

# Navigating Lateral Moves: Key Provisions in Law Firm Partnership Agreements

By Hilary P. Gerzhoy, Esq.

2023 showed no shortage of lateral partner moves and 2024 looks poised to be just as busy. For any partner who has decided to make a lateral move from one firm to another, one key initial step is to review his or her partnership agreement. These agreements are long, complex, and often the source of confusion. As an ethics lawyer who helps lawyers successfully make these transitions, below I lay out the most critical components of partnership agreements that every lateral partner should keep in mind and about which every recruiter should be aware.

As a first measure, it is important to understand the limitations of partnership agreements. Much as firms may try to act otherwise, neither lawyers nor clients are firm property. The Rules of Professional Conduct (“Rules”) provide significant protection for lawyers making lateral moves. Being armed with the knowledge of the scope of these protections is often essential for successfully navigating these moves. In my experience, the bigger the book of business the lateral partner has, the more contentious these fights can be. Firms often make assertions about what lateral partners can and cannot do that are inconsistent with the Rules. So before a lawyer even looks at her partnership agreement keep in mind: if any term within your partnership agreement conflicts with the Rules, the term is likely unenforceable as against public policy. See, e.g., *Cohen v. Lord, Day & Lord*, 550 N.E.2d 410, 410 (N.Y. 1989) (holding that a partnership agreement “which conditions payment of earned but uncollected partnership revenues” upon adherence to a non-compete provision in violation of the New York Code of Professional Responsibility is “unenforceable . . . as against public policy”). So while we need to be mindful of all the provisions of the partnership agreement, we should not treat them as gospel where they conflict with the Rules. Having said that, here are the key provisions to be aware of:

## Notice to Firm of Departure

Partnership agreements tend to mandate how much advanced notice of a departure an existing partner is required to provide, usually

30–60 days. In 2020, the ABA held that a firm’s fixed notice period can be unenforceable. ABA Opinion 489 states, “A lawyer who wishes to depart may not be held to a preestablished notice period particularly where, for example, the files are updated, client elections have been received, and the departing lawyer has agreed to cooperate post-departure in final billing.” ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 489 at 5 (2019). Where a fixed notice period serves to “restrict or interfere with a client’s choice of counsel” or to “hinder or unreasonably delay the diligent representation of a client,” it is unenforceable. Formal Op. 489 at 7. For example, if a firm imposes a 30-day notice period, as most do, but the lawyer’s client files are up to date and the lawyer promises to help in the transition going forward—even if that transition is not complete—the firm cannot hold the lawyer for 30 days or dock the lawyer financially.

## Notice to Clients

Recently, I have seen partnership agreements state that a lawyer is not entitled to contact his or her clients prior to departing the firm. These provisions are almost always unenforceable. With some limited exceptions, a lawyer cannot contact clients in advance of informing their current firm of the departure. See, e.g., D.C. Ethics Op. 273; Pa. Bar Ass’n Comm. on Legal Ethics and Prof’l Responsibility, Joint Formal Op. 300 (2007). But, in nearly every state other than Virginia and Florida, that’s where the client notice restrictions end. After you have informed your current firm that you are leaving, you are obligated to notify your current clients of your departure. See Model Rule 1.4; see also D.C. Ethics Op. 273. While they may try, unless you are a Virginia or Florida lawyer, your current firm cannot forbid you from unilaterally contacting your current clients. Virginia and Florida are the only jurisdictions that prohibit the firm or the departing lawyer from unilaterally notifying clients absent a failed attempt to agree on a joint communication. See Virginia Rule 5.8 and Florida Rule 5.8. California strongly encourages it. See CA Ethics Op. 2020-201 (“Joint notice...is preferable to unilateral notice because it is a better way in which to protect clients’ interests. However... if the parties cannot agree on joint notice, or drafting the joint notice is being used by a party to delay formal client notification while informal notice talks have already begun, unilateral notice is ethically permissible and may be required in some circumstances.”)

Nor can the firm deny a departing lawyer access to her client files, email, voicemail, firm resources—including the ability to work with other firm lawyers—or requiring a departing lawyer to work from home.

While you might consider telling your clients about your new firm’s capabilities, note that the law is unsettled about the consequences of going beyond that to solicit the client to come with you. Some jurisdictions offer guidance or impose requirements regarding the content of your departure notice to clients. Should a client choose to follow you, make sure their decision is in writing.

## Capital Repayment

Law firm partnership agreements tend to mandate capital contributions, which represent a partner’s financial stake in the firm. Partners should be

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aware of the conditions under which they can withdraw their capital from the firm, as well as any potential penalties or restrictions associated with such withdrawals. For purposes of a lateral move, partners should consider how long it will take for the firm to repay your capital contribution and under what circumstances they can withhold payments.

### **Non-Compete and Non-Solicitation Clauses**

Finally, partners contemplating a lateral move should review any non-compete or non-solicitation clauses in their current partnership agreement. These clauses may restrict a departing partner's ability to practice law within a specific geographic area or solicit clients and employees from the former firm. Negotiating the terms of these restrictive covenants with the new firm is crucial to avoid conflicts and legal disputes. Partners should seek legal advice to ensure that any limitations imposed by these clauses are enforceable and align with the legal landscape in their jurisdiction.

Making a lateral move to another law firm is a significant decision that involves careful consideration. Examining the key provisions in

law firm partnership agreements is a crucial step in this process, as it directly impacts your finances, client relationships, and overall professional experience. Partners should approach the negotiation of these provisions with diligence, seeking legal counsel when necessary, to ensure a smooth and successful transition to their new legal home.



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