

ETHICS OBLIGATIONS WHEN A LAWYER LEAVES A LAW FIRM

SANDRA J. COLHOUR¹

MOST LAWYERS NO LONGER JOIN LAW FIRMS EXPECTING TO STAY UNTIL RETIREMENT. SEVERAL TIMES OVER THE COURSE OF A LEGAL CAREER, A LAWYER MAY REQUIRE ETHICS-BASED GUIDANCE IN ADDRESSING THE THORNY ISSUES SURROUNDING A LAWYER'S DEPARTURE FROM A FIRM.²

A departing lawyer and the lawyers remaining at a firm have ethical and legal obligations to firm clients and to each other, and both the firm and departing lawyer have legitimate business interests in the future practice of law. These duties and interests may be difficult to harmonize.

Understanding relevant ethics obligations is a necessary step in reconciling lawyers' departure-related duties, but it does not end the inquiry. Where ethics rules are silent, applicable law may impose duties. What the ethics rules permit, applicable law may limit or proscribe, particularly when it comes to the timing of communication with the firm and its clients and the copying or removal of firm property, intellectual or otherwise.³ Private law firms are businesses, and lawyers must carry out their ethics obligations in conformance with their fiduciary duties, valid obligations in their employment or partnership agreements, and the applicable law of partnership, agency, property, contracts, and unfair competition. While these legal parameters are important, this article focuses exclusively on the ethics obligations of Missouri lawyers.

Required reading for Missouri lawyers leaving their firms, and the attorneys remaining behind, is the 1997 lawyer disciplinary case *In the Matter of Cupples*.⁴ In reprimanding a lawyer for pre-departure misconduct, the Supreme Court of Missouri dispensed specific directives to lawyers about their fiduciary duties, the obligation to protect the interests of clients, and the necessity of honesty and fair dealing when a

firm and one or more of its lawyers go their separate ways.

In addition to examining *Cupples I*, the prudent lawyer facing a departure from a firm will proceed in light of other ethics obligations in the Rules of Professional Conduct, as well as duties under applicable law, seeking additional guidance if warranted. What follows is an ethics roadmap for Missouri lawyers, both those leaving their firms and those staying behind in the wake of an associate's or partner's departure. Disputes and disciplinary concerns are minimized when lawyers abide by four categories of departure-related ethics obligations: (1) communicating notice; (2) ensuring competent and continuous representation; (3) protecting confidentiality and resolving conflicts of interest; and (4) avoiding misconduct.



Sandra J. Colhour

Communicating Notice

Clients must receive prompt communication about material changes in the circumstances of their representations. The Court in *Cupples I* made it clear that clients are not lawyers' "merchandise" and cannot be bought or sold, that they have the right to choose who will represent them, and that in civil cases this right is "near absolute."⁵

The Rules of Professional Conduct protect this right. Rule 4-1.16, Declining or Terminating Representation, requires a lawyer to take steps to withdraw if the lawyer is discharged by the client.⁶ A client can discharge a lawyer "at any time, with or without cause."⁷ With

slender exception, lawyers in Missouri are prohibited by Rule 4-5.6 from offering or signing a partnership, shareholder, or employment agreement that restricts the right of a lawyer to practice after termination of the relationship, in part because such agreements limit the freedom of clients to freely choose counsel.

When a lawyer leaves a law firm, whether voluntarily or involuntarily, timely notice to the client about changes in the circumstances of the representation is critical to the client's right to choose its own counsel.⁸ A lawyer is required by Rule 4-1.4 to communicate adequate information to allow a client to make informed decisions about the representation. The Court in *Cupples I* issued specific directives about who should issue the notice and to whom, as well as the notice's purpose, content, and format.

