

CHECKLIST FOR DEPARTING ATTORNEYS

- If you are making a lateral move to another firm or setting up your own practice, remember that the client's freedom of choice in selection of counsel is paramount. Always put the interests of your clients first. Keep the transition as amicable, professional, and stress-free as possible. Contentious withdrawals alienate clients and damage relationships. (This advice applies to associates, partners, Of Counsel affiliates, contract lawyers, or any other lawyer who is severing a relationship with a law firm.)
- Conflicts can arise when a lawyer changes firms. The new lawyer's conflicts are now the firm's conflicts (and vice versa) unless the screening rule in Oregon RPC 1.10 applies. Run a conflict check with the new firm and provide conflict information about your clients as the incoming lawyer. (See the discussion below about the resignation process.) Take appropriate measures if a conflict is found. [See the Professional Liability Fund (PLF) practice aid, "Conflict of Interest Systems – Procedures" available on the PLF website, www.osbplf.org.]
- Inform the firm of your decision to leave *before* contacting any clients. **Failing to give adequate and timely notice to your firm or partners before you contact clients is a violation of the duty of loyalty owed by a lawyer to his or her firm based on their contractual or agency relationship. It may also constitute conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Oregon RPC 8.4(a)(3).** *In re Complaint as to the Conduct of Murdock*, 328 OR 18, 25 (1998), citing, *In re Smith*, 315 Or 260, 266 (1992).
- Honor all fiduciary and contractual responsibilities:
 - If you are a partner, see the PLF practice aid, "Partners Departing a Law Firm," available on the PLF website, www.osbplf.org.
 - If you are not a partner, review your employment contract, employment letter, office policies, office procedures, or any other applicable terms that may control the process for terminating your relationship with your current firm or your obligations upon departure.
 - Be advised there may be law firm policies or procedures which affect the mechanics of withdrawal, such as the manner in which conflict information is provided.
- If your firm paid bar association membership dues, professional liability coverage, excess professional liability coverage, or other costs on your behalf you may or may not be obliged to reimburse your firm. Review your terms of employment, your partnership agreement, or other controlling policies/procedures as described above. Neither the Oregon State Bar (OSB) nor the Professional Liability Fund (PLF) can make this determination for you.
- As referenced briefly above, do not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Oregon RPC 8.4(a)(3). The best practice is to manage your departure in a way that is transparent to your firm:
 - Seek permission if you wish to take forms.
 - Provide an inventory of any property you are removing from your office.
 - Provide the firm with a copy of your client notification letter if you are unable to agree on a joint notification and elect to send your own.

- If you wish to recruit associates or others to join you in your new firm, inform your current firm before approaching anyone to come with you.
 - Keep the firm advised of all the steps you are taking in conjunction with your departure until your relationship with the firm is terminated. This is good advice for associates, partners, Of Counsel affiliates, contract lawyers, or any other lawyer who is severing a relationship with a law firm.
- The following violates one or more rules of professional conduct and may result in discipline:
 - Taking firm property, including forms, without the knowledge or consent of the firm;
 - Taking client files without the knowledge or consent of the firm;
 - Taking client money without the knowledge or consent of the firm;
 - Secretly attempting to lure firm clients to the new firm by having them sign retainer agreements with the lawyer rather than the firm; or
 - Lying about the client's right to choose counsel.

This list is not exhaustive. See *In re Smith*, 315 Or 260, 266 (1992).

