

**THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
FORMAL OPINION INTERIM NO. 11-0003**

ISSUES: Upon the dissolution of a law firm, what duties does an attorney formerly affiliated with the firm owe to a client on whose behalf he or she provided legal services if the attorney will no longer be representing the client following the dissolution? What duties does she owe to the client if she had no connection with or knowledge of the client prior to dissolution of the firm? Do those duties differ depending on the nature of the attorney's position with the firm?

DIGEST: California Rules of Professional Conduct, rule 3-700, provides that a member may not withdraw from the representation of a client until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client. The requirements of rule 3-700 also apply when an attorney's withdrawal is prompted by the dissolution of a law firm. In the event of dissolution, all attorneys who are employed by or partners of a firm are required to comply with rule 3-700 as to all clients of the firm, regardless of their knowledge of or connection to any specific client or the specific nature of their affiliation with the firm.

AUTHORITIES

INTERPRETED: Rules 3-110, 3-500, and 3-700 of the Rules of Professional Conduct of the State Bar of California.^{1/}

STATEMENT OF FACTS

A few months ago, Client, a closely held corporation, signed an engagement letter with Old Firm to retain the firm's services in pursuing certain claims. The engagement letter expressly stated that Client was retaining Old Firm, that Partner A would be primarily responsible for the representation, and that Associate also would work on the matter. Partner A was a partner in Old Firm, and Associate was an employee of the firm.

From the inception of Client's engagement, Associate has worked with Partner A on the matter. Associate and Partner A are both aware that the applicable statute of limitations will soon expire on Client's claims, such that a complaint must be filed in the near-term to preserve Client's rights. No other attorneys at Old Firm have been involved in the matter. Old Firm is comprised of approximately 200 lawyers located in various offices.

Associate learns that Old Firm is breaking apart when a large group of lawyers leaves the firm. Following this departure, Old Firm falls into disarray, with the remaining attorneys openly seeking new employment. Associate finds a new job with New Firm. Associate does not ask Client if Client would like to be represented by Associate at New Firm, nor does she want to make this proposal to Client, primarily because Client is slow to pay its bills. Before leaving for New Firm, Associate writes a memorandum to Partner A that provides a detailed outline of the status of work that she has performed for Client and upcoming dates, including the deadline imposed by the applicable statute of limitations. She ensures that the memorandum is saved in Client's file before departing. Associate also calls Client to advise that she is leaving the firm and will no longer be working on the matter.

A few days after Associate's last day of employment with Old Firm, a group of partners, including Partner A and Partner B, participate in a vote to dissolve Old Firm. Shortly thereafter, Partner A leaves Old Firm to join Mega

^{1/} Unless otherwise indicated, all future references to rules in this opinion will be to the Rules of Professional Conduct of the State Bar of California.

Firm. Partner B, a transactional lawyer who specializes in securities, starts a solo practice. Old Firm no longer employs any attorneys.

Mega Firm has a conflict with Client that will not be waived. On his last day with Old Firm, Partner A sends a short email to Client, with a copy to Associate, advising that Old Firm has dissolved and that he will no longer be able to represent Client due to the conflict of interest. In the email, Partner A recommends that Client promptly engage new counsel. Partner A also mentions the upcoming statute of limitations deadline and warns Client that it must engage new counsel to protect its interests.

Associate becomes aware that Partner A is no longer representing Client, and that Client has not engaged new counsel. She is also aware that Client will forfeit its claims if a complaint is not promptly filed. Associate reaches out to Partner B to seek his advice. Partner B never had any dealings with Client and has no conflicts with Client.

What are the respective duties to Client owed by Partner A, Associate, and Partner B?^{2/}

DISCUSSION

1. Duties of Partner A to Client

Rule 3-700(A)(2) of the Rules of Professional Conduct provides:

A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D) [concerning the delivery of the client's papers and property, and refunding advanced fees that have not been earned], and complying with applicable laws and rules.

