



# Transitioning to a New Law Firm

## Introduction

**D**uring the course of an average lawyer's legal career he/she would have switched to a new law firm at least once. Switching from one law firm to another is very common among young lawyers as they strive to find their feet in the profession. The reasons commonly given by them for changing law firms, has to do with poor salaries, bad working conditions and sadly, some of them totally lose interest in the law. However, some young lawyers also leave their current law firms to establish their own law firms. It is very easy to blame the economic situation in the country for being the root cause of most of the reasons mentioned but if we examine things more closely we will find that members of the legal profession have a role to play in mitigating the harshness of the legal climate for young lawyers. Following from the above, changing law firms would have a significant impact on the law firm and clients associated with the departing counsel but more importantly, it raises serious ethical issues which would be the subject of our discourse.

A departing counsel's duties arise from the fact that lawyers in a firm are obliged to protect clients' interests and owe contractual, fiduciary and agency duties to the law firm. These will be discussed briefly below.

## Communication

Firstly, the departing lawyer must give timely notice to their current law firm. Most employment contracts contain provisions that stipulate a minimum period within which to give notice of termination of employment or resignation for example 6 months or 3 months. Being mindful of this, the lawyer should ensure that such notice is given within the period stipulated in the contract to minimise the effect of the departure of the lawyer on the firm due to its reliance on the lawyer's services. In addition, lawyers with management roles within the firm should avoid decisions that would affect the firm negatively.

Secondly, the law firm and the departing lawyer have an ethical obligation to inform clients of the departure of the lawyer, so that they can make informed decisions on their next course of action. In the same vein, the firm and the lawyer concerned should ensure that the client's matters are handled professionally by a new lawyer assigned by the firm. Our Rules of Professional Conduct are silent on this issue so we will consider the American Bar Association formal opinion 99-414 which states that "the departing lawyer and responsible members of the law firm who remain have an ethical obligation to assure that prompt notice is given to clients on whose active matters



she is currently working on." The Arizona Opinion 99-14 explains further that a departing lawyer who has had "significant personal contact" with the firm's client should inform the client that they are leaving the firm.

It has been advised that a joint letter from the law firm and the departing lawyer should be sent to the client stating the following:

- a. an explanation for the lawyer's withdrawal and possible future unavailability;
- b. The time frame after which the departing lawyer will no longer be available;
- c. Status of client matter;
- d. Client's right to choice of counsel, i.e. former firm, new firm, other counsel. Obtain client written consent to successor counsel;
- e. Identity of person to contact regarding client file;
- f. Accounting for client property in the firm's possession, whether received directly from clients or third persons; and
- g. Status of fees earned and amounts owed.
- h. Make sure that all com-

munications, written or verbal, concerning availability of lawyer's services are truthful, that is not false, fraudulent, misleading or deceptive

- i. A place for the client to sign and return the letter, with instructions on

## Fiduciary Duty

All lawyers whether they are associates or partners owe a fiduciary duty of loyalty as members of the firm to deal with each other openly, fairly and honestly. In **BURKE v LAKIN LAW FIRM** 2008 WL 64521 (S.D.Ill. Jan. 3, 2008) the court in explaining this duty advised that lawyers should not 1) exploit their position within the firm for their own benefits 2) hinder the ability of firm to conduct the business for which it was established. To throw more light on this issue, departing lawyers should not interfere with the firm's contracts with existing clients and should definitely not use the firm's resources to set-up their new law firm and finally, should not attempt to lure the remaining employees of the law

firm.

In **DOWD & DOWD, LTD. v GLEASON**, 181 Ill.2d 460, 693 E.2d 358 (Ill. 1998) and 352 Ill.App.3d 365, 816 N.E.2d 754 (1st Dist. 2004). The court set out the ethical guidelines that should determine the conduct of departing counsel in relation to the firm and its clients.

The Dowd case concerns two lawyers who decided to leave the Dowd law firm and start their own practice. To this end, they spent over four months secretly planning their departure and trying to take one major client. Using confidential information from their current law firm they managed to secure financing for their law firm and they began to encourage other employees of the law firm to join them. When Dowd became aware of these facts and action was instituted against the lawyers and their law firm for breach of fiduciary duty to Dowd, their employment contract and tortious interference with prospective economic advantage. This action lasted for 14 years; however it resulted in a judgment of \$2.5million in damages in favour of Dowd.

In the case the court agreed that certain preliminary arrangements may be undertaken by a departing lawyer to protect the principle of a client's freedom of choice in counsel, however the principle of choice is "is not so overpowering that it shields all pre-termination competition by members of a firm." The court further explained that "a lawyer's conduct can be a breach of fiduciary duty when, before the lawyer departs, he

"secretly attempt[s] to lure firm clients (even those that the partner has brought into the firm and personally represented) to the new association lying to clients about their rights with respect to the choice of counsel, lying to partners about plans to leave, and abandoning the firm on short notice (taking clients and files) would not be consistent with a partner's fiduciary duties. The "fence" or dividing line, between permissible and impermissible conduct in these circumstances, the Court concluded, "cannot be drawn with mathematical precision."

## Other Matters

- A departing lawyer
- i. Should ensure that trust monies are in order and that advance fees are paid back to the client if necessary.
  - ii. Safeguard the confidentiality of former clients during interviews or other dealings with third parties.
- In addition the law firm should retrieve all clients' files in the lawyer's possession.

## Conclusion

It is undeniably that lawyers switch law firms in the course of their legal career however if there is a proper adherence to the rules of professional etiquette, acrimony and unnecessary disputes between the parties involved would be avoided.