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Do's and Don'ts of Lateral Attorney Movement: Managing the Risks

By Anthony E. Davis and Katie M. Lachter
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Lawyer movement from one law firm to another has become commonplace, almost routine. Associates often change firms several times before finding a professional "home"; partnerships seldom last the length of an attorney's career, as was the norm for earlier generations. In the current economic environment, these trends are exacerbated as firms downsize to cut costs, or dissolve, so that attorney departures are often involuntary. Because of the sometimes conflicting legal, financial and ethical implications of lateral attorney movement, a large body of literature has developed on this topic. In 1998, the late Steven C. Krane wrote about the legal and ethical principles that are in play when partners change firms, and reviewed the developing case law surrounding the disputes between departing partners and their former firms.[1]

Given that lawyer mobility has only increased in the intervening years, this, the first of two articles, will commence a review of the developments since 1998. These articles will seek to distill the legal and ethical principles that have emerged from the growing body of case law and commentary on lateral movement, and provide guidance both for departing lawyers and the law firms that are either losing or acquiring an attorney.

Communication With Clients

Departing Lawyer. Departing lawyers owe fiduciary duties to their current firms. Departing partners owe other partners in the firm duties as a matter of partnership law, and departing associates owe duties to their employers as a matter of agency and employment law.[2] Business and tort litigation against departed lawyers has mushroomed in recent years. In the last two decades, courts have analyzed solicitation of clients by lawyers making lateral moves in the context of fiduciary duties, and in a number of cases have found that lawyers violated those duties.

In *Meehan v. Shaughnessy*, the Massachusetts Supreme Judicial Court found that departing partners breached their fiduciary duties of good faith and loyalty to their former firm by unfairly acquiring consent from clients to remove cases.[3] While denying that they had plans to leave the firm, the departing partners made preparations for obtaining removal authorizations from clients. The Court reasoned that by virtue of their actions, the departing partners had obtained an unfair advantage over their former partners.[4]

The New York State Court of Appeals decision in *Graubard Mollen Dannett & Horowitz v. Moskowitz* remains the bedrock authority in New York concerning the consequences of improper pre-departure client solicitation.[5] In a unanimous decision, the Court found that "…as a matter of principle, preresignation surreptitious 'solicitation' of firm clients for a partner's personal gain is actionable."[6] While reaffirming this principle, the Court left open the precise parameters of when and how a departing lawyer

can (and in certain situations, must) contact clients, noting, "it is unquestionably difficult to draw hard lines defining lawyers' fiduciary duties to partners and their fiduciary duty to clients. That there may be overlap, tension, even conflict between the two spheres is underscored by the spate of literature concerning the current revolving door law firm culture."[7]

Breach of fiduciary duty or employment obligations are not the only claims that may arise following premature notification of a lawyer's intent to depart from her current firm. Recently, the New York Supreme Court, New York County, applied the *Graubard* decision to uphold a claim of tortious interference brought by a law firm against a departing law firm associate for pre-departure solicitation of clients. In *Raymond H. Wong, P.C. v. Xue*, an associate solicited at least three longstanding clients of the firm prior to his departure.[8]

The court found that an action for tortious interference with contractual and business relationships could lie, even though contracts between a law firm and its clients are terminable at will, if the soliciting attorney violates his ethical duties or governing law. This represents a marked divergence from Krane's view that "there can be no cause of action against a lawyer for tortious interference with an attorney-client relationship, which is terminable at will."[9]

Whatever the underlying cause of action, it is clear from these cases that departing attorneys should generally not discuss their departure plans with clients before telling their current firms about their upcoming withdrawal, and should not seek to sign up clients to the new firm prior to notifying the current firm of intent to depart. While the precise scope of permissible communication with clients on the part of the departing lawyer has not yet been established with complete clarity, and the law in this area continues to evolve, prudence cautions against any contact with clients, other than for routine business, until after formal announcement of a lawyer's departure.

