

# **Ethics Informational Packet**

## **NOTIFYING CLIENTS OF CHANGE IN FIRM COMPOSITION**

Courtesy of  
The Florida Bar  
Ethics Department

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## **RULE NOTIFYING CLIENTS WHEN LAWYERS LEAVE FIRMS GOES INTO EFFECT TODAY**

Joy A. Bruner, Assistant Ethics Counsel, *Rule notifying clients when lawyers leave firms goes into effect today*, The Florida Bar News, Jan. 1, 2006, <http://www.floridabar.org/DIVCOM/JN/JNNNews01.nsf/Articles/1A3DF69DF8C7A1C7852570E5005841F8>.

The Ethics Hotline receives numerous inquiries regarding the proper procedures for notifying clients when firms dissolve and/or attorneys leave firms.

There has not been a specific Rule of Professional Conduct addressing these issues. Rather, the Professional Ethics Committee has issued ethics opinions to provide guidance to Bar members.

This changes as of January 1, 2006, when new Rule 4-5.8 goes into effect. The rule emphasizes that clients have the choice of counsel and that generally lawyers and law firms can do nothing to affect the client's right to choose counsel. *See* 4-5.8(b).

The new rule applies to all lawyers leaving firms or involved in a firm dissolution. This rule requires lawyers who are either dissolving a firm or leaving a firm to make a bona fide effort to negotiate a joint communication notifying clients of the change before the lawyers can unilaterally notify clients. Negotiations are to be with a designated lawyer or lawyers authorized by the firm to handle such negotiations.

If negotiations for a joint communication are unsuccessful, a departing lawyer can unilaterally communicate with clients. However, the rule sets out information that must be included in the communication. A lawyer departing from a firm who unilaterally contacts clients must inform the clients that the lawyer is leaving the 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." Rule 4-5.8(d)(1).

Similarly, in firms that are dissolving, if there is not a negotiated method of communication, lawyers in the firm may unilaterally contact clients to tell them of the firm's dissolution. The communication must further "provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms." Rule 4-5.8(d)(2).

In both cases, the communication must provide information to the client regarding any potential responsibility the client has for fees and costs already incurred. The notice must also discuss how any fee and/or costs deposits will be handled and, if appropriate, give notice to the client that a reasonable charge may be imposed for copying the file for a successor attorney. Rule 4-5.8(d)(3).

The rule further provides for the scenario of a client who does not respond to the notice. If a client does not respond to notices informing the client that a lawyer is leaving a firm, the client is considered to remain a client of the firm until such time as the client gives notice otherwise. Rule 4-5.8(e)(1). In the case of a firm dissolution, a client who does not respond to notices of the dissolution is considered to be a client of the lawyer who had primary responsibility for the client's matter until such time as the client indicates otherwise. Rule 4-5.8(e)(2).

The rule makes clear that it is not attempting to create new legal obligations. Subsection (a) states: “The contract for legal services creates the legal relationships between the client and law firm and between the client and individual members of the law firm, including the ownership of the files maintained by the lawyer or law firm. Nothing in these rules creates or defines those relationships.”

It is important to note that the rule makes no distinction between partners, shareholders, and associates. Prior to the enactment of Rule 4-5.8, Florida Ethics Opinion 84-1 stated that when an associate leaves a firm, the preferred method of notifying clients was for the firm and the associate to jointly send a letter to the affected clients informing them of the change and asking the clients to let the firm and the associate know who they wished to continue with their matters. If a joint letter could not be done, the opinion concluded that the associate could independently send a notification to the clients informing them of the associate’s departure and providing new contact information. However, the associate was not allowed to solicit the clients. The continuing validity of Opinion 84-1 will be considered by the Professional Ethics Committee at its January meeting. [Note: The Professional Ethics Committee withdrew Florida Ethics Opinion 84-1 at its January 20, 2006 meeting.]

*Questions regarding Rule 4-5.8 or any of the Rules of Professional Conduct may be directed to the Ethics Hotline at 800-235-8619. The Ethics Hotline is open Monday through Friday from 9 a.m. until 5 p.m. E-mail inquiries may be sent to [eto@flabar.org](mailto:eto@flabar.org).*

## **AMENDMENT CLARIFIES THE DUTIES ASSOCIATED WITH LEAVING A FIRM**

Florida Bar News, January 15, 2015,

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/7d1fa5d263aee7a585257dc400492f7d!OpenDocument>

The Board of Governors has given final approval to a proposed rule amendment clarifying the duties of lawyers and law firms when a lawyer leaves the firm or the firm breaks up.

