

**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 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?

DIGEST: Rule 3-700(A)(2) of the California Rules of Professional Conduct, 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(A)(2) apply when an attorney's withdrawal is prompted by the dissolution of the attorney's 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(A)(2) as to all clients of the firm, regardless of their connection to any specific client or the specific nature of their affiliation with the firm. What "reasonable steps" an attorney must take to protect a particular client's rights may vary considerably, however, depending on the circumstances, including the attorney's relationship to the client and its matter and the attorney's position within 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

Six months ago, Client, a closely held corporation, signed an engagement letter with Old Firm to retain its services in pursuing certain claims for breach of contract and fraud against a supplier. 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. At that time, 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. Indeed, over the course of the past six months, they have devoted well over a hundred hours to interviewing witnesses, studying accounting and other documents, and otherwise learning the relevant aspects of Client's business in order to prepare an appropriate complaint. Associate and Partner A are both aware that the applicable statute of limitations will soon expire on Client's claims, and 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 across California.

After months of rumors and speculation, Associate learns that the partners of Old Firm have scheduled a vote to dissolve Old Firm. Partner A then tells Associate that she is considering accepting an offer from Mega Firm, and that, if she does, she likely will not continue representing Client at Mega Firm. Within a few days, Old Firm falls into disarray, with the remaining attorneys openly seeking new employment. Associate accepts an offer from New Firm. Associate does not ask Client if Client would like to be represented by New Firm. Before leaving for New Firm, Associate writes a memorandum to Partner A, which she saves in Client's file, that provides a detailed outline

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

of the status of work she has performed for Client and upcoming dates, including the deadline imposed by the applicable statute of limitations. Associate also calls Client to advise that she is leaving the firm and no longer will be working on the matter.

Because she is worried about Partner A's potential departure, before her own departure Associate talks to Partner B about her concerns with respect to Client. Partner B is a transactional lawyer who specializes in mergers and acquisitions. Partner B assures Associate he will alert the firm's executive committee to the issues raised by Associate with respect to Client.

A few days after Associate's last day of employment with Old Firm, a group of partners, including Partner A and Partner B, vote to dissolve Old Firm. As part of the same vote, the partners form a dissolution committee – comprised of five partners formerly on Old Firm's executive committee – to wind up Old Firm's business. Shortly thereafter, Partner A leaves Old Firm to join Mega Firm. Partner B starts a solo practice, but only after speaking with the newly formed dissolution committee about Client's situation, as relayed to him by Associate. Old Firm begins the process of winding down its affairs.

On her last day with Old Firm, Partner A sends a short email to Client advising that Old Firm has dissolved and that she no longer will be representing Client at Mega Firm. 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.

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

DISCUSSION

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.

The rule specifically references "members," indicating that individual attorneys are responsible for compliance. See rule 1-100(B)(2) (defining the term "member" as "a member of the State Bar of California"); see also Cal. State Bar Formal Opn. No. 1988-152.

An attorney's change of employment does not by itself terminate an attorney-client relationship. 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 clients reasonably informed about significant developments relating to their matters, which would include information concerning dissolution of the firm that the clients have engaged.³ See rule 3-500.

² This opinion does not address the responsibilities of attorneys employed by a legal services organization whose funding has been reduced or eliminated. See 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, § 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 Although we believe that the dissolution of a law firm is a "significant development relating to the employment or representation," and thus must be communicated to the client (see rule 3-500), we do not opine on when an attorney must disclose that his or her law firm is having financial difficulties, or even that dissolution is a possibility.

