



Leaving a Law Firm: A Guide to the Ethical Obligations in Law Firm Departure

Introduction

Key Ethical Obligations When Changing Law Firms

- Duties to Clients

- Fiduciary Duties of Loyalty as Members of a Law Firm

Preparing to Leave a Law Firm

- Notice to the Firm

- Logistical Arrangements Prior to Departure

- Recruitment of Staff

- Conflicts Screening

Notice to Clients

- Joint Notice

- Unilateral Notice

- Clients Entitled to Receive Notice

- Post-Departure Solicitation of Clients

Property Issues: What a Departing Lawyer May Take

- Client Files

- Retaining Liens

- Client Lists, CLE Materials, Practice Forms and Computer Files

Post-Departure Issues

- Restrictive Covenants

- Requests for Departing Lawyer's Contact Information

Appendix

- Bibliography

- Dowd & Dowd, Ltd. v. Gleason*: 1998 IL Supreme Court opinion and 2004 Appellate Court opinion on remand

- Sample Forms

INTRODUCTION

- I'm leaving a firm, what can I tell clients that I represent and when can they be told? Before or after I give notice to the law firm?
- Can I provide a list of all current and former clients that I represented at the prior law firm to the new firm or does that violate confidentiality?
- When I gave notice to my old firm they denied me to access to client records and my list of contacts and they refused to give callers my new contact information. Is this ethical?

The ARDC *Ethics Inquiry Hotline* receives many inquiries regarding what are the ethical obligations a lawyer has when departing a law firm to join another¹. Most lawyers change law firms at least once and likely several times over the course of a legal career. A lawyer's departure from one law firm to practice elsewhere, whether it's amicable or not, can raise a number of difficult legal and ethical issues. This arises from the fact that lawyers in a firm have two, sometimes competing, fiduciary obligations to navigate – to the clients and to the firm. Both the departing lawyer and the firm have ethical obligations to protect clients' interests and to honor clients' fundamental right to choose their counsel. At the same time, before a lawyer resigns from and leaves a law firm, the departing lawyer also owes contractual, fiduciary and/or agency duties to the law firm.

Ensuring that the best interests of clients are met while avoiding any conduct that could be considered a breach of a fiduciary duty of loyalty can become somewhat challenging. Departing lawyers and their firms need to consider not only their ethical duties under the Rules of Professional Conduct but also their legal obligations under the substantive law separate and apart from professional conduct rules.

In planning to transition between law firms, a lawyer should consult the following sources:

- (1) the Illinois Rules of Professional Conduct, caselaw and ethics opinions;
- (2) the law firm's partnership, shareholder or employment agreement; and
- (3) “other law” such as the law governing partnerships and other business entities, agency law, property law, business torts or trade secrets.

The steps taken by both the departing lawyer and the law firm during the transition should be aimed at accomplishing an orderly, fair and efficient transition that meets the

¹ The ARDC two-hour CLE webcast, *Law Practice Transitions: The Ethical Obligations When Selling, Closing or Leaving a Law Practice* (April 2011) is currently accessible on the ARDC website at <https://www.iardc.org/CLESeminar.html>.

fiduciary obligations lawyers owe to clients and to each other as members of a firm.

The first step for Illinois lawyer is to read the Illinois Supreme Court opinion of *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill.2d 460, 693 N.E.2d 358 (Ill. 1998) (referred to hereafter as “*Dowd I*”), *affirmed in part, reversed in part*, and the later 2004 Appellate Court opinion following remand, 352 Ill.App.3d 365, 816 N.E.2d 754 (1st Dist. 2004) (“*Dowd II*”). Both are recommended reading for any lawyer contemplating leaving a firm and taking clients with him or her. *Dowd I* and *II* opinions can be found in the Appendix along with a suggested checklist and forms.

The goal of this publication is to focus on the ethics rules generally implicated when lawyers move between firms and not the various legal consequences involving the law of contracts, agency, partnership, property or unfair competition that can confront a lawyer. The Rules of Professional Conduct are not designed to be a basis for civil liability but they do establish standards of conduct by which a lawyer’s conduct may be viewed. *See* Ill.Rules Prof. Conduct, Scope, cmts. [15] & [20]. By setting forth the “ethical guideposts” laid out by the Illinois Supreme Court in *Dowd*, it is hoped that Illinois lawyers may have a better understanding of what their ethical duties are in leaving a law firm and how a lawyer’s compliance or noncompliance with the ethical rules can impact not just the lawyer’s license to practice law but also the ultimate outcome of related civil litigation. Before planning a move, lawyers with questions concerning their ethical obligations are encouraged to call the *ARDC Ethics Inquiry Hotline* at either the ARDC Chicago office: 312/565-2600 or 800/826-8625 or Springfield office: 217/52-6838 or 800/252-8048.

KEY ETHICAL OBLIGATIONS WHEN CHANGING LAW FIRMS

What are the rules when lawyers depart a law firm to practice somewhere else? There are no specific ethical rules that directly address a lawyer’s departure. To a certain extent, the Rules of Professional Conduct adopted in 2010 recognize the modern trend of lawyers transitioning law firms. *See* ILRPC 1.9, cmts. [4]-[9]; 1.10; and 1.11 (recognize the modern trend of lawyers transitioning law firms and expressly acknowledge the ethical concerns facing lawyers who change law firms).

Duties to Clients

Both the departing lawyer and the law firm have ethical obligations to ensure that the clients’ interests are represented competently, diligently and with loyalty during a period of transition.

Protection of the client is of first and foremost consideration for both the departing lawyer and the law firm. The key ethical duties that all parties need to bear in mind are:

- *Communication (ILRPC 1.4)* - to keep clients informed of the impending departure of a lawyer having substantial responsibility for the clients' active matters and to make clear to those clients for whom the departing lawyer has worked and who inquire that the client has the absolute right to counsel of the client's choosing: the departing lawyer, the firm or neither;
- *Competence and Diligence (ILRPC 1.1, 1.3)* - to assure clients on whose active matters the departing lawyer worked that any change in representation will not adversely affect the client's interests and that unless the relationship is terminated by the client or the firm withdraws, the client's matter will continue to be managed by the remaining lawyer(s) at the law firm with competence and diligence to conclusion;
- *Avoiding Prejudice Upon Withdrawal (ILRPC 1.16)* - to assure clients that, upon the firm's withdrawal from representation of any client, the firm will take all reasonable steps to protect the client's interests, respecting the client's selection of counsel and not take actions that will frustrate the client's right to choose counsel by, among other things, denying access to the client's files;
- *Maintaining Confidentiality (ILRPC 1.6)* – that confidential information of clients once shared by the departing lawyer and the law firm will be maintained consistent with ILRPC 1.6;
- *Avoiding Conflicts of Interest ILRPC 1.7, 1.9 and 1.10)* – that the duties of loyalty and confidentiality owed to current and former clients will not be compromised by lawyers moving between firms;
- *Solicitation of Clients (ILRPC 7.1-7.5)* – that clients are given adequate and accurate information to assist clients in making an informed decision about choosing counsel free from the possibility of undue influence, intimidation, and overreaching; and
- *Duty of Candor (ILRPC 8.4(a) (4))* – avoiding conduct involving dishonesty, fraud, deceit or misrepresentation toward clients and between members of a law firm in connection with a planned withdrawal from the firm.

