By DAVID I. GRUNFELD and EVIE BOSS COGAN

Ethical Considerations For Departing Lawyers

Can a laid-off attorney take originated clients with him/her or do they belong to the firm?

You're an associate in a law firm, and you've just been told you're being laid off. You have a few cases you've brought in, but have been working mostly on other lawyers' matters, even though you have direct contact with their clients.

Are the clients you originated yours to take elsewhere, or do they belong to the firm? What can you tell the other lawyers' clients that you're in touch with? What can you say about the firm you're leaving? What restrictions are there on applying to other firms?

Most of these questions are not specifically answered by Pennsylvania's Rules of Professional Conduct, but some are, and others by ethics opinions, case law and commentators.

First, under the terms of most fee agreements, the client engages the firm, even though one lawyer, such as the originator, may be working on the matter. Therefore, the departing lawyer cannot assume that the file and client can be taken without further communication with the client and the firm.

The way it has played out locally is that the lawyer, either jointly with the firm or with the firm's approval of the language, sends a letter to the client, advising of the departure, and making it clear that the client is the one who has the choice of going with the departing lawyer, staying with the firm, or making any other choice as to engagement of counsel. What the departing lawyer should not do is to attempt to communicate secretly with the client (or with other lawyers' clients with whom the lawyer is in contact) in order to solicit their departing with the lawyer. Of course, the lawyer cannot and should not "bad mouth" the firm in any way, such as expressing or implying that the firm is unable to handle the matter at all or as well as the departing lawyer. As a substantive matter, any of the foregoing could be actionable as the tort of interfering with contractual relationships.

A parenthetical issue, one of contract and not necessarily ethics, is the ultimate division of the fee (if contingent), or a *quantum meruit* claim by the law firm.

Another element in the ethics consideration is conflicts. Rule 1.9 addresses duties to former clients (mostly arising out of the continuing duty of confidentiality under Rule 1.6), and the Comment discusses lawyers moving between firms. Basically, when the new firm represents a party adverse to the former client, then the lawyer is disqualified from involvement with the firm's client and from continued representation of the former client when the lawyer has actual knowledge of confidential information. Such conflicts may possibly be waived, by authorization from both clients with informed consent.

Rule 1.10 imputes disqualifications to others in the firm. However, when a lawyer joins a firm, the lawyer may be effectively screened from the matter, with written notice to the appropriate client to enable the client to ascertain compliance. Hence, it is obvious that a conflicts check must be done with a firm to which the departing lawyer is applying, and appropriate safeguards put in place where the new firm has matters adverse to the old firm.

Finally, it should go without saying that once these decisions are made, the departing lawyer and firm should work together in withdrawing and entering appearances, copying files, notifying opposing counsel and courts, reimbursing costs (a custom but not a requirement), transferring escrowed funds and the like.

As difficult as things may be for a "downsized" lawyer, that lawyer must follow the rules and take the high road in dealing with clients, cases and the firm. ■

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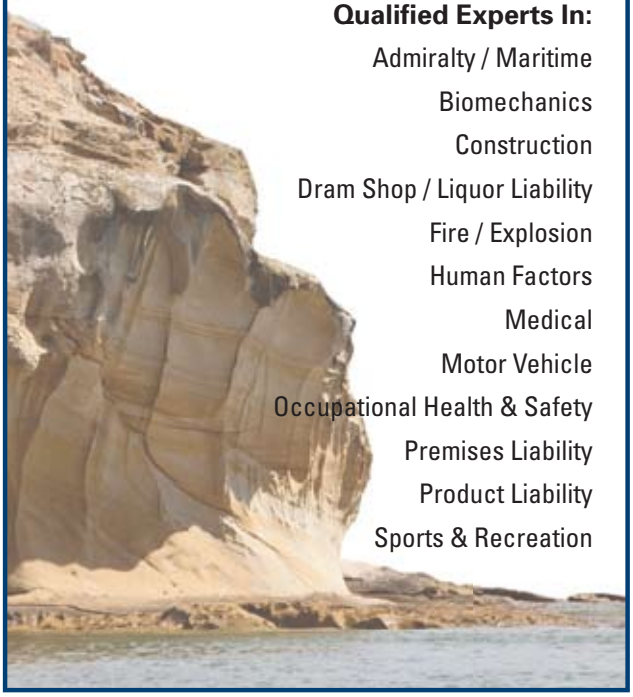

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