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Roadmap to Retirement Series:

Ethical Considerations for Attorneys Winding Down, Leaving, Withdrawing From or Selling a Law Practice

Presented by the Senior Lawyers Section

Thursday, May 9, 2019

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Cincinnati Bar ASSOCIATION

Ethical Considerations for Attorneys Winding Down, Leaving, Withdrawing From, or Selling a Law Practice
May 9, 2019

11 a.m. **Registration, Networking & Complimentary Lunch**

11:30 a.m. **Thomas L. Cuni, Esq.** **TAB A**
Cuni Ferguson & LeVay Co. LPA

Edwin W. Patterson, Esq. **TAB B**
General Counsel, Cincinnati Bar Association

Mark A. Vander Laan, Esq. **TAB C**
Dinsmore & Shohl LLP

1:00 p.m. **Adjourn**

TAB
A

THOMAS L. CUNI, ESQ.
CUNI, FERGUSON & LEVAY CO., LPA
10655 SPRINGFIELD PIKE
CINCINNATI, OHIO 45215
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College: University of Cincinnati, McMicken College of Arts & Sciences – Bachelor of Arts in Political Science in 1969

Law School: University of Cincinnati, College of Law – Juris Doctor in 1975

License to Practive Law: Admitted to the practice of law in Ohio and in the U.S. District Court for the Southern District of Ohio in 1975.

Work History: Partner in the firm of Osborne & Cuni from 1976 to 1978. Associate Attorney with the firm of Schwartz, Manes & Ruby Co., LPA from 1978 to 1983. The sole shareholder of Thomas L. Cuni Co., LPA from 1983 to 1988. One of the founding partners of Cuni, Ferguson & LeVay Co., LPA (originally Matre, Cuni & Orner Co. LPA) from 1988 to 2013. From 2014 to the present I have been of counsel to Cuni, Ferguson & LeVay Co., LPA.

Honors and Peer Ratings: I have maintained an AV rating by Martindale-Hubble for more than 20 years. I was named the VLP Lawyer of the Year in 2004 by the Volunteer Lawyers for the Poor and I was given the Trustees Award in 2015 by the Cincinnati Bar Association. I am the recipient of the John Warrington Community Service Award at the next annual meeting of the Cincinnati Bar Association in 2018.

Practice Areas: Corporate Law, Acquisitions and Sales of Businesses, Commercial Real Estate, Commercial Litigation, and Tax Deferred Exchanges

Practice Experience: The primary focus of my law practice was the representation of small businesses (under 200 employees) which included the formation of companies; the purchase and sale of businesses (approximately 350 significant transactions); the litigation of commercial disputes; and representation of business clients in the other normal business related issues and transactions for small businesses. I have organized several hundred business entities and represented clients in the purchase and sale of more than 200 significant commercial real estate holdings. I have represented parties in more than 600 civil cases of which approximately 100 resulted in trials to the bench or to a jury. Business disputes and construction related litigation were the most significant parts of my prior litigation experience. As a qualified intermediary, I have participated in excess of 2000 like-kind exchanges of real estate.

Alternate Dispute Resolution: As a member of the Hamilton County Court of Common Pleas Arbitration Panel, I participated as an arbitrator in more than 70 arbitrations. By the agreement of counsel, I have been selected as the single arbitrator in 5 controversies involving disputes among the shareholders, members, or partners of business entities.

Professional Activities and Memberships: I am a Past President of the Cincinnati Bar Association ("CBA"); a Past member of the CBA Board Trustees; a Past Co-Chair of Bench and Bar Committee of the CBA; a Past Chair of Alternate Dispute Resolution Committee of the CBA; a Past Chair of Professionalism Committee of the CBA; a Past Chair of the Continuing Legal Education Committee of the CBA. As a member of the Ohio Bar Association I participated in the Litigation and Real Estate Sections. As a member of the American Bar Association, I participated in the sections on Real Estate and Corporate Law. Currently I serve on the Board of Trustees of ProKids of Cincinnati. I am the Immediate Past President of that organization. I am a volunteer attorney for the guardian ad litems provided by ProKids in Juvenile Court cases. I am currently actively providing representation in 42 cases for ProKids. I have been a supervising attorney for the Entrepreneurial Law Clinic at the College of Law at the University of Cincinnati for three academic years and during the summer session of 2017 and the Fall semester, I served as the temporary director of the clinic. I am a member of the Literary Club in Cincinnati at which I have presented 4 papers on various topics.

Family: I have been married to Sally W. Cuni since June 20, 1970 and we have two sons, Seth C. Cuni and Zachary T. Cuni.

Born: Logan, West Virginia, October 4, 1947

Military Service: 1st Lt. U.S. Army, Field Art., 1969-1972. Service with the 101st Airborne Division in the former Republic of Vietnam as a forward observer attached to the 1/506th Infantry Regiment.

RETIREMENT PLANNING FOR LAW FIRMS AND ASSOCIATIONS

Thomas L. Cuni, Esq.
CUNI, FERGUSON & LeVay Co., L.P.A.
10655 Springfield Pike
Cincinnati, Ohio 45215
Email: TCuni@cfl-law.com

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1. OVERVIEW.

The goal of this presentation is to outline general guidelines for developing a written retirement agreement for a law firm or legal association in the event of the death, disability, retirement, or withdrawal of a principal.

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2. STRUCTURE.

The Agreement should be in writing and signed by all of the partners, shareholders, or members of the firm or association, whom I will refer to in the plural as the "**Principals**" and in the singular as a "**Principal**". The Agreement should define:

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A. The date or the event which triggers the buyout of a Principal's interest;
B. The mathematical method of determining the purchase price of a Principal's interest;
C. The interest rate and other terms of payment of the purchase price.

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3. TRIGGERING EVENTS.

- There are a number of events which can, or should be, included in a retirement agreement.

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A. The death of a Principal is the most obvious, and in many cases the easiest triggering event for a buyout. In many cases, term insurance can ease the financial burden for the surviving Principals. The alternative to a lump sum buyout paid with insurance proceeds, is a promissory note with extend payment terms. A buyout in the event of the death of a Principal reduces the risk of a potential conflict with the estate of the deceased principal while also benefiting the heirs of the decedent.

B. The disability of a Principal can be addressed in terms nearly identical to a normal retirement buyout. The definition of what constitutes a disability is vital to both the disabled Principal and those Principals who are to pay the purchase price buyout.

C. The retirement of a Principal should not, in my opinion, be left undefined. In order to have succession in a firm, the succeeding Principals, who are likely younger, should have the benefit of certainty. It also benefits the retiring Principal to have some degree of certainty that there will be a payment for the value of his/her interest.

D. The purchase of a Principal's interest in the event of either a voluntary or an involuntary withdrawal can be structured in various ways. The general concept in such situations is that a discounted purchase price or forfeiture may be justified.

The structure of the buyout will vary substantially depending upon size of the firm, the type of practice, and the age of Principals to name only a few of the factors to be considered.

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4. PURCHASE PRICE.

- The Purchase Price for a Principal's interest in a firm will vary based upon many of the same factors as discussed in the preceding section. There is no formula or customary method for determining and calculating a purchase price. The following list is not exhaustive, but may serve as an illustration of how valuations may be approached.

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A. Practices which are based upon one time transactions with clients such as family law, bankruptcy, personal injury, and criminal law generally do not have significant value absent the continued participation of the withdrawing Principal. In such situation a Purchase Price might be established based upon the originating handling attorney model that is used by many firms in calculating compensation, but will probably require some continued participation in the practice by the retiring Principal. I have seen a range of originating attorney percentage ranging from Five Percent (5%) to Twenty Percent (20%).

B. Practices such as estate planning and probate and trust administration can have a value based upon estimated legal services that can be expected in the future or can be based upon actual work received during a defined period.

C. Law practices which provide legal services to clients who maintain a continuing relationship with a firm provide a more predictable basis for valuation and the value can be calculated based upon prior revenues.

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An example of a valuation formula which illustrates many of the factors involved in calculation the value of a firm:

- Begin with the balance sheet or book value.
- Add work in process adjusted by the historical realization rate.
- Add accounts receivable adjusted by the historical collection rate.
- Multiply the total by the percentage of the Principal's ownership in the firm.

If the firm operates on the association model rather than the partnership model the value might be calculated based on book value plus percentages of the Principal's work in progress and accounts receivable adjust for historical realization and collection rates.

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5. METHOD OF PAYMENT.

The calculated value for the redemption or cross-purchase of the Principal's interest can be spread out over a number of years. The term for payment is generally dependent upon the availability of projected revenues. A fairly frequent formula is payments over five (5) years at an interest rate determined by the Prime Rate plus One Percent (1%) to Two Percent (2%) on the date of the triggering event.

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6. CONCLUSION.

Planning in advance will substantially improve the chances of having a successful retirement agreement. The discussions among the Principals will help shape the strategies for building a firm that will have value beyond the participation of current Principals. Which will in turn provide a way for a retiring Principal to be paid for the value of the firm which he or she helped to create and sustain.

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The structure of the buyout will vary substantially depending upon size of the firm, the type of practice, and the age of Principals to name only a few of the factors to be considered.

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6. **CONCLUSION.** Planning in advance will substantially improve the chances of having a successful retirement agreement. The discussions among the Principals will help shape the strategies for building a firm that will have value beyond the participation of current

Principals. Which will in turn provide a way for a retiring Principal to be paid for the value of the firm which he or she helped to create and sustain.