Fiduciary Duties of Loyalty as Members of a Law Firm

Lawyers owe each other a fiduciary duty of loyalty as members of a law firm to deal with each other openly, fairly and honestly.

All lawyers in a law firm owe a fiduciary duty of loyalty to the firm whether they be partners, shareholders, associates or otherwise employed in the firm “not to (1) actively exploit their positions within the [law firm] for their own personal benefits, or (2) hinder the ability of the [law firm] to conduct the business for which it was developed.” *Burke v. Lakin Law Firm*, 2008 WL 64521 (S.D.Ill. Jan. 3, 2008), *quoting FoodComm Intern. V.*

Barry, 328 F.3d 300, 303 (7th Cir. 2003). Claims for breach of fiduciary duty are commonplace in litigation over withdrawal from law firms. In *Dowd I*, the Court set forth some of the “ethical guideposts” in how far departing lawyers may go in their pre-departure preparatory activities, including what efforts a departing lawyer may properly take in communicating with the firm’s clients, without breaching a lawyer’s fiduciary duty owed to the members of the law firm.

See *Dowd & Dowd, Ltd. V. Gleason*, 181 Ill.2d 460, 693 N.E.2d 358 (Ill. 1998) and 352 Ill.App.3d 365, 816 N.E.2d 754 (1st Dist. 2004).

The *Dowd* saga began when two lawyers decided to leave the Dowd firm and start their own practice. The problem was in the covert manner in which the two partners prepared to leave. They had spent over four months planning their departure, secretly making arrangements with at least one major client to follow them to their new firm, using confidential firm information to secure financing for the new firm, and enticing other firm employees to leave – all before they had resigned from the firm. Dowd sued the two former partners and their new firm, alleging causes of action for breach of fiduciary duty, breach of employment contract, tortious interference with prospective economic advantage, and civil conspiracy. Their departure triggered a 14-year legal battle that ultimately resulted in a judgment for \$2.5 million in damages in favor of the law firm against the two departed lawyer and their new firm for breach of fiduciary duty to Dowd and tortious interference with prospective economic advantage. *Dowd II*, 352 Ill.App.3d 365, 816 N.E.2d 754 (1st Dist. 2004).

The Court agreed that certain preliminary arrangements may be undertaken by a departing lawyer in order to protect the important value of client freedom of choice in counsel; the Court cautioned, however, that the principle of client choice “is not so overpowering that it shields all pre-termination competition by members of a firm.” *Dowd I*, 181 Ill.2d at 475, 693 N.E.2d at 366 *quoting* R. Hillman, *Law Firms and Their Partners: The Law and Ethics of Grabbing and Leaving*, 67 Tex. L.Rev. 1, 27 (1988). A lawyer’s conduct can be a breach of fiduciary duty when, before the lawyer departs, he “secretly attempt[s] to lure firm clients (even those that the partner has brought into the firm and personally represented) to the new association lying to clients about their rights with respect to the choice of counsel, lying to partners about plans to leave, and abandoning the firm on short notice (taking clients and files) would not be consistent with a partner’s fiduciary duties.” *Dowd I*, 181 Ill. 2d at 477-78 *citing* *Graubard Mollen Dannett & Horowitz v. Moskovitz*, 86 N.Y. 2d 112, 112-21, 629 N.Y.S.2d 1009, 1013-14, 653 N.E.2d 1179, 1183-84).

The “fence” or dividing line, between permissible and impermissible conduct in these circumstances, the Court concluded, “cannot be drawn with mathematical precision.” *Dowd I*, 181 Ill.2d at 470, 693 N.E.2d. at 364. The steps that should be taken by both departing lawyer and the firm must be consistent with the interests of clients in continued competent representation, in freely choosing counsel, and in receiving accurate and fair information from which to make an informed choice.

Disciplinary Cases

While most claims of a breach of fiduciary duty are usually civil in nature, as in the *Dowd*, they can become disciplinary matters when a lawyer decides to misappropriate fees owed to the firm, remove files from the firm without client consent, secretly remove property belonging to the firm or conduct an outside practice without the firm's knowledge. *E.g.*, *In re Turner*, M.R. 23588, 2009 PR00016 (Ill. 2012) (lawyer suspended three months for conversion of settlement funds during a dispute with his former law firm partners over money that was due to each partner after the firm's dissolution); *In re Michod*, M.R. 17317, 97CH99 (Ill. 2001) (lawyer suspended for five months for converting \$112,500 in legal fees in which the lawyer and his partner had an interest and determining unilaterally how to allocate the funds between himself and his partners); *In re Cupples*, 952 S.W.2d 226, 236-37 (Mo. 1997) (in separate disciplinary proceedings involving a lawyer in connection with his departure from two different law firms, the court held that the lawyer's conduct, which included secreting client files as he prepared to withdraw from a firm, removing files without client consent, failing to inform clients of the change in representation, and other action constituted conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Missouri's counterpart to ILRPC 8.4(c)); *In re Park*, M.R. 25897, 2012PR00027 (Ill. 2013) (lawyer suspended one year for downloading over 75,000 electronic in law firm documents, including a client directory, client files, forms and templates during a 5-month span while he was still a partner there in order to start his own competing firm and later destroying documents in violation of a litigation hold order after his former law firm notified him that it would be filing a civil lawsuit); and *In re Maciasz*, M.R. 23960, 2006PR80 (Ill. 2010) (lawyer employed as a full-time attorney at successive law firms who secretly operated his own "moonlighting practice" that he did not disclose to the law firms suspended for one year).

PREPARING TO LEAVE A LAW FIRM

Notice to the Firm

A lawyer should first give reasonable notice of intent to withdraw from the firm promptly after reaching a commitment to join another firm or making the decision to leave the firm before notifying clients.

