



Intellectual Property Conference for Legal Professionals

September 15-16, 2016

Capital Hilton, Washington, DC

Best Practices for Integrating New Attorneys and Transitioning from Departing Attorneys

**Presented by
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9/16/2016

1:15 PM - 2:15 PM

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BEST PRACTICES FOR INTEGRATING NEW ATTORNEYS AND TRANSITIONING FROM DEPARTING ATTORNEYS

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OVERVIEW OF ISSUES AND PROBLEMS FACED BY PARTIES TO A LATERAL MOVE

MULTIPLE PARTIES TO EVERY LATERAL ATTORNEY MOVE

Departing Lawyer

Law Firm Lawyer Is Leaving

Law Firm Lawyer Is Moving To

Client(s)

ISSUES AND PROBLEMS FACED BY DEPARTING LAWYERS

**MUST BALANCE DESIRE TO RECRUIT CLIENTS WITH
FIDUCIARY OBLIGATIONS TO EXISTING LAW FIRM**

**MUST BE MINDFUL OF CONTRACTUAL OBLIGATIONS
AND RESTRICTIONS**

Notification Requirements With Respect To Withdrawal

Restrictions On Solicitations of Client

Financial Penalties

CLIENT NOTIFICATION REQUIREMENTS

*Adequate Notice Required For **Both** Clients Lawyer
Wants To Keep And Leave Behind*

*Must Address Contractual Restrictions On Providing
Such Notice*

ISSUES AND PROBLEMS FACED BY LAW FIRM OF DEPARTING LAWYER

- **MUST BALANCE DESIRE TO RETAIN CLIENTS WITH OBLIGATION TO PROVIDE ADEQUATE NOTICE TO CLIENTS SO THEY CAN CHOOSE**
- **MUST COMPLY WITH OBLIGATION TO PROVIDE CLIENT FILES TO NEW LAW FIRM UPON CLIENT REQUEST**

- **MUST PROTECT AGAINST UNAUTHORIZED TRANSFER OF CLIENT FILES**
- **MUST ENSURE MATTERS LEFT BEHIND ARE PROPERLY TRANSITIONED**
- **MUST ENSURE MATTERS BEING TAKEN ARE PROPERLY HANDLED UNTIL TRANSFER**

- **MUST BE AWARE THAT CERTAIN PARTNERSHIP RESTRICTIONS AFFECTING DEPARTING PARTNERS MAY NOT BE ETHICAL**
- **ABA MODEL RULE 5.6(A) -- LAWYERS SHALL NOT ENTER INTO A PARTNERSHIP AGREEMENT THAT RESTRICTS THE RIGHT OF A LAWYER TO PRACTICE AFTER HIS/HER WITHDRAWAL OR TERMINATION.**

ISSUES AND PROBLEMS FACED BY LAW FIRM LAWYER IS JOINING

- **MUST AVOID CONFLICTS OF INTEREST**
- **ADEQUACY OF DUE DILLIGENCE ON NEW LAWYER**
- **MUST BALANCE DESIRE FOR NEW BUSINESS WITH POTENTIAL CLAIMS THAT FIRM ASSISTED NEW LAWYER'S BREACH OF FIDUCIARY OBLIGATIONS**

- **MUST FOLLOW-UP TO ENSURE RECEIPT OF CLIENT FILES NEEDED FOR TRANSFERRED MATTERS**
- **SHOULD MONITOR BOTH ELECTRONIC AND PAPER FILES BEING BROUGHT TO FIRM BY NEW LAWYER**

BEST PRACTICES FOR FIRMS WHEN ATTORNEYS LEAVE

- **NOTIFICATION TO AFFECTED CLIENTS**
 - *Should Provide Sufficient Notice for Clients to Decide Who They Want To Continue To Represent Them*
 - *Should State Date of Departure and Whether Firm and Departing Lawyer are Available to Continue Representation*
 - *Joint Notification Coming From Departing Lawyer and Firm Is Best, But Not Generally Required*

- **LENGTH OF TRANSITION PERIOD**

- *Enough time to provide adequate notice to affected clients.*
- *Enough time to transition matters that are staying*
- *Enough time to get permission to transfer client files for matters that are leaving with the departed partner*