TAB
B

EDWIN W. PATTERSON III

Mr. Patterson has been employed by the Cincinnati Bar Association since 1982, and presently holds the title of General Counsel. His primary responsibilities, as counsel to the Certified Grievance Committee, include supervising the intake and evaluation of grievances against attorneys, case management for the Committees, and representation of the Association at administrative hearings. He also serves as advisor to the Ethics, Fee Arbitration, Unauthorized Practice of Law and Professionalism Committees of the Cincinnati Bar Association.

He is frequently called upon to interpret the rules of ethics for members of the Bar, and has lectured on the subject of legal ethics at seminars sponsored by the Cincinnati Bar Association, the University of Cincinnati College of Law, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, the Hamilton County Trial Lawyers Association, and others. He served on the Ohio Supreme Court's Task Force on Rules of Professional Conduct from 2003-2006.

Mr. Patterson is a graduate of Miami University and the University of Toledo College of Law. He was admitted to the practice of law in Michigan in 1978, and in Ohio in 1979. He previously served as Commission Counsel to the Ohio Ethics Commission.

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Cincinnati Bar Association
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Who Will Clean Up After You?

Who Will Clean Up After You?

By Edwin W. Patterson III

The phone rings. It's someone looking for files, documents, or personal property from an attorney who is missing or deceased. While you may think this is rare, in fact, the CBA receives such calls practically every week. And this is not just a local problem — it happens across the state and across the country. At one point last year, the Office of Disciplinary Counsel in Columbus was storing 2,299 boxes of client files recovered from the offices of missing or deceased Ohio attorneys. Apparently, attorneys all too often are unprepared for what would happen to their practice in the event they become even temporarily unavailable to serve their clients. Now would be a good time to take steps to ensure that your clients' interests are protected, even in your absence.

The first step which we are proposing is modest, but critical. To whom do we refer the caller? Sometimes, with luck, we can identify someone who was associated with the now missing, incapacitated or deceased attorney. A staff member might recall a connection, or we might find a clue in an old directory or membership file. Failing that, our last resort is a provision in the Supreme Court Rules for the Government of the Bar of Ohio: "[D]isciplinary counsel or the chair of a certified grievance committee may appoint one or more attorneys to inventory the files of an attorney and take action . . . as is necessary to protect the interest of clients of the attorney." Gov. Bar R. V §26.

As a service to the Bar, the public, and attorneys' surviving families, the CBA has created a voluntary system to enable you to designate an inventory attorney. The Inventory Attorney Program provides a starting point for winding down a practice. The following checklist will help begin the process.

The Inventory Attorney Program Checklist:

Considerations in Selecting an Inventory Attorney

- Select a licensed Ohio attorney whom you trust.
- Discuss what will need to be done in the event you are unavailable.
- Explain where to find important documents, files and any other important information that may be specific to your practice (see suggested list below).
- Don't make your inventory attorney's job more difficult than necessary. This is a great time to scrutinize your records management and retention policies.
- Your inventory attorney does not need to be a person capable of handling all of your outstanding cases. He or she simply needs to be able to close down your practice.
- Inform the CBA, your office staff and family of your inventory attorney selection.

Suggested Information to Share with Your Inventory Attorney

- Primary and satellite office addresses and access information
- Staff names and duties
- Landlord and lease information
- Information on calendaring, billing, and case management systems
- Passwords
- Contact information for key vendors such as accountant, payroll service, insurance agent and IT consultant
- Safety deposit box location
- IOLTA and operating account numbers and location(s)
- Professional liability insurance carrier and policy number
- Office insurance carrier and policies

How to Participate in the CBA Inventory Attorney Program

- Download a copy of the form shown on the adjoining page at www.cincybar.org.
- Complete the form in collaboration with your designated inventory attorney.
- Submit it to the CBA at inventory@cincybar.org. The CBA will maintain a record of your designated inventory attorney.

Patterson has served as general counsel for the CBA for more than 30 years.

Cincinnati Bar Association
est. 1872

Cincinnati Bar Center
225 E. Sixth St., 2nd Floor
Cincinnati, OH 45202
(513) 381-8213
inventory@cincybar.org

Inventory Attorney Program

Designation of Inventory Attorney

The attorneys named below wish to participate in the Inventory Attorney Program. The Inventory Attorney designated below should be contacted in the event of the death, disappearance, disability, or leave of absence of the Designating Attorney.

Name of Designating Attorney _____

Ohio Bar Number _____

Office Address _____

Office Phone _____

Email _____

Signature of Designating Attorney _____ **Date** _____

Name of Inventory Attorney _____

Ohio Bar Number _____

Office Address _____

Office Phone _____

Email _____

Signature of Inventory Attorney _____ **Date** _____

This designation is not intended to create a legally binding agreement.

Please return your completed designation form to the CBA at inventory@cincybar.org.

Questions? Please call (513) 699-1407.

Ohio Board of Professional Conduct

OHIO ETHICS GUIDE
SUCCESSION PLANNING

Succession Planning

The premature closing of a law office can result from the **unexpected disability, death, disappearance, or discipline of a lawyer**. The failure to plan adequately for the unexpected can result in harm to clients and in confusion and hardship for the lawyer's family, staff and professional colleagues. Developing a succession plan in advance ensures the orderly transfer of a client's affairs and file to a new lawyer, as well as the return of moneys held in trust, and satisfies the lawyer's ethical obligation to provide competent and diligent representation.

This ethics guide is a preventative tool to assist the Ohio bar in developing a succession plan.

The guide charts a path for a lawyer to facilitate the transition of open client matters to new lawyers or a successor lawyer appointed in advance by the affected lawyer. This guide addresses many common issues and offers measures that may be taken in advance of death or disability, but does not address every conceivable consequence of an untimely death/disability of a lawyer. Specific questions not addressed by this ethics guide may be posed to the legal staff of the Board of Professional Conduct.

This ethics guide does not address the issues inherent in the sale of a law practice that occurs before or after the death or disability of a lawyer.

Terminology

Terms used in this ethics guide include:

Affected Lawyer ➔ A lawyer whose death, temporary or permanent disability, disappearance, or discipline will trigger the need for the services of a successor lawyer. These events are collectively referred to in the ethics guide as "death or disability."

Successor Lawyer ➔ A lawyer chosen in advance by the affected lawyer to transition his or her practice after death or disbarment or manage the practice during disability or disappearance.

Immediate Protective Action ➔ A form of limited scope representation undertaken by the successor lawyer to safeguard the interests of the affected lawyer's clients. Tasks may include obtaining extensions of time from opposing counsel, filing of motions for continuances with courts and administrative agencies, and filing notices, motions, and pleadings on behalf of the affected lawyer's clients with their prior consent.

Am I Required to Develop a Succession Plan?

The Ohio Rules of Professional Conduct do not specifically mandate that a lawyer create a succession plan. However, several rules, when read in conjunction with their related comments, strongly suggest that a succession plan is necessary to protect clients from the adverse consequences arising from the lawyer's death or disability. A succession plan safeguards the client's legal interests, protects and accounts for client funds and property held in trust, and maintains the confidentiality of information related to the representation.

A succession plan can be viewed as a continuation of a lawyer's duty of competent and diligent representation. Prof. Cond. R. 1.1 and 1.3. In fact, Comment [5] to Prof.Cond.R. 1.3 addresses the steps a lawyer should undertake to prevent the neglect of client matters.

The comment provides that the duty of diligence may require that the lawyer prepare a succession plan that designates another competent lawyer to:

- Review client files;
- Notify each client of the lawyer's death or disability;
- Determine whether there is a need for immediate protective action.

Although representation normally will terminate when the lawyer is no longer able to adequately represent the client, the lawyer's fiduciary obligations of loyalty and confidentiality continue beyond the termination of the agency relationship. ABA Formal Op. 92-469.

What Are the Core Elements of a Succession Plan?

Every solo or small firm practitioner should prepare a written succession plan for the practice that includes detailed instructions to members of the lawyer's immediate family, a designated successor lawyer, the lawyer's nominated executor or personal representative, and key office staff.

The following are the recommended core elements of a comprehensive plan:

- A written agreement with the designated successor lawyer. *See page 4.*
- Information regarding the status of open client matters, including the location and status of client files (both closed and opened);
- A copy of the practice's client file retention plan;
- Details concerning IOLTA and operating accounts and client ledgers;
- The location of log-in and password information for office computers, mobile devices, voicemail, cloud storage, billing systems, calendaring system, email (including server addresses and passwords), online banking, and other websites upon which the law office relies;
- The location of accounts payable and receivable information and billing/ collection practices;
- Contact information for office personnel and key vendors;
- Detailed information (leases, insurance, taxes, sale of building) needed to physically close and wind up a law practice, if applicable;
- An office procedures manual. *See page 7.*

A review and discussion about the succession plan and its contents should be undertaken at least once a year with those persons responsible for implementing and carrying out the succession plan.

Corporate Entity Considerations

If the affected lawyer is the sole member of a LLC or LPA, the LLC or LPA must pre-authorize someone other than the sole member to act on behalf of the entity and carry out the succession plan in the event of the member's death or disability. The corporate entity must have the appropriate resolution in place that states when and how the successor lawyer may act on behalf of the entity, after the death or disability of the affected lawyer.

