

The Ethical and Legal Consequences of Lateral Moves between Law Firms

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The practice of law is beginning to mirror the world of sports. While ballplayers used to stay with one team for their entire careers, with the advent of free agency they now move more frequently, seeking a better fit or a bigger payday. Similarly, lawyers once worked for one law firm for their entire careers. Now lawyers are the ultimate free agents, seemingly always on the lookout for a law firm that offers them a better opportunity or a bigger payday.¹ Lawyers are uniquely situated to take advantage of these opportunities because they are, with some exception, at-will employees who do not need to “play out their contract” before they become free agents. In addition, unlike in many professions, lawyers are not typically subject to restrictions on their ability to practice law after they leave a firm.² For example, *The American Lawyer* reported in its “2010 Lateral Report” that the year ending September 30, 2009, saw 2,775 partners leave or join big firms.³ This set a record and was a 10.6 percent increase from the previous year. Yet, because this report merely tracks the partners leaving or joining big firms, this figure represents only the tip of the iceberg as it relates to overall lateral moves throughout the country.

However, this increased mobility creates a number of ethical and legal consequences. Moreover, quite often the ethical implications of the Rules of Professional Conduct and the substantive law conflict or do not neatly mesh together. While this article focuses on the ethical implications of lateral moves, it also necessarily discusses some of the legal ramifications that can follow a lateral move and how a lawyer’s compliance or noncompliance with the ethical rules can affect the ultimate outcome of any associated litigation. However, this article does not intend to exhaustively survey all of the various legal issues that can confront a lawyer making a lateral move. These issues can involve the law of agency, partnership, property, contracts, and unfair competition.⁴ How courts view a lawyer’s conduct will often depend on how each state’s substantive law negotiates the complex business relationships that often exist in law firms. In the ethical context, the main focus on a lawyer’s lateral move is protecting the client’s interests and the client’s freedom to choose counsel. Yet, when lateral moves spawn litigation, the courts are often asked to weigh these ethical considerations with a lawyer’s fiduciary duties to his or her previous firm and the concept of tortious interference with contractual relations. Although courts generally give protection of client interests great weight, they tend to go beyond the purely ethical considerations and delve into whether the lawyer’s conduct in making the lateral move was improper or created an unfair competitive advantage with the lawyer’s former firm. Often, these two considerations directly conflict. As noted in *Graubard Mollen Dannett & Horowitz v. Moskovitz*,⁵ “[i]t is unquestionably difficult to draw hard lines defining lawyers’ fiduciary duty to partners and their fiduciary duty to clients. That there may be overlap, tension, even conflict between the two spheres is underscored by the spate of literature concerning the current revolving door law firm culture.”⁶

The ethical and legal consequences of lateral moves have received much attention over the last 25 years.⁷ They have also been the subject of innumerable formal ethics opinions from the American Bar Association (ABA) and state bar associations.⁸ What is clear from the material that has examined these topics is that no bright line rules exist when it comes to lawyers making lateral moves. Lawyers who are considering making such a move, as well as firms that are considering making a lateral acquisition, must consider a variety of issues because even the most conscientious effort to comport with the ethical rules can still result in litigation.⁹

Protecting the Client’s Right to Counsel

The paramount concern when a lawyer makes a lateral move is protecting a client’s right to choose counsel, a right firmly embedded within the Model Rules of Professional Conduct. Rule 1.16 provides, in relevant part:

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

...
(3) the lawyer is discharged.
...

- (d) 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.¹⁰

When making a lateral move, three major issues must be considered to protect a client's interests properly:

1. notification to clients of the move,
2. disposition of client files, and
3. conflicts.

Although these may seem to be very straightforward issues, each has innumerable nuances that can complicate what should be a simple situation. Where practicable, this article tries to discuss the nuances of each issue. However, any lawyer who is anticipating making a lateral move, or even leaving a firm to open a new practice, should familiarize himself or herself with the law in the relevant jurisdiction and review any relevant ethics opinions from the bar associations of that lawyer's state or local jurisdiction.

