended from the practice of law?

YES

NO

- (e) May a law firm's name include the phrase "and Associates" if the lawyer practices by herself?

YES

NO

- (f) May a law firm composed of two lawyer named Keaton start a law firm with the name "Keaton & Keaton" -- when two other lawyers with the same name have been using that name for nearly 40 years in a city 100 miles away?

YES

NO

(g) May the two sons of the founders of the "Suisman Shapiro" law firm leave their fathers' firm and start their own firm -- using the name "Suisman Shapiro"?

YES

NO

(h) May two law firms include the name of the same practicing lawyer in their names?

YES

NO

(i) May lawyers practice under the name of Smith, Jones & Doe, P.C. -- if Jones and Doe are not shareholders, and do not share in the firm's profits and expenses?

YES

NO

(j) May a law firm's name include the name of a lawyer who is only "of counsel" to the firm?

YES

NO

Hypothetical 15

In an effort to improve your firm's recognition in your community, you want to start using a trade name that is likely to draw the attention of the increasing number of clients that select lawyers over the internet. You also want to start using a snazzy 800 number.

May you use the following names for your law firm:

(a) "The West End Law Firm"?

YES NO

(b) "The Best West End Corporate Law Firm"?

YES NO

May you use the following 800 numbers for your law firm:

(c) 1-800-HURT-BAD?

YES NO

(d) 1-800-2WIN-BIG?

YES NO

(e) 1-800-GET-CASH?

YES NO

Hypothetical 16

You and another law school classmate plan to start practicing together immediately after graduation. Among other things, you are trying to determine what domain name to use.

(a) May you use "southsidelawfirm.com" as a domain name?

YES

NO

(b) May you use "smithandjones.org" as a domain name?

YES

NO

(c) If you use "smithandjones.com" as your domain name and eventually go your separate ways, may either of you continue to use "smithandjones.com" as a domain name?

YES

NO

Hypothetical 17

Your firm's chairman asked you to meet with a potential lateral hire to discuss the possibility of her joining your firm. You have conducted some independent research about the lateral hire, but a few questions cross your mind as you prepare for your lunch together.

- (a) Without your clients' consent, may you identify some of your law firm's clients during your lunch conversations?

YES

NO

- (b) Without your clients' consent, may you describe your work for some of your law firm's clients during your lunch conversations?

YES

NO

- (c) Without her clients' consent, may the potential lateral hire identify some of her clients during your lunch conversation?

YES

NO

- (d) Without her clients' consent, may the potential lateral hire describe her work for some of her clients during your lunch conversation?

YES

NO

Hypothetical 18

As a mid-level associate working on a large litigation matter, you must frequently deal with the law firm representing your client's adversary. You have really grown to admire that other firm, and its associates seem much more satisfied with their salaries and responsibility than associates at your firm. You have actually considered seeking a job at that other firm, and you wonder about the confidentiality and conflicts ramifications of taking such a step.

- (a) Without advising your law firm and its client whom you are representing in the current litigation, may you mention to one of that other law firm's partners that you might be interested in applying for a job there at some point?

YES

NO

- (b) Without advising your law firm and its client whom you are representing in the current litigation, may you meet with one of the other firm's partners to discuss possible salary and job assignments?

YES

NO

- (c) If one of the other firm's partners senses your interest without your having said anything about it, must you advise your firm and its client if the partner offers you a job?

YES

NO

Hypothetical 19

Your firm is thinking of hiring a mid-level associate from another large law firm in your city. You and your colleagues are representing a client in very contentious litigation against a company represented by that other law firm. You worry that your litigation adversary would do anything to "knock out" your firm. However, as far as you know the associate has never worked on that matter.

Given this situation, is the mid-level associate practicing at the other law firm totally off-limits as a lateral hire?

YES

NO

Hypothetical 20

For several years, you have had your eye on a rising associate who works at a relatively small firm with offices in your building. Unfortunately, the associate has been working on a team of lawyers at her firm which represents an adversary in a very lengthy high-stakes litigation in which your firm represents your largest client.

If your firm hired the associate, is there a chance that your firm could be disqualified from continuing to represent your largest client in the pending litigation?

YES

NO

Hypothetical 21

You are interested in hiring a third- or fourth-year associate to bolster your intellectual property practice. One associate who practices elsewhere in your state seems like a good prospect, but you wonder whether her individual disqualification might be imputed to your law firm -- potentially disqualifying your firm from handling a number of matters that you are currently handling adverse to the associate's current firm. Your state just abandoned its traditional approach to the imputation issue -- and now allow hiring law firms to avoid imputed disqualification by screening lateral hires under certain circumstances.

- (a) Will you be able to avoid imputed disqualification if the associate was actively working as a member of the team at the other law firm representing your client's adversary?

YES

NO

- (b) Will you be able to avoid imputed disqualification if the associate had only taken one deposition in the case in which her current law firm represents your client's adversary?

YES

NO

- (c) Will you be able to avoid imputed disqualification if the associate had only prepared several abstract legal memoranda in the case in which her current law firm represents your client's adversary?