There is one possible exception to this default proposition, which gains some traction from the *Graubard* case. There may be exigent circumstances, such as a case about to go to trial, or a transaction a week away from closing, in which it may be appropriate to tell the client of the impending departure before having notified the firm. If the client may be harmed by a lawyer's sudden move at a critical moment, the client's interest in having maximum flexibility and freedom to choose its counsel going forward, the duty to help (and not to harm) the client may outweigh the duty to the current firm.

In 1999, the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 99-414, titled "Ethical Obligations When a Lawyer Changes Firms." The ABA Opinion, discussed in depth in the next section, lends support to the idea that in some circumstances it may be appropriate to give notice to clients first.

As mentioned in the *Graubard* decision, attorneys have obligations to their clients that must be balanced against their fiduciary duties to and employment by their current firms. Under New York Rule of Professional Conduct (RPC) 1.4, a lawyer must promptly inform the client of "material developments in the matter."[10] This Rule has been interpreted to mean that a lawyer and law firm must notify a client of the departure of the attorney actively handling the client's matter. According to ABA Opinion 99-414, "[t]he departing lawyer and responsible members of the law firm who remain have an ethical obligation to assure that prompt notice is given to clients on whose active matters she currently is working."[11]

Although the ABA Opinion also states that a lawyer making a lateral move may, at least in some circumstances, ethically inform clients of the move prior to resignation, provided that the lawyer does not solicit the clients' business or disparage his current firm, we recommend that, other than in exigent circumstances, lawyers first inform their firms and then promptly inform their clients. As prominent ethicists have noted, what constitutes improper "solicitation" as opposed to permissible "notice" is up for debate.[12] The Court of Appeals in *Graubard* did not define the term "solicitation." New York's Judiciary Law prohibits solicitation by attorneys, but likewise does not define it.[13] And both the ABA Opinion and the *Graubard* case indicate that the better

course is for the departing lawyer first to notify his current firm, and then for the firm and departing partner to give joint notice to the lawyer's clients.

When notifying clients (after announcing the intended departure to the current firm), avoid disparaging the current firm or its attorneys. ABA Formal Op. 99-414 specifically cautions attorneys not to disparage their current firms when speaking with clients. The ABA Committee on Ethics and Professional Responsibility has issued two informal opinions bearing on this subject.[14] In both opinions, the ABA concluded that whether attorneys' proposed letters to clients as to whose matters they were responsible conformed to prevailing ethical guidelines would depend and be conditioned in part on the fact that the letters did not urge the clients to sever their relationships with the former firms, but rather left the decision to the clients.

Current Firm. Whenever possible, a departing lawyer's current firm should send a letter jointly with the departing attorney to all clients with whom that lawyer had significant personal contacts. As ABA Formal Op. 99-414 emphasizes, law firms also have an ethical obligation to their clients to notify them that an attorney who had been actively working on their matters is leaving. While joint notice is not always feasible, it is the best practice whenever possible. The client must be informed that the choice of whether to stay with the firm or go with the departing lawyer (or to an entirely different firm) is the client's alone, and that there will be no adverse consequences from the client's decision.

A joint letter ensures evenhanded treatment of both the departing lawyer and the firm, and reduces the risk that either side will later accuse the other of misconduct. Lawyer and law firm break-ups can often result in acrimony, but it is in the firm's best interest to work with the departing lawyer, if possible, to minimize the potential for disputes and focus on prompt and accurate disclosure to clients. Some firms include requirements for such joint letters in their partnership agreements and their policy and procedures manuals.

We recognize that there may be circumstances in which joint notice is not possible. In those cases, the firm may be required, and may in any event wish to send its own letter to all clients with whom the departing lawyer had significant personal contacts, apprising them of the attorney's departure and informing them that they have the choice whether or not to remain with the firm. The firm should also avoid disparaging the departing attorney. If the attorney's departure resulted from some kind of misconduct, illness or disability, the firm may have a duty to notify its clients, but this too must be balanced against the firm's duty not to unlawfully disparage its former employee. In these situations, we recommend that the firm seek advice from an employment lawyer, and, in some situations, a defamation lawyer, as these are as much issues of employment and tort law as they are of legal ethics.