Notifying Clients of the Lawyer's Departure

Probably the most hotly debated topic is when and how a lawyer can communicate with a firm's clients about his or her impending departure. What is clear is that the departing lawyer and the soon-to-be-former firm both have ethical obligations to notify the firm's clients of the departure. Specifically,

[w]hen a lawyer ceases to practice at a law firm, both the departing lawyer and the responsible members of the firm who remain have ethical responsibilities to clients on whose active matters the lawyer currently is working to assure, to the extent reasonably practicable, that their representation is not adversely affected by the lawyer's departure.¹¹

According to the ABA Standing Committee on Ethics and Professional Responsibility,¹² Rule 1.4—requiring a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information—includes notifying a client that a lawyer responsible for representing the client, or who plays a principal role in delivering the firm's legal services in a current matter, will be departing the firm.¹³ Therefore, “[a] lawyer who is departing one law firm for another has an ethical obligation, along with responsible members of the law firm who remain, to assure that those clients are informed that she is leaving the firm.”¹⁴ ABA Formal Opinion 99-414 defines current clients as “clients for whose active matters [the lawyer] is currently responsible or plays a principal role in the current delivery of legal services.”¹⁵ Informing the client of the lawyer's departure in a timely manner is essential to the client's right to decide who will continue its representation.¹⁶ Significantly, communications by a lawyer to his or her clients about the lawyer's impending departure would not be considered prohibited solicitation under Rule 7.3(a) because the lawyer has a previous professional relationship with that client.¹⁷ Such a relationship would not exist, however, where the work involved little or no direct contact with the client.¹⁸ Although the Model Rules may require that both the departing lawyer and the firm notify clients of the lawyer's departure, *when* that notification is made and *how* it is made generate the most difficulty in balancing a lawyer's ethical duty to his or her clients with his or her legal duty to the firm.

Timing of the communication. When the communication may be sent to a client is not entirely clear, and the Model Rules do not necessarily prescribe when the communication may occur.¹⁹ According to ABA Formal Opinion 99-414, the communication to the firm's clients may be made before the lawyer leaves the firm.²⁰ Yet the Pennsylvania and Philadelphia Bar Associations recognize that there may be circumstances where a lawyer will feel compelled to notify clients even before notice of the lawyer's departure is known to the firm.²¹ These two bar associations surmised that such a situation may arise when the departing lawyer fears that the firm may bar access to the client's files and the firm's computer system

upon learning of the lawyer's impending departure, and thus compromise that lawyer's ability to adequately serve the client's interests.²² Importantly, this type of conduct on the part of the firm could also violate the firm's ethical obligations to the client.²³

Typically, client notification is expected to occur at the same time or shortly after the lawyer gives notice to the firm.²⁴ Even if the Model Rules do not prevent a lawyer from notifying clients before notifying the firm, courts have found that such conduct may breach a fiduciary duty owed to the firm. In *Graubard Mollen Dannett & Horowitz v. Moskovitz*,²⁵ the court held that

as a matter of principle, pre-resignation surreptitious "solicitation" of firm clients for a partner's personal gain the issue posed to us—is actionable. Such conduct exceeds what is necessary to protect the important value of client freedom of choice in legal representation, and thoroughly undermines another important value—the loyalty owed partners (including law partners), which distinguishes partnerships (including law partnerships) from bazaars.²⁶

Therefore, unless there is a serious question about the lawyer's ability to represent a client's interest when notice is given, it would seem prudent to refrain from notifying clients until after giving notice to the firm.

Content of the communication. The manner in which the lawyer's departure is communicated to the client is equally important. Providing notice to current clients in person or by telephone is not prohibited; Model Rule 7.3(a) only prohibits in-person or telephone contact with clients with whom the lawyer has not had a prior professional relationship. However, due to the often contentious nature of departures, prudence dictates making initial notifications in writing.²⁷ In fact, the best practice is for the initial notification to be jointly written by the firm and the departing lawyer.²⁸ Nevertheless, ABA Formal Opinion 99-414 recognizes that joint notice is not always feasible given the sometimes fractious nature of lawyer departures.²⁹

According to ABA Formal Opinion 99-414, any communication should conform to the following:

