

Hiring Question & Client Confidentiality

A current situation is leaving me perplexed and I don't know what to do. I'll try to summarize as briefly as possible. Any thoughts, suggestions, advice are greatly appreciated.

My practice is in a small town. Everyone knows everyone. I recently added an office in a town about 8 miles away but there remains a great deal of overlap.

I need to hire a new assistant / legal secretary. When I only had the 1 office, I had an informal policy not to hire anyone who lived in that town for confidentiality reasons and clients' comfort / privacy.

Recently, I've advertised for the new position and received a resume from someone who appears highly qualified and a very good fit all around. Unfortunately, she does live in the aforementioned small town. Ironically, 2 of the 3 references she listed - 1 is a current client and the other is an "opposing party" in a current case (in quotes b/c not really. The person is the ex-wife of one of my bankruptcy clients. They're very friendly, he's current in support but still technically a creditor / opposing party).

I'm sure that, if she was hired, this would not be the last time a prospective client, actual client or opposing party was someone she knows.

What would you do? Should I consider hiring her? Can I even consider it?

What do I do?? I've had such trouble finding good staff that I hate the thought of letting someone potentially good go but need to protect my clients first and foremost, of course.

I think you can, and I probably would. But the interview needs to include a thorough discussion of her understanding of confidentiality, and the range of consequences for violation.

It is not uncommon for paralegals (or lawyers) to leave one firm and work for an opposing firm. In some matters, it is necessary to exclude that staffer from certain matters to avoid conflicts, and it sounds like that might be the case for a couple of your matters. That doesn-

't mean she won't encounter the other party, but she needs to have a very clear understanding - and a signed statement of understanding - of the nature of her obligations and the potential consequences of violation. Any potential staffer could have conflicts with a client, even out-of-town; I often have clients come to me from out-of-county because they can't find a local attorney who'll go up against county government, etc. If I hired out-of-county, these could be potential conflicts. Staffers need to understand that your formal conflict checks review conflict for the *firm* with respect to counsel and former clients and parties; they have a duty to advise you of any potential *personal* conflicts with parties or clients, too!

My tuppence,

-Rick

Richard J. Rutledge, Jr., North Carolina

Thanks, Rick. That's very helpful. What sort of consequences other than termination of employment? I don't think there's anything else I can do, right?

Also, I have no way really to "firewall" her access to the confidential information of those clients she has a current connection with. Do I just

trust that she won't violate privilege by snooping at and sharing that information with her friends, family members, etc.?

Thanks!

You can password lock those documents and she doesn't have that password.

You can lock those documents in a cabinet in which she doesn't have a key (if you feel the need to go that far).

But yes, generally the wall is fictional and built upon the assumption that the person blocked will NOT go into those files (at least with lawyers)

Erin M. Schmidt, Ohio

So...I looked up _____, and its population is about on par with that of the town where my main office is, Sebastian.

All 5 of my legal assistants and receptionists live here. Staff need to be aware of obligations of confidentiality, sign confidentiality agreements, and you need to reiterate with clients the obligations of confidentiality that everyone who works in your office has. It is not terribly unusual for clients to come in and recognize or know a staff member (or me). I just reiterate the obligations of confidentiality with the new client, and we move on. To my knowledge, I haven't lost a client to it. I wouldn't stress too much about staff members being related to a creditor, for

example, but would be more concerned with if the opposing party in a traditional conflict is a relative of a staff member (and might turn down the case if that were so). It has not been a problem for my office ever. And, there are plenty of clients who come to us who none of us knows...we don't literally know everyone (though I can't go to the grocery store without recognizing a bunch of people, which is a plus and not a minus).

Frankly, if a staff member breaches an obligation of confidentiality, you have the same issues whether your staff lives locally or not, you just might not have fully recognized it before. In Florida, we have Florida Registered Paralegals. If one such violated a duty of confidentiality, I would definitely need to report them to the Bar.

I've had a paralegal quit and several months later, move to another law firm. That new law firm represented an opposing party on one case. I called up the attorney, discussed it, and they walled her off that case (since she had prior knowledge of the case from working here).