New Firm. Firms should beware of assisting the incoming attorney in soliciting clients of his former firm prior to notification to the former firm of the intent to depart. Hiring firms may face potential liability to laterally hired lawyers' former firms premised on theories of aiding and abetting the departing lawyers' alleged breach of duty, or tortious interference with the former firms' business, if hiring firms assist departing lawyers in impermissible pre-departure solicitation.

Even something short of assistance, such as rendering advice to a prospective incoming counsel about his or her solicitation of existing clients, could expose the hiring firm to liability for conduct for which it otherwise would not be responsible.[15] Because of this possible exposure, we recommend that hiring firms consider whether it may be appropriate to advise the prospective lateral hire to seek the advice of independent counsel regarding these issues. A number of firms routinely do so already. Counsel engaged by the laterally moving lawyer will likely also need to review the lawyer's present firm's partnership (or equivalent) agreement and policies.

Recruitment

Departing Lawyer. Departing lawyers should be prepared to continue to service, bill and collect from the clients of the current firm until the time

of departure, and thereafter use reasonable efforts to continue to assist in the collection process of fees owed to the now former firm.

Departing lawyers remain fiduciaries to their current firms until they actually leave, not just until they announce their departure, and in some respects those duties continue even after departure. Accordingly, departing lawyers have an obligation to keep working and to keep billing and collecting from clients after notification but prior to actual departure. Departing lawyers may not steer money to their new firm or delay billing on behalf of the firm they are about to leave so that payments due to that firm are paid instead to the new one.[16]

There are case law-based restrictions on a departing lawyer's recruitment of employees of a current firm until after the point of departure. It is permissible for departing partners to recruit other partners in their current firms to move to their new firms, but it is not permissible to recruit non-partners. Because departing partners remain fiduciaries until they leave, pre-departure recruitment of associates or staff may be deemed a violation of their fiduciary duties, or create other liability. In *Gibbs v. Breed, Abbott & Morgan*, even though the departing partners had not discussed with firm employees the possibility of moving with them prior to their departure, they indicated to their new firm the employees in whom they were interested before departing, and one of the departing partners specifically testified that he refrained from telling one of his partners about his plans to recruit specific associates and support staff from the partnership.[17] The Appellate Division, First Department found that such conduct was sufficient to uphold the lower court's finding of breach of fiduciary duty. *Gibbs*, which mandates that no recruitment, even indirectly, should take place prior to the actual date of departure, should serve as a cautionary tale for lawyers.

One question that is not resolved by the case law, but which is frequently in issue, is where non-equity or contract partners fit within this structure. Arguably, since they are held out as partners rather than employees, they should be treated as partners in this regard, and therefore be free both to invite, and be invited by, other partners to depart together. However, as this is not settled, departing non-capital partners who may be deemed to be employees should act with caution.

Other than in order to identify possible conflicts of interest, take care not to disclose confidential or proprietary information about the current firm or its clients when interviewing with a prospective new firm. When a lawyer seeks to move laterally to a prospective new firm, that firm will inevitably need and request information regarding the prospective hire's practice. Lawyers seeking to move may provide personal financial information, and information about any partners who are also seeking to move to the same firm. Lawyers may talk about their typical billing rates, and speak generally concerning total expected receivables, but should take care not to provide the hiring firm with more information about a client than is necessary for a conflicts check, or that is confidential or proprietary to the lawyer's current firm, such as associate rates or salaries, or other firm specific financial information.

In the *Gibbs* case, the departing partners were held to have breached their fiduciary duties of loyalty and good faith to their former law firm by engaging in "surreptitious recruiting" and giving their new firm an unfair competitive advantage when they supplied the new firm with confidential employment data, such as associates' billing rates and average billable hours.[18]

Recruitment and pre-departure obligations of the current and acquiring firms, as well as considerations relating to information and property, will be discussed in the next article in this column.

