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PROFESSIONAL RESPONSIBILITY**

PHILADELPHIA BAR ASSOCIATION PROFESSIONAL GUIDANCE COMMITTEE

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ETHICAL OBLIGATIONS WHEN A LAWYER CHANGES FIRMS

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I. Introduction

In April, 1999, this Committee and the Philadelphia Bar Association's Professional Guidance Committee issued Joint Opinion No. 99-100. In that Opinion we summarized key concerns that arise under then applicable Pennsylvania Rules of Professional Conduct (sometimes, "RPC") when a lawyer moves from one firm to another. Given the passage of time since the issuance of Joint Opinion No. 99-100, and the numerous inquiries this Committee receives regarding ethical obligations relating to lawyers changing firms, this Committee concluded that it was appropriate to revisit this subject matter in the light of decided and published authorities since Joint Opinion No. 99-100 was issued. On the whole, despite the passage of time and the existence of new authorities, the Committee is of the view that the conclusions reached in the prior opinion remains valid and well grounded.

This Opinion both adds to and departs from our prior pronouncement. Accordingly, this Opinion is now our operative Opinion and supersedes all prior opinions on the subject.

II. Summary of Conclusions

- The client chooses the lawyer. The client may chose to stay with the old firm, go with the departing lawyer or hire another lawyer.
- In order to exercise its choice, the client must be informed that its lawyer is leaving the old firm.
- Both the departing lawyer and the old firm have independent ethical obligations to inform the client that its lawyer is leaving the old firm.
- The clients entitled to notice are those for whom the departing lawyer is currently handling active matters or plays a principal role in the current delivery of legal services.
- The law firm should preferably be notified before the clients are notified.
- Joint notification of clients is preferable.

III. Preliminary Observations

Over the course of recent decades the legal profession has undergone a sea change in terms of the mobility of lawyers. What once was an unusual occurrence, a lawyer's departure from one firm to join another, is now an everyday event in the practice of law. See, e.g., Hillman on Lawyer Mobility 2d Ed., (hereinafter "Hillman"), § 1.1, p 1:7 ("The era of the mobile lawyer began in the 1980s and shows little indication of subsiding").¹ Underlying many such departures is a competition for clients -- a type of competition not traditionally seen in the practice -- between the departing lawyer and the firm from which the lawyer is departing (sometimes, "old firm").

Increased mobility has thrust upon the profession a variety of difficult legal and ethical issues that had not, prior to this period of change, been the subject of extensive consideration by judicial and ethical authorities. In some instances, the difficult practicalities of the potentially differing interests at stake -- the interests of the departing lawyer, the old firm and, most importantly, the clients - - do not fit neatly within the framework and text of the existing Rules of Professional Conduct. Resolution of a number of thorny issues that arise in this context is not easily achieved.

Moreover, there is an overlap, and sometimes a tension, between the Rules of Professional Conduct and applicable substantive law. Generally, when providing opinions on matters of ethics, this Committee has avoided the difficulties presented by the interface of law

¹ The Pennsylvania Superior Court indicated that the interests of law firms in the stability of their lawyers and clientele are interests deserving of protection. See, Capozzi v. Latsha & Capozzi, P.C., 797 A.2d 314 (Pa. Super. 2002) (adopting the reasoning and rationale of the California Supreme Court in Howard v. Babcock, 6 Cal. 4th 409, 863 P.2d 150 (Cal. 1993)). Thus, the interests of individual lawyers in mobility and of law firms in stability are values to be balanced in providing ethical guidance in this area.

and ethics by simply noting that it is not our province to render advice on substantive law. The temptation here to take that same course is great, for harmonizing ethical principles with legal requirements in the context of the issues that arise when lawyers change law firms is not an easy task. We have concluded, however, that a blanket failure at least to acknowledge and discuss the impact of substantive law in this opinion would not well serve members of this Bar. Although it is not the province of this Committee to provide legal advice unrelated to the Rules of Professional Conduct, ethical advice given in this context should not be dispensed in a vacuum without regard to the legal obligations that departing lawyers and old firms owe separate and apart from the Rules of Professional Conduct.

In ABA Formal Opinion No. 99-414 (“Ethical Obligations When a Lawyer Changes Law Firms”), the ABA Standing Committee on Ethics and Professional Responsibility (“ABA Committee”) recognized the need to consider substantive law, as well as rules of ethics, in addressing questions in this setting:

The departing lawyer also must consider legal obligations other than ethics rules that apply to her conduct when changing firms, as well as her fiduciary duties owed the former firm. The law of agency, partnership, property, contracts, and unfair competition impose obligations that are not addressed directly by the Model Rules. These obligations may affect the permissible timing, recipients, and content of communications with clients, and which files, documents and other property the departing lawyer lawfully may copy or take with her from the firm. Although the Committee does not advise upon issues of law beyond the Model Rules, we must take account of other law in construing the Rules; so must the departing lawyer in determining an appropriate course of action.

ABA Formal Opinion No. 99-414 at 2. We agree.

IV. The Paramount Concern: The Client’s Freedom of Choice in the Selection of Counsel

We begin our analysis of the issues by restating that which we said in our prior opinion-- the fundamental and paramount rule that must be honored in the difficult circumstances that

sometimes accompany a lawyer's change of law firms is the client's right to choose its counsel. Joint Opinion No. 99-100 at 1. The client's freedom of choice in the selection of counsel is a principle firmly embedded in our Rules of Professional Conduct. Rule 1.16 ("Declining or Terminating Representation") ethically requires a lawyer to withdraw from the representation of a client, if "the lawyer is discharged." Comment [4] to Rule 1.16 emphasizes the point: "[a] client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment of the lawyer's services." ABA Formal Opinion No. 99-414 recognizes the principle as well. There, the ABA Committee stated, "a client has the ultimate right to select counsel of his choice. . . ."

This principle of client freedom of choice has also been recognized by the courts. E.g., Adler, Barish, Daniels, Levin & Creskoff v. Epstein, 482 Pa. 416, 393 A.2d 1175 (1978), cert. denied and appeal dismissed, 442 U.S. 907 (1979); see also, Attorney Grievance Commission of Maryland v. Potter, 380 Md. 128, 158, 844 A.2d 367, 384 (2004) (commenting on client's freedom of choice).²

² In Potter, Maryland's highest court stated:

The client has the right to choose the attorney or attorneys who will represent it. . . . Clients are not the "possession" of anyone, but to the contrary, control who represent them. . . . Clients are not merchandise. They cannot be bought, sold or traded. The attorney-client relationship is personal and confidential, and the client's choice of attorneys in civil cases is near absolute.

