

When a Lawyer Leaves a Firm

Introduction and Objectives

Our profession has changed dramatically over time. Lawyers are no longer committed to the same firm for their whole careers, and regularly move to new firms or leave to start their own practices. A lawyer's departure often tests the professionalism of the lawyers involved and raises many ethical, legal, business and personal issues. Lawyers' ethical obligations are best fulfilled when the departing lawyer and firm agree to engage in cooperative discussions, designed to protect the interests of the clients they serve.

The objectives of the When a Lawyer Leaves a Firm module are:

- to learn about ethical considerations when leaving a firm, including your duties to clients;
- to recognize what steps should be taken prior to departing the firm;
- to understand what communications may be made to clients, including when, to whom, and how to give notice to clients; and
- to be aware of property and post-departure issues when leaving a firm.

Please note that Withdrawal of Service, generally and as it relates to departure from a law firm, is covered in the [Withdrawal of Service Module](#).

Ethical Obligations

The firm and the departing lawyer have ethical obligations under the [Code of Conduct](#) to clients, colleagues and the profession when a lawyer leaves a firm. **All of the lawyers involved owe a primary duty to the clients.** When a lawyer is departing a firm, all the lawyers involved have an ethical obligation to protect clients' interests and honour clients' rights to choose their own counsel. Lawyers within a firm also have obligations to one another, both contractual and fiduciary in nature. When a lawyer is departing a firm, all the lawyers involved have an ethical obligation to protect clients' interests and honour clients' rights to choose their own counsel. Lawyers within a firm also have obligations to one another, both contractual and fiduciary in nature.

Lawyers and firms do not have proprietary rights to clients. Clients have an absolute right to choose their own counsel, in light of the personal nature of the services provided. (See [Loreto v. Little et al, 2010 ONSC 755 \(CanLII\)](#) and *A Law Firm v. A Solicitor*, [1992] A.J. No. 1242.)

Clients are clients of the firm and not of individual lawyers, even if the client came to the firm because of a particular lawyer and regardless of whether the lawyer working on the file is a partner or associate. This is not applicable, however, to associations of independent practitioners, where each member of the association has their own files, work in progress and accounts receivable.

In addition, a client has the freedom to terminate the lawyer-client relationship at will (Rule 3.7-1 of the Code, Commentary [1]).

Lawyers and firms also have the following obligations under Rule 3.7-9 of the Code:

When a lawyer leaves a law firm, the lawyer and the law firm must:

- (a) ensure that clients who have current matters for which the departing lawyer has conduct or substantial involvement are given reasonable notice that the lawyer is departing and are advised of their options for retaining counsel; and
- (b) take reasonable steps to obtain the instructions of each affected client as to who they will retain.

The principles outlined in this Rule and commentary will apply to the dissolution of a law firm.

Rule 3.7-9 does not apply to a lawyer leaving a government, Crown corporation, other public body or corporation, or other organization where they were employed as in-house counsel.

For information about obligations pertaining to withdrawal of service, see Rule 3.7-1 and also [Withdrawal of Service Module](#) of this course.

Client Options and Considerations

When a lawyer who was substantially involved in a client's matter leaves the firm, there are three possible options for the client:

- stay with the current firm;
- go with the departing lawyer; or
- retain new counsel.

In some cases, the firm may be agreeable to the client files going with the departing lawyer and may not want to give the client the option of staying with the firm. In other situations, the departing lawyer may not be proposing that a client come to the new firm. In either case, the client should still be informed of the departure of the lawyer.

At all times, the client must be placed in a position to provide informed instructions regarding the future handling of the matter.

Client protection requires additional consideration of the following issues.

- Competence – any change in representation must not adversely affect the clients' interests and, if the firm remains as counsel, the files must continue to be managed with competence and diligence.
- Avoiding prejudice resulting from a departure or a file transfer – the firm must take all reasonable steps to protect the clients' interests and must not unreasonably deny them access to their files, in the event the firm is no longer acting.
- Maintaining confidentiality – confidential information shared with the firm's lawyers must be protected.
- Avoiding conflicts of interest – the duty of loyalty and confidentiality owed to current and former clients must not be compromised when lawyers move between firms.

- Solicitation of clients – clients must be given adequate and accurate information to assist them in making an informed decision about the choice of counsel, in the absence of undue influence, intimidation and overreaching.
- Duty of candour – avoid dishonesty, fraud, deceit or misrepresentation when dealing with both clients and other firm members in connection with a planned withdrawal from the firm.

