

LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET AA
INTRODUCTION TO LEAVING A FIRM

Worksheet AA is intended to facilitate a discussion about issues surrounding leaving a firm, such as how to protect oneself, advising clients and withdrawing from cases.

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- Discuss the duties a lawyer has to his or her firm regarding notification that the lawyer is departing, as well the duties he or she may have to share fees with the firm if clients will be departing with the lawyer. What duties does the principal of a firm have to deal honestly with other firm members?
- Discuss relevant ethical considerations of asking clients to move with you to a new law firm. How should this be done to ensure that the client has the right to his or her choice of counsel, the client has a continuity of service and the client's property is protected? Do you have a duty to notify your firm that you are departing prior to notifying your clients? Can the firm you are leaving restrict you from notifying clients that you are leaving and from asking them if they want to go with you? Do you continue to have any obligations to clients who stay with the law firm you left? See Prof. Cond. Rules 1.9 and 5.6.
- Discuss the importance of and tips for checking for conflicts at a lawyer's new firm.
- Discuss the appropriateness of taking with you items that you generated while employed with the firm you are departing, including your contact lists, sample pleadings that the firm maintains, forms that you produced for the cases you worked on, etc.
- Discuss practical suggestions for notifying your firm that you are leaving. What are the best things to do to maintain the relationship? What should you avoid doing?

RESOURCES

INDIANA RULES OF PROFESSIONAL CONDUCT

RULE 1.9: DUTIES TO FORMER CLIENTS

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

- (1) whose interests are materially adverse to that person; and
 - (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.
- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

COMMENTS

Lawyers Moving Between Firms

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However,

the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(e). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

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RULE 5.6: RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making either of the following:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement;
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a claim or controversy.

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