

When Merging Firms Should Notify Clients

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The current urge to merge is nowhere more pervasive than in the legal profession. The merger of two law firms can be especially traumatic to clients who are suddenly confronted with changes in address, phone number and even personnel, without prior notice.

In recognition of the trauma suffered by clients, the Association of the Bar of the city of New York has issued its Formal Opinion No. 1999-04.

The Opinion asks the question:

When one law firm merges into another, does it need to obtain the consent of its clients to the handling of their matters by the resulting firm.

The conclusion reached by the Opinion is that, in the absence of an agreement to the contrary, the client's consent is not necessary, but that notice to the client may be – at least in those cases in which the client's matters will be handled by a firm materially different from the one she knew and relied on.

[The Opinion notes but does not consider the special issues which may arise when one of the merging firms has an outstanding retainer agreement with a client.]

Distinguished From Sale of Practice

The Opinion distinguishes between the merger of two firms and the sale of a law practice. It notes that the sale of a practice is a much more disruptive event to the client than a merger, after which the client's attorney is likely to continue to represent him. It also notes that specific provision for notice to clients in the case of sales is contained in the New York Code of Professional Responsibility (DR 2-111), but that no similar provision is made for mergers.

Nevertheless, the Opinion advises that notice should be given to clients whenever the firm resulting from a merger is "materially different from the one that had previously represented the client."

The opinion gives three examples of mergers which would result in a new firm materially different from the firm the client knew and relied on:

- A three-man firm merges into a firm of 300 lawyers. The clients of the larger firm many not care, but
- the clients of the smaller firm almost certainly will;
- A personal injury firm merges into a firm specializing in corporate matters;

- A firm representing the union side in labor disputes merges into a firm representing management.

Except for the three examples cited in the Opinion, the issue of materiality is left to the discretion of the surviving firm.

However, since notice would seem, after all, to be a relatively simple matter, it is probably advisable to give notice whenever a merger of two –re-existing firms occurs.