



# ALPS

## Practice Management Pointers

## Managing File Handoffs

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Believe it or not, file handoffs can lead to trouble if not properly managed. It doesn't matter if the handoff is from a partner to an associate, from one firm to another post referral or purchase of a practice, or if it is sent to a new firm or attorney after the current attorney's practice has ended due to death, disability, retirement, or disciplinary action. There are concerns that should be addressed with all of three situations. Why? Because an attorney's liability for a client file isn't necessarily limited to the decisions made or actions taken solely during the time he or she is personally responsible for doing the work on any given file.

Consider the partner to associate handoff. What if the partner's perspective is that the work on the file being handed off is viewed as routine? Of course, this partner would also assume that the associate would ask if there were any questions or problems. Further, the partner reasons, the introduction of a new client that comes with the handoff supports the associate's efforts in client development; and, due to the limited number of files that have been previously transferred, the associate certainly has the time. Now, what if the associate's response is the following? The work being transferred is new to the associate and he feels less than able to ask for assistance because he believes he has been asking too many questions already. After all, he wants to avoid being viewed as struggling or worse yet, as not cutting it. In addition, without training in client development, these introductions have tended to go nowhere so he has little excitement about meeting another new client. Finally, three other partners have also "dumped" a significant amount of work on him this past week and, frankly, the associate was overloaded before this handoff happened.

An unintentional misstep is a real possibility here. It could be a blown deadline, a missed issue in a poorly researched document, the passing along of incorrect legal advice, or significant over-billing due to hours of research that the now upset long-term client has no intention of paying. At a minimum this scenario underscores what can happen when one runs with assumptions. It is also an example of where mentoring could be of real value. Regardless, with file handoffs an understanding that no question is too stupid to ask coupled with a policy of the partner's door is always open can do wonders. Further, if work transferred to an associate will come from several sources, one of the partners should be responsible for monitoring all work assigned and not only for the amount assigned but for associate follow through with firm docket control and file management processes as well. It's all about building

in accountability. After all, won't the partner and firm remain liable for what happens on that file post handoff? Of course they will.

Now, consider the handoff that occurs via referral, after the sale of a practice, or as an attorney is going into retirement. How might this go bad? Perhaps the client is not made aware of all the options that are available to clients who need to be handed off and the receiving attorney eventually bungles the matter for whatever reason. It could be incompetence, overwork, poor office systems, impairment, or even a staff misstep. Worse yet, the receiving attorney is uninsured. Negligent referral claims are real and they can be even more problematic if the referring attorney was compensated for the handoff in some fashion and/or the receiving attorney has no malpractice insurance. The bottom line here is when advising a client about who to work with, treat that advice as legal advice because that's how the client will view it. Keep your client's interests front and center. It should always be about what's best for them.

We could also turn this around and have the receiving attorney assume that all previous work done by the referring attorney was completed in a competent, thorough, and timely fashion; but what if it wasn't? Receiving attorneys should never blindly trust that all prior work on any incoming file is without error. Incoming files must be timely reviewed and clients informed of any problems found because in time the receiving attorney can become liable for the entire matter. Again, this is how the client will see it if a problem rears its ugly head months or years later. They will have expected you to have thoroughly reviewed the incoming file. Of course, all of this also holds true for file handoffs that occur as a result of an attorney's suspension, disbarment, death, or disability.

Given that missteps can and do occur as a result of a file transfers, it is important to always document the how, when, and why of a file transfer as well as the client's consent to the transfer. If able, also confirm that the receiving attorney is up to speed on the current status of the file and prepared to move forward. The attorney who hands off the file should be cautious about his or her response post transfer as it is too easy to adopt an "out of sight, out of mind" attitude. While the file might be gone, liability for the file often isn't, particularly with an in-house transfer or a less-than-total handoff outside the firm. Sometimes the misstep can be as simple as an inadvertent failure to file a formal notice of substitution of counsel. Finally, any receiving attorney would be well advised to also consider if any conflicts of interest issues are in play. Serious conflict claims can arise even within firms when transfers occur between locations of a firm and there is no true firm-wide conflict checking system in use. A missed conflict can not only lead to a lost client but a viable malpractice claim as well.

The above is not meant to be an exhaustive review of all of the issues that might arise due to a file transfer. The intent is simply to raise awareness because often bright lines of liability do not exist in file transfers. Successful handoffs require awareness about what has been done and what is to be done by both attorneys involved. Add to the mix a clear focus on what's going to be best for the client and the odds of a fumble on the handoff are quite low and that's the goal.



## Risk Management Questions?

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