1. Duties of Partner A to Client

Partner A's decision to leave Old Firm and to decline to continue representing Client constitutes a withdrawal of representation by Partner A. Accordingly, before severing her ties with Client, Partner A was required to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of Client. See rule 3-700(A)(2); see also rule 3-500; Cal. State Bar Formal Opn. No. 1985-86 (discussing obligation to provide clients timely and accurate notice of changes in employment status).^{4/} In these circumstances, the "reasonably foreseeable prejudice" is obvious – Client risks missing a statute of limitations deadline if it cannot find new counsel who can sufficiently come up to speed to draft an appropriate complaint before the statute of limitations expires. Thus, depending on how difficult it likely will be for Client to find new counsel – which will depend on, among other things, how complex the matter is, how much time Old Firm already has invested familiarizing itself with the facts and issues, whether Old Firm created work product that new counsel can utilize, how much time it will take new counsel to understand the case, and how much time remains before a complaint must be filed – Partner A may not be able to summarily terminate her relationship with Client. Depending on how likely it is that Client will be prejudiced in these circumstances, Partner A may not be able to transition to Mega Firm until she has taken reasonable steps to avoid foreseeable prejudicial results – i.e., that Client will not be able to find new counsel in time to meet the filing deadline. See rule 3-700(A)(2) (including as a "reasonable step" that attorney allows her client "time for employment of other counsel").

In our facts, Partner A has left Old Firm without taking reasonable steps to avoid reasonably foreseeable prejudice to Client with regard to the upcoming deadline. As the principal partner representing Client on behalf of Old Firm, Partner A had a duty to Client under rule 3-700(A)(2) which, under the circumstances, required more than the brief email she sent. Had Partner A left an ongoing firm that had lawyers available to assist Client, then her departure from the firm likely would not prejudice Client in a way that would require further action by Partner A. That is because other attorneys at the firm would be obligated to continue the representation – which, per the engagement letter, expressly was with Old Firm and not with an individual partner. But Old Firm's dissolution leaves Client without any ongoing representation by the firm, thereby potentially placing additional burdens on Partner A in fulfilling her duties to Client. In short, Partner A may not treat her departure from dissolving Old Firm the same way she might treat a departure from an ongoing firm. Under these circumstances, Partner A has violated her duty under rule 3-700(A)(2).

2. Duties of Associate to Client

Upon departing Old Firm, Associate prepared a memo summarizing the status of the case, talked to Partner B, and informed Client of her departure. In circumstances where an associate leaves an ongoing firm, the associate may not necessarily be required to take all of these steps. However, just as the dissolution of Old Firm could place additional burdens on Partner A's fulfillment of her duties – making her take additional steps that she otherwise might not be compelled to take – so too could it place additional burdens on Associate to take the kinds of steps Associate took in this instance.

Although Associate was an employee of Old Firm, rather than a partner, rule 3-700(A)(2) applies equally to her conduct toward Client. Rule 3-700 (as well as rule 3-500) applies to all "members," regardless of their employment status. 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 [former rule 2-111(A)],^{5/} 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

[Footnote continued...]

Our opinion on this point is limited to disclosure of the dissolution after it has become a *fait accompli*, i.e., after the dissolution vote.

^{4/} If Old Firm already had appeared in litigation for Client, Partner A also would have to take steps to comply with the applicable withdrawal rules of the tribunal in which the action was pending. Rule 3-700(A)(1).

^{5/} Former rule 2-111 was replaced by rule 3-700 in 1989.

dissolution, and to protect the clients' interests whenever there is a change in the employment status that materially alters the representation." *Id.* If one attorney, such as Partner A, refuses to take the appropriate action to protect Client's interests, that attorney's conduct does not excuse the others from their own professional responsibilities. *Id.* ("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.")

As it turned out in our facts, Client will likely be prejudiced, as no attorneys remained at Old Firm to continue with the representation and file Client's complaint within the statutory period. If Associate was aware that the events would result in reasonably foreseeable prejudice to Client – that is, if she could have reasonably foreseen an imminent dissolution, Partner A's abdication of her duties, and Client's inability to retain replacement counsel in advance of the running of the statute of limitations – then she would have had to take appropriate reasonable steps to avoid prejudice. Under our facts, Associate appears to be aware that Old Firm is on the verge of dissolution at the time she leaves the firm, which is precisely why she left. If, as suggested in the hypothetical, she also had reason to believe Partner A would not continue representing Client upon her departure from Old Firm, then Associate may need to take additional steps in any event to avoid the prejudice to Client. Here, Associate not only contacted the client and prepared an exit memo, as might be expected in most situations, but also spoke with Partner B, and received assurances from Partner B that he would discuss her concerns with other attorneys at the firm – specifically, the executive committee. Associate's actions would appear to be reasonable under the circumstances, thereby satisfying her obligations under rule 3-700(A)(2).^{6/}

