

**DRAFT**

BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE

**FORMAL ETHICS OPINION 2023-F-169**

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The Board of Professional Responsibility, in response to numerous ethics inquiries on this subject, issues this opinion as guidance regarding the ethical obligations of departing attorneys and their former firms to notify clients of their options when an attorney leaves a firm.

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**OPINION**

Departing lawyers and their law firms have an ethical duty to protect client interests when a lawyer leaves a law firm. The departure of a lawyer who represents a client or is responsible for the law firm's delivery of legal services currently on a matter is information that may affect the status of a client's matter and require the client to make a decision regarding the representation as set forth in RPC 1.4. A departing lawyer and the law firm have an ethical duty to inform the client of the lawyer's departure. Because a client has the right to select counsel of the client's choice, the fact that the lawyer is leaving and where the lawyer will ultimately practice is information that will aid the client in determining whether to stay with the law firm, leave with the lawyer or seek legal representation elsewhere. Notice should be given to the client by the departing lawyer, the law firm, or preferably, jointly by the law firm and the lawyer.

**DISCUSSION**

Many lawyers will change law firms during their careers. When a lawyer departs from a law firm, clients should be given the option to stay with the firm, go with the departing attorney, or choose another law firm altogether.<sup>1</sup>

The law firm and the departing lawyer both have the ethical obligation to protect the clients' interests during the departing lawyer's transition. "Lawyers and law firm management have ethical obligations to assure the orderly transition of client matters when lawyers notify a firm they intend to move to a new firm."<sup>2</sup> As noted in State Bar of Ariz., Formal Op. 10-02 (2010) "When a lawyer's employment with a firm is terminated, both the firm and the departing lawyer have ethical obligations to notify affected clients, avoid prejudice to those clients, and share information as

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<sup>1</sup> ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 99-414 (1999) at n. 1 (clients should be given the option to stay with a firm, go with a departing attorney, or choose another firm altogether).

<sup>2</sup> ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489, 1 (2019).

necessary to facilitate continued representation and avoid conflicts. These ethical obligations can best be satisfied through cooperation and planning for any departure.” Law firms may require a period of advance notice of a lawyer’s intended departure. Notice should be long enough for clients to make decisions about who will represent them as required by RPC 1.4(a)(1). However, law firm notification requirements cannot be so rigid that they restrict or interfere with a client’s choice of counsel or serve to unreasonably delay the diligent representation of a client and therefore may violate RPC 5.6 which prohibits restraints on a client’s choice of counsel.

RPC 5.6 provides: A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement.

“While the departing lawyer and the firm may unilaterally inform clients of the lawyer’s impending departure at or around the same time that the lawyer provides notice to the firm, the firm and departing lawyer should attempt to agree on a joint communication to firm clients with whom the departing lawyer has had significant contact, giving the clients the option of remaining with the firm, going with the departing attorney, or choosing another attorney.”<sup>3</sup> The law firm management should assess if it has the capacity and expertise to offer to continue to represent the clients. If the departing lawyer is the only lawyer at the firm with the expertise to represent a client on a specific matter, the firm should not offer to continue to represent the client unless the firm has the ability to retain other lawyers with similar expertise. If a client wants to remain with the firm and the court refuses to allow the departing lawyer to withdraw, the lawyer “shall continue representation notwithstanding good cause for terminating the representation.”<sup>4</sup>

RPC 5.1 sets forth law firm management’s obligations to establish procedures to ensure the ethical transition of client matters when lawyers change firms.

RPC 5.1(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

Ideally the firm will have written policies to provide guidance to lawyers about the procedures the firm anticipates following when a lawyer leaves the firm.”<sup>5</sup>

“Firms also cannot restrict a lawyer’s ability to represent a client competently during such notification periods by restricting the lawyer’s access to firm resources necessary to represent the clients during the notification period.”<sup>6</sup> These resources would include client contact information, and the use of computer client data. Likewise, if the lawyer’s departure is immediate, the firm

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<sup>3</sup> ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 99-414, at p. 2. (1999).

<sup>4</sup> Tennessee Rules of Professional Conduct, RPC 1.16 (c).

<sup>5</sup> ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 489, p. 1 (2019).

<sup>6</sup> *Id.* at p. 1.

should not restrict the lawyer’s access to client contact information because the lawyer has the ethical obligation to notify current clients of his/her departure. RPC 1.4 requires the lawyer to “promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in RPC 1.0 (e), is required by these Rules.”<sup>7</sup>

Firms cannot prohibit or restrict access to email, voicemail, files, and electronic court filing systems where such systems are necessary for the departing lawyer to represent clients competently and diligently during the notice period. Once the lawyer has left the firm, the firm should set automatic email responses and voicemail messages for the departed lawyer’s email and telephones, to provide notice of the lawyer’s departure, and offer an alternative contact at the firm for inquiries. A supervising lawyer at the firm should review the departed lawyer’s firm emails, voicemails and paper mail in accordance with client directions and promptly forward communications to the departed lawyer for all clients continuing to be represented by that lawyer.<sup>8</sup>

### CONCLUSION

Lawyers have the right to change law firms and clients have the same right to change lawyers or law firms. Lawyers and law firms have the ethical obligations to protect client interests when a lawyer leaves a law firm. Such protection involves notice to the client of the lawyer’s departure, advising clients of their options for continued representation, and a smooth transition in accordance with the client’s wishes for their continued representation.

This \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ETHICS COMMITTEE

\_\_\_\_\_  
Barbara Medley, Chair

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Charles K. Grant

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Juanita Patton

APPROVED AND ADOPTED BY THE BOARD

<sup>7</sup> Tennessee Rules of Professional Conduct, RPC 1.4(a).

<sup>8</sup> *Id.* at p. 7.