1. the notice should be limited to clients whose active matters the lawyer has direct professional responsibility for at the time of the notice (i.e., the current clients);
2. the departing lawyer should not urge the client to sever its relationship with the firm but may indicate the lawyer's willingness and ability to continue his or her responsibility for the matters upon which he or she currently is working;
3. the departing lawyer must make clear that the client has the ultimate right to decide who will complete or continue the matters; and
4. the departing lawyer must not disparage the lawyer's former firm.³⁰

It is important to note that the initial communication to the client should not actively solicit the client's files or urge the client to remain with the departing lawyer.³¹ *Adler, Barish, Daniels, Levin & Creskoff v. Epstein*,³² a Pennsylvania case, makes this point succinctly:

[A]ppellees' conduct frustrates rather than advances, [the firm's] clients' "informed and reliable decision making." After making [the firm's] clients expressly aware that appellees' new firm was interested in procuring their active cases, [the departing lawyer] provided the clients the forms that would sever one attorney-client relationship and create another. [The departing lawyer's] aim was to encourage speedy simple action by the client. All the client needed to do was "sign on the dotted line" and mail the forms in the self-addressed stamped envelopes. . . . Thus, appellees were actively attempting to induce the clients to change law firms in the middle of their active cases. Appellees' concern for their line of credit and the success of their new law firm gave them an immediate, personally created financial interest in the clients' decisions. In this atmosphere, appellees' contacts posed too great a risk that clients would not have an opportunity to make a careful, informed decision.³³

In addition to the information contained in the initial notice, the departing lawyer may also provide whatever further information the client needs or requests to assist the client in making its decision regarding representation. However, the departing lawyer must always be perfectly clear that the client ultimately has the right to choose who represents it.³⁴ Moreover, lawyers need to understand that any communication that goes beyond the minimum communication necessary to comply with ethical requirements may result in liability to the former firm under other legal concepts.³⁵ Once a lawyer has

actually departed the former firm, he or she is free to solicit any clients of that firm, not just his or her “current clients,” as long as that solicitation conforms to Model Rules 7.1 through 7.3.³⁶

Handling Client Files

When a lawyer leaves a law firm, both the lawyer and the firm have an ethical responsibility to protect a client’s interests³⁷ and to ensure that the client’s matters are properly handled.³⁸ Model Rule 1.16(d) requires that a lawyer or law firm who has been discharged surrender papers and property to which the client is entitled. Furthermore, until the client informs the firm how it wants its files handled, the firm must hold those files in accordance with Rule 1.15(a), which governs the safekeeping of client property.³⁹ A firm that attempts to block a departing lawyer from gaining access to files, or tries to frustrate a client’s transition of its files to the departing lawyer, may violate Rules 1.16(d) and 1.15.⁴⁰ In addition, while the firm may be able to apply a lien against the client’s files for unpaid legal fees, that remedy is very limited and often disfavored.⁴¹ Further, it appears that lawyers are free to take with them documents that they created, such as legal research, memoranda, pleadings, and forms.⁴² However, firm-created documents and confidential items like client lists may not be taken absent an agreement with the firm.⁴³

The handling of client files and proprietary firm material has often been the genesis of litigation. For example, in *Joseph D. Shein, P.C. v. Myers*,⁴⁴ the trial court found that the defendants’ conduct of removing files from their former firm, without the firm’s permission, and taking the files to their new office supported the finding of tortious interference with contract.⁴⁵

Conflicts

The lateral move of a lawyer can raise several additional ethical quandaries, foremost of which is the lawyer’s ethical duty to protect a client’s confidential information. Model Rule 1.6 states that “[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent” When a lawyer is contemplating changing firms, the new firm normally wants to know information about the lawyer’s clients and his or her cases. However, how much information the lawyer may disclose without committing an ethical breach is a subject for debate.⁴⁶ It would seem that disclosing client names, and the types of cases the lawyer handles, for the purpose of determining the kind of business the lawyer might bring to the firm, as well as to check for possible conflicts, would not violate any ethical duties. However, anything beyond that minimal information could give rise to ethical questions.

