



THE NEW ELLIS GROUP

Monday Monday

Connecting the Dots with Karen Kaplowitz



*Helping you create and reinforce the habits of successful career building,
gleaned from my work as a business development strategist, trainer and coach*

Volume 6, Issue 11

May 21, 2012

Dewey Fallout Two: Look Before You Leap. To expand on the newsletter on client concerns resulting from the crisis at Dewey & LeBoeuf, ([click here to read more](#)), we invited two veteran lawyers who represent lawyers and law firms, Arnold Bressler and Stella Lellos of Moses & Singer, to comment on avoiding Dewey-type situations in law firm mergers and moves.

Look Before You Leap. There are aspects of the Dewey & LeBoeuf LLP meltdown which bring to mind the old adage: A lawyer who represents himself has a fool for a client.

When business owners undertake to sell or merge their businesses, their professional team will include lawyers experienced in that type of transaction. Why is it that when lawyers undertake to merge their practices, they are often willing to do so without professional advice? Is it because lawyers are confident that they can represent themselves?

When representing their clients, lawyers are expected to exercise the judgment of an independent third party to assess risk and provide advice. They are expected to separate themselves from a matter to evaluate it objectively. This objectivity is lost, however, when lawyers represent themselves. Personal viewpoints, emotion and self-interest can all cloud a lawyer's ability to provide himself –or his colleagues--the best legal representation.

In the merger of one business into another, one of the most critical tasks is the due diligence process. It is during the due diligence period that the acquirer learns about the target: its contracts, liabilities, litigation, risks, value, and performance. It is also during this period that the target examines the acquirer to determine whether the merger is the right fit, particularly if the principals and employees of the target will be joining the acquirer's team. If a party to a merger transaction were to refuse to provide such information, his or her attorney would undoubtedly advise extreme caution. Shouldn't the same hold true when lateral partners put their careers on the line by joining a new law firm?

When lateral partners are exploring the possibility of joining a new law firm, they often do not request information regarding the new firm that would allow them to assess risks and make well-informed decisions. Perhaps the reluctance to ask for information stems from a concern that the firm may react negatively. Yet in any other business merger, the request for such diligence would be considered standard practice. What could be the result of such failure to conduct due diligence in the context of a law firm? The recent news accounts regarding Dewey & LeBoeuf LLP may provide some guidance. Dewey, in an effort to counteract declining revenues, entered into a number of contracts with lateral partners, guaranteeing them multi-year, multi-million dollar compensation. From the lateral partners' perspective, the offers must have looked very attractive. However, these contracts ultimately resulted in the payment to the new laterals of 80% of the firm's 2011 year end profits, which resulted in sharp payment reductions to the firm's remaining partners. This in turn resulted in the defection of more than 70 of Dewey's partners, which began the avalanche that ultimately led to the demise of the firm. To make matters worse, the firm faces scrutiny as to whether the guaranteed payment contracts were executed without the appropriate approval of the executive committee.

Could the ensuing turmoil have been avoided had the lateral partners conducted due diligence prior to joining Dewey? Perhaps. There is not enough in the public record to know. It is clearly prudent, however, for a lateral partner contemplating joining a new firm to request at least the following:

- The partnership agreement
- Financials of the firm for several years
- The profits per partner for such years
- Information concerning significant pending or threatened litigations
- Material contracts, especially relating to guaranteed compensation of partners and
- The amount and terms of the firm's debt.

The prospective lateral partner should have a complete understanding of the firm's decision making process regarding compensation and other matters, as well as the firm's capital structure.

Due diligence is of little value, however, unless it is evaluated objectively, and such objectivity may be lost to emotion if not reviewed by independent counsel. The reality is that even lawyers need lawyers. If you would not recommend that clients enter into a transaction without a lawyer, should you engage in such a transaction yourself without independent counsel?

Moses & Singer LLP Law Firm Practice Group advises law firms and lawyers in connection with partnership matters, lateral attorney intake, mergers, joint ventures and other law firm matters. For more information, contact Arnold N. Bressler or Stella Lellos.