380 Md. at 158, 844 A.2d at 384.

V. Both the Departing Lawyer and the Old Firm have an Attorney-Client Relationship with Clients Affected by the Departure; Both Bear Ethical Obligations to such Clients in Connection with the Departure

It is axiomatic that a departing lawyer who personally represents a client in a current active matter has an attorney-client relationship with that client. The departing lawyer's firm also has such a relationship with that client. Many engagement letters make this relationship explicit.

This conclusion is entirely consistent with our prior opinion on this subject. There we said that, "generally . . . a client served by one lawyer in a law firm is also a client of the firm," and that, "clients serviced by one lawyer in a firm are clients of the firm." Joint Opinion No. 99-100 at 1, 6 (citing Philadelphia Bar Ass'n Prof. Guid. Comm. Op. No. 94-30 (1994)) (emphasis added)).

It is also consistent with Comment h to § 14 of the Restatement (Third) of the Law Governing Lawyers ("Restatement"). That Comment states:

Client-lawyer relationship with law firms.

Many lawyers practice as partners, members, or associates of law firms. . . . When a client retains a lawyer with such an affiliation, the lawyer's firm assumes the authority and responsibility of representing that client, unless the circumstances indicate otherwise. For example, the lawyer ordinarily may share the client's work and confidences with other lawyers in the firm. . . . and the firm is liable for the lawyer's negligence. . . . Should the lawyer leave the firm, the client may chose to be represented by the departing lawyer, the lawyer's former firm, neither or both. . . .

Restatement § 14, Comment h (citations omitted; emphasis added). See also, Rule 1.10, Comment [2] ("a firm of lawyers is essentially one lawyer for the purposes of the rules governing loyalty to the client. . . .").

ABA Formal Opinion No. 99-414 recognizes the obligations imposed on the remaining managing lawyers of the old firm in the context of a lawyer's departure as well as on the departing lawyer:

When a lawyer ceases to practice at a law firm, both the departing lawyer and the responsible members of the firm who remain have ethical responsibilities to clients on whose active matters the lawyer currently is working to assure, to the extent reasonably practicable, that their representation is not adversely affected by the lawyer's departure.

ABA Formal Opinion No. 99-414 at 1 (emphasis added). In short, both the departing lawyer and the old law firm have an attorney-client relationship with, and owe ethical obligations to, clients in connection with a lawyer's departure.

VI. The Duty to Communicate the Fact of Departure to Clients

Aptly titled "Communication," Rule 1.4 imposes a duty of communication upon an attorney. The Rule states:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; . . .

(2) keep the client reasonably informed about the status of the matter

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

In our prior opinion on this subject, in reliance upon Guidance Inquiry 92-8 of the Philadelphia Bar Association Professional Guidance Committee, we concluded that this rule imposes an obligation upon both the departing lawyer and the old firm to advise current clients serviced by the departing lawyer of the fact of the departure. Joint Opinion No. 99-100 at 3.

Such notification is necessary in order to allow the clients to make an intelligent decision regarding their future representation. ABA Formal Opinion No. 99-414 concurs in this view:

Because the client has the ultimate right to select counsel of his choice, information that the lawyer is leaving and where she will be practicing will assist the client in determining whether the legal work should remain with the firm, be transferred with the lawyer to her new firm, or be transferred elsewhere. Accordingly, informing a client in a timely manner is critical to allowing the client to decide who will represent him.

ABA Formal Opinion No. 99-414 at 3. We reaffirm our conclusion that the departing lawyer and the old firm each owe a duty of communication to clients regarding an attorney's impending departure.

The departure of a lawyer from one firm to another is the type of development as to which Rule 1.4 requires a client to be advised. The decision as to who shall continue to represent the client in light of the departure is a decision as to which the client's informed consent must be obtained. Thus, the departing lawyer and the law firm each bear an obligation under Rule 1.4 to notify the client and obtain the client's informed consent with respect to the client's continued representation. This is not to say that each must notify the client of an impending departure, although both are permitted to if they so choose. However, if one fails or refuses to do so, the other one must.

A. The Clients to Whom the Duty to Communicate Runs

In Formal Opinion No. 99-414, the ABA Committee found the duty of disclosure to run only to "current clients." ABA Formal Opinion No. 99-414 at 1-3. The ABA Formal Opinion defined the term "current clients" to mean "clients for whose active matters [the departing lawyer] currently is responsible or plays a principal role in the current delivery of legal services."

Id. at 1. We adopt the ABA Formal Opinion 99-414's concept of "current clients" for purpose of identifying those clients to whom the duty to communicate runs.

Our Committee views the duty of communication of the departing lawyer and the old firm as running, not to all firm clients, but only to current clients of the departing lawyer, i.e., those clients for whom the lawyer either (1) is currently responsible for handling active matters or (2) plays a principal role in the current delivery of legal services. In short, current clients are the clients affected by the departure, and, hence, the ones to whom the duty to communicate is owed. We note that the duty to communicate does not include clients of the old firm on whose matters the departing lawyer did not work or worked only in a subordinate role in a way that afforded the lawyer little or no direct client contact.

B. The Timing of Communication with Clients

Having recognized the duty of communication and identified the clients to whom it does and does not run, we turn to another important aspect of notifying such clients of a lawyer's departure -- the timing of the notification. In our prior opinion, we pointed out that, although "[t]he timing of any notice is important," the subject "does not appear to be specifically covered by the Rules of Professional Conduct." Joint Opinion No. 99-100 at 2. In fact, it is not.

Nonetheless, in our prior opinion, we said that "absent circumstances that would compromise the interests of the client, the prudent approach is that the departing lawyer should not notify clients of an impending departure until the firm has been informed of the lawyer's intention to leave the firm." Id. (See Part VIII.B., infra, discussing the timing of the departing attorney's notice to the old firm).

Our prior opinion did not describe the circumstances that might allow notification of clients prior to notification of the old firm. One such circumstance that might be imagined, however, would involve a departing lawyer's reasonable fear that the old firm, upon receiving

notice of the lawyer's intended departure, would take preemptive action, such as locking the lawyer out of the firm's offices and depriving the lawyer of access to documents and the firm computer systems, which would disable the lawyer from serving clients desiring and in need of her services during the transition phase. Circumstances of this nature should be rare, since such preemptive conduct on the part of the old firm could well violate ethical obligations to clients.

