Trends in the Lateral Market

Ethical & Other Issues In Lateral Attorney Movements

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Meet the Faculty

Panelists

Dan Binstock - Garrison

Alex Edelman - Klein Landau & Edelman, LLC

Brock Naeve - Affirm Partners

Tina Solis - Nixon Peabody LLP

Moderator

Jonathan Friedland - Much Shelist, P.C.

About This Webinar
Trends in the Lateral Market

- Timing and sequencing are pivotal in ensuring a successful transition when contemplating a lateral move.
- In 2024, the lateral partner hiring market experienced notable growth. By mid-December, the top 50 law firms collectively hired over 900 partners, a slight increase from the previous year.
- This upward trend was particularly evident in major markets; for instance, New York saw a 36% rise in lateral moves, increasing from 101 to 137, while London experienced a 6% uptick, with moves rising from 94 to 100. The surge in hiring was primarily driven by firms' strategic focus on strengthening high-demand practice areas, with 39% of firms prioritizing expertise in these sectors.
- But times have changed quickly in 2025, and lateral attorney moves have slowed.
- This webinar addresses broad market timing issues (i.e., when to make and when not to make a move) and more specific timing issues (i.e., typical timelines for a move, and the associated ethical considerations).

About This Series

Ethical & Other Issues In Lateral Attorney Movements

- This three-episode series discusses all the issues a lateral partner candidate needs to consider when thinking about making a lateral move from one firm to another including legal, ethical and business issues. The first episode focuses on preparing the lateral partner questionnaire, preparing for and participating in the interview process and obtaining the offer.
- It also discusses when and how to inform the firm, clients and colleagues about an upcoming move. The second episode focuses on negotiating the offer(s) and issues a lateral partner must confront after she has given notice to her current firm but before she departs. It also includes a discussion of post-departure issues that a lateral partner oftentimes faces.
- For any partner considering a move this ss a must-see series! Episode #3 of this three-part series focuses on negotiating the offer, including which provisions are the most important and why. The panel also discusses recent trends in the market, how those trends can impact the negotiation process and more.

Episodes In This Series

1. The Do's and Don’ts in Connection with a Lateral Move

   Premiere date: 07/15/25

2. Trends in the Lateral Market

   Premiere date: 08/19/25

3. Critical Issues in Negotiating a Lateral Move

   Premiere date: 9/16/25

Financial Poise Webinars

Episode #2

Trends in the Lateral Market

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Question:

You have completed the interview process and have received an offer or perhaps multiple offers.

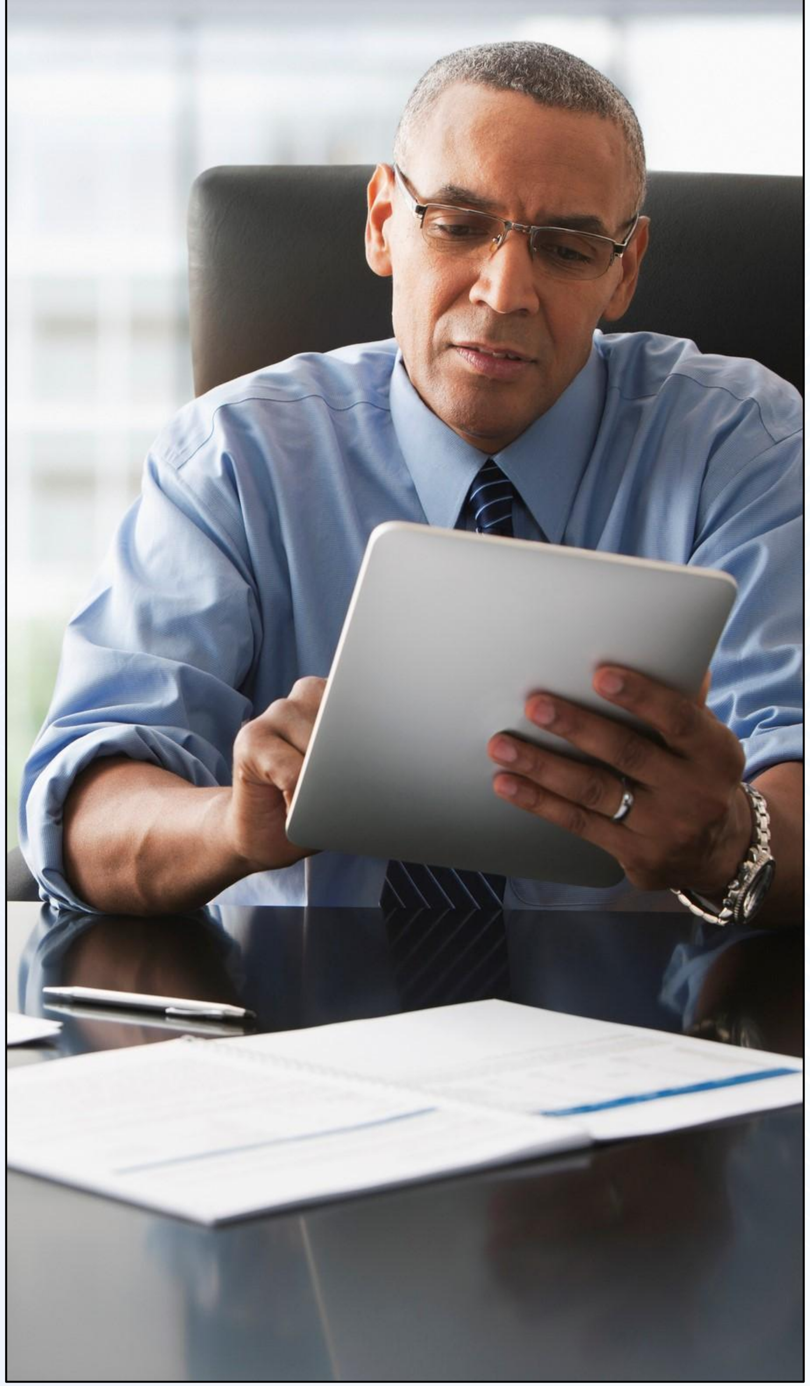
In addition to negotiating the offer, what other issues must be considered in determining the timing of your upcoming move?

