



Thursday, November, 03, 2022  
02:00 PM – 03:15 PM

**Session YLN 1 | New Horizons: Preparing and Planning for a Career Shift**

Panel discussion providing young lawyers advice on making a career change, whether it is from one law firm to another, from a law firm to in-house, from in-house to law firm, from private practice to government or public interest law – or vice versa, or transitioning to something totally different. The panelists will discuss career changes they have made and how they arrived at their decisions; provide thoughts on how to recognize that a career change may – or may not – be the best thing to do; discuss the ethical and legal obligations that you will face as you contemplate and/or prepare for a transition; and discuss the mechanics of transitioning to a new legal job consistent with your ethical and legal obligations as a licensed attorney.

**Moderator:**

Tryphena Liu, *Associate, Epstein Becker & Green, P.C.*

**Speakers:**

James Oh, *Member of the Firm, Epstein Becker & Green, P.C.*

Jamie Chu, *Lead Counsel, FedEx Express*

Edward Chang, *Assistant US Attorney, United States Attorneys' Offices*

Tiffany Yim, *Counsel, Isuzu North America Corporation*



EPSTEIN  
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GREEN

# New Horizons: Preparing & Planning for a Career Shift

**November 3, 2022**

# PANELISTS

- **James J. Oh**, Member of the Firm, Epstein Becker Green
- **Jamie Chu**, Lead Counsel, FedEx Express
- **Edward Chang**, Assistant US Attorney, United States Attorneys' Offices
- **Tiffany Yim**, Counsel, Isuzu North America Corporation

# AGENDA

## Ethical & Legal Obligations in Career Shifts

- Firm to Firm
- Firm to/from In-House
- Government to/from Private Practice

# Lateral Move From One Firm To Another

# As An Associate

1. Why do it?
2. Why is it better?
3. How to go about it
4. Anticipated questions?
  - i. explanation of your law school transcript
  - ii. explanation of your performance at your current firm
  - iii. explanation of why you want to make a move
  - iv. explanation of what you're working on
  - v. writing sample – is it really your own work?
5. According to ABA Journal, as of Sept. 30, 2021, there was a 51% increase in lateral associate moves (13,987 associates) over the previous 4-year average for that time period.<sup>1</sup>
6. What ethical rules apply?

1. <https://www.abajournal.com/news/article/lateral-associate-moves-increased-51-compared-to-prior-four-years-according-to-due-diligence-firm>

# As A Partner

1. Do you have portable business?
2. Do you have an in-demand expertise?
3. Can you bring a team?
4. Culture
5. Capital requirements?
6. Partnership or professional corporation?
7. Solicitation of clients/colleagues

# Lateral Move: Solicitation of Clients

## Fiduciary & Ethical Responsibilities

- **Solicitation of clients and colleagues**
  - Pre-termination/pre-resignation solicitation of clients may be breach of fiduciary duty.<sup>1</sup>
  - Rules on solicitation of co-workers vary.<sup>2</sup>
- **Communication with client regarding move to new firm**
  - Required to inform client of move, per ABA Model Rule 1.4 (same Rule under CA Rules of Professional Conduct)

1. Dowd and Dowd, Ltd. v. Gleason, 352 Ill. App. 3d 365, 375 (2004) (affirming lower court's finding that law partners breached their fiduciary duty to former firm by soliciting a client prior to termination of their employment contracts); Wenzel v. Hopper & Galliher, P.C., 779 N.E.2d 30, 47 (Ind. Ct. App. 2002) (“[A]s a matter of principle, pre-resignation surreptitious “solicitation” of firm clients for a partner’s personal gain—the issue posed to us—is actionable.”).
2. Buckingham, Doolittle & Burroughs, L.L.P. v. Bonasera, 157 Ohio Misc.2d 1, 15-16 (Ohio Ct. C.P. 2010) (Courts across the country use varied rules to evaluate whether asking colleagues to join a withdrawing lawyer is consistent with the fiduciary duty owed a law firm. According to the author of a 2009 article in the Chicago Bar Record, supra (which includes case citations), in New York State<sup>4</sup> “you can solicit your partners but not your employees,” while in Maryland “you can solicit the people in your ‘circle of friends.’” Virginia is said to allow solicitation “out of the office and after hours” while Massachusetts “provides that you can solicit the people with whom you are actively working.” The difficulty in determining when actions by departing lawyers “impermissibly solicited co-workers, [requires] the trier of fact [to] ‘consider the nature of the employment relationship, the impact or potential impact of the employee’s actions on the employer’s operations, and the extent of any benefits promised or inducements made to co-workers to obtain their services for the competing \* \* \* enterprise.’ \* \* \* ‘No single factor is dispositive \* \* \*.’” Sec. Title Agency, Inc. v. Pope (App.2008), 219 Ariz. 480, 493, 200 P.3d 977, quoting Jet Courier Serv., Inc. v. Mulei (Colo.1989), 771 P.2d 486, 497.”)

**Communicate  
carefully!**



# Lateral Move: Conflict Checks

## Hypothetical: Moving from one defense firm to another

Representation of client at old firm in a case with multiple co-defendants, one of whom is represented by new firm.

- No joint defense agreement
- Conflicts check
- Ethical wall

Rules of Professional Conduct implicated include:

- ABA Model Rules 1.7, 1.9, 1.10
- Same Rules under CA Rules of Professional Conduct

# Firm to/from In-House

# Firm to/from In-House

## Ethical and Legal Considerations

### Non-Disclosure Agreements

- May be required to sign NDAs during interview process to maintain confidentiality of information about the position and other information obtained during interview

### Conflict Checks

- ABA Model Rules 1.7, 1.9, 1.10
- Same Rules under CA Rules of Professional Conduct

### Use of Prior Work Product

- To what extent can you use work product you created for another client at the old firm for your new in-house employer

# Government to/from Private Practice

# Government to/from Private Practice

## ABA Model Rule 1.11: Special Conflicts of Interests for Former and Current Government Officials and Employees

### ■ Former government official or employee

- Rule 1.9(c)
- Imputation of conflicts
- Lawyer who acquired confidential government information about a person may not represent a private client whose interests are adverse to that person.

### ■ Current government official or employee<sup>1</sup>

- Rules 1.7 and 1.9
- Prohibited from:
  - Participating in a matter in which the lawyer participated substantially while in private practice or nongovernmental employment, without appropriate government agency's informed consent; or
  - Negotiating for private employment with anyone who is involved as a party in a matter in which the lawyer is participating personally or substantially.

1. City and County of San Francisco v. Cobra Solutions, Inc., 38 Cal. 4th 839, 854 (2006) (where defendant in city's action was formerly represented by city attorney while he was in private practice, city attorney's personal conflict was properly imputed to city attorney's office, warranting vicarious disqualification).

# Closing Remarks