



Parting Friends?

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By Jeffrey Lowe

Perhaps the most troubling decision for any partnership's management committee is the determination to force partners from the partnership. Last year, in "The Broken Covenant: A Retrospective — Partners for Life" (*Law Firm Partnership & Benefits Report*, April 2008), I examined the reasons for the breakdown of the "covenant" that formerly governed a law firm's relationship among its partners. The thought of terminating partners because business was slow was once unthinkable. Today, the legal world is a much scarier place than it was only a year ago, and the last remnants of the covenant are under further siege. Layoffs continue at a record pace, and law firms and partners struggle to figure out what's next. If one still believes that the practice of law is a profession, rather than a mere vocation, do law firms owe their departing colleagues something other than a pat on the back and three months of severance? This article examines what law firms can do to assist their partners as they show them the door.

Designation for Departure

There's an old adage that says the best way to find a job is to have a job, and that certainly holds true in the legal profession. Allowing a partner designated for layoff to remain formally associated with the firm for some specified (or unspecified) period of time significantly enhances that partner's value in the lateral partner marketplace.

There are two ways the firm can handle this:

Open-ended Termination

By far the most lenient way to handle a termination is to have a member of the management committee meet with the partner and deliver the message that it is time to move on, but with no definite time set for the partner's departure. Depending upon the firm's culture, this message may or may not be combined with a reduction in the departing partner's compensation and/or the provision of outplacement counseling for the partner (discussed below). Open-ended termination is particularly suitable for partners who have been with the firm for a long time and who are well regarded by their peers. Firm management should also be sensitive to the partner's privacy, and share this message with as few people as possible.

The principal danger of open-ended termination is that the affected partner fails to move quickly enough to secure new employment, and lingers on longer than management desires. In some cases, affected partners may also become vocal critics of management and the firm in general, which will ultimately have an adverse effect on firm morale. Consequently, management should make clear at the outset that the firm's willingness to support the partner during this time of transition is subject to the partner remaining a "good citizen" and taking demonstrable steps to secure new employment.

Closed-end Termination

While open-ended termination may have formerly been the preferred method of "managing out" partners who are no longer productive, in today's economic climate, the closed-end termination is becoming far more common. Unlike open-ended termination, the closed-end termination message is delivered by management with a firm date set for the partner's departure (which may or may not be subject to limited negotiation), typically anywhere from three months to one year. We frequently see this message being delivered along with an immediate reduction in the affected partner's compensation and the immediate provision of outplacement services for the affected partner. The closed-end termination is, of course, far more stressful for the affected partner and tends to focus more quickly on the need to secure new employment.

The mere act of designating a partner for termination raises several issues for both the firm and the partner. First, under either scenario, the affected partner retains both actual and apparent authority to bind the law firm and the law firm retains exposure for such authority. Consequently, the law firm must feel comfortable allowing the departing partner to hold him or herself out to the world as a member of the firm. Second, the designation raises the question of whether the departing partner is required to disclose his or her status to potential employers.

With regard to the open-ended scenario, employment lawyers surveyed for this article felt that the message to move on could be delivered in such a way that the affected partner could honestly say he or she was not being terminated. While this is significantly more preferable for the partner, it can put the law firm at risk if a potential employer seeks a reference check from the terminating firm. Accordingly, under either the open-ended scenario or the closed-end scenario, firm management and the departing partner should clearly define the type of reference to be given at the outset and agree upon a written statement drafted by the departing partner, both to minimize any chances for future misunderstandings and to appropriately limit the firm's risk for providing a negligent reference.

With regard to the closed-end scenario, although there may be no legal requirement to disclose one's impending termination, the departing partner should strongly consider being candid about his or her status. While many law firms are quite large, the legal community is, at the end of the day, quite small, even in cities like New York and Washington. Failing to disclose one's status can seriously undermine one's credibility with a potential employer, especially if the new employer learns of the departing partner's status through back channels, or the departing partner reaches his or her termination date before receiving an offer to join the new employer.