The board approved the amendment to the comment to Rule 4-5.8 at its December meeting. It now goes to the Supreme Court for approval. The board also received an amendment to Rule 4-1.7 on conflicts of interest and will act on that at its January 30 meeting.

The Rule 4-5.8 amendment addresses questions directed to Bar staff through the Bar's Ethics Hotline by lawyers and law firms and addresses how and which clients must be informed of changes in a firm and provides that such communications must be reasonable in timeliness and nature.

The new comment language is: "Lawyers and firms should engage in bona fide, good faith negotiations within a reasonable period of time following their knowledge of either the anticipated change in firm composition or, if the anticipated change is unknown, within a reasonable period of time after the change in firm composition. The actual notification to clients should also occur within a reasonable period of time. What is reasonable will depend on the circumstances, including the nature of the matters in which the lawyer represented the clients and whether the affected clients have deadlines that need to be met within a short period of time.

"For purposes of this rule, clients who should be notified of the change in firm composition include current clients for whom the departing lawyer has provided significant legal services with direct client contact. Clients need not be notified of the departure of a lawyer with whom the client has had no direct contact. Clients whose files are closed need not be notified unless the former client contacts the firm, at which point the firm should notify the former client of the departure of any lawyer who performed significant legal services for that former client and had direct contact with that former client.

"Although contact by telephone is not prohibited under this rule, proof of compliance with the requirements of this rule may be difficult unless the notification is in writing.

"In order to comply with the requirements of this rule, both departing lawyers and the law firm should be given access to the names and contact information of all clients for whom the departing lawyer has provided significant legal services and with whom the lawyer has had direct contact.

"If neither the departing lawyer nor the law firm intends to continue representation of the affected clients, they may either agree on a joint letter providing that information to those clients, or may separately notify the affected clients after bona fide, good faith negotiations have failed. Any obligation to give the client reasonable notice, protect the client's interests on withdrawal, and seek permission of a court to withdraw may apply to both the departing lawyer and lawyers remaining in the firm."

On the conflict rule, Rules Committee Vice Chair Margaret Mathews said the change would add that lawyers would have a conflict when the attorney has a “significant personal relationship” with the counsel for the opposing party, unless the client gives informed consent. The rule already prohibits that representation if the opposing lawyer is a blood relative or related by adoption or marriage.

The revised comment specifies that “a significant personal relationship includes a domestic partnership or a romantic relationship.”

[Note: The Supreme Court of Florida approved the changes, effective February 1, 2018, in *In re Amendments to Rules Regulating Florida Bar (Biennial Petition)*, No. SC16-1961, 42 Fla. L. Weekly S903, (Fla. Nov. 9, 2017).

#### **4-5.8 PROCEDURES FOR LAWYERS LEAVING LAW FIRMS AND DISSOLUTION OF LAW FIRMS**

**(a) Contractual Relationship Between Law Firm and Clients.** The contract for legal services creates the legal relationships between the client and law firm and between the client and individual members of the law firm, including the ownership of the files maintained by the lawyer or law firm. Nothing in these rules creates or defines those relationships.

**(b) Client's Right to Counsel of Choice.** Clients have the right to expect that they may choose counsel when legal services are required and, with few exceptions, nothing that lawyers and law firms do affects the exercise of that right.

**(c) Contact With Clients.**

(1) *Lawyers Leaving Law Firms.* Absent a specific agreement otherwise, a lawyer who is leaving a law firm may 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.

(2) *Dissolution of Law Firm.* Absent a specific agreement otherwise, a lawyer involved in the dissolution of a law firm may not unilaterally contact clients of the law firm unless, after bona fide negotiations, authorized members of the law firm have been unable to agree on a method to provide notice to clients.

**(d) Form for Contact With Clients.**

(1) *Lawyers Leaving Law Firms.* When a joint response has not been successfully negotiated, unilateral contact by individual members or the law firm must give notice to clients that 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.

(2) *Dissolution of Law Firms.* When a law firm is being dissolved and no procedure for contacting clients has been agreed to, unilateral contact by members of the law firm must give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

(3) *Liability for Fees and Costs.* In all instances, notice to the client required under this rule must provide information concerning potential liability for fees for legal services previously rendered, costs expended, and how any deposits for fees or costs will be handled. In addition, if appropriate, notice must be given that reasonable charges may be imposed to provide a copy of any file to a successor lawyer.