Dowd established while it is permissible for a departing lawyer to announce to clients of his or her impending departure before the law firm is told, "ideally" these communications should occur **after** the departing lawyer has notified the firm of the lawyer's plans to leave. *Dowd* I, 181 Ill.2d at 476, 693 N.E.2d at 367. ABA *Formal Ethics Op.* 99-414 Ethical Obligations When a Lawyer Changes Firms (Sept. 1999) similarly takes the view that it is ethically permissible for a departing lawyer to notify

current clients even before advising the firm of the lawyer's intention to resign. That view is not universally shared, however. *See, e.g., Restatement of the Law (Third) of The Law Governing Lawyers*, sec. 9(3) (2000) (lawyer leaving firm may solicit firm clients prior to leaving only after lawyer has informed the firm of the lawyer's intent); Ohio Supreme Court Ethics Op. 98-5 (1998)(departure should be discussed between firm and departing lawyer before client is informed); Pennsylvania and Philadelphia Joint Ethics Op. 2007-300 (in most cases, client notice should not precede notice to lawyer's firm); and Fla. Rule of Prof.Conduct 4-5.8 (prohibits a departing lawyer from sending notice until after a good faith effort to negotiate a joint notice).

In addition, the Court noted in *Dowd* that leaving on short notice or concealment of a decision to withdraw may be a basis for a breach of fiduciary duty claim if the firm can show that the deception caused damage to the firm. *Dowd I*, 181 Ill. 2d at 476, 693 N.E.2d at 367.

See CHECKLIST FOR LEAVING A LAW FIRM

Logistical Arrangements Prior to Departure

A lawyer may make certain, limited logistical arrangements prior to announcing his or her withdrawal to the firm but how much planning a lawyer may or may not do before departing, as the Court noted in *Dowd*, is a difficult line to draw. *Dowd I*, 181 Ill.2d at 476, 693 N.E.2d at 367. Soliciting firm clients on firm time or using the firm's resources to establish one's own competing firm are not permissible. On the other hand, the firm has a duty not to interfere with the departing lawyer's continued right to practice law. *Dowd*, II, 352 Ill.App.3d at 372, 816 N.E.2d at 761. There is no bright line but the key, however, is not to exceed what is necessary to protect the interests of clients who might choose to continue with the departing lawyer but not undermine the fiduciary duty of loyalty owed to the other members of the firm. Simply put – a lawyer may take pre-termination steps in preparation to compete but may not begin to commence competition. *Dowd II*, 352 Ill.App.3d at 374, 816 N.E.2d at 762, *citing Dowell v. Bitner*, 273 Ill.App.3d 681, 691, 652 N.E.2d 1372, 1381 (1995).

Examples of permissible planning actions taken in anticipation of announcing a lawyer's withdrawal from the law firm may include:

- (1) obtaining office space and supplies such as printing new letterhead;
- (2) arranging bank financing not based on nonpublic, confidential of the firm;
- (3) ordering office equipment and systems;
- (4) 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
- (5) 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.

Examples of impermissible planning actions taken in anticipation of announcing a lawyer's withdrawal from the law firm may include:

- (1) soliciting firm clients pre-termination;
- (2) soliciting firm employees pre-termination to join the departing lawyer;
- (3) lying to the firm about plans to leave;
- (4) abandoning the firm on short notice and taking clients and files;
- (5) using firm resources such as copying files or client lists without permission or unlawfully removing firm property from the premises to solicit clients; or
- (6) using nonpublic confidential information of the firm such as time and billing information, firm structure and financial statements, etc. in order to obtain financing or other things against the interests of the firm; or
- (7) taking other action detrimental to the interests of the firm or of clients, aside from the impact the lawyer's departure will have on the firm.

Dowd I, 181 Ill. 2d at 470-71, 693 N.E.2d at 364; *Dowd II*, 352 Ill.App.3d at 374-75, 816 N.E.2d at 762-64; *ABA Formal Op. 99-414* at 7; *Restatement of the Law (Third) of The Law Governing Lawyers*, sec. 9, cmt. i (2000)I .

Recruitment of Staff Prior to Withdrawal

A departing lawyer should not contact and urge firm lawyers or support staff to leave until after the departing lawyer has departed. In *Dowd*, the departing lawyers were found to have breached their fiduciary duty by recruiting not only existing firm employees (associates and support staff) but also prospective firm employees that the departing lawyers knew about from firm personnel records before resigning from the law firm. *Dowd II*, 352 Ill.App.3d 365, 377, 816 N.E.2d 754, 764-765 (1st Dist. 2004). It is clear from *Dowd* that **surreptitious** recruitment of firm employees is not justified. Less clear is the extent to which a departing lawyer may contact firm employees after giving notice to the firm but prior to departure or to what extent a departing lawyer may discuss partnership or employment opportunities with lawyers or staff who approach the departing lawyer. *Kopka, Landau & Pinkus v. Hansen*, 874 N.E.2d 1065 (Ind.Ct.App. 2007) (associate acted properly when discussing plans to depart with other associates and staff and inquiring of their desire to leave; such actions were “mere preparation to compete” and no formal offers of employment were extended until after the associate left the firm). The safest course is not to solicit firm employees until the departing lawyer has left and is at the new firm.

A departing lawyer could have concerns, however, that a client's matter may be prejudiced if key employees who worked on a client's matter were not in place prior to joining another firm. It has been suggested that a way to accommodate these conflicting duties would be to allow the departing lawyer to recruit firm employees prior to resignation but only to the extent reasonably necessary to avoid disruption in the representation of clients and only after the firm has been given notice of the lawyer's intent to withdraw from the firm and the firm is told the identity of the employees to be solicited. In this way, the firm would have a reasonable opportunity to persuade the employees to remain with the firm. Hillman, Robert W., *Lawyer Mobility: The Law and*

Ethics of Partner Withdrawals and Law Firm Breakups, at sec. 4.8.4 (2d. 2009 Supp.). Once a lawyer has left a firm, the departing lawyer is generally free to recruit staff of the firm but should be careful not to use information improperly taken from the firm to advance the recruitment of firm employees or induce those employees that are themselves restricted by fiduciary or contractual obligations to breach their duties to the firm.