From the firm's perspective, it seems clear that merely designating a partner for eventual layoff requires no special disclosure obligation on the firm's part, especially in those cases where the partner continues to receive compensation and perform legal work. But what about those situations where a firm simply agrees to let the partner maintain an office or a Web site presence, but the partner is receiving reduced or no compensation and is no longer performing legal work? Firms would be wise to consult with their own labor and employment attorneys to understand the risks involved, and should be especially careful with references. Regardless of how partners and law firms choose to handle departures, it is clear that delaying the severance of the affiliation for as long as possible inures to the benefit of the departing partner.

How Firms Can Help Departing Partners Land Well

Once it becomes clear that departure is inevitable, how can a firm help former partners land on their feet? Making an effort to do so is clearly in the firm's interest, particularly given how small legal circles prove to be.

Outplacement and Career Counseling

One possibility is covering the cost of effective outplacement counseling. For many departing partners, termination of employment is devastating on a number of levels. Aside from the loss of income, the sudden loss of stature can be even more damaging. In our experience, many lawyers are ill-equipped to handle the sudden loss of a job. Kate Neville, a Harvard Law School grad and founder of Neville Career Consulting in Washington, DC, notes why this is often the case:

"A substantial percentage of lawyers went straight from college to law school to a firm through an on-campus recruiting program. Since they have never had to look for a job before, these partners often aren't familiar with how

to conduct a job search or make a professional transition. Second, even attorneys who have been unhappy at a firm and have considered leaving for years absorb an ego hit when asked to leave and have a very difficult time dealing with it emotionally — it's always better to be the person making the decision rather than having the decision made for you. Third, while lawyers often know what they do NOT want to do, many still have not identified what type of work they actively want to pursue. Finally, many accomplished lawyers who advocate persuasively on behalf of their clients find it much more difficult to make a case for themselves."

By providing the departing partner with some form of career consultation, coaching or outplacement services, the departing partner is better equipped to identify next steps and stay on a timetable for departure, which ultimately serves both the firm's and the partner's best interests. According to Neville, the initial challenge for many attorneys who are asked to leave is to determine what kinds of positions outside of a firm involve work where they are marketable, that they enjoy, or at least meet their priorities at a given time.

"In order to avoid being pigeonholed by their prior work experience, these lawyers need to be able to: 1) articulate what they are looking for and why; and 2) translate what they bring to the table so their skills are clearly understood by other professionals and prospective employers. Lawyers who have been asked to leave are not necessarily in the mindset to accomplish these steps on their own. Working with a professional familiar with these transitions can make a huge difference, both in the progress an attorney makes as well as his attitude towards his previous employer."

These services can be structured a number of ways. For example, firms may, as part of their severance packages, offer a departing partner a credit for a set number of sessions with a counselor of the individual's choice. Alternatively, firms may establish a relationship with one provider based on proposals for pre-arranged services, and allow the departing partner to work with such counselors for so long as may be necessary. Finally, some firms who hired an in-house career counselor in a stronger market now rely on that person to increasingly provide more of an outplacement service as the economy declines.

Alumni Networks

Law firms with well-developed alumni networks can also prove a fruitful source of opportunities for departing partners. Former Big Four accounting firm Arthur Andersen had (and still has) a legendary alumni network. Over the last several years, we have seen firms take a more proactive role in formally establishing a firm alumni organization, holding periodic events and dedicating a specific section of the firm's website to their former attorneys, including job postings, listservs and networking information. The cost of these programs is fairly small, and the potential rewards are great.

In-house Placement

Perhaps the best way a firm can help a departing partner is to recommend him or her to one of the firm's existing clients for an in-house counsel position. Having a client bring a partner on board can be win-win for the firm and the partner. Of course, a firm should be willing to reach out to its clients only in those situations where the partner is being asked to leave solely for economic reasons and not performance reasons, and where the firm is confident that the departing partner will continue to use the firm as outside counsel. Both the partner and the firm should also remember that making such an overture to a client signals that the partner in question is not long for the firm, and should ensure that this signal won't otherwise adversely affect the client relationship.

Partners should also remember that today's market for in-house jobs is extremely competitive. The number of applicants for each in-house position often runs into the hundreds, and employers have the luxury of being able to wait for the perfect candidate. Having an inside track with an existing client can cut those odds significantly.

Conclusion

The departure of a partner can be a traumatic event for both the firm and the partner. By assisting the departing partner in his or her transition, it is possible that the partner and firm can remain good friends (well, maybe just friends).

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