Notice to Clients

Lawyers are obliged to tell clients about a lawyer's departure from a firm, as it amounts to a material change in the representation.

Notices are not required or justified if the departing lawyer had only a subordinate role on a file, or little direct client contact. When determining whether to send the client a notice, it is helpful to consider the situation through the clients' eyes. Would the client be concerned about the lawyer's departure and its effect on the ongoing representation?

When both the firm and departing lawyer desire to, or are willing to, continue with the client's file, the client is to be given the option to choose where the file goes.

Ideally, client communications should come jointly from the firm and the lawyer, but either or both can send a notice directly to the client if they cannot agree. Firm client lists may be used by a departing lawyer for the purpose of identifying and communicating with the affected clients.

Even if the departing lawyer does not want to take firm clients, or the firm is agreeable to the files going with the departing lawyer, the client should be informed of the lawyer's departure as it may have an impact on the ongoing representation of the client and the ability to accomplish the client's objectives. **Files should not simply be transferred with the departing lawyer, or left behind at the firm, without first communicating with the client.**

Joint Notices

A joint notice should be neutral in tone and contain the following details.

- A confirmation of the lawyer's departure and the timing, and the identity of the new contact person within the firm.
- A confirmation of the client's right to choice of counsel, along with a list of options for the client. The client may remain with the firm, go with the departing lawyer or be represented by a new firm or lawyer.
- Information about the client's liability for fees and disbursements incurred if the client terminates the retainer with the firm. For example, explain that funds held in trust as a retainer will be applied to fee accounts before the file is transferred.
- Information about refunds or transfers of unused retainers.
- An explanation of how the client file will be transferred.
- Information regarding the client's matter, such as critical deadlines or limitations, or information about pending steps.
- A list of all client property held by the firm, and a request for a direction from the client regarding where it is to be held, or to whom it should be forwarded.

- The notice should include a form authorizing the matter to stay with the firm, or authorizing the transfer of the client's file and trust funds or other property, if the client chooses to leave the firm. Include a return envelope if the notice is mailed. Authorizations to transfer trust funds should be signed by the client. If the client chooses to go elsewhere, the firm should send a letter confirming that the retainer is at an end.
- If the client does not have the option of remaining with the firm or going with the departing lawyer, due to conflicts or the inability of either the lawyer or the firm to provide representation, this should be explained to the client. The firm can also offer an alternative, such as suggesting other firms or lawyers who may be willing to take the client's matter.
- Indicate when the client needs to respond and the consequences if the client does not respond. For example, the client will continue to be a client of the firm unless the client gives notice to the contrary.

Communications Between the Departing Lawyer and Firm Clients

Departing lawyers should only contact clients after the firm has received notice of the lawyer's planned departure. Unilateral communications to clients by the departing lawyer are permitted if the lawyer and firm cannot agree on the form of joint notice to be issued to clients.

After giving notice to the firm, departing lawyers should speak with clients, to inform those with whom they have professional relationships of their impending withdrawal from the firm. This includes clients with active matters, when the departing lawyer is directly responsible for the representation. The lawyer may also communicate with firm clients in circumstances where the departing lawyer plays a principal role in the firm's delivery of legal services. The departing lawyer may not, however, directly ask clients to send files to the new firm or otherwise solicit work while still at the old firm. The communication must be very neutral.

All communication should be informative only, and neutral in tone. The following are helpful guidelines to consider when issuing notices.

- The notice should be sent only to those clients for whose active matters the lawyer has direct responsibility or involvement at the time of the notice.
- The departing lawyer may inform the client that the lawyer is leaving, the timing of the departure, where the lawyer is going, the lawyer's ability or willingness to continue to represent the client, the client's options (i.e. to stay, go with the departing lawyer, or find a new firm), and who will maintain and handle the client's file until the client expresses a choice.
- The departing lawyer must not urge the client to terminate its relationship with the firm and must not disparage the firm.
- The notice should make clear that the client has the ultimate right to decide who will handle the files.
- If the client requests more information, the departing lawyer may provide information about the new firm's billing rates, staffing and resources, as this information assists the client in making an informed decision about the choice of counsel.
- The notice should be in writing, to minimize the risk that the firm or client will accuse the departing lawyer of improper solicitation.