Conflicts Screening and the Disclosure of Confidential Information

Before departing to another firm, both the departing lawyer and his/her prospective new firm must perform a thorough conflicts check to determine whether the departing lawyer has ever represented parties with interests adverse to those of the new firm's clients. The fact that the process of checking for conflicts involves a sharing of certain information about the persons and issues involved in current and former client matters raises the concern that confidential information will be disclosed without client consent. ILRPC 1.6 does not explicitly authorize a lawyer to reveal confidential information when changing firms. See *In re Doreen Ann Graham*, M.R. 20244, 04SH118 (Ill. 2005) (lawyer censured for conflict of interest when she entered her appearance as counsel for the plaintiff in a medical negligence action against the hospital she had represented in a number of medical negligence actions while at law firm she had left three months earlier); *In re Carey*, M.R. 18575, 99 SH 67 and *In re Danis*, M.R. 18575, 99 SH 68 (Ill. 2003) (former associates of a law firm were suspended for conflict of interest under Rule 1.9(a), when they represented clients against the former law firm's client in matters that were substantially related to matters to lawyers had worked on while earlier employed at the law firm).

ABA Formal Op. 09-455 Disclosure of Conflicts Information When Lawyers Move Between Law Firms (2009) provides some helpful guidance on the issue of lawyers' conflicting duties to protect client information under Rule 1.6 and to detect and resolve conflicts of interest under Rules 1.7 and 1.9 when moving between firms. Based on *ABA Formal Op. 09-455*, the ABA's 20/20 Committee recently proposed amending Model Rule 1.6 to add an express exception to Rule 1.6 to allow limited disclosure of confidential information under these circumstances.

Under proposed Model Rule 1.6, the lawyer and prospective law firm may share limited client information to the extent reasonably necessary "to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client." See Proposed ABA Model Rule 1.6(b)(7). The amount of information disclosed would be limited to what is reasonably necessary to allow for conflicts checks (e.g., client name; brief summary of the nature of the representation; and whether the matter is ongoing or concluded) and disclosure would be prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal

investigation that has not led to a public charge). *See* ABA Proposed Model Rule 1.6, cmt. [7]. Also, a lawyer in talks with another firm about a possible association, merger or purchase should provide this information only once substantive discussions regarding the new relationship have occurred. *See* Proposed ABA Model Rule 1.6, cmt. [7].

NOTICE TO CLIENTS

Both the departing lawyer and the law firm have a duty to inform firm clients of any material change in the representation, including the departure of a lawyer who had substantial responsibility for the matter, and to obtain the client's informed direction as to how the client wishes its work to be handled going forward.

Clients do not “belong” to a lawyer or law firm and have the fundamental right to counsel of their own choosing. *See* ILRPC 1.16(a)(3), cmt. [4] (“A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer’s services.”) Should a lawyer who was actively and substantially working on a client’s matter leave the firm, the client has the right to choose whether to continue with the firm, transfer his/her business with the departing lawyer, neither or both. Whether notice comes from the departing lawyer, the firm or both, the client has the right to know of the change in counsel so that they can make informed decisions about the future representation as required by ILRPC 1.4. The notice should be a joint communication from both **after** the departing lawyer has give notice to the firm. *Dowd I*, 181 Ill.2d at 476, 693 N.E.2d at 367.

Even if the departing lawyer is not seeking to bring the firm’s clients with him or her, clients should be informed of the departure of the lawyer who was actively and substantially working on their matters and how the clients’ matters will be continued to be handled at the firm. *See Ill. State Bar Ass’n, Advisory Op. on Prof’l Conduct No. 12-14* (May 2012) (duty under ILRC 1.4 to timely inform client of associate's departure where associate's involvement is of such degree or kind that associate's departure could reasonably affect the client's decisions regarding the representation or the means of accomplishing the client's objectives).

Joint Notice From the Departing Lawyer and the Law Firm

The law firm and departing lawyer should first attempt, prior to a lawyer’s departure, to negotiate a joint communication notifying clients of the change before the lawyer prepares to unilaterally notify clients. A joint notice from the law firm and the departing lawyer has been suggested as perhaps the most desirable way for affected clients to be notified of the change, present the options for future representation and minimizes concerns about what is communicated to the affected clients.

ABA Formal Op. 99-414 (1999) provides guidance on the information that should be put in the announcement or notification letter to clients. The information clients typically should receive would include:

- *Effect of Transition* – an explanation for the lawyer's withdrawal and possible future unavailability; the time frame after which the departing lawyer will no longer be available; current status of the client matter; and identity of person to contact regarding client file;
- *Right to Counsel of Choice* – the option to remain with the law firm, choose representation by the departing lawyer or choose representation by other lawyers or law firms;
- *Liability for Fees and Costs* – if the client choose to terminate the law firm, information about any responsibility the client has for fees and costs already incurred;
- *Refund of Unearned Fees and Costs* – how any fees and/or costs deposits will be handled;
- *Transfer of Client File* – how transfer of the client's file will be handled and if the client may be charged a reasonable charge for copying the file for a successor lawyer (*see Ill. State Bar Ass'n, Advisory Op. on Prof'l Conduct Nos. 94-13 and 94-14* (Jan. 1995) (guidance on which materials in a client's file a lawyer must provide copies of to the client and who bears the expense));
- *Accounting of Client Property Held in Trust* – a complete and accurate of all property and funds the law firm is currently holding in trust and whether the trust property will remain in the law firm's possession a request for direction from the client; and
- *Time for Response* – time for client to respond to the notice and the consequence if the client does not respond to the notice, such as the client is considered to remain a client of the firm until such time as the client gives notice otherwise.

Sample Form: JOINT CLIENT LETTER FROM FIRM AND DEPARTING ATTORNEY

Unilateral Notice From the Departing Lawyer Prior to Departure: Avoiding Pre-Departure Solicitation

A departing lawyer, prior to withdrawing from the law firm, is “permitted to inform clients with whom they have a prior professional relationship about their impending withdrawal and new practice, and to remind the client of its freedom to retain counsel of its choice.” *Dowd I*, 181 Ill.2d at 476, 693 N.E.2d at 367, *quoting Graubard Mollen Danner & Horowitz v. Moskovitz* 653 N.E.2d 1179, 1183-84 (N.Y. 1995). Asking clients to take their business to the lawyer's new firm, *i.e.*, solicitation, while still employed by the firm may be construed as an improper effort to lure clients away or otherwise tortiously interfere with the firm's relationships with its clients. *Dowd I*, 181 Ill.2d at 473, 693 N.E.2d at 366 (Ill. 1998).

