



ATTORNEY AND STAFF DEPARTURES: KEEP THEM CIVIL, BUT KEEP THEM SAFE FOR THE FIRM

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I have written previously about attorney departures, and the reaction from readers was overwhelming. I heard from attorneys who have been with the firm left behind, as well as those who have departed. I have heard from those who left voluntarily, as well as those who were thrust out the door. It was rewarding to hear from so many who agreed with my thoughts on the matter. And it was enlightening to hear their additional perspectives. [See “*Katie Bar the Door: When Attorneys Depart the Firm*” which appeared in the July 4, 2005 issue of The Pennsylvania Bar News.]

Those who are charged with keeping your computer system, intellectual property, and confidential client documents safe have a strong sense of how to do so. Everyone discharged should be immediately cut off from computer access. Period. For those who give notice, ditto. Pack up their belongings, collect their firm equipment, and escort them to the door under watchful eye. Black and white, it seems. If only law firm life were so simple.

VOLUNTARY RESIGNATIONS

We have to recognize that those who provide notice to the firm have usually done so with forethought. It is rare nowadays that someone voluntarily leaves on the spur of the moment. No. In most instances they have slowly and thoughtfully come to the decision to seek other employment. Then they have searched, interviewed, negotiated, and ultimately accepted other employment or made other alliances.

What we also know is that during the time period spent going through this search and realignment process, most smart people will at the same time be ensuring that they take with them any work product they intend to take. So by the time they give notice, you can be relatively sure anything electronic they wanted will already be in their possession. Other items will have been copied and taken off-site.

There are software programs specifically designed to lock down the firm’s intellectual property and prevent it from leaving via internet or transfer to other

electronic media such as CD, Flash-ROM or DVD. But these programs are cost prohibitive for all but the largest firms. So what can a firm do?

There are a number of things the firm can and should do. However, I believe that the things which can and should be done must be reasonable. Firms often over-react. They burn bridges out of fear or feelings of emotional betrayal. And often they needlessly alienate those leaving.

As I recently read the January, 2006 issue of *Law Technology News*, a particular paragraph jumped out at me. And it prompted me to write this article to readdress the issue of departures. It read in part:

“General Dynamics chair and CEO Nicholas Chabraja is a former Jenner and Block partner, as is general counsel David Savner. The alumni use their former firm as primary outside counsel . . .”

There you have it. This is one big reason why your firm should not burn bridges. A departing attorney can become a lucrative client in the future. Or a solid referral source. I have had the same experience with staff who have departed. Some have proved to be valuable personnel recruiters by recommending the firm to their peers.

Keep in mind that not everyone leaves for “bad” reasons. Some find opportunities better suited to their likes, closer to home, at better wage and/or benefit than you supply, creating better synergy, and so forth. But that doesn’t mean they harbor ill will toward your firm. If you handle their departure properly you can protect the firm *and* the relationship.

Since it’s important to know what has occurred with your electronic documents retroactively, it becomes important to have document management software which is capable of producing reports by user. For example, by running an activity report for the employee who has resigned, the firm can ascertain what documents have been accessed, printed, and copied over a given date range. Any unusual activity is quickly determined and the firm can promptly address it.

At one firm this simple ability provided the firm with proof that a departing attorney had already electronically copied the firm’s entire form bank. The attorney was forced to return the disks and attest that he retained no additional copies. Another time the report revealed that a large number of documents had been deleted by a staff member in the weeks preceding resignation. The firm restored all the documents from backups before they were overwritten.



At another firm, document management made it easy to deal with a departing practice group. There was no need to haggle and waste countless hours dividing up documents and forms. Their forms and clients' documents were easily identified, indexed, and copied, regardless of how old they were. The departing group was provided with a neat table of contents to take along with their disks. It enabled the departing group to get up and running quickly, without any generation of hard feelings. And it gave the firm a permanent record of what was provided to them.

Document management software addresses a whole host of other needs in a firm. Here I only point out those which are helpful when dealing with departures of attorneys and staff.

Another area which can prove problematic is removal of client files. For that reason, an inventory of all client files on which the attorney has worked, both open and closed, should be taken immediately upon provision of resignation. The departing attorney and firm should both have the list of files. Written instruction from the client should be required before any files are released to the departing attorney. As files are released, the list should be annotated. A final inventory of files should be made on the attorney's last day to make sure that all files are accounted for, and none have been removed for which client release letters have not been received. A permanent record should be kept regarding which files leave, including a copy of the request for release of the file from the client.

The easiest way to perform this inventory is to have barcodes on files, a barcode reader, and a records management software package which provides simple reporting. But the old fashioned yellow pad works too. It just takes a lot longer and requires more labor. Keep in mind that if a client requests their file(s) be released, you would probably prefer they ask for the release of all their closed files too, so that your firm does not wind up paying file storage costs for another attorney's clients.

Whether or not you want to let a staff member or attorney who has provided resignation notice remain at the firm will depend on the individual facts and circumstances at hand. Someone who has been highly problematic or critical of the firm may be prone to vengeful acts. So you may want to provide pay in lieu of notice and make an immediate separation to be safe. That's ok, as long as you do it with dignity for both firm and employee, and utilize a checklist for consistency purposes.

If you decide to let the employee continue to work during their notice period, there are a few precautions you should take. First, cancel any ability to dial in remotely. Consider curtailing the "rights" assigned to network and software program access to just those which are essential. Immediately collect firm-owned equipment



which may be used to take information offsite, such as PDAs, convergent devices, and laptops. Restrict work hours to hours when the switchboard is covered, so that comings and goings are monitored, and boxes cannot be removed unmonitored. Collect office keys from staff. Make sure that management and administrative personnel are immediately informed. That includes bookkeepers, billing clerks, records managers, office managers, administrators and so forth.