Why Designate a Successor Lawyer?

The succession plan should include the designation of a competent and diligent lawyer as the successor lawyer. Some malpractice insurance carriers may require the designation of a successor lawyer. A successor lawyer typically is granted authority by the affected lawyer to inventory the affected lawyer's files and make determinations as to which client matters need immediate protective action. In addition, the successor lawyer is typically responsible for notifying the affected lawyer's clients and the of the death or disability affected lawyer. See ABA Adv. Op. 92-369.

If a successor lawyer was not designated in advance, any willing and able lawyer may be approached by the affected lawyer's family, the local bar association, Disciplinary Counsel, or law office staff to fulfill the role. Gov.Bar R. V, Sec. 26.

The designation of a successor lawyer will ensure client confidentiality and prevent malpractice if a lawyer is temporarily disabled. In addition to the inventorying and transferring of client files, the successor lawyer may take on a variety of other tasks agreed upon in advance with the affected lawyer.

In addition to being someone the affected lawyer knows and trusts, the most effective successor lawyer will be one who practices in the same fields or specialties as the affected lawyer. A suitable candidate may be someone with whom the affected lawyer has co-counseled or to whom the affected lawyer has referred matters.

How Do I Designate a Successor Lawyer?

A written agreement between the affected lawyer and the successor lawyer is essential to memorialize the arrangement and designate the duties and responsibilities of the successor lawyer. At a minimum the agreement should authorize and direct the successor lawyer to promptly inventory and promptly review the client files (within 24-48 hours after death or disability) and determine those matters that need immediate protective action. Other key provisions in the written agreement include:

- Appointment of the successor lawyer with the legal authorization to undertake and accomplish all the actions contemplated by the agreement. The appointment will become effective only upon the affected lawyer's death or disability. (approval is not required by Supreme Court of Ohio rules);
- The steps necessary for the successor lawyer to be notified by the affected lawyer's family or personal representative in the event of the affected lawyer's death or disability;

- A provision concerning confidentiality to authorize the successor lawyer to review and inventory client files; inclusion of a confidentiality provision furthers support the implied disclosure authorized by Prof.Cond.R. 1.6(a);
- Authority to carry out immediate protective action on behalf of clients including communicating with courts and opposing counsel;
- Authority to notify clients of the death or disability of the affected lawyer (a draft letter can be prepared in advance for the successor lawyer to utilize for this purpose);
- Authority for the successor lawyer to access and serve as a signatory on the law practice's operating account and IOLTA during disability or in the event of death;
- Authority to assume possession of client files for the purposes of inventorying and reviewing the files;
- Any compensation that will be paid or costs reimbursed to the successor lawyer by the affected lawyer's estate or practice;
- Indemnification of the successor lawyer by the practice or the estate;
- Termination of the agreement.

Other provisions in the written agreement may include:

- Winding down the business affairs of the law practice, including paying business expenses, collecting outstanding fees, terminating malpractice insurance, and purchasing a tail policy;
- Informing the Office of Disciplinary Counsel or local bar association where the affected lawyer's closed files and or original documents will be stored and the name, address, and phone number of a person able to retrieve the files.

How Are Clients Notified?

Client Notification of the Succession Plan

At the outset of any client representation, the affected lawyer should notify clients that the lawyer has arranged for a successor lawyer to transition the practice in the event of death or disability. The affected lawyer should indicate in the initial fee or retainer agreement that a successor lawyer has been designated who will undertake immediate protective action until new counsel is retained by the client. Immediate protective action undertaken by the successor lawyer should be explained to the client so the client is aware of what type of action may be taken on his or her behalf. The affected lawyer should obtain the advance written consent from each client to the limited representation by the successor.

Notification Upon Implementation of the Plan

Upon completing a review and inventory of the affected lawyer's closed and active client files, the successor lawyer should promptly contact each active client of the affected lawyer to notify him or her of the incapacity of the lawyer. The written notification to clients from the successor lawyer should contain at a minimum:

- The status of the active client matter and any pending deadlines or time limitations;
- An accounting of any funds or property held in trust;

- The status of any outstanding fees owed by the client;
- A request for specific instructions from the client as to the disposition of the file. Prof.Cond.R. 1.15(d). The options should include ❶ directing that the file be sent to a new lawyer, ❷ advising the client how to retrieve the file, or ❸ asking the successor lawyer for assistance in obtaining new counsel.

While conducting the inventory of client files and reviewing the law firm calendar, the successor lawyer may encounter situations where immediate protective action should take precedence over notifying the client of their lawyer's death and requesting the client's directions about file retrieval or transfer.

For example: **A motion hearing scheduled 24 hours after death of the affected lawyer would necessitate the successor lawyer preparing for and attending the hearing before any formal notification is initiated.**

What About Potential Conflicts?

The written agreement with a successor lawyer should delineate whether the successor lawyer will be representing ❶ the interests of the affected lawyer, or ❷ represent some or all of the clients, or ❸ neither.

The possibility of a conflict of interest exists depending upon how the "client" is identified in the written agreement with the affected lawyer. If the successor lawyer is designated in the written agreement as representing the affected lawyer, the successor lawyer may not inform a client about potential legal malpractice or ethical violations discovered during the representation, without the affected lawyer's prior and informed written consent. Prof.Cond.R. 1.6. On the other hand, if the lawyer is permitted to represent the affected lawyer's clients, he or she may have an ethical obligation to inform a client of errors or omissions discovered during the inventorying of the file. *See "Handling an Attorney's Death, Disability or Disappearance,"* Shaw, Betty M., *Minnesota Lawyer* (October 8, 2001).

Because the successor lawyer will have access to confidential client information during the file inventory process, the written agreement should direct the successor lawyer to check for conflicts of interest before beginning the file inventory. This can be accomplished by comparing a list of the affected lawyer's clients with those of the successor lawyer.

If the successor lawyer determines that a conflict of interest exists, another lawyer, named by the affected lawyer in advance, should review the file.

In addition, the designated successor lawyer and affected lawyer should periodically review their respective active client matters to determine obvious conflicts that would require the designation of another lawyer to review certain client files.

Solicitation of Affected Lawyer's Clients

If permitted by the written agreement, representation of the affected lawyer's clients should commence only after the former client has approached the successor lawyer about representation. A successor lawyer should not actively or formally solicit the former clients of the affected lawyer. Prof.Cond.R. 7.3. However, the successor lawyer is free to respond to inquiries from clients regarding representation, absent any conflicts.

Keys to Succession Planning: Good Law Office Management Practices

Several law office management best practices will assist the successor lawyer, former office staff, and the affected lawyer's family in transitioning clients to new lawyers and closing the office. Lawyers are encouraged to follow these best practices in the event of death, disability or other events that temporarily may interrupt a law practice:

- Creating and maintaining an office procedures manual used by legal and administrative staff (see below);
- Maintaining a calendaring system with all court and filing deadlines and follow-up dates;
- Thoroughly documenting client files;
- Maintaining current time and billing records;
- Routinely backing up all digital records of the practice;
- Properly maintaining IOLTA records and ledgers;
- Following the firm's client file retention and destruction policy. Client File Retention Guide.

Ohio lawyers can participate in succession planning programs currently offered by the Columbus Bar Association or the Cleveland Metropolitan Bar Association, even if they are not association members. Both bar associations allow lawyers to designate a successor lawyer either electronically or in writing. The services are without charge and assist clients or other lawyers in ascertaining the existence and identify of a successor lawyer.

Should I Prepare an Office Procedures Manual?

As part of the preparation for the implementation of a succession plan, every lawyer should create and regularly maintain an office procedure manual. The manual will serve as a guide for a successor lawyer to run a practice temporarily, or to assist in its eventual closure. An office procedure manual should include documentation concerning:

- Determination of conflicts of interest;
- The use of the office calendaring system;
- How to generate a list of active client files, including client names, addresses, and phone numbers;
- Where and how client ledgers are maintained;
- How the open/active files are organized and where closed files, if any, are stored;
- The firm's client file retention and destruction policy;
- Log-in and password information for office computers, mobile devices, voicemail, cloud storage, billing systems, calendaring system, email (including server addresses and passwords), online banking, and other websites the law office relies upon on a daily basis;
- Time and billing procedures and software;
- The names and contact information for office personnel, financial institutions, accountants, landlords, vendors, and insurance agents/brokers.

How Will the Successor Lawyer Access My IOLTA and Operating Accounts?

Advanced planning can avoid issues that may arise concerning the successor lawyer's need to access the trust accounts. Ohio does not provide a procedure by court rule for successor lawyers to petition the Supreme Court or other court for an order transferring a deceased lawyer's IOLTA to another lawyer for disbursement and account closing purposes. Likewise, neither the Board of Professional Conduct, Office of Disciplinary Counsel, nor certified grievance committees are authorized to issue any correspondence requesting that a successor lawyer be given access to an IOLTA and operating accounts.

Ethics authorities in some jurisdictions recommend having a second signatory on the IOLTA in the event of disability or death. However, the potential for client financial harm increases if multiple signatories are present on an IOLTA and consequently this method is not recommended.