If permission for termination of employment is required by the rules of a tribunal, a member also shall not withdraw from employment in a proceeding before that tribunal without its permission. Rule 3-700(A)(1). The rule specifically references "members," indicating that individual attorneys are responsible for compliance. An attorney may not discontinue representation of an existing client simply by virtue of changing employment. See Cal. State Bar Formal Opn. No. 1985-86 ("Whatever change may occur in an attorney's employment relationship does not vary the professional responsibilities the attorneys owe to the clients."). The attorney must continue to serve the client unless withdrawal is permitted by the provisions of rule 3-700. An attorney also has a duty to keep his clients reasonably informed about significant developments relating to their matters, which would include information concerning dissolution of the firm that the clients engaged. See rule 3-500.

Accordingly, to withdraw from representation, Partner A was required to take steps to avoid reasonably foreseeable prejudice to the rights of Client, allow time for employment of other counsel, ensure that Client's papers and property are appropriately handled, and communicate with Client regarding the dissolution of the firm.^{3/} See rules 3-500 and 3-700(A); see also Cal. State Bar Formal Opn. No. 1985-86 ("Whenever there is a material change in the

^{2/} The Committee does not opine regarding any distinctions between equity partners in a law firm and so-called non-equity partners. As discussed in this Opinion, all attorneys employed by a firm generally share equal professional responsibilities to all clients of the firm. This Opinion does not address the responsibilities of attorneys employed by a legal services organization whose funding has been reduced or eliminated. See also Cal. State Bar Formal Opn. No. 1981-64. This Opinion also does not address the responsibilities of attorneys who perform limited services for a firm or client on a contract basis. In addition, it does not address the issues raised by the "unfinished business doctrine" in connection with the revised Uniform Partnership Act. See, e.g., *Geron v. Robinson and Cole, LLP* (S.D.N.Y. 2012) 476 B.R. 732, 739 (citing Cal. Corp. Code section 16401(h) and concluding the "reasonable compensation" rule undermines the holding in *Jewel v. Boxer* (1984) 156 Cal.App.3d 171 [203 Cal.Rptr. 13]).

^{3/} If Old Firm had appeared in litigation, Partner A would also have to take steps to comply with the applicable rules of the tribunal in which the action was pending. Rule 3-700(A)(1).

representation of a client caused by a change in an attorney's employment status, all attorneys involved directly in this change have a responsibility to see that the client receives the protections required by this rule, including timely and accurate notice of the change." Partner A may not transition to Mega Firm until he has taken sufficient steps pursuant to the rule to prevent reasonably foreseeable prejudice to Client, in light of the existing client conflict with Mega Firm.

Partner A has failed in these responsibilities. Partner A has left Old Firm without taking reasonable steps to ensure that Client's interests are protected, particularly with regard to the upcoming deadline. Partner A has not provided due notice of his departure or communicated appropriately with Client. An email sent on the day of Partner A's departure is insufficient. It is reasonably foreseeable that Client will be prejudiced by Partner A's withdrawal. Even if Client engages new counsel in time to file a complaint, it is unclear whether new counsel will be able to familiarize herself sufficiently with the matter to file an effective complaint that preserves all claims. Partner A has impermissibly abdicated his duties to Client.

2. Duties of Associate to Client

Although Associate was an employee of Old Firm, rather than a partner, rule 3-700 applies equally to her conduct toward Client. Rules 3-500 and 3-700 apply to all "members," regardless of their employment status. See rules 3-500 and 3-700(A). Thus, just like Partner A, Associate has a duty to ensure that Client is not prejudiced by Old Firm's dissolution. In Cal. State Bar Formal Opn. No. 1985-86, this Committee opined that "all attorneys involved directly" in a change in representation resulting from dissolution of a firm "have a responsibility to see that the client receives the protections required by this rule, including timely and accurate notice of the change." This duty "requires attorneys to provide for an orderly transition in the event of attorney withdrawal or dissolution, and to protect the clients' interests whenever there is a change in the employment status that materially alters the representation." If one attorney, such as Partner A, refuses to participate in the discussion, this attorney's conduct does not excuse the others from their own professional responsibilities. Cal. State Bar Formal Opn. No. 1985-86 ("Upon dissolution or withdrawal, the attorneys involved on both sides have a professional duty to act as fiduciaries to the clients who are affected by the withdrawal.").