In addition to protecting a client’s confidential information, lawyers must be aware of any conflicts that may arise from moving to a new firm. These conflicts could include the new firm representing clients adverse to the lawyer’s current clients, violating Rule 1.7, or the new firm representing a client that was adverse to one of the former firm’s clients, which could violate Rule 1.9. When a lawyer seeks to move to a firm that is adverse to his or her client, several particular issues may arise. The ABA Committee on Ethics and Professional Responsibility has concluded that,

[w]hile recognizing that the exact point at which a lawyer’s own interests may materially limit his representation of his client may vary, the Committee believes that clients, lawyers and their firms are all best served by a rule which requires consultation and consent at the earliest point that the client’s interests could be prejudiced. We, therefore, conclude that a lawyer who has an active and material role in representing a client in litigation must consult with and obtain the consent of that client, ordinarily before he participates in a substantive discussion of his experience, clients or business potential or the terms of an association with an opposing firm.⁴⁷

Clearly this type of situation is fraught with ethical pitfalls and should not be entered into lightly.

The timing of a lawyer’s notice to his or her firm is another area that can create possible conflicts and implicate ethical rules. Although no ethical rules directly address the timing of notification, Rule 8.4, governing misconduct, could be implicated if the lawyer’s conduct constitutes dishonesty, fraud, deceit, or misrepresentation. While the mere failure to disclose an intention to leave a firm would not typically implicate Rule 8.4, in some circumstances it might. For instance, if a lawyer with a substantial practice was aware that the firm was undertaking a significant investment in new space, personnel, or equipment to support that practice, a duty to disclose an intention to move may exist.⁴⁸ There is even a question whether a lawyer could deny that he or she was engaged in active discussions with another firm if questioned directly.⁴⁹ Ultimately, in the absence of any extenuating circumstances, the language of the partnership

agreement or any employment contract may control the timing of the notice.

Restricting the Right to Practice Law

One area where the Model Rules and the courts appear to agree involves the prohibition against contractual restrictions on a lawyer's right to practice law. Rule 5.6 clearly prohibits a firm or a lawyer from entering into an agreement of any kind that restricts a lawyer's right to practice law. This prohibition has been widely upheld in formal ethics opinions as well. For example, the District of Columbia Bar found that a partnership agreement requiring a departing partner to pay 40 percent of fees received from clients of the firm for two years after the lawyer left the firm violated Rule 2-108(a), which was the predecessor to current Rule 5.6(a).⁵⁰ Additionally, a partnership agreement that reduced the payment of unrealized accounts receivables by half if the departing partner opened a competitive practice within 12 months was also found to violate this Rule.⁵¹

Yet not all partnership provisions that place a financial restriction on departing partners are invalid. An agreement on how to divide potential contingent fees from unrealized contingent fee cases did not violate Rule 5.6 as long as it was reasonable and did not give an excessive amount to the old firm.⁵² Moreover, a Massachusetts court has held that a partnership provision imposing adverse financial consequences on departing partners was not prohibited because it applied to all departing partners and not just those who competed with the firm.⁵³ Some courts have even enforced properly tailored provisions that restrict financial benefits for departing lawyers if they compete with their old firm.⁵⁴ Significantly, the prohibition on restrictions is not limited to partners. An Arizona ethics opinion, for example, found that a condition of employment for associates that required them to pay \$3,500 for each client they took from the firm if they departed violated Rule 5.6.⁵⁵

Soliciting Other Lawyers and Firm Employees

Despite the ethical rules addressing the solicitation of clients, no ethical rules appear to govern a departing lawyer's solicitation of other lawyers or employees of the firm.⁵⁶ Typically, relevant law rather than ethics govern this type of solicitation.⁵⁷ However, some commentators have cautioned that while a lawyer may freely solicit a firm's at-will employees, it may be impermissible to solicit employees in a manner that is intended to "cripple, destroy or misappropriate a competitor's business organization."⁵⁸

In *Jacob v. Norris*,⁵⁹ the plaintiffs were shareholders and employees of the defendant firm of Norris, McLaughlin & Marcus but had left to establish their own firm and took several associates and a paralegal with them. However, Norris, McLaughlin & Marcus "had a Service Termination Agreement that barred plaintiffs from collecting termination compensation if they continued to represent firm clients or solicit firm attorneys or other paraprofessionals within a year of their departure."⁶⁰ Ultimately, the Supreme Court of New Jersey held that