The affected lawyer should contact his or her bank in advance to determine what documentation it will accept for transfer of the IOLTA and operating account to the successor lawyer. Methods of documentation that may be acceptable for transfer of accounts include ❶ a durable power of attorney, ❷ a copy of the written agreement between the affected lawyer and the successor lawyer, ❸ a probate court order, or ❹ pre-signed designation forms provided by the bank.

Pursuant to the written agreement, the successor lawyer should make every reasonable effort to attempt to identify clients who have funds in the trust account and contact those clients to return any funds to which they are entitled.

If funds remain in the IOLTA after distribution or a client cannot be located, the successor lawyer is required to transfer the remaining funds to the Ohio Department of Commerce, Division of Unclaimed Funds. R.C. 169.01(B)(1), 169.03(A)(1) and Adv. Op. 2008-3.

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The Basic Steps to Ethically Closing a Law Practice, Illinois Attorney Registration & Disciplinary Commission

Ohio Board of Professional Conduct

OHIO ETHICS GUIDE

SWITCHING FIRMS

NOTE: Ethics Guides address subjects on which the staff of the Ohio Board of Professional Conduct receives frequent inquiries from the Ohio bench and bar. The Ethics Guides provide nonbinding advice from the staff of the Ohio Board of Professional Conduct and do not reflect the views or opinions of the Board of Professional Conduct, commissioners of the Board, or the Supreme Court of Ohio.

Switching Firms

Today, it is common for a lawyer to change law firms multiple times during the course of his or her career. A lawyer's departure from one law firm to join another was once an unusual occurrence, but now is common.[1]

There are many reasons why a lawyer may switch firms—dissolution of a prior firm, family move, better pay, firm culture, or career advancement, to name a few. Whatever the reason for the change, the departing lawyer, the former firm, and the new firm all should be concerned about the ethical implications that may result when the departing lawyer takes on a similar position at a different law firm. Even if the change in firms is amicable, there are a number of difficult ethical and legal issues that must be considered.

Of paramount concern is protection of clients' interests and ensuring that clients have the right to choose who represents them. This balance can be difficult and requires consideration of ethical obligations under the Rules of Professional Conduct, as well as legal requirements separate from the ethical duties.

Some of the questions that typically arise in these situations are:

- I'm leaving a firm. What can I tell my clients, and when can I tell them — before or after I give notice to the law firm?
- Can I provide the new firm a list of all of the current and former clients that I represented at the former law firm, or does that violate confidentiality?
- When I gave notice to my former firm, I was denied access to my client records and my list of contacts, and the firm refused to give callers my new contact information. Is this ethical?

[1] *See*, e.g. Hillman on Lawyer Mobility, 2d Ed., § 1.1, p. 1:7.

Although no one ethics rule addresses a lawyer's duties when leaving one law firm to practice at another, the Rules of Professional Conduct recognize the modern trend of lawyer mobility.[2]

This Ethics Guide provides guidance to lawyers and law firms regarding ethical implications when a lawyer changes law firms, but does not analyze the legal implications of changing law firms.

Duties to Clients

Above everything else, the departing lawyer and both the former and new law firms owe a duty to each client to ensure that the client is represented with competence, diligence, and loyalty.

Of primary concern should be:

1. Communicating with clients regarding the departure of the lawyer;
2. Maintaining client confidentiality before, during, and after the change of firms; and
3. Avoiding conflicts of interest that may result from switching firms.

Moreover, it is important to remember that a client does not belong to a lawyer or a law firm, but rather the client has the power to choose counsel of his or her choice.

A client's power to choose, discharge, or replace a lawyer borders on the absolute. Neither the law firm nor any of its members may claim possessory interest in a client.[3] "Although the firm may refer to clients as 'the firm's clients,' clients are not the 'possession' of anyone, but, to the contrary, control who represents them."[4]

[2] *See,* Prof.Cond.R. 1.9, cmt. [4-9], 1.10, 1.11.

[3] Ethics Comm. of Colo. Bar Ass'n, Op. 116 (Mar 2007).

[4] *Kelly v. Smith*, 611 N.E.2d 118, 122 (Ind. 1993).

As a result, the departing lawyer and law firm must ensure that each client's interest is protected and that each client has a choice in his or her representation.

Communication: Prof.Cond.R. 1.4

A lawyer is required to keep clients reasonably informed so the clients can make informed decisions about their matters.[5] As such, the departing lawyer and the former law firm ethically are obligated to ensure that clients receive timely notice of the lawyer's intended departure and an explanation of the clients' options for representation in the matter going forward.[6] This is especially important for active matters on which the departing lawyer is currently working.[7]

Although a departing lawyer and the former firm are required to notify clients that the lawyer is changing firms, there is no express ethical rule or provision of when and how clients should be notified of a lawyer's separation. Two states, Florida and Virginia, have enacted rules addressing lawyer mobility and law firm disclosure. Florida's rule provides that clients can choose their lawyer, but clients should not be notified prior to the departing lawyer notifying the law firm of the separation.[8] Virginia's rule is similar and requires that lawyers and law firms attempt to confer about notification prior to informing clients of a move and apprise clients of all available representation options.[9] It also prohibits lawyers at the old firm from unilaterally contacting or soliciting the departing lawyer's clients.[10] Ohio does not have a rule specifically addressing the timing of client notification.[11]

The preferred method of notifying clients that their lawyer is changing firms is a joint letter from the law firm and the departing lawyer to all clients with whom the lawyer has had significant personal contacts *(see Form 1 on p. 11)*.[12] The standard of "significant personal contacts" is determined from the perspective of the client. When asked, "Who at the law firm represents you?" any lawyers identified by the client are those with whom the client is deemed to have "significant personal contacts."[13]

The letter sent to clients prior to the lawyer's departure should advise of the following:

- When the lawyer is leaving, the current status of the client matter, and whom to contact regarding the transfer of the client file;
- That the client has the option of going with the lawyer, staying with the firm, or getting new counsel;
- The treatment of any advanced fee deposit, unearned fees and costs, an accounting of client property held in trust, and any liability for fees and costs; and
- The time for the client to respond, and if no response, notice that the client remains a client of the firm until the client gives notice otherwise.

5 Prof.Cond.R. 1.4.

6 *See,* AZ Op. 10-02 (Mar. 2010).

7 ABA Formal Op. 99-414 (Sept. 1999)("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 currently is working.")

8 Rules Regulating the Florida Bar 4-5.8 (2006).

9 Virginia Rule of Professional Conduct 5.8.

10 Id.

11 *But see,* Prof.Cond.R. 7.3.

12 ABA Formal Op. 99-414 (Sept. 1999)

13 AZ Op. 99-14 (Dec. 1999).

If not done at the beginning of the representation, the letter should inform the client to provide direction as to the disposition of the file, and have a place for the client to sign and return the letter to the firm *(see Form 2 on p. 12)*. If the client chooses to leave with the departing lawyer, then the firm is responsible to ensure the file is transferred, and the firm must bear the expense to copy the file, if the firm wishes to retain a paper copy of the file.[14] Further, a departing lawyer or the former law firm should provide clients with whatever is reasonably necessary to assist the clients in making an informed decision about their future representation.[15]

If a joint letter from the departing lawyer and the firm is not an option, separate letters can be sent by the departing lawyer and/or the firm to clients with whom the lawyer has had significant personal contact.

The letters must not disparage the former firm or the departing lawyer, and must not involve improper solicitation under Prof. Cond.R. 7.3. Although it is permissible for a departing lawyer to announce to clients his or her departure before notifying the law firm, ideally this should occur after the departing lawyer has notified the law firm.[16] Even though no ethics rule expressly addresses a lawyer's duty to notify the law firm of an intended departure, such a duty arises from a number of other sources, such as the law firm's duty of communication with law firm clients.[17]

Confidentiality: Prof.Cond.R. 1.6

Of equal importance to client communication is the duty to protect client confidentiality before, during, and after the departing lawyer changes firms. From the time the lawyer interviews with another law firm until after the lawyer has switched firms, the departing lawyer must ensure that client confidentiality is maintained.

Prof.Cond.R. 1.6 prohibits lawyers from revealing information relating the representation of a client; however, a departing lawyer may reveal limited information relating to the representation of a client in order to detect and resolve conflicts of interest due to change of employment.[18] This disclosure only is permitted if the information does not compromise the attorney-client privilege or otherwise prejudice the client.[19] The information should be limited to information reasonably necessary to detect and resolve conflicts and should include no more than the identity of the client or entity involved in the matter, a brief summary of the general issues, and information about whether the matter is ongoing.[20]

The timing of the disclosure of client information should not be done until reasonably necessary, which is only once substantive discussions regarding the new employment have occurred.[21]

In some circumstances, the only way to reveal the client information may be to obtain client consent before disclosure.[22] Situations where this may occur include: where a corporate client is seeking advice on a corporate takeover that has not been

[14] Prof.Cond.R. 1.16, cmt. [8A].

[15] ABA Formal Ethics Op. 99-414 (Sept. 1999).

[16] ABA Formal Ethics Op. 99-414 (Sept. 1999).

[17] Philadelphia Bar Ass'n Prof'l Guidance Comm. and Pa. Bar Ass'n Comm. On Legal Ethics and Prof'l Resp., Joint Formal Op. 2007-300 (Jun. 2007).

[18] Prof.Cond.R. 1.6(b)(7).

[19] Prof.Cond.R. 1.6(b)(7).

[20] Prof.Cond.R. 1.6, cmt. [13]; ABA Op. 09-455 (Oct. 2009).