Under typical circumstances (*i.e.*, absent the dissolution of the firm), an associate departing her employment with a firm likely sufficiently complies with the rules by taking the steps followed by Associate here, assuming that she has complied with applicable rules of any tribunal before which she was appearing at the time of her departure. See rule 3-700(A). Associate notified the Client of her departure and prepared a detailed memorandum outlining the status of her work and identifying important upcoming deadlines. If Associate had left in circumstances where she reasonably believed attorneys at Old Firm would continue representing Client, such that services to the Client would be uninterrupted and no new counsel would need to be retained, these steps would ordinarily be sufficient to ensure the Client suffered no reasonably foreseeable prejudice and was fully informed of Associate's departure.^{4/}

However, in the present circumstances, it appears to be reasonably foreseeable to Associate at the time of her departure that simply sending a memorandum to Partner A might not be sufficient to protect Client's interests. Associate is aware that Old Firm is on the verge of dissolution at the time she leaves the firm. The firm is in open disarray, with attorneys actively and openly seeking new employment. Indeed, under our facts, that is precisely why she left. She then becomes aware that, within a few days of her departure, the partners of Old Firm have voted to dissolve the firm and Partner A refuses to provide any further services to Client. Associate is also aware of the impending deadline to file a complaint.

Under these circumstances, Associate's notice to Client of her departure and her preparation of a memorandum detailing her work are not sufficient steps to avoid reasonably foreseeable prejudice to Client. At the time of her departure, it was reasonably foreseeable that Client faced imminent prejudice due to the disarray at Old Firm.

^{4/} Such steps may not always be sufficient, however. In some circumstances, an associate departing a firm must take additional measures to avoid prejudice to clients, such as by following up to confirm that a new attorney associated with the firm has taken responsibility for a matter. See *Maples v. Thomas* (2012) __ U.S. __ [132 S.Ct. 912] (associates departed firm without notifying client and without ensuring new counsel took over matter, resulting in firm overlooking crucial notice regarding prisoner seeking post-conviction review of death penalty sentence).

Consequently, Associate had a continuing duty to Client to monitor Client's matter after her departure and to take further reasonable steps to avoid prejudice to Client's interests as necessary. Upon discovering that Partner A refused to continue handling the matter, Associate had a duty to step in to prevent prejudice to Client. Associate's act of contacting Partner B for guidance is an appropriate first step. However, Associate cannot then turn a blind eye to the situation going forward. If Associate does not receive adequate assurance that Partner B or another former attorney with Old Firm will be taking appropriate action to protect Client's interests, Associate must take reasonable steps to ensure that Client is not prejudiced by the dissolution.

3. Duties of Partner B to Client

Just like Partner A and Associate, Partner B also owes duties to Client. When a client retains a law firm, the client's relationship generally extends to all members of the firm. Cal. State Bar Formal Opn. No. 1981-64 (opining that all attorneys employed by a legal services program owe identical professional responsibilities to clients of the program); see also *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384 [58 Cal.Rptr.3d 516] ("Unless there is an agreement to the contrary, the retention of an attorney in a law firm constitutes the retention of the entire firm."); *Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441, 445 [98 Cal.Rptr.2d 193] ("[B]y retaining a single attorney, a client establishes an attorney-client relationship with any attorney who is a partner of or is employed by the retained attorney."); see also *Redman v. Walters* (1979) 88 Cal.App.3d 448 [152 Cal.Rptr.42] (partner who left partnership one year after client engaged firm and who never had any contact with client was liable for malpractice of his former partners); *Blackmon v. Hale* (1970) 1 Cal.3d 548, 558 [83 Cal.Rptr. 194] (absent notice to client that he was engaging a single attorney, rather than a partnership, attorney was liable for acts of his former partner).

Consequently, Partner B at all times is responsible for taking steps to protect clients of Old Firm from reasonably foreseeable prejudice as a result of the firm's dissolution.

4. "Reasonable Steps" Vary Depending on the Circumstances.

Given that all attorneys of Old Firm, including Associate and Partner B, owe a duty to take reasonable steps to protect clients of the firm in the event of dissolution, the question then becomes what steps are "reasonable" for purposes of the rule.

