

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE
41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

OPINION 98-5

Issued April 3, 1998

Withdrawn by Adv.Op. 2020-06

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: A departing attorney may notify clients of his or her departure from a law firm, identify his or her new location of practice, and indicate a willingness to provide legal services at the new location. A law firm may notify clients of the departure of a lawyer from the law firm and inform the clients of the law firm's desire to provide continued representation of the client. The notification may be made to the clients in person or through an announcement card or letter. Such communication is permitted under DR 2-102(A)(1) and (2) and DR 2-103(A). The departing lawyer and the law firm should handle the departure professionally and ethically. Both the departing lawyer and the law firm should be made aware of the planned departure before any announcement is made to the client. The announcement to the client of the departure may be communicated separately or jointly. The departing lawyer should not unfairly disparage the law firm to the client. The law firm should not unfairly disparage the departing lawyer to the client. The law firm should not withhold the departing lawyer's whereabouts from the client. Client files should neither be "raided" by the departing lawyer nor "locked up" by the law firm for this can cause prejudice to the client. Client files should remain with the law firm if that is the client's choice. However, if the client chooses the services of the departing attorney, the files should be handed over in a professional and timely manner per the client's instructions. Respect for a client's choice demonstrates to the client and to the public that the lawyer and law firm are truly practicing a profession.

OPINION: The departure of a lawyer from a law firm can leave a lawyer and a law firm at odds as to the continued representation of a client. The purpose of this opinion is to provide departing lawyers and law firms with guidance as to the ethical requirements under the Ohio Code of Professional Responsibility. Although departure of a lawyer from a law firm can also create legal issues, those issues are outside the authority of this advisory opinion.

Is it proper for a departing attorney to notify clients of his or her departure from a law firm, identify his or her new location of practice, and indicate a willingness to provide future legal services?

Is it proper for a law firm to notify clients of the departure of a lawyer from the law firm and inform the clients of the law firm's desire to provide continued representation of the client?

Clients are not the property of a lawyer or law firm. Clients are individuals with choice as to who will be their counsel. Although this may be difficult for some to hear or say, it is true.

The client's right to choose counsel is recognized in the Ohio Code of Professional Responsibility. If a client discharges an attorney, the attorney must withdraw under DR 2-110(B)(4). A lawyer and a law firm may not under DR 2-108(A) participate in a partnership or employment agreement that interferes with the client's choice of counsel by placing financial or geographical restrictions on a departing lawyer's right to practice. *See* Ohio SupCt, Bd of Comm'rs on Griev & Disc, Op. 91-3 (1991), Op. 90-14 (1990).

If the choice of counsel resides with a client, why do lawyers and law firms come to loggerheads over clients when a lawyer departs? Both the law firm and the departing lawyer value the client's business. Both take pride in providing professional services to the client. Both enjoy the resulting financial benefit. Thus, there are competing interests and concerns.

A law firm may be concerned that the departing attorney will take files, improperly solicit the client, and disparage the law firm, thus luring the client away from the firm. A departing attorney may be concerned that the law firm will refuse to answer a client's inquiry as to the attorney's new address or location or will refuse to hand over files if a client wishes the services of the departing attorney at a new location.

When these concerns emerge as hostile allegations, the departing attorney and the law firm begin the battle. It is a "client war." Everyone loses. The profession is degraded. The client suffers. The departing attorney and the law firm spend time and energy unproductively and unprofessionally.

Often, the point of contention involves allegations regarding client communication. Who communicated what to the client? When was it communicated? How was it communicated? What effect did it have on the client's choice of counsel? Were ethical rules violated by such communications? Accusations are made. Feelings are hurt. Professional relations between the attorneys and between the attorneys and the clients are damaged.

Much has been written regarding the ethics of lawyer departure from a law firm. There are journal articles and books. *See e.g.* Mark W. Bennett, Note, *You Can Take It With You: The Ethics of Lawyer Departure and Solicitation of Firm Clients*, 10(2) *Geo. J. Legal Ethics* 395 (1996); Robert W. Hillman, *Law Firms and Their Partners: The Law and Ethics of Grabbing and Leaving*, 67 *Texas L. Rev.* 1 (1988). For a publication devoted to the subject see Robert W. Hillman, *Hillman on Lawyer Mobility* (1997).

There are numerous advisory opinions permitting (sometimes with conditions) a departing attorney to notify clients of the departure. *See e.g.*, ABA, Informal Op. 1457 (1980); Alabama State Bar, Op. 91-06 (1991); State Bar of Arizona, Op. 91-17 (1991); Bar Ass'n of Nassau County, Op. 93-40 (1993); North Carolina State Bar Ass'n, Op. 200 (1995); Oregon State Bar, Op. 1991-70 (1991). Several opinions express the view that a

departing attorney must communicate with clients regarding the change. *See* District of Columbia Bar, Op. 273 (1997); Philadelphia Bar Ass'n, Op. 92-8 (undated); State Bar of Wisconsin, Op. E-97-2 (1997).

In Ohio, what can be communicated and by whom? The Code does provide guidance. Under DR 2-102(A), lawyers and law firms are permitted to announce new or changed associations or addresses through professional announcement cards.

DR 2-102(A) A lawyer or law firm may use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, that are in dignified form and comply with the following:

- (1) A professional card of a lawyer identifying the lawyer by name and as a lawyer and giving the lawyer's addresses, telephone numbers, law firm name, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates and may be used for identification.
- (2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm. It shall not state the nature of the practice except as permitted under DR 2-105.

In announcing the change, may a departing attorney indicate a willingness to provide legal services at his or her new location? May a law firm indicate its desire to provide continued representation of the client by lawyers in the firm? Again, the Code provides guidance.

Under DR 2-103(A) a lawyer is prohibited from recommending oneself for employment to a non-lawyer unless the non-lawyer has sought the lawyer's advice.

DR 2-103(A) A lawyer shall not recommend employment, as a private practitioner, of himself or herself, his or her partner, or associate to a non-lawyer who has not sought the lawyer's advice regarding employment of a lawyer, except as provided in DR 2-101.

If an attorney is already providing legal services to a client, the client in essence has sought the lawyer's advice. Therefore, it would not be improper under the rule for the attorney to acknowledge that he or she would be available to continue to provide legal services at the new location. Similarly, it would not be improper for the law firm to express its interest in continuing the representation by an attorney in the law firm.

In conclusion, the Board advises that a departing attorney may notify clients of his or her departure from a law firm, identify his or her new location of practice, and indicate a willingness to provide legal services at the new location. A law firm may notify clients of the departure of a lawyer from the law firm and inform the clients of the law firm's desire

to provide continued representation of the client. The notification may be made to the clients in person or through an announcement card or letter. Such communication is permitted under DR 2-102(A)(1) and (2) and DR 2-103(A). The departing lawyer and the law firm should handle the departure professionally and ethically. Both the departing lawyer and the law firm should be made aware of the planned departure before any announcement is made to the client. The announcement to the client of the departure may be communicated separately or jointly. The departing lawyer should not unfairly disparage the law firm to the client. The law firm should not unfairly disparage the departing lawyer to the client. The law firm should not withhold the departing lawyer's whereabouts from the client. Client files should neither be "raided" by the departing lawyer nor "locked up" by the law firm for this can cause prejudice to the client. Client files should remain with the law firm if that is the client's choice. However, if the client chooses the services of the departing attorney, the files should be handed over in a professional and timely manner per the client's instructions. Respect for a client's choice demonstrates to the client and to the public that the lawyer and law firm are truly practicing a profession.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.