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Ethical Considerations in the Dissolution of a Law Firm or a Lawyer's Departure from a Law Firm

(Revised April 2025)

I. Introduction and Scope

Many ethical issues arise in connection with the dissolution of a law firm or a lawyer's departure or withdrawal from a firm. Such issues often arise in the context of determining who will represent particular clients following the break-up. The departing lawyer and the responsible members of the firm with which the lawyer has been associated have ethical obligations to clients on whose legal matters they worked. These ethical obligations sometimes can be at odds with the business interests of the law firm or the departing lawyer. In such circumstances, all involved lawyers must hold the obligations to the client as paramount.

The Colorado Rules of Professional Conduct (Colo. RPC or Rules) impose obligations and duties upon lawyers that apply when a law firm dissolves or a lawyer departs a firm. The ethical considerations discussed in this opinion include: (1) the duty to keep the client reasonably informed about the status of the legal matter and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, pursuant to Rule 1.4(a) and (b); (2) the duty to provide

competent representation to the client, pursuant to Rule 1.1; (3) avoiding neglect of client matters because of a break-up, in violation of Rule 1.3; (4) taking appropriate steps upon withdrawal from representation, in accordance with Rule 1.16(d); (5) ensuring that any funds in which a client or a third party may claim an interest are maintained separate from the lawyers' own property, in accordance with Rule 1.15(a); (6) refraining from any solicitation or efforts to retain clients that would violate the provisions of Rule 7.3; (7) restrictions on a lawyer's right to practice after leaving a firm that might violate Rule 5.6(a); and (8) generally refraining from any conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c).

The primary focus of this opinion is on the ethical obligations of lawyers to the *clients* they represent at the time of the dissolution or the lawyer's departure. The opinion also touches upon the actions of lawyers toward each other in these circumstances. The ethical obligations of the lawyers involved are the same whether the departing lawyer is a partner/shareholder, an associate, or some other category of lawyer such as one designated as of counsel. However, the opinion does not address the *legal* obligations owed to clients, or the legal duties arising from the relationship between and among the lawyers. It also does not address circumstances in which lawyers who are not in the same firm represent, as co-counsel, a common client.

This opinion substantially adopts and endorses Formal Opinion 99-414 (1999) issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association (ABA Standing Committee).[1] The remainder of this opinion focuses on application of the Colorado Rules to these circumstances and on issues that

warrant comment beyond that in ABA Formal Opinion 99-414. Reference is also made to ABA Standing Committee Formal Opinion 19-489 (2019).

The Colorado Rules apply to lawyers as individuals and not to law firms as separate entities. Any references to the duties and obligations of a law firm within this opinion are references to the responsible members of the firm.

II. Analysis

A. The Client's Right to Choose Counsel

It is now uniformly recognized that the client-lawyer contract is terminable at will by the client.[2] Rule 1.16(a)(3) codifies this principle.[3] When a lawyer who has had primary responsibility for a client matter withdraws from a law firm, the client's power to choose or replace the lawyer borders on the absolute.[4] Neither the firm nor any of its members may claim a possessory interest in clients.[5] In other words, clients do not *belong* to lawyers.[6]

A lawyer or law firm may not, therefore, take action that impermissibly impairs a client's right to choose counsel. For example, a dispute between attorneys in a law firm over a fee that is due or may come due should not impact the client's right to freely choose counsel.

Nevertheless, the client's right to choose is subject to certain limitations. Generally, a lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client, if the representation will result in violation of the Rules of Professional Conduct or other law[7] or if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.[8] For example, the

departing lawyer may be the only lawyer in the firm with experience in a specialized area of law applicable to a particular client matter. In such circumstances, the law firm from which the lawyer is departing may be unable to continue the representation, except on a limited basis.[9] On the other hand, the departing lawyer may lack the support and resources necessary to handle a complex matter properly after leaving the firm. The departing lawyer may also be prohibited from representing the client if he or she is associating with a firm that would be precluded from representation due to a conflict of interest. In some situations, the right of a client to select the lawyer may be limited under the provisions of an insurance contract.[10]

In any event, a client represented by a particular lawyer or law firm will have to choose counsel again if the firm breaks up or the responsible lawyer departs from the firm during the course of the representation. In order to make appropriate choices, the client must have sufficient information.