When the lawyer has commenced work at the new office, and is no longer employed by the old firm, the lawyer may be more direct in approaching former clients and engaging in marketing

and client development in efforts to obtain new work. Lawyers should not, however, interfere with existing retainers between prospective clients and other lawyers.

Sample leaving letters are included at the end of this module.

Duties Owed to the Firm

All lawyers owe a fiduciary duty to the firm, whether they are partners or associates. This means that no lawyer should exploit his or her position in the firm for personal benefit or interfere with the firm's ability to conduct business.

It is inappropriate for a departing lawyer to compete with the firm prior to giving notice of the lawyer's departure. Departing lawyers may, however, take some preliminary steps to establish a new office before advising the firm, as this is consistent with the interests of the clients in facilitating an orderly transition of client files. For example, the departing lawyer may obtain office space, establish trust accounts, order office equipment and obtain financing.

In contrast, the departing lawyer should not:

- entice clients and employees to leave the existing firm;
- surreptitiously remove client files without consent or knowledge of the firm or the clients;
- convert or misappropriate fees owed to the firm;
- mislead the firm about plans to leave, or conceal the departure;
- abandon the firm on short notice;
- use firm resources to copy files or client lists without permission, subject to the comments later in this module regarding the use of client information to develop a list of clients the departing lawyer may wish to contact, or to screen for conflicts arising from the lawyer's transfer to a new firm; and
- take any action which may be detrimental to the interests of the firm or the clients, aside from the impact of the lawyer's departure on the firm.

Maintaining Professionalism

Throughout the transition of leaving a firm, it is in everyone's interest to maintain the highest levels of professionalism during the transition. Tempers can flare when the stress of dealing with a departure is added to the normal stresses of practising law. Do not let it get personal. If you find you are losing objectivity, retain counsel to act as a buffer.

Proactive Considerations for Firms

A law firm should have a written agreement addressing what will happen to client matters in the event of a departure of a lawyer. It is also advisable to have a technology policy to address the management of a departing lawyer's email account and access to the firm's computer systems and data. Finally, any agreement should consider the ability of a departing lawyer to retain copies of work or precedents they have personally completed, as well as to clarify whether or not the lawyer may take copies of other firm precedents, documents, continuing professional development materials or other resources which the firm has created or paid to obtain.

Preparing to Leave

Before informing the firm of a plan to resign, a departing lawyer should be mindful of the following considerations.

- Many firms will not allow lawyers to remain in the office after learning that they are about to leave. Have a plan that will allow you to commence practice right away, in the event you are asked to leave immediately upon giving notice. Do you have a computer, workspace, copies of upcoming events on your calendar or task manager, a telephone for clients to reach you, etc.? Most importantly, before you are able to practice, you must either have approval to operate a trust account or, alternatively, must have successfully applied for an exemption from the trust accounting rules.
- Compile a list of clients and current contact information for future conflict checks. List the firm clients and matters on which you might have an ongoing conflict. You may also need to use this list to notify clients of your departure in the event the firm does not agree to notify clients, or you otherwise need to notify clients on your own.
- Review any governing agreement, whether you are a partner or associate, to determine if there are any contractual provisions affecting departing lawyers.

Once a lawyer has provided notice to the firm:

- the parties should negotiate the terms of the withdrawal, if not already provided for in an agreement;
- the firm should bill and collect on those files which are being transferred;
- if the departing lawyer is compensated based on a percentage of fees collected, compensation should be negotiated for work-in-progress that has not been billed and accounts receivable not yet collected at the time the lawyer departs;
- staff should be instructed on how to handle calls from clients or potential clients after the departing lawyer has left the firm. Clients must not be misled and the firm must not withhold information;
- the firm should agree with the departing lawyer about how emails or other communications directed to the departing lawyer will be managed;
- the [Law Society](#) should be notified of your change of contact particulars;
- your address and email address should be changed with all listservs and publications to which you subscribe; and
- your name should be removed from firm bank accounts, if applicable.

When dealing with trust conditions governing the transfer of files to the departing lawyer and/or the new firm, **it is improper to demand that the new firm retain the client file intact and return it on demand.** The new firm cannot comply with such an undertaking without infringing on the client's rights to the file. If the former firm wishes to protect itself, it should copy the file before turning it over and is entitled to retain the file for a reasonable period of time to do so. Such copying is done at the firm's own expense and not that of the client or new law firm.

