

Leaving Your Law Firm: What Partners Need to Know

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The legal industry has seen an increase in lateral partner moves in recent years. If you're considering such a move, it is critical to understand—and avoid potential pitfalls on your journey to your next firm.

Those pitfalls can be avoided by remembering two key considerations that will shape the departure process: the prevailing importance of the client's wellbeing, and your responsibilities to the rest of the partnership. Keeping these in mind from an early stage will make for a smoother exit.

In this article, Selendy Gay partner **Joshua Margolin**—who has extensive experience advising law firm equity partners in their transitions to other law firms offers practical suggests for making an obstacle-free move to a new law firm.

INFORM THE CLIENT TOGETHER

When leaving your law firm, both you as the partner and your firm have obligations to your clients. First, there is an ethical obligation to promptly inform clients that you are changing firms. In New York, this requirement stems from Section 1.4 of Rules of Professional Conduct (RPC), which requires a lawyer both to keep a client "reasonably informed about the status of" the client's matter, and to provide the client with enough information "to permit the client to make informed decisions regarding the representation."

Ideally, you will work with your old law firm to inform the client together. Though the ABA permits unilateral statements, the New York State Bar Association recommends a joint communication.^[1] Inform your client of the departure promptly, with a notice that should provide the client with the information they need to decide on future representation.^[2]

AVOID SOLICITATION UPFRONT

Avoid veering into the realm of solicitation before leaving the law firm. Members of a law firm partnership owe each other fiduciary duties, and as fiduciaries, partners must keep each other's welfare in mind.^[3] This means that in most circumstances partners should refrain from soliciting clients to leave the firm while they remain members of the partnership.^[4] That said, it is the client's decision whether to remain with the law firm and clients should be provided this option, as well as sufficient information to make an informed decision.

So, when informing a client of an imminent departure, you should keep the notice brief and factual.^[5]

HONOR YOUR CLIENT'S RIGHTS

During the transition period, you have a duty to protect the client's interests. Carrying out this duty includes ensuring work on the client's matters does not skip a beat, and can also include updating the lawyers who may take over the representation.^[6]

It is the client's prerogative to choose their attorney—in fact, a New York court called this the "paramount concern" in a break-up of a partnership.^[7] As the ABA puts it, "clients are not property" subject to conflict-of-interest limitations, they have full control over their representation.

Your old law firm cannot interfere with this right, nor can it take steps that would negatively impact the client. For example, the firm cannot simply restaff the client matter with a new partner without the client's

permission, nor can it take tasks away from you, the current (though departing) partner, if it would harm the client, regardless of your departure.

MAKE SURE YOUR NEW FIRM CAN TAKE YOUR CLIENT ON

If the client chooses to leave with you, you must ensure that their new law firm can take them on. Competency and conflicts are two initial hurdles to overcome. Rule 1.1(b) explicitly prohibits a lawyer from representing a client in a legal matter that “the lawyer knows or should know that [he/she] is not competent to handle, without associating with a lawyer who is competent to handle it.” Your new firm should have the necessary expertise and resources to devote to the client.

The usual conflicts rules apply, but while running a conflict check, you should be wary of disclosing too much about the potential new client.^[8]

TIMING

Leave sufficient time to bring other partners up to speed on your current responsibilities. This includes your responsibilities for current clients that are remaining with the firm, as well as any administrative responsibilities you may have with the firm.

Additionally, you should cooperate with the firm in collecting outstanding fees owed from any clients that are changing firms (although the timing of your departure should not be conditioned on receipt of any such outstanding payments). You should continue to assist the firm in collecting any outstanding fees after your departure.

CONCLUSION, AND GOOD LUCK!

Overall, leaving your firm is likely one of the biggest journeys you'll navigate during your career. There's potential for missteps, but if you keep your fiduciary duties to the partnership front and center, it's possible to leave your partners, colleagues, and clients on a positive note. Above all, remember that no matter the relationship between you and your former firm, you all must work together to further the clients' best interests.

Author Information

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^[1] ABA Formal Opinion 489, available at https://www.americanbar.org/content/dam/aba/administrative/news/2019/12/aba_formal_opinion_489.pdf; Attorney Professionalism Forum: Changing Firms and Client Needs, New York State Bar Association (Oct. 6, 2020), <https://nysba.org/attorney-professionalism-forum-changing-firms-and-client-needs/>.

^[2] Rule 1.4; Formal Opinion 489.

^[3] In New York and elsewhere, “[t]he members of a partnership owe each other a duty of loyalty and good faith, and [a]s a fiduciary, a partner must consider his or her partners’ welfare, and refrain from acting for purely private gain.” *Gibbs v. Breed, Abbott & Morgan*, 271 A.D.2d 180, 184 (1st Dept. 2000) (internal citation omitted). “Partners are

constrained by such duties throughout the life of the partnership and [t]he manner in which partners plan for and implement withdrawals is [still] subject to the constraints imposed on them by virtue of their status as fiduciaries." *Id.* at 184-85 (internal citation omitted).

[4] The "solicitation of a [law] firm's clients by one partner for his own benefit, prior to any decision to dissolve the partnership, is a breach of the fiduciary obligation owed to each other and the partnership, and a breach of the partnership agreement in general." *Matter of Silverberg (Schwartz)*, 81 A.D.2d 640, 641 (2d Dept. 1981).

[5] As the ABA put it in Formal Opinion 489, the joint communication should "giv[e] the client[] the option of remaining with the firm, going with the departing attorney, or choosing another attorney."

[6] Formal Opinion 489.

[7] *Gibbs*, 271 A.D.2d at 196.

[8] See New York Rule of Professional Conduct 1.6 Comment 18F for guidance, *available at* <https://www.nycourts.gov/ad3/AGC/Forms/Rules/Rules%20of%20Professional%20Conduct%2022NYCRR%20Part%201200.pdf>.

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