To restate, both the departing lawyer and the old firm owe ethical duties to clients, including the duty to assure that their representation is not adversely affected and that their active matters continue to be handled diligently and with competence, in accordance with Rules 1.3 and 1.1. These duties apply during the period from the lawyer's negotiations looking toward a new association, through the lawyer's announcement of an intention to depart, and the clients' decisions as to whom shall continue the representations, and, if the clients determine to use the departing lawyer at the new firm, on through the transfer of the representation to that firm.

Preemptive conduct on the part of either the old firm or the departing lawyer could violate their mutual obligations along these lines. In short, during the period of transition in a lawyer's change from one firm to another, both the departing lawyer and the old firm owe a duty of cooperation to one another in the protection of the clients' interests. See Part VII, *infra*.

Our prior opinion, as a general matter, associated the timing of notification of the clients with the timing of notification to the old firm. We affirm that approach today. After notification to the old firm, the risk of claims of breach of fiduciary duty is considerably lessened. Moreover, recognizing that in most cases client notice should not precede notice to the old firm still permits the departing lawyer to comply with the lawyer's duty of communication to the client under Rule 1.4(a).

The timing of notice should be fair and reasonable under all of the circumstances. From the perspective of notice to the old firm, the notice should be timed to enable the old firm to discharge its ethical obligations in a responsible and orderly way while facilitating client freedom of choice in the selection of counsel. From the perspective of the clients, the notice should be timed so as to enable them to make a reasonable, informed, unpressured judgment regarding who should carry on their representation.

Any suggestion that the departing lawyer should not be permitted to communicate the fact of departure until after that the departing lawyer has left the old firm must be rejected. Affording the client notice of a departure after the departure has already occurred is ill-suited to allowing the client to make an informed, unpressured choice of legal counsel. Hillman, § 4.8.3.2 at p. 4:104. ABA Formal Opinion No. 99-414 concurs in this view. Id. at 5 n.11 (“Today, we reject any implication of Informal Opinions 1457 or 1466 that notices to current clients as a matter of ethics must await departure from the firm.”).

C. Form and Substance of Communication

1. The Initial Communication

The question of the form and substance of communication with clients affected by the departure must be viewed both from the perspective of the departing lawyer and of the old firm. We address the issue first from the departing lawyer’s perspective.

As we noted in our prior opinion, there is no ethical prohibition against the departing lawyer’s giving notice to current clients (i.e., clients for whose active matters the departing lawyer currently is responsible or for whom the lawyer plays a principal role in the current delivery of legal services) in person or by telephone. Joint Opinion No. 99-100 at 2. Nonetheless, because of the importance of the obligation to communicate with clients affected regarding the lawyer’s departure and the fiduciary obligations associated with the departing

lawyer's providing such notice while still associated with the old firm, as a best practice we urge that at least the initial notice be given in writing. A writing will provide a record of the communication. Id.

Additionally, because of the potential for breach of fiduciary or other duties to the old firm in any communication with clients about an intention to depart while still associated with the old firm, communications on this subject should be carefully worded and narrowly circumscribed. See Joint Opinion No. 99-100 at 4 ("the scope of the notice should be carefully limited"). Such communications by a departing lawyer, while still associated with the old firm, should go no further than necessary to protect the important value of client freedom of choice in legal representation, and should not go so far as to undermine the important value of loyalty owed by partners and associates to existing law firms. See, Graubard, Mollen, Dannett & Horowitz v. Moskowitz, 86 N.Y. 2d 121, 119-20, 629 N.Y.S. 2d 1009, 1013, 653 N.E. 2d 1175, 1179 (1995).

Balancing these competing values, we believe that the initial notice by a departing lawyer informing clients of the departing lawyer's new affiliation sent before the lawyer's departure from the firm generally should conform to the following:

1. The client should be advised of the departing lawyer's intended departure and the timing of that intended departure, together with the departing lawyer's new association and the willingness and ability of the departing lawyer at the new firm to continue with current representations of the client;
2. The client should not be urged to sever or continue its relationship with the old firm or to establish a relationship with the new firm;

3. The client should be advised that it has the sole right to decide who will complete or continue the matters, the departing lawyer, the old firm or a new lawyer altogether; and
4. Neither the departing lawyer nor the old firm should be disparaged.

These standards are consistent with ABA Formal Opinion No. 99-414 and also consistent with our prior opinion. See Formal Opinion No. 99-414 at 5; Joint Opinion No. 99-100 at 2-4.³

To avoid any risk of exposure to claims of breach of duty arising from unilateral communications with clients, while at the same time seeking to assure that the clients receive appropriate information to facilitate an informed choice in selection of counsel, we urge both the departing lawyer and the old firm to cooperate and provide a written joint notice to the clients affected by the lawyer's departure. As ABA Formal Opinion No. 99-414 notes, "[t]he far better course to protect client's interests is for the departing lawyer and her law firm to give joint notice of the lawyers' impending departure. . . ." See also, Hillman § 4.8.3 at 4:105 ("Ideally, a law firm and withdrawing partner will advance this objective [of assisting clients in making informed choices regarding representations] by cooperating to the end of providing joint notice to clients of the partner's withdrawal." (emphasis in original)); see also, Florida Rule of Professional

³ In Joint Opinion No. 99-100, we said:

In addition, the scope of the notice should be carefully limited. Clients should be told that they have the right to remain with the firm, as well as the right to switch lawyers and be represented by the departing lawyer or by a new lawyer. They should not be urged either to remain with the firm or to go with the departing lawyer. Rather, the letter should simply state the willingness of the departing lawyer or the firm to handle the client's matters. No disparaging remarks should be made about the firm or the departing lawyer, and the notice should not contain comparisons between the firm and the departing lawyer. Finally, the notice should be brief and dignified. Ohio Board of Commissioners on Grievances and Discipline Op. 98-5 (1998).

Id. at 4-5.

Conduct 4-5.8 (prohibiting lawyer unilateral contact with clients of a law firm for purposes of notifying them of intended departure or to solicit their representation, absent bona fide negotiations with an authorized representative of the law firm regarding the sending of a joint communication). Where, however, as a consequence of the circumstances of the departure such joint notice is not possible, both the departing lawyer and the old firm still bear a duty of notification to affected clients, i.e., to “current clients” of the departing lawyer as we have defined it above.

