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What's in a Name?
Law Firm Titles and Risk Management

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When I began my career at a large law firm here in Portland, there were two titles for law firms: partnerships and professional corporations. Similarly, there were two titles within law firms for lawyers: partners (and its corporate cousin, shareholders) and associates. Today, both organizational forms available for law practice and titles within firms have become significantly more complex and do not necessarily reflect the simple categories of that earlier era. At the same time, the notion of who is connected to a law firm continues to have important implications for whether disqualifying conflicts or malpractice liability will be imputed to the firm as a whole. In this column, we'll first look at the term "firm" that is used in the Rules of Professional Conduct and then survey the many individual lawyer titles that are swept into that definition.

"Firm"

The terminology rule includes a very broad definition of "firm" under RPC 1.0(d): "'Firm' or 'law firm' denotes a lawyer or lawyers . . . in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law[.]" The requisites for the particular organizational form chosen are governed by state statutory law for both partnerships (including "LLPs") and professional corporations (including "PCs" and "LLCs"). RPC 1.0(d) and OSB

Formal Ethics Opinion 2005-50, however, exclude simple office-sharing arrangements from the broad definition of "firm." Therefore, lawyers with independent practices who merely share space cannot—in the view of OSB Formal Ethics Opinion 2005-12—market themselves as a law firm.

The practical significance of the definition of "firm" is that it controls the scope of our collective duties as lawyers practicing within that structure. For example, the so-called "firm unit rule"—RPC 1.10(a)—generally imputes one law firm lawyer's conflict to the firm as a whole. In doing so, Oregon's rule in neither new nor novel. Former Oregon DR 5-105(G) imposed a similar standard and our rule is now patterned on the corresponding ABA Model Rule. This effectively means that if one firm lawyer has a disqualifying conflict, the entire firm may be at risk of disqualification (*see generally Roberts v. Legacy Meridian Park Hosp., Inc.*, 2014 WL 294549 (D Or Jan 24, 2014) (unpublished)). Similarly, if one firm lawyer is asserted to have committed malpractice, both that lawyer and the firm may find themselves as joint defendants (*see, e.g., Cairns v. Dole*, 195 Or App 742, 99 P3d 781 (2004)).

Titles

Oregon has long recognized the traditional titles of "partner" (*see, e.g., Gray v. Martin*, 63 Or App 173, 663 P2d 1285 (1983)) and "shareholder" (*see,*

e.g., Hagen v. O'Connell, Goyak & Ball, P.C., 68 Or App 700, 683 P2d 563 (1984)) as signifying lawyers who hold ownership interests in their firms. RPC 1.0(j) codifies these titles by defining "partner" as used in Oregon's RPCs as "a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law." More recently, Oregon has also recognized "nonequity partners," who do are not owners but have a contractual interest the firm's profits (*see, e.g., Landye Bennett Blumstein, LLP v. Jeffrey S. Mutnick, PC*, 270 Or App 158, 346 P3d 1265 (2015)). Both classes have fiduciary duties to the firm (*see, e.g., In re Renshaw*, 353 Or 411, 298 P3d 1216 (2013)) and share general responsibility for supervising the ethical conduct of firm operations under RPC 5.1(b) if the person concerned is a "partner or has comparable managerial authority in the law firm[.]"

Oregon has also long recognized the title "associate" as reflecting a lawyer who is an employee of a law firm (*see, e.g., In re Smith*, 315 Or 260, 843 P2d 449 (1992)). Associates are responsible for their own conduct under RPC 5.2, share in the responsibility for those within the firm they directly supervise (whether other lawyers or staff) under RPCs 5.1 and 5.3 and owe fiduciary duties to their firm (*see, e.g., In re Smith*, *supra*). Oregon has also long recognized the title "of counsel" to signify an employee or independent contractor who is often a

more senior lawyer who has a continuing relationship with a firm (*see, e.g.,* OSB Formal Ethics Op 1999-155, superseded and amended as Formal Ethics Op 2005-155 (rev 2014)). "Of counsel" are included in Oregon's definition of "firm" under RPC 1.0(d). More recently, "contract lawyers" who are often independent contractors working on specific cases or groups of cases have become more common (*see, e.g., Williams, Love, O'Leary, & Powers, PC*, 2013 WL 145508 (Bankr D Or Jan 11, 2013) (unpublished)). "Contract lawyers" may be included in the definition of "firm" as well provided they are not simply working with a firm on a "limited basis" (to use RPC 1.0(d)'s undefined term).

Summing Up

Although law firm organization is much more complex today than when I began practicing, one fundamental principle continues to ring true: lawyers generally share both the responsibilities and the limitations imposed by practicing within the context of a firm.

ABOUT THE AUTHOR

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Mark writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the quarterly Ethics & the Law column for the WSBA *NWLawyer* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB Ethical Oregon Lawyer, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.