



News

Anthony Davis Author Article, "Lateral Attorney Movement: Pre-Departure and Recruitment," in New York Law Journal

May 7, 2012

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." 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.

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