As a threshold matter, attorneys should always strive to work collectively to protect the interests of the firm's clients in the event of dissolution. See Cal. State Bar Formal Opn. No. 1985-86. One reasonable step that attorneys can take as a group to protect the interests of a firm's clients is to designate one or more attorneys responsible for ensuring that clients' interests are protected. For example, a firm's management structure can be kept in place or a dissolution committee can be formed. So long as the designated attorneys are in fact empowered to act on behalf of clients of the firm, given sufficient resources to protect clients' interests, and are competent to perform this role, this step alone may sometimes be sufficient to fulfill the duties of individual attorneys of the firm in certain circumstances.

However, regardless of whether a dissolution committee or comparable mechanism is in place, the totality of the circumstances must be considered to determine whether an individual attorney has taken reasonable steps as required by the rule to protect the interests of clients of his or her firm. Factors to be considered include but are not limited to:

- **Knowledge of client prior to dissolution.** A lawyer who has worked extensively with a client must take that aspect of the relationship into account when evaluating the steps that he or she may be required to take to avoid prejudice to the client in the event of dissolution. To illustrate, in our fact scenario, even if Old Firm had formed a dissolution committee, Partner A and Associate could not simply refer Client to the committee and then have no further involvement. In light of their close involvement with the litigation in question, Partner A and Associate would have an ongoing responsibility to cooperate with both the dissolution committee and Client to ensure that Client is not prejudiced by the transition, including by promptly communicating regarding Client's matter as needed and potentially by assisting in drafting documents to ensure the statute of limitations deadline is met. But see Discussion to rule 3-700 ("Absent special circumstances, 'reasonable steps' do not include providing additional services to the client once the successor counsel has been employed and rule

3-700(D) has been satisfied.”). In contrast, given that Partner B has no knowledge about the case, Partner B likely would take sufficient reasonable steps by referring Client to a dissolution committee, so long as Partner B has a reasonable basis to believe that the dissolution committee was empowered to take all necessary actions on behalf of Client and was in fact doing so in a competent fashion.

- **Ability of the attorney to act for firm.** The Committee recognizes that “reasonable steps” may differ for an attorney with authority to act for a firm, as compared to a junior-level attorney without such authority. Thus, in our scenario, Partner B may have been unreasonable in failing to take steps to designate an attorney responsible for handling client issues at the time he participated in the vote to dissolve Old Firm. It is predictable that some clients of the firm could be prejudiced by the dissolution, and it was incumbent on Partner B to take action to the fullest extent possible within his authority to protect all clients of the firm. In comparison, Associate presumably did not have the authority to take such action and it would not be reasonable to expect her to do so. She likely also did not have sufficient resources or information to influence the decision-making process of the firm as a whole. Nonetheless, Associate must take reasonable steps insofar as she is able to protect Client’s interests. Such actions might include contacting Client to inform it of Old Firm’s dissolution and ensuring that any new counsel engaged by Client is aware of the statute of limitations and other material information about the Client’s case.
- **Competence of attorney to perform services for client.** At all times, an attorney owes a duty of competence to his or her clients. See rule 3-110. Thus, it is not reasonable for an attorney to undertake legal services that he or she is not competent to perform. For instance, in our fact scenario, Partner B is a transactional lawyer specializing in securities and may not be competent to represent Client in the pending litigation proceeding. If no former Old Firm attorney is willing to assist Partner B in ensuring that Client is not prejudiced by the dissolution of the firm, and Partner B cannot competently represent Client, Partner B should consider alternative steps, such as associating in new counsel. Likewise, Associate may only take steps that she is competent to perform. To illustrate, one reasonable step Associate might take in our fact scenario is to attempt to continue to represent Client at New Firm. However, if Associate cannot represent Client competently at that firm, such as due to the lack of resources necessary to represent Client’s interests adequately, this step may not be reasonable.

CONCLUSION

Partner A, Partner B and Associate each owe a duty to Client to protect its interests during the dissolution process. Each attorney must take reasonable steps to ensure that Client is not prejudiced by the dissolution of the firm and is kept appropriately informed of the status of its matter and its attorneys throughout the process.

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any member of the State Bar.