

LEGAL ETHICS OPINION 1506

TERMINATION OF REPRESENTATION
— CONFLICT OF INTEREST —
ZEALOUS REPRESENTATION:
ATTORNEY'S FORMER FIRM
REFUSING TO ADVISE CLIENTS OF
ATTORNEY'S NEW LOCATION.

You have presented a hypothetical situation in which Law Firm employed Associate for over four years during which time Associate was handling numerous client files for Law Firm. You indicate that, after not having received a raise for over two years, Associate began to look for new employment. When Senior Partner learned that Associate was looking for new employment, he fired Associate immediately and directed Associate to leave by 5:00 p.m. that day. Other partners knew that Associate had been looking for other employment; one partner offered Associate a good recommendation. Associate then rented an office nearby.

You further indicate that Law Firm then decided to discontinue practice in the areas of domestic relations, criminal defense, and bankruptcy, the areas of most of Associate's cases, and to concentrate exclusively on personal injury law. Law Firm wrote letters to all of Associate's former clients, asking them to contact Law Firm so that they could then be referred to another law firm.

You have advised that, following Associate's departure, persons who call Law Firm asking for Associate are interrogated as to why they seek him and that, in most cases, they are not given Associate's new business address. Instead, callers are referred to another firm selected by Law Firm. Additionally, Associate has no access to client records so that he is unable to advise clients or appropriate courts of his new address as necessary for individual cases. You have also stated that one clerk of court has advised Associate that the judge contemplated failure to appear charges against Associate because no member of Law Firm appeared in a criminal case.

You have asked the Committee to opine whether, under the facts of the inquiry, (1) it is ethical for Law Firm not to advise clients of former Associate's address when asked; and (2) whether Law Firm would be ethically obligated to provide a list of names and addresses of clients if requested by former Associate.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:2-108(D) which states that upon termination of representation, a lawyer shall take reasonable steps for the continued protection of a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering all papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned; DR:5-106(B) which provides that a lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to regulate his professional judgment in rendering such legal services; and DR:7-101(A)(2) which precludes a lawyer from failing to carry out a contract of employment entered into with a client for professional services.

Committee Opinion
February 17, 1993

The Committee has previously opined that requiring a client to contact the firm, rather than the withdrawing attorney who represented the client, would be improper in that the employer/firm would be directing and regulating the lawyer's professional judgment in the providing of legal services to his client. *See* LE Op. 1403.

The Committee believes that the client is entitled to be informed of *all* his choices, i.e., (1) that the client may remain with the law firm, (2) that the client may remain with the Associate, and (3) that if neither the Law Firm nor the Associate can adequately and fully represent the client's interests, the firm or the associate may recommend an attorney, or the client may choose his own counsel. *See* LE Op. 381, LE Op. 406. Thus, in the facts you present, the Committee opines that by not advising the client of Associate's new address when directly asked, Law Firm is violating DR:5-106(B) and impermissibly regulating Associate's professional judgment in the providing of legal services to his client.

As to whether Law Firm is ethically obligated to provide Associate with a list of client names and addresses when asked, the Committee directs your attention to LE Op. 1332, in which the Committee opined that if access to office and files of clients was being denied even during office hours, such conduct may be violative of DR:2-108(D) if a finder of fact were to determine that the intention was to preclude access to or to sequester the client files or copies of client files from the withdrawing partner. The Committee is of the view that the Law Firm should, at a minimum, provide Associate with a list of client names and addresses when so requested, so as not to deny either the Associate's access to current client files or the protection of clients' interests. Since you indicate that the Law Firm has failed to make an appearance in at least one case, while simultaneously not providing Associate with the client's name and address, the Committee is concerned that the best interests of the clients are not presently being served and, thus, the firm may also have violated DR:7-101(A)(2).

Finally, the Committee directs your attention to DR:1-103(A) which mandates reporting to the appropriate authority by an attorney having knowledge that another attorney has committed a violation of the Disciplinary Rules that raises a substantial question as to that lawyer's fitness to practice law in other respects. Whether an attorney's conduct is such that it raises a "substantial question as to that lawyer's fitness to practice law in other respects" requires a case-by-case determination which should be made after consideration of the facts and analysis of the impact on the offending lawyer's fitness to practice law. *See* LE Op. 1308 and *In re Himmel*, 125 Ill.2d 531, 533 N.E.2d 790 (1988).