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Endnotes:

[1] Steven C. Krane, "When Partners Part: The Ethical Implications of Lawyer Mobility," The New York Professional Responsibility Report, September 1998 (republished August 2010).

[2] . Anthony E. Davis and Kara Farmer, "Lateral Movement by Lawyers, the Ethical 'Do's and Don'ts,'" ABA LPM Book Chapter, March 2009.

[3] 404 Mass. 419, 535 N.E.2d 1255 (1989).

[4] Id. at 435.

[5] 86 N.Y.2d 112, 653 N.E.2d 1179 (1995).

[6] Id. at 119.

[7] Id.

[8] 2005 N.Y. Misc. LEXIS 3254 (Sup. Ct. New York Co. Feb. 4, 2005).

[9] Krane, supra note 1.

[10] RPC 1.4(a)(1)(iii).

[11] ABA Eth. Op. 99-414.

[12] Barry R. Temkin, "The Ethical Issues of Lateral Moves: Whether, When and How to Notify Clients of a Lawyer's Resignation," NYSBA Journal March/April 2011. See also Ronald C. Minkoff, "Ethics Rule Speaks to Departure Restrictions," NYLJ, Feb. 1, 2010, p. 4, col. 1.

[13] N.Y. Judiciary Law §479.

[14] Informal Op. 1457 (1980) and 1466 (1981).

[15] Temkin, supra note 11, citing Ronald Minkoff, "Poaching Partners: the Legal Risks," http://www.fkkslaw.com/article.asp?articleID=188

[16] Davis and Farmer, supra note 2.

[17] 271 A.D.2d 180, 710 N.Y.S.2d 578 (1st Dept. 2000).

[18] Id. at 186.

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Lateral Attorney Movement: Pre-Departure and Recruitment

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Our last column, on March 5, 2012, left off with a discussion of the recruitment and pre-departure obligations of an attorney moving laterally to another firm. This article picks up with the recruitment and pre-departure obligations of the departing lawyer's current and new firms.

Agreements

Current Firm. Be aware of the ethics rules and case law that prohibit entering into a contract forbidding departing lawyers from competing with the firm or soliciting clients after leaving the firm.

Under RPC 5.6(a), except in connection with retirement benefits, firms are not permitted to offer or make an "agreement that restricts the right of a lawyer to practice after termination of the relationship."[1] Clearly, firms may not enforce a contract provision that forbids departing lawyers from competing with the firm or soliciting clients after leaving the firm. Further, indirect restraints on a lawyer's right to practice, such as imposition of negative financial consequences on lawyers who leave and compete with the firm, have been held to violate this rule.

In *Cohen v. Lord, Day & Lord*, the firm's partnership agreement purported to deny payouts of a lawyer's share of profits collected post-departure to a withdrawing partner who joined a competing firm in a contiguous jurisdiction.[2] The New York Court of Appeals declared that provision of the partnership agreement void because it violated Disciplinary Rule 2-108(A) of the former New York Lawyer's Code of Professional Responsibility, which is virtually identical to the current Rule 5.6. According to the Court, in addition to restricting a lawyer's right to practice law by exacting a "significant monetary penalty," the provision at issue restricted the client's choice of counsel.[3]

For both reasons, courts in New York and the overwhelming majority of other jurisdictions refuse to enforce even indirect restraints on competition. Recently, the New York Supreme Court, Erie County, cited *Cohen* and subsequent cases in determining that portions of an associate employment agreement were unenforceable as a matter of public policy. In *Becker v. Cellino & Barnes*, the associate signed an employment contract mandating in relevant part that: (1) the employee would not initiate contact with any client or prospective client of the firm after he gave notice that he was leaving the firm; and, (2) if any client decides to contact the employee and continue to retain him, the firm is entitled to 43.56 percent of any fee earned, which represents firm overhead costs.[4] The Supreme Court invalidated the non-compete provision as violative of RPC 5.6 and governing case law.[5] With respect to firm overhead, which was an issue of first impression, the court found that the penalty served as a strong disincentive for the employee to represent any client who wished to follow him, and invalidated the provision on that ground.[6]

