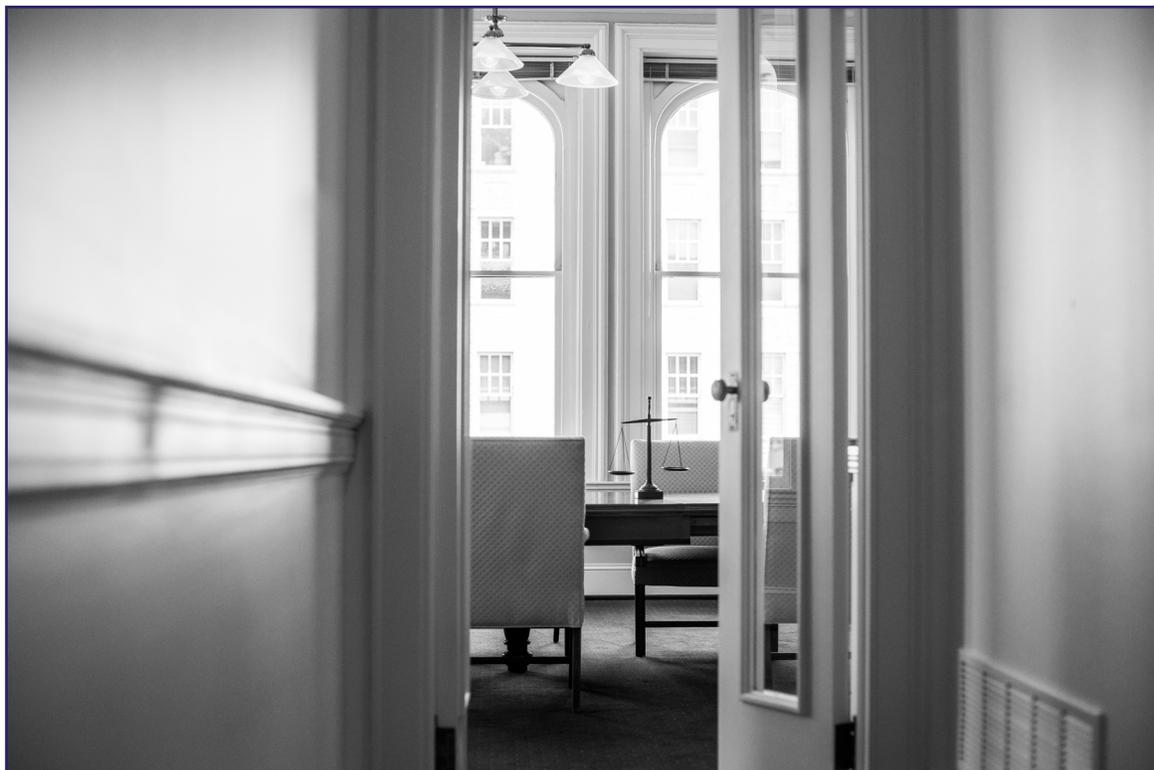




Ohio Board of Professional Conduct



OHIO ETHICS GUIDE

SWITCHING FIRMS



NOTE: Ethics Guides address subjects on which the staff of the Ohio Board of Professional Conduct receives frequent inquiries from the Ohio bench and bar. The Ethics Guides provide nonbinding advice from the staff of the Ohio Board of Professional Conduct and do not reflect the views or opinions of the Board of Professional Conduct, commissioners of the Board, or the Supreme Court of Ohio.

Switching Firms

Today, it is common for a lawyer to change law firms multiple times during the course of his or her career. A lawyer's departure from one law firm to join another was once an unusual occurrence, but now is common.¹

There are many reasons why a lawyer may switch firms—dissolution of a prior firm, family move, better pay, firm culture, or career advancement, to name a few. Whatever the reason for the change, the departing lawyer, the former firm, and the new firm all should be concerned about the ethical implications that may result when the departing lawyer takes on a similar position at a different law firm. Even if the change in firms is amicable, there are a number of difficult ethical and legal issues that must be considered.

Of paramount concern is protection of clients' interests and ensuring that clients have the right to choose who represents them. This balance can be difficult and requires consideration of ethical obligations under the Rules of Professional Conduct, as well as legal requirements separate from the ethical duties.