2. Subsequent Communication

Following the initial communication the question arises, what additional information may the departing lawyer and the old firm provide current clients in connection with the departure and the clients’ decisions as to who will continue the representations? From the departing lawyer’s perspective, during the period after notice of departure to the old firm and while still associated with the old firm, care must be taken in what is said, for any communication might be construed as a duty-breaching solicitation for the benefit of the departing lawyer and the new firm. Nonetheless, ABA Formal Opinion No. 99-414 concluded, “[i]f the client requests further information about the departing lawyer’s new firm, the lawyer should provide whatever is reasonably necessary to assist the client in making an informed decision about future representation, including, for example, billing rates and a description of the resources available at the new firm to handle the client matter.” ABA Formal Opinion No. 99-414 at 6 (relying upon D.C. Bar Legal Ethics Opinion 273 (1997) (“Ethical Considerations of Lawyers Moving from One Private Firm to Another”)). The ABA Committee added, however, that “[t]he departing lawyer nevertheless must continue to make clear in these discussions that the client has the right to choose whether the firm, the departing lawyer and her new firm, or some other lawyer will continue the representation.”

The old firm, like the departing lawyer, ethically may, after the initial communication, provide additional information reasonably necessary to assist clients affected by the departure in making an informed choice in the selection of counsel. Thus, the old firm is permitted to discuss such matters as billing arrangements, staffing and the competence of the old firm to continue to handle the matter going forward notwithstanding the departing lawyer's departure. However, to ensure clients' freedom of choice, constraints should apply to the old firm's communication with clients of a nature similar to those which apply to such communications on the part of the departing lawyer. The old firm should reiterate the clients' freedom of choice in the course of these communications.

3. Solicitation After Departure⁴

After departure from the old firm, both the departing lawyer and the old firm are free as an ethical matter to solicit clients of the old firm in accordance with the Rules 7.1 through 7.3. In these solicitation efforts, pursuant to Rule 7.1 a lawyer, and a law firm, are prohibited from making "a false or misleading communication about the lawyer or the lawyer's services."⁵

Rule 7.2 "[s]ubject to the requirements of Rule 7.1," permits "a lawyer [to] advertise services through written recorded or electronic communications, including public media, not

⁴ We limit our discussion in this section to the applicable Rules of Professional Conduct in order to avoid a broad ranging discussion of other law that could conceivably be applicable to the subject, such as the law of tortious interference with contractual relationships, use of trade secrets of the former firm, defamation, trade disparagement, breach of fiduciary duty, etc. Suffice it to say, that the substantive law that governs competition in business would operate to constrain the conduct of lawyers in competition for clients post-departure. Both the departing lawyer and the old firm obviously must comply with other law in the post-departure competition for clients.

⁵ The obligation of truthfulness applies not only to post-departure communications with clients, but to predeparture communications, as well. See, Rule 8.4(d) (making it professional misconduct to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation").

within the purview of Rule 7.3.” Rule 7.3(a) prohibits “in-person” solicitation of a prospective client, directly by a lawyer, or through an intermediary, unless the lawyer has a family, close personal or prior professional relationship with the person contacted or that person is a lawyer. Under Rule 7.3(a), such prohibited in-person solicitation includes contact “by telephone or by real-time electronic communication, but subject to Rule 7.3(b), does not include written communications.”

Reading these Rules together, the departing lawyer may solicit in-person, or by intermediary, including through telephonic or real-time electronic communication, any current or former client of the old firm with whom the lawyer has either a prior professional, close personal or family relationship, or the person contacted is a lawyer, provided once again, however, that such solicitation does not entail a false or misleading communication or fall within the prohibited categories of Rule 7.3(b). Additionally, the departing lawyer is free as an ethical matter to solicit in writing all current and former clients of the old firm, provided the solicitation does not entail a false or misleading communication in violation of Rule 7.1 and provided further that none of the three exceptions to otherwise permissible solicitation set forth in Rule 7.3(b) applies.⁶

With respect to a departing lawyer’s in-person solicitation of those clients of the old firm on whose matters the departing lawyer previously worked, we adopt the ABA Committee’s discussion in ABA Formal Opinion No. 99-414 of what constitutes a “prior professional relationship” sufficient to permit such in-person solicitation. The ABA Formal Opinion

⁶ The three exceptions to permissible solicitation under Rule 7.3(d) are where: (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer; (2) the person has made known to the lawyer a desire not to receive communications from the lawyer; or (3) the communication involves coercion, duress or harassment.

emphasized that the exception under Rule 7.3(a) permitted “in-person solicitation only of those current clients of the firm with whom the lawyer personally has had sufficient professional conduct [sic] [contact] to afford the client an opportunity to judge the professional qualifications of the lawyer. . .” ABA Formal Opinion No. 99-414. Unless the departed lawyer had a prior professional relationship of this nature with a client of the old firm, he would not be permitted to solicit such client by in-person contact, but only through a writing that is not a real-time electronic communication. The ABA Formal Opinion observed that “[a] lawyer does not have a prior professional relationship with a client sufficient to permit in-person or live telephone solicitation by having worked on a matter for the client along with other lawyers in a way that afforded little or no direct contact with the client.” *Id.* at 3.

VII. Duty to Cooperate in Handling and Transitioning of Active Client Matters

While this Opinion thus far has focused on duties relating to notification of the old firm and communications with clients, other duties arise under these circumstances. Principal among them is the duty to protect the interests of clients in their legal matters during the period of transition. *See*, RPC 1.16(d). Both the departing lawyer and the old firm owe an obligation to ensure that the interests of the clients in active matters are competently, diligently and loyally represented in accordance with Rules 1.1, 1.3 and 1.7 during that period. *See e.g.*, ABA Formal Opinion 99-414 at 7, n.1.

For example, with respect to an active matter that the departing lawyer anticipates will follow him to the new firm, the lawyer may not defer work on the matter that can and should be done currently in order to further his own personal interest in generating fees for the new firm. Along similar lines, an old firm which has been notified that a client intends to follow the departing lawyer to the new firm, may not render that lawyer’s continued representation of the client difficult or impossible by depriving access to documents and information needed to carry

on the representation in the absence of a valid right to assert a retaining lien.⁷ In other words, both the departing lawyer and the old firm owe a duty of cooperation during the transition to avoid prejudice to the clients' interests in connection with current and future legal representation.