Answer:

You must be familiar with the provisions set forth in your partnership agreement.

Certain of these provisions can greatly impact the timing of a lateral move.

Understanding these provisions can minimize the amount of money "left on the table."



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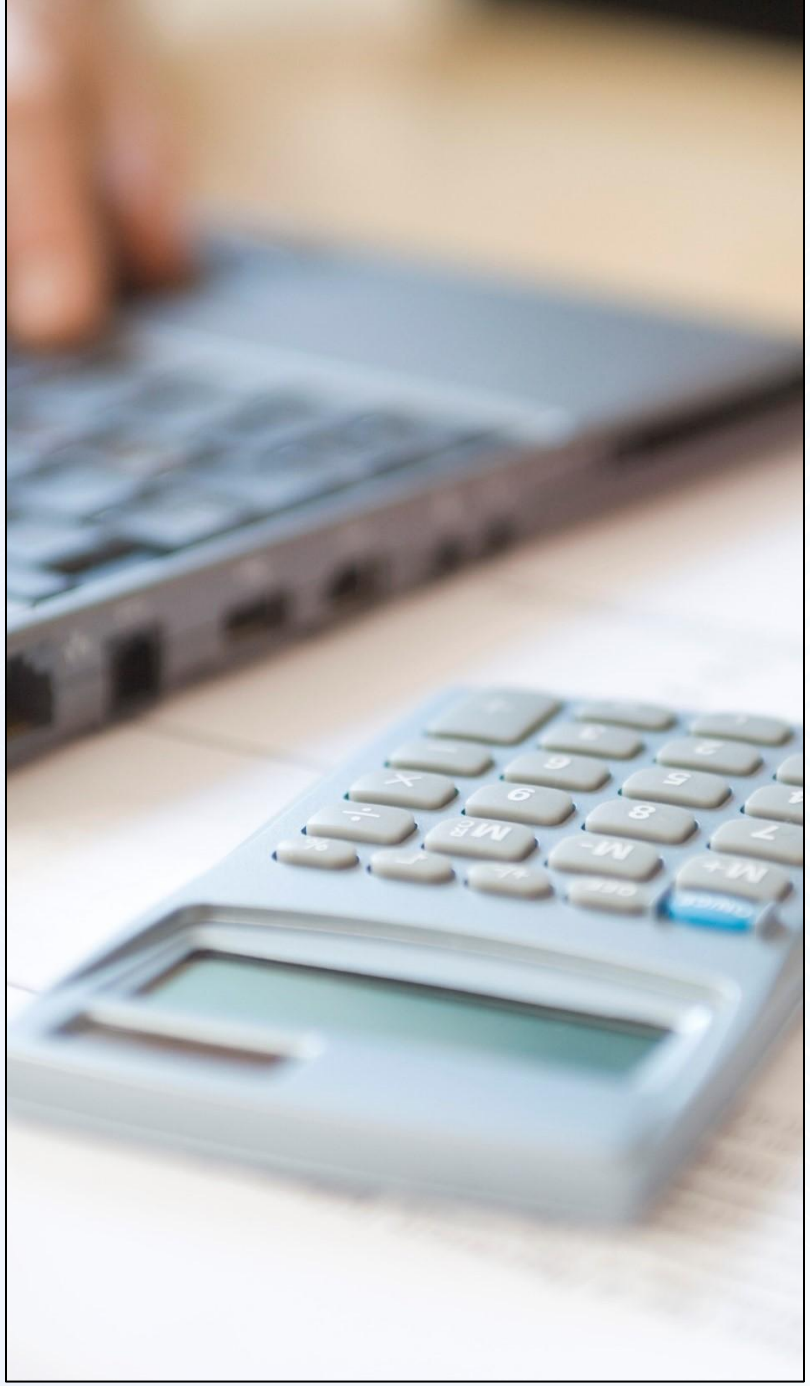
Timing of Payments to a Withdrawing Partner

Issues for Consideration:

- What payments is a withdrawing partner entitled to under her partnership agreement?
- Does a withdrawing partner forego any types of payments based upon when she provides her notice of resignation/withdrawal?
- When is the final distribution for the fiscal year paid? Is it paid in a lump-sum or in installments?
- When are bonuses paid?



Return of Capital

Issues for consideration:

- Over what period of time is the capital returned?
- Lump sum vs. installment payments
- Is interest earned?
- These provisions can sometimes be negotiated.
- Read carefully; agreements vary.

How Does the Return of Capital Impact the Timing of a Move?

Scenario:

- Current Firm pays capital contribution back over time.
- New Firm requires immediate up-front payment?