Some of the questions that typically arise in these situations are:

- I'm leaving a firm. What can I tell my clients, and when can I tell them — before or after I give notice to the law firm?
- Can I provide the new firm a list of all of the current and former clients that I represented at the former law firm, or does that violate confidentiality?
- When I gave notice to my former firm, I was denied access to my client records and my list of contacts, and the firm refused to give callers my new contact information. Is this ethical?

Although no one ethics rule addresses a lawyer's duties when leaving one law firm to practice at another, the Rules of Professional Conduct recognize the modern trend of lawyer mobility.²

This Ethics Guide provides guidance to lawyers and law firms regarding ethical implications when a lawyer changes law firms, but does not analyze the legal implications of changing law firms.

Duties to Clients

Above everything else, the departing lawyer and both the former and new law firms owe a duty to each client to ensure that the client is represented with competence, diligence, and loyalty.

Of primary concern should be:

- 1 Communicating with clients regarding the departure of the lawyer;
- 2 Maintaining client confidentiality before, during, and after the change of firms; and
- 3 Avoiding conflicts of interest that may result from switching firms.

Moreover, it is important to remember that a client does not belong to a lawyer or a law firm, but rather the client has the power to choose counsel of his or her choice.

A client's power to choose, discharge, or replace a lawyer borders on the absolute. Neither the law firm nor any of its members may claim possessory interest in a client.³ "Although the firm may refer to clients as 'the firm's clients,' clients are not the 'possession' of anyone, but, to the contrary, control who represents them."⁴

² See, Prof.Cond.R. 1.9, cmt. [4-9], 1.10, 1.11.

³ Ethics Comm. of Colo. Bar Ass'n, Op. 116 (Mar 2007).

⁴ *Kelly v. Smith*, 611 N.E.2d 118, 122 (Ind. 1993).

¹ See, e.g. Hillman on Lawyer Mobility, 2d Ed., § 1.1, p. 1:7.

As a result, the departing lawyer and law firm must ensure that each client's interest is protected and that each client has a choice in his or her representation.

Communication: Prof.Cond.R. 1.4

A lawyer is required to keep clients reasonably informed so the clients can make informed decisions about their matters.⁵ As such, the departing lawyer and the former law firm ethically are obligated to ensure that clients receive timely notice of the lawyer's intended departure and an explanation of the clients' options for representation in the matter going forward.⁶ This is especially important for active matters on which the departing lawyer is currently working.⁷

Although a departing lawyer and the former firm are required to notify clients that the lawyer is changing firms, there is no express ethical rule or provision of when and how clients should be notified of a lawyer's separation. Two states, Florida and Virginia, have enacted rules addressing lawyer mobility and law firm disclosure. Florida's rule provides that clients can choose their lawyer, but clients should not be notified prior to the departing lawyer notifying the law firm of the separation.⁸ Virginia's rule is similar and requires that lawyers and law firms attempt to confer about notification prior to informing clients of a move and apprise clients of all available representation options.⁹ It also prohibits lawyers at the old firm from unilaterally

contacting or soliciting the departing lawyer's clients.¹⁰ Ohio does not have a rule specifically addressing the timing of client notification.¹¹

The preferred method of notifying clients that their lawyer is changing firms is a joint letter from the law firm and the departing lawyer to all clients with whom the lawyer has had significant personal contacts (*see Form 1 on p. 11*).¹² The standard of "significant personal contacts" is determined from the perspective of the client. When asked, "Who at the law firm represents you?" any lawyers identified by the client are those with whom the client is deemed to have "significant personal contacts."¹³

The letter sent to clients prior to the lawyer's departure should advise of the following:

- When the lawyer is leaving, the current status of the client matter, and whom to contact regarding the transfer of the client file;
- That the client has the option of going with the lawyer, staying with the firm, or getting new counsel;
- The treatment of any advanced fee deposit, unearned fees and costs, an accounting of client property held in trust, and any liability for fees and costs; and
- The time for the client to respond, and if no response, notice that the client remains a client of the firm until the client gives notice otherwise.

⁵ Prof.Cond.R. 1.4.

⁶ *See*, AZ Op. 10-02 (Mar. 2010).

⁷ ABA Formal Op. 99-414 (Sept. 1999) ("The departing lawyer and responsible members of the law firm who remain have an ethical obligation to assure that prompt notice is given to clients on whose active matters she currently is working.")

