



Ohio Board of Professional Conduct

OPINION 2020-06

Issued August 7, 2020

Withdraws Adv. Op. 98-05

Lawyer Departing Law Firm

SYLLABUS: A law firm and a lawyer leaving the firm have an ethical obligation to ensure that affected clients are informed of the lawyer's departure. A law firm and departing lawyer may jointly or separately notify affected clients of the lawyer's departure from the law firm. The notice may indicate the availability and willingness of the lawyer or law firm to continue to provide legal services to the client. A lawyer and the law firm must accept a client's choice of counsel prompted by the departure of a lawyer from the firm. A law firm cannot prevent a departing lawyer from notifying affected clients for whom he or she has principal responsibility.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

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QUESTIONS PRESENTED:

1). Is it proper for a departing lawyer 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?

2). 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?

APPLICABLE RULES: Prof.Cond.R. 1.1, 1.3, 1.4, 1.15, 1.16, 7.1, 7.3

OPINION:

The departure of a lawyer from a law firm gives rise to ethical duties for both the departing lawyer and the remaining responsible lawyers of the law firm. A departing lawyer with principal responsibility for a client has a duty to keep a client informed about the status of a matter, including developments about the substance of the lawyer's representation.¹ This duty includes a change in the lawyer's affiliation with the law firm. Prof.Cond.R. 1.4(a)(3), cmt. [3], ABA Op. 489 (2019). Consequently, a lawyer with principal responsibility for affected clients is not only permitted, but required to communicate his or her impending departure. Prof.Cond.R. 1.16(d). The notice serves as critical information for the client to decide whether to remain as a client with the law firm, follow the departing lawyer to his or her new firm, or seek new counsel altogether. The Board recommends that a departing lawyer's notice to affected clients be undertaken at the same time or after, but not before, the law firm is informed of the lawyer's impending departure.²

Communication of Availability to Provide Legal Services

Because the departing lawyer in most cases may be actively representing the affected client at the time he or she gives notice of his or her departure, the lawyer may indicate his or her willingness to continue the representation. Even if the representation of the client terminates, the lawyer may directly solicit the client for employment since the client had a prior professional relationship with the lawyer. Prof.Cond.R. 7.3(a)(2). Likewise, a law firm can indicate in a separately delivered notice that it is available to provide continued representation to the client. *Id.*

Jointly Delivered Notice

Both the departing lawyer and the law firm have an ethical obligation to ensure that the affected clients are informed about the pending departure of the lawyer. ABA Op. 99-414 (1999). To satisfy this obligation, the Board strongly encourages departing

¹ A lawyer with principal responsibility is a lawyer in the firm who has a major role in the delivery of the legal services to the affected client.

² This advisory opinion does not address the possible legal and fiduciary duties of a departing lawyer to his or her former firm or the possibility of civil remedies. *See e.g., Fred Siegel Co. L.P.A. v. Arter Hadden*, 85 Ohio St.3d 171 (1999).

lawyers and their law firms to work collaboratively to jointly draft and distribute a notice to the affected clients and include relevant information concerning the last date of the lawyer's employment with the firm and the lawyer's new address and contact information. The joint notice may also include a formal request for the client to indicate their choice of counsel and give authorization for the timely transfer of the client's property and file if the client chooses to continue his or her relationship with the departing lawyer. Prof.Cond.R. 1.15(d). The Board also recommends that law firms engage in advanced planning for the departure of firm lawyers. A plan will direct the timing and content of a joint notice, ensure that the affected clients will receive pertinent information about the representation, avoid prejudicing the client's choice of counsel, and fulfill the mutual ethical obligations of both the firm and the departing lawyer. *See* State Bar of Ariz. Formal Op. 10-02 (2010).

If a joint notice from the departing lawyer and law firm is neither feasible due to timing nor desirable because the separation is unamicable, notices from either party should be sent to those clients for whom the departing lawyer is principally responsible. The separate notices should instruct the affected client that the decision concerning the choice of counsel is within the sole direction of the client and should not encourage the client to sever ties with either the firm or the lawyer or disparage either party. ABA Formal Op. 99-414 (1999). The law firm and departing lawyer must also avoid making false, misleading, or nonverifiable statements in their respective notices. Prof.Cond.R. 7.1. Finally, the law firm may not prohibit the departing lawyer from delivering a separate notice to affected clients after it learns of the lawyer's impending departure. ABA Op. 489 (2019).

Timing of the Notice

The timing of the notice sent either separately or jointly should give the client enough time to make an informed decision as to continued representation without causing harm to the client. "[I]nforming the client of the lawyer's departure in a timely manner is critical to allowing the client to decide who will represent him." ABA Op. 99-414 (1999). Prof.Cond.R. 1.4 suggests that the timing must be reasonable under the circumstances and consistent with the client's best interests. In an ideal situation, the notice will be transmitted to the affected clients before the lawyer departs the law firm. Recognizing that the severing of a relationship with a law firm can occur suddenly or

without warning to either party the notice, preferably in writing, to the affected clients should be delivered as soon as feasibly practicable to protect the interests of the clients.

Client's Choice of Counsel

It is improper for either the law firm or departing lawyer in a notice to infer or imply that a client is the firm's or lawyer's client. The law firm and the lawyer ultimately must accept the client's decision to remain with the law firm or follow the departing lawyer. Consequently, neither the law firm nor the lawyer may take action that interferes with the client's right to choose counsel. Colo. Adv. Op. 116 (2007). If the law firm cannot continue the representation due to the unavailability of competent lawyers in a particular legal specialty, or if the departing lawyer cannot carry out the representation due to a non-waivable conflict at a new firm, the lawyer and law firm must work together to assist the client in obtaining new counsel. Both the departing lawyer and the law firm have an ethical duty to ensure that active matters pending while the client chooses counsel are handled with the requisite competence and diligence and that all steps are taken to ensure the withdrawal of representation by either party protects the client's interests. Prof.Cond.R. 1.1, 1.3, and 1.16(d).

CONCLUSION: A departing lawyer and his or her law firm have a mutual obligation to keep the client informed about the status of the representation, including the impending departure of a lawyer principally responsible for providing the client legal services. The effective use of a jointly delivered notice to affected clients ensures that the client receives critical information in order to make a choice of counsel. If a joint notice is neither feasible or desirable, the firm and departing lawyer may send separate notices to affected clients. The separate notices may indicate the willingness of the lawyer or law firm to continue to provide legal services to the client. Lastly, while the delivery of a joint notice is preferred, a law firm may not prohibit the departing lawyer from delivering a notice to affected clients after it learns of the lawyer's impending departure.