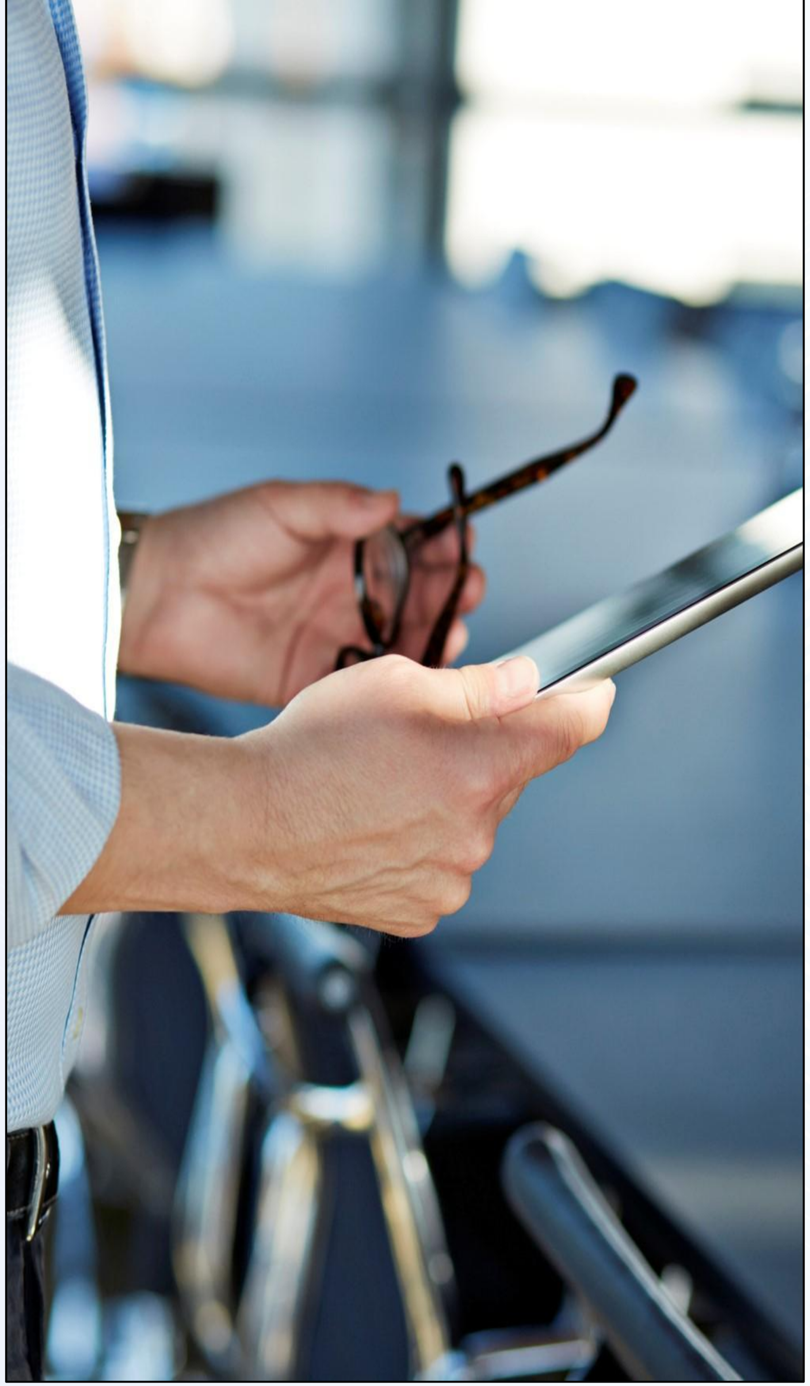
How best to handle this situation?

Does the Partnership Agreement Have a Claw Back Provision?

What is a clawback provision?

Answer: *It is a contractual provision that requires the return of money that has already been paid out under certain conditions.*

Issue for Consideration: Equity Partners are owners of the firm and the draws received throughout the year are merely "advances" on their share of the year-end firm profits.

