**The Right Way to Leave Your Firm**

In situations where an attorney withdraws from a law firm, it is the responsibility of both that attorney and the law firm to ensure that the clients for whom that attorney had provided material representation are informed of the change in the circumstances of the clients' representation. This duty requires communication with those clients whether written, personal, or by some other means that is professional in nature and content. The primary purpose of the communication is to assist these clients in determining whether their legal work should remain with the law firm, be transferred to the departing attorney, or be transferred elsewhere. While it is natural to expect both the firm and the departing attorney to want the clients' continued legal representation, the primary purpose of the communication is to assist the clients in their needs and not to solicit the clients' business. A failure by the attorney or the firm to fulfill this duty appropriately may justify disciplinary action.

I. No One Owns the Client.

 A. Clients do not belong to anyone.

 B. The client’s right to choose counsel is not affected by how the client got into the firm or which lawyer did the work on the client’s representation.

II. The Client Owns the File

 A. The file belongs to the client, not the attorney or firm.

 B. See, e.g. New Mexico Advisory Opinions 1988-1 & 2005-1 and NMRA 16-116.

III. Client Property, Including Unearned Fees, Must be Surrendered as Directed by the Client.

 A. NMRA 16-116(D) 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.

IV. The Client Must be Notified, in a Professional Manner.

 A. Ideally, the departing lawyer and the firm will jointly notify the clients, for whom the

 departing attorney provided material representation.

 B. Clients may be notified by the firm, the departing attorney, or both, either jointly or separately.

 C. The communication should be professional in tone and should not be a solicitation.

 C. The communication’s purpose is to advise the client of a significant change in the representation.

 D. Notification by letter is ideal because it creates a record of the communication. However, in some circumstances, timing or other factors dictate that the communication will be oral. If oral communication is used, it is recommended that a contemporaneous memo of the conversation be drafted and the client’s choices be timely confirmed in writing.

 E. The notification should inform the client:

 1) that the attorney is leaving the firm and when,

 2) where the departing attorney is going,

 3) that the client can stay with the firm (if that is actually an option),

 4) that the client can go with the departing attorney (if that is actually an option),

 5) as always, the client is not limited by these choices and can choose any other

 attorney, and

 6) where the client’s file will be and who will be handling the client’s matter until the client expresses a choice.

 7) Any/all critical matters that require the client’s immediate attention.

 8) All appropriate new contact information (phone, email, physical address, or

 whatever means of communication is used).

 9) The status of funds held in trust and directions on where they shall be maintained going forward, depending on the client’s choice.

 10) The status of any balance due.

 11) The status of the attorney-client relationship with the firm and attorney

 depending on the client’s choice, e.g. if the client elects to follow the attorney, the duty of the firm to protect the client’s interests and/or take any action on behalf of the client terminates upon the date of the client’s selection.

V. When an Option is Not an Option

 A. In some instances, the client may not have the option to go with the departing attorney or stay with the firm.

 1) The attorney may not continue in the same type of practice,

 2) The new firm may have a conflict,

 3) The old firm may not to have anyone handling the client’s type of matter.

 B. If there are reasons that the client doesn’t have these options, that should be explained

 to the client and the option should not be offered.

VI. Ease of Doing Business

 A. Consider whether the process might go more smoothly if a response form and/or a

 self-addressed (stamped?) envelope is/are provided with a checklist of the client’s

 options.

VII. Don’t Think This Outline is the End

 A. It is not possible to address every ethical issue that might arise when an attorney is

 leaving a firm. However, some issues are almost universal in these situations. One

 universal concern is to make sure the client’s matter is handled properly and the

 client is treated professionally, regardless of the quality of the relationship

 between the firm and the departing attorney.