One area that remains uncertain is the enforceability of extended "notice" periods. Some partnership agreements require lawyers who have announced their intention to depart to stay at the current firm until the expiration of some period of time—or risk forfeiture of benefits or suits for breach of fiduciary duty. While a reasonable period to complete billing duties, or hand off matters that will not move with the lawyer, is appropriate, periods of longer than a month may be susceptible to challenge. Guidance on what is, and is not permissible in terms of a notice period, either from an ethics committee or a court, would help avoid the potential for disputes.

Recruitment and Conflicts

New Firm. Be aware of the risks of assisting the incoming attorney in attempting to lure away from the former firm associates or personnel during the pre-departure time period.

As with improper solicitation of clients, a hiring firm that in any way collaborates with or assists incoming counsel in recruiting employees of their prior firm during the period before the departing lawyers make the lateral move risks exposure for aiding and abetting breach of fiduciary duty or tortious interference with business relations. The hiring firm should have no contact with employees of the prior firm until after the departing lawyers have made the lateral move.

When checking for conflicts of interest, be mindful of the risks of possible disclosure of confidential client information.

While a conflict check is necessary to protect the hiring firm and its clients, requesting the information necessary to perform the check creates the potential for improper disclosure or receipt of client information. The identity of a client is generally not attorney-client privileged, but may nonetheless be confidential. To best ensure that both clients and the hiring firm are protected, the departing lawyer and the hiring firm should consider agreeing (1) that the hiring firm will treat as confidential all information produced for conflict checking purposes, (2) that the hiring firm will use such information solely for the purpose of checking conflicts, and (3) that the hiring firm will return or destroy all such information in the event the hiring does not proceed or the client in question decides not to retain the new firm. In addition, the hiring firm may find it prudent to set up a mechanism so that as few as possible of its lawyers or employees review the client list in order to be able to demonstrate, if later challenged, that prior to the actual arrival of the lateral hire, the firm's activities in connection with client-specific information were limited to checking conflicts.

Formal Opinion 2003-03 of the New York City Bar cites case law and other ethics opinions holding that, because a lateral hire's prior clients are potential sources of conflict for the new law firm, the hiring firm must include in its conflict-checking system a means for determining which clients the lateral lawyer personally represented while at his former firm. American Bar Association Formal Op. 09-455 notes the tension between confidentiality and conflicts analysis, and emphasizes that any disclosure should be no greater than reasonably necessary to accomplish the conflict check.

Information and Property

Departing Lawyer. Be aware of the risks concerning the removal or destruction of property, including digitally stored information, that belongs to the current firm.

Courts have held that lawyers planning to make lateral moves to new law firms must avoid any misuse, removal or destruction of the former firm's property or confidential or proprietary information.[7]

Lawyers moving laterally between firms often seek to take with them their contact information, calendars, "chronology" files, forms, and precedents developed in the course of their practices, as well as information about clients and former clients whom they have served. The digitization of information and the ability of a departing lawyer to access and copy vast amounts of data has only exacerbated the grounds for disputes when lawyers make lateral moves, and the ethics rules and current case law leave largely unresolved the question of who owns the intellectual property in forms and

precedents created by lawyers but accessible to both lawyers and their firms.

A few guidelines may be garnered from existing law. First, "it seems clear that if lawyers are free to move among firms, and to communicate with clients they have served once they announce to their current firms their intent to depart, then they must be entitled to take their personal contact information, in digital form, just as once they would have taken their 'Rolodex.'"[8] Second, there are cases suggesting that lawyers are entitled to their personal "chronology" files—again, presumably, in digital as well as hard copy form.[9] It is an open question whether a departing attorney is entitled to the contents of his or her e-mail inbox.