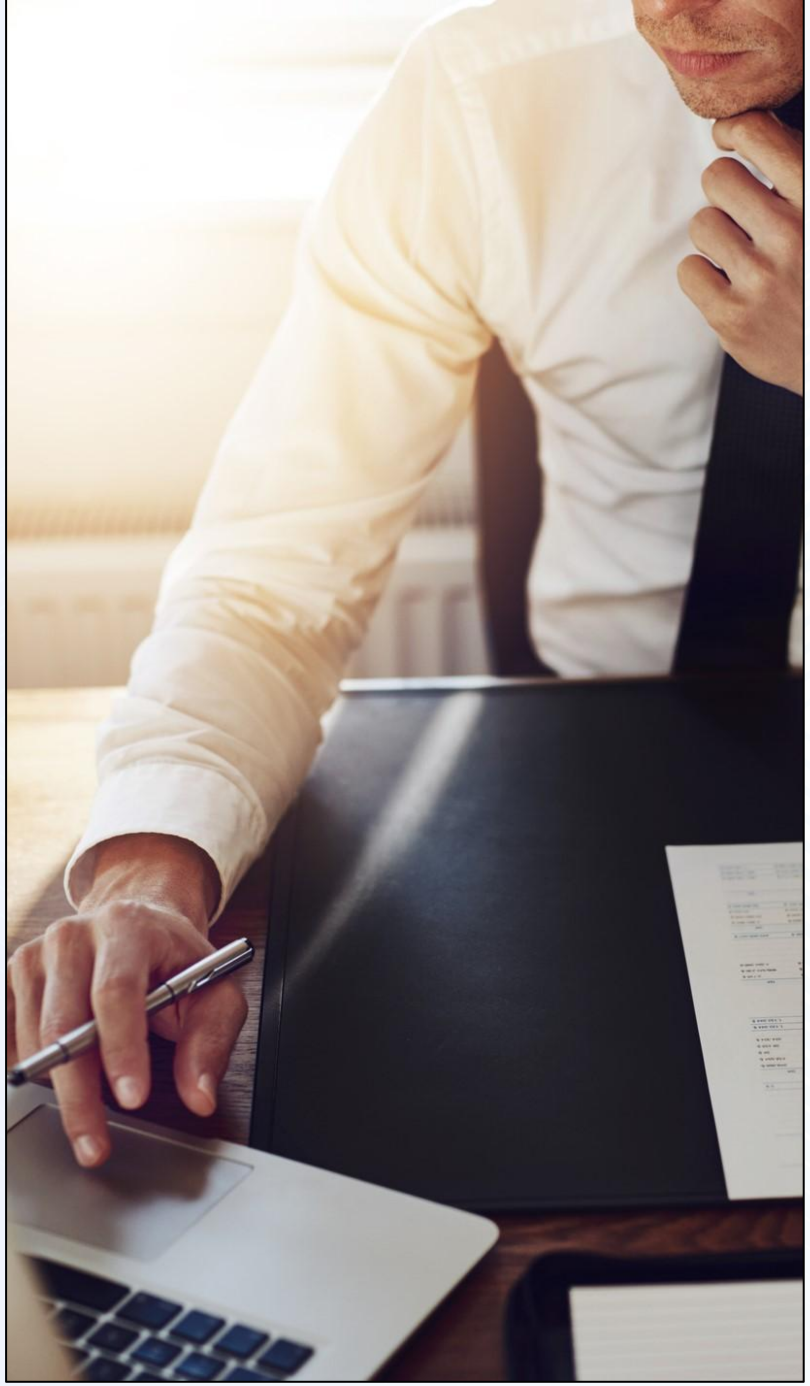


Does the Partnership Agreement Have a Setoff Provision?

What is a setoff provision?

Answer: *It allows one party to deduct an amount it owes from what it is owed by the other party.*

Issue for consideration: Does the agreement allow for setoffs of outstanding accounts receivable?



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Does the Partnership Agreement Have a Forfeiture Provision?

What is a forfeiture provision?

Answer: *It provides that a party in a contract may lose something to the other party under certain circumstances.*

Issues for consideration:
Does the agreement have a forfeiture of:

- Capital
- Bonus
- Profits

Financial Disincentive Provisions

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What are they?

- Claw back provisions
- Setoff for outstanding AR
- Forfeiture of capital if attorney leaves or competes prior to set date

Financial disincentive provisions provide that a departing partner's deferred compensation or equity interest will be reduced if the partner competes with the former firm.

Purpose

These provisions discourage competition through harsh penalties and compensate firms for their financial losses.

Are they enforceable?

Courts are split on the enforceability of financial disincentive agreements.

- Majority view: they are not enforceable because restricting a departing partner's right to practice law and a client's right to select an attorney is contrary to public policy and the Professional Rules of Ethics.

Model Rule of Professional Conduct 5.6

"Restrictions on Right to Practice"

"A lawyer shall not participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement…."

States Following the Majority View

- Alabama
- Illinois
- Iowa
- Massachusetts
- New Jersey
- New York
- Oregon
- Tennessee
- Texas

States Following the Minority View

- California
- Pennsylvania
- Wisconsin

Majority View Case Illustrations

Cohen v. Lord, Day & Lord,
75 N.Y.2d 95 (1989):

provision in partnership agreement that entitled departing partners to their share of the firm's unpaid and unbilled fees at the time of departure ***unless*** the partner continued to practice law in any state in which the partnership maintained an office was void as against public policy.

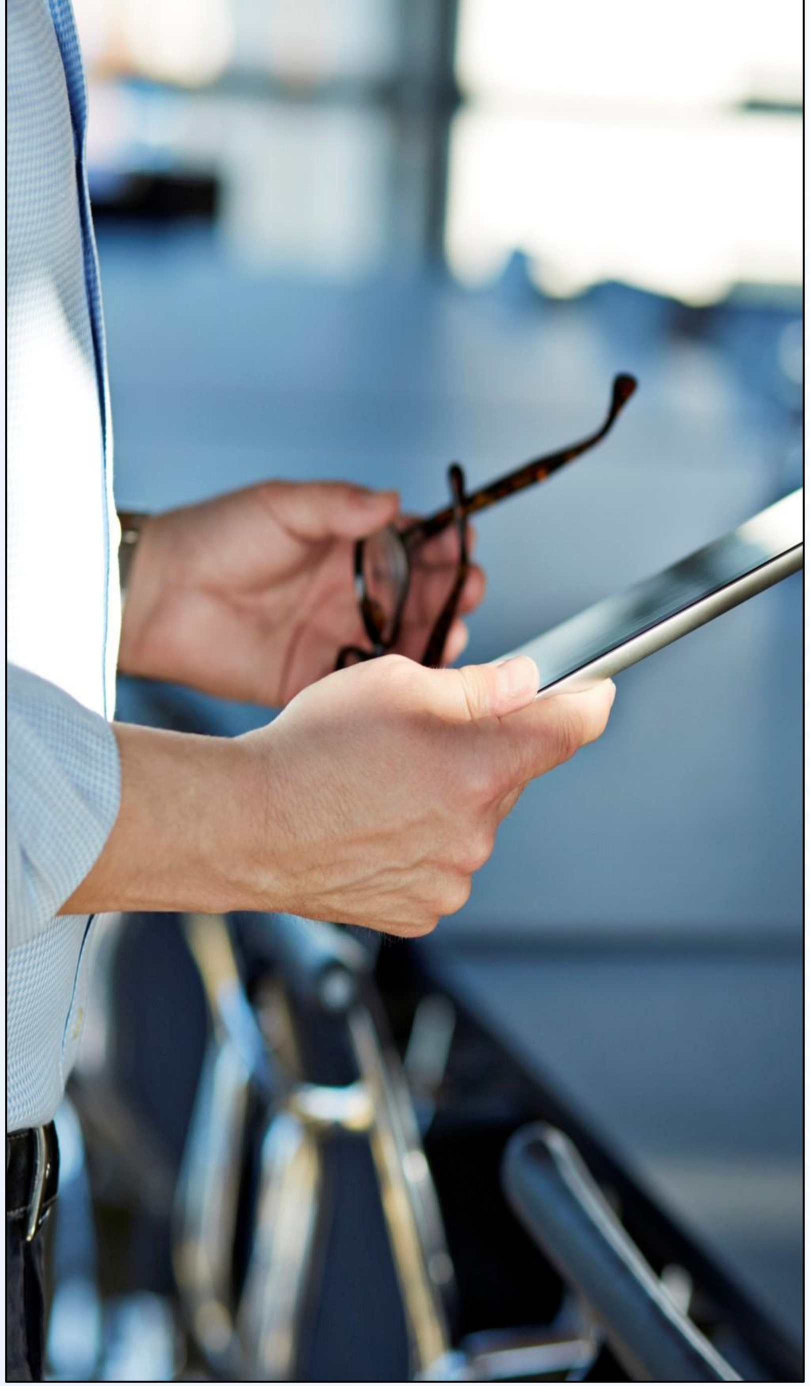
Stevens v. Rooks Pitts & Poust,
289 Ill. App. 3d 991(1st Dist. 1997):