[Rule 5.6] proscribes all agreements that "restrict[] the rights of a lawyer to practice." The Agreement requires a departing partner to forfeit all termination compensation if he or she "solicits other professional and/or paraprofessional employees of the Law Firm to engage in the practice of law with the departed Member." The "practice of law" consists not only of lawyers' interactions with their clients, but also includes their interactions with colleagues. Agreements discouraging departing lawyers from contacting those lawyers with whom they would like to associate violate [Rule 5.6].⁶¹

As a consequence, the court concluded "that the unrestricted 'practice of law' includes the right to solicit both attorneys and those members of the paraprofessional staff that attorneys believe are necessary to provide the best legal service for their clients."⁶² However, where the lawyer engages in "unlawful and unethical conduct in mounting a campaign to deliberately disrupt plaintiffs' business," he or she may be found liable for attempting to solicit at-will employees.⁶³

Conclusion

Many different ethical and legal issues confront a lawyer making a lateral move. Ultimately, each lawyer must be governed by the ethical and legal precedent in his or her relevant jurisdiction as well as by any provisions contained in partnership agreements or other employment contracts. One guiding principle through all of this would seem to be that exercising great care and caution in considering each step of the process will go a long way to making what is already a difficult situation a little less complicated.

Notes

1. *See, e.g.*, Robert W. Hillman, Hillman on Lawyer Mobility: The Law and Ethics of Partner Withdrawals and Law Firm Breakups § 1.1 (2d ed. 1998).
2. *See* Model Rules of Prof'l Conduct R. 5.6. (2010). Because most states have adopted the ABA Model Rules of Professional Conduct in some form, all references to Rules in this article are to the ABA Model Rules of Professional Conduct unless stated otherwise. Note also that the specific provisions of the Model Rules mentioned in this article can be found, in relevant part, at pages 20–23.
3. Ted J. Chiappari & Angelo A. Paparelli, *The 2010 Lateral Report*, Am. Law. (Feb. 1, 2010), www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202439586090&The__Lateral_Report.
4. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 99-414, at 2 (Sept. 8, 1999) [hereinafter ABA Formal Op. 99-414]. Specifically, the opinion states that “[t]he departing lawyer also must consider legal obligations other than ethics rules that apply to her conduct when changing firms, as well as her fiduciary duties owed the former firm. The law of agency, partnership, property, contracts, and unfair competition impose obligations that are not addressed directly by the Model Rules. These obligations may affect the permissible timing, recipients, and content of communications with clients, and which files, documents, and other property the departing lawyer lawfully may copy or take with her from the firm.”
5. 653 N.E.2d 1179 (N.Y. 1995).
6. *Id.* at 1183.
7. *See* Geri S. Krauss, Partner Departures and Lateral Moves: A Legal and Ethical Guide (ABA 2009); Robert W. Hillman, Hillman on Lawyer Mobility: The Law and Ethics of Partner Withdrawals and Law Firm Breakups (2d ed. 1998); Mark W. Bennett, Note, *You Can Take It With You: The Ethics of Lawyer Departure and Solicitation of Firm Clients*, 10 Geo. J. Legal Ethics 395 (1997); Vincent R. Johnson, *Solicitation of Law Firm Clients by Departing Partners and Associates: Tort, Fiduciary, and Disciplinary Liability*, 50 U. Pitt. L. Rev. 1 (1988).
8. *See, e.g.*, ABA Formal Op. 99-414, *supra* note 4; Joint Pa. and Phila. Bar Ass’n Formal Op. 2007-300 (June 2007) [hereinafter Pa./Phila. Formal Op. 2007-300]; D.C. Bar, Op. 273 (Sept. 17, 1997) [hereinafter D.C. Op. 273].
9. While a violation of the Rules of Professional Conduct does not itself create liability, a lawyer’s compliance with them is not an absolute defense to liability. *See, e.g.*, Cincinnati Bar Ass’n Ethics and Prof'l Responsibility Comm., Op. 2006-2 (2006).
10. *See also* ABA Formal Op. 99-414, *supra* note 4, at 3; Pa./Phila. Formal Op. 2007-300, *supra* note 8 (quoting Attorney Grievance Comm’n of Md. v. Potter, 844 A.2d 367 (Md. 2004) (finding “[t]he client has the right to choose the attorney or attorneys who will represent it . . . Clients are not the ‘possession’ of anyone, but to the contrary, control who represent them. . . . Clients are not merchandise. They cannot be bought, sold or traded. The attorney-client relationship is personal and confidential, and the client’s choice of attorneys in civil cases is near absolute.” 844 A.2d at 384).
11. ABA Formal Op. 99-414, *supra* note 4, at 1.
12. ABA Formal Op. 99-414, *supra* note 4.
13. *Id.* at 2–3.
14. *Id.* at 3.
15. *Id.* at 1. However, an Arizona ethics opinion extended the scope of who is a client beyond “persons who were or are technically clients of the departing attorney and includes anyone with whom the lawyer had significant personal contact while at the firm.” State Bar of Ariz. Comm. on the Rules of Prof'l Conduct, Ethics Op. 99-14 (Dec. 1999).
16. ABA Formal Op. 99-414, *supra* note 4.
17. *Id.*
18. *Id.* at 4.
19. *See* State Bar of Ariz. Comm. on the Rules of Prof'l Conduct, Ethics Op. 99-14 (Dec. 1999).
20. ABA Formal Op. 99-414, *supra* note 4, at 5 n.11; *see also* State Bar of Ariz. Comm. on the Rules of Prof'l Conduct, Ethics Op. 99-14 (Dec. 1999) (holding no ethical rule would prevent a lawyer from communicating with clients before he or she leaves firm).
21. Pa./Phila. Formal Op. 2007-300, *supra* note 8, at 8–9. Nevertheless, the opinion seems to differentiate between the content of any predeparture communication and postdeparture communication. In a footnote, the opinion states that predeparture communication should be limited to factual information regarding the impending departure and should not take the form of active solicitation. *Id.* at 28 n.13.

