

Draft prepared for the January 11, 2019 COPRAC Meeting

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**THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
DRAFT FORMAL OPINION INTERIM NO. 14-0001
IMPAIRMENT OF COLLEAGUE'S COMPETENCE**

ISSUES: What ethical obligations does an attorney in a law firm have when s/he knows or reasonably suspects a colleague's impairment is negatively affecting the representation of a law firm client?

DIGEST: An attorney who knows or reasonably suspects a colleague is impaired has an ethical responsibility to take reasonable steps to investigate the matter and to protect any clients whose representation may be negatively affected by preventing such an impairment from causing breaches of duties owed to the firm's clients before harm occurs.

This obligation extends to all attorneys within a firm, who know or reasonably suspect a colleague is impaired, and is not limited to only those in a supervisory or managerial capacity, although there may be practical differences in terms of the scope of action an attorney may take based upon his or her position within a law firm and the resources available.

The extent of an attorney's obligation and ability to act may be affected by the nature of the representation, as well as the severity of a colleague's impairment, the size of the law firm, and the resources available. If an attorney in a law firm has become sufficiently impaired so that s/he may no longer be able to continue a client representation, the other attorneys in the law firm must safeguard against incompetent client representation. This may entail alerting the appropriate individuals in a firm with management authority, such as a managing partner or in-house risk management/ethics counsel. Such action may only be a first step, as simply reporting a colleague's impairment internally does not address the more fundamental concern of protecting the client(s). The other attorney(s) in the firm may need to assume the representation themselves, bring in outside counsel, or withdraw from the representation.

If a colleague's impairment does not significantly or immediately affect any current client representation(s), then the impaired attorney may seek

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treatment for or otherwise address the causes of his or her impairment before needing to alert the client. However, if under any circumstances, the impairment has already, or will immediately and significantly impact the client's representation, then the client must be notified of this significant development. The impaired lawyer's right of privacy must be considered when notifying the client or third parties. If continued representation by the firm is an option, either by the impaired attorney under the careful supervision of the firm or by other lawyers in the firm, then client consent must be obtained.

AUHORITIES

INTERPRETED: Rules 1.1, 1.3, 1.4, 5.1, 5.2, and 1.16 of the Rules of Professional Conduct of the State Bar of California, Business and Professions Code, section 6068, subdivision (m)

STATEMENT OF FACTS

Attorney is a fifth-year associate assigned to assist with a complex litigation matter. Attorney has propounded and responded to discovery, taken some depositions, appeared at Case Management Conferences and regarding discovery motions, and communicated with the Client on a limited basis.

The matter is also staffed by Partner, an established trial attorney, who has earned a strong reputation within the community as a litigator of complex matters. He has conducted party and expert depositions, and been the primary point of contact with the Client. Partner will try the case, if necessary.

At the outset of the litigation, Partner and Attorney met and created a strategy and litigation plan for Client's matter. After the initial meeting, Partner and Attorney met at least weekly to discuss the case in detail. The case progresses without incident for some time.

As trial approaches, Attorney becomes concerned about the firm's ability to execute the litigation plan and to serve Client's best interests.

Partner appears distracted by personal issues, including a pending divorce. Partner has missed two meetings with the Client without explanation, has failed to respond to inquiries from Attorney and Client, and his direction to Attorney has become infrequent, superficial, and incomplete. At a recent hearing on the opposing party's motion for summary judgment, Partner appeared frazzled and confused. The court allowed Attorney, who had drafted the opposition, to step in and address the points the court adopted when rejecting the motion.

Attorney expresses to Partner her concern with the firm's representation of Client. Partner vehemently denies he not able to adequately serve Client's needs. He admonishes Attorney for even suggesting he needs help, and refuses to make any changes regarding the case handling.

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Partner adamantly instructs Attorney to not raise a concern with to Client, as that could cause Client to lose confidence in the firm's representation.

Scenario #1: Partner and Attorney are affiliated with Big Firm, an 850-attorney international law firm. Big Firm includes both a management committee and a risk management committee.