From Whom Notice Must Be Given

Communication with clients is the responsibility of both the departing lawyer and the law firm.⁹ A failure in this duty by either responsible party may justify discipline.¹⁰ To protect the interests of clients, departing lawyers and their firms should make every effort to cooperate in issuing the communication jointly.¹¹ If circumstances will not allow for joint notice, both the firm and the departing lawyer retain the obligation to ensure clients receive proper notice.¹² A law firm is not permitted to prohibit a departing lawyer from promptly notifying clients, even if the lawyer's departure is abrupt or due to termination of employment by the firm.¹³ Clients must be notified of a material change in their representation regardless of whether the change is occasioned by the departure of a partner, associate, or an attorney affiliated with the firm "of counsel."¹⁴ Subordinate lawyers are bound by the Rules of Professional Conduct, and neglect of the well-established professional duty to communicate adequately with clients may result in discipline, even if the subordinate lawyer is acting at the direction or insistence of other lawyers at the firm.¹⁵

The Rules of Professional Conduct do not address whether a lawyer must notify the firm of an impending departure before notifying clients. Because firm lawyers have a fiduciary duty to treat each other fairly and honestly,¹⁶ most ethics advice strongly encourages lawyers to notify the firm of an impending departure before notifying clients.¹⁷

To Whom Notice is Required

Notice of a lawyer's departure from a firm need not be given to former clients of the departing lawyer or to all clients of the firm. Notice is to be provided to current clients for whom the lawyer has provided "material representation," for it is those clients for whom the lawyer's departure occasions a "material change" in the circumstances of the representation.¹⁸ Other ethics advice describes the proper recipients of notice as clients with whom the departing lawyer has had "significant client contact."¹⁹ Because of the importance of providing clients with notice, it is advisable in a questionable case to err on the side of caution by informing the client.²⁰

A departing lawyer who has not yet left a firm should exercise caution in unilaterally notifying other clients, such as former clients or clients for whom the departing attorney has not provided material representation. While a departing lawyer is still associated in a firm, unilateral communication about the departure issued by the lawyer to firm clients under circumstances in which communication is not required by Rule 4-1.4 or the guidance in *Cupples I* may raise concerns by the firm that a lawyer is attempting to solicit firm clients in violation of a lawyer's fiduciary duty to the firm.²¹

Purpose and Content of Notice

The primary purpose of the notice is to obtain the client's informed direction as to whether the client wishes to be represented in the matter by the law firm, the departing attorney, or new counsel of the client's choosing.²² If the departing lawyer or firm is unable or unwilling to continue the representation post-departure, the client should be so informed, and the remaining available options for representation should be offered to the client.²³ The communication should be profes-

sional in nature and content and should not attempt to influence a client's choice of counsel.²⁴ Client notice of this nature has long been an ethics obligation in Missouri.²⁵

Other jurisdictions provide guidance that lawyers' departure-related notice to a client should not disparage the departing lawyer or law firm or urge termination, should be carefully worded and narrowly circumscribed, should balance the duty to protect client freedom with the departing lawyer's duty not to undermine the duty of loyalty owed to a firm, and should contain no false or misleading information.²⁶

Notice should be timed to serve the client's best interest rather than the interests of the departing lawyer or firm.²⁷ If a lawyer's departure will require withdrawal from the representation, Rule 4-1.16(d) requires that a client's interest be protected to the extent reasonably practicable, including the giving of reasonable notice to the client to allow the client time for employment of other counsel.

Lawyers should take care to ensure information in the notice is truthful and does not misrepresent either side's ability to represent the client under the changed circumstances. Notice to clients that is dishonest, fraudulent, deceitful, or contains misrepresentations runs afoul of Rule 4-8.4(c).

If a client contacts the firm or departing lawyer for additional information about a lawyer's departure or its impact on the client's representation, lawyers should provide what is reasonably necessary to assist the client in making an informed decision.²⁸ Responses to client inquiries should reiterate the client's right to freely choose its own counsel.²⁹ Departing lawyers should be mindful of what one jurisdiction described as a "hazy border" between ethically required communications and those violating other law.³⁰ The Court in *Cupples I* opined that while a lawyer is affiliated with a firm, the lawyer's fiduciary duty includes not putting self-interests before the interests of the partnership, not competing with the firm, and not soliciting clients before withdrawing from the firm.³¹

Even when ethics obligations to clients have been met by a lawyer pre-resignation, any post-departure solicitation of clients of a lawyer's former firm must comply with Rule 4-7.3, Direct Contact with Prospective Clients. Although a lawyer's fiduciary duty to the firm does not prohibit post-resignation competition with the former firm, lawyers should be mindful that applicable law may limit solicitation of firm clients. A lawyer who has left a law firm and provides false or misleading information to firm clients, or wrongfully uses the firm's client list to contact clients in an effort to persuade them to change firms, may prompt claims at law by the firm.³²

