



THE NEW ELLIS GROUP

Monday Monday

Connecting the Dots with Karen Kaplowitz



*Helping you create and reinforce the habits of successful career building,
gleaned from my work as a business development strategist, trainer and coach*

Volume 12, Issue 24

November 19, 2018

Disengagement with Clients

This newsletter usually advocates for as much **engagement** as possible with clients. So, it may seem contrarian to raise the possibility that **disengagement** is also an important strategy. The issue is whether keeping client matters open when you are not actively providing legal services may prevent your firm from taking on new work for another client because of the legal ethics rules which prevent you from being adverse to existing clients such as [Rule 1.7 of the ABA's Model Rules of Professional Conduct](#). If you routinely leave client matters open, you run the risk that another client will seek to retain you for a lucrative matter which is adverse to your existing client. You may not be allowed to drop the first client "[like a hot potato](#)." Here are some questions to consider on this issue:

- Do you have files which have never been formally closed for clients who have been long dormant? Do you assume that a dormant client is automatically the same as a former client?
- Have you had disqualification motions filed by dormant or semi-dormant clients when you attempted to sue them on behalf of a new client?
- Do your engagement letters specify what will constitute conclusion of the matter?
- When matters conclude, does your firm have a policy about sending a disengagement letter which references the provision of the engagement letter about what constitutes the conclusion?
- Does the firm have a system to inquire about whether matters have been concluded or is that decision left to the individual lawyers involved?
- Does your firm give the client relationship partner the opportunity to craft the disengagement letter, so it communicates the firm's interest in new opportunities and does not close the door to new engagements from the client?
- Do you have a specific policy to deal with files which are "general" files or for "advice and counseling?" For these files, should you trigger an automatic disengagement review after a designated period in which there have been no billings?

There may be conflicts between individual lawyers who want to leave client matters open in hopes that the clients will return for new work and the firm itself which wants to avoid being precluded from lucrative new work which is adverse to dormant clients. Since individual lawyers may not consider it to be in their self-interest to close files even when they are dormant, it is important for the firm to adopt policies and practices which address these questions.

Example: A practice group embarked on a business development initiative with a specific industry focus. The practice group was interested in expanding its work in defending certain types of claims. As part of the group's strategic planning, the group identified some firm clients who had previously sued some of the companies the group hoped to represent. The firm had not been involved in representing the firm clients in those matters. The practice group leader determined that the firm's relationships with these clients were largely dormant. Before launching the new initiative, the practice group leader approached the lawyers who had the dormant client relationships, explained the new initiative and asked them to send them disengagement letters to prevent the firm from being disqualified from taking on new defense work. The practice group leader worked with the other lawyers to craft disengagement letters which were clear but friendly, not hostile.

Are you being thoughtful about the value of keeping open files for clients who are largely dormant? Is your firm's interest in encouraging lawyers to engage widely with new clients putting the firm at risk of being disqualified from lucrative new work which may be adverse to dormant clients?