B. Notice to Clients

In Colorado, a lawyer has a duty to keep a client reasonably informed about the status of a matter[11] and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.[12] When a lawyer plans to cease practice at a law firm, or when a law firm plans to terminate the lawyer's association with the firm, both the lawyer and the firm have responsibility for providing timely notification to clients affected by the lawyer's departure and providing such clients with information sufficient to allow informed choice.

Not only are the remaining and departing lawyers *permitted* to contact clients about an impending change in personnel, they are *required* to provide the client with at least enough information to determine the future course of the representation.[13] It is highly preferable that any affected client be notified by a joint communication from the departing lawyer and the firm and that the joint notice be transmitted sufficiently in advance of the lawyer's anticipated departure to allow the client to make decisions about who will represent it and communicate that decision before the lawyer departs. An "affected client" is one for whose active matters the departing lawyer currently is responsible or plays a principal role in the current delivery of legal services.[14] The joint and advance notice helps ensure an orderly transition that will best protect the interests of the affected client. Attached to this Opinion as Appendix B is a form of letter that, if given in a timely manner, should satisfy the ethical requirements of notice to affected clients.

In some circumstances, timely, joint notice is not practicable or possible. If either the departing lawyer or the firm fails or refuses to participate in providing timely and appropriate joint notice, unilateral notice becomes necessary. When unilateral notice is given, it should impartially and fairly provide the same type of information as would have been included in the joint notice.[15]

There will be situations in which a departing lawyer will be unable to represent the client, and the notice to the client would not present representation by the departing lawyer as an option. For example, if the lawyer were to take a position with a government agency or a private corporation or be subject to certain discipline, the departing lawyer likely would be unable to represent the client. However, a difference of opinion between the firm

and the departing lawyer regarding the competence or ability of one or the other to represent the client does not justify failure or refusal to extend to the client a choice in representation. Similarly, actions by either firm or departing lawyer to limit the other's access to client matter information and materials or that fail fairly to present options to the client are both unethical and unprofessional.

Consistent with Rule 7.1, both the departing lawyer and the firm may solicit professional employment from clients or former clients of the firm. In doing so, however, the departing lawyer should be mindful that such solicitation may give rise to a civil claim for damages or other relief under the substantive law, especially while the departing lawyer is still employed by or associated with the law firm.[16] Pursuant to Rule 7.3, departing lawyers may solicit professional employment through written or electronic communications. Departing lawyers having a "family or prior professional relationship with the prospective client" are not subject to the 30-day waiting period for soliciting clients in personal injury or wrongful death matters as provided in Rule 7.3(d), and also may solicit clients in person or by telephone without running afoul of Rule 7.3.[17] Prior to departure, a departing lawyer may solicit business from "affected clients," but there may be tort or contractual liability to the firm for doing so. In this context, a firm client with which the departing lawyer has a prior professional relationship solely by being employed at or a member of the firm is not an "affected client".

If a client or potential client inquires of the firm seeking to contact a lawyer who has departed the firm, the firm must provide the lawyer's new business address and telephone number, if known. Failure to do so may be a violation of Rule 1.4 or may reflect

a lack of candor.[18] However, after providing information as described above, the firm may inquire whether the call is regarding a legal matter and, if so, may ask whether someone at the firm may help instead.[19]

C. Proper and Continuous Handling of Client Matters

Amid the turmoil of a firm break-up, attorneys should never forget that they have clients and that they continue to owe those clients ethical and legal duties.[20] While an affected client is choosing between the departing lawyer and the law firm, both have a duty to ensure that the client's matter is handled properly. A lawyer shall act with reasonable diligence and promptness in representing a client, and shall not neglect a legal matter entrusted to that lawyer.[21] Unless the relationship between a lawyer and client is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client.[22]

Absent a special agreement, the client employs the firm and not a particular lawyer, and the firm has responsibility, along with the departing attorney, for the cases being handled by the departing attorney.[23] Therefore, subject to the contrary wishes of an affected client, a law firm is obligated to continue to handle matters that had been handled by a departing lawyer.[24] The affected client, however, may continue to view the departing lawyer as the client's representative despite the lawyer's withdrawal from the firm. The attorney-client relationship is an ongoing relationship that gives rise to a continuing duty to the affected client unless and until the client clearly understands, or reasonably should understand, that the relationship is one on which he, she or it can no longer depend.[25]

D. Withdrawal by the Law Firm or Attorney as Counsel of Record

A lawyer's departure from a law firm generally leads to withdrawal of either the firm or the departing lawyer as counsel for one or more affected clients. In matters in which a lawyer or firm has entered an appearance in a court proceeding, a formal motion to withdraw or substitute counsel likely will be required.[26] A departing lawyer who is counsel of record before a court or agency must immediately notify the tribunal or agency of the lawyer's new contact information. Even after a client chooses by whom the client will be represented, both firm and departing lawyer remain obligated to tribunal or agency (to, for example, attend hearings or file pleadings) until a motion to withdraw is granted or a substitution of counsel or notice of withdrawal is effective.

