

CHECKLIST FOR PARTNERS DEPARTING A FIRM

1. If you are making a lateral move to another firm or setting up your own practice, remember that the clients' freedom of choice in selection of counsel is paramount. Always put the interests of your clients first. Keep the transition as amicable, professional, and stress-free as possible. Contentious withdrawals alienate clients and damage relationships. (This is good advice for associates, of counsels, contract lawyers, or any other lawyer who is severing a relationship with a law firm.)
2. Refer to the Professional Liability Fund (PLF) practice aids for additional information. See *Checklist for Departing Lawyers*, available on the PLF website, www.osbplf.org. Click on Services tab > CLE & Resources > Practice Aids > Departing a Firm > Checklist for Departing Lawyers. See also *Resources for Partnership Withdrawal and Dissolution*, available on the PLF website, www.osbplf.org. Click on Services tab > CLEs & Resources > Practice Aids > Partnership/Of Counsel > Resources for Partnership Withdrawal and Dissolution.
3. Conduct your partnership withdrawal in a manner that honors the contractual and fiduciary responsibilities owed to your fellow partners. Contractual duties are controlled by your written partnership agreement. Fiduciary duties are described in case law and codified by statute in Oregon's Revised Partnership Act (ORPA). See *Advising Oregon Businesses*, available on the Oregon State Bar (OSB) website under BarBooks, www.osbar.org.
4. Fulfilling your duties includes (but is not limited to) informing the firm of your decision to leave *before* contacting any clients. **Failing to give adequate and timely notice to your firm** or partners *before* you contact clients is a violation of the duty of loyalty owed by a lawyer to his or her firm based on their contractual or agency relationship. It may also constitute conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of ORPC 8.4(a)(3). *In re Complaint as to the Conduct of Murdock*, 328 OR 18, 25 (1998), citing, *In re Smith*, 315 Or 260, 266 (1992).
5. In addition, you have an obligation of good faith and fair dealing toward your fellow partners. You are also obliged to avoid conduct involving dishonesty, fraud, deceit or misrepresentation. ORPC 8.4(a)(3). Therefore, the best practice is to manage your departure in a way that is transparent to your fellow partners. This advice also applies to associates, of counsels, contract lawyers, or any other lawyer who is severing a relationship with a law firm. One example of transparency is providing the firm with a copy of your client notification letter if you are unable to agree on a joint notification and elect to send your own.
6. Review applicable firm policies or procedures which may affect the mechanics of withdrawal, such as the manner in which conflict information is provided to departing partners.
7. If you are terminating representation, follow ORPC 1.16. A lawyer may withdraw from representing a client if "withdrawal can be accomplished without material adverse effect on the interests of the client." ORPC 1.16(b)(1). "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law." ORPC 1.16(d).
8. If necessary, file substitutions of counsel or withdrawals. Until you are removed as attorney of record on a matter, you remain responsible for the case in the eyes of the court.

CHECKLIST FOR PARTNERS DEPARTING A FIRM

9. Review the following articles:

- a. Amber Hollister, "Seeking New Horizons: Ethical Duties When Changing Law Firms," *Oregon State Bar Bulletin* (August 2012).
<https://www.osbar.org/publications/bulletin/12augsep/barcounsel.html>.
- b. David L. Hudson, Jr., "What are the Ethical Duties When a Lawyer Leaves a Firm? Formal Ethics Opinion Offers Guidance," *ABA Journal* (December 2019).
<https://www.abajournal.com/web/article/aba-ethics-opinion-emphasizes-ethical-responsibilities-of-departing-lawyers-and-law-firms>.

10. Review the following ethics opinions:

- a. OSB Formal Opinion No. 2005-29 "Law Partnerships: Covenants Not to Compete"
<https://www.osbar.org/docs/ethics/2005-29.pdf>.
- b. OSB Formal Opinion No. 2005-70 "Lawyer Changing Firms: Duty of Loyalty"
<https://www.osbar.org/docs/ethics/2005-70.pdf>.
- c. Other Oregon opinions related to departing a firm are referenced on the PLF website, www.osbplf.org. See our forms and practice aids under the category "Departing a Firm."
- d. State Bar of California Formal Opinion No. 2014-190 "Dissolving Firm and Moving to New Firm"
[https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202014-190%20\(11-0003\)%20v1.pdf](https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202014-190%20(11-0003)%20v1.pdf). [Issues discussed: Upon the dissolution of a law firm, what duties does an attorney affiliated with the firm owe to a client on whose behalf he or she provided legal services if the attorney no longer will be representing the client following the dissolution? How does the fulfillment of those duties differ if the attorney had no connection with or knowledge of the client prior to dissolution of the firm? Do the steps an attorney may be required to take depend on the nature of the attorney's position with the firm?]
- e. Philadelphia Bar Association Joint Formal Opinion 2007-300 "Ethical Obligations When a Lawyer Changes Firms"
<http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/EthicsOpinion2007-300.pdf>. [Excellent discussion of ethics issues and substantive law on lawyer mobility, withdrawal, and dissolution.]

11. The information published by the PLF (including these guidelines) is intended as a brief overview of the issues involved when partners leave a firm. For legal advice, consult outside counsel experienced in the areas of lawyer mobility, partnerships, fiduciary duties, lawyer separation, and law firm dissolution. This is particularly critical if you anticipate a contentious departure. The PLF does not provide legal advice on lawyer withdrawal or law firm dissolutions. Nor can we mediate or resolve disputes between lawyers and firms.
12. For ethics advice relating to your departure, consult outside counsel or contact the OSB General Counsel's Office, <http://www.osbar.org/ethics>.

CHECKLIST FOR PARTNERS DEPARTING A FIRM

IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices. © 2023 OSB Professional Liability Fund