

## Best Practices for Departing Attorneys

by Tina B. Solis, Esq. and Christina E. Kurow, Esq.

**Despite recent signs of a slowdown, the lateral attorney market continues to boom.** Whether the attorney departing be an associate, counsel, or partner—it is crucial that all involved in the departure, including the recruiter, be aware of the ethical, fiduciary, and contractual implications involved in the process. How clients are notified of the departure and how client files are handled are critical considerations in the departure, which must be handled with care. It is best to consult with an attorney who is knowledgeable in this area to ensure a smooth transition for all parties.

Below is a non-exhaustive list of some “Do’s” and “Don’ts” for the departing attorney to keep in mind:

### Do’s:

- ✓ Inform the law firm of the departure before informing clients.
- ✓ Attempt to first send a joint statement with the firm notifying clients of the attorney’s departure. ABA Formal Opinion 489, however, requires that firms may not prevent departing attorneys from providing prompt notice to clients.
- ✓ Review the partnership agreement and any addenda or employment agreements prior to resigning for any relevant departure-related provisions. Look for notice period, claw back, set-off, and non-solicitation provisions. Equity partners should also pay particular attention to provisions governing the return of capital as well as how the timing of the departure could determine whether the departing attorney must repay certain amounts to the firm. (The enforceability of these provisions depend on the laws in the various states. Counsel should be consulted).
- ✓ Continue to assist with client responsibilities before departing. (The law firm should make certain that the departing attorney has access to firm resources during the departing attorney’s transition period, including, but not limited to, access to client files, office space, support staff, and firm phones and email to ensure no disruption in the handling of client files.)
- ✓ If moving to another state, consider the relevant local state laws to avoid the unauthorized practice of law as discussed in ABA Formal Opinion 495.

### Don’ts:

- ✗ Do not inform clients of departure before informing the firm.
- ✗ Do not solicit clients before departing.
- ✗ Do not work on departure using firm resources or during business hours.
- ✗ Do not take client files absent prior written client consent.
- ✗ Do not solicit associates or support staff before departing.

The implications of moving firms, especially when a large book of business is involved, are far reaching and can have serious consequences on the departing attorney if he or she fails to time the departure correctly, fails to take certain steps in the proper sequence and/or does not understand his or her fiduciary and ethical obligations. The rules vary from state-to-state and may not be intuitive. Departing attorneys are not necessarily familiar with this area of law. Thus, it is recommended that the departing attorney hire counsel to assist with the transition.

Involving counsel as soon as the departing attorney first contemplates a potential move is best. Waiting has pitfalls. For example, counsel can assist a departing attorney with structuring his or her new deal in multiple, beneficial ways. If, however, the departing attorney waits to consult counsel until after the deal terms have already been negotiated, there is very little that can be done.

Put simply, nobody does “million-dollar” deals without counsel, neither should a departing attorney.

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