financial disincentive provision was unenforceable because it was against public policy, reasoning while Illinois courts employ a reasonableness test as to noncompetition clauses for other professions, Illinois law provided little basis for allowing lawyer noncompetition clauses, particularly since Rule 5.6 of the Code became effective.

Firm Notice Periods

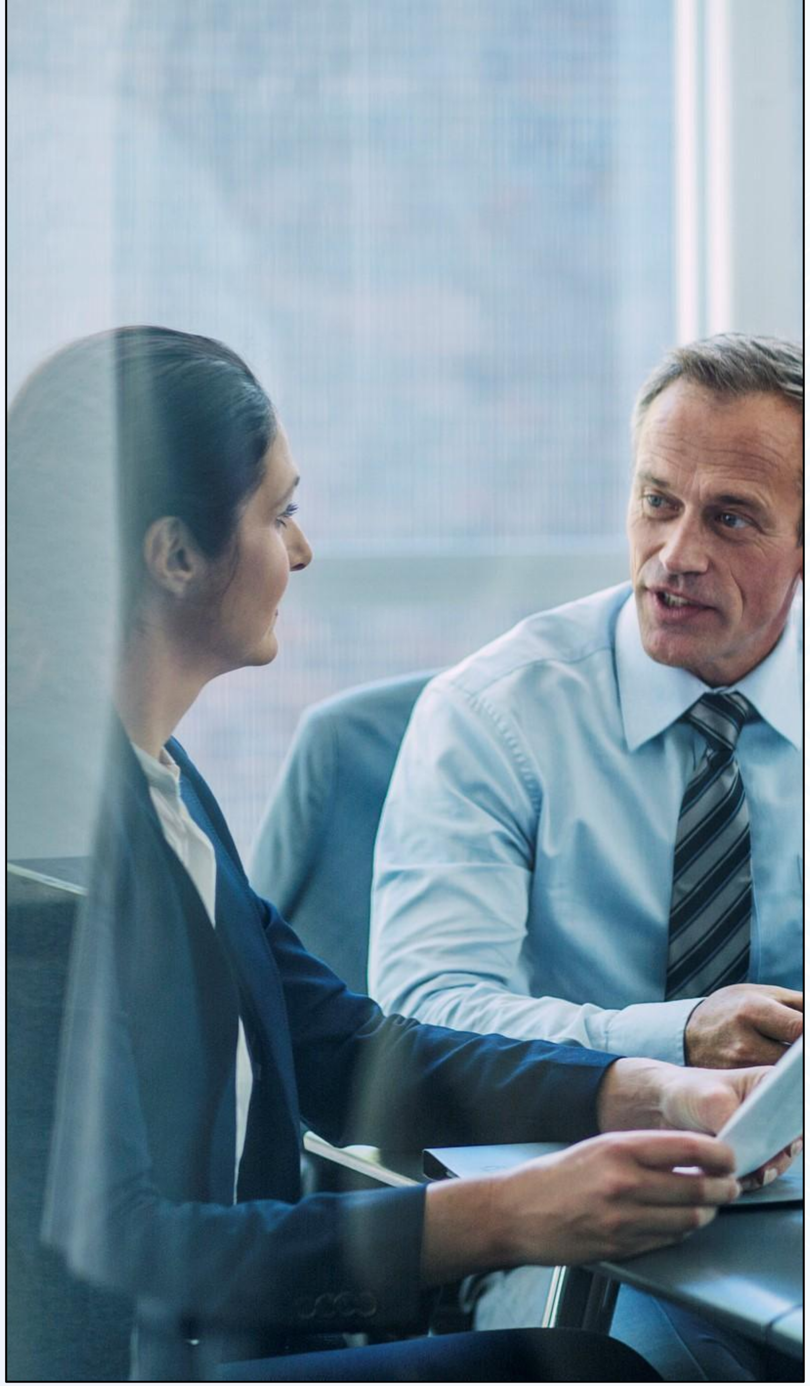
What is a notice provision?