These facts highlight that, in most instances, an associate may fulfill his or her duties under rule 3-700(A)(2) – even in the face of a law firm dissolution – by notifying a partner of the firm of any concerns, and receiving at least some assurance from that partner that he or she will not ignore those concerns.^{7/} If the steps an associate takes still leave it reasonably foreseeable that a client will suffer prejudice from that associate's departure – for example, there is reason to believe that the remaining attorneys and/or dissolution committee will abdicate their responsibilities resulting in the client being unable to obtain replacement counsel in time to file the complaint – then an associate may need to take additional steps to comply with rule 3-700(A)(2). What additional steps are "reasonable" for an associate to take will depend on the circumstances.

3. Duties of Partner B to Client

When a client retains a law firm, the client's relationship generally extends to all attorneys in the firm. See 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).^{8/} Consequently, like Partner A and Associate, Partner B

^{6/} If, at the time she contemplated leaving Old Firm, Associate did not reasonably foresee Partner A's future abdication of her duties, there would have been no need to talk to Partner B about any concerns.

^{7/} For partners, like Partner B, merely being part of a process that leads to the formation of a dissolution committee may be sufficient to discharge his duties. We recognize, however, that an associate may not have the same ability as a partner to ensure the formation of a dissolution committee or that the law firm take other steps to provide some continuity of client representation during the dissolution process. Accordingly, an associate's obligations upon dissolution may, and likely will, vary in some respects from a partner's obligations.

^{8/} This point also is made in numerous cases in the professional malpractice context. See, e.g., *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 392 [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."); *Redman v. Walters* (1979) 88 Cal.App.3d 448, 453-455 [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). We believe the value of these cases is somewhat limited in our hypothetical context. Nonetheless, we do accept the basic premise that all attorneys in a law firm owe duties – including ethical duties – to each of the firm's clients. What will differ, however, among attorneys is what steps those attorneys must take to discharge those duties.

must take reasonable steps to avoid reasonably foreseeable prejudice to Client's rights as a result of Old Firm's dissolution. Because Partner B had no prior relationship with Client and is not even a litigator competent to meet the filing deadline, Partner B's "reasonable steps" likely are very different than Partner A's or Associate's. In fact, Partner B's participation in a successful vote to form a dissolution committee likely is a sufficient "reasonable step" by Partner B to meet his duty under rule 3-700(A)(2). Unless Partner B has some reason to believe the dissolution committee would not take responsibility for protecting against the abandonment of Old Firm clients, he likely needs to do no more for Client. The same would be true for any other attorney of the firm, each of whom reasonably could rely on the dissolution committee – or other, similar steps Old Firm has taken to foster an orderly dissolution – to look out for any ongoing client issues.

The one caveat for Partner B is that, unlike the other attorneys in Old Firm, Partner B was contacted by Associate, who expressed her concerns to him. Accordingly, Partner B's burden in complying with his duty to Client may be greater than the burden on other attorneys at Old Firm. At a minimum, Partner B should follow up with the executive committee or dissolution committee to make sure they were aware of the impending deadline and, if necessary, suggest they reach out to Associate for more information. Even that additional, minimal step by Partner B likely would be sufficient to meet his obligations under rule 3-700(A)(2).

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

The above discussion about the various duties owed by all attorneys of Old Firm, including Partner A, Associate, and Partner B, explores what steps are "reasonable" for purposes of rule 3-700(A)(2) in the event of a dissolution. As a threshold matter, attorneys always should strive to work collectively to protect the interests of the firm's clients in the event of the law firm's dissolution. See Cal. State Bar Formal Opn. No. 1985-86. One reasonable step that attorneys can and should take as a group to protect the interests of a firm's clients is to work toward an orderly dissolution, which likely would include, for example, forming a dissolution committee, as Old Firm has done here, and to ensure that such committee has as one of its charges to take steps to avoid foreseeable prejudice to any clients of the firm as a result of the dissolution. Indeed, it may be incumbent on all partners in a dissolving firm to work towards an orderly dissolution, which would include taking steps to avoid having any of the firm's clients suffer reasonably foreseeable prejudice. The failure to do so could violate each partner's duties under rule 3-700(A)(2) should a client suffer some reasonably foreseeable and otherwise avoidable prejudice as a result of the dissolution.^{9/}