Business Considerations for the Departing Lawyer

Some departing lawyers make the mistake of taking as many files as they can. This error usually occurs because of fear that the new practice will not generate enough cash flow in its early days. The lawyer believes that any work is better than no work.

Work that is at odds with the business plan of the new practice can be worse than no work at all. It can take the new practice in unintended directions and divert attention from the numerous organizational tasks that you must attend to as your new practice develops. One of the greatest threats to a new practice is too much legal work, or legal work of the wrong kind, because production overwhelms management and the infrastructure of the new practice never gets properly established.

Conflict Screening and Maintaining Confidentiality

When a lawyer is transferring to another firm, the departing lawyer and the prospective new firm must perform a conflict check to determine if the departing lawyer has represented a party with interests adverse to those of the new firm's clients. The transferring lawyer must accordingly share some information about current and former clients. It is appropriate to limit this information to what is necessary to detect and resolve a conflict arising from the lawyer's change of employment – such disclosure would include client names, names of opposing parties, a brief summary or description of the matter and whether the file is ongoing or has been concluded. It should not include information about the fees generated from a particular client's files, for example, as that information goes beyond what is necessary to conduct a conflicts analysis.

If, however, the disclosure would compromise privilege or otherwise prejudice the client, the disclosure may be prohibited. There may be potential prejudice to a client when, for example, the client has consulted the firm about the possibility of a divorce before the client has made his or her intention known to the other spouse. A similar concern may arise if the client has consulted a lawyer about a criminal charge before public charges have been laid. In the context of corporate practice, the fact that a client may have sought advice on a takeover, that has not yet been publicly announced, would be information that should not be disclosed when screening for conflicts.

If information may not be disclosed due to concerns over privilege or potential prejudice to a client, the departing lawyer and the new firm have three options:

- abandon the move;
- defer the move until the conflicts check can be completed without prejudice to the client; or
- complete the move on the understanding that if a conflict emerges, the new firm will deal with the situation as required when the conflict becomes known.

Post-Departure Matters

Communication

After the lawyer's departure, the lawyer may make direct contact with clients of the former firm and may be more direct about obtaining work from the client. The lawyers involved must not disparage one another.

A law firm should never withhold information from clients who inquire about the location or contact information of the departed lawyer. Mail and other communications should be promptly forwarded to the lawyer's new address.

Fees and Disbursements on Files Transferred and Remaining

Arrangements between the lawyer and firm regarding work in progress and disbursements should be managed to minimize expense and avoid prejudice to the client (see Commentary [6] to Rule 3.7-9 of the [Code of Conduct](#)).

For files remaining with the firm, consideration should be given as to whether it is reasonable to charge for time spent by another firm member to become familiar with the file (see Commentary [7] to Rule 3.7-9 of the Code)

Trust Conditions and Financial Arrangements

Clients must provide written direction prior to the transfer of trust funds to another firm. Client trust money that is subject to a prior trust condition or undertaking must be handled in a manner consistent with the lawyers' ethical obligations. If the file is going with the departing lawyer to a new firm, the lawyer will continue to be bound by any prior trust condition or undertaking. If the file will be transferred to a new lawyer, the departing lawyer should impose the same trust conditions or undertakings on the successor lawyer prior to departure. If the opposing lawyer is suggesting you cannot transfer funds subject to a trust condition or undertaking, you may want to get a court order or speak to a Practice Advisor.

The Practice Advisors Office encourages lawyers and firms to quickly negotiate reasonable trust conditions and financial arrangements to facilitate file transfers with the least possible impact on the clients. Practice Advisors are available to help in these negotiations. The Practice Advisors Office provides free, confidential mediation of disputes that arise when a lawyer leaves a firm.

For information about solicitors' liens, see Rules 3.7-6 and 3.7-7 of the Code and the [Withdrawal of Service Module](#) of this course.

