



## Putting Clients First in Lateral Moves

When lawyers change firms, there is often a tug of war between the firms over clients. This is one of the leading causes of “lateral fatigue” on the part of clients. Even though everyone involved—laterals and both firms-- has a strong incentive to avoid clients’ lateral fatigue, the process often negatively affects clients. If the goal is to put the clients’ interests first, here are some policies to consider:

- When law firms and departing lawyers fulfill their ethical duty to notify clients of the impending departure, the stated goal should be to achieve the least disruption and impact on the client.
- If the client selects the old firm to continue the representation, the firm should not treat that as a license to automatically remove the departing lawyer from the team.
- If the client selects the departing lawyer to continue the representation, the departing lawyer should not automatically replace the old firm’s lawyers with lawyers from his/her new firm.
- Staffing should be controlled by what will be most beneficial and least damaging to the clients’ best interests, not by maximizing either law firm’s revenues.
- Firms should not exercise rights, such as “gardening leaves” or notice provisions, which have the effect of sidelining a departing lawyer at the expense of clients’ interests.
- Firms should not hold up copying files or any other such means of inconveniencing a departing lawyer because the adverse impact is on the client.
- Laterals and new firms should do their best to insure full payment of fees to the old firm.

Most firms will be on the receiving end of a valued lawyer’s departure at some point. Clients may be reluctant to start relationships with firms which get the reputation of playing hardball with departing lawyers. It is time for a Lateral Code of Conduct in addition to ethics rules to eliminate some of the frictions which currently make the process so challenging for clients and lawyers alike.

**Example:** When she informed her firm she was leaving, a corporate partner met with her practice group leader to discuss transition with respect to pending transactions. The departing partner offered to continue to work on matters for clients that were controlled by other partners to the extent the clients and the client relationship partners requested. The practice group leader responded that he assumed that her services on matters staying with the firm would not be necessary. The departing partner said she expected several clients would follow her to her new firm and that with the old firm’s consent, she would complete pending transactions with the same team of lawyers with whom she had been working. The practice group leader said that might be acceptable but that the departing partner should expect the firm to compete to retain the work for clients even where she thought she had the primary relationship. When the departing lawyer communicated with clients, she was forced to share that she could not fully control whether the transition process would be an easy one. One client responded that if the old firm did not facilitate a smooth transition, the firm would never see another piece of business from his company. When the client received the old firm’s inquiry of which firm the client would choose, the client selected the departing lawyer’s new firm and emphasized his expectation of an easy transition.

Does your firm have in place practices which put clients’ interests first when dealing with departing and incoming lateral lawyers? I invite you to send examples of your firm’s policies or your recommendations on items you think should be included in a Lateral Code of Conduct.