

Solo Becoming an Associate

If a solo is hired as an associate for a large firm, how does the solo deal with their active solo caseload when they transition to a firm?

Anything else to keep in mind for someone transitioning from a solo to an associate, before the ink on the employment contract is signed?

Arguably, the firm that you are going to be asked for a client list and ran conflicts.

Assuming no conflicts, the clients could certainly become clients of the firm.

It is totally the clients' choice.

Walter D. James III, Texas

1. Billing and collections for prior work done on existing solo clients and billing and collections on work done after coming aboard. What portion of the fees from continuing clients does the solo retain? What portion of the associate's to be's time may be dedicated to the caseload that follows her?

2. Malpractice insurance coverage for prior work as well as work that continues on prior cases. Most firms will not agree to obtain coverage for prior acts, in that case, the associate needs to think about getting insurance tail coverage. But the firm may have its own concerns as to existing clients that follow the associate.

3. Conflicts are an issue. Beyond the obvious check between existing clients of the solo and her future firm, look for potential conflicts due to the type of cases that the solo has handled for clients. Solo has employee clients but the firm does employer work is an example. The firm may look at the client list and ask the associate to be to jettison some existing clients.

4. Trust accounts. Trust funds for clients that follow the lawyer need to be transferred to the new firm.

5. New engagement letters and letters to transition files. The lawyer is going with a new firm. Clients need to execute new engagement letters with the new firm and technically need to authorize transfer of files to the new firm. The latter can just be a sentence or two in the new engagement letter.

Craig A. Stokes, Texas

What Walter said. Also, associate should negotiate a % of billed from clients the associate brought in.

Michael Blake, Connecticut

My associate ran his own solo practice for close to a year. When he came on board, he advised me of his pending cases, and which ones he preferred to finish through his own firm and which ones he wanted to bring to my firm.

Carolyn Elefant, District of Columbia

I did this after my first time as solo and took my clients along. First, you need to have the firm to do a conflict check against your clients to see if you are stepping into a conflict of interest. If any conflicts, resolve those conflicts.

Once that is done, send clients a letter about the move. Offer to continue working on their file and let them know about any changes in fee agreement. Have clients sign new fee agreement with new firm. Also offer to assist them to find new attorney if they are not interested in going with new firm. Make sure you withdraw from cases that are not being transferred.

Finally, make sure you document what happens to funds in IOLTA. Either it is transferred to new firm's IOLTA or returned to client.

If you have any other questions, please let me know and I will help if I can. Good luck.

Leon J. Letter, Michigan

I was recently hired by a "big law" firm in NYC, and they make a big deal about me having my private practice. They submitted the situations to their ethics committee and they decided that because of the risk of imputed liability and other sort of ethical considerations (I had a partner), unless I give up my practice, they will not hire me. They said that even if a current partner of the firm comes with a situation like that, they will ask them to leave the building immediately. I guess "big law" does not even care about your comparatively small clients, but only about their liability risks and ethical issues.

Vilma Preta

Immediately join APRL Association of Professional Responsibility Lawyers. Post to their List Serv. Maybe engage one of them. That's what a lot of members do, advise lawyers on professional responsibility matters such as this one.

Roger M. Rosen, California

Answers to legal ethics questions depend on the specific ethics rules, and rule interpretations, of the state in which the lawyer practices.

If the employing firm will permit it, continuing to handle the cases as an associate of the firm causes the fewest problems for all interested parties.

On the one hand, law firms generally do not allow associates or partners to practice law on the side, for multiple valid reasons. On the other hand, do not expect that you can simply drop existing clients and matters. Lawyers have both contractual and ethical duties to carry out their professional engagements competently and diligently. Model Rules of Prof'l Conduct R. 1.1, 1.3. Rule 1.16 limits the circumstances under which a lawyer may voluntarily withdraw from a representation. A lawyer may withdraw if "withdrawal can be accomplished without material adverse effect" on the client's interests. *Id.* R. 1.16(b)(1). In my opinion, paying a new lawyer to learn what the existing lawyer already was paid to learn would constitute a material adverse effect. In my opinion, denying the lawyer the privilege of working at a law firm for increased compensation would not constitute "an unreasonable financial burden on the lawyer" *Id.* R. 1.16(b)(6). In cases pending in court, typically either a new lawyer must appear for the client simultaneously with the present lawyer's withdrawal or the withdrawing lawyer must obtain the court's permission to withdraw for good cause. *Cf.* R. 1.16(c). In considering a motion for permission to withdraw, the court will

consider the client's interest and also whether withdrawal would adversely affect the judge's docket.

Bringing the lawyer's cases to the new firm solves both problems. I began my practice as an associate at Paul Weiss Rifkind Wharton and Garrison in New York. Paul Weiss had a standing policy for allocating fees earned from cases that an associate originated that was unreasonably generous to the associate. Paul Weiss wanted to encourage practice development, although very few associates originated business (I was one of the few who did).

I recommend that the inquiring lawyer promptly and candidly discuss with the prospective employer what to do about the lawyer's existing practice-before the firm begins preparing an employment contract.

Numerous other issues exist for the transitioning lawyer to consider. If the lawyer has claims made professional liability insurance, the lawyer should consider buying a tail. If the lawyer does not continue to represent the client, either individually or in the new firm, the lawyer must properly deliver client property in the lawyer's possession and must properly transfer trust funds, and should also prepare for each matter a schedule of due dates and a plan for completing each matter.

"[B]efore the ink on the employment contract is signed"???

Steven Finell, California