In our prior opinion, we discussed one particular aspect of this duty relating to the protection of the interests of the difficult client. Joint Opinion No. 99-100 at 5. We noted there that although the departing lawyer may have an interest in taking as many clients as possible, the lawyer may also want to leave difficult clients behind. *Id.* We cautioned that in this situation, “the departing lawyer must take care not to violate the duties imposed by Rule 1.3 (diligent representation) and Rule 1.4 (communication with client).” *Id.* We reaffirmed the duties of both the departing lawyer and the old firm to notify the difficult client of the intended departure and that client's freedom of choice as to who will continue the representation. *Id.*

We also noted, however, the rights of the departing lawyer and the old firm to withdraw from the representation of the difficult client in accordance with the provisions of Rule 1.16. In our prior opinion, we said:

If the departing lawyer or former firm does not wish to continue representing such a client, the lawyer or firm is permitted generally to withdraw from the representation “if withdrawal can be accomplished without material adverse effect on the client.” Rule 1.16(b). The lawyer or firm is also permitted to withdraw from the representation when the representation “has been rendered unreasonably difficult” by the client even if withdrawal will have an adverse effect on the client. Rule 1.16(b)(5); Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility Informal Op. 94-125 (1994). Although withdrawal

⁷ While our prior opinion dealt with some, but not all, aspects of the question of entitlement to client documents in the departing lawyer setting, including the right of a lawyer or law firm to assert a retaining lien, these issues are addressed elsewhere. *See*, this Committee's Formal Opinion Nos. 2006-300 (“Ethical Considerations in Attorneys' Liens”), and 2007-100 (“Client Files - Right of Access, Possession and Copying, Along With Retention”).

may be permissible, steps still must be taken to protect the client's interests. Rule 1.16(d). Thus, the client must be notified of the lawyer's and/or firm's decision to terminate the representation. In addition, the client must also be provided with sufficient time to retain a new lawyer following notification of the lawyer's and/or firm's decision to terminate the representation. Rule 1.16(d).

Id. Our statements in our prior opinion regarding the protection of the interests of problem clients continue to apply.

In our prior opinion we also concluded, relying upon Opinion 94-30 of the Philadelphia Professional Guidance Committee, that where, following a partner's departure a client for whom the partner had worked, telephoned the law firm asking for the former partner, the firm was obligated to provide the contact information for that former partner prior to engaging in any other discussion with the client. Joint Opinion No. 99-100 at 6. That advice was based on the need to allow the client to make prompt contact with the former attorney in order to facilitate the client's freedom of choice in the selection of counsel. Id. We also concluded that after providing the contact information, the firm's representative was permitted to inquire whether the call was related to a legal matter, and if so, the firm's representative could properly propose the firm's assistance in the matter. Id. This conclusion was based upon the analysis that a client represented by one lawyer in a firm is a client of the firm. Id. Under Rule 7.3(a), we acknowledged the firm's right to communicate with a prospective client with whom the firm had a prior professional relationship. Id. We noted, however, that if the caller resisted the invitation or indicated a desire to talk only to the former partner, continued persistence or heavy-handedness by the firm would run the risk of violating Rule 7.3(b) which prohibits direct solicitation of persons who display a disinclination to deal with the firm. Id. We believe this guidance remains appropriate today.

VIII. Duty of Departing Lawyer to Notify Firm of Possible or Intended Departure

A. Existence of the Duty

We believe that a lawyer may owe an obligation to provide notice to the old firm of the lawyer's possible departure. Moreover, when the possibility of departure ripens into an affirmative intention to leave, an affirmative obligation to notify the old firm arises. Although no Rule of Professional Conduct expressly imposes such a duty to notify the old firm, the obligation flows from a number of sources.

First, in recognizing that an attorney-client relationship exists between the client and the old firm, we have acknowledged that certain ethical obligations are imposed upon the old firm flowing from that relationship and the fact of the departure. ABA Formal Opinion No. 99-414 supports this view. That opinion concludes that the members of the old firm with managerial authority (and hence, in our view, the old firm itself) are obligated, for example, "(1) to keep clients informed pursuant to Rule 1.4(b) of the impending departure of a lawyer who is currently responsible for or plays a principal role in the current delivery of legal services for the client's active matters; (2) to make clear to those clients and others for whom departing lawyer has worked and who inquire that the client may choose to be represented by the departing lawyer [by the old firm or by another lawyer]. . . ; (3) to assure that active matters on which the departing lawyer has been working continue to be managed by the remaining lawyers with competence and diligence pursuant to Rules 1.1 and 1.3; and (4) to assure that upon firm's withdrawal from the representation of any client, the firm takes reasonable steps to protect the client's interest pursuant to Rule 1.16(d)." ABA Formal Opinion No. 99-414 at 2 n 1. We agree that the old firm bears these obligations to clients.

Moreover, as ABA Formal Opinion No. 99-414 further recognizes, "[w]hen discussing an association with another firm, the departing lawyer also must be mindful of potentially

disqualifying conflicts of interest in her old firm, if the new firm currently represents any interests adverse to a client of the old firm. Should such a client be identified, the departing lawyer may need to be screened within the old firm no later than the commencement of serious discussions with the new firm. See ABA Formal Opinion No. 96-400.” ABA Formal Opinion No. 99-414 at 6 n. 12.

ABA Formal Opinion No. 96-400 (“Job Negotiations with Adverse Firm or Party”), cited in the foregoing quotation from ABA Formal Opinion No. 99-414, is instructive in understanding certain interests and obligations of the old firm in the departing lawyer context, and hence the basis for the imposition of a duty upon the departing lawyer to notify the old firm of a possible or intended departure. ABA Formal Opinion No. 96-400 addresses ethical issues which arise when a lawyer pursues an employment opportunity with a firm or party that the lawyer is opposing in a matter, focusing on the conflict that may arise in these circumstances. The opinion concludes that “depending on the stage of the discussions,” a lawyer’s pursuit of employment with an adversary firm or party may “materially limit the lawyer’s representation of a client because the area of the lawyer’s interest in the prospective affiliation may affect the discharge of many of his ethical duties to his client.” Id. at 3. The opinion notes that for the lawyer to continue the representation under these circumstances (i.e., in the face of a material limitation conflict) requires consultation and the consent of the client. Id.

