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Navigating Ethical Maelstroms When The Law Firm is Taking on Water

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NAVIGATING ETHICAL MAELSTROMS WHEN THE LAW FIRM IS TAKING ON WATER

By: George Coleman and A.J. Singleton

The changing landscape of the practice of law has had its fair share of law firms close their doors, for one reason or another. Regardless of the reasons for the closures, one thing is certain: there are ethical implications that the lawyers of those firms needed to address. Through hypotheticals, this presentation will address some of those ethical issues. These written materials that accompany the presentation will identify a number of applicable Texas Disciplinary Rules of Professional Conduct (“Texas Rules”), Texas Ethics Opinions, case law, American Bar Association (“ABA”) Model Rules and ABA Formal Ethics Opinions, and other sources that may be of assistance to the lawyer or law firm facing such situations. Moreover, as the presentation will mention, some of these ideas may be of interest to the going-concern law firm that simply wants to put in place best practices to proactively address issues of concern.

I. Checklist for Firm Downsizing.

No one wants to even consider the likelihood that his/her law firm is not on stable grounds or that it will have to divest itself of practice groups or offices to survive. But that is becoming the modern reality of the business of the law practice. Even if a law firm does not plan now, but the unthinkable does arise, it is important for law firm leaders to have a well thought-out plan for proceeding and for assigning responsibilities. The following is a checklist of steps to consider when facing such adversity:

- **Identify a “Firm Leadership Team.”** The Firm Leadership Team will consist of those Firm managers (lawyers and staff members) who will be authorized to address all departing office and departing attorney issues, including those related to public announcement and client notification issues, conflict checking issues, negotiating with destination law firms, and other matters involved in the “winding up” of the law firm.

- **Identify Firm lawyers and staff members who (in addition to those on the Firm Leadership Team) may work for the Firm in liquidating and “winding up” (such as “the Conflicts Team”).**
- **Establish a Timeline.** This timeline will address a number of matters, including public announcements of office and/or attorney departures and the timing of providing notice to particular clients.
- **Identify Potential Departing Offices, Potential Destination Firms, and Remaining Offices, and likewise Identify Potential Departing Attorneys and Remaining Attorneys.**
- **Identify any Law Firm Representations that are Closable but May Not Have Been Closed.** Closing the closable matter, on the front end, will help eliminate the wasting of time spent running to ground a number of “phantom” conflicts.
- **Identify the Then-Current Law Firm Clients.** This list is of critical importance and will require frequent updating. Responsibility for this function / list should either be given to a separate team or to the Conflicts Team. A senior member of the Firm Leadership Team should have the direct ultimate responsibility for compilation and updating of this list.
- **Identify a member of the Firm Leadership Team and at least one assistant (collectively, “the Conflict Team”).** The Conflict Team will be authorized to coordinate conflict and notice-related issues for existing law firm clients. The Conflict Team should coordinate efforts with, and communicate frequently with, other members of the Firm Leadership Team to get their input and to provide pertinent information to the Firm Leadership Team, who can use the information to better negotiate and address “winding up” matters.
- **Identify the Responsible Attorney for Each Client:** Determine which attorney(s) have the most significant relationship with the client. Consider too the principal location of the client, and note whether that attorney is likely to depart and, if so, to where. Predict client movement based on anticipated attorney departures. Identify possible remaining attorneys who can provide competent substitute legal services to specific clients if the client chooses to continue the representation with the law firm.
- **Determine and/or Implement Pre-Existing Procedures for Client Notification and for Obtaining Client Consent for the Transfers of Representations and Files, and Draft the Appropriate Client Notices.** Such policies and procedures may address:
 - Procedures and rules for departing attorneys contacting their current clients and for whether joint notifications (notifications signed by a representative of the law firm and by the departing attorney) should be used.

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