22. *Id.*
23. *Id.*
24. *Id.*
25. 653 N.E.2d 1179 (N.Y. 1995).
26. *Id.* at 1183. However, the court did not find it impermissible for a lawyer to seek alternative space or affiliations before resigning. *See also* Dowd & Dowd, Ltd. v. Gleason, 816 N.E.2d 754 (Ill. App. Ct. 2004) (reaffirming tenet that preresignation solicitation of firm clients for partner's personal gain is breach of partner's fiduciary duty to firm).
27. Pa./Phila. Formal Op. 2007-300, *supra* note 8, at 10–11.
28. ABA Formal Op. 99-414, *supra* note 4, at 6.
29. *Id.* at 7. Florida has enacted a specific rule of professional conduct governing the conduct of lawyers when they leave a firm. *See* Fla. Rules of Prof'l Conduct R. 4-5.8(c)(1), which provides:
Lawyers Leaving Law Firms. Absent a specific agreement otherwise, a lawyer who is leaving a law firm shall not unilaterally contact those clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer has approached an authorized representative of the law firm and attempted to negotiate a joint communication to the clients concerning the lawyer leaving the law firm and bona fide negotiations have been unsuccessful.
30. ABA Formal Op. 99-414, *supra* note 4, at 5.
31. Pa./Phila. Formal Op. 2007-300, *supra* note 8, at 12 n.3.
32. 393 A.2d 1175 (1978), *superseded on other grounds by* Law Offices of William W. McVay v. Weisman, Goldman, Bowen, Gross, LLP, 2006 Pa. Dist. & Cty. Dec. LEXIS 468, at *9–10 (Allegheny County Dec. 19, 2006).
33. *Id.* at 1181.
34. Pa./Phila. Formal Op. 2007-300, *supra* note 8, at 6.
35. *See* D.C. Op. 273, *supra* note 8, which states:
Any communication which exceeds that required by ethical rules—for example, an active solicitation of the client to leave the lawyer's current firm and join the lawyer at the new firm—could run afoul of the lawyer's obligations under partnership law (for departing partners), corporate law (for shareholders of a professional corporation) and the common law of obligations of employees (for lawyers who are employees of a firm).
- Id.* at 121.
36. *See* Va. State Bar Ethics Counsel Legal Ethics Opinion 1822, issued on January 10, 2006, which found that an associate who left a firm had not violated any ethics rules by refusing to provide the former firm with a list of clients solicited and the content of that letter. The opinion found that nothing in the Rules of Professional Conduct gave the firm the right to police the associate's communications and that there was no affirmative duty to provide that information to the firm.
37. Model Rules of Prof'l Conduct R. 1.16(d) (2010).
38. ABA Formal Op. 99-414, *supra* note 4, at 2; *see also* Model Rules of Prof'l Conduct R. 1.1 & 1.3 (2002).
39. *See* Utah State Bar Ethics Advisory Opinion Comm., Op. 132 (Aug. 26, 1993).
40. Pa./Phila. Formal Op. 2007-300, *supra* note 8, at 9. In fact, the firm may have an obligation to provide the client with the former lawyer's new contact information if asked, before it can have any further discussions with that client. ABA Formal Op. 99-414, *supra* note 4, at 18.
41. *See* D.C. Op. 273, *supra* note 8.
42. ABA Formal Op. 99-414, *supra* note 4, at 8.
43. *Id.*; *see also, e.g.,* Cincinnati Bar Ass'n Ethics and Prof'l Responsibility Comm., Op. 2006-2 (2006).
44. 576 A.2d 985 (1990).
45. *Id.* at 987; *see also In re Matter of Cupples*, 979 S.W.2d 932, 935 (Mo. 1998) (finding that lawyer's conduct, which included secreting files as he prepared to withdraw and removing files without client consent, constituted conduct involving dishonesty, fraud, deceit, and misrepresentation).
46. ABA Formal Op. 99-414, *supra* note 4, at 6 n.12; Pa./Phila. Formal Op. 2007-300, *supra* note 8, at 23 n.9.
47. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 96-400, at 5 (Jan. 24, 1996).
48. Pa./Phila. Formal Op. 2007-300, *supra* note 8, at 25.
49. *Id.*
50. D.C. Bar, Op. 65 (Mar. 14, 1979). Specifically, the opinion found that the effect of the provision was