Addressing the question of when such consultation must occur, ABA Formal Opinion No. 96-400 concludes:

While recognizing that the exact point at which a lawyer’s own interests may materially limit his representation of his client may vary, the Committee believes that clients, lawyers and their firms are all best served by a rule which requires consultation and consent at the earliest point that the client’s interests could be prejudiced. We, therefore, conclude that a lawyer who has an

active and material role in representing a client in litigation must consult with and obtain the consent of that client, ordinarily before he participates in a substantive discussion of his experience, clients or business potential or the terms of an association with an opposing firm.

Id. at 5.

ABA Formal Opinion No. 96-400 goes on to recognize that in certain circumstances it may be “inappropriate or unnecessary for the job-seeking lawyer to raise the potential conflict personally with the client.” Id. at 6. “This would be true, for example,” the opinion states, “if the job-seeking lawyer does not have the principal relationship with, or any direct contact with the client.” Id. In such circumstances, the opinion continues, “the job-seeking lawyer should first make disclosure to his superior in the matter or the lawyer who has the principal relationship with the client. That lawyer may then decide whether to remove the job-seeking lawyer of further responsibility for the matter pending his employment discussions, or to disclose the job-seeking lawyer’s interest in the opposing firm to the affected client, and, on behalf of the job-seeking lawyer, seek to obtain the client’s consent to the job-seeking lawyer’s continuing to work on the matter.” Id.

ABA Formal Opinion No. 96-400 concludes that the personal interest conflict that exists where a lawyer representing a client in a matter desires to pursue job negotiations with an adversary in that matter is not imputed to other lawyers in the firm. Id. at 7-8. See, RPC 1.10(a). Thus, if the job-seeking lawyer is relieved of responsibility of a matter, the firm, through other lawyers, may continue the representation of the client in that matter. Id. In this context, it would be prudent for the old firm to screen the job-seeking lawyer from further involvement in or contact with that matter.

The type of conflict addressed in ABA Formal Opinion No. 96-400 may arise anytime a lawyer in a firm negotiates with another firm if the two firms are opposite one another in any

matter. Were a job-seeking lawyer, in the course of the job negotiations, to be exposed even inadvertently to confidential information regarding a matter in which the old firm and new firm are opposite one another, the lawyer would be obligated to disclose that fact to the lawyer's existing firm, i.e., to the lawyers within that firm with managerial authority under Rule 5.1, so that the firm could properly address the situation. Thus, a job-seeking lawyer should be vigilant, while remaining at the old firm, to avoid any involvement in or being exposed to any confidential information relating to any matter where the firm with which the lawyer is negotiating is on the opposite side.⁸ Moreover, the negotiating lawyer has a duty of disclosure to the lawyer's current firm if circumstances should arise in the course of the negotiation which raise a realistic possibility of conflict.

In short, the old firm's ability to comply with its own ethical obligations to avoid conflicts, notify clients of departures, ensure client freedom of choice and avoid prejudice to client interests in the course of a departure and any accompanying withdrawal from representation, could be compromised absent the recognition of a duty on the departing lawyer in certain circumstances to notify his current firm of the lawyer's possible or intended departure. Hence, the departing lawyer may owe a duty to the old firm to provide such notice. See, Hillman, § 4.8.2 at p. 4:98 ("Generally, a partner should provide reasonable notice of an intent to withdraw from a firm."). This obligation is a natural outgrowth of the departing lawyer's practicing in the old firm.

⁸ If the departing lawyer were to become involved in such a matter or acquire such information while at the old firm and the client did not follow the lawyer to the new firm, the lawyer would carry to the new firm a former client conflict under RPC 1.9. Imputation of that conflict to others of the new firm could be avoided by following the screening requirements of Rule 1.10(b).

B. Timing of the Duty of the Departing Lawyer to Notify Old Firm

Where a duty of notice to the old firm arises, precisely when the departing lawyer should notify the old firm of a possible or intended departure will vary depending upon the circumstances. The interests of the departing lawyer and the old firm may diverge on this question. The old firm, for example, would have an interest in knowing of a lawyer's possible departure at a relatively early stage of the lawyer's job search -- to use the words of ABA Formal Opinion No. 96-400, at the point at which the lawyer "participates in a substantive discussion of his experience, clients or business potential or the terms of an association with [another] firm." Id. at 5.⁹ The lawyer, however, may not want to disclose to the old firm the fact of those types of

⁹ This Opinion does not attempt to resolve definitively the difficult question of what information, if any, relating to a client might be disclosed by a lawyer in discussions with another firm regarding a potential new association, prior to the lawyer's joining the new firm, in the absence of client consent. On a practical level, we perceive a need, for conflicts checking purposes, to disclose pre-departure at least some limited information regarding the identity of the lawyer's clients, both those who might, and those might not, join the lawyer at the new firm, as well as the nature of the work done for those clients, and the parties opposite those clients in current matters that may become matters of the new firm. We also recognize that, as a practical matter, this type of exchange of client information and conflicts checking is routinely done in connection with lawyer's changing law firms. In Formal Opinion No. 99-414, the ABA Committee recognized the need for limited disclosure of otherwise confidential client information in this context and seemed to assume that such disclosure is permissible under the Rules. Formal Opinion No. 99-414 at 6 n. 12 ("The departing lawyer must ensure that her new firm would have no disqualifying conflict of interest in representing the client in a matter under Rule 1.7, or other Rules, and has the competence to undertake the representation. In order to do so, she may need to disclose to the new firm certain limited information relating to this representation."). The ABA Committee, however, cited no authority in the Rules or otherwise to support this assumption.

We note the apparent absence of any express authorization in the Rules of Professional Conduct or elsewhere for a lawyer's making these types of pre-departure disclosures to another law firm without client consent. See Tremblay, Migrating Lawyers and the Ethics of Conflicts Checking, 14 Geo. J. Legal Ethics 489 (Spring 2006). Of course, where client consent is obtained, there can be no ethical issue regarding the propriety of disclosures under Rule 1.6. Thus, obtaining client consent would insulate the lawyer from allegations of ethical improprieties in making such disclosures. Moreover, where

discussions at such an early stage out of concern that the lawyer could lose the goodwill of his existing firm and thereby jeopardize his existing association if discussions with the anticipated new firm do not come to fruition. The departing lawyer, acting out of self-interest, may typically desire to defer notice to the old firm until after an offer of association in the new firm has been made and accepted.

