



**New York State Bar Association  
Committee on Professional Ethics**

**Opinion 1195 (06/11/2020)**

**Topic:** Attorney's obligation to accept client files from prior law firm.

**Digest:** A lawyer has no duty to represent clients who were clients of a former law firm and have not engaged the lawyer to represent them at a new firm, no matter whether the lawyer did work on behalf of those clients at the former firm.

**Rules:** 1.6, 1.9, 1.16

**FACTS**

1. The inquirer recently left employment with a law firm in which the inquirer had practiced for some years. Several partners left the firm during the inquirer's last two years at the firm. The inquirer took on a number of matters these lawyers had handled, and settled several of them. In one matter, the inquirer reached a compromise of a lien but then later discovered that another lien existed, at which point the inquirer wrote the client to advise of the outstanding lien and the client's responsibility to pay the lien or negotiate a reduction. The inquirer left the law firm shortly thereafter and started a new firm. Several of the clients from the old firm retained this new firm.

2. Following the inquirer's departure, the former firm began sending files for matters that the inquirer had handled before departure. The inquirer returned the files to the old firm with notice that the inquirer did not represent the affected clients. Nevertheless, the old firm re-sent the files to the inquirer and, we are told, advised those clients in writing that the inquirer was now handling their matters.

**QUESTIONS**

3. The inquirer asks:

(a) Is a lawyer who leaves a law firm responsible for representing clients represented by the inquirer at the prior firm but who have not retained the lawyer's new firm?

(b) Is a lawyer who advised a client about lien prior to departure from a prior firm still responsible for advising the onetime client about the lien?

(c) Is it ethical for a law firm an employee of which has left the firm to advise firm clients that the former employee remains responsible for certain matters the departing lawyer had previously handled?

4. Our charter restricts us to responding to inquiries about a lawyer's own prospective

conduct, not about the conduct of other lawyers. Consequently, we offer no opinion in reply to the inquirer's third question.

## **OPINION**

5. On the facts presented, we consider clients of the inquirer's former firm who have not retained the inquirer's new firm to be former clients of the inquirer. A lawyer owes only certain discrete obligations to former clients. The most prominent of these are set out in Rule 1.9 of the N.Y. Rules of Professional Conduct ("Rules"), which, among other things, requires a lawyer not to reveal the confidential information of former clients protected by Rule 1.6, and not to represent a client adverse to the former client in a matter that is "the same or a substantially related matter" to one in which the lawyer previously represented the former client. Rule 1.16(e) also makes provisions for avoiding prejudice to a client upon termination of the attorney-client relationship. For the most part, however, a lawyer's duty of care to clients dies with the end of the attorney-client relationship.

6. On our view, this means that the inquirer no longer owes clients of the former firm the range of duties attending an ongoing attorney-client relationship under the Rules. This extends to the client of the former firm whom the inquirer advised about liens. It appears that the inquirer counseled the client to deal with the liens. Unless the client has retained the inquirer's new firm, we see nothing in the Rules to obligate the client further to serve the client, except for making available documents or other information in the inquirer's possession that may avoid prejudicing the erstwhile client's ability to act as instructed.

7. The Rules explicitly state that the existence of an attorney-client relationship is a question of law, not ethics. Rules, Preamble ¶ 9. We do not issue opinions on legal questions, but we do not stray far from our charter in saying that an unaffiliated third party may not unilaterally impose such a relationship without the agreement of the lawyer and the client. Thus, unless clients of the former firm have agreed to retain the inquirer's new firm, the inquirer's duties to those onetime clients are limited to those any lawyer owes a former client. *See* ALI, Restatement of Law Governing Lawyers (Third) § 14(1) (Formation of a Client-Lawyer Relationship) (a lawyer-client relationship arises when "a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either (a) the lawyer manifests to the person consent to do so; or (b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services).

## **CONCLUSION**

8. A lawyer owes no duty to represent clients of a former firm absent a client's agreement and instead owes such persons only the duties all lawyers owe to former clients.

(06-20)