In the absence of a written agreement or policy, it is unclear who has the right to confidential information, whether client- or firm-related, created while lawyers are working at a firm. Except in limited circumstances, the majority view is that work product that lawyers create on behalf of clients largely belongs to the client.[10] But non-client information, including precedents that lawyers worked to create, when expunged of client specific information, is arguably proprietary to the law firm. Laterally moving lawyers therefore open themselves up to future challenges or lawsuits by attempting to remove such information. However, because these rights and responsibilities are not spelled out in the ethics rules or case law, and the facts of each case differ widely, it cannot be predicted which side will prevail should a dispute arise. The best advice is simply to proceed cautiously when it comes to removal of information, in hard copy or electronic form, from former firms. If at all possible, departing lawyers should try to come to an agreement with their firms concerning what may be taken.

Before removing client files or information, obtain the clients' instruction, in writing, to transfer files to the new firm.

Client files are considered client property, not property of either the lawyer or law firm working on a client's matter, and should only move from one firm to another pursuant to the client's written instruction.[11] Any other transport or discarding of the client file is ethically impermissible.

Current Firm. Review and consider revising the firm's partnership or shareholder agreement and the firm's policies and procedures manual as needed in order to clarify the firm's lawyers' obligations with respect to client- and firm-related information.

Many firms include in their partnership or shareholder agreements broad language asserting that the firm, and not individual partners or shareholders, "own" all confidential information of any kind—whether client- or firm-related—created while lawyers are working at the firm. Such language is designed to establish grounds for firms to claim that when departing lawyers take any information—or at least information that is not client-specific that is transferred at the express direction of a client—the lawyers are "stealing" that information and are thereby breaching their fiduciary duties to their former firms. However, it is important, if such language is not to be susceptible to attack as over-extensive, that the agreement carves out, and permits, removal of those items that the courts expressly authorize. As discussed above, at a minimum this includes a lawyer's personal calendar, contact information, "chronology file" and perhaps e-mail inbox.

Improper removal of a law firm's proprietary information may be used by the former firm to ground claims that the departing partners forfeit their right to some or all of whatever the firm may owe to them in the way of capital or undistributed income. Further, if or when the information is then transferred to the lawyers' new firm, a claim may be asserted that the hiring firm aided and abetted the lawyers' malfeasance, arguably subjecting the hiring firm to allegations of tortious interference or aiding and abetting breach of contract or breach of fiduciary duty. Here, too, whenever feasible, firms should try to come to an agreement with departing lawyers concerning what may be taken.

New Firm. Consider developing policies and procedures that permit the acceptance of electronic data from an incoming lateral hire only relating to client matters where clients have given

authority or where the prior firm has agreed to the transfer by the new attorney.

Firms hiring laterally should take great care before accepting data "dumps" by new lateral hires when they arrive at the firm. As noted above, particularly in cases where the former firm's partnership or shareholder agreement expressly prohibits departing attorneys from taking such information with them, the hiring firm may be drawn into a dispute and may face allegations of tortious interference or of aiding and abetting the moving lawyers' breach of contract or breach of fiduciary duty.

Some larger firms have recently adopted protocols for their IT departments to assess the content of information that the newly arriving lawyers seek to import.[12] In the absence of clear guidance in the ethics rules and case law, this approach is sensible risk management, and we recommend that firms consider it.

Additional Considerations

We conclude by addressing some additional risk management considerations in the context of lateral movement. These considerations may not be strictly tied to the ethical rules, but we nonetheless recommend that lawyers and law firms consider whether they may be helpful in seeking to minimize the potential for disputes arising out of lateral moves. New law is being made all the time in the area of lateral attorney movement, but no lawyer (or law firm) wants to be the test case.