- **LOCKING OUT A PARTNER UPON RECEIVING NOTIFICATION OF WITHDRAWAL IS A VERY BAD IDEA!**

DO NOT DO IT

- **USE OF TRANSITION PARTNERS**

TO UNDERSTAND ALL OF THE MATTERS THE DEPARTING LAWYER IS WORKING ON

- Which matters are likely to be going
- Which matters are likely to be staying
- Which matters, if any, firm does not want to keep

- **USE OF TRANSITION PARTNERS**

TO SEND NOTICES, JOINT OR OTHERWISE, TO AFFECTED CLIENTS

- Assume Responsibility for Monitoring Responses
- Assume Responsibility for Overseeing File Transfers
- Counsel Against Unauthorized File Transfers
- Assure that Matters Staying Are Adequately Staffed

- **WHAT FILES MUST BE TRANSFERRED?**

MODEL ABA RULE 1.16(d) -- MUST SURRENDER "PAPERS AND PROPERTY TO WHICH THE CLIENT IS ENTITLED"

- Scope of files client is entitled to varies among jurisdictions
- Some jurisdictions permit "retaining lien" for unpaid work product

EMERGING MAJORITY REQUIRES TRANSFER OF ALL CLIENT FILES, INCLUDING WORK PRODUCT

- See e.g. Va. Bar Rule 1.16(e) describing in detail all documents that must be provided, and prohibiting assertion of lien for unpaid work product

ASSERTION OF RETAINING LIEN IS EXTREMELY DANGEROUS AND SUBJECTS FIRM TO LIABILITY

- Not worth the risk

BEST PRACTICES FOR FIRMS BRINGING IN LATERAL ATTORNEYS

GENERAL DUE DILIGENCE

Past/Pending Lawsuits and Threatened Claims

Past/Pending Disciplinary Matters

Identity and Types of Clients Lawyer Intends To
Market To

CONFLICT AVOIDANCE

- ***Detecting Current Conflicts***

- Need to check *all* current matters of lateral, not just those coming to firm
- Also need to check closed matters of lateral to ensure no current firm matters are substantially related

How far back --3 Years, 5 Years, Longer?

- ***Avoiding Future Conflicts***

- Do you input conflict information from closed matters of lateral lawyer into your data base?
- If so, how far back in time do you go?

If practical, firm should circulate new matter conflict information to all lawyers to detect previous work on old substantially related matters.

Industry Conflicts—Need to confer with prospective laterals about firm policies not to undertake representations of certain companies or industries.

- e.g., Samsung/Apple, picking sides with respect to generic drugs.

SCREENING TO AVOID CONFLICT ARISING FROM IMPUTED CONFLICTS OF LATERAL LAWYERS

- ABA Model Rule 1.10
- Allows Use of Screening (ethical wall) to avoid conflict based on prior representation by lateral lawyer at prior firm without consent of opposing counsel
- You must check your local bar rules to see if screening works and what the particular requirements are.

DOCUMENTATION OF ENGAGEMENT TERMS ON MATTERS BROUGHT IN BY LATERAL LAWYERS

- Best to have transferring clients sign firm's standard engagement letter.
- OK to negotiate changes provided current firm management is aware of and approves changes.

- **Dangerous to use a short letter confirming representation will be on the same terms as prior firm.**
 - May not have copy of prior engagement letter
 - May have been written or oral modifications at prior firm
 - Firm management should review and be aware of deviations to its standard terms.

TRANSFER OF CLIENT FILES FROM PRIOR FIRM

- Should lateral bring files from former clients?
- Should lateral bring files from closed cases of current clients?
- What happens to files if lawyer leaves?
- All electronic file transfers should be through IT Dept.
- Must avoid unauthorized transfer through portable hard drives or other means, such as mass emails.

UNAUTHORIZED PRACTICE OF LAW ISSUES

- Is lateral attorney licensed in the jurisdiction of the office he or she is going to be working in?
- There are limitations on “federal practice” exception, even with respect to intellectual property lawyers.

Website bios often include practice outside of exception.

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Your Opinion Matters!

Please take a moment to evaluate this session.

Thank you!!

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