In some cases deferring disclosure of the possibility of a lawyer's change of law firm until the arrangement with the new firm has been concluded will be appropriate. For reasons of both ethics and the law of fiduciary duty, however, the Committee must note that late notice will, in certain circumstances, be improper. As mentioned above, if the lawyer were, for example, working on a client matter at the old firm and the new firm were on the other side, any personal interest conflict arising in that circumstance would be one that the old firm would have an interest and an obligation to address.¹⁰ Thus, in that circumstance, the departing lawyer would have a duty of disclosure to the old firm, even before a final arrangement or decision to leave were made. The duty to disclose to the old firm in such a case -- consistent with the timing of disclosure to the client -- could arise at the point at which the lawyer desires to "participate[] in a substantive discussion of his experience, clients or business potential or terms of an association" with the other firm. ABA Formal Opinion No. 96-400.

such client consent is sought prior to departure, the lawyer may be obligated to disclose the fact of the discussions and the communication with the client regarding the same, to the old firm. See Section VIII.A., supra. Further, when a lawyer involved in discussions with another firm regarding a new association discloses client information without client consent, such disclosures should go no further than necessary to insure the new firm's ability to comply with its own ethical obligations, e.g., to avoid conflicts and ensure the ability to competently and diligently represent a prospective client.

¹⁰ Cf. Rule 1.12(b) which states that a lawyer serving as a law clerk to a judge may not negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially until the lawyer has notified the judge.

Similarly, a duty to disclose a possible departure in advance of any binding commitment or agreement to join a new firm could arise under the law of fiduciary duty. For example, if a partner with a substantial practice were aware that the old firm was making significant investments or undertaking significant commitments in terms of personnel, space, equipment, financing or other resources, to support that partner's practice, a fiduciary duty of disclosure may arise if the partner were to engage in substantive discussion that reasonably could result in that partner and the practice being taken elsewhere after the investments and commitments were entered. Similarly, if a partner or an associate engaged in substantive discussions with another firm about joining that firm, the partner or associate could not ethically deny the existence of such discussions if asked by his current firm. See, RPC 8.4(c).

Where the circumstances are such that disclosure to the old firm is not required before a final commitment to join the new firm arises, then the question of notice to the old firm becomes one of what is either required or reasonable under all the circumstances. If the question is governed by an agreement between the parties (e.g., a partnership or employment agreement), then compliance with the agreement should, absent facts that would otherwise mandate an earlier or later disclosure, suffice to discharge the duty. In the absence of an agreement, the departing lawyer should give such notice as is fair and reasonable under all the circumstances. In determining what is fair and reasonable in this context, the guiding principles should be to ensure that client freedom of choice is maintained and to allow the old firm in a responsible and orderly way to discharge its ethical obligations to clients, although other factors may also be relevant.¹¹

¹¹ Hillman states:

Relevant factors in evaluating the reasonableness of notice may include:

IX. Tortious Interference and Fiduciary Duty

In the preceding section, we suggested that the prudent approach is that the departing lawyer should not notify clients of her impending departure until she notified her firm. We offered that advice in light of substantive legal authority to the effect that “a lawyer owes a fiduciary duty to his or her current firm by virtue of the employment or partnership relationship.” Id. In support of this proposition of law, we cite, inter alia, our Supreme Court’s opinion in Adler, Barish, Daniels, Levin & Creskoff v. Epstein, supra, 482 Pa. 416, 393 A.2d 1175 (1978), and the Superior Court’s decision in Joseph D. Shein v. P.L. Myers, 394 Pa. Super. 549, 576 A.2d 985 (1990), alloc. denied, 617 A.2d 1274 (Pa. 1991). We noted previously that “[d]epending upon the circumstances and the context of the communications, communication with the firm’s clients about the lawyer’s impending departure before the firm is aware of the departure could be construed as an attempt to lure clients away in violation of the lawyer’s fiduciary duties to the firm, or as tortious interference with the firm’s relationships with its clients.” Joint Opinion No. 99-100 at 2.

In Adler, Barish, the Pennsylvania Supreme Court reversed a Superior Court order dissolving an injunction against former salaried associates of a law firm. In reinstating the injunction prohibiting the former associates from contacting or communicating with clients of their former firm, the Court found that the former associates’ actions in seeking to represent their former firm’s clients constituted tortious interference with the former firm’s contractual

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- (1) past practice concerning withdrawal from the firm;
 - (2) compliance with notice provisions of the partnership agreement;
 - (3) the possibility of retribution from the firm that may serve to harm the interests of clients;
 - (4) the promptness with which the partner informs the partnership of the partner’s decisions to withdraw.

Id. § 4.8.2 at p. 4:98.

relationships with those clients. The Court held that the circumstances and manner in which the former associates sought the representation of those clients undermined the clients' freedom of choice in the selection of counsel. The Court explained:

“[A]ppellees’ conduct frustrates rather than advances, [the former firm’s] clients’ ‘informed and reliable decision making.’ After making [such] clients expressly aware that appellees’ new firm was interested in procuring their active cases, [one of the former associates] provided the clients the forms that would sever one attorney-client relationship and create another. [The former associates’] aim was to encourage speedy simple action by the client. All the client needed to do was ‘sign on the dotted line’ and mail the forms in the self-addressed stamped envelopes. . . . Thus, appellees were actively attempting to induce the clients to change law firms in the middle of their active cases. Appellees’ concern for their line of credit and the success of their new law firm gave them an immediate, personally created financial interest in the clients’ decisions. In this atmosphere, appellees’ contacts posed too great a risk that clients would not have an opportunity to make a careful, informed decision.

