



WHEN PARTNERS AND COLLEAGUES LET YOU DOWN: IT CAN HAPPEN TO YOU

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It was a particularly difficult hot line call. Two partners conferred with me for well over an hour. Toward the end of the call one of the partners openly wept. “I just can’t believe this has happened to us,” the partner managed to say, “you always hear about these things happening at other firms, to other people you know, but you never think it will happen to you. We’ve known each other since law school. We all shared a vision of the type of law we wanted to practice, and the type of firm we wanted to practice in. We built this firm together. We’ve been successful. We trusted each other beyond question. We feel so totally betrayed. We don’t even know where to start picking up the pieces.”

If only this were a first-time call. Unfortunately it wasn’t. In the many years I have worked in and with law firms, I have witnessed, and sometimes experienced first-hand, the devastation and betrayal that can be caused when one or more partners cross the line. The causes are many. Sometimes there is more than one cause at play. Some of the causes I have witnessed include addiction to drugs or alcohol, gambling, criminal activity, dishonesty to the courts, clients, or partners, depression or other mental illness, and more. These types of occurrences can leave a firm in turmoil; malpractice exposure, damaged client relationships, damaged firm reputation, financial loss, and the most disabling: a deep feeling of betrayal by partners and/or colleagues.

The partners of this firm were careful not to disclose the specific cause. And to be honest, it didn’t really matter much to me. Because my advice would not alter one iota based on causation. The process of picking up the pieces and carrying on are usually not impacted by the cause.

My very first question is what action the firm has taken, or could take, under its partnership or shareholder agreement. Fortunately for this firm, they approached me for assistance when they became established. Back then we discussed what should be included in a partnership agreement. I strongly recommended language for expulsion of a partner for cause. We discussed at length the types of things which would be included as cause for expulsion. We discussed,

for example, whether arrest for a serious crime was cause, or only conviction. We discussed mental impairments which prohibited effective representation, whether resulting from physical causes, such as brain tumor, or from psychological cause such as severe depression. We discussed various ways expulsion could be handled.

I had witnessed the havoc created by a partnership agreement which calls for a 100% approval vote to expel (excluding the partner in question) at more than a few firms. Equally difficult were firms which were totally silent on the expulsion question, or had no partnership agreement at all. In either instance the path became unclear and impeded a firm from taking decisive action when necessary.

For this firm there was a clear path. They handed a copy of their agreement to their accountant and asked, simply, "How much do we have to pay?" So the most potentially difficult part of the process became the simplest. And for that they were exceptionally grateful. They turned to me for advice on what to do next, and to be sure they missed nothing in the process.

Here is a checklist of the major points which need to be addressed under these circumstances:

1. **Inform the Client:** Rule 1.4 (Communication) requires that the firm advise clients promptly of anything which will affect the handling of their case. The firm must be careful to avoid disparagement of the lawyer who was handling the matter. It must inform the client as to where the lawyer can be reached and the client's right to go with that lawyer, to remain with the firm (assuming the firm has the skill and expertise required to handle the matter), or to choose other counsel.

In this particular instance the expelled partner was not seeking to retain any clients or provide legal services, so there was no concern about the possibility of an impaired attorney attempting to continue to represent firm clients. What if the expelled partner wanted to continue to represent clients? What obligation would the remaining partners have to advise those clients accordingly? I attended an excellent seminar by a panel of employment law attorneys which covered this specific question. Under Rule 8.3 (Reporting Professional Conduct) a firm's partners may be required to report an attorney who is unfit to represent clients to the Disciplinary Board. But the firm has no duty to disclose such impairment to clients. And in fact doing so may put the firm at risk for charges of defamation or breach of confidentiality requirements under ADA or other legislation.



- 2. Inform the professional liability insurance provider:** It is very apparent that the firm will need to disclose on its next insurance application undesirable information in response to the question, "Do you know of any act, error or omission which may reasonably give rise to a claim?" Failing to put the current carrier on notice could result in a gap in coverage for claims which arise under a later policy as a consequence of the expelled partner's actions or inactions.
- 3. Ascertain the status of every matter:** Depending on case load, it isn't always possible to review every single matter's status before contacting the client. But the firm needs to do this as quickly as possible in order to properly catch any impending or missed deadlines, provide proper notification of change of counsel to all involved parties, and reassign urgent work to prevent further malpractice exposure.

This particular firm lacked the manpower to effectively review all the files. It was enough to keep the work moving for the existing partners, and take care of all the necessary client calls and hand holding. In this instance the best thing to do is to hire a temporary attorney or paralegal to quickly review the files, create status reports, and create appropriate docket entries. I was able to refer the firm to a reliable agency for temporary attorneys.

- 4. Ascertain the status of files and financial information:** In some instances I have found that lawyers physically remove entire files from the firm, save critical documents on home computers, or leave important parts of the file in car trunks, or other locations. The firm must make sure it has complete files on site for all clients. Those files are the property of the client, and subject to Rule 1.15 (Safekeeping Property).

This particular firm determined quickly that there was a distinct possibility that some files were not housed at the office. We discussed appropriate strategies to keep relationships as mutually cooperative as possible, in spite of the feelings of betrayal, in order to help facilitate the delicate process of file and document retrieval.

Likewise, the firm has to quickly determine whether work performed was recorded, billed, and paid. Was there money in trust for this purpose? If the client chooses other counsel, the trust funds will need to be returned. But often in situations like this, it is difficult to reconstruct what has actually transpired. An impaired attorney may



create false time records, or even send bills which he or she knows will never be paid, in order to avoid detection for some period of time. Depending on the underlying cause, trust funds may be found to be misused. In this instance additional work will be required to file an insurance claim, and restore the money to the client trust account.

5. **Other communications:** In many instances a firm will be contacted by media, other lawyers in the community, and even prospects who want to know what's happening. The firm should have a statement / explanation prepared in advance, and let everyone know who will be delivering it. Likewise, someone must be in charge of communicating inside the firm that the lawyer(s) is no longer with the firm, and provide whatever explanation is deemed appropriate. Again, disparagement should be avoided.

If the attorney(s) in question had staff members assigned to them, these individuals should be approached privately first. They will want to know whether they will have a job with the attorney gone. They will want to know whether the attorney's actions reflect on them in any way. Keep in mind that if handled right, they will be loyal to the firm and can be extremely helpful in locating information and determining what, if anything, is missing.

These are just some of the immediate considerations for the firm. And none are quite as simple as they appear here. With these partners it raised another question. How do they ensure it never happens again? Of course hindsight is always 20-20, but they were amazed that things had progressed to such an extreme point without their knowledge or even suspicion that something was amiss. They realized during our conversation that it all came down to the "trusted beyond question" comment. In reality, you have to trust your partners. But that doesn't mean that you shouldn't engage good business practices to ensure that if someone betrays that trust, you know about it before extensive damage is done.

One thing this firm did not do was survey its clients to ensure satisfaction. Even a simple postcard sent out with monthly statements and bills would have revealed lots of angry clients of this attorney who were not receiving responses to calls and emails, and from several who had already threatened to sue over missed filings. I'm also sure that the staff member assigned to this attorney was well aware of the situation, as he or she would have fielded many angry calls, and opened letters from angry or exasperated clients. Had staff members been empowered and encouraged to always report client dissatisfaction of any degree, this firm's reputation and claim history would have been protected.



Take a moment to read the title of this article once again. Remember that these things can and do happen to people like you. And it **COULD** be you. What will you do now to prepare for the unthinkable action of a partner or colleague? Remember that praying, while commendable, is not a strategy.

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