

Limitations on referrals under Rule 1.7

by

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Lawyers often refer people to other lawyers for representation. In many instances, such referrals are beneficial to the person in need of legal services and can be done without problems. Nevertheless, both the lawyer making the referral and the lawyer receiving the referral need to be cognizant of the Rules of Professional Conduct. An example may illustrate the point.

John and Jane Doe, a married couple, met with Attorney Fred Farmer about a marital dissolution matter. Farmer drafted a petition for marriage dissolution, marital termination agreement (MTA) and proposed judgment and decree.

Farmer informed the parties that he could represent one party, not represent both parties. Farmer represented John Doe and referred Jane Doe to attorney Bob Banker for representation.

Jane Doe and Banker met the next day. Jane Doe retained Banker.

Farmer's office is in the same building as the firm at which Banker practices. Farmer leases his office space from that firm. Farmer and the firm at which Banker practices are sufficiently intertwined that Farmer has observed Banker interact with clients and has seen Banker prepare for trial on multiple occasions. Farmer has a sibling who works at the firm in which Banker practices.

The fee for Banker's representation of Jane Doe was paid by John Doe, the opposing party in the matter. Banker did not receive from Jane Doe informed consent to Banker's accepting compensation from the opposing party.

The extent of Banker's representation of his client Jane Doe was approximately an hour on the matter the day that he first met with his client. Banker suggested a couple of corrections to the MTA and proposed judgment and decree which were made, and the documents were filed with the court.

The court rejected the MTA and proposed judgment and decree. The court had concerns about how issues relating to paternity, custody and parenting time were addressed.

The rule implicated by the conduct of Farmer and Banker is Rule 1.7(a)(2), Minnesota Rules of Professional Conduct (MRPC), which provides:

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: ... there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

In the case of Farmer, his practice is so intertwined with the firm at which Banker practices that there is a substantial risk of material limitation when Farmer and a lawyer of that firm are opposing counsel. Farmer depends for office space on that other firm. Farmer's sibling is employed by that other firm. Lawyers are able to observe other lawyers, even at purportedly separate firms, interacting with clients, conducting trial preparation and, presumably, undertaking other aspects of the practice of law. When office sharers and/or law firms are sufficiently intertwined that it cannot be said that there is a separation and interdependence, a conflict may arise which precludes representation.

In the case of Banker, he had too many connections to the opposing party and opposing counsel to be able to act without material limitation on his ability to represent Jane Doe. Banker received Jane Doe as a client on a referral from opposing counsel. The opposing party paid Banker's fee. An employee in Banker's firm is a sibling of opposing counsel. Banker's firm shares office space with Farmer, to the extent that Farmer has observed Banker interact with clients and prepare for trial.

That the ability of Farmer and Banker to represent their clients was "materially limited" by a conflict of interest, Rule 1.7(a)(2), MRPC, is reflected by the court's refusal to accept the MTA and proposed judgment and decree as drafted.

As in all professional dealings, lawyers involved in referrals must ensure that their conduct complies with the Rules of Professional Conduct.