Departing Lawyer. Consider resigning from managerial positions, and avoiding participation in managerial decisions that will affect the firm after withdrawal from the current firm, while negotiating to move.

If a lawyer participates in or makes management decisions in which there is an implied assumption that the lawyer will be remaining at the firm, the lawyer may face allegations that she engaged in dishonesty or misrepresentation, or breached her fiduciary duty to the firm and former partners.

If it is not feasible to resign, at the very least it is advisable to try to avoid making or participating in any significant management decisions that imply that the lawyer will be remaining at the firm. Common law claims such as breach of fiduciary duty often turn on notions of fairness, so activities just prior to departure, such as attendance at management committee meetings or votes on hiring decisions, are likely to be subjected to microscopic scrutiny.

Current Firm. Review and consider revising the firm's partnership (or operating) agreement, and the policy and procedures manual, as needed, in order to spell out the terms on which lawyers may depart, and are expected to behave prior to announcing their departure and prior to actual withdrawal.

This is largely self-explanatory, but the idea is twofold: By dealing with these issues up front in the partnership or shareholder agreement, and policies and procedures manual, everyone involved will have a better sense of their respective obligations, and individuals are more likely to comply. However, to reiterate, under RPC 5.6 and the *Cohen* line of cases, the firm may not include any provisions that operate as a direct or indirect restraint on an attorney's right to practice after leaving the firm.

New Firm. Review existing hiring practices and consider adopting a protocol designed to make sure that the firm undertakes appropriate due diligence relating to the incoming lawyer.

A hiring firm should never assume that a lateral attorney comes to the firm with an unblemished past. Before extending an offer of partnership or employment, a firm should gather all non-proprietary information appropriate for making a hiring decision. At an absolute minimum, this should include confirming the lawyer's admission and current good standing in every jurisdiction where he is admitted, and determining whether the prospective hire has ever been sued by a client or disciplined. Any claims outstanding at the time of hire become the problem of the hiring firm as well as the individual attorney.

With respect to outstanding or potential malpractice claims that may be instituted based on the lawyer's prior conduct, the firm should consider the liability insurance implications of

hiring laterally, and decide whether and to what extent the firm would benefit from or be harmed by providing prior acts coverage for the lateral hire.[13] In addition, extra due diligence may be warranted to identify and, to the extent possible, avoid the potentially serious economic implications both for the firm and laterally hired lawyers if the firm from which the individual lawyer is withdrawing subsequently dissolves.[14] Issues relating to lateral attorney movement in the context of law firm dissolution will be discussed in detail in a subsequent article.

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[1] See also Restatement (Third) of the Law Governing Lawyers §13(1)(2000).

[2] 75 N.Y.2d 95 (1989).

[3] Id. at 98.

[4] 602107/2011, Sup. Ct. Erie Cty., Slip. Op. Dec. 20, 2011, at 5, 7.

[5] Id. at 22.

[6] Id. at 20.

[7] *Gibbs v. Breed, Abbott & Morgan,* 271 A.D.2d 180, 185-86 (1st Dept. 2000); see also Restatement (Third) of the Law Governing Lawyers §9 comment i (2000).

[8] Anthony E. Davis, "Legal Ethics in a Digital Age," New York Law Journal, March 7, 2011, p. 3.

[9] Gibbs, supra note 7, at 185.

[10] Robert W. Hillman and Allison D. Rhodes, "Client Files and Digital Law Practices: Rethinking Old Concepts in an Era of Lawyer Mobility," 43 Suffolk U. L. Rev. 897 (2010).

[11] See Hillman on Lawyer Mobility, Ch. 2, §2.3.2 "Files as Property of the Client."

[12] Davis, supra note 8.

[13] Many firms decline to provide prior acts coverage on the ground that claims relating to acts or omissions of laterals before they joined the firm put the firm's policy at risk for matters for which the firm derived no benefit.

[14] *Jewel v. Boxer*, 156 Cal.App.3d 171 (1 Dist. 1984).