- Using law firm resources (equipment, letterhead, postage, staff, etc.) to set up your new practice or solicit clients is inappropriate and may be a breach of your fiduciary or contractual responsibilities. As noted below, consult with outside counsel if you have questions about what you can and cannot do.
- If you are terminating representation, follow Oregon RPC 1.16. A lawyer may withdraw from representing a client if “withdrawal can be accomplished without material adverse effect on the interests of the client.” Oregon RPC 1.16(b)(1). “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 or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.” Oregon RPC 1.16(d). See Beverly Michaelis, “How to Fire a Client: Do's and Don'ts When Ending Representation,” *Oregon State Bar Bulletin* (July 2007). An updated version of this article is available on the PLF website, www.osbplf.org, along with sample disengagement letters.
- Review the following articles:
 - Helen Hirschbiel, “On the Move: Ethical Duties When Switching Law Firms,” *Oregon State Bar Bulletin* (May 2007).
<http://www.osbar.org/publications/bulletin/07may/barcounsel.html>.
 - Amber Hollister, “Seeking New Horizons: Ethical Duties When Changing Law Firms,” *Oregon State Bar Bulletin* (August 2012).
<http://www.osbar.org/publications/bulletin/12augsep/barcounsel.html>.
 - Mark J. Fucile, “Moving On: Duties Beyond the RPCs when Changing Law Firms,” *Oregon State Bar Bulletin* (June 2013).
<http://www.osbar.org/publications/bulletin/13jun/managing.html>.
 - Marian C. Rice, “Making Ends Neat,” *Law Practice Magazine* (September/October 2012).

http://www.americanbar.org/publications/law_practice_magazine/2012/september-october/ethics.html.

- Review the following ethics opinions:
 - OSB Formal Opinion No. 2005-29 “Law Partnerships: Covenants Not to Compete” <https://www.osbar.org/docs/ethics/2005-29.pdf>.
 - OSB Formal Opinion No. 2005-70 “Lawyer Changing Firms: Duty of Loyalty” <https://www.osbar.org/docs/ethics/2005-70.pdf>.
 - Other Oregon opinions related to departing a firm are referenced on the PLF website, www.osbplf.org. See our forms and practice aids, “Departing a Firm.”
 - State Bar of California Formal Opinion No. 2014-190 “Dissolving Firm and Moving to New Firm” [http://ethics.calbar.ca.gov/Portals/9/documents/Opinions/CAL%202014-190%20\(11-0003\)%20v1.pdf](http://ethics.calbar.ca.gov/Portals/9/documents/Opinions/CAL%202014-190%20(11-0003)%20v1.pdf). [Issues discussed: Upon the dissolution of a law firm, what duties does an attorney affiliated with the firm owe to a client on whose behalf he or she provided legal services if the attorney no longer will be representing the client following the dissolution? How does the fulfillment of those duties differ if the attorney had no connection with or knowledge of the client prior to dissolution of the firm? Do the steps an attorney may be required to take depend on the nature of the attorney’s position with the firm?]
 - Philadelphia Bar Association Joint Formal Opinion 2007-300 “Ethical Obligations When a Lawyer Changes Firms” <http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/EthicsOpinion2007-300.pdf> [Excellent discussion of ethics issues and substantive law on lawyer mobility, withdrawal, and dissolution.]

- The process of leaving your firm occurs in stages:
 1. Do the homework described above – review your partnership agreement, employment contract, policies, and procedures – whatever applies to or controls the process of departing from your firm.
 2. Read the resources referenced above and seek ethics advice or the advice of outside counsel if needed.
 3. Prepare for the departure process. This begins by assessing your current client caseload. Do you hope to take clients with you? Wish to leave clients behind? Is it possible that *neither you nor your firm* wish to continue representing certain clients? If so, can withdrawal be accomplished without prejudicing the interests of the clients?
 4. Bring all open files up-to-date with a status memo. Include information about upcoming deadlines.
 5. Prepare for your resignation. (See below.)
 6. Submit your resignation. (See below.)
 7. Notify clients by e-mail or mail. (See below.)
 8. If necessary, cooperate with filing substitutions of counsel or submit withdrawals. Until you are removed as attorney of record on a matter, you remain responsible for the case in the eyes of the court. (See the discussion above regarding Oregon RPC 1.16.)