⁸ Rules Regulating the Florida Bar 4-5.8 (2006).

⁹ Virginia Rule of Professional Conduct 5.8.

¹⁰ *Id.*

¹¹ *But see*, Prof.Cond.R. 7.3.

¹² ABA Formal Op. 99-414 (Sept. 1999)

¹³ AZ Op. 99-14 (Dec. 1999).

If not done at the beginning of the representation, the letter should inform the client to provide direction as to the disposition of the file, and have a place for the client to sign and return the letter to the firm (*see Form 2 on p. 12*). If the client chooses to leave with the departing lawyer, then the firm is responsible to ensure the file is transferred, and the firm must bear the expense to copy the file, if the firm wishes to retain a paper copy of the file.¹⁴ Further, a departing lawyer or the former law firm should provide clients with whatever is reasonably necessary to assist the clients in making an informed decision about their future representation.¹⁵

If a joint letter from the departing lawyer and the firm is not an option, separate letters can be sent by the departing lawyer and/or the firm to clients with whom the lawyer has had significant personal contact.

The letters must not disparage the former firm or the departing lawyer, and must not involve improper solicitation under Prof. Cond.R. 7.3. Although it is permissible for a departing lawyer to announce to clients his or her departure before notifying the law firm, ideally this should occur after the departing lawyer has notified the law firm.¹⁶ Even though no ethics rule expressly addresses a lawyer's duty to notify the law firm of an intended departure, such a duty arises from a number of other sources, such as the law firm's duty of communication with law firm clients.¹⁷

Confidentiality: Prof.Cond.R. 1.6

Of equal importance to client communication is the duty to protect client confidentiality before, during, and after the departing lawyer changes firms. From the time the lawyer interviews with another law firm until after the lawyer has switched firms, the departing lawyer must ensure that client confidentiality is maintained.

Prof.Cond.R. 1.6 prohibits lawyers from revealing information relating the representation of a client; however, a departing lawyer may reveal limited information relating to the representation of a client in order to detect and resolve conflicts of interest due to change of employment.¹⁸ This disclosure only is permitted if the information does not compromise the attorney-client privilege or otherwise prejudice the client.¹⁹ The information should be limited to information reasonably necessary to detect and resolve conflicts and should include no more than the identity of the client or entity involved in the matter, a brief summary of the general issues, and information about whether the matter is ongoing.²⁰

The timing of the disclosure of client information should not be done until reasonably necessary, which is only once substantive discussions regarding the new employment have occurred.²¹

In some circumstances, the only way to reveal the client information may be to obtain client consent before disclosure.²² Situations where this may occur include: where a corporate client is seeking advice on a corporate takeover that has not been

¹⁴ Prof.Cond.R. 1.16, cmt. [8A].

¹⁵ ABA Formal Ethics Op. 99-414 (Sept. 1999).

¹⁶ ABA Formal Ethics Op. 99-414 (Sept. 1999).

¹⁷ Philadelphia Bar Ass'n Prof'l Guidance Comm. and Pa. Bar Ass'n Comm. On Legal Ethics and Prof'l Resp., Joint Formal Op. 2007-300 (Jun. 2007).

¹⁸ Prof.Cond.R. 1.6(b)(7).

¹⁹ Prof.Cond.R. 1.6(b)(7).

²⁰ Prof.Cond.R. 1.6, cmt. [13]; ABA Op. 09-455 (Oct. 2009).

²¹ Prof.Cond.R. 1.6, cmt. [13]; ABA Formal Op. 09-455 (Oct. 2009).

²² Prof.Cond.R. 1.6(a); ABA Formal Ethics Op. 99-414 (Sept. 1999).

publicly announced; when a person is consulting a lawyer about the possibility of a divorce before the person's intentions are known to the person's spouse; or when a person is consulting a lawyer about a criminal investigation that has not led to a formal charge.²³

The duty of confidentiality usually is implicated when a lawyer is interviewing with a new firm or in the recruiting process when law firms are performing due diligence on potential lateral hires. A departing lawyer cannot openly reveal confidential client information, which in some instances may include the name of the client.