**(e) Nonresponsive Clients.**

(1) *Lawyers Leaving Law Firms.* In the event a client fails to advise the lawyers and law firm of the client's intention in regard to who is to provide future legal services when a lawyer is leaving the firm, the client remains a client of the firm until the client advises otherwise.

(2) *Dissolution of Law Firms.* In the event a client fails to advise the lawyers of the client's intention in regard to who is to provide future legal services when a law firm is dissolving, the client remains a client of the lawyer who primarily provided the prior legal services on behalf of the firm until the client advises otherwise.

**Comment**

The current rule of law regarding ownership of client files is discussed in *Donahue v. Vaughn*, 721 So. 2d 356 (Fla. 5th DCA 1998), and *Dowda & Fields, P.A. v. Cobb*, 452 So. 2d 1140 (Fla. 5th DCA 1984). A lawyer leaving a law firm, when the law firm remains available to continue legal representation, has no right nor expectation to take client files without an agreement with the law firm to do so.

While clients have the right to choose counsel, that choice may implicate obligations such as a requirement to pay for legal services previously rendered and costs expended in connection with the representation as well as a reasonable fee for copying the client's file.

Whether individual members have any individual legal obligations to a client is a matter of contract law, tort law, or court rules that is outside the scope of rules governing lawyer conduct. Generally, individual lawyers have such obligations only if provided for in the contract for representation. Nothing in this rule or in the contract for representation may alter the ethical obligations that individual lawyers have to clients as provided elsewhere in these rules.

In most instances a lawyer leaving a law firm and the law firm should engage in bona fide, good faith negotiations and craft a joint communication providing adequate information to the client so that the client may make a fully informed decision concerning future representation. In those instances in which bona fide negotiations are unsuccessful, unilateral communication may be made by the departing lawyer or the law firm. In those circumstances, great care should be taken to meet the obligation of adequate communication and for this reason the specific requirements of subdivisions (d)(1) and (3) are provided.

Lawyers and firms should engage in bona fide, good faith negotiations within a reasonable period of time following their knowledge of either the anticipated change in firm composition or, if the anticipated change is unknown, within a reasonable period of time after the change in firm composition. The actual notification to clients should also occur within a reasonable period of time. What is reasonable will depend on the circumstances, including the nature of the matters in which the lawyer represented the clients and whether the affected clients have deadlines that need to be met within a short period of time.

For purposes of this rule, clients who should be notified of the change in firm composition include current clients for whom the departing lawyer has provided significant legal services



with direct client contact. Clients need not be notified of the departure of a lawyer with whom the client has had no direct contact. Clients whose files are closed need not be notified unless the former client contacts the firm, at which point the firm should notify the former client of the departure of any lawyer who performed significant legal services for that former client and had direct contact with that former client.

Although contact by telephone is not prohibited under this rule, proof of compliance with the requirements of this rule may be difficult unless the notification is in writing.

In order to comply with the requirements of this rule, both departing lawyers and the law firm should be given access to the names and contact information of all clients for whom the departing lawyer has provided significant legal services and with whom the lawyer has had direct contact.

If neither the departing lawyer nor the law firm intends to continue representation of the affected clients, they may either agree on a joint letter providing that information to those clients, or may separately notify the affected clients after bona fide, good faith negotiations have failed. Any obligation to give the client reasonable notice, protect the client's interests on withdrawal, and seek permission of a court to withdraw may apply to both the departing lawyer and lawyers remaining in the firm.

Most law firms have some written instrument creating the law firm and specifying procedures to be employed upon dissolution of the firm. However, when such an instrument does not exist or does not adequately provide for procedures in the event of dissolution, the provisions of this rule are provided so that dissolution of the law firm does not disproportionately affect client rights.

As in instances of a lawyer departing a law firm, lawyers involved in the dissolution of law firms have a continuing obligation to provide adequate information to a client so that the client may make informed decisions concerning future representation.

The Florida Bar's Practice Resource Institute has sample forms for notice to clients and sample partnership and other contracts that are available to members. The forms may be accessed on the bar's website, [www.floridabar.org](http://www.floridabar.org), or by calling The Florida Bar headquarters in Tallahassee.

Lawyers involved in either a change in law firm composition or law firm dissolution may have duties to notify the court if the representation is in litigation. If the remaining law firm will continue the representation of the client, no notification of the change in firm composition to the court may be required, but such a notification may be advisable. 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. If the departing lawyer and the law firm have made the appropriate request for the client to select either the departing lawyer or the law firm to continue the representation, but the client has not yet responded, the law firm should consider notifying the court of the change in firm composition, although under ordinary circumstances, absent an agreement to the contrary, the firm will continue the representation in the interim. If the departing lawyer and the law firm have agreed regarding who will continue

handling the client's matters then, absent disagreement by the client, the agreement normally will determine whether the departing lawyer or the law firm will continue the representation.

