



# Clients Come First When Lawyers Leave Firms

What problems can arise when a lawyer leaves an association with other lawyers?<sup>1</sup>

When the lawyer leaves a law firm, it is helpful to start any analysis of the ethical issues with a quick review of ER 5.6(a) (Restrictions on Right to Practice).<sup>2</sup> This ER prohibits restrictions on a lawyer's right to practice after leaving another law firm. It is the ethical foundation for the principle that it is the client who has the sole and exclusive right to choose the lawyer whom he wants to represent him. Any agreement concerning representation between a

lawyer and the lawyer's firm that may impair that right is unenforceable as being against public policy.<sup>3</sup>

Next, consider the provisions of ER 1.4 (Communication). This Rule places a mandatory duty on the departing lawyer to advise any client with whom he was working of his departure and that it is the client's choice between continuing the relationship with the departing lawyer or staying with the departing lawyer's firm.

Last, but by no means least, is the question of what additional types of communication may be made by the departing lawyer with his current clients. It should first be noted that there is no prohibition against the departing lawyer advising clients of his or her departure before such departure.<sup>4</sup>

The inquiry requires a review and application of ER 7.1 (Communications and Advertising Concerning a Lawyer's Services) and ER 7.3 (Direct Contact With Prospective Clients). Concisely stated, ER 7.1 regulates the kinds of information that a lawyer may give concerning his or her qualifications, the fees charged and the like. ER 7.3 prohibits direct contact with

David D. Dodge is a partner in the Phoenix law firm Lieberman, Dodge, Gerding, Kothe & Anderson, Ltd. He is a former Chair of the Disciplinary Commission of the Arizona Supreme Court.



prospective clients unless the communication is clearly marked as a commercial solicitation.

The general rule concerning departing lawyers is that communications with people with whom the departing lawyer has had a

## endnotes

1. A previous article looked at the ethical implications of a lawyer withdrawing from the lawyer–client relationship. *See* *Withdrawal From Representation*, 35 ARIZ. ATTORNEY 7, at 18 (March 1999).
2. Rule 42, ARIZ.R.S.Ct.
3. *See dicta* in *Valley Medical Specialists v. Farber*, 982 P.2d 1277, 1282-83 (Ariz. 1999).
4. Formal Op. No. 91-17 (June 10, 1991), Committee on the Rules of Professional Conduct, State Bar of Arizona.
5. For a discussion and definition of this term, and for other considerations when a lawyer departs, *see* Formal Op. No. 99-14 (Dec. 1999), Committee on the Rules of Professional Conduct, State Bar of Arizona.

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“prior professional relationship”<sup>5</sup> are not subject to the restrictions of ER 7.3, except that the communications cannot be fraudulent or misleading, as prohibited by ER 7.3(d)(2) and (3). However, such communications are subject to the provisions of ER 7.1 and its prohibition against deceptive types of lawyer “advertising.”

A lawyer’s departure from a law firm often can be difficult for the lawyer and those remaining. The best way to proceed is for the departing lawyer and the firm to agree on the wording of a joint communication to the clients for whom the departing lawyer has worked, advising them that it is their choice as to who will continue to represent them and for what matters. Absent this, everybody involved should keep an eye on the ethical rules and conduct themselves professionally in transferring responsibilities so that the clients’ best interests are not adversely affected. ▀