While joint notice by the departing lawyer and the law firm is the preferred way of informing clients, unilateral notice is permitted if the law firm and departing lawyer

cannot agree upon a joint communication or the departing lawyer reasonably anticipates that the firm will not cooperate on providing such a joint notice. *Dowd I*, 181 Ill.2d at 475, 693 N.E.2d at 367 (Ill 1998); *ABA Formal Ethics Op. 99-414* at p. 5; *see also Alaska Bar Assn. Ethics Op. 2005-2* (Sept. 8, 2005) (“Ethical Obligations When a Lawyer Changes Firms”); *Colorado Bar Assn. Ethics Op. 116* (March 17, 2007) (“Ethical Considerations in the Dissolution of a Law Firm or a Lawyer’s Departure From a Law Firm”); *Pa. Bar Assn. & Phila. Bar Assn. Joint Formal Op. 2007-300* (June 2007) (“Ethical Obligations When a Lawyer Changes Firms”); *Meehan v. Shaughnessy*, 535 N.E.2d 1255 (Mass. 1989) (suggesting use of joint announcement to avoid strife in battle for clients). Such pre-withdrawal communications, however, must be limited and should go no further than necessary to protect the important value of client freedom of choice in legal representation, and should not go so far as to undermine the important value of loyalty owed by partners and associates to their existing law firm. *See Graubard Mollen Dannet & Horowitz v. Moskovitz*, 86 N.Y.2d 121, 119-120, 629 N.Y.S.2d 1009, 1013, 653 N.E.2d 1175, 1179 (1995).

What emerges from *Dowd* and *ABA Formal Op. 99-414* (1999) are several guidelines for the manner and content of the notice sent to affected clients before the lawyer has given his or her resignation notice to the firm:

- 1) the notice should be limited to client whose active matters the lawyer has direct responsibility for at the time of the notice;
- 2) the departing lawyer can inform the client:
 - the lawyer is leaving;
 - the timing of the departure;
 - where the lawyer is going;
 - the departing lawyer’s ability and willingness to continue to represent the client;
 - the client’s option to stay with the old firm; go with the departing lawyer or chooses another lawyer/firm entirely; and
 - where the client’s file will be and who will be handling the client’s matter until the client expresses a choice;
- 3) the departing lawyer should not urge the client to sever its relationship with the firm;
- 4) the departing lawyer must make clear that the client has the ultimate right to decide who will complete or continue the matters;
- 5) the departing lawyer must not disparage the lawyer’s former firm or urge the client to sever its relationship with the firm; and
- 6) the notice should be in writing in order to minimize the risk that the firm or client will sue the departing lawyer for improper solicitation, failure to inform or some fiduciary duty the departing lawyer may have to the former law firm.

If the client requests additional information from the departing lawyer about the departing lawyer's new firm, the departing lawyer may provide additional information, such as billing rates, staffing and the resources of the new firm, as may be reasonably necessary to assist the client in making an informed decision about future representation. *ABA Formal Op. 99-414* at 6, relying on *D.C. Bar Legal Ethics Opinion 273 (1997)* ("Ethical Considerations of Lawyers Moving from One Practice Firm to Another").

Sample Form: UNILATERAL LETTER TO CLIENTS FROM DEPARTING ATTORNEY

Clients Entitled to Receive Notice

The departing lawyer may contact, prior to withdrawal from the firm, only those firm clients with whom the lawyer has a prior professional relationship. *Dowd I*, 181 Ill.2d at 367, 693 N.E.2d at 476. *ABA Formal Op. 99-414* defines the "clients" as those with:

- active matters; and
- for whom the departing lawyer either is responsible for the client's representation or who plays a principal role in the law firm's delivery of legal services currently in the matter.

ABA Formal Op. 99-414 at 1.

The duty to communicate does not mean to all firm clients and not clients on whose matters the departing lawyer did not work or worked only in a subordinate role where the lawyer had little or no direct client contact. Whether the departing lawyer played a significant enough role in the client's representation to merit giving notice should be weighed from the client's perspective with any doubt being resolved in favor of informing the client. Whether the client needs to be informed of the lawyer's departure and reminded of the client's right to choose counsel depends on whether, viewed from the perspective of the client, the client's decision about who should continue the representation might depend on the continued involvement of the departing lawyer. Even if the firm or the departing lawyer believes it is unlikely that the client would choose to retain new counsel because of the lawyer's departure, the client still has the right to make that informed decision.

Summary

- ☐ The client chooses the lawyer and may choose to stay with the old firm, go with the departing lawyer or hire another lawyer.
- ☐ In order to exercise its choice, the client must be informed that lawyer handling their matter is leaving the old firm. Both the departing lawyer and the old firm have independent ethical obligations to inform the client that the lawyer is leaving the old firm.
- ☐ The clients entitled to notice are those for whom the departing lawyer is currently handling active matters or plays a principal role in the current delivery of legal services.
- ☐ The law firm should preferably be notified before the clients are notified.
- ☐ Joint notification of clients is preferable.
- ☐ Notification of clients, whether joint or not, should remain neutral in tone and be informative only, e.g., it should not disparage the law firm or the departing lawyer or mislead the client in any way.

Post-Departure Solicitation of Clients

Once a lawyer leaves a firm, a lawyer is ethically permitted to make direct contact with prospective clients with whom the lawyer has had a close personal or “prior professional relationship,” as allowed by ILRPC 7.3(a)(2). *See Ill. State Bar Ass’n, Advisory Op. on Prof’l Conduct No. 12-14*, 2011 WL 2308107 (May 2012) (associate who has left a law firm may contact clients of the firm with whom he had an attorney-client relationship). *ABA Formal Opinion 99-414* (1999) advises that the “prior professional relationship” exception applies only to clients with whom the lawyer personally has had enough professional contact to give the client an opportunity to evaluate the lawyer’s professional qualifications. *ABA Formal Op. 99-414*, at p. 4.

Former firm clients on whose matters the lawyer worked but had little or no direct contact with the client are treated like the general public for purpose of solicitation. *ABA Op. 99-414* at p. 2. The departing lawyer, however, cannot use a firm’s confidential information such as a client list and use only publically available information or information the lawyer personally knows about the clients’ matters (*Dowd*, 181 Ill. 2d at 470-71, 693 N.E.2d at 364; *See ABA Formal Op. 99-414* at 7).

Also, the departing lawyer and law firm should refrain from disparaging each other in its solicitations and communications to clients. *See Pratt, P.C. v. Blunt*, 140 Ill.App.3d 512, 488 N.E.2d 1062 (5th Dist. 1986) (post-departure solicitation, only some of which was disparaging of the former firm, enjoined as tortious interference with former firm’s

relationship with existing clients); *Becker v. Zellner*, 292 Ill.App.3d 116, 684 N.E.2d 1378, 1381 (2d Dist. 1997) (paralegals who left law firm to work with client's new lawyer stated a claim for slander and commercial disparagement when former employer stated that they had submitted "\$45,000 bill for five pages of worthless memorandum" and were "devious").