Regardless of whether a dissolution committee or comparable mechanism is in place, however, the totality of the circumstances must be considered to determine whether an individual attorney has taken reasonable steps as required by the rule to avoid reasonably foreseeable prejudice to clients of his or her firm. See *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 297 [36 Cal.Rptr.2d 537] (stating that the circumstances will impact what steps are reasonable under rule 3-700, including whether a statute of limitations is upcoming and whether the client will have time to find replacement counsel) (J. Kennard dissenting); *Cal Pak Delivery, Inc. v. United Parcel Service, Inc.*, (1997) 52 Cal. App.4th 1, 18 n.4 [60 Cal.Rptr.2d 207] ("What such [reasonable] steps [under rule 3-700] would include, of course, will vary according to the circumstances."). Factors to be considered include but are not limited to:

- **Prior relationship with client.** A lawyer who has worked extensively with a client prior to dissolution must take that aspect of the relationship into account when evaluating the steps he or she may be required to take to avoid reasonably foreseeable prejudice to the client in the event of dissolution.
 - To illustrate, in our fact scenario, even though Old Firm formed a dissolution committee, Partner A likely could not simply refer Client to the committee and then withdraw, without taking further

^{9/} As noted above, an associate or other non-partner likely has less ability, and probably no ability, to ensure that the firm forms a dissolution committee or otherwise takes steps to ensure an orderly dissolution; thus, an associate or other non-partner probably has fewer "reasonable steps" available to him or her. We further recognize that not all partners share equal power at a law firm and that, whether designated as an equity partner, non-equity partner, or some other title, a partner may have little or no ability to impact firm policy and/or to form a dissolution committee. What steps may be reasonable for a given attorney to take, of course, will depend on what steps that attorney is able to take in the context of his or her relationship with the firm.

appropriate steps to avoid reasonably foreseeable prejudice to Client. In light of her close involvement with the litigation in question, prior to withdrawing from Old Firm and from her relationship with Client, Partner A would have the obligation to cooperate with both the dissolution committee and Client to avoid reasonably foreseeable prejudice to Client caused by the transition. This may include assisting in drafting documents to ensure the statute of limitations deadline is met, or assisting in locating replacement counsel. 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 the dissolution committee, so long as Partner B has a reasonable basis to believe the dissolution committee was empowered to take all necessary actions on behalf of Client and in fact was doing so in a competent fashion. Although Partner B may have had more knowledge of Client than other attorneys at Old Firm by virtue of his discussion with Associate, there is no basis to believe Partner B has anything to add to the representation, provided one or more lawyers on the dissolution committee were aware of the situation.
- As for Associate, to the extent it was reasonably foreseeable to her at the time she was contemplating leaving Old Firm that Client would be prejudiced by an imminent dissolution, and that Partner A would not fulfill her duties to Client, Associate likely would have to take additional steps to fulfill her own duties to Client – for example, by reaching out to Partner B, as Associate did here.
- **Ability of the attorney to act for firm.** The Committee recognizes that “reasonable steps” may differ for an attorney with actual authority to act for a firm, as compared to a junior-level attorney – or even a senior-level partner – without such authority. Thus, in our scenario, Partner B likely took reasonable steps by helping to effectuate the formation of a dissolution committee. 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, for example, by making one or more partners of Old Firm aware of Client’s situation.
- **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 and may not be competent to represent Client in the contemplated litigation proceeding. Thus, it may not be reasonable for Partner B to assume the representation of Client himself. In the absence of the dissolution committee or some other Old Firm attorney taking on the matter, however, Partner B might have to consider taking some other action to avoid reasonably foreseeable prejudice to Client, including potentially finding new, competent counsel to represent Client, at least until the immediate crisis (i.e., the filing deadline) has been addressed. Similarly, Associate only may take steps that she is competent to perform.

CONCLUSION

Partner A, Associate, and Partner B – and, indeed, all attorneys at Old Firm – each owe a duty to Client to take reasonable steps to avoid reasonably foreseeable prejudice during the dissolution process. What those “reasonable steps” may be will vary depending on the specific circumstances of the representation and the particular role of each attorney both in the representation of Client and within Old Firm.

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.