Parting Checklist and Leaving Letters

Parting Checklist

1. Ask the firm to delegate authority to deal with your departure to one person.
2. List all files for which you are responsible. Completely clean your office, including in and behind your credenza and filing cabinets to make sure no files slip between the cracks.
3. List the files where you want to give the client the option of going with you or staying with the firm, noting any:
 - trust funds;
 - outstanding accounts receivable;
 - unbilled disbursements;
 - outstanding work in progress;
 - outstanding trust conditions or undertakings; and
 - loans to clients.
4. Discuss the list with the firm and negotiate the wording of the letter to go to the clients (see the template letters below).
5. Send the letters giving the client the option of going with you, staying with the firm or retaining new counsel, including an authority to transfer the file and trust funds. If clients contact the firm or the departing lawyer to ask what their rights are, it is unethical for either to use undue influence or harassment to keep the file.
6. Complete, bill out and collect on as many files as possible. On matters that cannot be completed, interim bill and collect on as many as possible.
7. Negotiate trust conditions for the transfer of contingency fee files, which:
 - recognize the firm's right to share in the fee and provide a mechanism for determining the appropriate share, with an arbitration clause for disputes;
 - deal with disbursements, either requiring them to be paid at the time of file transfer or when the matter is settled; and
 - deal with loans to clients.
8. Negotiate trust conditions for the transfer of non-contingency files with outstanding accounts receivable or work in progress dealing with:
 - trust funds;
 - accounts receivable;
 - disbursements, billed and unbilled;
 - work in progress; and
 - loans to clients.
9. Print out, forward, or save electronic copies of all emails, documents, correspondence and other computer files that relate to files that are going with you.
10. Inform the firm in writing on a timely basis of all the deadlines (particularly limitation and court dates) on all files that you are not taking with you so appropriate arrangements can be made to protect the clients' interests.

11. Make a list of the firm's clients and matters on which you will have an ongoing conflict of interest.
12. If you are a partner, negotiate the terms of your withdrawal from the partnership.
13. If your compensation is based on a percentage of fees collected, negotiate the basis for your compensation for work in progress unbilled and accounts receivable not collected by the time you leave.
14. File, where applicable:
 - notices of change of solicitors;
 - notices of change of agent on caveats and other Land Titles documents that contain a notice of address for service;
 - notices of change of address on security registrations;
 - notices of change of address in respect of contracts (including leases and options) where your new office will be the address for service; and
 - change of registered office for corporations where your new office will be the registered office.
15. Notify the Law Society of Alberta of your new address and status.
16. Give notice of your new address to:
 - lawyers you deal with regularly;
 - lawyers you have files with;
 - LESA, CBA other legal organizations you belong to;
 - publishers of magazines or other subscription services to which you subscribe; and
 - listservs and other Internet subscriptions.
17. If you have signing authority on the firm's bank accounts, arrange for new signing documents to be executed.

Leaving Letters

For Firm Alone or Firm and Departing Lawyers Jointly

On [date], [Departing Lawyer] is leaving/left this firm to join the firm of [name of new firm]/commence practice at [address and phone no.].

[Departing Lawyer] has been the responsible lawyer on the above matter. You may choose to have

[Departing Lawyer] continue to represent you;

This firm continue to represent you, in which case the file will be handled by [New Lawyer] or,

Some other firm represent you.

If you wish to have [Departing Lawyer] continue to represent you or have your file go to some other firm, please so advise us in writing by signing the enclosed letter of authority and returning it to us. Arrangements respecting your account(s) with us may have to be made.

Please advise us in writing of your decision by [date], so that continuity in your representation may be assured. If no response is received, the file will remain with this office.

Yours truly

For Departing Lawyer Alone

On [date], I am leaving/left [name of old firm] firm to join the firm of [name of new firm]/commence practice at [address and phone no.].

I have been the responsible lawyer on the above matter. You may choose:

To have me continue to represent you;

To have [name of old firm] continue to represent you or;

To have some other firm represent you.

If you wish me to continue to represent you, please so advise me in writing by signing the enclosed letter of authority and returning it to me for forwarding to [name of old firm].

Arrangements respecting your account(s) with [name of old firm] may have to be made.

If you wish to have your file remain with [name of old firm], or go elsewhere, please advise [name of old firm] in writing, with a copy to me.

Please advise me in writing of your decision in writing as soon as possible [or by X date] so that continuity in your representation may be assured. If we hear nothing from you, your file will remain with [name of old firm].

Yours truly

Letter of Authority

[Date]

To: [name of old firm]

This is your authority to deliver to [Departing Lawyer] the file(s) regarding the following matter(s):

[list matters]

This is also your authority to pay to [Departing Lawyer] all monies held by you in trust to my credit relating to such matter(s)*.

Client

*If there are no trust funds to be transferred, delete this paragraph.