- It specifies how many days before the withdrawal a partner must provide notice.
- It states to whom notice must be given.
- It specifies whether management may accelerate the departure date.



Tension with **ABA Model Rule 5.6**:

"A lawyer shall not participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement…"



Enforceability of Firm Notice Periods

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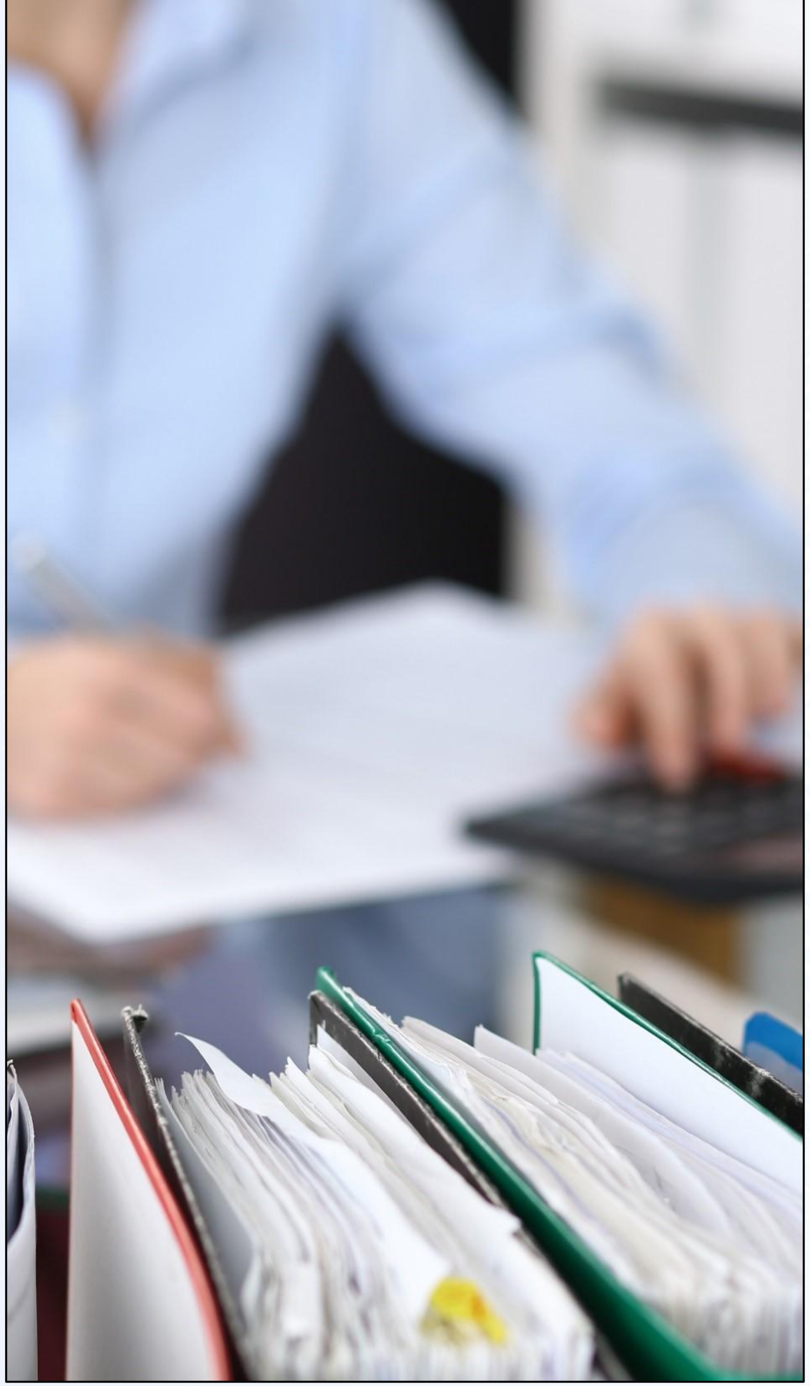
ABA Formal Opinion 489 regarding the enforceability of notice periods provides:

If they would affect a client's choice of counsel or serve as a financial disincentive to a competitive departure, the notification period may violate Rule 5.6.