Rule 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

When the law firm and the departing lawyer provide proper notice as discussed above, the affected client's matter is handled with diligence and competence during the withdrawal and selection of counsel, and the client chooses to be represented by one or the other (or chooses another lawyer or firm), the interests of the client will have been protected to a large extent. However, client papers and property still can be an issue. In any client matter, files generally are created while the departing lawyer is associated with the firm. The proper handling of these client files is discussed below.

The affected client may have paid an advance retainer for representation in a particular matter. Typically, such retainers are paid to the firm rather than an individual lawyer. These funds must be held separate from the lawyers' own property.[27] If the lawyer or law firm holding the client funds is withdrawing from representation, and neither the lawyer nor any third person claims any interest in the funds, the lawyer or firm holding the funds must promptly pay the remaining trust balance to the client or otherwise apply the funds as directed by agreement with the client.[28] If the departing lawyer will be representing the affected client, the client funds held by the firm may, with the client's consent, be transferred to an appropriate trust account established by the departing lawyer.

In some circumstances neither the departing lawyer nor the law firm wants to continue representing the affected client. In this situation, the obligations of the lawyers are no different than in any other situation in which a lawyer wishes to withdraw from representation. The departing lawyer and the firm must bear in mind the responsibilities imposed under Rule 1.3 (diligent representation), Rule 1.4 (communication), and Rule 1.16 (termination of representation).

E. Client Files

With limited exceptions, the client is entitled to the client file.[29] The departing lawyer may remove client files only with the consent of the affected client. If the affected client so requests, the firm must provide the files to the departing lawyer, subject to the limitations discussed in CBA Formal Opinion 104. Pending receipt of instructions from the client, both the departing lawyer and the law firm should have reasonable access to the file in order to protect the interests of the client, which remains the paramount obligation

of both.[30] Even if the client has requested that the file be transferred to the departing lawyer, the file should not be removed without giving the firm notice and opportunity to copy the file. Likewise, if the affected client requests that the firm continue the representation, the departing lawyer should be given the opportunity to copy the file.[31] The contents of such client files remain confidential pursuant to the provisions of Rule 1.6.

In some circumstances, a client wishing to have a file transferred to the departing lawyer may owe the firm for past services or for costs advanced on the client's behalf. It is this Committee's view that such situations should be treated the same as any other in which a client discharges a lawyer without fully satisfying his or her financial obligations to the lawyer. The firm may, under certain limited circumstances, assert a retaining lien against client property in its possession.[32]

The law firm may possess client files in legal matters that are inactive or have been closed. Both the departing lawyer and the firm should consider any ethical obligations they may have with respect to such files insofar as they pertain to client matters for which the departing lawyer was responsible or played a principal role.[33]

F. Conflicts of Interest Arising Out of the Departing Lawyer's New Affiliation

The departing lawyer must also be aware of and avoid conflicts of interest that may arise out of his or her affiliation with another law firm. While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8(c), 1.9 or 2.2.[34] The rule of imputed disqualification flows from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client.[35] Thus, when the departing

lawyer brings clients to his or her new firm, they become the new firm's clients. Likewise, the new firm's clients become the departing lawyer's clients.

Because of the rules concerning imputed disqualification, the departing lawyer and the new firm must perform thorough conflicts checks. This conflicts check should be designed to determine whether the departing lawyer's association with the new firm may involve conflicts of interest based on consideration of the departing lawyer's current *and* former clients.[36] The process of checking for conflicts of interest may, in some circumstances, be undertaken prior to the departing lawyer's affiliation with the new firm.[37]

G. Restrictions on the Right to Practice

Rule 5.6(a) provides that a lawyer shall not participate in offering or making a "partnership or employment agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement or as permitted by Rule 1.17 [regarding the sale of a law practice]." The comment to Rule 5.6 provides that such an agreement "not only limits the lawyer's professional autonomy but also limits the freedom of clients to choose a lawyer."