Format of Notice

The Court in *Cupples I* left open the format required for notice to clients when a lawyer leaves a firm. The notice may be written, personal, or "by some other means," provided it is "professional in nature and content," avoids solicitation, and assists the client in exercising its right to choose its counsel.³³

Given the Court's pointed warning in *Cupples I* that a lawyer or firm's failure to fulfill its duties to clients in this context may justify disciplinary action, lawyers are advised to notify clients in writing.³⁴ Written notice provides a record of the fact, timing, nature, and content of the notice.³⁵ A writing permits time for due care in crafting language to address client interests

and simultaneously to comply with lawyers' fiduciary duties to each other while associated in a firm.

If exigent circumstances require personal or telephone notice to protect a client's interests, a follow-up writing reiterating the client's right to choose counsel is recommended.

Ensuring Competent and Continuous Representation

Law firms and departing lawyers should cooperate to ensure client representation is competent and continuous throughout the transition. When a client chooses to be represented by a lawyer who is part of a law firm, both the individual lawyer representing the client and those at the firm with managerial authority have duties to the client imposed by the Rules of Professional Conduct.³⁶ Rule 4-1.1 requires competent representation of the client, and Rule 4-1.3 requires that the representation be provided with diligence. Rule 4-5.1 requires partners and other supervisory lawyers in a firm to make reasonable efforts to ensure the firm has policies in place assuring all lawyers within the firm provide competent and diligent representation and comply with all other duties in the Rules of Professional Conduct. The rule further requires lawyers in a firm with direct supervisory authority over another lawyer to make reasonable efforts to ensure the supervised lawyer complies with the rules, and under certain circumstances, a managerial lawyer can be responsible for misconduct of a lawyer under the manager's supervision.³⁷

Departing lawyers and the firms they leave behind must cooperate to ensure an orderly transition of client matters when a lawyer departs from a firm.³⁸ In addition to their mutual duty to provide appropriate notice to clients, both firms and lawyers leaving firms have duties to ensure client files are maintained in accordance with Rule 4-1.22 or transferred appropriately, to withdraw in accordance with Rule 4-1.16 from representing clients who discharge them or for whom they cannot continue representation, and to make sure the tasks are carried out competently and professionally.³⁹

Files of Departing Attorney's Current and Former Clients

In exercising their right to choose who will continue to represent them, clients are entitled to direct attorneys or firms to transmit their original files to counsel of choice.⁴⁰ The firm must honor the client's directions, even if fees are owed to the firm.⁴¹ Notice to a current client about a lawyer's impending departure should explain that a client's original file will remain with the firm until or unless the client elects to be represented by the departing attorney or new counsel.⁴²

The files of a departing attorney's former clients should remain with the firm unless the firm and departing attorney agree otherwise and former clients grant informed consent to the transfer of the files to the custody of the departing lawyer.⁴³

To fulfill the mutual duties of the departing attorney and the law firm to provide competent and diligent representation to the client during the transition period, attorney work product should remain in the client file.⁴⁴ The departing attorney and firm should cooperate to ensure access by the client's chosen counsel to complete information about upcoming deadlines and other information necessary to protect the client's

interests during and following the transition.⁴⁵

Once a client exercises its choice, other attorneys of record must promptly withdraw from the representation in accordance with Rule 4-1.16, Termination of Representation. Prompt efforts to protect the client's interest upon termination as required by Rule 4-1.16(d) include relinquishing the original client file, refunding any advance payment of fee or expense that has not been earned or incurred, and taking all other reasonably practicable steps to protect the interest of the client.

In the event of a law firm dissolution, lawyers are required by Rule 4-1.22, Retaining Client Files, to make reasonable arrangements for the maintenance of client files. Clients must be given contact information that will enable them to exercise their right to obtain their files in the future.

