

## Breaking up: It's all about the clients

By: Nancy Crotti    December 5, 2013    0

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Neil Sedaka wasn't kidding when he crooned "Breaking up is hard to do" back in 1975. Although Sedaka was referring to romantic relationships, the same maxim applies to law firms that splinter without proper planning.

There are several reasons to dump a law partner: personality clashes, compensation issues and distribution of work, among others. The way one goes about it may result in unforeseen consequences.

Say your partner's gotten on your last nerve and you decide, "That's it! I've had it!" You take that person's stuff, toss it in the hall, change the locks and lock the door. Simple, right?

That's the only simple part about it, according to local experts in the field. They raised a number of questions, including, who gets the clients?

"Usually it's the law firm, but lawyers don't think that way," said attorney Paul Floyd, who represents other attorneys for Minneapolis firm Wallen-Friedman & Floyd. "They think in their minds, 'I own the client' or 'It's my client.'"

Floyd suggested referring to the retainer agreement that was given to each client, and if necessary, executing a substitution of counsel. Law firm management consultant Carol Cummins recommends issuing a joint communication to clients about changes at the firm and seeing how they respond.

"The bottom line is, the clients get to decide who is going to do their work," Cummins said. "The middle-of-the-night stuff has all this play for grabbing clients."

That's not only immature but also unethical, according to Cummins, who serves on the Lawyers Board for Professional Responsibility. "Client files should never go anywhere, under the rules," she said.

A firm's founding documents may also contain language that pertains to the breakup of the firm, including shareholder or member control, governing documents and employment agreements. The bylaws may state that the

firm must dissolve if one of the partners leaves.

Having the rules written down and agreed upon in advance makes the breakup tidier, but that's not always the way it works. Sometimes law school buddies decide to form a firm right after passing the bar without covering all the legal issues associated with partnership, Floyd said. Or they'll come from different firms to join forces, and leave the details to another day.

"It's like the cobbler's children have no shoes," he said. "One of the things to do is, before you actually start your partnership, think about the back end. I have clients who are together for 25 years and never signed a partnership agreement."

As advocates focused on their clients, lawyers tend to work hard — as if they're in silos — even if they have partners, according to Cummins, who worked at Dorsey & Whitney and Merchant & Gould before going out on her own. She cited a study that said lawyers have a high need for autonomy and are not very resilient.

"When things really go south for lawyers, they tend to battle really hard because they think it's a fight to the death," she said. "They oftentimes live to work instead of working to live. When it's that big a role for you, you tend to pull out all the stops when doing it and you don't take time to step back and look at the broader picture of how does it fit in your life and how is it going to fit with somebody else."

Cummins urged breaking up with as much respect and gentleness as possible. She likened law partnerships to marriages.

"It's really important to have good communication and be in constant communication about, 'Why are we together?'" she said. "Anytime lawyers get together, the whole has to be greater than the sum of the parts. Otherwise, why bother?"

Before a lawyer dumps a partner, Floyd recommends subjecting the resulting relationship to the restaurant test. If, in two years, one former partner is at a restaurant and the other walks in, will the first one feel like he or she has to leave without finishing the meal? That's a good sign that the breakup was too nasty, he said.

Lawyers can avoid breakups if they're willing to work at it, according to Minneapolis attorney Ken Engel, who also serves on the Lawyers Board.

"I think what really fuels breakups between attorneys is pretty similar to breakups in other businesses. It's either some communication problem or something in the dynamics, a personality conflict," Engel said. "I go back to try to understand what happened first before you pull the trigger"

Engel recommended hiring an outside mediator rather than one employed by the firm, because the inside mediator may not be impartial. He has found that a good outside mediator can help feuding law partners resolve their differences in as little as a half a day.

“What that saves is not just financial, but emotionally is huge,” Engel said.

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