

Risk Management of the Moonlighting Lawyer in a Gig Economy

Moonlighting by attorneys—whether consulting, freelance legal work, board service, or side businesses—has become more common across firms of all sizes. While moonlighting isn't inherently unethical, it can create risk management concerns that law firms should address proactively.

The primary risks involve conflicts of interest, confidentiality, malpractice exposure, and misuse of firm resources. Attorneys engaged in outside legal work may inadvertently create conflicts with existing firm clients or prospective matters. The attorney may risk malpractice coverage for any malpractice claim brought for a client that was the result of moonlighting as policies typically have an exclusion for moonlighting. Firms should ensure that all outside activities are disclosed and reviewed through a formal approval process.

Cybersecurity and confidentiality issues are equally important. Remote work and overlapping technology platforms increase the risk that firm data could be accessed, stored, or transmitted improperly through outside engagements. Firms should reinforce policies governing data security and use of firm systems.

Moonlighting can also create supervision and liability issues. If an attorney performs outside legal services without adequate malpractice coverage or clear engagement documentation, disputes may spill over into the firm's professional liability exposure. Firms should clarify whether outside legal work is prohibited, permitted only with approval, or subject to insurance and client-intake requirements.

Rule of Professional Conduct 5.7 deserves attention. Lawyers providing "law-related services" outside the firm—such as consulting, mediation, compliance, or financial advisory work—may still trigger ethical obligations if clients reasonably believe legal services are being provided. Without clear separation and disclosures, attorneys risk unintentionally creating attorney-client relationships, confidentiality duties, and conflicts obligations. Note: California does not have a Rule 5.7. However, to the extent law-related services are provided, lawyers must comply with the California Rules of Professional Conduct and the State Bar Act in the provision of those services. See, Cal. State Bar Form.Opns. 1999-154; 1997-148; 1982-69.

An effective risk management strategy includes written moonlighting policies, mandatory disclosure and approval procedures, conflict checks for outside legal work, and clear guidance regarding confidentiality, technology use, and outside business activities. Firms that address moonlighting proactively are better positioned to reduce liability while maintaining workplace flexibility.

If you have questions about this or any other risk management issues, get in touch with our senior risk management counsel at Attorneys Risk Management, and click on the "Request a Risk Management Consultation" button.

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