Adopted effective January 1, 2006 (SC05-206) from revised supreme court opinion issued on December 8, 2005, original opinion issued October 6, 2005 (916 So.2d 655), amended November 9, 2017, effective February 1, 2018.

## PROFESSIONAL ETHICS OF THE FLORIDA BAR

### OPINION 69-1 March 28, 1969

In the absence of any controlling provision in a partnership agreement or other instrument or of consent by the continuing firm, or of specific instructions from the client in question, a withdrawing partner has no right to remove from the partnership premises files on which he may have worked while a member of the firm.

**Canons:** 7 and 33

Chairman MacDonald stated the opinion of the Committee:

Members of The Florida Bar advise that one member recently withdrew from their partnership, leaving the remaining partners to continue the firm practice. The withdrawing partner, upon the discontinuance of his association with the firm, removed a considerable number of files from the firm offices to his new office. The firm did not consent in advance to this removal and desires their return; the withdrawing partner, who had performed substantially all of the work in connection with the files in question, is of the view that he is directly responsible for the clients and that the files should not be returned until the clients specifically so request.

The continuing firm and the withdrawing partner commendably all seek our guidance in this controversy, recognizing the validity of the proposition that it is for the client to decide who shall represent him, and limiting their disagreement to the identity of the proper possessor of the files pending such designation.

We observe at the outset that it is entirely likely as a matter of law that all of the inquiring individuals, both the withdrawing partner and the continuing firm, may have legal obligations in connection with the handling of the various legal matters which may be involved in the files described. The nature and scope of these obligations might vary dependent upon the subject matter of the files. In all events, there are involved questions of law beyond our purview. However, as to the matter of legal ethics here involved, it is our decided view that in the absence of any controlling provision in a partnership agreement or other instrument, and in the absence of consent by the continuing firm, a withdrawing partner has no right to remove from the partnership premises files on which he may have worked while a member of the firm in advance of specific instructions from the client whose work is encompassed by the file in question.

We concur in the suggestion advanced by the continuing firm that a dignified and appropriate notice of the withdrawal be submitted to the clients involved with an appropriate request that instructions be given.



**PRACTICE RESOURCE INSTITUTE SAMPLE ADMINISTRATIVE FORM**

**JOINT LETTER TO CLIENTS ANNOUNCING THE TERMINATION/DEPARTURE  
OF AN ASSOCIATE OR PARTNER  
(CUSTOMIZE TO SUIT CIRCUMSTANCES)**

Re: [client/matter name]

On [date], [departing lawyer] [is leaving/left] our firm to [join the law firm of [name]]/ [commence practice as a sole practitioner].

Inasmuch as [departing lawyer] was your designated lawyer on the above matter, we are required by the Rules Regulating The Florida Bar to inform you that you have the right to choose to have [departing lawyer] continue in [his/her] new capacity to represent you in this matter, **or** you may have our firm continue to represent you, in which case the file will be handled by [firm lawyer], **or** you can choose to retain an entirely new lawyer.

If you wish to have [departing lawyer] **or** a new lawyer continue to represent you, arrangements to secure your outstanding account with us will have to be made before the file can be released to [departing lawyer] **or** new lawyer.

[If applicable: You may be liable for fees and costs for services already provided by the firm.]

[If applicable: Any retained/unspent fees or costs currently held by the firm will be promptly returned or transferred to [departing lawyer] or [new lawyer] as you designate.

Please advise [departing lawyer] and us, as quickly as possible, of your decision so that continuity in your representation is assured. You may do so by indicating your choice below and returning a signed and dated copy in the enclosed stamped envelope. Please retain the additional copy of this designation letter for your records.

Yours truly,

[for the firm]

Instructions:

- I wish my file to stay with [*name of former firm*].
- I wish my file and trust account balance to be transferred to [*name of departing lawyer*]. Please send my file to [*departing lawyer*] at [*departing lawyer's new address*]. For banking instructions, you may contact [*departing lawyer*] at [*departing lawyer's new number and/or email*].
- I will retain new counsel and have them contact [*name of former firm*].

\_\_\_\_\_

\_\_\_\_\_

[Client's Printed Name]

[Client's Signature]

\_\_\_/\_\_\_/\_\_\_

Date