- Prepare for your resignation meeting:

- Prepare your resignation letter or notice.
 - Prepare a client selection list identifying clients whom you wish to notify of your departure. Include complete contact information (e-mail address, mailing address, telephone number). **Include only clients with whom you have significant contact and all matters where you are the principally responsible attorney.**
 - Draft a joint client notification letter/e-mail. Your notification must inform the clients that the choice is in their hands: engage you, stay with the firm, or chose another lawyer. If you intend to withdraw from representing a particular client, give the client proper notice and comply with Oregon RPC 1.16 as noted above. [See the PLF practice aid, “Joint Letter from Firm and Departing Attorney,” available on the PLF website, www.osbplf.org.] More than one type notification may be necessary. You may also wish to prepare your own separate client notification in the event you and your firm cannot agree upon a joint notification. [See the PLF practice aid, “Separate Letter from Departing Attorney,” available on the PLF website, www.osbplf.org.]
 - Identify the scope of file materials you propose to include in the transfer process for each client. This may include the paper file, electronic file, or closed files.
 - Draft an authorization to transfer file to be enclosed with your notification to clients. [See the PLF practice aid, “Authorization to Transfer File,” included in our Departing a Firm materials on the PLF website, www.osbplf.org.]
 - Consider the logistics of your move. At your resignation meeting, be prepared to discuss how the firm will forward mail, redirect incoming calls and e-mail, provide conflict of interest information, transfer files, and transfer client trust funds. [See the PLF practice aids, “Moving Checklist,” “Conflict of Interest Systems – Procedures,” and “Email Communications for Departing Attorneys.” All are available on the PLF website, www.osbplf.org.]
 - Bring all open files up-to-date with a status memo as discussed above. Include information about upcoming deadlines. Be prepared to discuss the status of any cases you do not wish to take with you at your resignation meeting.
 - Start gathering and removing personal belongings only. Prepare a list of firm property or shared property you wish to take.
 - Schedule a resignation meeting when you will give notice and provide the information referenced above.
- Meet with your partners or firm management:
 - Submit your resignation letter or notice.
 - Provide a copy of your client selection list.
 - Provide a copy of your proposed joint client notification letter/e-mail.
 - Provide copies of your authorizations to transfer files, including the scope of file materials to be included for each client.
 - Get a commitment from the firm on how client notification will proceed. Make a joint decision during your resignation meeting or set a deadline for reaching an agreement. If necessary, make clear that a unilateral notification will be sent to all clients on the client selection list by the deadline date if there is no joint agreement. [Note: if you send your own unilateral notification to clients, copy the firm.]
 - Discuss and reach an agreement regarding the logistics of your move - how the firm will forward mail, redirect incoming calls and e-mail, and provide conflict of interest information; the process of file transfer; the process of transferring client trust funds.
 - Discuss and reach an agreement on how to handle matters for clients who are not on your client selection list. Your files should be up-to-date and should include a status memo noting any upcoming deadlines. Cooperate regarding Substitutions of Counsel or filing of withdrawals as necessary. See the discussion above.

- Discuss and reach an agreement regarding firm property or shared property you wish to take.
- Confer with outside counsel as needed.

Retain your own copy of your resignation packet.

- Complete the transfer of client trust funds from your old firm. The trust account check from your former firm should be accompanied by an itemization of funds being transferred, as well as copies of the most recent billing statements sent to the clients.
- Complete the transfer of client files, including any file material which may be stored electronically such as e-mail communications. It is best to have a client directive of what the file should be, instructing the former firm to turn over the file as the client describes it.
- Sign new fee agreements any clients who moved with you from your old firm.
- Submit a change of address card to the post office or change your address online at <https://www.usps.com/umove/>.
- Send change of address notices to others, such as opposing counsel, courts, vendors, etc. Update your address with the Oregon State Bar (OSB). When your address is updated with the OSB it is automatically updated with the PLF. [See the PLF practice aid, “Moving Checklist,” available on the PLF website, www.osbpolf.org.]
- Send out announcements regarding the opening of your practice to former clients, friends, colleagues, state bar associations, local bar associations, and your law school alumni newsletter.
- The information published by the PLF (including these guidelines) is intended as a brief overview of the issues involved in departing a firm. For legal advice, consult outside counsel experienced in the areas of lawyer mobility, partnerships, fiduciary duties, lawyer separation, and law firm dissolution. This is particularly critical if you anticipate a contentious departure. The PLF does not provide legal advice on lawyer withdrawal or law firm dissolutions. Nor can we mediate or resolve disputes between lawyers and firms.
- For ethics advice relating to your departure, consult outside counsel or contact the OSB General Counsel’s Office, <http://www.osbar.org/ethics>.

IMPORTANT NOTICES

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