In certain areas of practice, client information is particularly sensitive and even very basic information cannot be revealed under Prof.Cond.R. 1.6. Therefore, unless the client consents, disclosure should be limited to information necessary to detect and resolve conflicts, such as:

- Identities of clients or other parties involved in the matter;
- A brief summary of the status and nature of a particular matter, including the general issues involved; and
- Information regarding whether the matter is ongoing.²⁴

Information that should never be disclosed without client consent includes:

- Attorney-client privileged information;
- Information potentially "detrimental or embarrassing to the client"; and
- Information that the client requested to remain confidential.²⁵

²³ Prof.Cond.R. 1.6(a), cmt. [13].

²⁴ Prof.Cond.R. 1.6, cmt.[13].

²⁵ Hillman on Lawyer Mobility, 2dEd. §2.3.1, p.2:129.

Additionally, the departing lawyer should be mindful that confidential information may implicate fiduciary duties that a departing lawyer may owe the former law firm.

Conflicts of Interest: Prof.Cond.R. 1.7, 1.8, 1.9

Both the departing lawyer and the prospective law firm have a duty to detect and resolve conflicts of interest that may arise under the Rules of Professional Conduct.²⁶ The two broad principles that underlie a conflicts of interest analysis are the duty of loyalty to clients and preserving client confidences.²⁷

Lateral hiring is a central element of many law firm business plans, and recruiting can be seen as a key to success. However, it is essential to perform due diligence and screen for shared matters, as well as to avoid new conflicts during the process.²⁸ As mentioned above, the Rules of Professional Conduct generally permit the disclosure of conflict of interest information during the process of lawyers moving between firms.²⁹

Conflicts of interest may arise when a departing lawyer has employment discussions with a firm that is an opponent of the lawyer's client or with a law firm representing the opponent, which could materially limit the lawyer's representation of the client.³⁰ Especially in the case of side-switching, i.e. moving from plaintiff to defense, or vice versa, diligence is required on the part of both the departing lawyer and the prospective law firm.³¹

²⁶ Prof.Cond.R. 1.7, 1.8(a), 1.9; ABA Formal Op. 09-455 (Sept. 1999).

²⁷ See, e.g., *Roy D. Mercer LLC v. Reynolds*, 292 P.3d 466 (N.M. 2012).

²⁸ ABA Formal Op. 96-400 (Jan. 1996) (Job Negotiations with Adverse Firm or Party).

²⁹ ABA Formal Op. 09-455 (Sept. 1999); Prof.Cond.R. 1.6(b)(7).

³⁰ Prof.Cond.R. 1.7, cmt. [20]; ABA Formal Ethics Op. 99-414 (Sept. 1999).

³¹ ABA Formal Op. 96-400 (Jan. 1996); Prof.Cond.R. 1.3.

The departing lawyer should reveal client information only to the extent reasonably necessary to detect and and resolve conflicts of interest. No disclosure may be made if it would compromise the attorney-client privilege or otherwise result in prejudice to the client.³² Similarly, the prospective law firm only may use the information received for purposes of detecting and resolving conflicts of interest.³³

Imputation and Screening

If proper precautions are not instituted, lawyers who switch firms can cause serious and potentially costly problems. The imputation of a conflict of interest extends the disqualification of one member of a firm to all members of a firm and must be considered prior to switching firms.³⁴

Implementation of a screen may resolve some imputed disqualifications due to conflicts of interest that may arise due to a lawyer switching firms; however, it may not resolve all conflicts.³⁵ Screening “denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under the Rules of Professional Conduct or other law.”³⁶ The purpose of the screen is to protect client confidences and minimize the perception or appearance of impropriety. Although the Rules of Professional Conduct recognize screening, it is still prudent to notify the other firm that a screen has been implemented.

Prior to employing a lateral hire, it is critical for the prospective firm to understand the clients and cases on which a departing lawyer performed work. For example, even if the majority of the work the lateral attorney does is transactional, he or she might have

done a small amount of work on a litigation case, of which the firm needs to know.