Dispute Over Fees Between Departing Attorney and Former Firm

A dispute about fee division must not be permitted to interfere with prompt distribution of a client's undisputed funds as required by Rule 4-1.15 (Trust Accounts and Property of Others) and Rule 4-1.16 (Declining or Terminating Representation).⁴⁶ A fee dispute between a firm and departing lawyer often centers around the proper division of a contingency fee when a lawyer leaves a firm before a matter is concluded. If a firm's partnership, shareholder, or employment agreement is silent on the issue, applicable law will govern. Rule 4-1.5(e), which addresses division of fees between lawyers not in the same firm, does not regulate or prohibit the division of fees to be received in the future for work carried out while lawyers were previously associated in a firm.⁴⁷ If lawyers who are no longer in the same firm jointly enter into a new agreement with a client to provide representation, the lawyers must comply with Rule 4-1.5(e) in dividing the fee.

A lawyer and firm who are unable to resolve a dispute over fee division may consider contacting the Lawyer-to-Lawyer Dispute Resolution Program offered by The Missouri Bar.⁴⁸

Protecting Confidentiality and Resolving Conflicts of Interest

Lawyers must protect the confidentiality of client information while simultaneously detecting and resolving conflicts of interest. Departing lawyers and their firms have a duty under Rules 4-1.6 and 4-1.9 to protect the confidentiality of information related to the representation of current and former clients of the firm. The lawyer also has an ongoing obligation not to enter an affiliation with a new firm under circumstances that would result in a violation of the duties owed to clients and former clients under Rule 4-1.7 (Conflict of Interest: Current Clients) and Rule 4-1.9 (Duties to Former Clients).⁴⁹

Under most circumstances, Rule 4-1.10 will impute to all lawyers in a firm the conflicts of interests of any lawyer in the firm, including those conflicts brought to the affiliation by a lawyer joining the firm. Missouri's Rule 4-1.10 makes no provision for screening or the use of an "ethical wall" to defeat the rule's imputation of conflicts among firm lawyers. Lawyers are obligated to adopt reasonable procedures, appropriate for the size and nature of the firm and its practice, to detect and resolve conflicts of interest. Lawyers who are unaware of

conflicts of interest because of a failure to implement adequate procedures are not excused from ethical liability.⁵⁰

Rule 4-1.6 was amended in 2017 to permit lawyers to disclose information to the extent reasonably necessary to detect and resolve conflicts of interest arising from a lawyer's employment change or changes in ownership or composition of a law firm, provided the information revealed would not compromise the attorney-client privilege or otherwise prejudice the client.⁵¹ Comment [18] to Rule 4-1.6 provides guidance that disclosures authorized by the rule ordinarily must be limited to no more than the identity of those involved in a matter, a "brief summary of the general issues involved," and information as to whether the matter has concluded. Disclosures for this purpose are not permitted until the lawyer and prospective new firm have entered into "substantive discussions" about the new relationship.⁵²

Lawyers and their new firms or prospective new firms may use the information disclosed pursuant to Rule 4-1.6(b)(5) only to the extent necessary to detect and resolve conflicts of interest.⁵³ Guidance in Comment [18] to Rule 4-1.6 warns that a lawyer's fiduciary duty to the lawyer's current firm also governs a lawyer's conduct in exploring an association with another firm and is a topic outside the scope of the Rules of Professional Conduct.


Employment discussions by a lawyer with a firm representing a party adverse to a current client of the lawyer may give rise to a conflict of interest if the negotiations would materially limit the representation of the client. The negotiating lawyer may be required to comply with Rule 4-1.7(b), including, but not limited to, obtaining the informed consent, confirmed in writing, of affected clients.⁵⁴ Although conflicts of interest arising from a lawyer's interest in future employment normally are not imputed to other lawyers in the firm, a negotiating lawyer may be required to disclose the conflict to the lawyer's current firm if other affiliated lawyers may themselves have a conflict arising from their own interest in their colleague's negotiations.⁵⁵

Avoiding Misconduct

The obligation of a lawyer to be candid and fair with partners, other shareholders, and employers is implicit in Rule 4-8.4(c), which forbids conduct involving dishonesty, fraud, deceit, or misrepresentation.⁵⁶ Partners, shareholders, and employees owe a duty of loyalty to each other while associated in a firm. As the Court warned in *Cupples I*:

Most law partnerships are founded upon a total trust and confidence among the partners. A breach of this exceedingly close relationship merits disciplinary action.⁵⁷ . . . Prior to withdrawal, lawyers within a firm have a duty to treat each other fairly and honestly and to put the interests of the law firm regarding firm business before their individual interests. The lawyer may not compete with the firm for business opportunities. Each lawyer has a duty to the firm to represent firm clients diligently, competently, and zealously.⁵⁸

Conclusion

When a lawyer plans or executes a departure from a firm, or receives notice of termination by the firm, attention to ethics obligations may be overshadowed by concerns about financial stability and cash flow, personal or family adjustments, discussions with a new firm, or the myriad tasks involved in setting up a new practice. Lawyers remaining at the firm may find themselves working to attract new legal talent and clients, negotiating with the departing lawyer over division of fees, and focusing on staff retention and morale in the wake of a key lawyer's departure. Nevertheless, lawyers on both sides of the event are advised to keep their ethics obligations to clients and to the firm at the top of their priority lists. Lawyers have an ethics obligation to communicate with and protect the interests of clients whose representations will be affected by the transition. Equally important is a lawyer's duty of honesty and fair dealing toward other affiliated lawyers. A resource page compiling relevant rules, cases, informal advisory opinions, articles, and frequently asked questions about ethics issues surrounding a lawyer's departure from a law firm is available on the Legal Ethics Counsel website at <http://www.Mo-Legal-Ethics.org>. Missouri lawyers with specific questions about the ethics of their own prospective conduct related to a lawyer's departure from a firm may seek an informal advisory opinion from the Legal Ethics Counsel office.⁵⁹ 

Endnotes

1 Sandra J. Colhour is assistant legal ethics counsel for the Advisory Committee of the Supreme Court of Missouri.

2 See Rule 4-1.9, Comment [4] (recognizing that many lawyers move from one association to another several times in their careers); Ky. Bar Assoc. Ethics Op. KBA E-424 (2005).

3 ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 99-414 (1999).

4 *In the Matter of Cupples (Cupples I)*, 952 S.W.2d 226 (Mo. banc 1997). The Supreme Court of Missouri disciplined attorney Cupples a second time for subsequent misconduct in *In re Cupples (Cupples II)*, 979 S.W.2d 932 (Mo. banc 1998).

5 *Cupples I*, 952 S.W.2d at 234 (citations omitted).

6 Rule 4-1.16(a).

7 Rule 4-1.16, Comment [4].

8 ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489 (2019) (quoting ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 99-414 (1999)).

9 *Cupples I*, 952 S.W.2d at 235; Mo. Informal Advisory Op. 950184 (1995), available at <http://www.mobar.org> or <http://www.Mo-Legal-Ethics.org>.

10 *Cupples I*, 952 S.W.2d at 235.

11 Mo. Informal Advisory Op. 950184 (1995); Mo. Informal Advisory Op. 970197 (1997); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489 (2019); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 99-414 (1999); Alaska Bar Assoc. Ethics Op. 2005-2 (2005); Ky. Bar Assoc. Ethics Op. KBA E-424 (2005).

12 Mo. Informal Advisory Op. 950184 (1995); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 99-414 (1999); Pa. Bar Assoc. Comm. On Legal Ethics and Prof'l Responsibility and Phila. Bar Assoc. Prof'l Guidance Comm., Joint Formal Op. 2007-300 (2007).

13 See Rule 4-8.4(a); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489 (2019); Pa. Bar Assoc. Comm. On Legal Ethics and Prof'l Responsibility and Phila. Bar Assoc. Prof'l Guidance Comm., Joint Formal Op. 2007-300 (2007) (citing Robert W. Hillman, *Hillman on Lawyer Mobility* § 4.8.3.2 (2d ed. 1998); ABA Comm. On Ethics and Prof'l Responsibility, Formal Op. 99-414 (1999)); State Bar of Ariz. Ethics Op. 10-02 (2010).