Scenario #2: Partner and Attorney work with a fourth attorney, Junior Associate, in Small Firm. Junior Associate has practiced one year and works exclusively on transactional matters. She has never worked on Client's litigation matter.

Trial is 30 days away. What are Attorney's ethical obligations in either scenario?

DISCUSSION

Many factors may affect an attorney's judgment, reasoning and insight. Temporary or permanent impairment could be caused by life events, such as accidents, current events, injury or disease, mental illness, and unhealthy lifestyle, including, but not limited to, lack of sleep, stress, and/or substance abuse. Such impairment may impede an attorney's ability to exercise the skills necessary to competently and diligently practice law in such a significant way that a client's interests become imperiled.¹ Signs of potential impairment include repeated memory lapses, failing to plan and prepare for events adequately without explanation or justification, or inexplicable, inconsistent direction or inability to focus.

Duty of Competence & Diligence

California Rules of Professional Conduct, Rule 1.1 addresses attorney competence.

"Competence" in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.

(Rules of Prof. Conduct, Rule 1.1(b)). Rule 1.0.1(h) defines "reasonably" when used in relation to conduct by a lawyer as the conduct of a reasonably prudent and competent lawyer. An lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence. (Rules of Prof. Conduct, Rule 1.1(a)). A lawyer is also obligated to perform with "reasonable diligence," meaning that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer. (Rules of Prof. Conduct, Rule 1.3(b)). A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client. (Rules of Prof. Conduct, Rule 1.3(a)). Impairment, whether permanent or temporary, can negatively affect an attorney's competence and diligence.

Impaired attorneys have the same ethical obligations as other attorneys. (ABA Ethics Committee Formal Opinion 03-429; see, also, *Columbus Bar Ass'n v. Korda*, 760 N.E.2d 824 (Ohio 2002.)

¹ Attorneys are also not immune from normal and short-term variations in efficiency, moods, energy, confidence, and decision-making that are common in everyday life. But general low points within such normal fluctuations do not constitute a form of impairment within the meaning of this opinion, so long as a client's interests are not threatened.

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In other words, impairment does not excuse the lawyer from providing competent representation. For example, an attorney who fails to act with diligence in representing a client, or who fails to communicate a significant development relating to the representation of a client violates his or her ethical obligations, even if that failure is due to impairment. An impaired lawyer who cannot continue to represent clients competently, owes a duty to cease the representation.

Responsibilities of Other Lawyers in the Firm

Although an impaired lawyer is not personally excused from his or her ethical responsibilities, an impaired lawyer may fail to recognize the existence or extent of his or her impairment. An impaired attorney's failure to recognize and/or address an impairment imposes an affirmative duty upon other attorneys in a firm to act to prevent harm to clients.

Multiple factors may affect the duty of attorneys within a firm to act in the face of a colleague's impairment, including the nature and severity of the impairment; the urgency of the situation, and the non-impaired attorney's role within the firm. Attorneys in a firm who knowingly allow a impaired attorney to continue a client representation in violation of ethical responsibilities ,breach their own ethical responsibilities and duty of loyalty under Rules 5.1 or 5.2, and may further be in violation of the duties of competence and diligence under Rules of Prof. Conduct, Rules 1.1 and 1.3. Thus, non-impaired attorneys within a firm owe a duty to investigate a colleague's perceived or suspected impairment, and may owe a further duty to act in the face of the evidence learned through such investigation.

An attorney's role within a law firm affects the duty to act and the extent thereof. The Rules of Professional Conduct impose differing but similar duties upon "managerial" and "supervisory" lawyers versus those in a "subordinate" capacity.

Rule 5.1, entitled "Responsibilities of Managerial and Supervisory Lawyers" states:

(a) A lawyer who individually or together with other lawyers possesses managerial authority in a law firm,* shall make reasonable* efforts to ensure that the firm* has in effect measures giving reasonable* assurance that all lawyers in the firm* comply with these rules and the State Bar Act. I

(b) A lawyer having direct supervisory authority over another lawyer, whether or not a member or employee of the same law firm,* shall make reasonable* efforts to ensure that the other lawyer complies with these rules and the State Bar Act.