Even 10 hours of work on a case can cause a conflict. Due to lawyers’ responsibility for nonattorney assistants under Prof.Cond.R. 5.3, screening may resolve imputation of conflicts of interest involving nonlawyer personnel who have moved between firms.³⁷

Additionally, when analyzing conflict of interest issues of substantive law also must be considered, including the firm’s partnership or employment agreement and the firm’s written or customary employment practices.³⁸

Duties to Clients Upon Termination of Representation: Prof.Cond.R. 1.16

If a lawyer’s change in law firms results in termination of the representation, the departing lawyer or the former law firm owe certain additional duties to protect clients’ interests.³⁹ Those duties may include returning the client’s file, accounting for monies held in trust, and providing sufficient notice to allow reasonable time for clients to find new counsel.⁴⁰ The former firm is required to review the departing lawyer’s emails to the extent necessary to carry out duties for the clients.⁴¹ Since email often is a primary method of communication between many lawyers and their clients, a firm that simply turns off the departing lawyer’s email account violates duties to clients under Prof.Cond.R. 1.16.

Client Files

Ultimately, the file belongs to the client. The client file includes correspondence, pleadings, deposition

³² Prof.Cond.R. 1.6, cmt. [13].

³³ Prof.Cond.R. 1.6 [cmt14].

³⁴ Prof.Cond.R. 1.10.

³⁵ Prof.Cond.R. 1.10.

³⁶ Prof.Cond.R. 1.0(l).

³⁷ Tennessee Supreme Court Board of Professional Responsibility Formal Op. 2003-F-147 (Jun. 2003).

³⁸ ABA Formal Ethics Op. 99-414 (Sept. 1999).

³⁹ Prof.Cond.R. 1.16.

⁴⁰ Prof.Cond.R. 1.16(d).

⁴¹ See, Philadelphia Bar Ass’n Prof. Guidance Comm., Op. 2013-4 (Sept. 2013).

transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to the client's representation.⁴² A client's interests should not be prejudiced when the attorney-client relationship ends.⁴³

When a lawyer leaves a firm and the client decides to leave with the lawyer, the former firm cannot hold a client's file hostage. Likewise, a firm faced with the abrupt departure of one or several lawyers may not refuse prompt delivery of the client's file to hinder the departing lawyers.⁴⁴ The firm must protect the client's interests, which includes providing the client file to the client or the new lawyer, timely submitting court documents reflecting a change of counsel, facilitating communication and docket information to best serve the client, and bearing any copy costs.⁴⁵

If the departing lawyer is not continuing the representation of the client, the lawyer may take copies of documents relating to his or her representation of former clients, but must ensure client confidentiality is protected under Prof.Cond.R. 1.6 and 1.9. Additionally, a departing lawyer may take his or her own work product; however, items such as client lists, practice forms, and certain digital files may turn on property law and trade secrets law.

Trust Account Monies

When a lawyer changes firms, the departing lawyer and the former law firm must account for any trust account monies or client property held by the firm for clients who leave the firm with the departing lawyer or with another lawyer.⁴⁶ Clients who leave the law firm with the departing lawyer and who have given the firm an advance

fee or cost deposit are entitled to take the money with them, less earned fees and incurred costs.⁴⁷

The former firm should provide an accounting to the client and should write a check to the client or to the new law firm's trust account at the direction of the client.⁴⁸ Additionally, law firms should contemplate the possibility of a fee dispute arising as to whether the departing lawyer can keep all fees, including contingent fees, the partnership portion of fees, and quantum meruit.

Fees: Prof.Cond.R. 1.5

Another consideration for a departing lawyer and the law firm is the division of fees under Prof.Cond.R. 1.5. After a departing lawyer leaves a firm, there likely may be period of time where fees are shared by a departing lawyer and/or the law firm. This is especially the case in contingent fee cases.

A departing lawyer who was in a firm with clients on a contingent fee basis may have additional considerations regarding the division of fees. Usually in a contingent fee case when a client discharges a lawyer, the discharge normally will terminate the lawyer's claim to a contractually based contingent fee, and instead, a quantum meruit recovery for the value of services rendered prior to the discharge is the basis of compensation.⁴⁹

⁴² Prof.Cond.R. 1.16(d).

⁴³ Prof.Cond.R. 1.16(d).

⁴⁴ Prof.Cond.R. 1.16, cmt. [8A, 9].

⁴⁵ Prof.Cond.R. 1.16, cmt. [8A].

⁴⁶ Prof.Cond.R. 1.15(d).

⁴⁷ Prof.Cond.R. 1.15(d).