In Colorado, an agreement prohibiting a departing lawyer from soliciting clients after departure from a firm impermissibly impairs the client's right to discharge and choose counsel, and may lead to discipline for the offending attorney.[38] Courts in many other jurisdictions have refused to enforce agreements between lawyers and law firms that they viewed as anti-competitive.[39] While a departing lawyer must be mindful of the lawyer's fiduciary obligations to the firm and of the existing contractual relations between the firm

and affected clients, the lawyer may not agree to, and the firm must not impose, conditions that might inhibit a client's right to choose counsel.

H. Duty of Candor

Regardless of the nature of the departure, a departing lawyer and firm each have a duty to act with candor toward the other.[40] Rule 8.4(c) states that, "it is professional misconduct for a lawyer to … (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation." The duty of candor, as well as Rule 8.4(c), may be breached by a lawyer who misrepresents the lawyer's status or intentions to others at the firm, and vice versa.

While a discussion of the legal, as opposed to ethical, duties of lawyers is beyond the scope of this opinion, lawyers and firms contemplating a dissolution or departure should give careful consideration to their respective legal duties, including potential obligations based on their contractual, agency, or fiduciary relationships. A departing lawyer should consider the consequences that may arise from contacting clients and attempting to obtain consent to transfer matters to the departing lawyer in advance of notifying the firm, or in denying to the firm the lawyer's intention to depart. Firms likewise should consider the consequences of similar actions prior to the contemplated departure of a lawyer who is not yet aware of impending change.[41] Such actions by a departing lawyer or a firm may reflect a lack of candor.

[1] Before this opinion was amended in 2025, ABA Formal Op. 99-414 was attached to this opinion as Appendix A. ABA Formal Op. 99-414 also was printed as an appendix to this opinion, with the ABA's permission, in the May 2007 issue of The Colorado Lawyer.

[2] Charles W. Wolfram, Modern Legal Ethics, § 9.5.2, at 545 (1986). The Colorado Supreme Court recognized the client's right to terminate the attorney-client relationship as a matter of public policy in *Olsen Brown v. City of Englewood*, 889 P.2d 673, 676 (Colo. 1995).

[3] Rule 1.16(a)(3) provides that except when a lawyer is ordered to do so by a tribunal, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged, subject to the approval of the tribunal where applicable.

[4] Robert W. Hillman, *Hillman on Lawyer Mobility*, ("Hillman"), Chapter 2, § 2.3.1 (2000 Supplement).

[5] *Id.*

[6] In expressing this view, the committee is aware that the Restatement of the Law Governing Lawyers suggests that clients belong to the firm and not an individual lawyer. Rest. (3d) Law Governing Lawyers, § 9(3), cmt. i. The Committee disagrees with any characterization of clients as property.

[7] Colo. RPC 1.16(a)(1).

[8] Colo. RPC 1.16(a)(2).

[9] The comment to Colo. RPC 1.1 provides in pertinent part:

> While the licensing of a lawyer is evidence that the lawyer has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which the lawyer is not qualified. However, a lawyer may accept such employment if in good faith the lawyer expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to clients. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which the lawyer is not and does not expect to become so qualified should either decline the employment or, with the consent of the client, accept the employment and associate with a lawyer who is competent in the matter.

The comment further provides:

> In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.

[10] *See* CBA Formal Op. 91, "Ethical Duties of Attorney Selected by Insurer to Represent Insured" (Jan. 16, 1993).

[11] Colo. RPC 1.4(a).

[12] Colo. RPC 1.4(b).

[13] Alexander R. Rothrock, Essays on Legal Ethics and Professional Conduct ("Rothrock") § A4.2.1, CLE in Colorado, Inc. (2005).

[14] *See* ABA Formal Op. 99-414, Appendix A hereto, which provides a similar definition for the term "current clients." In determining whether or not the departure of a lawyer from a firm triggers the requirement to notify a client on whose matter the lawyer has been working (that is, whether the client is an "affected client"), the lawyer and the firm also should consider whether the client reasonably would believe itself to be affected by the lawyer's departure, for example, where a lawyer is specifically named in an engagement letter as being expected to provide services to the client. Even if a client is not an affected client, the departing lawyer may choose to notify the client of his or her departure if such notification complies with Colo. RPC 7.3. Restrictions purporting to prohibit such contact likely would violate the prohibition of Colo. RPC 5.6 on restrictions of the right of a lawyer to practice after termination of his or her relationship with a firm.

