

Don't Leave Me THIS WAY

ABC LAW FIRM IS A THRIVING FIRM IN A COMPETITIVE MARKET. The firm's success has led to some of its partners leaving ABC to join competing law firms or to start their own firms. The departure of key individuals has caused headaches for ABC when the departing partners compete with ABC to retain their clients and legal matters. In an effort to reduce the frequency of partner departures, ABC decides to amend its partnership agreement to discourage lawyers from leaving.

The first proposal would require lawyers to give reasonable advance notice of withdrawal from the partnership. The second prohibits departing lawyers from notifying clients for whom they are lead counsel that they are leaving the firm. Finally, ABC wants to forbid departing lawyers from soliciting the firm's clients even after the lawyer has withdrawn from the partnership.

When these proposals are presented to the partners, some object that these provisions violate provisions of the Texas Disciplinary Rules of Professional Conduct. According to a recent ethics opinion, which of the three provisions violate the TDRPC?

- A. Requiring lawyers to provide reasonable advance notice of their departure.
- B. Prohibiting lawyers from notifying their clients of an impending departure.
- C. Preventing lawyers from soliciting the law firm's clients after the lawyer departs.
- D. A and B.
- E. A and C.
- F. B and C.
- G. All of them.
- H. None of them.



ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethicstexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.



ANSWER: Lawyers with active clients moving from one firm to another is fraught with potential ethical problems. The issues presented here are addressed in Ethics Opinion 699 (2024). The focus in such situations is on how any restrictions on departing lawyers would affect the firm's clients rather than how they would affect the lawyers or the law firm. As the opinion wryly observes, clients "are not chattel owned by lawyers and law firms," and they are "free to terminate lawyers and their law firms with or without cause."

The opinion finds that prohibiting a lawyer from notifying clients of their intended departure runs afoul of Texas Disciplinary Rule of Professional Conduct 1.03, which not only allows but also requires lawyers to (1) keep clients reasonably informed about the status of a matter and (2) provide sufficient information to permit a client to make informed decisions regarding the representation. Therefore, clients must be timely notified of the departure and made aware that they have the right to decide whether they go with the departing lawyer or stay with the firm.

Likewise, a law firm cannot prohibit a lawyer from soliciting the firm's clients after departure because that "restricts the rights of a lawyer to practice after termination of the relationship," which is prohibited under Rule 5.06. Opinion 699 cites previous ethics opinions finding that law firms cannot ethically prohibit contacting or soliciting clients after the lawyer's departure because "solicitation is part of the practice of law."

The opinion does recognize that law firms have a legitimate reason for requiring "reasonable notice" of a lawyer's planned departure because lawyers have an ethical obligation to ensure that any transition of a client's legal matter is handled smoothly and protects the client's interests. While firms can ethically mandate a "reasonable" minimum departure notice, the notice period cannot be "set in stone." Rather, any notice period must be justifiable on a "fact-specific basis." The correct answer is F. For further information, go to legalethicstexas.com/ethics-question-of-the-month. **TBJ**