If the resignation comes from management or administrative personnel, a whole new set of issues may arise. For example, unless a bookkeeper or other accounting individual were leaving on very good terms, I would suggest you always elect to offer pay in lieu of notice. The same applies to anyone involved in maintaining your computer network or billing system.

INVOLUNTARY RESIGNATIONS

When it comes to involuntary resignations a whole different set of considerations come into play. With voluntary resignations a firm is usually tempted to keep staff through the notice period—often begging for more lengthy notice—but inclined to escort the attorney out immediately. But when the employee is terminated, usually the opposite strategy applies.

Even if a staff person is terminated for the most innocuous reason—downsizing—it is generally better to treat it like the removal of a Band-Aid; execute in one swift and decisive motion. Typically, letting someone hang around who has been given notice of impending termination does neither the firm nor the employee any good. It lowers morale for those remaining. And it allows the person to stew, become embittered, and perhaps vengeful. It's rare that the firm will get any real work benefit from the staff person from the point of notice of termination. The attitude quickly becomes, "What are they going to do about it, fire me?!" Even a highly professional work attitude quickly goes to seed once the employee is given notice of termination.

The right way to handle a termination is to plan ahead. Have the paperwork ready. Know what reason(s) are prompting you to terminate, and know what explanation you are going to give. While in the meeting with the employee, have someone log off their computer and disable their logon. Go over the details of their severance. Be as truthful as possible regarding the reason for separation. Go through your separation checklist together. This lets the employee know you are not treating them differently from anyone else who has been terminated. It also helps you keep it together during what is probably one of the most difficult tasks you will face.



Assist the employee in packing up, or let them know you will pack up for them and tell them when they can return to pick up their personal belongings. Collect keys and security cards. (This should be at the top of your checklist.) Escort them to the door.

If the employee wants to say goodbye to people, let them know they can call. Or write. Or email. But don't permit the employee to walk around the office making tearful goodbyes. I always terminated employees either before the lunch hour, or before the end of the day. That way, by the time they emerged from our meeting, most people were gone. It afforded more dignity, and kept the trauma to a minimum for remaining employees as well. I always avoided Friday terminations, so that the employee would not stew about it all weekend. At least if when someone is terminated during the week s/he can immediately visit the local Employment Office, call with questions, and otherwise distract themselves with self-help activities.

I have always had strong reservations as to how terminated attorneys are typically handled by the law firm. Often they are advised of their termination under a cloak of confidentiality, with extensive notice—sometimes without a cut-off date even being established—in order to allow them to seek other employment and leave “under their own steam,” thereby preserving reputation and saving face. Well, it sounds great in theory. But it rarely works out that way. This comment may surprise and even anger you, but if it were up to me, attorney terminations would be handled much the same way as staff.

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. Promise discretion, not secrecy, so as to give the attorney the ability to be the first to let his/her colleagues know. Make sure that your administrative personnel know right away, so they can be vigilant and take the appropriate steps to protect the firm.

Don't expect that the attorney will continue to be productive just because you are continuing to pay salary. Insisting that they keep working is unrealistic, will generate ill will needlessly between the firm and the attorney, and may even result in malpractice. Once an attorney knows employment is ending, he or she has to devote all of their energy to finding a new employment situation. If you think otherwise, you're kidding yourself. Even a seasoned partner with a robust client roster will struggle to try to maintain client service while looking for a new alliance. The goal should be to transition all work quickly to other attorneys with full status reports and attention drawn to any deadlines or statutes.



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 joint letter to clients for whom the attorney has worked, advising them of their choice to select on-going counsel. *Remember that the client has the ultimate say in who will continue to do their work.* 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. I also believe that it is in the firm's best interest to do this quickly, rather than wait until the departing attorney has had repeated contacts with the client to express interest in continued work. Let the client know right away that the firm is also interested in continuing to serve the client.

Always set an end date up front. And absent unusual circumstances, don't amend it once set. Make it clear that "conduct unbecoming" will result in an immediate separation. Define what constitutes unacceptable conduct, such as soliciting firm clients for which the attorney has not had a substantial relationship, badmouthing the firm, purposely neglecting matters and critical deadlines, and so forth.

Be helpful if possible in the attorney's search for new employment. Consider hiring a career counselor or outplacement firm to assist the attorney. Make a referral to other positions you feel would be more suitable to the attorney's talents. Try not to treat the attorney like a leper. I know, you feel guilty. It's hard to look the poor schlub in the face once you've terminated him or heard he's been terminated. But remember it's a business decision. It's not personal. So try to keep your interaction continuing on a business-like basis.

NO MATTER WHAT, NO MATTER WHO

There are a few things you should do regardless of whether the resignation is voluntary or involuntary, and regardless of whether it involves a staff person or attorney.

First, always use a checklist. That way nothing gets missed. Everyone is treated equally. And the attorney or staff member is reminded about the things they must do for themselves. For a staff member it may be switching medical coverage to a spouse's plan. For an attorney it may be contacting Martindale-Hubbell or the Yellow Pages to change their listing.

Second, 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. It will give you necessary information about 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.

Need assistance? If you'd like to see specimen departure checklists or exit interviews, or want to discuss any of this, please contact me on the hot line at 800-932-0311 x2228 or by email at lawpractice@pabar.org. Remember, the only constant in life is change. In today's legal environment, partners are rarely partners for life. Attorneys come and go more frequently than we or they like, as do staff. It's a fact of business life. Don't take it personally, don't overreact. Keep it civil, but keep it safe for the firm.

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