Cynthia V. Hall, Florida

Speaking of confidentiality...

I remember a conversation that I had once with a colleague who practiced in a relatively personal area of law (it seems like it was either bankruptcy or family law). She mentioned that one of her policies (which she addressed with clients at the first consultation) was that she would not even acknowledge them in public unless they spoke to her first. So, for example, if she ran into a client in a grocery store, she would pass on by as if they had never met **unless** the client spoke first. Similarly, if she was introduced to someone at a function, she would act as if it was the first time she had ever laid eyes on the person.

Her reasoning was that it could be embarrassing to a client for others to learn that the client had even spoken to a lawyer with her specialty, so she wanted to be certain that it was the client who let that cat out of the bag.

Depending on how small your community is (and how long you have lived there), it might not be surprising for you to know people, whether or not they are clients. But if the nature of your practice is such that clients might be embarrassed that you (or your secretary) know them, you may even want to adopt this type of policy for your new hire.

Brian H. Cole, California

I have the same policy, Brian. I live and practice bankruptcy law in the same community. Luckily I'm active in my church and the Chamber of Commerce, so there are usually a number of ways people can politely say they know me without mentioning they are my client.

As to Laura's original question, will this person conflict you out of cases? Are they related to half the town (the half you don't represent)? Does their family own the local bank? If they aren't going to conflict you out of things, then a confidentiality agreement and discussion about what is and isn't acceptable should be enough. If a client or potential client is concerned about a neighbor knowing about the case, you can always direct the new employee not to work on that case. It'll make it harder for you, because that's what you have an assistant for, but as long as that doesn't keep happening you should be fine.

Sincerely,

Corrine Bielejeski, California

As Cynthia aptly points out, "consequences" can depend on credentials and/or "endorsement" by the Bar. If you have a certification at question, she could lose it, or be sanctioned for violations, beyond termination.

As others have noted, there could be a point where her "connections" are so intimate and extensive that she would effectively become useless to you by virtue of personal conflicts. That should be explored.

-Rick

Richard J. Rutledge, Jr.

I also have the same policy as Brian described, and I often tell clients about it. I will sometimes smile at someone (I do that anyway a lot), but I won't ever initiate a conversation. If they do, I will talk to them, but it isn't up to me to reveal that or how I know someone. I worked out at a gym for several months that one of my clients frequented when I was there (usually just a few treadmills down), and never said a word to him. Next time he was in my office, he commented on it and how he appreciated it. Other people announce loudly to all of Publix that I am their lawyer and exactly what I did for them.

But we lawyers aren't unique in this situation. Medical professionals have similar obligations of confidentiality, as does their staff. My pediatrician's kid was in the same preschool as one of my kids (different

town, by the way) and she breathed a sigh of relief when I mentioned to her that my daughter was a patient of hers when chatting outside the classroom one time. She chuckled and said, "I know! I was having a hard time figuring out how to talk in the hall with you without revealing within hearing of everyone how I already knew her."

Cynthia V. Hall

If you don't have a confidentiality agreement, you need one.

If you don't do background checks, you need to.

And if you don't trust someone, don't hire them.

There isn't that much you can do. Depending on the representation you might want to consider whether or not to let those clients go (at a significantly reduced fee) if you really want to hire the paralegal; even an appearance of conflict can kill a firm.

One surprisingly effective (albeit a bit unfriendly) tactic: when you interview, start to press her for information on other confidential things she has worked on. You can press pretty hard if you want: nasty though that sounds, it's a heck of a lot less pressure than most people experience from friends and relatives. If she shares information about others which you wouldn't want shared about your clients, then don't hire her.

Erik Hammarlund, Massachusetts

I had the same policy as Brian's colleague. The towns were small enough that for a long time I was the only attorney who lived within mail delivery range. Speaking to anybody wasn't enough to make people automatically wonder. If we did chat for a

minute, I didn't allow the conversation to go much beyond "give me a call". The real motive was to discourage the cocktail party consultation where people have "just a quick question" and want a quick freebie answer.

CJ Stevens, Montana