[21] Prof.Cond.R. 1.6, cmt. [13]; ABA Formal Op. 09-455 (Oct. 2009).

[22] Prof.Cond.R. 1.6(a); ABA Formal Ethics Op. 99-414 (Sept. 1999).

publicly announced; when a person is consulting a lawyer about the possibility of a divorce before the person's intentions are known to the person's spouse; or when a person is consulting a lawyer about a criminal investigation that has not led to a formal charge.[23]

The duty of confidentiality usually is implicated when a lawyer is interviewing with a new firm or in the recruiting process when law firms are performing due diligence on potential lateral hires. A departing lawyer cannot openly reveal confidential client information, which in some instances may include the name of the client.

In certain areas of practice, client information is particularly sensitive and even very basic information cannot be revealed under Prof.Cond.R. 1.6. Therefore, unless the client consents, disclosure should be limited to information necessary to detect and resolve conflicts, such as:

- Identities of clients or other parties involved in the matter;
- A brief summary of the status and nature of a particular matter, including the general issues involved; and
- Information regarding whether the matter is ongoing.[24]

Information that should never be disclosed without client consent includes:

- Attorney-client privileged information;
- Information potentially "detrimental or embarrassing to the client"; and
- Information that the client requested to remain confidential.[25]

[23] Prof.Cond.R. 1.6(a), cmt. [13].

[24] Prof.Cond.R. 1.6, cmt.[13].

[25] Hillman on Lawyer Mobility, 2dEd. §2.3.1, p.2:129.

Additionally, the departing lawyer should be mindful that confidential information may implicate fiduciary duties that a departing lawyer may owe the former law firm.

Conflicts of Interest: Prof.Cond.R. 1.7, 1.8, 1.9

Both the departing lawyer and the prospective law firm have a duty to detect and resolve conflicts of interest that may arise under the Rules of Professional Conduct.[26] The two broad principles that underlie a conflicts of interest analysis are the duty of loyalty to clients and preserving client confidences.[27]

Lateral hiring is a central element of many law firm business plans, and recruiting can be seen as a key to success. However, it is essential to perform due diligence and screen for shared matters, as well as to avoid new conflicts during the process.[28] As mentioned above, the Rules of Professional Conduct generally permit the disclosure of conflict of interest information during the process of lawyers moving between firms.[29]

Conflicts of interest may arise when a departing lawyer has employment discussions with a firm that is an opponent of the lawyer's client or with a law firm representing the opponent, which could materially limit the lawyer's representation of the client.[30] Especially in the case of side-switching, i.e. moving from plaintiff to defense, or vice versa, diligence is required on the part of both the departing lawyer and the prospective law firm.[31]

[26] Prof.Cond.R. 1.7, 1.8(a), 1.9; ABA Formal Op. 09-455 (Sept. 1999).

[27] *See,* e.g., *Roy D. Mercer LLC v. Reynolds,* 292 P.3d 466 (N.M. 2012).

[28] ABA Formal Op. 96-400 (Jan. 1996) (Job Negotiations with Adverse Firm or Party).

[29] ABA Formal Op. 09-455 (Sept. 1999); Prof.Cond.R. 1.6(b)(7).

[30] Prof.Cond.R. 1.7, cmt. [20]; ABA Formal Ethics Op. 99-414 (Sept. 1999).

[31] ABA Formal Op. 96-400 (Jan. 1996); Prof.Cond.R. 1.3.

The departing lawyer should reveal client information only to the extent reasonably necessary to detect and and resolve conflicts of interest. No disclosure may be made if it would compromise the attorney-client privilege or otherwise result in prejudice to the client.[32] Similarly, the prospective law firm only may use the information received for purposes of detecting and resolving conflicts of interest.[33]

Imputation and Screening

If proper precautions are not instituted, lawyers who switch firms can cause serious and potentially costly problems. The imputation of a conflict of interest extends the disqualification of one member of a firm to all members of a firm and must be considered prior to switching firms.[34]

Implementation of a screen may resolve some imputed disqualifications due to conflicts of interest that may arise due to a lawyer switching firms; however, it may not resolve all conflicts.[35] Screening "denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under the Rules of Professional Conduct or other law."[36] The purpose of the screen is to protect client confidences and minimize the perception or appearance of impropriety. Although the Rules of Professional Conduct recognize screening, it is still prudent to notify the other firm that a screen has been implemented.

Prior to employing a lateral hire, it is critical for the prospective firm to understand the clients and cases on which a departing lawyer performed work. For example, even if the majority of the work the lateral attorney does is transactional, he or she might have done a small amount of work on a litigation case, of which the firm needs to know.
Even 10 hours of work on a case can cause a conflict. Due to lawyers'responsibility for nonattorney assistants under Prof.Cond.R. 5.3, screening may resolve imputation of conflicts of interest involving nonlawyer personnel who have moved between firms.[37]

Additionally, when analyzing conflict of interest issues of substantive law also must be considered, including the firm's partnership or employment agreement and the firm's written or customary employment practices.[38]

Duties to Clients Upon Termination of Representation: Prof.Cond.R. 1.16

If a lawyer's change in law firms results in termination of the representation, the departing lawyer or the former law firm owe certain additional duties to protect clients' interests.[39] Those duties may include returning the client's file, accounting for monies held in trust, and providing sufficient notice to allow reasonable time for clients to find new counsel.[40] The former firm is required to review the departing lawyer's emails to the extent necessary to carry out duties for the clients.[41] Since email often is a primary method of communication between many lawyers and their clients, a firm that simply turns off the departing lawyer's email account violates duties to clients under Prof.Cond.R. 1.16.

Client Files

Ultimately, the file belongs to the client. The client file includes correspondence, pleadings, deposition

[32] Prof.Cond.R. 1.6, cmt. [13].

[33] Prof.Cond.R. 1.6 [cmt14].

[34] Prof.Cond.R. 1.10.

[35] Prof.Cond.R. 1.10.

[36] Prof.Cond.R. 1.0(l).

[37] Tennessee Supreme Court Board of Professional Responsibility Formal Op. 2003-F-147 (Jun. 2003).

[38] ABA Formal Ethics Op. 99-414 (Sept. 1999).

[39] Prof.Cond.R. 1.16.

[40] Prof.Cond.R. 1.16(d).

[41] See, Philadelphia Bar Ass'n Prof. Guidance Comm., Op. 2013-4 (Sept. 2013).

transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to the client's representation.[42] A client's interests should not be prejudiced when the attorney-client relationship ends.[43]

When a lawyer leaves a firm and the client decides to leave with the lawyer, the former firm cannot hold a client's file hostage. Likewise, a firm faced with the abrupt departure of one or several lawyers may not refuse prompt delivery of the client's file to hinder the departing lawyers.[44] The firm must protect the client's interests, which includes providing the client file to the client or the new lawyer, timely submitting court documents reflecting a change of counsel, facilitating communication and docket information to best serve the client, and bearing any copy costs.[45]

If the departing lawyer is not continuing the representation of the client, the lawyer may take copies of documents relating to his or her representation of former clients, but must ensure client confidentiality is protected under Prof.Cond.R. 1.6 and 1.9. Additionally, a departing lawyer may take his or her own work product; however, items such as client lists, practice forms, and certain digital files may turn on property law and trade secrets law.

Trust Account Monies

When a lawyer changes firms, the departing lawyer and the former law firm must account for any trust account monies or client property held by the firm for clients who leave the firm with the departing lawyer or with another lawyer.[46] Clients who leave the law firm with the departing lawyer and who have given the firm an advance fee or cost deposit are entitled to take the money with them, less earned fees and incurred costs.[47]

The former firm should provide an accounting to the client and should write a check to the client or to the new law firm's trust account at the direction of the client.[48] Additionally, law firms should contemplate the possibility of a fee dispute arising as to whether the departing lawyer can keep all fees, including contingent fees, the partnership portion of fees, and quantum meruit.

Fees: Prof.Cond.R. 1.5

Another consideration for a departing lawyer and the law firm is the division of fees under Prof.Cond.R. 1.5. After a departing lawyer leaves a firm, there likely may be period of time where fees are shared by a departing lawyer and/or the law firm. This is especially the case in contingent fee cases.

A departing lawyer who was in a firm with clients on a contingent fee basis may have additional considerations regarding the division of fees. Usually in a contingent fee case when a client discharges a lawyer, the discharge normally will terminate the lawyer's claim to a contractually based contingent fee, and instead, a quantum meruit recovery for the value of services rendered prior to the discharge is the basis of compensation.[49]

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[42] Prof.Cond.R. 1.16(d).

[43] Prof.Cond.R. 1.16(d).

[44] Prof.Cond.R. 1.16, cmt. [8A, 9].

[45] Prof.Cond.R. 1.16, cmt. [8A].

[46] Prof.Cond.R. 1.15(d).

[47] Prof.Cond.R. 1.15(d).

[48] ABA Formal Op. 99-414 (Sept. 1999).

[49] *Reid, Johnson, Downes, Andrachik & Webster v. Lansberry*, 68 Ohio St.3d 570, 629 N.E.2d 431 (1994) (when attorney employed pursuant to contingent fee is discharged, attorney's fee recovery is on basis of quantum meruit and arises upon successful occurrence of contingency); but see, *Cuyahoga Cty. Bar Assn. v. Levey*, 88 Ohio St.3d 146, 2000-Ohio-283, 724 N.E.2d 395 (because respondent's contingent-fee agreement with clients provided for hourly charge if discharged "whether or not, a successful completion" occurred, respondent violated DR 2-106(A) [now Prof.Cond.R. 1.5(a)]).

