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FIFTY WAYS TO LEAVE YOUR LAW FIRM

by
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When a lawyer has decided to leave a firm, ethical duties arise toward the clients. These duties may be overlooked in the turmoil created by personal, professional or financial disputes between the departing lawyer and the remaining members of the firm, all of whom have fiduciary obligations to each other. See *Meehan v. Shaughnessy*, 404 Mass. 419 (1989). Lawyers who do not appropriately consider their clients' rights when coping with the break-up of their relationship may violate the rules governing their conduct. This article focuses on the responsibilities owed to clients under the Massachusetts Rules of Professional Conduct by both departing and remaining lawyers.

The core principle is the client's right to choose his or her own lawyer. See *Pettingell v. Morrison, Mahoney & Miller*, 426 Mass. 253, 257 (1997); *Meehan v. Shaughnessy*, *supra* at 431. This principle is reflected in Mass. R. Prof. C. 1.16(a)(3), requiring a lawyer to withdraw from employment if the lawyer is discharged by the client, and Mass. R. Prof. C. 5.6(a), which prohibits lawyers from entering into partnership or employment agreements that restrict their right to practice after termination of their relationship. Comment 1 to Rule 5.6 explains that such non-competition agreements would not only limit the professional autonomy of the lawyers but also would infringe their clients' freedom of choice.

The departing lawyer must disclose the departure to the firm before any notice is given to clients. Next, the departing lawyer and the firm must identify the departing lawyer's clients. All clients of the departing lawyer must be notified promptly when the lawyer leaves the firm. This obligation of notice applies whether the departing lawyer is a principal or an associate and extends to all persons and entities with whom the departing lawyer had an active attorney-client relationship in a matter pending at the time of the departure. See *Meehan v. Shaughnessy*, *supra* at 436-438

When both the departing lawyer and the firm want to keep a client, consistent with the strong public interest in allowing clients to retain counsel of their choice, the client must be advised clearly of the right to decide who will continue the representation. Client notices in this situation should be mailed; should make clear that the client has the right to decide who will complete or continue the matter; and should be brief, dignified, and not disparaging. While the notice may express the departing lawyer's willingness to continue responsibility for the matter, it should not urge the client to sever the relationship with the firm or recommend the employment of the departing lawyer. *Meehan vs. Shaughnessy*, *supra* at 437 n. 15, citing ABA Informal Opinions 1457 (April 29, 1980) and 1466 (February 12, 1981).

The recommended practice is to send a joint notice advising the client of the right to be represented by whomever the client selects. *Meehan v. Shaughnessy*, *supra* at 442 n. 16; see also, *Pettingell v. Morrison, Mahoney & Miller*, *supra* at 257. If the departing lawyer and the firm cannot agree on the language of a joint letter, separate letters may be sent. Note, however, that departing lawyers who send preemptive, one-sided announcements will violate

their duty of good faith and loyalty to the remaining lawyers. *Meehan v. Shaughnessy*, supra at 437. Care should also be exercised to avoid any misrepresentations or misleading statements to the client about the client's rights.

If the departing lawyer does not want to continue the representation, the client should be notified of the change in the status of the lawyer and the firm, informed that a remaining lawyer in the firm is willing to keep the case, and advised that the client can choose whether to remain with the firm or seek new counsel. In all cases of withdrawal from representation, the departing lawyer must take reasonable steps to protect the client as required by Mass. R. Prof. C. 1.16. If the case is in litigation, the lawyer must comply with the applicable rules of the tribunal and secure any required permission before withdrawing. Mass. R. Prof. C. 1.16(c). Remember that under the Rules of Civil Procedure, the signing of a pleading filed in court constitutes an appearance by the lawyer who signs it. Mass. R. Civ. P. 11(b)(1). To avoid ongoing personal liability, the departing lawyer must file and perfect withdrawals even in cases where a remaining firm lawyer also has an appearance.

If a client chooses to be represented by new counsel in another firm, both the departing and the remaining lawyers who represented that client must withdraw in compliance with Mass. R. Prof. C. 1.16. In that event, the client's file must be made available promptly, any unearned retainers refunded, and care taken to minimize any prejudice to the client. Mass. R. Prof. C. 1.15(b); Mass. R. Prof. C. 1.16(d) and (e).

Finally, the firm must not prevent the departing lawyer from honoring these obligations or attempt to thwart any ongoing relationships between that lawyer and departing clients. We frequently hear from departing lawyers, often younger associates, that their employers have forbidden them to announce their departure, notify their clients or opposing counsel, or take other appropriate measures to protect the clients. Firm personnel have been instructed not to disclose the whereabouts of former lawyers to departing clients or other callers. Remaining lawyers have impermissibly withheld the files of departing clients as leverage in disputes with departing lawyers over the division of fees or other lawyer-to-lawyer issues.

All of these practices constitute or can lead to ethical violations. Under Mass. R. Prof. C. 5.2(a), a subordinate lawyer is bound by the disciplinary rules even where he or she acts at the direction of another person. Departing associates therefore must comply with the notice and withdrawal rules even if directed otherwise by their superiors. On the other hand, principals and supervisory lawyers must take reasonable measures to assure compliance with the disciplinary rules by all lawyers and nonlawyer assistants in their firms or under their supervision, and they are responsible for ethical violations of others if they order or knowingly ratify the conduct at issue or fail to take reasonable remedial measures. Mass. R. Prof. C. 5.1, 5.3.

When a firm breaks up, both the lawyers' failure to meet their own obligations to clients and their obstruction of their colleagues' fulfillment of those obligations may have significant consequences to the clients, whose interests should come first, as well as disciplinary consequences.

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