[15] Kentucky Bar Assn. Ethics Op., KBA E-424 ("KBA E-424"), n. 4 (2005).

[16] *See e.g., Jet Courier Serv., Inc. v. Mulei*, 771 P.2d 486 (Colo. 1989), a case not involving lawyers. The Court held that an employee's solicitations of customers and fellow employees to compete with his employer constitutes a breach of the employee's duty of loyalty. In reaching that conclusion the Court relied upon the commentary to § 393 of the *Restatement (Second) of Agency*, which notes that "an employee is not 'entitled to solicit customers for [a] rival business before the end of his employment.'" *Jet Courier*, 771 P.2d at 493 (quoting *Restatement (Second) of Agency§* 393 cmt. e). Hence, the court noted, it is important to distinguish between advising current customers that the employee is leaving current employment, which does not violate the duty of loyalty, and solicitation of those customers for a new competing business, which does. *Jet Courier*, 771 P.2d at 493-94. See also *Azar v .Ngo* P.3d 446 (Colo. App. 2024) (limiting *Jet Courier*'s holding that the law permitting an employee to prepare to compete with an employer only protects the employee from liability in tort, but not from liability for contract claims). However, given the departing attorney and firm's ethical obligation noted above to provide the client with sufficient information to make an informed decision about the future course of representation, a departing attorney's actions in providing truthful information about his/her ability to continue such representation, is ethically permitted. *See also* additional cases cited in ABA Formal Op. 99-44, Appendix A hereto, at n.16, 17.

[17] The Committee concurs with the ABA view that a lawyer does not have a prior professional relationship with a client sufficient to permit in-person or live telephone solicitation solely by

having worked on a matter along with other lawyers in a way that afforded little or no direct contact with the client. "Prior professional relationship" also may apply to the constituents of an organizational client with whom the lawyer has had substantial contact, who in their individual capacity never were clients of the firm or lawyer. See 2 G. Hazard & W. Hodes, *The Law of Lawyering*, § 57.7, n. 4, p. 57-25 (3d ed. 2001).

[18] Colo. RPC 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. To the extent such inquiries are handled by nonlawyers employed or associated with the firm, partners or principals in the firm, or those lawyers having direct supervisory authority over the non-lawyer, shall make reasonable efforts to insure that the firm has in effect measures giving reasonable assurance that the non-lawyer's conduct will be compatible with the professional obligations of the lawyer, or shall make reasonable efforts to insure that the person's conduct is compatible with those professional obligations. Colo. RPC 5.3(a) and (b).

[19] Phila. Bar Assn./Pa. Bar Assn. Joint Ethics Op. 99-100 (April 1999).

[20] Rothrock § A4.2.1.

[21] Colo. RPC 1.3.

[22] Comment, Colo. RPC 1.3. Even after the attorney-client relationship has terminated, the firm and the departing lawyer have an obligation to avoid harming the client's interests. For example, where a client has terminated the client's relationship with a firm, the firm nonetheless has the obligation to make sure that communications coming to the client through the firm are promptly communicated to the client. See Restatement (Third) The Law Governing Lawyers, § 33(2)(c).

[23] ABA Comm. On Ethics and Professional Responsibility, Informal Op. 1428 (Feb. 16, 1979).

[24] Wisconsin Ethics Op. E-97-2, State Bar of Wisconsin CLE Books (July 1998).

[25] *People v. Bennett*, 810 P.2d 661, 664 (Colo. 1991) (*quoting In re Weiner*, 120 Ariz. 349, 352, 586 P.2d 194, 197 (1978)). In *People v. Bennett*, the Colorado Supreme Court held that whether an attorney-client relationship exists turns on the reasonable, subjective view of the client, and an important factor is whether the client believes that the relationship existed. "The attorney-client relationship is an ongoing relationship giving rise to a continuing duty to the client until the client understands, or reasonably should understand, that the relationship is no longer to be depended on." Id.

[26] C.R.C.P. 121, §1-1(4), applicable to attorneys practicing in the district courts in Colorado, seems to indicate that when an attorney enters an appearance as a member of a firm, it is the firm as a whole that becomes counsel of record. Thus, if the departing lawyer will not be continuing the representation after leaving the firm, a formal motion to withdraw may not be necessary if the firm will continue representing the client. In contrast, the local rules of the United States

District Court for the District of Colorado state that the law firm is not counsel of record. D.C. Colo. L. R. 83-5(B). Thus, in a matter pending in certain federal courts, it may be necessary for the departing lawyer to withdraw from representation and for a different lawyer with the firm, who will take over responsibility for the case, to enter an appearance.