Prof.Cond.R. 1.5(e), regarding the division of fees by lawyers not in the same firm, does not apply if the fee is being divided between two lawyers who were associated in a firm but went their separate ways.[50]

Additionally, fee determination also may turn on partnership law's income-sharing principles. This is likely the case when the question concerns the allocation of fees among lawyers, rather than client responsibility for payment of fees. However, in simple discharge cases where disputing lawyer has no prior partnership relationship, client choice may dictate.

Solicitation of Clients: Prof.Cond.R. 7.3

Generally, a lawyer is not permitted to solicit professional employment in-person, via live telephone, or by real-time electronic contact, unless the person is family or has a prior professional relationship with the lawyer, i.e. a former client.[51] Because the departing lawyer has a current professional relationship with the clients, the lawyer may inform clients of his or her impending departure from the firm.[52] A departing lawyer is prohibited from making in-person contact with firm clients with whom the departing lawyer does not have a prior professional relationship, but may contact them as permitted under Prof.Cond.R. 7.3.[53]

Although a departing lawyer is not prohibited from announcing to clients his or her impending departure before the law firm is told, ideally these communications should occur after the firm has been notified of the lawyer's plans to leave.[54] This is an important consideration because a departing lawyer may have a fiduciary duty to his or her former firm.[55]

Restrictions on Right to Practice: Prof.Cond.R. 5.6

When a departing lawyer leaves a firm, the client, not the firm, dictates who will represent him or her. Prof.Cond.R. 5.6 prohibits lawyers from offering or participating in an agreement that restricts a lawyer's right to practice law. This rule extends to non-competition agreements or agreements that purport to govern allocation of client matters after a lawyer leaves a law firm. These agreements not only limit a lawyer's right to practice, but also restrict clients' freedom to choose an attorney.[56]

A firm cannot penalize a lawyer for leaving because the clients chose to leave with the lawyer.[57] Moreover, attempting to limit competition by forbidding client contact or use of "firm" information for a given period of time has been found to violate Prof.Cond.R. 5.6.[58]

Permissible Planning Actions

Permissible planning actions may be taken in anticipation of a departing lawyer announcing that he or she is leaving the law firm *(see Form 3 on p. 13)*.[59]

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[50] Prof.Cond.R. 1.5, cmt. [8]; *See*, *Norton v. Frickey, P.C. v. James B. Turner,* P.C. 94 P.3d 1226 (Colo. Ct. App. 2004); Ill. Ethics Op. 03-06 (2004).

[51] Prof.Cond.R. 7.3(a).

[52] Ill. Ethics Op. 12-14 (2012).

[53] ABA Formal Ethics Op. 99-414 (Sept. 1999).

[54] ABA Formal Op. 99-414 (Sept. 1999).

[55] *See, Fred Siegel Co. v. Arter & Hadden*, 85 Ohio St.3d 171, 1999-Ohio-260, 707 N.E.2d 853; *Buckingham, Doolittle & Burroughs, L.L.P. v. Bonasera*, 157 Ohio Misc.2d 1, 2010-Ohio-1677, 926 N.E.2d 375.

[56] Prof.Cod.R. 5.6, cmt. [1]. *See* ex., *In re Hanley II*, 19 N.E.3d 756 (Ind. 2014) (Indiana lawyer disciplined for violating Rule 5.6 for drafting a non-compete agreement as part of an associate employment agreement and sent unilateral notices to clients after the associate left).

[57] *Cincinnati Bar Assn. v. Hackett,* 129 Ohio St.3d 186, 2011-Ohio-3096, 950 N.E.2d 969; N.C. Ethics Op. 2007-6 (2007).

[58] Pa. Ethics Op. 2012-06 (2012); Va. Ethics Op. 1403 (1991); Wash. Ethics Op. 2118 (2006).

[59] Oh.Adv.Op. 98-5 (Apr. 1998).

Some <u>permissible</u> actions include:

- ✓ Obtaining office space and supplies, such as printing new letterhead;
- ✓ Arranging bank financing, not based on confidential or nonpublic information of the firm;
- ✓ Ordering office equipment and systems;
- ✓ Preparing lists of clients expected to leave the firm and obtain financing based on the lists, using only non-confidential, non-protected, publically available information based on what the lawyer personally knows about the clients' matters; or
- ✓ Informing clients with active matters for whose representation the lawyer is responsible or in which the lawyer plays a principal role, only that the client has the right to choose who will continue to manage their business following the lawyer's departure.

On the other hand, certain actions should be <u>avoided</u> when a lawyer is switching firms. Those actions include:

- × Abandoning the firm on short notice and taking clients and their files;
- × Using firm resources, such as copying files or client lists without permission or unlawfully removing firm property from the premises to solicit clients;
- × Using nonpublic confidential information of the firm, such as time and billing information or firm structure and financial statements to obtain financing or other things against the interests of the firm[60]; or
- × Taking other action detrimental to the interests of the firm or clients, aside from the impact the lawyer's departure will have on the firm.[61]

[60] *See*, *Disciplinary Counsel v. Robinson*, 126 Ohio St.3d 371, 2010-Ohio-3829, 933 N.E.2d 1035, (attorney disciplined for removing confidential documents from his former law firm, provided some documents to a competitor firm with whom he was seeking potential employment, and then, after his former law firm had sued him, secretly destroyed some of the documents to conceal his possession);

[61] *See*, *Cleveland Metro. Bar Assn. v. Azman*, 147 Ohio St.3d 379, 2016-Ohio-3393, 66 N.E.2d 695, (attorney disciplined for accessing e-mail accounts of his former employer without authorization and deleted e-mail messages).

Tort and Agency Law

There is an intersection between legal ethics and fiduciary duties in the lawyer mobility setting. In addition to the ethics rules, the theories of tort and agency law also may apply when a lawyer switches law firms. Legal issues that may arise when a lawyer leaves a firm include interference with contracts a firm has with existing clients, use of firm resources to set up a new firm, misappropriation of trade secrets, and attempts to steal associates and staff while the lawyer is still working for the firm.

Courts have noted that there is a distinction between "logistical arrangements" and concerted efforts made in secret while still at the firm to lure away some of firm's clients.[62]

Although it may be common practice for individual lawyers seeking lateral opportunities to include disclosure of the lawyer's own clients, experience, salary, and benefits; in doing so, the departing lawyer must ensure that he or she complies with the Rules of Professional Conduct, as well as other legal obligations. Hiring firms and departing lawyers must be cautious when gathering data to gauge the comparable incomes, hourly rates, collections, client lists, and similar data on lateral hires.[63]

Conclusion

A number of difficult ethical issues must be addressed when a lawyer switches from one law firm to another. Of primary importance is protection of the clients' interests. To do so, the departing lawyer and the firm, ideally, should jointly notify clients prior to the departure, so clients can make an informed decision regarding representation. The departing lawyer and law firm must maintain client confidentiality before, during, and after the change of firms, but may provide certain client information to the prospective firm in order to detect and resolve any conflicts of interest that may arise from switching firms. Additionally, the departing lawyer and the former firm should not take drastic actions, such as improperly using firm resources or denying the departing lawyer access to client files, which could negatively impact clients' interests. The departing lawyer and law firm also must consider a number of other potential ethical issues that may arise, including those involving client files, fees paid and owed, division of fees, solicitation of clients, and restrictions on the right to practice. No matter the reason for switching firms, the primary consideration for the departing lawyer and the firms involved should be the clients' interests.

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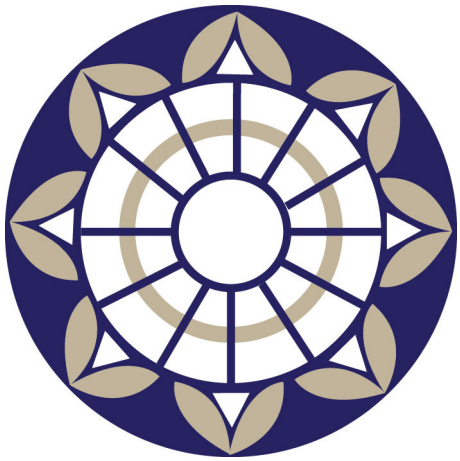
[62] *Meehan v. Shaughnessy*, 535 N.E.2d 1255 (Mass. 1989); see also, *Fred Siegel Co. v. Arter & Hadden*, 85 Ohio St.3d 171, 177, 1999-Ohio-260, 707 N.E.2d 853, 859 (Court defined bounds of fair competition in context of grabbing clients and leaving a firm where an associate left the firm and took with her to her new firm a number of the firm's clients).

[63] *Buckingham, Doolittle and Burroughs, L.L.P. v. Bonasera*, 157 Ohio Misc.2d 1, 2010-Ohio-1677, 926 N.E.2d 275 (Law firm and its corporate partner brought action for breach of fiduciary duty and duty of loyalty, civil conspiracy, unfair competition, and tortious interference with business relations and prospective contract relations against former employees and shareholders who left as a group for a rival firm).



