

Leaving a Small Firm

Firm,

I am in a difficult position. I am leaving the firm I have been working at for several years and potentially taking several clients with me. I am at a two-person firm and we both practice in the same area. The principal of the firm whom I work for is someone I can no longer tolerate. I believe he has repeatedly acted against the best interests of the firm's client and has taken a few questionable ethical positions. This is all on top of his bad managerial skills. I am set to head out on my own but I wonder about how much notice I should give him. He has shown to be a vindictive guy and I can see him doing what he can to malign me to the clients of the firm. I was given the Ethic Opinion 1985-86 but I don't know how to implement. He would NEVER agree to a "joint letter" and allow for a smooth transition should any client wish to go with me.

The last associate that left before me cashed his paycheck and walked out that afternoon. I have heard the Boss badmouth this guy for four years. I don't necessarily want to run out with no notice, but the least amount of notice I could provide would be best. This is the first legal job where I really need to run and I'm not sure how to. When it comes to the clients, I know I will be able to represent them competently from Day 1, but for those that stay with Boss' firm, I cannot say. Do I owe these clients extended notice so my Boss can figure out where the cases are even though we are both on the pleadings and jointly- handle, etc.?

Are things so bad that you should notify the state Bar?

Reta A. Mckannan, Alabama

This is one of those times where I would spend \$500 to \$1,000 to retain ethics counsel, get a good solid opinion and then follow it to the T. If the boss is as wacky as he sounds, he could say or do things that make you look bad. A little bit of prevention now goes a long way.

Jonathan G. Stein, California

I would prepare a file memo for each of your client files stating the basic facts & causes of action, what's been done, and what the next steps are. That way, regardless of the amount of notice, you have taken care of the clients.

If you have an employment contract with the firm, it should dictate how much notice is reasonable. Otherwise, as long as you've got the files in good shape and have put a memo in each so that the next attorney can get up to speed, do what seems reasonable to you. I'd recommend going ahead and getting your client notice letters prepared in advance so that on your last day, all you have to do is sign and mail them. If you have a litigation practice, you'll also have to notify the courts and opposing counsel.

I'm sorry you're having to go through this.

Paula Pierce, Texas

All other things being equal, the more notice the better.

However, I rather suspect not all things are equal in this case.

There is a distinct possibility that the minute you give him notice he's going to tell you to clear out your desk. In which case, of course you won't have your files, etc. unless you take steps initially.

I don't have a real good answer on this; All I can suggest is that you give him maybe a week a week or so notice, and try to document the files before you give notice.

If boss is willing to let you stick around for a bit, then you can bring him up to speed; if he's not then he's the clients lawyer and ultimately it's his responsibility to look after them. I'm not suggesting you leave the clients in the lurch but it's going to be up to your boss how this goes down.

Ronald Jones, Florida

Since you anticipate issues, it would be best to speak to Ethics Counsel to go over your obligations as well as your boss's. Have a clear path as to what is required of each.

Before you give notice have everything ready to go immediately. The ethics opinion seems very clear as to what should be in the letter and does not require a joint letter. Draft a proposed joint letter to send, but have the alternative letter prepared to go as well. The opinion makes it seem that both letters would likely be the same, except for who signs. It also notes caution for soliciting, so the letters may not be something where "argument" should be added to persuade one of you over the other.

As for the status of any ongoing case, presuming that the files are in order, whether you prepare a specific status report is a different issue.

You do not want to do anything unethical, or that will harm the clients, but going "above and beyond" what you are required to do is something to negotiate. If there are clients that have impending deadlines, that may be worth a memo to advise at least of the action that needs to be taken. This memo may also make the boss realize that he may need your help with the transition.

Also, in addition to your letter stating you are leaving have a letter prepared (in case it is needed) cautioning him about disparaging you, or taking steps to harm your business reputation, etc. You have witnessed his ways so prepare to counter if needed. Best to consider the actions to take in advance so you are ready.

Phil A. Taylor, Massachusetts

I had a similar issue come up when I left my last brick-and-mortar law firm, as they would not send out letters giving the client the option to go with me (as is their right under Virginia's rules and just about everybody else's).

I can't speak to the CA rules, but I spoke to the Virginia State Bar ethics counsel and was advised I could send letters on my own even prior to my departure from the firm, telling the clients I was leaving and giving them the option to stay, come with me, or have their files sent to another attorney. I was also told I could tell them what my billable rate would be at my new firm.

I would definitely speak to someone at the CA Bar and get advice specific to the CA rules.

Kevin W. Grierson, Virginia

I encourage you to get counsel. Your present employer is not going to make things easy, simple, or quick. Let your counsel advise you and then at some point interact with Boss on your behalf. You will want to be focusing on the future and your new practice, not on untangling things in the past.

Plus it can be very beneficial to be able to have a confidential conversation with your counsel. It costs, but it is one of those expenses that will be worth every single penny spent.

Remember, once you are gone that every time you look in your rear view mirror, Boss will be a smaller image.

Deb Matthews, Virginia

Others have given you good advice. I will just add good luck wishes, and if I can help you talk through anything specific, please call.

Wendy Lascher, California

Anonymous - something similar happened to me.

One thing to consider is you need to get your name off those files. If you are an electronic filer, you can pull up all the open cases with your name on them.

Please feel free to reach out to me offline. I'm swamped until Tuesday, but happy to talk things over.

Sincerely,

Corrine Bielejeski, California

Join the Association of Professional Responsibility Lawyers. Join the APRL list serv. Post. Hire someone in that group as your counsel. There are lawyers there who advise other lawyers on ethics issues.

Roger M. Rosen, California