(c) A lawyer shall be responsible for another lawyer's violation of these rules and the State Bar Act if:

(1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm* in which the other lawyer practices, or has direct

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supervisory authority over the other lawyer, whether or not a member or employee of the same law firm,* and knows* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable* remedial action.

Lawyers in supervisory or management positions within the firm are not the only ones who can be held responsible for the violations of an impaired lawyer. Under Rule 5.2(a) a subordinate lawyer “shall comply with these rules and the State Bar Act notwithstanding that the lawyer acts at the direction of another lawyer or other person.” Under Rule 5.2(b), “[a] subordinate lawyer does not violate these rules or the State Bar Act if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty. The comment to Rule 5.2 explains this dynamic as follows:

When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to the lawyers' responsibilities under these rules or the State Bar Act and the question can reasonably* be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. Accordingly, the subordinate lawyer must comply with his or her obligations under paragraph (a). If the question reasonably can be answered more than one way, the supervisory lawyer may assume responsibility for determining which of the reasonable alternatives to select, and the subordinate may be guided accordingly. If the subordinate lawyer believes that the supervisor's proposed resolution of the question of professional duty would result in a violation of these rules or the State Bar Act, the subordinate is obligated to communicate his or her professional judgment regarding the matter to the supervisory lawyer.

As all attorneys in a firm owe duties to all clients of the firm, the impairment of one member may impose additional duties on all attorney members of the firm, not just those attorneys working on a particular client matter, to ensure a client's interests are protected. (See State Bar of California Formal Opin. 2014-190.) Upon learning of a colleague's potential impairment that may affect the ability to competently represent a client, an attorney in a managerial or supervisory capacity owes a duty to investigate further, pursuant to Rule 5.1, in furtherance of the obligation to provide reasonable assurance that all lawyers in the firm comply with the Rules of Professional Conduct and the State Bar Act.

If the managerial or supervisory attorney confirms a colleague's impairment may preclude the affected attorney from providing competent representation, a managerial or supervisory attorney must act to prevent harm to the client's interests. This may include reassigning counsel to or away from a particular matter.

Managerial or supervisory attorneys must also determine if other client matters may be affected by a colleague's impairment. This entails a duty to identify and audit other files of the impaired lawyer to ensure the firm's representation complies with applicable ethical duties.

Upon learning of the potential impairment of a colleague (or supervisor), a subordinate attorney owes a duty to report the concern(s) to supervisors, firm management and/or in-house ethics

counsel, as appropriate, to ensure the representation continues in a competent manner. As discussed below, an attorney may need to communicate with the client regarding any re-staffing of the case.

Duty to keep client informed of significant developments

Rule of Professional Conduct, Rule 1.4(a)(3) and Business and Professions Code section 6068(m), require attorneys to keep their clients reasonably informed about significant developments relating to the representation.² What constitutes a “significant development” is fact dependent and may be influenced by the purpose of the representation, the sophistication of the client, client expectations and numerous other variables.

Rule 1.4(a)(4) further requires that a client must be advised “about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.” Clearly, a client expects a lawyer to act competently and with diligence, and a lawyer has the ethical obligation to do so, so an impairment preventing a lawyer from satisfying those ethical obligations and the client’s expectations, even if the impact is temporary, qualifies as a relevant limitation on the lawyer’s conduct that must be communicated to the client.

A client must be informed of the substantial impairment of an attorney working on a matter, particularly an impairment that precludes a lead or supervising attorney from providing competent legal services, which may include re-staffing the case if the firm has reasonable and competent re-staffing options.³ Adjusting the scope of representation or re-staffing a client matter, including the temporary or permanent absence of the impaired attorney, changing the client’s legal team to ensure adequate supervision of the impaired lawyer, a need to hire outside counsel, and/or any other efforts that must be taken by the firm to ensure that the client’s matter is handled competently and diligently, very likely qualify as significant developments that must be communicated to the client. Further, under Rule 1.4(a)(1) a lawyer must promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent is required by these rules or the State Bar Act. Limiting the scope of representation (Rule 1.2(b)); any change in fees owed by the client, perhaps due to the need to hire outside counsel (Rule 1.5); or, withdraw from representation (rule 1.16) require the client’s informed

² In some jurisdictions, Model Rule 8.3 imposes a duty on lawyers to report rule violations due to a colleague’s or an adversary’s impairment. (See, e.g., Virginia State Bar Standing Committee on Legal Ethics Op. 1886.) California does not have an analog to Model Rule 8.3. (See San Diego Bar Ass’n, Ethics Op. 1992-2.).

