

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 27th day of February, 2015.

On December 16, 2014 came the Virginia State Bar, by Kevin E. Martingayle, its President, and Karen A. Gould, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, praying that Rule 5:8, Part Six of the rules of Court, be added. The petition is approved, as modified by the Court, and Rule 5:8 is added to read as follows:

Rule 5.8 Procedures For Notification to Clients When a Lawyer Leaves a Law Firm or When a Law Firm Dissolves.

(a) Absent a specific agreement otherwise:

(1) Neither a lawyer who is leaving a law firm nor other lawyers in the firm shall unilaterally contact clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer and an authorized representative of the law firm have conferred or attempted to confer and have been unable to agree on a joint communication to the clients concerning the lawyer leaving the law firm; and

(2) A lawyer in a dissolving law firm shall not unilaterally contact clients of the law firm unless authorized members of the law firm have conferred or attempted to confer and have been unable to agree on a method to provide notice to clients.

(b) When no procedure for contacting clients has been agreed upon:

(1) Unilateral contact by a lawyer who is leaving a law firm or the law firm shall not contain false or misleading statements,

and shall give notice to the clients that the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms; and

(2) Unilateral contact by members of a dissolving law firm shall not contain false or misleading statements, and shall give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

(c) Timely notice to the clients shall be given promptly either by agreement or unilaterally in accordance with Rule 5.8(a) or (b).

(d) In the event that a client of a departing lawyer fails to advise the lawyer and law firm of the client's intention with regard to who is to provide future legal services, the client shall be deemed a client of the law firm until the client advises otherwise or until the law firm terminates the engagement in writing.

(e) In the event that a client of a dissolving law firm fails to advise the lawyers of the client's intention with regard to who is to provide future legal services, the client shall be deemed to remain a client of the lawyer who is primarily responsible for the legal services to the client on behalf of the firm until the client advises otherwise.

Comment

[1] Although there may also be significant business and legal issues involved when a lawyer leaves a law firm or a law firm dissolves, this rule addresses the rights of the clients to be fully informed and able to make decisions about their representation. Accordingly, the rule emphasizes both the timing and the content of the required notice to clients. Upon the departure of a lawyer or the dissolution of the law firm, the client is entitled to notice that clearly provides the contact information for the departing lawyer and information about the ability and willingness of the lawyer and/or firm to continue the representation, subject to Rule 1.16. Either the departing lawyer or the law firm shall take appropriate steps in accordance with Rule 1.16 regarding the client's file, and any other property, including advanced legal fees. Nothing in this rule or in the contract for representation may alter the ethical obligations that individual lawyers have to a client as provided elsewhere in these rules. Any client notification agreement, whether pursuant to this rule or otherwise, must also comport with Rule 5.6(a). Lawyers may also have fiduciary, contract, or other obligations to their firms that are outside the scope of these rules.

[2] While this rule requires the departing lawyer and the law firm to confer in order to make a joint communication to the departing lawyer's clients, the duty to communicate with clients and to avoid prejudicing the clients during the course of representation requires prompt communication when the lawyer primarily responsible for those clients is leaving the firm. See, e.g., Rules 1.3(c),

1.16(d) and 1.16(e). If continued representation by the departing lawyer and/or by the law firm is not possible, the communication shall clearly state that fact and advise the client of the remaining options for continued representation, including the client's right to choose other lawyers or law firms.

[3] For purposes of the notification required by this rule, "client" refers to clients for whose active matters the departing lawyer has primary responsibility.

[4] While clients have the right to choose counsel, such choice may implicate obligations. Those obligations may include a requirement to pay for legal services previously rendered and costs expended in connection with the representation as well as a reasonable fee for copying the client's file. See Rule 1.16(e). Some clients may be limited in their ability to choose counsel. For example, when the lawyer is appointed by a court to represent a client, the appointed lawyer is responsible for the representation until relieved or replaced by the court.

[5] Lawyers involved in either a change in law firm composition or a law firm dissolution may have duties to notify the court if they represent clients in litigation. In either case, a lawyer who is counsel of record before a court must file a motion to withdraw or a motion for substitution of counsel if he no longer represents the client. See Rule 1.16(c).

Upon consideration whereof, it is ordered that the Rules for Integration of the Virginia State Bar, Part Six of the Rules of

Court, be and the same hereby are amended in accordance with the prayer of the petition aforesaid, effective May 1, 2015.

A Copy,

Teste:

Debra L. Harrison

Clerk