

November 2005 *Multnomah Lawyer Ethics Focus*

Changing Seasons: Moving from One Firm to Another

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You may have noticed that my by-line is different this month. After 20 years at the same professional home, I started a new firm last month with my long-time trial partner. Launching a start-up gave me first hand experience with the issues involved in moving from one firm to another. We'll look at three in this column. *First*, when can you ask your clients to come with you? *Second*, how are file transfers handled? *Third*, what are the conflict rules involved?

When Can You Ask Your Clients to Come with You? In leaving a firm, a lawyer's first duty is to his or her clients. See *In re Smith*, 315 Or 260, 843 P2d 449 (1992); OSB Legal Ethics Op No 2005-70. The lawyer must honor this fiduciary duty by ensuring that work for clients continues to be handled in a timely and competent way during any transition. If there is a critical time deadline a client is facing, then OSB Legal Ethics Opinion 2005-70 counsels that a lawyer may need to give a client advance notice of the lawyer's intent to leave a firm. Because a lawyer also owes fiduciary duties to the soon-to-be old firm, however, client notification should normally come after the lawyer has told the old firm (absent a critical client deadline where the lawyer's duty to the client would "trump" the duty to the old firm). *Id.* Once a lawyer has actually left a firm the lawyer may contact clients whom the lawyer represented at the former firm to solicit their business. RPC 7.3(a)(2); accord OSB Legal Ethics Op No 2005-70.

That contact can be in-person, by phone or in writing (both written and electronic). *Id.* The decision to retain work at the old firm, move it to the departing lawyer or seek entirely new counsel remains the client's alone. See *In re Smith, supra*, 315 Or 260; OSB Legal Ethics Op No 2005-70.

How Are File Transfers Handled? If a client decides to have the departing lawyer continue handling the client's work, the old firm (assuming that there is no lien for unpaid fees) must relinquish the client's file and other property to the departing lawyer on the client's direction. See OSB Legal Ethics Op No 2005-70. Whether the old firm can charge the client photocopy costs for reproducing the file materials depends largely on whether the fee agreement between the old firm and the client permits that. See *generally* OSB Legal Ethics Op 2005-125 (dealing with photocopy charges for client files on termination of representation). In any event, both the old firm and the departing lawyer must take all steps reasonably necessary during the transition to protect the client's interests. See RPC 1.16(d); OSB Legal Ethics Op No 2005-70.

What Are the Conflict Rules Involved? When a lawyer departs a firm and takes all of a client's work, that client then becomes a "former client" of the firm. RPC 1.10(b); OSB Legal Ethics Op 2005-128. At that point, the lawyer's old firm may represent clients adverse to the former client unless, under RPC 1.9, the proposed new matter is substantially related to a matter that the old firm handled for the former client or would involve the use of the former client's confidential

information adversely to the former client. See OSB Legal Ethics Op No 2005-128. As with all former client conflicts, however, this prohibition can be waived if the former and current clients give their consent. RPC 1.9. If the lawyer joining a new firm had been working opposite the new firm on a current matter, the lawyer joining the new firm should be screened under RPC 1.10(c)(1)-(3). Although the lawyer would not be able to continue on that matter at the new firm, screening would allow the new firm to stay in the case.

ABOUT THE AUTHOR

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