³ The ABA has concluded the duty to communicate may not end even if the impaired attorney leaves the firm but intends to practice elsewhere. Because current clients may consider leaving with the attorney, a law firm is required to advise departing clients of the facts surrounding an attorney’s withdrawal due to an impairment to the extent disclosure is necessary for the clients to make an informed decision regarding their choice of counsel. (ABA Formal Opinion 03-429; see, also Model Rule 1.4). Those statements must be limited to those “for which there is a reasonable factual foundation.” (*Ibid.*) This duty does not extend to notifying former clients who already elected to continue having the departed, impaired attorney represent them. (*Ibid.*) But the firm should not make any statements that could be construed as an endorsement of the impaired attorney. (*Ibid.*)

consent to the change and certain circumstances may require the client's informed consent to be in writing.

Duty to withdraw

An impaired attorney may need to cease work on client matters, at least until the impairment can be addressed. In such instances, other lawyers in the attorney's firm may continue the representation if they are competent to do so and the client consents. Whether the individual attorney needs to formally withdraw his or her appearance in a matter will depend upon the context. For example, a formal withdrawal may be necessary for matters pending in federal court, but individual withdrawal may not be required in state court matters. If no one at the firm is competent or available to continue a client representation, the firm itself may need to associate other counsel and/or withdraw.

Rules of Professional Conduct, rule 1.16(b) provides that withdrawal is permissive (upon permission of the tribunal, if required), if an attorney's continued involvement is *likely to* result in a violation of the Rules or State Bar Act (rule 1.16(b)(8)), or if the attorney's mental or physical condition renders it *difficult* for the member to carry out the employment effectively (rule 1.16(b)(9)). (Emphasis added). Rules of Professional Conduct, rule 1.16(a) provides that withdrawal is mandatory (again, upon permission of the tribunal if required), if an attorney's *knows or reasonably should know* that continued involvement *will* result in a violation of the Rules or the State Bar Act (rule 1.16(a)(2)), or if the member's mental or physical condition renders it *unreasonably difficult* to carry out the employment effectively (rule 1.16(a)(3)). (Emphasis added).

In situations where an attorney has a mental, physical, or emotional impairment, the distinction between mandatory and permissive withdrawal is the degree of difficulty the attorney faces in continuing the representation – mandatory if it is *unreasonably* difficult (rule 1.16(b)(3); *Gary v. State Bar* (1988) 44 Cal.3d 820, 824 [alcoholism]; *Snyder v. State Bar* (1976) 18 Cal.3d 286, 293 [mental or emotional strain]), or permissive if it is merely difficult, but not unreasonably so (rule 1.16(b)(8)). If the impairment does not make it difficult to continue the representation, then it does not provide grounds for withdrawal.

Given the nature of impairment, however, the affected attorney may deny impairment altogether or may not adequately recognize the degree to which he or she is impaired, , unreasonably believing that the impairment is not of sufficient pervasiveness that it makes continued representation unreasonably difficult. Thus, decisions regarding continued representation by the firm or withdrawal, may have to be made between the client and other attorney members of the firm if the impaired lawyer is unable to make reasonable determinations about how his or her impairment may effect the representation.

In any withdrawal, whether mandatory or permissive, a member shall not withdraw until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the clients. (Rules of Prof. Conduct, rule 1.16(d).)