PROPERTY ISSUES: WHAT A DEPARTING LAWYER MAY TAKE

Client Files

If a client elects to follow a departing lawyer or retains another firm, under ILRPC 1.16(d) and 1.15(d) the firm must promptly forward any requested part of the client's file remaining at the firm, subject to the firm's right to assert a lien to retain the client's file in order to secure payment of the firm's fees and disbursements. *See* ILRPC 1.16, cmt. [4] and [Retaining Liens](#) section at p. 13.

The departing lawyer may not remove client files without the client's consent and even when the client requests to have the file transferred to the departing lawyer, the file should not be removed until the firm has been give notice and opportunity to copy the file. *See In re Cupples*, 952 S.W.2d 226, 236-37 (Mo. 1997) (lawyer reprimanded for violating his duties to former law firm and law firm's client by removing files without client consent); *Maryland Attorney grievance Comm'n. v. Potter*, 844 A.2d 367 (Md. 2004) (90-day suspension on departing associate who secretly removed two client files and destroyed firm's computer records for those clients even though lawyer believed he was acting in clients' best interests out of concern the law firm might act to thwart their choice).

Pending the client's instructions, the firm and the departing lawyer should have reasonable access to the file in order to protect the client's interests. *See Ill. State Bar Ass'n. Advisory Op. on Prof'l Conduct No. 95-02* (1995) (lawyer no longer with a law firm may have access to closed files of that firm where the lawyer was in an attorney-client relationship with the client of the file in question.) Delays in file transfer may prejudice the client's matter particularly if there is a statute of limitations period or court-imposed deadlines. Also, return original client property and unearned client funds promptly to avoid possibly hampering the client's ability to retain new counsel. The ARDC receives a number of grievances each year complaining about delays in file transfer. *See, e.g., ARDC 2011 Annual Report*, Chart 9 Classification of Charges, at p. 17.

If the lawyer is requesting the copies for herself, then she should bear the cost in question. If she is requesting copies on behalf of her client, then the client should be informed of the potential cost involved. For guidance on responding to a client's request for a copy of a lawyer's closed file and whether the client can be billed for the file

copying expenses *see Ill. State Bar Ass'n. Advisory Op. on Prof'l Conduct Nos. 94-13 and 94-14* (January 1995).

In releasing the file to the departing lawyer, the firm should make a copy of the file, obtain direction from the client on where to send the file and formally end the relationship between the firm and the client by sending the client an end-of-the engagement letter to help minimize the risk of any misunderstandings about who is responsible for the client's matter going forward.

**Sample Forms: ACKNOWLEDGMENT OF RECEIPT OF FILE and
AUTHORIZATION FOR TRANSFER OF CLIENT FILE**

Retaining Liens

To the extent that there is an amount owing to the firm and the firm is refusing to release the file until fees are paid, Illinois has long recognized that lawyers may assert a common law possessory lien on the client's file until the amount is paid or the client posts adequate security for payment. *Twin Sewer & Water. Inc. v. Midwest Bank & Trust Co.*, 308 Ill.App.3d 662, 667, 720 N.E.2d 636 (1st Dist. 1999), *citing Sanders v. Seelye*, 128 Ill. 631, 21 N.E. 601 (1889). The ability to assert a retaining lien is not unbounded, however, as ILRPC 1.15(d) and 1.16(d) impose certain ethical restrictions on a lawyer's assertion of the lien.

ILRPC 1.15(d) provides in relevant part:

...Except as stated in this ILRPC or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

ILRPC 1.16(d) also provides:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

If retention of the file will adversely affect the client's ability to proceed with their legal matter, however, the lawyer's duties under ILRPC 1.16(d) to avoid prejudice to the client upon termination of the representation trumps the lawyer's right to assert a retaining lien. When determining whether or not to claim a retaining lien to original documents, the lawyer should take into account: 1) whether the client will suffer serious consequences without the documents; 2) the client's ability (or lack thereof) to pay; 3) the fairness of

the fee agreement or the client's understanding of it; and 4) whether any prejudice to the client can be mitigated by means other than a return of the documents. *See Matter of Liquidation of Mile Square Health Plan*, 218 Ill.App.3d 674, 578 N.E.2d 1075 (1st Dist. 1991); *Upgrade Corp. v. Michigan Carton Co.*, 87 Ill.App.3d 662, 410 N.E.2d 159 (1st Dist. 1980). Given the ethical limitations, a retaining lien should be asserted only as a matter of last resort and only once the lawyer has sought other reasonable means of collection of the unpaid fees.

Client Lists, CLE Materials, Practice Forms and Computer Files

When it comes to other property, *ABA Formal Ethics Op. 99-414* (1999) concludes that a departing lawyer is entitled to take copies of documents such as research memoranda, pleadings and forms, "to the extent that they were prepared by the lawyer and are considered the lawyer's property or are in the public domain." *Op. 99-414* at p. 7. A departing lawyer shall take into consideration who prepared the material and the measures taken by the law firm to retain title or otherwise to protect it from external use, e.g., continuing legal education materials, practice forms, or computer files the lawyer created while at the law firm. *Id.*

The departing lawyer shall first look to the employment, operating, or shareholder agreement with the law firm. If the agreement does not restrict what a lawyer can take, the lawyer shall first inform the law firm and avoid taking property in a "surreptitious" manner to avoid accusations of misconduct and possible tort claims. Taking firm property without its knowledge and consent may result in both civil litigation as well as disciplinary action. *See In re Park*, M.R. 25897, 2012PR00027 (Ill. 2013) (lawyer suspended one year for downloading over 75,000 electronic documents, including a client directory, client files, forms and templates during a 5-month span while he was still a partner at a firm, while simultaneously making plans to establish his competing firm and later destroying firm documents in violation of a litigation hold order after his former law firm notified him that it would be filing a civil lawsuit which later resulted in the lawyer being ordered to pay nearly \$60,000 in sanctions to his former firm); *In re Nelson*, M.R. 19657, 02 CH 12 (Ill. 2004) (lawyer suspended 90 days for taking and copying confidential personnel records without employers' consent). A departing lawyer cannot take a firm's proprietary business information including client lists or information about salaries, bonuses, and other business information. *See Restatement of the Law (Third) of The Law Governing Lawyers*, sec. 9, cmt. i (2000) (lawyer planning a departure must not "misuse firm resources (such as copying file or client lists without permission or unlawfully removing firm property from its premises)"); *see In re Teplitz*, 97 CH 94, M.R. 16148 (Ill. 1999) (lawyer improperly took a client list when he left his client's employment and then disseminated other confidential information about the client's operations to the media). Departing lawyers are permitted to prepare lists of clients expected to leave the firm and obtain financing based on the lists but can do so using only publically available information and what the lawyer personally knows about the clients' matters in advising clients of the lawyer's new association. *Dowd I*, 181 Ill. 2d at 470-71, 693 N.E.2d at 364); *ABA Formal Op. 99-414* at 7.