FORM 1

JOINT LETTER OF DEPARTURE

[NAME & ADDRESS OF CLIENT
CURRENTLY SERVED BY _____]

Dear _____:

_____ has elected to withdraw from the firm of _____ and to join a new law firm at [name and address of new firm].

As an existing client of _____, you have the right to remain a client of the firm, to follow the withdrawing attorney to his new firm, or to transfer your representation to any other attorney of your choice.

Enclosed is a form for you to sign and send in the enclosed envelope if you elect to follow _____ to his new practice. Upon the firm's receipt of that form, your file will be transferred in accordance with your direction. If you elect not to request such a transfer within thirty days from the date of this letter, or if an issue arises in a pending matter in which you are involved during that period before your request is received, you will be contacted by an attorney at _____ to make sure that your interests are protected and your choice of counsel is honored.

Yours truly,

_____

By:_____

_____

FORM 2

REQUEST FOR TRANSFER

I hereby request that my current legal files at the law firm of _____

(CHOOSE ONE BY MARKING "X" BESIDE YOUR CHOICE)

_____ REMAIN WITH _____

_____ TRANSFER FILE TO _____

_____ TRANSFER FILE to the following attorney at the following address:

_____

_____

_____

_____
Signature

_____
Print Name

_____
Address

_____
City, State, Zip

FORM 3

CHECKLIST FOR LEAVING A LAW FIRM

☑ Review firm's partnership, shareholder or employment agreement in advance of departure

- Understand permissible pre-departure actions you may take in anticipation of setting up a firm or going to a competing law firm.

☑ Review your caseload and determine:

- when you will notify the firm of your intended departure;
- when clients will be notified of your departure;
- what will be contained in the notification letter to clients; and who will send it.

☑ Compile a list of client matters for which you were the responsible attorney, and include:

- addresses, phone numbers, and other contact information related to each file; all active client matters, the current status of each matter and any important upcoming deadlines and dates;
- all active client matters pending before a tribunal; all clients that you believe should be notified of your departure and provided your new firm contact information; which clients may leave with you and which may stay with the firm;
- any funds deposited into the firm's trust account that have not been earned or expended;
- any outstanding accounts receivable, unbilled disbursements, any work in progress, and any case management issues.

☑ Prepare and file any necessary motions seeking permission to withdraw or for substitution of counsel in any proceedings pending before a tribunal, as well as, advising all other counsel of any change in the representation.

☑ Notify the Attorney Services Office of your change of firm and address, or change it on the Attorney Services portal.

☑ Arrange for your name to be removed from all firm's bank accounts, including trust accounts, if applicable.

☑ If you and the departing firm are not able to resolve differences concerning your departure, consider hiring an independent mediator or arbitrator to assist with a resolution.

Ohio Board of
Professional Conduct

65 South Front Street • Columbus Ohio • 43215-3431

RULE 1.17: SALE OF LAW PRACTICE

(a) Subject to the provisions of this rule, a lawyer or *law firm* may sell or purchase a law practice, including the good will of the practice. The law practice shall be sold in its entirety, except where a conflict of interest is present that prevents the transfer of representation of a client or class of clients. This rule shall not permit the sale or purchase of a law practice where the purchasing lawyer is buying the practice for the sole or primary purpose of reselling the practice to another lawyer or *law firm*.

(b) As used in this rule:

(1) "Purchasing lawyer" means either an individual lawyer or a *law firm*;

(2) "Selling lawyer" means an individual lawyer, a *law firm*, the estate of a deceased lawyer, or the representatives of a disabled or disappeared lawyer.

(c) The selling lawyer and the prospective purchasing lawyer may engage in general discussions regarding the possible sale of a law practice. Before the selling lawyer may provide the prospective purchasing lawyer with information relative to client representation or confidential material contained in client files, the selling lawyer shall require the prospective purchasing lawyer to execute a confidentiality agreement. The confidentiality agreement shall bind the prospective purchasing lawyer to preserve information relating to the representation of the clients of the selling lawyer, consistent with Rule 1.6, as if those clients were clients of the prospective purchasing lawyer.

(d) The selling lawyer and the purchasing lawyer may negotiate the terms of the sale of a law practice, subject to all of the following:

(1) The sale agreement shall include a statement by selling lawyer and purchasing lawyer that the purchasing lawyer is purchasing the law practice in good faith and with the intention of delivering legal services to clients of the selling lawyer and others in need of legal services.

(2) The sale agreement shall provide that the purchasing lawyer will honor any fee agreements between the selling lawyer and the clients of the selling lawyer relative to legal representation that is ongoing at the time of the sale. The purchasing lawyer may negotiate fees with clients of the selling lawyer for legal representation that is commenced after the date of the sale.

(3) The sale agreement may include terms that *reasonably* limit the ability of the selling lawyer to reenter the practice of law, including, but not limited to, the ability of the selling lawyer to reenter the practice of law for a specific period of time or to practice in a specific geographic area. The sale agreement shall not include terms limiting the ability of the selling lawyer to practice law or reenter the practice of law if the selling lawyer is selling his or her law practice to

enter academic, government, or public service or to serve as in-house counsel to a business.

(e) Prior to completing the sale, the selling lawyer and purchasing lawyer shall provide *written* notice of the sale to the clients of the selling lawyer. For purposes of this rule, clients of the selling lawyer include all current clients of the selling lawyer and any closed files that the selling lawyer and purchasing lawyer agree to make subject of the sale. The *written* notice shall include all of the following:

(1) The anticipated effective date of the proposed sale;

(2) A statement that the purchasing lawyer will honor all existing fee agreements for legal representation that is ongoing at the time of sale and that fees for legal representation commenced after the date of sale will be negotiated by the purchasing lawyer and client;

(3) The client's right to retain other counsel or take possession of case files;

(4) The fact that the client's consent to the sale will be presumed if the client does not take action or otherwise object within ninety days of the receipt of the notice;

(5) Biographical information relative to the professional qualifications of the purchasing lawyer, including but not limited to applicable information consistent with Rule 7.2, information regarding any disciplinary action taken against the purchasing lawyer, and information regarding the existence, nature, and status of any pending disciplinary complaint certified by a probable cause panel pursuant to Gov. Bar R. V, Section 11.

(f) If the seller is the estate of a deceased lawyer or the representative of a disabled or disappeared lawyer, the purchasing lawyer shall provide the *written* notice required by division (e) of this rule, and the purchasing lawyer shall obtain *written* consent from each client to act on the client's behalf. The client's consent shall be presumed if no response is received from the client within ninety days of the date the notice was sent to the client at the client's last *known* address as shown on the records of the seller or the client's rights would be prejudiced by a failure to act during the ninety day period.

(g) If a client cannot be given the notice required by division (e) of this rule, the representation of that client may be transferred to the purchaser only after the selling lawyer and purchasing lawyer have caused notice of the sale to be made by at least one publication in a newspaper of general circulation in the county in which the sale will occur or in an adjoining county if no newspaper is published in the county in which the sale will occur. Upon completion of the publication, the client's consent to the sale is presumed.

(h) The *written* notice to clients required by division (e) and (f) of this rule shall be provided by regular mail with a certificate of mailing or other comparable proof of mailing. In lieu of providing notice by mail, either the selling lawyer or purchasing lawyer, or both, may personally deliver the notice to a client. In the case of personal delivery, the lawyer providing the notice shall obtain *written* acknowledgement of the delivery from the client.

(i) Neither the selling lawyer nor the purchasing lawyer shall attempt to exonerate the lawyer or *law firm* from or limit liability to the former or prospective client for any malpractice or other professional negligence. The provisions of Rule 1.8(h) shall be incorporated in all agreements for the sale or purchase of a law practice. The selling lawyer or the purchasing lawyer, or both, may agree to provide for the indemnification or other contribution arising from any claim or action in malpractice or other professional negligence.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this rule, when a lawyer or an entire firm ceases to practice, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6. A sale of a law practice is prohibited where the purchasing lawyer does not intend to engage in the practice of law but is buying the practice for the purpose of reselling the practice to another lawyer or law firm.

[2] [RESERVED]

[3] The purchasing and selling lawyer may agree to a reasonable limitation on the selling lawyer's ability to reenter the practice of law following consummation of the sale. These limitations may preclude the selling lawyer from engaging in the practice of law for a specific period of time or in a defined geographical area, or both. However, the sale agreement may not include such limitations if the selling lawyer is selling his practice to enter academic service, assume employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] [RESERVED]

[5] [RESERVED]

Sale of Entire Practice

[6] The rule requires that the seller's entire practice~~,~~ be sold. This requirement protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice, subject to conflict clearance, client

consent, and the purchasing lawyer's competence to assume representation in those matters. This requirement is satisfied even if a purchaser is unable to undertake a particular client matter because of a conflict of interest or if the seller, in good faith, makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Pursuant to Rule 1.1, the purchasing lawyer may be required to associate with other counsel in order to provide competent representation.

Client Confidences, Consent, and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. See Rule 1.6(b)(7). Providing the purchaser access to detailed information relating to the representation and to client files requires the purchaser and seller to take steps to ensure confidentiality of information related to the representation. The rule provides that before such information can be disclosed by the seller to the purchaser, the purchaser and seller must enter into a confidentiality agreement that binds the purchaser to preserve information related to the representation in a manner consistent with Rule 1.6. This agreement binds the purchaser as if the seller's clients were clients of the purchaser and regardless of whether the sale is eventually consummated by the parties. After the confidentiality agreement has been signed and before the prospective purchaser reviews client-specific information, a conflict check should be completed to assure that the prospective purchaser does not review client-specific information concerning a client whom the prospective purchaser cannot represent because of a conflict of interest.