Analysis under hypothetical facts

Here, Attorney must assess and determine whether Partner is subject to an impairment that create a material risk of impacting the representation and causing prejudice to Client. (See ABA Formal Opinion 03-429 [“The firm’s paramount obligation is to take steps to protect the interests of its clients.”].) Attorney must also take steps, consistent with his role within the firm and as part of the team representing Client, to ensure continued competent representation of Client. After identifying a concern that a colleague may be impaired, and that the attorney’s actions will likely negatively impact the client’s matter if the behavior continues, the first step Attorney should take is to consider internal measures to address the problem. As the ABA noted in its Formal Opinion No. 03-429:

The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer’s impairment. This could include, for example, a suggestion that the impaired attorney contact the State Bar Lawyer’s Assistance Program. Other steps may include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients.

Of course, some impairments may be accommodated by addressing either the circumstances or the nature of the work the attorney is performing. (*Ibid.*) The practicalities of a firm may necessarily complicate this process. Here, Attorney has raised his concern with Partner, but received what he believes is an unsatisfactory response from Partner, indicating that no remedial action is required.

In a larger firm context (Scenario #1), Attorney should communicate his concerns regarding Partner’s possible impairment to firm management and/or to the firm’s risk management attorney(s) or committee. Such reporting does not ameliorate or fully discharge Attorney’s duties to Client, as he separately owes those duties (e.g., competence, communication) and is not relieved from those duties simply by internally reporting his concerns, but reporting his concern should make additional resources available to address the situation.

In Scenario #2, Attorney lacks the ability to report and/or seek assistance with the pending representation internally. This places the ethical burdens associated with the current representation entirely upon Attorney.

The impairment of Partner is significant and growing, affecting two court hearings and everyday work. Further, Partner plays a bigger role in the Client’s matter and is expected to primarily handle the trial. With trial quickly approaching, if the matter is not adequately addressed internally after meaningful efforts by Attorney, then Attorney may have a duty to take additional steps.

Attorney remains ethically bound to ensure the competent representation of Client. For the pending litigation, this likely entails working with other lawyers in Big Firm to prepare the case for trial. Given Attorney’s relationship with Client, Big Firm may also call on him to facilitate the introduction of new attorneys to Client and to provide continuity with respect to the

representation. Ultimately, if the firm refuses to take appropriate action, Attorney should consider disclosing the facts to Client and, as a last resort, withdrawing from the representation. (See *Ibid.*⁴)

In Scenario #2, available internal options are limited given Attorney's subordinate role and the composition of the firm. Because attorneys within a firm, who have knowledge of concerns like the ones discussed in this opinion, have an obligation to the firm's clients, Attorney should remind both Partner of the independent ethical duty Attorney owes to Client, notwithstanding his subordinate role. Attorney may even go so far as to indicate he will have to inform the Client himself if Partner does not address the impairment issue consistent with ethical requirements. Due to the unique circumstance presented by the approaching trial, Partner may recognize the seriousness of the situation presented, which may make him more receptive to Attorney's position.

Advising the client

In either scenario, there remains a duty to keep Client informed of significant developments affecting the representation, which includes changes in staffing.

To determine whether a colleague's impairment is a "significant development" requiring disclosure, attorneys may ask themselves how much the impairment has impacted their colleague's performance to date, how much the impairment is likely to impact future performance, what the impact on the client is likely to be, and how long the impairment is likely to last. In most situations, a "significant development" under Rule 1.4(a)(3) will not encompass minor or unexceptional circumstances that are not likely to impact the purpose or outcome of the representation.

ABA Formal Opinion 03-429 notes that it may be difficult for a lay person to determine whether an apparent medical or other disorder is causing an actual impairment of the attorney's ability to represent the client competently. Accordingly, the opinion suggests that, depending on the circumstances, it may be helpful for those determining how to respond to consult with an experienced psychiatrist, psychologist, or other appropriately trained health professional.

Here, Partner's potential inability to try Client's case 30 days before trial is a significant development requiring disclosure to the Client. Even in Scenario 1, assuming Big Firm is able to

⁴ ABA Formal Opinion 03-429 states that attorneys have three different obligations arising under the Model Rules when an attorney in the same firm is mentally impaired. These are (1) to adopt measures to prevent the impaired attorneys from violating ethical obligations, (2) to report violations to the appropriate professional authority, and (3) to advise existing clients of facts surrounding the withdrawal of an impaired attorney that are necessary to enable an informed decision about selection of counsel. Model Rule 8.3(a) imposes an affirmative duty to report not currently found in the California Rules of Professional Conduct. "A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, *shall* inform the appropriate professional authority." (Emphasis added.)