⁴⁸ ABA Formal Op. 99-414 (Sept. 1999).

⁴⁹ *Reid, Johnson, Downes, Andrachik & Webster v. Lansberry*, 68 Ohio St.3d 570, 629 N.E.2d 431 (1994) (when attorney employed pursuant to contingent fee is discharged, attorney's fee recovery is on basis of quantum meruit and arises upon successful occurrence of contingency); but see, *Cuyahoga Cty. Bar Assn. v. Levey*, 88 Ohio St.3d 146, 2000-Ohio-283, 724 N.E.2d 395 (because respondent's contingent-fee agreement with clients provided for hourly charge if discharged "whether or not, a successful completion" occurred, respondent violated DR 2-106(A) [now Prof.Cond.R. 1.5(a)]).

Prof.Cond.R. 1.5(e), regarding the division of fees by lawyers not in the same firm, does not apply if the fee is being divided between two lawyers who were associated in a firm but went their separate ways.⁵⁰

Additionally, fee determination also may turn on partnership law's income-sharing principles. This is likely the case when the question concerns the allocation of fees among lawyers, rather than client responsibility for payment of fees. However, in simple discharge cases where disputing lawyer has no prior partnership relationship, client choice may dictate.

Solicitation of Clients: Prof.Cond.R. 7.3

Generally, a lawyer is not permitted to solicit professional employment in-person, via live telephone, or by real-time electronic contact, unless the person is family or has a prior professional relationship with the lawyer, i.e. a former client.⁵¹ Because the departing lawyer has a current professional relationship with the clients, the lawyer may inform clients of his or her impending departure from the firm.⁵² A departing lawyer is prohibited from making in-person contact with firm clients with whom the departing lawyer does not have a prior professional relationship, but may contact them as permitted under Prof.Cond.R. 7.3.⁵³

Although a departing lawyer is not prohibited from announcing to clients his or her impending departure before the law firm is told, ideally these communications should occur after the firm has been notified of the lawyer's plans to leave.⁵⁴ This is an

important consideration because a departing lawyer may have a fiduciary duty to his or her former firm.⁵⁵

Restrictions on Right to Practice: Prof.Cond.R. 5.6

When a departing lawyer leaves a firm, the client, not the firm, dictates who will represent him or her. Prof.Cond.R. 5.6 prohibits lawyers from offering or participating in an agreement that restricts a lawyer's right to practice law. This rule extends to non-competition agreements or agreements that purport to govern allocation of client matters after a lawyer leaves a law firm. These agreements not only limit a lawyer's right to practice, but also restrict clients' freedom to choose an attorney.⁵⁶

A firm cannot penalize a lawyer for leaving because the clients chose to leave with the lawyer.⁵⁷ Moreover, attempting to limit competition by forbidding client contact or use of "firm" information for a given period of time has been found to violate Prof.Cond.R. 5.6.⁵⁸

Permissible Planning Actions

Permissible planning actions may be taken in anticipation of a departing lawyer announcing that he or she is leaving the law firm (*see Form 3 on p. 13*).⁵⁹

⁵⁰ Prof.Cond.R. 1.5, cmt. [8]; *See, Norton v. Frickey, P.C. v. James B. Turner*, P.C. 94 P.3d 1226 (Colo. Ct. App. 2004); Ill. Ethics Op. 03-06 (2004).

⁵¹ Prof.Cond.R. 7.3(a).

⁵² Ill. Ethics Op. 12-14 (2012).

⁵³ ABA Formal Ethics Op. 99-414 (Sept. 1999).

⁵⁴ ABA Formal Op. 99-414 (Sept. 1999).

⁵⁵ *See, Fred Siegel Co. v. Arter & Hadden*, 85 Ohio St.3d 171, 1999-Ohio-260, 707 N.E.2d 853; *Buckingham, Doolittle & Burroughs, L.L.P. v. Bonasera*, 157 Ohio Misc.2d 1, 2010-Ohio-1677, 926 N.E.2d 375.

⁵⁶ Prof.Cod.R. 5.6, cmt. [1]. *See ex., In re Hanley II*, 19 N.E.3d 756 (Ind. 2014) (Indiana lawyer disciplined for violating Rule 5.6 for drafting a non-compete agreement as part of an associate employment agreement and sent unilateral notices to clients after the associate left).