To the extent that a departing lawyer retains copies of client documents relating to the representation of former clients, the departing lawyer must take reasonable measures to ensure that any confidential client information contained in those documents is protected from disclosure pursuant to the lawyer's duties under ILRPCs 1.6 and 1.9. As for the departing lawyer disclosing to the lawyer's new firm a current or former client list to prevent conflicts at a new firm, the information must be limited to that which is reasonably necessary to check for conflicts. See **Screening for Conflicts** section at p. 15.

Summary

- A departing lawyer should first look to the employment, operating or shareholder agreement. If the agreement does not restrict what a lawyer can take, the lawyer should first inform the law firm can avoid taking property in a "surreptitious" manner.
- A departing lawyer can take those things that the lawyer developed in the course of his/her own practice while at the firm.
- A departing lawyer cannot take a firm's proprietary business information such as client lists or information about salaries, bonuses or other business information.
- Unless disclosure would prejudice a client's interests, a departing lawyer may disclose to the lawyer's prospective new firm a limited amount of information concerning the clients previously served by the lawyer but only to the extent reasonably necessary to check for conflicts at the new firm.

POST DEPARTURE ISSUES

A law firm cannot impede a departing lawyer's ability to practice law or service the clients that wish to go with the departing lawyer.

Restrictive Covenants

ILRPC 5.6 provides that a lawyer shall not participate in offering or making an employment agreement that restricts the rights of a lawyer to practice after the termination of the employment relationship except an agreement concerning benefits upon retirement. In *Dowd*, the Court held that a covenant not to compete between the Dowd firm and two departing attorneys which prohibited the departing lawyers, for a period of to year after termination, to "not directly or indirectly, solicit or endeavor to entice away any clients" of the law firm, was unenforceable under Rule 5.6. *Dowd*, 181 Ill. 2d at 480, 693 N.E.2d at 369. The Court said that ILRPC 5.6 "is designed to afford clients greater freedom in choosing counsel and to protect lawyers from onerous

conditions that would unduly limit their mobility.” *Dowd*, 181 Ill. 2d at 481, 693 N.E.2d at 369-370; *see also* ILRPC 5.6, cmt. [1].

ILRPC 5.6 provides:

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a client controversy.

Similarly, placing any financial disincentives and penalties upon on a departing lawyer for competing, not within a *bono fide* retirement plan, is a violation of the rule. *Dowd*, 352 Ill.App.3d 365, 386, 816 N.E.2d 754 (1st Dist. 2004); *Stevens v. Rooks Pitts & Poust*, 289 Ill.App.3d 991, 996, 682 N.E.2d 1125 (1st Dist. 1997) (holding “courts have overwhelmingly refused to enforce provisions in partnership agreements which restrict the practice of law through financial disincentives to the withdrawing attorney”); Ill. State Bar Ass’n, Advisory Op. on Prof’l Conduct No. 97-09 (May 1998) (“It is unethical and a violation of Rule 5.6(a) for a lawyer to make such an agreement or for a law firm, lawyer, or group of lawyers, whether in a partnership, corporation or proprietorship, to make such an agreement”).

Restrictive covenants “concerning benefits upon retirement” are allowed under Rule 5.6 and have been held enforceable. *See Hoff v. Mayer, Brown and Platt*, 331 Ill.App.3d 732, 772 N.E.2d 263 (1st Dist. 2002) (retirement provision that precluded payment unless the retiring lawyer “substantially ceases the active practice of law on a permanent basis” is enforceable); *cf. Cummins v. Bickel & Brewer*, No. 00 C 3703, 2002 WL 187492 (N.D.Ill. Feb. 6, 2002) (court held unenforceable a retirement provision for the forfeiture of retirement benefits “in the event [the retiring lawyer] undertakes the representation of a Partnership Client within three (3) years after his effective date of withdrawal from the Partnership.”)

Requests for Departing Lawyer’s Contact Information

Additionally, a law firm should not withhold information from clients that inquiry about the whereabouts of the departing lawyer or mislead clients. *See Pa. Bar Assn. & Phila. Bar Assn. Joint Formal Op. 2007-300* (June 2007) Ethical Obligations When a Lawyer Changes Firms. If a client asks for the contact information about a lawyer who has left the firm, the law firm should give the client whatever information the firm has regarding that lawyer's whereabouts.

Conclusion

There are two key principles that all lawyers involved in a transition must bear in mind – the clients’ fundamental right to choice of counsel and the fiduciary duty of loyalty that lawyers owe each other as members of a law firm. As difficult as changes in law firm affiliation can be, all lawyers involved must keep in mind that the interests of the clients are paramount. Both the firm and the departing lawyer have ethical obligations to notify affected clients, avoid prejudice to those clients, and share information as necessary to facilitate continued representation and avoid conflicts. At the same time, the actions taken need to also respect the fiduciary duties lawyers and law firms have to each other while members of the same firm. Neither the lawyer nor the firm may impede or prevent the other’s fulfillment of any ethical obligations or duties owed to a client, the court or each other. These ethical obligations can best be satisfied when the departing lawyer and the law firm agree to suspend any feelings of animosity or retribution they may have toward each other and instead agree to engage in coordinated cooperation and candid discussions for the sake of the interests of clients.

