

Colorado Supreme Court Strikes Down Firm's Attempt to Enforce Client Transfer Fees



In a landmark decision, the Colorado Supreme Court ruled on January 16, 2024, that a law firm cannot enforce a contractual provision compelling departing lawyers to pay a fee of \$1,052 for each client they take with them upon leaving the firm. The case involved Grant Bursek, a former associate at Johnson Family Law, operating under Modern Family Law. The court's decision emphasized the violation of a Colorado ethics rule that prohibits employment and partnership agreements restricting a lawyer's right to practice after leaving a firm.

Background: Departing Lawyer Faces Substantial Client Transfer Fee

Grant Bursek, formerly associated with Modern Family Law, was in a legal battle when the firm claimed he owed \$18,936 for departing with 18 clients. According to the contractual provision, the fee was characterized as reimbursement for challenging-to-determine marketing expenses related to those clients. Bursek, who signed the agreement in April 2019, left the firm in September of the same year.

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Colorado Supreme Court's Ruling

The Colorado Supreme Court's decision underscored that the contract provision imposed an undifferentiated fee on departing attorneys, violating the state's ethics rule. The court acknowledged the potential for firms to seek reimbursement of specific client costs but clarified that demanding a blanket fee to continue representing clients is impermissible.

Majority vs. Minority View on Departure Agreements

The court highlighted the ongoing debate among states with similar ethics rules, pointing out the majority view that any financial burden on departing lawyers violates the ethics rule. In contrast, the minority view considers financial disincentives as non-per se violations, subject to a balancing approach. This balancing act weighs the interests of client choice and attorney autonomy against a firm's financial and practice stability.

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Endorsement of Minority View with Reasonableness Inquiry

While endorsing the minority view, the Colorado Supreme Court emphasized a reasonableness inquiry in departure agreements. In Bursek's case, the undifferentiated fee incentivized attorneys to retain high-fee clients and discard those with less lucrative claims, violating the ethics rule. The court acknowledged that reimbursement might be justifiable in cases where a firm advances litigation costs or incurs unusual expenses to attract a specific client but stressed that Bursek's scenario lacked a client-specific cost justification.

Implications for Departing Lawyers and Firms

This precedent-setting decision clarifies the boundaries of departure agreements in Colorado and aligns with the majority view that imposes strict limitations on financial burdens for lawyers leaving firms. The ruling emphasizes the need for reasonableness in such agreements, balancing protecting client choice and attorney autonomy while recognizing a firm's interests in financial stability. The case, officially titled *Johnson Family Law v. Bursek*, establishes a significant precedent for legal professionals navigating departure agreements in the state.

Don't be a silent ninja! Let us know your thoughts in the comment section below.