

MINUTES

COMMITTEE: Ethics Committee

DATE: July 2011

3. CHAPTER 3, RULES 6 TO 12 AND APPENDIX 4 – DUTY OF LAWYER AND LAW FIRM WHEN A LAWYER LEAVES THE FIRM

When a lawyer leaves a law firm to practice alone or to join another law firm, the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter that the clients have a right to choose who will continue to represent them (Rule 6). The same duty may arise when a firm is winding up or dividing into smaller units. When a notification to clients is required, each client must receive a letter as soon as practicable after the effective date of the change is determined, informing the client of the right to choose his or her lawyer (Rule 8). It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes; however, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send a letter in substantially the form set out in Appendix 4 (Rule 9). The Committee was asked whether it is proper for either the firm or the departing lawyer to include marketing materials in the letter informing clients of their right to choose their counsel.

The Committee noted that Appendix 4 precedents provide for inclusion of the name of the departing lawyer's new firm and contact information but do not contain a paragraph providing for marketing. The Committee's view was that, unless the departing lawyer and the law firm agree otherwise, the letter must not include a marketing section or materials.