“to impose a barrier to the creation of a lawyer/client relationship between the departing lawyer and clients of his former firm. Such a barrier is inconsistent with the concept of the practice of law as a profession and at least incidentally interferes with clients’ choice of an attorney.”

51. D.C. Bar, Op. 194 (Nov. 15, 1988). Significant to the committee’s decision was the fact that the penalty “casts a considerably [broad] net by exacting its economic sanction if the erstwhile partner enters into *any* practice of law competitive with that of the former firm,” and not just if the partner’s new practice includes clients of the former firm. Similarly, a partnership agreement that imposed a delay of up to five years in paying out funds from a partner’s capital financial account where the partner leaves the partnership and engages in the practice of law in the Washington area was prohibited. D.C. Op. 273, *supra* note 8.

52. D.C. Bar, Op. 221 (Oct. 15, 1991).

53. *Pierce v. Morrison Mahoney LLP*, 897 N.E.2d 562, 569–71 (Mass. 2008).

54. *See generally* *Capozzi v. Latsha & Capozzi, P.C.*, 797 A.2d 314 (Pa. Super. 2002) (striking down provision that set departing partner’s share of firm at partner’s initial capital contribution—\$5,000—as unreasonable, but holding that such restrictive covenants, if properly tailored, would not violate Pennsylvania law). In reaching this conclusion, the Superior Court of Pennsylvania noted that the courts are not bound by the Professional Rules of Conduct when determining a question of law. *Id.* at 320.

55. State Bar of Ariz. Comm. on the Rules of Prof’l Conduct, Ethics Op. 09-02 (May 2009).

56. D.C. Op. 273, *supra* note 8.

57. *Id.*

58. Joint Pa. and Phila. Bar Ass’n, Op. 99-100 (Apr. 1999).

59. 607 A.2d 142 (N.J. 1992).

60. *Id.*

61. *Id.* at 153.

62. *Id.*

63. *Reeves v. Hanlon*, 95 P.3d 513, 521 (Cal. 2004).