[27] Colo. RPC 1.15(a).

[28] *See* Colo. RPC 1.15(b). For proper handling of funds in a lawyer's possession in which the lawyer or another person claims an interest, *see* Colo. RPC 1.15(c).

[29] *See* CBA Formal Op. 104, "Surrender of Papers to the Client Upon Termination of the Representation," (April 17, 1999).

[30] ISBA Op. 95-02, n. 4; Utah Ethics Op. 132 (1993).

[31] *See* KBA E-424 (recognizing that both the firm and the departing lawyer may have legitimate interest in the content of a client file because, among other reasons, it would be essential in defending a later malpractice action). See also, D.C. Bar Legal Ethics Comm. Op. 168 (1986) (concluding that a firm may copy transferred files at its own expense).

[32] *See* CBA Formal Op. 82, "Assertion of Attorney's Retaining Lien on Client's Papers," (April 15, 1989; Addendum Issued 1995).

[33] For general discussion regarding client files in closed legal matters, see Raymond P. Micklewright, "Understanding File Retention: Developing an Ethical Policy and Plan-Part I," 30 *The Colorado Lawyer* No. 10, p. 147 (October 2001); Raymond P. Micklewright, "Understanding File Retention: Developing an Ethical Policy and Plan-Part II," 30 *The Colorado Lawyer* No. 11, p. 77 (November 2001).

[34] Colo. RPC 1.10(a).

[35] Colo. RPC 1.10, Comment.

[36] Even if the departing lawyer did not personally represent a particular client at the prior firm, a conflict of interest can exist if the lawyer's new firm represents a client in the same or a substantially related matter, the interests of the prior firms' client are materially adverse to those of the new firm's client, and the departing lawyer acquired information protected by Rule 1.6 that is material to the matter. Colo. RPC 1.9(b).

[37] *See* Colo. RPC 1.6(b)(7) permitting a lawyer to reveal information relating to a the representation of a client to the extent the lawyer reasonably believes necessary "to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information is not protected by

the attorney-client privilege and its revelation is not reasonably likely to otherwise materially prejudice the client".

[38] In *Johnson Fam. L., P.C. v. Bursek*, 2024 CO 1, ¶ 9*,* the Colorado Supreme Court explained Rule 5.6 is designed primarily to protect a client's freedom to select counsel. It held an employment or partnership agreement that either entirely prohibits a lawyer from continuing to practice in competition with the lawyer's former firm or imposes a substantial disincentive for the departing lawyer to agree to continue representing a client in competition with the departing lawyer's former firm violates Rule 5.6. *Id.*, ¶ 14. As a result, the Court held that the agreement at issue was unenforceable as violative of public policy. *Id.*, ¶ 19. In *People v. Wilson*, 953 P.2d 1292, 1294 (Colo.1998), the Colorado Supreme Court issued a public censure against a lawyer who attempted to enforce an employment agreement prohibiting departing lawyers from soliciting clients and providing for forfeiture of all fees earned by departing lawyers through such solicitation. T he court held that such conduct violated Colo. RPC 8.4(g), which prohibits conduct in violation of accepted standards of legal ethics.

[39] For a thorough discussion of agreements discouraging competition among lawyers, see Hillman, § 2.3.4 (2004 Supplement).

[40] This committee agrees with the Oregon Bar Association and the Oregon Supreme Court that a lawyer has a duty of candor to her or his firm. Or. Bar Assn. Formal Op. No. 2005-70. ("Regardless of contractual, fiduciary, or agency relationship between Lawyer and Firm A, however, it is clear under Oregon RPC 8.4(3) that Lawyer may not misrepresent Lawyer's status or intentions to others at Firm A. *See In re Smith*, 315 Or. 260, 843 P.2d 449 (1992); *In re Murdock*, 328 Or. 18, 968 P.2d 1270 (1998) (although not expressly written, implicit in disciplinary rules and in duty of loyalty arising from lawyer's contractual or agency relationship with his or her law firm is a duty of candor toward that law firm)").

[41] *See, e.g., Meehan, et al. v. Shaughnessy*, 535 N.E.2d 1255 (Mass. 1998); *Adler, Barish, Daniels, Levin and Creskoff v. Epstein*, 393 A.2d 1175 (Pa. 1978); *In re Smith, supra; In re Murdock, supra*, at n. 7.