YES

NO

Hypothetical 22

Having just been "burned" by hiring a young associate in your New York office that ended up being "Typhoid Mary," you now take every step to screen lateral hires before they come on board. However, you just received a motion to disqualify your firm in a large matter, based on your hiring of a lateral associate. The motion acknowledges that you imposed a screen before hiring the lateral associate, but claims that the screen was not effective -- because it did not mention that lawyers violating the screen would be punished, and did not include an assurance that the lateral associate would not share in any fees generated by your firm's representation of your client in the litigation.

Is your firm likely to be disqualified based on these alleged deficiencies in the screen?

YES

NO

Hypothetical 23

Two weeks ago, you hired a young associate in your New York office from another large Los Angeles-based law firm. This morning, you received a frantic call from one of your partners, who said that he just learned that the young associate had worked at his old firm on a litigation matter in which your firm represents your largest client. Your partner wants you to screen the young associate immediately, and asks whether the immediate imposition of a screen will eliminate the risk that your firm might be disqualified from that litigation matter.

- (a)** Can you avoid the possibility of an imputed disqualification by immediately screening the new hire?

YES

NO

- (b)** Will you be able to avoid an imputed disqualification if the new hire can establish (under oath) that he did not share any confidences from his old firm with any of your lawyers, and that the lawyers working on the litigation matter at your firm did not acquire any confidential information from the new hire?

YES

NO

Hypothetical 24

Your firm has several large litigation projects that you expect to last for several years. You want to avoid adding to your permanent roster of lawyers, so you are looking into various categories of lawyers that might be able to assist you in these projects. You have asked your firm's ethics partner about the conflicts of interest ramifications of hiring such lawyers, many of whom have worked on numerous projects for other law firms.

- (a)** Will your firm have to worry about the imputation of a lawyer's individual disqualification, if the lawyer will work only on one large case -- conducting research, taking depositions, preparing pleadings, etc.?

YES

NO

- (b)** Will your firm have to worry about the imputation of a lawyer's individual disqualification, if the lawyer will work only on privilege review projects, without access to your firm's computer network and the files of other clients?

YES

NO

Hypothetical 25

You are considering outsourcing some of your firm's discovery work to an overseas operation suggested by one of your largest clients. You wonder about the conflicts of interest ramifications of such a step.

Will the lawyers at the overseas privilege review operation be considered part of your firm for conflicts of interest purposes?

YES

NO

Hypothetical 26

You have been advising one of your firm's offices in a state that does not allow screening of lawyers to avoid imputed disqualification of an individually disqualified lawyer. That office is considering hiring several paralegals who previously worked at your law firm's largest competitor.

- (a) Do you risk imputed disqualification by hiring a paralegal who has been working on the other side of a large case that goes to trial next year?

YES

NO

- (b) Will you be able to avoid any risk of imputed disqualification by screening any individually disqualified paralegal from your side of the case?

YES

NO

Hypothetical 27

You just hired two new lawyers and one new assistant. The lawyers recently graduated from law school, and the assistant had previously worked only for doctors. Having been a sole practitioner until now, you wonder about the ethical and professional implications of bringing on new folks like this.

- (a) Do you have any responsibility for assuring that lawyers and nonlawyers you supervise comply with the ethics rules?

YES

NO

- (b) Can you be held responsible for any ethics violations by lawyers and nonlawyers you supervise?

YES

NO

Hypothetical 28

You have always worked at a large law firm, which frequently coordinates as co-counsel with a minority-owned law firm. Your managing partner just asked you to set up another arrangement with that firm, under which your firm and the other firm will share fees.

(a) Do you need the client's consent to share your fees with another law firm?

YES

NO

(b) Must your fee sharing be in proportion to the amount of work that you handle on the matter?

YES

NO

(c) To share in another law firm's fees, must your firm assume ethical and malpractice responsibility for a matter?

YES

NO

(d) May either your firm or the minority-owned firm earn a "referral fee" without handling any of the work on the matter?

YES

NO

Hypothetical 29

You just started your own firm with two law school classmates, and you think that direct mail marketing can provide "more bang for the buck" than television or media advertising. However, before you get started you want to make sure you understand the ethics rules.

- (a)** May you send targeted direct mail to people involved in serious automobile accidents (and whose names appear in the newspaper)?

YES

NO

- (b)** May you send direct mail marketing to folks who have just declared bankruptcy (and whose names appear in the newspaper)?

YES

NO

- (c)** Will your direct mail marketing have to comply with any specific requirements, include disclaimers, etc.?

YES

NO

Hypothetical 30

You financed your college and law school education by selling magazine subscriptions to your fellow students, so you know that you have the type of sales skills that will serve you well as you try to build your practice as a new lawyer. However, you do not want to start your legal career with an ethics charge, so you want to make sure that you do not engage in any solicitation prohibited by the ethics rules.

May you engage in the following type of solicitation:

- (a) Placing telephone calls to automobile accident plaintiffs while they are in the hospital?

YES

NO

- (b) Calling members of your church to see if they would like some estate planning advice?

YES

NO

- (c) Setting up appointments to see the general counsel of local companies?

YES

NO