



# ALLIED WORLD

## **Attorneys Who Leave Law Firms**

When a lawyer leaves a firm, errors and omissions can occur that may give rise to claims. In many states, there is little or no guidance for attorneys about what communications with firm clients are permitted, and what contacts are prohibited. If there is confusion about who will be taking or keeping the client and the file, errors can occur and deadlines can be missed.

It is important for you to be aware of the rules of professional conduct within your state concerning contact with clients. In one state in particular, Florida, there is a long standing rule of professional conduct that sets forth clearly how the law firm and the departing lawyer are to handle client files. The Virginia Supreme Court recently adopted a similar rule containing procedures for notifications to clients when a lawyer leaves a law firm, which goes into effect May 1, 2015. Florida and Virginia are the only two states with specific rules of professional conduct addressing this issue.

Both Florida Rule 4-5.8 and Virginia Rule 5.8 explain that clients have the right to select which attorney or law firm will represent them. They suggest that the law firm and the departing lawyer jointly notify clients who will be affected by the lawyer's departure. If negotiations between the law firm and the departing lawyer are unsuccessful, then the Rules permit unilateral contact with the client by the law firm and the departing lawyer. The Rule provides that the notice inform the client the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms. In addition, the notice to the client under Florida Rule 4-5.8 must also provide information concerning potential liability for fees for legal services previously rendered, costs expended, how any deposits for fees or costs will be handled, and, if appropriate, that reasonable charges may be imposed to provide a copy of any file to a successor lawyer. Other states have caselaw that provides for guidance.

## **Notifying Clients**

Sending the notice is only the first step. However, what happens if the client does not respond? The Florida and Virginia Rules provide for a default resolution indicating that the client shall be considered as remaining a client of the firm until the client advises otherwise. The comments to the Florida and Virginia rules explain that if the departing lawyer will take over representation of the client, a motion for substitution of counsel or a motion by the firm to withdraw from the representation may be appropriate. As a matter of risk management, this step should be undertaken as an attorney or law firm of record may be held responsible for any malpractice that occurs in a case.

When a lawyer leaves a firm, it is important to the firm and to the departing attorney that the appropriate substitutions of counsel are filed to eliminate vicarious liability for future acts of malpractice by the lawyer or law firm that kept the client.

For example, in *Redman v. Walters*, 88 Cal.App.3d 448 (1979), the client retained the services of one lawyers within a firm. The Complaint filed for the client identified that partnership as attorneys of record. About a year later, one partner terminated his relationship with the firm. The name of the law firm was changed, but no formal substitution of attorneys was ever filed nor (allegedly) did the client ever consent to the change in representation. The client later sued for malpractice, and named the former partnership as the defendant, which included the former partner. The Court of Appeals held that the termination of the partnership did not terminate the liability the partnership assumed when it undertook to represent the client without an express or implied agreement with the client, or by express consent to assumption of the obligation by the successor entity. As the client believed that he continued to be represented by the original partnership, the "innocent" partner remained liable for the malpractice that had occurred after he left the firm. (See also, *Staron v. Weinstein*, 305 N.J. Super. 236, 701 A.2d 1325 (1997)).

## Risk Management Tips

- Be aware of any specific state rules, regulations or caselaw regarding client contact when an attorney leaves a firm.
- When a lawyer leaves a firm or a partnership is dissolved, it is prudent to inform all clients, in writing, of the dissolution of the firm.
- Engage in transition planning within the firm should you be faced with an attorney departing.
- Should you have questions concerning these issues, consider consulting with an attorney or risk management professional.

**We invite Allied World policyholders to access additional information on this and other Risk Management Topics.** The lawyers' risk management website, <http://awac.lawyerlaw.com>, contains resources as well as related topics.

Also, the **Risk Management Hotline** is included for up to 2 free hours per year, per firm of confidential advice regarding risk management questions that your law firm may have. If you are an Allied World policyholder, the hotline can be accessed through the risk management website, <http://awac.lawyerlaw.com>. Once you log on to the website, the link to contact the hotline is on the upper left side, under the Allied World and Darwin logos.

If you are not a current Allied World policyholder and would like information on our program and our risk management services, please contact your agent or broker.

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