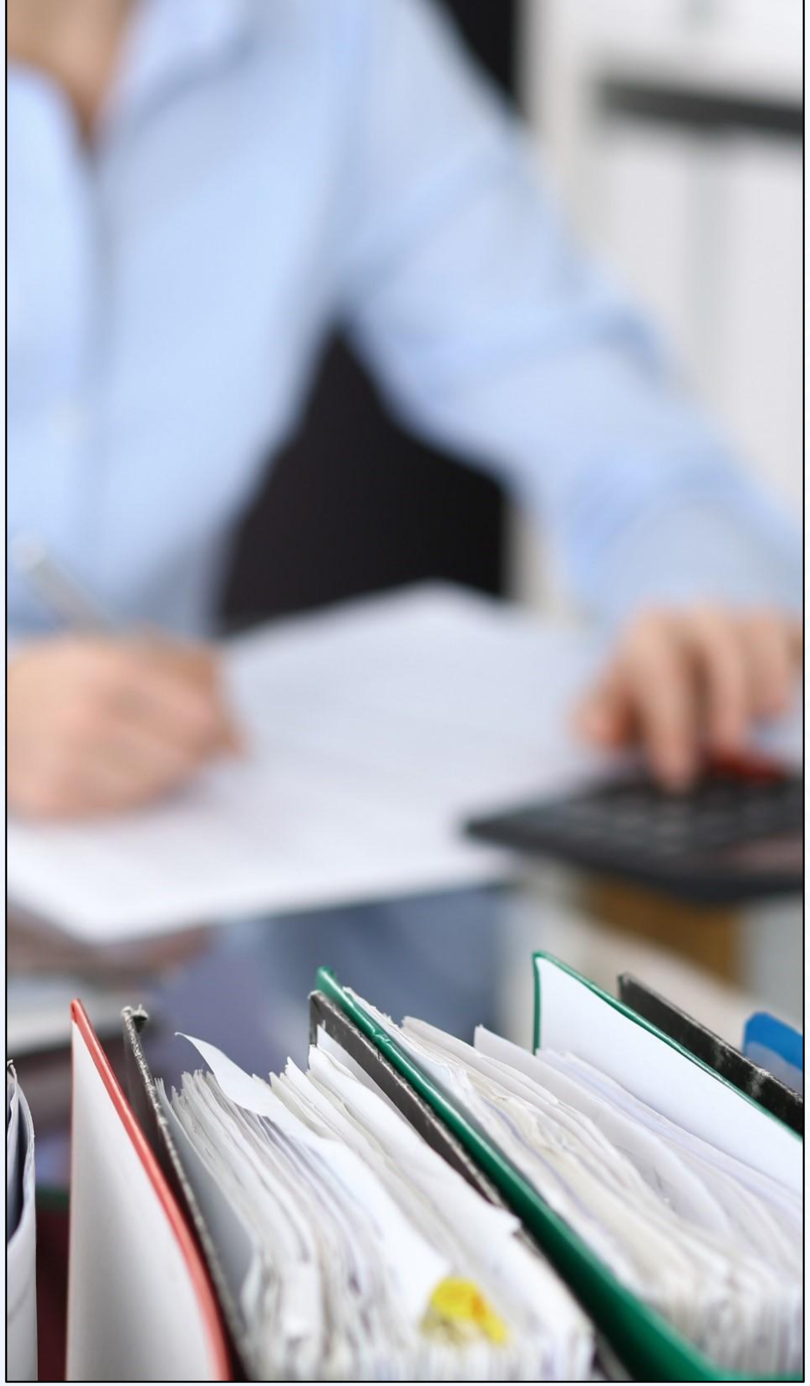
A lawyer who wishes to depart may not be held to a pre-established notice period particularly where, for example, the files are updated, client elections have been received, and the departing lawyer has agreed to cooperate post departure in final billing.



Case Law Interpreting Rule 5.6 - Enforceability Of Notice Provisions

The case law generally supports the conclusion that an attorney cannot be held to a fixed notice period and forced to work at a firm through a fixed period of time.

See e.g., Cohen v. Lord, Day & Lord, 550 N.E.2d 410, 411 (N.Y. 1989) (holding any provision that imposes a "significant monetary penalty" on an attorney who remains in private practice is the functional equivalent of a restriction on the practice of law, even though there is no express prohibition on competitive activities imposed on the withdrawing partner).



Case Law Interpreting Rule 5.6 - Enforceability Of Notice Provisions *(cont'd)*

Pettingell v. Morrison, Mahoney & Miller, 687 N.E.2d 1237, 1238 (Mass. 1997) (reduction in payments based on the net worth of the firm)

Whiteside v. Griffis & Griffis, P.C., 902 S.W.2d 739, 741 (Tex. App. 1995) (same)

Jacob v. Norris McLaughlin & Marcus, 607 A.2d 142, 146 (N.J. 1992) (reduced payments based on annual draws)

Gray v. Martin, 663 P.2d 1285 (Or. Ct. App. 1983) (reduced share of future firm profits)

Notice Period & Its Impact on Timing of Departure

Issues for Consideration:

- Clients' needs and corresponding deadlines must come first.
- Firm may attempt to hold the partner for the full period.
- Firm may accelerate the provision and provide for an immediate release.
- The length of the notice period as it relates to the timing of payments to the withdrawing partner.

Solicitation of Clients

The partnership agreement has a client non-solicitation provision.

Question: Is it enforceable?

***Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365 (1st Dist. 2004)**

- Pre-resignation surreptitious “solicitation” of firm clients for a partner’s personal gain is actionable
- While attorneys who are planning to leave a firm may take preliminary steps of obtaining office space and supplies, they may not commence competition, such as, solicit clients for their new venture

Solicitation of Clients *(cont'd)*

Joint written communications from the firm and departing lawyer notifying clients of the upcoming departure are preferred, but:

ABA Formal Op. 489 provides: If the firm and departing lawyer "cannot promptly agree on the terms of a joint letter, a law firm cannot prohibit the departing lawyer from soliciting firm clients."
Also, "departing lawyers need not wait to inform clients of … their impending departure, provided that the firm is informed contemporaneously."

Client Non-Solicitation Provision & Its Impact on Timing of a Lateral Move

Issues for Consideration:

- How many clients must be informed?
- How has the firm handled communications with clients and departing attorneys historically?

Solicitation of Other Employees

The Partnership Agreement has a non-solicitation provision prohibiting solicitation of other firm employees?

Question: Is it enforceable?