⁵⁷ *Cincinnati Bar Assn. v. Hackett*, 129 Ohio St.3d 186, 2011-Ohio-3096, 950 N.E.2d 969; N.C. Ethics Op. 2007-6 (2007).

⁵⁸ Pa. Ethics Op. 2012-06 (2012); Va. Ethics Op. 1403 (1991); Wash. Ethics Op. 2118 (2006).

⁵⁹ Oh.Adv.Op. 98-5 (Apr. 1998).

Some permissible actions include:

- ✓ Obtaining office space and supplies, such as printing new letterhead;
- ✓ Arranging bank financing, not based on confidential or nonpublic information of the firm;
- ✓ Ordering office equipment and systems;
- ✓ Preparing lists of clients expected to leave the firm and obtain financing based on the lists, using only non-confidential, non-protected, publically available information based on what the lawyer personally knows about the clients' matters; or
- ✓ Informing clients with active matters for whose representation the lawyer is responsible or in which the lawyer plays a principal role, only that the client has the right to choose who will continue to manage their business following the lawyer's departure.

On the other hand, certain actions should be avoided when a lawyer is switching firms. Those actions include:

- ✗ Abandoning the firm on short notice and taking clients and their files;
- ✗ Using firm resources, such as copying files or client lists without permission or unlawfully removing firm property from the premises to solicit clients;
- ✗ Using nonpublic confidential information of the firm, such as time and billing information or firm structure and financial statements to obtain financing or other things against the interests of the firm⁶⁰; or
- ✗ Taking other action detrimental to the interests of the firm or clients, aside from the impact the lawyer's departure will have on the firm.⁶¹

⁶⁰ See, *Disciplinary Counsel v. Robinson*, 126 Ohio St.3d 371, 2010-Ohio-3829, 933 N.E.2d 1035, (attorney disciplined for removing confidential documents from his former law firm, provided some documents to a competitor firm with whom he was seeking potential employment, and then, after his former law firm had sued him, secretly destroyed some of the documents to conceal his possession);

⁶¹ See, *Cleveland Metro. Bar Assn. v. Azman*, 147 Ohio St.3d 379, 2016-Ohio-3393, 66 N.E.2d 695, (attorney disciplined for accessing e-mail accounts of his former employer without authorization and deleted e-mail messages).

Tort and Agency Law

There is an intersection between legal ethics and fiduciary duties in the lawyer mobility setting. In addition to the ethics rules, the theories of tort and agency law also may apply when a lawyer switches law firms. Legal issues that may arise when a lawyer leaves a firm include interference with contracts a firm has with existing clients, use of firm resources to set up a new firm, misappropriation of trade secrets, and attempts to steal associates and staff while the lawyer is still working for the firm.

Courts have noted that there is a distinction between “logistical arrangements” and concerted efforts made in secret while still at the firm to lure away some of firm’s clients.⁶²

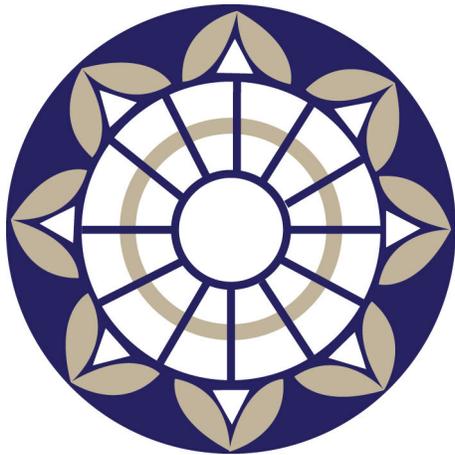
Although it may be common practice for individual lawyers seeking lateral opportunities to include disclosure of the lawyer’s own clients, experience, salary, and benefits; in doing so, the departing lawyer must ensure that he or she complies with the Rules of Professional Conduct, as well as other legal obligations. Hiring firms and departing lawyers must be cautious when gathering data to gauge the comparable incomes, hourly rates, collections, client lists, and similar data on lateral hires.⁶³

