TEL: 310.440.9320 KC@VICTORLS.COM

November 4, 2009 Los Angeles Daily Journal – Perspective

Avoiding Slash and Burn Departures – Right and Wrong Ways to Switch Firms

by K.C. Victor

A generation ago, partners at significant firms found that their ability to switch firms had greatly expanded. This began when clients started to act as if they had options in choosing their law firm. Once clients believed that they had a choice, many law firm partners began to take their client bonding quite personally. Regardless of how ecumenically partners behaved with regard to bonded clients, many began to think of certain clients as rightfully belonging to them rather than to the firm. Since there are no thought crimes, the time when such attachments actually matter is when a partner is planning a move.

There is substantial law on the subject of the duties law firm partners owe one another when planning or making a move. See, *Law Firm Partnership Agreements* Section 6.03 by Leslie Corwin and Arthur Ciampi, Law Journal Press, revised 2004. Still, even when you are not violating established common law or a provision of your partnership agreement, there are better and worse ways for a law firm partner to consider, plan and accomplish a move to a new firm.

While loyalty to a firm is not the same as loyalty to a spouse, they have elements in common. It is important to have an excellent reason to abandon a partnership. The most accepted reason is a conflict with a client offering you substantial work. The most frequent is a serious disappointment within your current partnership. Sometimes an alternative is presented, directly or through a recruiter, which is so much better than your current situation that it should be explored.

Even when there is antagonism toward your current firm, it is important to leave with as much delicacy and care as possible. Slashing and burning is not a good thing. Not only is that not the right way to behave, but, as in a marriage, how you behaved before is something your new intimates will at least think you capable of doing again.

Most firms have lateral partner questionnaires. These forms always include detailed questions about your expected business. Although it is often possible to avoid delivering this form until after one or two meetings, it is always a good idea to complete the form as soon as possible. It helps you, and your recruiter (if one is involved) see how realistic your business expectations are. I have seen partners decide to stay put to and expand their business more than once after being forced to document answers to some hard business questions.

In order to be taken seriously as a partner by a new firm, a lawyer needs to show two things – talent and clients. It is generally easy to display your historical talents without causing harm or embarrassment. A litigator can discuss settlements or cases, a transactional or tax lawyer can disclose deals, a trusts and estates lawyer can discuss documents drafted and advice given, etc.

But that is, of course, not enough. At the partner level, movement without an expected business base is extremely rare. When a firm is only seeking a set of skills at the partner level, they almost always approach someone they already know well.

Although a partner pursuing an offer may not solicit clients before giving notice, expected clients and billings must be discussed with your prospective firm. The question is when and with what detail they should be discussed as you go through the interviewing process. It is easy when a particular lawyer is known to be bonded with one or more particular clients. In those cases, the early client conversations are *"sotto voce."* For most moves, that is not the case.

When exploring a firm you know only or mostly by reputation, it is fair to assume that you will not necessarily want to join. If a significant portion of your business comes from just a few clients, it sometimes makes sense to reveal the names of those clients even before a first meeting. That will allow all involved to avoid wasting time on the interviewing process for a deal that will never close. However, if you have any doubt about the inherent loyalty of those clients, you may want to be cautious and wait a bit longer before revealing their names or other details.

At the beginning of a partner-level candidate's search process for placement with a law firm, I generally advise the candidate to prepare two different versions of an expected business list. The first one, for the candidate and me, is a listing in detail of which clients the partner or group of partners believe will move; which clients might join the new firm, regardless of whether there was a prior personal working relationship; why both categories of clients should move; and the historical collections, when known, for those clients.

The second list is a generic version of the first list. Instead of saying that you know Bill Smith, the Managing Director of International Finance at XYZ Investment Bank because you went to college together, you say that you know a Managing Director of Finance at a major investment bank because you have been friends since your late teens. Since the description is vague, you can usually still list the historical billings for that client without exposing too much or giving a firm you have not yet decided to take seriously a road map to your business. Likewise, provided that the description is specific enough, it should get you in the door at appropriately interested firms. If there is not mutual interest after some initial meetings, little has been exposed.

Detailed information about your clients should be given after there is an understanding that you and your potential new firm have a sufficient enough level of enthusiasm about each other for you to seriously consider joining. That means that you at least share similar professional values. Do you agree with your potential partners about how to staff work, how to service clients, how to cross-sell, how to pay associates, how to determine partner compensation and other similar items?

After you reveal the details about your clients, the firm with which you are talking should make sure that there are no important conflicts. If the process can still proceed, it is time for the candidate to see a detailed list of any of the law firm's clients not discoverable from the web site. Perhaps obviously, cross-selling possibilities depend not only upon a firm's attitude towards

TEL: 310.440.9320 KC@VICTORLS.COM

cross-selling (which is highly influenced by how the partnership pie is cut), but also upon everybody's current clients.

At this stage, lateral partner transactions become entirely individual affairs. As in purely personal relationships, sometimes there is rapid trust and confidence. When the personal rapport is high, all sorts of facts are shared with confidence and comfort. There is a mutual belief that even if the deal does not culminate, neither party will take advantage of the other based upon client or personal information.

Sometimes the dance is slow and cautious. (The longest placement I ever made took twenty-seven months from start to finish.) In those cases, the personal connections are not visceral, but the working styles and clients mesh well. The decision to come together is formed by persuasion rather than affection.

Regardless of how long a lateral partner move takes to come to fruition, the deals that work for the long haul are the ones where the parties know each other extremely well before they get married. If you don't have full and complete information about each other's working styles as well as client relations and practices, the success of the union depends mostly upon luck.