Answer:

- Some firms are including non-solicitation provisions in their partnership agreements to prevent additional departures
- Overall, best practice is for departing attorneys not to solicit associates or support staff before departing
- But the rules in each state vary and counsel should be consulted to ensure proper compliance

Solicitation of Other Employees *(cont'd)*

Different states have different rules with respect to departing partners soliciting other employees of the firm

- New York provides that you can solicit your partners but not your employees. *Gibbs v. Breed, Abbott & Morgan*, 271 A.D.2d 180 (N.Y. App. Div. 1st Dep't 2000)
- Maryland provides that a departing attorney can solicit the people in your "circle of friends." *Quality Systems, Inc. Warman*, 132 F. Supp.2d 349, 354 (Md. 2001)
- Illinois provides that you may solicit partners pre-resignation but not associates or other employees. Dowd and Dowd, Ltd. v. Gleason, 352 Ill. App. 3d 365 (1st Dist. 2004)
- Virginia provides that you can solicit employees and partners out of the office and after hours. Appleton v. Bondurant & Appleton, P.C., 2005 WL 3579087, *19 (Va. Cir. Ct. 2005)

Solicitation of Other Employees and Its Impact on a Lateral Move

Issues for consideration:

Can you make an immediate move and still meet the clients' deadlines?

Does the new firm have the resources to immediately staff the portable business you hope to bring with you?

When are bonuses paid to others that you may want to solicit after you join the new firm?

Solicitation of Other Employees & Its Impact on a Lateral Move

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Questions or Comments?

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Meet The Faculty

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Dan Binstock - dbinstock@g-s.com

Dan Binstock is a partner at Garrison & Sisson. With an extensive network and track record placing partners, high-level government attorneys, and practice groups, he connects candidates and law firms in a highly efficient and discreet manner.

-Dan has brokered some of the most significant lateral partner and/or practice group placements.

-Dan is the founder and editor of lateralpartners.com, a detailed guide on lateral partner recruiting.

-LawDragon has named Dan one of the Top 100 Legal Consultants and Strategists for the past six consecutive years (see interview).

-Dan authored "The Attorney's Guide to Using (or Not Using) Legal Recruiters: Answers to Important Questions Most Attorneys Don't Know to Ask … But Should" (2015).

Alex Edelman - alex@kleinlandau.com

Alex works with all types of lawyers, he specializes in representing regulatory attorneys and practice groups and is one of the leading recruiters in the global trade and national security practice area. Over the last few years Alex has placed a number of regulatory practice groups, partners, and associates at a variety of firms, including a Magic Circle firm, an AmLaw 50 Global firm, and an elite AmLaw 200 firm.

Alex graduated from The University of Vermont with a degree in Political Science and English. He is a native of the Washington, D.C. area. Additionally, Alex is an accomplished photojournalist who works for major wire services.

Alex's notable representations include:

Represented a multi-partner, Chambers ranked, International Trade and National Security practice group in their move to an Am Law 20 firm in Washington, D.C.

Represented a Chambers ranked International Trade and National Security partner with her move to an Am Law 100 firm in Washington, D.C. Read More

Jonathan Friedland – jfriedland@muchlaw.com

Summary

- Corporate structuring and restructuring attorney with nearly 30 years of experience advising companies, boards of directors, owners, and other stakeholders in various contexts, including distressed, bankrupt, and special situations.
- Represented and advised clients in 150+ transactions and litigation across various industries.
- Serial entrepreneur who understands business from the business person's perspective.
- Consistently ranks as a top business law attorney in various surveys, holding the highest possible ratings from Martindale-Hubbell (AV® Preeminent™), AVVO (10/10), and Justia (10/10). Has repeatedly been recognized as a "Super Lawyer" in multiple practice areas, including Business/Corporate Law and Bankruptcy/Creditor/Debtor Rights, named a "Leading Lawyer" by Leading Lawyers Magazine several times, and selected for inclusion in The Best Lawyers in America® for exceptional work in Corporate Law.
- Admitted to the bars (each by exam) in New York, Illinois, Arizona, and New Jersey.

Thought Leadership Examples

- Principal Author and Editor-In-Chief, Commercial Bankruptcy Litigation & Strategic Alternatives for and Against Distressed Businesses (each published annually by Thomson Reuters)
- Author of 100+ articles and speaker at 100+ events. Examples here.

Academics

- Clayton Center for Entrepreneurial Law Visiting Professor at the University of Tennessee College of Law.
- Adjunct Professor of Strategic Management, University of Chicago Graduate School of Business (co-taught with Jamie Sprayregen).
- JD from the University of Pennsylvania, followed by a one-year federal court clerkship; B.S. in Business Administration (magna cum laude in three years) from Albany State University. Read More

Brock Naeve - brock.naeve@affirmpartners.com

Brock Naeve is the founder and CEO of Affirm Partners, where he specializes in high-impact human capital moves for the world's leading law firms and private funds, including partner/group and GC placements, office openings and key practice expansions across geographies.

Brock began his career as an M&A attorney at Latham & Watkins LLP, advising on complex transactions across the energy, industrials, and broader corporate sectors. He later held both legal and investment roles at a real estate-focused private equity firm and separately co-founded and successfully exited an oil and gas operator.

He earned his JD, BBA (Finance) and BA (Economics) at The University of Texas. While at UT, Brock served as Editor-in-Chief of The Texas Journal of Oil, Gas, and Energy Law and President of the BBA Energy Finance Group and was elected to the Texas Friar Society. Read More

Tina Solis - tbsolis@nixonpeabody.com

Tina Solis advises businesses on issues involving trade secrets, unfair competition and complex commercial litigation in state and federal courts. She also counsels lawyers and law firms on professional responsibility issues. Tina regularly represents regulators in federal court litigation related to the failure of banks.

Tina is also leader of the firm's Financial Institutions & Banking Disputes team, which represents institutions and individuals in a full range of civil litigation, enforcement matters, Financial Industry Regulatory Authority (FINRA) arbitrations, and compliance investigations on issues such as consumer protection, fair lending, anti-money laundering, and violations of fiduciary duties.

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