

ABA Informal Op. 1428

ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1428

American Bar Association

**LAWYER-CLIENT RELATIONSHIP BETWEEN THE INDIVIDUAL AND LEGAL SERVICES OFFICE: DUTY OF OFFICE TOWARD CLIENT WHEN ATTORNEY REPRESENTING HIM (HER) LEAVES THE OFFICE AND WITHDRAWS FROM THE CASE**

February 16, 1979

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In order that your legal services office may formulate office policies conforming to the Code of Professional Responsibility, you have requested the opinion of this Committee on the following three questions:

1. Does DR 2-110 concerning the attorney-client relationship, and withdrawal therefrom, apply to the transfer of cases between attorneys in the same law **firm**? You indicate that this question arises in the context of attorneys leaving the **firm** and transferring their entire caseloads to remaining attorneys or to a replacing attorney. You further inquire as to whether the departing attorney must perform the steps enumerated in DR 2-110; or does the rule, in this context, require that steps be taken only if the **firm** as a whole wishes to terminate the attorney-client relationship?

It is the opinion of this Committee that absent a special agreement, the client employs the legal services office as a **firm** and not a particular **lawyer**. However, in the case of **lawyers** leaving the **firm** who have been charged with responsibility for handling a matter, the instructions and wishes of the clients should be considered.

2. What ethical obligations does a law **firm** have to a client that it represents, apart from the ethical obligations that individual attorneys working on the case might have? In asking this question, you further explain that the question arises in the context of attorneys leaving the law **firm** where no remaining attorney has the time to take the responsibility for the departing attorney's caseload and where no replacing attorney can be hired prior to the departure. You further ask whether the law **firm** can ethically compel the departing attorney to take his cases with him and in addition, do the clients have a right to require the law **firm** to accept responsibility where no written retainer has been executed so binding the **firm**?

It is this Committee's opinion, as stated in the answer to question number one, that the client employs the legal services office as a **firm** and not a particular **lawyer**, and accordingly, the **firm** has responsibility, along with the departing attorney, for the cases being handled by the departing attorney. DR 2-110(A)(2) requires that 'a **lawyer** shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.'

It is our view that under DR 2-110, both the **firm** and the individual **lawyer** share responsibility for withdrawal from employment and the client must be given the choice as to whether or not the client wishes the **firm** to continue handling the matter or whether the client wishes to choose another **lawyer** or legal services **firm**. In addition, if the matter is in litigation, it may be necessary, dependent on local court rules, for you to seek permission of the court to withdraw. The fact that the **firm** may not have a written retainer agreement, in our view, does not release the **firm** from responsibility

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for the files being handled by the departing attorney. The **firm** should either continue to represent the client or assist the client in obtaining other representation.

3. If a remaining attorney does accept the departing attorney's cases, what constitutes neglect under DR 6-101, where none of the client's substantive or procedural rights will be prejudiced, but where the client will be inconvenienced?

This Committee has previously defined the word 'neglect' as used in DR 6-101 within Informal Opinion No. 1273 as follows:

'Neglect involves indifference and consistent failure to carry out the obligations which the **lawyer** has assumed to his client or a conscious disregard for the responsibility owed to the client. The concept of ordinary negligence is different. Neglect usually involves more than a single act or omission. Neglect cannot be found if the acts or omissions complained of were inadvertent or the result of an error of judgment made in good faith.'

Accordingly, we recommend that you promptly communicate with the client(s) and explain the reason for the delay.

We hope that the foregoing answers will be of assistance to you in developing your office policy guidelines.

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