Conclusion

A number of difficult ethical issues must be addressed when a lawyer switches from one law firm to another. Of primary importance is protection of the clients’ interests. To do so, the departing lawyer and the firm, ideally, should jointly notify clients prior to the departure, so clients can make an informed decision regarding representation. The departing lawyer and law firm must maintain client confidentiality before, during, and after the change of firms, but may provide certain client information to the prospective firm in order to detect and resolve any conflicts of interest that may arise from switching firms. Additionally, the departing lawyer and the former firm should not take drastic actions, such as improperly using firm resources or denying the departing lawyer access to client files, which could negatively impact clients’ interests. The departing lawyer and law firm also must consider a number of other potential ethical issues that may arise, including those involving client files, fees paid and owed, division of fees, solicitation of clients, and restrictions on the right to practice. No matter the reason for switching firms, the primary consideration for the departing lawyer and the firms involved should be the clients’ interests.

⁶² *Meehan v. Shaughnessy*, 535 N.E.2d 1255 (Mass. 1989); see also, *Fred Siegel Co. v. Arter & Hadden*, 85 Ohio St.3d 171, 177, 1999-Ohio-260, 707 N.E.2d 853, 859 (Court defined bounds of fair competition in context of grabbing clients and leaving a firm where an associate left the firm and took with her to her new firm a number of the firm’s clients).

⁶³ *Buckingham, Doolittle and Burroughs, L.L.P. v. Bonasera*, 157 Ohio Misc.2d 1, 2010-Ohio-1677, 926 N.E.2d 275 (Law firm and its corporate partner brought action for breach of fiduciary duty and duty of loyalty, civil conspiracy, unfair competition, and tortious interference with business relations and prospective contract relations against former employees and shareholders who left as a group for a rival firm).



FORM 1

JOINT LETTER OF DEPARTURE

[NAME & ADDRESS OF CLIENT
CURRENTLY SERVED BY _____]

Dear _____:

_____ has elected to withdraw from the firm of _____ and to join a new law firm at [name and address of new firm].

As an existing client of _____, you have the right to remain a client of the firm, to follow the withdrawing attorney to his new firm, or to transfer your representation to any other attorney of your choice.

Enclosed is a form for you to sign and send in the enclosed envelope if you elect to follow _____ to his new practice. Upon the firm's receipt of that form, your file will be transferred in accordance with your direction. If you elect not to request such a transfer within thirty days from the date of this letter, or if an issue arises in a pending matter in which you are involved during that period before your request is received, you will be contacted by an attorney at _____ to make sure that your interests are protected and your choice of counsel is honored.

Yours truly,

By: _____

FORM 2

REQUEST FOR TRANSFER

I hereby request that my current legal files at the law firm of _____

(CHOOSE ONE BY MARKING "X" BESIDE YOUR CHOICE)

_____ REMAIN WITH _____

_____ TRANSFER FILE TO _____

_____ TRANSFER FILE to the following attorney at the following
address:

Signature

Print Name

Address

City, State, Zip

FORM 3

CHECKLIST FOR LEAVING A LAW FIRM

- Review firm's partnership, shareholder or employment agreement in advance of departure
 - Understand permissible pre-departure actions you may take in anticipation of setting up a firm or going to a competing law firm.

 - Review your caseload and determine:
 - when you will notify the firm of your intended departure;
 - when clients will be notified of your departure;
 - what will be contained in the notification letter to clients; and who will send it.

 - Compile a list of client matters for which you were the responsible attorney, and include:
 - addresses, phone numbers, and other contact information related to each file; all active client matters, the current status of each matter and any important upcoming deadlines and dates;
 - all active client matters pending before a tribunal; all clients that you believe should be notified of your departure and provided your new firm contact information; which clients may leave with you and which may stay with the firm;
 - any funds deposited into the firm's trust account that have not been earned or expended;
 - any outstanding accounts receivable, unbilled disbursements, any work in progress, and any case management issues.

 - Prepare and file any necessary motions seeking permission to withdraw or for substitution of counsel in any proceedings pending before a tribunal, as well as, advising all other counsel of any change in the representation.

 - Notify the Attorney Services Office of your change of firm and address, or change it on the Attorney Services portal.

 - Arrange for your name to be removed from all firm's bank accounts, including trust accounts, if applicable.

 - If you and the departing firm are not able to resolve differences concerning your departure, consider hiring an independent mediator or arbitrator to assist with a resolution.
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Ohio Board of
Professional Conduct

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