Id. at 427-28, 393 A.2d at 1181.¹²

However, communication that goes beyond notification of the fact of the departure and begins to take on the appearance of an active effort to take the client from the old firm and acquire it for the new firm may constitute solicitation. When such communication (i.e., one tantamount to solicitation) occurs while the departing lawyer is still a partner in or employed by the old firm, the communication may, as a matter of the substantive law of partnership, agency or

¹² One commentator has said that Adler, Barish is the “first case of consequence” to apply the law of tortious interference with contractual relationships in the context of lawyers departing from a law firm and competing for clients they serviced at the old firm. Hillman, § 3.1.2 at p. 3:4. Although aspects of the case have been criticized by commentators (see Hillman, § 3.1.2 at p. 3:8 n. 26; Johnson, Solicitation of Law Firm Clients by Departing Lawyers and Associates: Tort, Fiduciary and Disciplinary Liability, 50 U. Pitt. L. Rev. 1, 10. n.23), the case has never been directly overruled. Its broad fundamental holding still appears to be good law; if a departing lawyer’s conduct in competing for clients is “improper,” it may constitute tortious interference with the contractual relationships of the old firm with those clients and may be enjoined. 482 Pa. at 429-436, 343 A.2d at 1181-1185.

tortious interference, expose the lawyer to liability for breach of fiduciary or other duty to the old firm. E.g., Adler, Barish, supra, 482 Pa. at 435, 393 A.2d at 1185 (recognizing agency duties owed by associates to their existing firm); Meehan v. Shaughnessy, 535 N.E. 2d 1255 (Mass. 1989) (partner’s efforts, while still at the firm, to lure away clients to new firm constituted breach of fiduciary duty); Graubard, Mollen, Dannett & Horowitz v. Moskovitz, 86 N.Y. 2d 112, 624 N.Y.S. 2d 1009, 653 N.E. 2d 1175 (1995) (predeparture secret solicitation of firm client to commit to representation by departing lawyer at new firm constitutes breach of fiduciary duty to firm); Vowell & Meelheim, P.C. v. Beddow, Erben & Bowen, P.A., 679 So.2d 637, 637 (Ala. 1996) (attorney “breached his fiduciary obligations owed to the . . . firm, by contacting clients of that firm and obtaining employment as an attorney for those clients while he was still an officer, director and shareholder of the firm.”).¹³

¹³ Certain authorities suggest that the critical event with respect to determining when a departing lawyer’s “solicitation” of clients of the old firm is permissible is the lawyer’s giving of notice to the old firm of an intention to leave or to solicit clients, not the lawyer’s actual departure. Section 9 of the Restatement, for example, states that “prior to leaving the firm” a departing lawyer “may solicit firm clients,” “after the lawyer has adequately and timely informed the firm of the lawyer’s intent to contact firm clients for that purpose. . . .” See, also, Hillman § 4.8.3.2 at p. 4:104 (“The act that enables the solicitation is the notification of withdrawal rather than the withdrawal itself.”). In providing our ethical guidance, we stop short of advising lawyers that solicitation of firm clients is permissible while remaining associated with the firm. Neither the Restatement nor Hillman cites any judicial authority that squarely supports that proposition, and we have uncovered no Pennsylvania decision that so holds. We perceive a risk that such direct competition with the lawyer’s current firm would constitute a breach of fiduciary or other duty even if the lawyer gave notice to the old firm of an intent to commit such a breach. In providing our guidance we opt instead for a more conservative approach based on the distinction articulated in the text between communication and solicitation. We believe that during the period post-notification and pre-departure, a departing lawyer’s duty to communicate with clients regarding an intended departure (see, Part VI.B., supra) can be satisfied by providing factual information relevant to the client’s options in the selection of counsel (see, Part VI.C., supra), without actively soliciting the client to terminate an existing relationship and establish a new one.

In a leading case, the New York Court of Appeals, in Graubard, Mollen, *supra*, 86 N.Y. 2d 112, 624 N.Y.S. 2d 1009, 653 N.E. 2d 1175, recognized the somewhat amorphous line in this context between permissible communication and impermissible solicitation under the law of fiduciary duty.¹⁴ In Graubard, Mollen the court, after concluding that “preresignation surreptitious ‘solicitation’ of firm clients for a partner’s personal gain . . . is actionable” (86 N.Y.2d at 1190-20, 624 N.Y.S. 2d at 1013, 653 N.E. 2d at 1183), went on to explain that precisely what constitutes prohibited solicitation is unclear:

What, then, is the prohibited “solicitation”? As the trial court recognized, in classic understatement, the answer to that question is not self-evident. (149 Misc.2d, at 486).

Given the procedural posture of the case before us [on summary judgment] plainly this is not an occasion for drawing the hard lines. Factual variations can be crucial in determining whether an attorney’s duties have been breached, and we cannot speculate as to what conclusions will follow from the facts yet to be found in the case before us.

86 N.Y.2d 102, 629, N.Y.S.2d 1015, 653 N.E.2d 1184.

The New York high court went on to set out certain broad parameters of permissible and impermissible conduct. At one end of the spectrum, the court noted, attorneys dissatisfied with an existing arrangement would not violate fiduciary duties by taking “steps to locate alternative space and affiliations.” *Id.* Likewise, the court noted that as a matter of ethics “departing

¹⁴ In Graubard, an “of counsel” attorney of one law firm began discussions with another firm about joining the latter firm. Two other partners of the old firm were contemplating the move also. The new firm would not finalize any arrangement with the lawyer, or the other partners, unless a large client of the old firm approved transfer of its business to the new firm. The lawyer likewise wanted to ensure that he would continue to represent that client if he moved to the new firm. A series of meetings were held between the client, the lawyer and the representatives of the new law firm. Eventually, before the lawyer changed firms, the client gave the requested assurances. The trial court denied the defendant lawyer’s motion for summary judgment and, first, the Appellate Division, and then, the New York Court of Appeals affirmed.

lawyers have been permitted to inform firm clients with whom they have a prior professional relationship about their impending withdrawal and new practice, and to remind the client of its freedom to retain counsel of their choice” Id. At the other end of the spectrum, the court said, “secretly attempting to lure firm clients (even those the partner has brought into the firm and personally represented) to the new association, lying to clients about their rights with respect to choice of counsel, lying to partners about plans to leave, and abandoning the firm on short notice (taking clients and jobs) would not be consistent with a partner’s fiduciary duties.” Id., 629 N.Y.S.2d at 1014-15, 653 N.E.2d at 1183-84 (citing Matter of Silverberg, 81 A.D.2d 640 641); see also, Meehan v. Shaughnessy, 404 Mass. 419, 535 N.W.2d 1255; Adler, Barish, supra, 482 Pa. at 428, 393 A.2d at 1181.

In the middle ground between these two ends of the spectrum lies the challenge for the departing lawyer in staying within the proper scope of predeparture communications with clients.

CAVEAT: The foregoing opinion is advisory only and is not binding on the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. This opinion carries only such weight as an appropriate reviewing authority may choose to give it.