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adequately re-staff the case internally so as to ensure competent representation, a duty of disclosure arises. This duty applies to firm management, and separately applies to Attorney.

In any disclosure to Client, care should be given to minimize the impact on Partner's privacy. Under Rule 1.4(a)(3), an attorney must keep the client reasonably informed about significant developments *relating to the representation*. Disclosing the existence of the impairment and the impact it will have on the representation is the only information that an attorney is ethically required to communicate to the client; therefore, personal and/or medical details concerning the impairment are not required to be disclosed to the client under the ethics rules. Should a client demand to know more information specifics, it is the choice of the impaired lawyer whether or not to reveal such private information to client. Disclosure of such private facts by Attorney, or any person of the firm other than the impaired lawyer, may violate privacy laws, and such information should not be disclosed absent informed consent from the impaired lawyer.

In such a circumstance, firm management and/or Attorney may wish to disclose the fact that actions affecting the representation have occurred but not the details. By way of example, firm management and/or Attorney may wish to disclose to Client that Partner was late to court but not offer the specifics as to why. Obviously, Client may demand to know this information. In this scenario, directing Client to communicate with Partner may be the most appropriate response.

All involved in the case, including Client, should be given the opportunity to assist in making appropriate determinations, such as whether to seek a continuance, whether to modify how the case is staffed (whether internally or through associating in counsel), or whether to move forward with the same attorney team and time table.

Additional steps

Regardless of what option is taken, attorneys must see to it a matter is adequately staffed to provide the client with competent representation throughout. If no one else in a firm is available to handle the matter competently, the firm may be required to withdraw entirely from the case, after taking necessary steps to avoid reasonably foreseeable prejudice to the client. (Rules of Prof. Conduct, rule 1.16.)

In Scenario #1, Big Firm may have sufficient internal resources available to assign a new attorney or attorneys to replace or supplement Partner, albeit with client consent. The circumstances differ in Scenario #2.

The only attorney in Small Firm not working on the matter is Junior Associate and not a litigator. So, she is unlikely to be helpful either in addressing the concerns of impairment or in assisting in the representation.

In Scenario #2, it might make sense to determine whether Attorney could and should take over trial responsibilities, or whether to approach Client about associating an attorney from outside the firm. In addressing this situation, Attorney should be mindful of the potential prejudice each step may have on the Client. Especially because trial is quickly approaching, Client presumably

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has a strong interest in preserving the continuity of his representation as much as possible, which is likely true in either scenario.

Attorney needs to communicate any significant staffing changes to Client, and will likely need Client's consent. A staffing change of a significant working attorney, including lead counsel, would be a significant development within the meaning of rule 1.4 and expressly required by 1.16. (See e.g. Cal. State Bar Formal Opn. No. 1985-86 [discussing obligation to provide clients timely and accurate notice of changes in employment status].)

As in the Scenario 1, there is a duty in Scenario 2 to investigate Partner's involvement in other matters, and whether the clients associated with Partner's other representations must be notified of changes to his condition. Unlike Scenario 1, where firm management may act, this responsibility falls entirely upon Attorney in Scenario 2, and is subject to the concerns regarding the need to consult first with Partner before Attorney makes any direct disclosures to Client. Attorney must also consider and act to preserve Partner's privacy to the extent possible.

CONCLUSION

Regardless of its nature or source, a colleague's impairment may trigger ethical obligations not just for the impaired attorney, but also for attorneys who practice in the same firm. Although the impact of many impairments may be addressed and resolved through internal procedures, to the extent they significantly affect the representation of a client, such impairments trigger a duty to communicate those impacts to clients and may trigger a duty for re-staffing and/or for the impaired attorney to withdraw from the representation. The available resources and options to address a concern may differ from firm to firm and depend on the nature of the representation, but the duties owed by counsel who have knowledge of the impairment remain.

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any member of the State Bar.