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Managing Ethics Considerations in the Context of Partner Departures

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Lateral partner transitions can pose ethical and other challenges for departing lawyers and the involved firms.

Protecting client needs and preferences is an ethical imperative. At the same time, firms and lawyers need to navigate conflicts of interest, confidentiality provisions, and internal and external communications. The soon-to-be former firm must also anticipate and plan for any client-related or internal fallout from the partner's decision to depart. Meanwhile, the departing lawyer's new firm needs to prepare for the lateral's integration into the firm and for any clients that will move with the partner to the destination firm.

One tool that will define the parameters of a potentially tricky departure is in plain sight: the partnership agreement. "Whether advising the departing partner or one of the firms, reading the partnership agreement and identifying the operative provisions is an important early step," says **Catherine S. Duval**, a leading partner at **Zuckerman Spaeder** whose Legal Profession and Ethics practitioners have ample experience guiding lawyers and firms through these transitions.

"It can be helpful when firms proactively distill the partnership agreement and provide the

essential guidelines to departing partners," adds Duval. (Of course, the agreement's importance to this process also underscores the need for and benefit of creating precise and clear partnership documents from the outset.)

Keep Key Considerations in Mind

"The partnership agreement can serve as a road map on multiple fronts," adds **Anthony M. Ruiz**, another Zuckerman Spaeder partner who advises on ethics issues.

A firm concerned about a partner's conduct during a departure should consult the partnership agreement to determine whether the departing partner may have violated its terms. The agreement may also address possible remedies, such as whether the firm could have a claim to some or all of the lawyer's capital account under certain circumstances, and may include provisions

dictating whether disputes must be arbitrated, what law applies, and so on.

These considerations help "drive critical discussions and strategic decisions about how to handle disputes between a departing partner and their former firm," says Ruiz.

Facilitate a Smooth Transition Through Clear Communication

Departures can be thorny. Communication between the firm and the departing partner, the departing partner and impacted clients, and the firm and those same clients is key to ensuring the transition goes as smoothly as possible. Partners have a fiduciary duty to notify the firm of their impending departure before discussing it with clients. "Ideally, the firm and the departing partner collaborate in notifying clients, soon after the partner's notice to the firm," Duval says, "and request guidance as to whether the client wants to remain with the firm or follow the partner."

The American Bar Association ethics guidance echoes this, urging that transition plans be orderly and flexible, and "[protect] client interests during the lawyer's transition."

"The key is keeping the client's best interests in mind," says Ruiz. "It's critical that clients understand their options and how the departure may affect them. In contingency matters, for example, clients should be informed about how fees from a recovery will be allocated between firms and whether the move could impact their ultimate recovery."

Duval adds, "Even if there are hard feelings between the firm and a departing partner, both parties must ensure any conflict does not interfere with doing what's best for the client." She notes that bringing in outside ethics counsel can help "de-escalate tensions and resolve issues before litigation. Engaging counsel early in the process can provide an impartial perspective and ensure that ethical and practical considerations are addressed thoroughly."

While lateral moves can be ethically challenging, they are manageable with careful attention to partnership agreements, clear client communication, and a shared focus on minimizing animosity.

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