



Lawyers Changing Firms: An Update

Leaving a law firm continues to generate problems for the lawyers involved. It seems as though lawyer mobility, now a fact of professional life, is a concept that lawyers don't always handle well.

We discussed some of the aspects of this subject previously,¹ and there is plenty of authority elsewhere that's readily available for Arizona lawyers.² Now, the American Bar Association has again weighed in on the subject. In a recent formal opinion,³ the ABA, while citing other cases and ethics opinions on the subject, emphasizes an often-overlooked aspect of the issues involved: retaliatory actions of the firm from which the lawyer is leaving, especially when they are potentially harmful to the clients affected thereby.

The unfortunate truth of the matter is that not all law firm departures


can be described as tearful farewells. I've personally seen a firm try to preempt the departing lawyer from using the lawyer's name in a new website address, delay the sending of a jointly agreed communication in an attempt to prevent the departing lawyer from notifying clients who might wish to leave the firm, or otherwise make it difficult for the departing lawyer to service clients before those clients have had a chance to decide whether they will stay with the firm, go with the departing lawyer, or have their matters transferred to new counsel.

The overarching consideration in the ABA opinion is that regardless of any personal antagonisms that may exist between the lawyers involved, it is the clients' interests that must come first. Thus:

- The firm can't insist, by employment agreement or otherwise, on a notification period for the departing lawyer that could delay competent and diligent representation of a client or unnecessarily interfere with the departing lawyer's departure beyond the time necessary to address any transition issues involving a client. As can be imagined, the time between when the departing lawyer notifies the firm of his departure and the time when he actually leaves the office is often an awkward interval, and it is best accomplished in as short a period of time as practicable.
- The firm can't attempt to penalize the departing lawyer by withholding firm resources the lawyer needs to continue to represent the clients choosing to go with him prior to the time of actual departure. This would be considered as penalizing the client and a breach of the firm's fiduciary duties.
- The firm may not restrict the departing lawyer's prompt notification to firm clients once the firm has learned of the lawyer's intended departure. Both the firm and the lawyer have an ethical duty under ER 1.4 (Communication)⁴ to keep the clients reasonably informed about the status of

their matters and to communicate relevant information to the clients to permit them to make informed decisions regarding the representation. The preferred manner of doing this is by a joint communication sent to the clients on whose matters the departing lawyer has had significant client contact, requesting them to choose whom they wish to represent them. In the event that the firm and the departing lawyer cannot promptly agree of the terms of a joint communication, the general consensus seems to be that the firm cannot use this as a pretext to prohibit the departing lawyer from unilaterally soliciting firm clients on whose matters the lawyer has had significant client contact.⁵

All of this is not to say that the departing lawyer has no ethical obligations. The ABA opinion discusses these too, including pre-departure fiduciary duties to the firm and to those clients that choose to remain there.

The bottom line is that in these often-stressful situations, both the firm and the departing lawyer need to focus on what is best for the clients involved instead of reacting unprofessionally to any hurt feelings that may result. 

endnotes

1. *New Rules Make Changing Firms a Little Easier*, ARIZ. ATT'Y (Sept. 2018) at 8.
2. *See, e.g.*, Lynda Shely, *Ethical Obligations When Lawyers Change Firms*, www.shelylaw.com/ethical-obligations-when-lawyers-change-firms (Jan. 8, 2013).
3. *Obligations Related to Notice When Lawyers Change Firms*, ABA Formal Op. 489 (Dec. 4, 2019).
4. Rule 42, ARIZ. R.S.CT.
5. RESTATEMENT (THIRD), THE LAW GOVERNING LAWYERS at §9(3) (a) (2000); Ariz. Ethics Op. 99-14 (Withdrawal from Law Firm; Communication with Clients; Advertising and Solicitation) (Dec. 1, 1999). Citations to other authorities on this point from other jurisdictions may be found in ABA Formal Op. 489, *supra* note 3, at note 7.

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Ethics Opinions and the Rules of Professional Conduct are available at www.azbar.org/Ethics



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