

Adding Lawyers to Your Letterhead Adds Liability

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Here's a stone-age old story about the perils of adding lawyers to your letterhead with whom you do not have a formal partnership or employment relationship.

Fred Flintstone and Betty Rubble are sole practitioners. Fred and Betty each maintain letterhead in their individual practice names: Law Offices of Fred Flintstone and Betty Rubble, Ltd. They also maintain separate legal malpractice insurance policies — Fred with Quarry Indemnity Company and Betty with Bedrock Casualty.

For marketing reasons, Fred and Betty decide to change their individual letterhead to the name "Flintstone & Rubble." At the same time, Fred agrees to rent office space to Henry Slate, another sole practitioner who specializes in plaintiff's litigation. Although Henry does not associate on files with his office mates, Fred and Betty add Slate's name under the designation "of counsel" to their new Flintstone & Rubble letterhead. The three lawyers also enter into a loose arrangement to cover emergencies for one another during vacations.

Riprock v Flintstone & Rubble

Betty is hired to represent Darla Riprock in her sensational divorce from movie idol Dash Riprock. Neither Flintstone nor Slate has any involvement in the Riprock marital melodrama. As the case drags on and the legal fees mount, Darla becomes increasingly restive. Unhappy with the ultimate settlement, Darla hires a new lawyer and brings a legal malpractice action against not only Betty, but Fred and the firm of Flintstone & Rubble as well.

Although Fred is initially upset that he has been named in the complaint,



Don't add someone to your letterhead without considering the consequences.

he assumes that Betty's insurer, Bedrock Casualty, will cover the claim. Fred and Betty are both dismayed when Bedrock Casualty denies the claim based on the fact that Betty's policy covers "Betty Rubble Ltd.," not "Flintstone & Rubble." Fred reluctantly puts his carrier, Quarry Indemnity, on notice of the claim. Quarry Indemnity provides Fred with a defense and eventually settles the matter for three saber-toothed tiger skins (today's equivalent of \$150,000). In addition to tarnishing his claims-free record, Fred has to pay the deductible on the claim. Fred is not happy.

Marbleson v Flintstone & Rubble

While the Riprock divorce is pending, office-mate Henry Slate is hired by the Marblesons to pursue a personal injury claim on behalf of their daughter who was bitten by the neighbor's pet dinosaur. During the representa-

tion, Slate communicates with the Marblesons on Flintstone & Rubble stationery. While Slate is on vacation, Fred and Betty each have brief conversations with Mrs. Marbleson regarding the claim.

Slate returns from vacation, continues to procrastinate on the Marbleson file, and eventually blows the statute of limitations. The Marblesons' new lawyer sues Slate, Flintstone, and Rubble each individually and the firm of Flintstone & Rubble.

Once again, Fred and Betty assume that Slate's insurance policy will cover the claim.

Slate then breaks the news to Flintstone and Rubble — he has no malpractice insurance. With no alternatives, Fred and Betty put their carriers on notice. Bedrock denies Betty's claim again because the matter was handled on behalf of "Flintstone & Rubble." Quarry Indemnity hires defense counsel for Fred, settles the matter, and then nonrenews him based on his poor claims history.

Is it worth the risk?

In reality, there's nothing comical about being tagged for another lawyer's malpractice. Yet every day lawyers enter into informal relationships with one another without realizing the liability they are assuming. Ask yourself this question: If you are not willing to enter into a partnership or employment relationship with another lawyer, why would you add his or her name to your letterhead and possibly create the same liability? Remember that lawyers who share letterhead and office space do not maintain the same quality controls and office procedures that they would in a true partnership. The result is often a de facto partner-

ship that is *more prone* to legal practice than a legitimate partnership or employment relationship.

Co-counseling can benefit both clients and lawyers. It should be done, however, on a case-by-case basis with the written agreement of the client and a clear, written understanding of the tasks to be performed by each counsel. Simply adding a fellow lawyer to your stationery as “of counsel” is not a pru-

dent way to handle such co-counsel situations.

Ethical concerns are also raised when lawyers share letterhead. According to ISBA Advisory Opinion No. 764, lawyers who share office space should not use common stationery “because the public may be misled as to the relationship among them.” Even lawyers who are not office mates while sharing letterhead may be violating Illi-

nois Rule of Professional Conduct 7.5(d): “Lawyers may state or imply that they practice in partnership or other organization only when that is the *fact*.” (Emphasis added.)

Finally, don’t forget to consult with your insurance carrier to determine whether such informal letterhead and office sharing arrangements will be covered by your professional liability policy.