[7A] Before a sale is completed, written notice of the proposed sale must be provided to the clients of the selling lawyer whose matters are included within the scope of the proposed sale. The notice must be provided jointly by the selling and purchasing lawyers, except where the seller is the estate or representative of a deceased, disabled, or disappeared lawyer, in which case the notice is provided by the purchaser. At a minimum, the notice must include information about the proposed sale and the purchasing lawyer that will allow each client to make an informed decision regarding consent to the sale. A client may elect to opt out of the sale and seek other representation. However, consent is presumed if the client does not object or take other action within ninety days of receiving the notice of the proposed sale.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the rule requires the parties to provide notice of the proposed sale via a newspaper publication.

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser. However, the purchaser may negotiate new fee agreements with clients of the seller for representation that is undertaken after the sale is completed.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(f) for the definition of informed consent); the obligation to avoid agreements limiting a lawyer's liability to a client for malpractice (see Rule 1.8(h)); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This rule applies to the sale of a law practice of a deceased, disabled, or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these rules. Since, however, no lawyer may participate in a sale of a law practice that does not conform to the requirements of this rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans, and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this rule.

[15] This rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

[16] The purchaser can not continue to use the seller's name unless the seller is deceased, disabled, or retired pursuant to Rule VI of the Supreme Court Rules for the Government of the Bar of Ohio.

Comparison to former Ohio Code of Professional Responsibility

Rule 1.17 restates the existing provisions of DR 2-111, substituting "information relating to the representation" in place of "confidences and secrets."

Although there is little textual similarity between Rule 1.17 and the ABA Model Rule, most of the substantive provisions of the Model Rule are incorporated into the rule, with the major exceptions being that Rule 1.17 (1) does not permit the sale of only a portion of a law practice, and (2) allows a missing client to be provided notice of the proposed sale by publication. The comments are modified to track the rule and Ohio law.

Comment [1] is modified to clearly indicate that the provisions of the rule are not intended to permit sale to a lawyer who will merely act as a "broker" and resell the practice.

Comment [2] is relocated to Comment [6] where the language of the Model Rule comment is revised to address the unanticipated return to practice of the selling lawyer. The latter modification is deemed unnecessary due to the prohibition in division (d)(3) directing that the sale agreement may not restrict the ability of the selling lawyer to reenter the practice if the sale is the result of the lawyer selling the practice "to enter academic, government, or public service or to serve as in-house counsel to a business" and the commentary contained in Comment [3].

Comments [4] and [5] are deleted, and comments [6], [9], and [15] are modified, to reflect the fact that Rule 1.17 does not permit the sale of a part of a lawyer's practice.

Comments [7] and [7A] are modified to reflect the actual mechanisms contained in the rule respecting the preservation of information related to the representation of clients.

Comment [10] is clarified to indicate that new fee arrangements may be negotiated with clients after the sale of a law practice "for representation that is undertaken after the sale is completed."

Comment [11] is modified to specifically ensure that the parties to the sale of a law practice understand that the sale may not limit the liability of either the buyer or the seller for malpractice.

Comment [16] is added to give notice to prospective purchasers that it is improper to utilize the seller's name in the practice unless the seller is deceased, disabled, or retired pursuant to Gov. Bar R. VI.

Comparison to ABA Model Rules of Professional Conduct

Rule 1.17 differs from Model Rule 1.17 as noted above.

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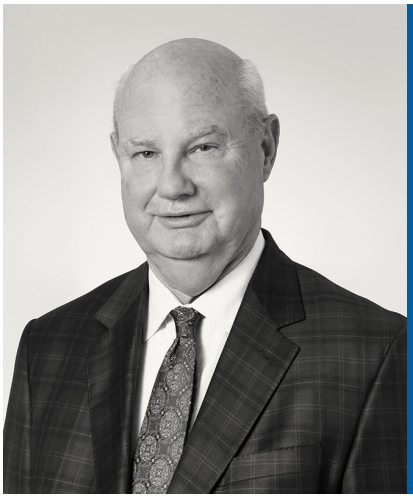

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Mark teaches legal ethics as an adjunct professor of law at the University of Cincinnati College of Law. He is also a champion for the less fortunate, having served as trustee and former president of the Legal Aid Society of Greater Cincinnati, the Volunteer Lawyers for the Poor, and the Ohio Justice & Policy Center. He has also served as board chair and continues to serve on the board of the Center for Closing the Health Gap.

Services

- Litigation
- White Collar Crime
- Appellate
- Government Relations
- Government Investigations
- Municipal & Government
- Securities Litigation

Education

- University of Michigan Law School (J.D., 1972)
- Hope College (A.B., *cum laude*, 1970)

Bar Admissions

- Ohio

Court Admissions

- U.S. Supreme Court
- U.S. Tax Court
- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Southern District of Ohio
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the District of Colorado

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Affiliations/Memberships

- Ohio Ethics Commission
- University of Cincinnati College of Law, Legal Ethics adjunct professor
- Cincinnati Bar Association, Ethics Committee past chair
- Ohio State Bar Association, Litigation Section
- American Bar Association, Litigation Section
- State of Ohio, past deputy special prosecutor
- City of Blue Ash, Ohio, city solicitor
- National Diocesan Attorneys Association
- Cincinnati Southern Railway, trustee and president (1992 - 2012)
- Potter Stewart Inn of Court, master of the bench
- Supreme Court of Ohio, Rules Revision Committee past member
- Indian Hill Church, Board of Stewards past president
- University of Cincinnati College of Law, Board of Visitors
- The Health Gap, Board of Directors chair

Distinctions

- Peer Review Rated AV in *Martindale-Hubbell*
- *Best Lawyers*®
  - Arbitration, Mediation Bet-the-Company Litigation, Commercial and Appellate Practice Litigation
  - "Lawyer of the Year" in Cincinnati Appellate Practice (2012, 2014, 2019)
  - "Lawyer of the Year" in Cincinnati Litigation (2009, 2013)
  - "Lawyer of the Year" Cincinnati Litigation – Municipal (2015)
- Ohio *Super Lawyers*®
- *Who's Who in America*
- *Who's Who in the Midwest*
- *Who's Who in Law*
- *Chambers USA*®: *America's Leading Lawyers for Business,* Litigation: General Commercial
- Cincy Leading Lawyer by *CincyMagazine*
- American Board of Trial Advocates
- *Benchmark Litigation* Star in Ohio (2016)

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Retirement Planning:

Ethical Considerations

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EXAMPLE PHOTO & TEXT

Duty to Plan

→ Rule 1.1: Competence

→ Rule 1.3 Diligence

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Duty to Plan

"To prevent neglect of client matters in the event of sole practitioners death or disability the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of lawyers death or disability, or determine whether there is a need for immediate protective action." Cmt. 5 to Rule 1.3

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Duty to Plan

Rule 1.4 (b):

→ **"A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."**

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Duty to Maintain Malpractice Insurance

Rule 1.4(c):

→ **Lawyer must provide written notice and client must acknowledge regarding malpractice insurance:**

⇒ At time of engagement;

⇒ or, anytime subsequent to the engagement;

⇒ And…

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Duty to Maintain Malpractice Insurance

The notice must be signed by the client and the lawyer shall maintain a copy of the signed notice for five years after the representation has ended.

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Sharing of Fees

Rule 1.5(e):

→ **Lawyers not in the same firm may divide fees if:**

⇒ The division of fees is in proportion to services performed by each lawyer, or each lawyer assumes joint responsibility and agrees to be available for consultation, and

⇒ The client has given written consent after disclosure; and

⇒ The total fee is reasonable.

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Duty of Confidentiality

Rule 1.6:

→ **Lawyer shall not reveal information relating to representation of a client unless client gives informed consent.**

→ **"The duty of confidentiality continues after the lawyer-client relationship as terminated." Cmt. 20, Rule. 1.6.**

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Safe Keeping Funds and Property

Rule 1.15

9

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Declining or Terminating Representation

Rule 1.16:

→ **Lawyer shall not represent a client or shall withdraw if:**

⇒ (a)(2) "the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."

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Declining or Terminating Representation

Rule 1.16(b)

→ **Lawyer may withdraw:**

⇒ (7) client gives informed consent to termination of representation;

⇒ (8) lawyer sales the practice in accordance with Rule 1.17.

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Declining or Terminating Representation

Rule 1.16(c):

→ **Lawyer may need tribunal's permission to withdraw.**

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Declining or Terminating Representation

Rule 1.16(d)

→ **Lawyer shall to the extent reasonably practicable protect the client's interest:**

⇒ Notice to the client allowing time to employ other counsel;

⇒ Deliver all papers and property to which the client is entitled.

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Client Papers and Property

- → Correspondence;
- → Pleadings;
- → Deposition transcripts;
- → Exhibits;
- → Physical Evidence;
- → Expert reports;
- → Other items "reasonably necessary to the client's representation."

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Avoid Malpractice

- → Plan in advance;
- → Document, document, document;
- → Use checklists.

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Questions?

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