



## **KATIE BAR THE DOOR: WHEN ATTORNEYS DEPART THE FIRM**

Ellen Freedman, CLM  
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Over the years I have seen more than my share of attorneys depart law firms. In some instances the parting has been mutually desired. But in most cases it was not. Either the attorney or the firm chose to end the relationship, to the dismay or at least disappointment of the other.

Most law firms treat attorney departures differently than that of other staff. Attorneys are, after all, professionals, who understand their ethical obligations to the firm and its clients. So there is a great deal of trust involved at most firms when notice is provided by the attorney. Attorneys are likewise afforded greater dignity and latitude when it comes to their termination. Often they are advised of their termination under a cloak of confidentiality, with adequate notice—sometimes without a cut-off date even being established—to allow them to seek other employment and leave “under their own steam” in order to preserve reputation and appearance.

Unfortunately, this additional latitude can create unfortunate consequences for the firm. Here are some actual incidents I have been witness to over the years:

- § Months after an associate was confidentially terminated he showed no signs of interviewing elsewhere, so the firm provided him with an employment cut-off date. When the date arrived I intercepted him attempting to remove over twenty banker’s boxes of materials. As it turned out, he had invested his time wisely between notice of termination and his final day. It seems that in the evenings and on weekends he visited partner offices and methodically and painstakingly copied all forms he could find. His plan was to set up his own practice using the intellectual capital of his former firm.
- § A young partner refused to return her new laptop when her termination date arrived. It took a year of negotiation, and ultimately a threat of criminal prosecution, to convince her to return the laptop.
- § An associate went to the post office on his last day of employment and filled out a change of address form for the firm, forwarding all mail to his home. When the firm realized what had been done, it contacted the post office.

Unfortunately, in accordance with an unreasonable policy which still remains in effect, the post office refused to make a change until the associate came back in and put the change request in writing under his signature. The firm's mail was misrouted for almost two weeks until the associate agreed to do so.

§ A senior associate whose partnership decision was deferred to the next year provided a scant two weeks notice to the firm. He was in the process of mailing a blatant solicitation letter to all of the firm's clients—literally at the postage meter—when an observant secretary alerted a top partner.

Even though these types of events are not the norm, they happen more frequently than we think. And of course there are equally distasteful stories about inappropriate actions firms have taken when an attorney provides notice. Enough so, that I believe firms need to be reminded of some of the most important steps to take regarding attorney departures, in order to improve the process.

1. ***Secrecy doesn't work, so don't promise it.*** I have seen nothing but bad feelings created when firms promise to maintain secrecy regarding the termination of an attorney. In all but the largest firms, partners are immediately informed. Then each partner proceeds to tell their secretary, and usually at least one key associate. Within 24 to 48 hours the terminated attorney is bombarded with people offering sympathy and help, as well as those who come to ask for "dibs" on their chair, desk, file cabinet, and even office! The result is that the terminated attorney feels betrayed and angry. Usually the only people who are not informed are precisely those few who should be: office manager, bookkeeper, receptionist, records manager, IT manager. Promise discretion, not secrecy, so as to give the attorney the ability to be the first to let his/her colleagues know.
2. ***Remember that the client has the ultimate say in who will continue to do their work.*** When a departure involves someone who has had a decent level of client interaction and matter responsibility, the firm should be prepared and openly discuss sending out a letter to clients for whom the attorney has worked, advising them of their choice to select on-going counsel. While the firm may want to prevent this from happening, and find it a distasteful experience, it is nonetheless a firm's obligation to notify clients, and a client's right to choose.
3. ***Immediately upon provision of notice, inventory all client files on which the attorney has worked, and do not release any of them without signed authorization from the client.*** The departing attorney and the firm should both have the list of files, and that list should be



annotated as to any files leaving. A final inventory of files should be made on the attorney's last day to make sure all are accounted for. A permanent record should be kept regarding files which leave, including a copy of the request for release of the file from the client.

If the departing attorney is a partner or senior associate who has opened and closed files while at the firm, a review of those closed files in storage should also be made, and the same care should be taken regarding disposition of those files.

4. ***Try to avoid generating ill will and bad feelings.*** Firms forget that sometimes past employees can turn out to be future clients, or good referral sources. They can also become future enemies and sources of bad publicity. I have seen all possible outcomes, and in almost all cases the firm set the tone and nature of the future relationship. There is just no good reason to treat a departing attorney with disrespect, hostility, or to react emotionally and play the "disloyalty" card. Accept that sometimes relationships just don't work out for any variety of reasons. Rise above it and take the high road.
5. ***Use exit interviews to learn from the experience.*** Every employee departure presents an opportunity to the firm to obtain candid feedback. No matter how often you ask for candid feedback from current employees, and no matter how many anonymous surveys you conduct, you will never have as valuable an opportunity to find out about how your firm is perceived by employees than during an exit interview. Try to find ways to improve the firm's management based on the feedback. There is no doubt that you will wind up with a more attractive firm for current and future employees, and ultimately reduce turnover.
6. ***Be sure to inform key personnel at the firm as early as possible.*** You want to make sure as many eyes as possible are watching for things like unusual file copying—physical or electronic—removal of files, submission of unusual expense requests or reimbursement requests, lack of attention to billing or receivables or large write-offs, removal of assets like computers and dictation equipment from the premises, and so forth.
7. ***Use a checklist for consistency and to ensure nothing gets overlooked.*** It's easier to deal with issues openly and while the attorney is still coming in on a daily basis. And it will avoid hard feelings on the part of the attorney to know that everyone in the same situation receives the same oversight.



It's a confusing and difficult time for those who are leaving involuntarily. A checklist which is reviewed regularly will make it easier for the attorney to think about and plan for issues such as changes to listings in yellow pages, Martindale-Hubbell, notifications to alumni associations, renewing subscriptions in their own name, obtaining insurance and benefits, and the hundreds of other details that get overlooked by attorney and firm without the use of good checklists.

Use of a comprehensive exit checklist also lets the attorney know that the firm is experienced and careful, and will immediately eliminate thoughts of doing something "naughty" because of a perception someone will notice.

This is not by any means a comprehensive list, but it contains some of the most important points to take into consideration concerning attorney departures.

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