14 Mo. Informal Advisory Op. 20060060 (2006).
15 See Rule 4-5.2, Responsibilities of a Subordinate Lawyer.
16 *Cupples I*, 952 S.W.2d at 235-36.
17 E.g., State Bar of Ga. Formal Advisory Op. No. 97-3 (1998); Pa. Bar Assoc. Comm. On Legal Ethics and Prof'l Responsibility and Phila. Bar Assoc. Prof'l Guidance Comm., Joint Formal Op. 2007-300 (2007); Ky. Bar Assoc. Ethics Op. KBA E-424 (2005).
18 *Cupples I*, 952 S.W.2d at 235-36; see ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 99-414 (1999).
19 ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489 (2019).
20 State Bar of Ariz. Ethics Op. 10-02 (2010).
21 See *Cupples I*, 952 S.W.2d at 236 (citations omitted) (noting that a lawyer's fiduciary duty to other lawyers in a firm has been found to have been breached by a lawyer's solicitation of firm clients before withdrawing from a firm); see also *Dowd & Dowd v. Gleason (Dowd I)*, 693 N.E.2d 358, 366 (Ill. 1998) (opining that lawyers planning to leave a firm may not solicit clients for their new venture while still affiliated with their old firm), *remanded to Dowd & Dowd v. Gleason*, 2001 WL 35834889 (Ill.Cir.Ct. 2001), *aff'd by Dowd & Dowd v. Gleason (Dowd II)*, 816 N.E.2d 754 (Ill. App. 2004).
22 *Cupples I*, 952 S.W.2d at 235-36; ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489 (2019); Mo. Informal Advisory Op. 950184 (1995).
23 ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489 (2019). Lawyers wishing to withdraw from a client's representation must do so as permitted or required by Rule 4-1.16, Declining or Terminating Representation. See Mo. Informal Advisory Op. 20030049 (2003) (providing guidance to firm regarding withdrawal when departing attorney is unable to continue the representation and firm no longer practices in the relevant area of substantive law).
24 *Cupples I*, 952 S.W.2d at 235.
25 See, e.g., Mo. Informal Advisory Op. 950184 (1995); Mo. Informal Advisory Op. 970197 (1997); Missouri Informal Advisory Op. 20060060 (2006); Missouri Informal Advisory Op. 2019-03 (2019).
26 See Rule 4-7.1; ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489 (2019); Ky. Bar Assoc. Ethics Op. KBA E-424 (2005); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 99-414 (1999); Pa. Bar Assoc. Comm. On Legal Ethics and Prof'l Responsibility and Phila. Bar Assoc. Prof'l Guidance Comm., Joint Formal Op. 2007-300 (2007).
27 State Bar of Ga. Formal Advisory Op. No. 97-3 (1998); D.C. Ethics Op. 273 (1997); Colo. Bar Assoc. Formal Op. 116 (2007).
28 ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 99-414 (1999) (citing D.C. Ethics Op. 273 (1997)); see Pa. Bar Assoc. Comm. On Legal Ethics and Prof'l Responsibility and Phila. Bar Assoc. Prof'l Guidance Comm., Joint Formal Op. 2007-300 (2007); see also *Cupples I*, 952 S.W.2d at 235 (emphasizing that purpose of notice is to assist clients in making their decisions about who will handle their legal work going forward).
29 Pa. Bar Assoc. Comm. On Legal Ethics and Prof'l Responsibility and Phila. Bar Assoc. Prof'l Guidance Comm., Joint Formal Op. 2007-300 (2007).
30 D.C. Ethics Op. 273 (1997); see *Dowd II*, 816 N.E.2d at 769 (Ill. App. 2004) (finding lawyers' pre-resignation solicitation of law firm's client breached lawyers' fiduciary duty to firm and evidenced essential element of claim for tortious interference with firm's contractual expectancy); see also *Adler v. Epstein*, 393 A.2d 1175 (Pa. 1978) (affirming trial court's finding of tortious interference with contract where departing lawyers' notice to clients supplied clients with new contracts and forms for notifying firm of termination of representation).
31 *Cupples I*, 952 S.W.2d at 235-36.
32 See, e.g., *Reeves v. Hanlon*, 95 P.3d 513 (Cal. 2004); *Fred Siegel Co. v. Arter & Hadden*, 707 N.E.2d 853 (Ohio 1999).
33 *Cupples I*, 952 S.W.2d at 235.
34 *Id.*; see Ky. Bar Assoc. Ethics Op. KBA E-424 (2005); Pa. Bar Assoc. Comm. On Legal Ethics and Prof'l Responsibility and Phila. Bar Assoc. Prof'l Guidance Comm., Joint Formal Op. 2007-300 (2007).