Appendix

Bibliography

Leaving a Law Firm Publications

Robert W. Hillman, *Hillman on Lawyer Mobility: The Law and Ethics of Partner Withdrawals and Law Firm Breakups* § 1.1 (2d ed. 1998)

Michael L. Shakman, Geraldine Soat Brown, and Barry A. Miller, Primer on Acting Rationally When Lawyers Relocate, *CBA Record* (February/March 2000)

Douglas R. Richmond, Yours, Mine & Ours: Law Firm Property Disputes, *NIU Journal* Vol. 30 (2010)

ABA Formal Opinions

ABA Formal Op. 99-414 (Sept. 1999) Ethical Obligations When a Lawyer Changes Firms

State Ethics Opinions (Links to the ethics opinions websites for the issuing state bar ethics committees are available on the ABA Center for Professional Responsibility website: www.abanet.org/cpr/links.html#states)

- *Alaska Bar Assn. Ethics Op. 2005-2* (Sept. 8, 2005) Ethical Obligations When a Lawyer Changes Firms
- *Colorado Bar Assn. Ethics Op. 116* (March 17, 2007) Ethical Considerations in the Dissolution of a Law Firm or a Lawyer's Departure From a Law Firm
- *Ill. State Bar Ass'n, Advisory Op. on Prof'l Conduct No. 12-14* (May 2012)
- *Pa. Bar Assn. & Phila. Bar Assn. Joint Formal Op. 2007-300* (June 2007) Ethical Obligations When a Lawyer Changes Firms
- *D.C. Bar Legal Ethics Opinion 273* (1997) Ethical Considerations of Lawyers Moving from One Practice Firm to Another

Fla. Rules of Prof'l Conduct R. 4-5.8(c)(1) (www.floridabar.org)

Conflicts Screening

ABA Formal Op. 09-455 (2009) Disclosure of Conflicts Information When Lawyers Move Between Law Firms

Client Files

Ill. State Bar Ass'n, Advisory Op. on Prof'l Conduct Nos. 94-13 and 94-14 (January 1995) (guidance on which materials in a client's file a lawyer must provide copies of to the client and who bears the expense) (www.isba.org)

Rule 5.6 and Restrictive Covenants

Ill. State Bar Ass'n, Advisory Op. on Prof'l Conduct No. 97-09 (May 1998)

Sample Forms

CHECKLIST FOR LEAVING A LAW FIRM

- ☐ Review your firm's partnership, shareholder or employment agreement concerning provisions made in advance for departing lawyers.
- ☐ Read and review the *Dowd & Dowd* case. This case will guide you in what pre-departure actions you may take in anticipation in setting up 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;
 - ☐ who will be notified of your departure, *i.e.*, current client matters or all clients matters, including former clients, for which you had primary responsibility;
 - ☐ 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 originating and/or 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 which of those clients you would like to take with you and/or those you intend to leave behind with the old firm;

- ☐ any funds deposited into the firm's trust account that have not been earned or expended;
 - ☐ any outstanding accounts receivable, unbilled disbursements; and
 - ☐ any work in progress, and any case management issues.
- ☐ Discuss with the firm the best procedure to notify clients regarding your departure. You and the firm should try to jointly notify clients by letter. If not possible, clients may be notified separately by the firm and you. The notification should advise the client of the change in the representation and should not be in the form of a solicitation for the client's business.
- ☐ Notification letter to clients affected your departure, prepared and sent either jointly or individually, should be professional in nature and tone and include the following elements:
- ☐ Inform the client that you are leaving the firm and when.
 - ☐ Indicate where you are going.
 - ☐ If it is an option, notify the client that they may stay with the firm.
 - ☐ If it is an option, notify the client that they may go with you.
 - ☐ Include a form authorizing the transfer of the client's file and trust funds if the client's choice is to go with you, or authorizing the client's matter to remain with the firm. Include a return envelope for the authorization.
 - ☐ If the client will not have any of the above options because you are not continuing the same area of practice, the new firm you are going to may have a conflict, or the firm from which you have left does not have a lawyer that handles that area of practice, it should be clearly explained to the client as well as offering an alternative option.
 - ☐ Notify the client that they may elect to choose any other lawyer or law firm.
 - ☐ Clarify any critical information regarding the client's matter.
 - ☐ Explain what will happen to client funds deposited in the firm's trust account or balances that are due.

- ☐ Inform the client where their file is currently located and how they may retrieve it, if they so desire, or how the file may be transferred.
- ☐ Notify the client about the lawyer who is currently handling their matter in the interim.
- ☐ 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.
- ☐ Agree on how the firm staff will handle calls from clients or potential clients after you have left the firm. The old firm must not mislead clients or withhold information.
- ☐ Notify the ARDC of your change of address or change your address on the ARDC's website.
- ☐ Arrange for your name to be removed from all firm's bank accounts, including trust accounts, if applicable.
- ☐ If you and the firm from which you are departing are not able to resolve differences concerning your departure, consider hiring an independent mediator or arbitrator to assist with a resolution.

JOINT CLIENT LETTER FROM FIRM AND DEPARTING ATTORNEY

DISCLAIMER: Lawyers using these forms should do so very carefully to ensure that the language finally used fits the particular situation for which they are designed. It is not the intent of these forms to suggest or establish practice standards.

Re: [client/matter name]

On [date], [departing lawyer] [is leaving/left] our firm to [join the law firm of [name]]/[commence practice as a sole practitioner].

Inasmuch as [departing lawyer] was your designated lawyer on the above matter, we are required by the Illinois Rules of Professional Conduct to inform you that you have the right to choose to have [departing lawyer] continue in [his/her] new capacity to represent you in this matter, **or** you may have our firm continue to represent you, in which case the file will be handled by [firm lawyer], **or** you can choose to retain an entirely new lawyer.

If you wish to have [departing lawyer] **or** a new lawyer continue to represent you, arrangements to secure your outstanding account with us will have to be made before the file can be released to [departing lawyer] **or** new lawyer.

[If applicable: You may be liable for fees and costs for services already provided by the firm.]

[If applicable: Any retained/unspent fees or costs currently held by the firm will be promptly returned or transferred to [departing lawyer] or [new lawyer] as you designate.

Please advise [departing lawyer] and us, as quickly as possible, of your decision so that continuity in your representation is assured. You may do so by indicating your choice below and returning a signed and dated copy in the enclosed stamped envelope. Please retain the additional copy of this designation letter for your records.

Yours truly,

[for the firm]

Instructions

- ☐ I wish my file to stay with [name of former firm]
- ☐ I wish my file and trust account balance to be transferred to [name of departing lawyer]
- ☐ I will retain new counsel and have them contact [name of former firm].

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DISCLAIMER: Lawyers using these forms should do so very carefully to ensure that the language finally used fits the particular situation for which they are designed. It is not the intent of these forms to suggest or establish practice standards.

ACKNOWLEDGMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received a copy of my file from the law office of _____[name].

[I understand that [Affected Lawyer] has [died, was disbarred, is disabled or is missing.]
[I have been notified that I should retain substitute counsel immediately to handle any ongoing legal matters in which I am involved.]

[Name]

[Date]

AUTHORIZATION FOR TRANSFER OF CLIENT FILE

I hereby authorize the law office of _____ to deliver a copy of my file to my new attorney at the following address:

Client Name

Date