35 Rule 4-1.0(n) defines a writing as "a tangible or electronic record of a communication or representation, including," *inter alia*, "electronic communications."
36 Restatement (Third) of the Law Governing Lawyers § 14 cmt. h (Am. Law Inst. 2000).
37 Rule 4-5.1.
38 ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489 (2019).
39 *Cupples I*, 952 S.W.2d at 237.
40 *Id.* at 234.
41 Mo. Sup. Ct. Advisory Committee Formal Op. 115 (1988), available on the website of the Supreme Court of Missouri at <https://www.courts.mo.gov/file.jsp?id=44620>; Mo. Informal Advisory Op. 2019-03 (2019).
42 Mo. Informal Advisory Op. 2019-03 (2019); Mo. Informal Advisory Op. 950184 (1995).
43 See Rule 4-1.0(e) (defining "informed consent").
44 Mo. Sup. Ct. Advisory Committee Formal Op. 115 (1988); see Mo. Informal Advisory Op. 980141 (1998); State Bar of Ariz. Ethics Op. 10-02 (2010).
45 See Rule 4-1.1; Rule 4-1.3; Rule 4-5.1; see also State Bar of Ariz. Ethics Op. 10-02 (2010).
46 Mo. Informal Advisory Op. 2019-04 (2019). Rule 4-1.16(d) requires a lawyer upon termination of representation to take steps to the extent reasonably practicable to protect a client's interests. Rule 4-1.15(e) requires lawyers to cooperate as necessary to enable prompt distribution of all funds of a client or third person that are not in dispute.
47 Rule 4-1.5, Comment [8]; Mo. Informal Advisory Op. 2019-04 (2019).
48 Information is available on The Missouri Bar's website, Lawyer Resources, Dispute Resolution at https://mobar.org/site/content/Lawyer-Resources/Lawyer-to-Lawyer_Dispute_Resolution_Program.aspx.
49 Rule 4-1.9, Duties to Former Clients, Comment [4], acknowledges the competing interests involved when a lawyer ends an association with a firm and considers undertaking representation of a client previously represented by the former firm. The rule is an attempt to balance the rights of former clients to expect loyalty and confidentiality, the rights of new clients to freely choose counsel, and the interests of lawyers to move freely from one practice setting to another.
50 Rule 4-1.7, Comment [3]; see Rule 4-5.1 and Comment [2].
51 Rule 4-1.6(b)(5); accord ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 489; accord ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 09-455 (2009); see also Rule 4-1.9, Duties to Former Clients, which does not limit future representation by a departing lawyer of a party adverse to a client the departing lawyer did not represent at the firm and about whom the departing lawyer acquired no confidential information.
52 Rule 4-1.6, Comment [18].
53 Rule 4-1.6, Comment [19]. At least one jurisdiction has indicated that improper use of a firm's client list by a former associate and the lawyer's new firm could support claims at law by the old firm against the former associate and the new firm. *Fred Siegel Co. v. Arter & Hadden*, 707 N.E.2d 853, 861-63 (Ohio 1999).
54 ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 96-400 (1996). It should be noted that not all conflicts of interest are consentable conflicts. See Rule 4-1.7, Comment [14].
55 Rule 4-1.10(a); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 96-400 (1996).
56 *Cupples II*, 979 S.W.2d 932, 935-36 (Mo. banc 1998) (finding that lawyer's dishonest and deceitful dealings with lawyer's law firm violated Rule 4-8.4(c)); *Cupples I*, 952 S.W.2d at 236 (quoting *In re Smith*, 843 P.2d 449, 452 (Or. 1992)).
57 *Cupples I*, 952 S.W.2d at 236 (quoting *Comm. On Prof'l Ethics & Conduct of Iowa State Bar Assoc. v. McClintock*, 442 N.W.2d 607, 608 (Iowa 1989)).
58 *Cupples I*, 952 S.W.2d at 236.
59 Instructions for requesting an oral or written informal advisory opinion are available at <http://www.Mo-Legal-Ethics.org>.