



FIRING WITH FINESSE

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In a career which has spanned well over 4 decades, I have hired and fired literally hundreds of people. Over the course of the years, I have developed a protocol for each task which is finely honed and highly successful. Since I joined PBA in 1999, the firings I have done have always been at the request of law firm clients. You might ask yourself why a firm would choose to employ an outsider to handle such a personal task, and what category of employee would be involved.

The answer to the second part of the question is much easier than the first. I have been brought in to fire all manner of employees including administrators, office managers, bookkeepers, controllers, billing specialists, secretaries, paralegals, associates, and even shareholders and partners. I know, your mind is screaming in disbelief, "Ellen, did you say shareholders and partners? How can that be?" And that brings me to the first and more difficult part of the question in the first paragraph: why bring in an outsider to perform this task?

For those of you who read my articles regularly, you are well aware of the tendency of lawyers to be highly conflict averse. The truth is, most of you don't have the "stomach" to deal with highly unpleasant situations and conversations, unless you're doing it at the behest of clients.

Admittedly, if your back is up against a wall, you can and will do it. But avoidance is usually the path of least resistance, and the one most heavily traveled by attorneys. As a result, I have on occasion been called upon to have those "difficult" conversations with a partner or shareholder, in order to remove the burden from those not up to the task,

My experience is that a firm may delay a much-needed conversation about parting ways for several years simply because no one wants to take on the task of initiating the discussion. I can honestly say I've had clients who have managed to avoid the inevitable for a decade or two. Meanwhile, the firm languishes in an unhealthy purgatory where there is little or no change or progress, leaving it infinitely more vulnerable to changing market conditions and partner defections.

Fear and/or avoidance is just one reason to bring in an outsider to handle terminations, however. For many firms — particularly solo and small firms which

do not have professional managers on staff — there is a fear of making a serious mistake while handling such a delicate matter. Even though PA is an "employment at will" state, we have never seen so many lawsuits for wrongful discharge. Remember, you can fire for no reason, but not for the wrong reason. What you do may be innocent from your perspective, but ultimately may have to withstand the "smell" test of a DOL investigator, or jury. Their perspective may be very different based on factors you don't think to take into account.

As a result, many firms bring me on board to first assess the landscape before firing. Is the firing for performance reasons? I make sure the file is documented appropriately, and that the employee has had some warning and opportunity to improve. That track record will go far to invalidate any spurious retaliatory claims.

At one firm, for example, performance was cited as the reason for desired termination. However, the employee's file had glowing performance reviews from the associate to whom she was assigned. Upon discussion, the associate admitted he was too afraid of "retaliation" from the over-dominating secretary if he dared to submit an appropriately critical evaluation. The next review was not far away. I had the firm delay termination until after the associate submitted the next evaluation, which was more truthful. The employee was given feedback, asked to create a plan for improvement, and given a few months to demonstrate whether improvement could be achieved. Not surprisingly, at the end of that period, termination was completed, with no complaints or future claims from an otherwise cantankerous employee.

Where issues of willful misconduct are involved, it is often wise to get an objective review of the firm's policies and related communications. Sometimes I am brought on board for this reason. For example, at one firm an employee was to be terminated for excessive absence, both paid and unpaid, in violation of the firm's leave policy. There were copies of several memos to the employee regarding this issue in her personnel file.

On its face, no problem. However, upon questioning I determined that there was another employee who had more absences in the same period, who had no warnings and was not in jeopardy of termination. What was the difference? Race? Age? National origin? Anything which could be used against the firm? Absent some good explanation, this disparity of treatment would never have withstood the smell test.

As it turned out, this employee was far less tenured and had therefore not had a chance to build as solid a track record of performance as the other one who was not being criticized. And this employee worked for associates,



whereas the other worked for a partner with a considerable book of business. Under the circumstances, we changed the reason for termination from willful misconduct to merely not being a good fit for the associates. Possible cause of action averted. Allowing the employee to collect unemployment was a small price to pay.

Lastly, law firms bring me aboard to handle a hiring or termination because I have so much experience, and a strong track record of success. I am just better at it, based on so much experience. Just like you get better at your craft with experience. Clients can relax knowing that best practices will be utilized. And that's the reason most firms seek my assistance.

Experience teaches what works and what does not, far beyond the best of seminars and guidebooks. I have had people react in the extreme during terminations, from those rendered so numb that they could not speak or even rise from their seat without assistance, some who have wept out of control, to those who literally tried to take a piece of me, swept the contents of my desk onto the floor, or screamed and yelled at the top of their lungs.

This week I traveled to a client's office to fire her office manager. This employee was a loose cannon, and my instincts told me that she was a possible "tussle." I made sure to wear clothes which left my body free to move with independence and speed, and offered few points for someone to "grab hold" if grappling. My husband questioned my choice of attire as I dressed that morning, and I had to explain why I carefully choose my outfit. Experience.

What follows are some tips on handling terminations which have been gained from years of experience. I'm sure they will make it easier for you to deal with this particularly distasteful and critical aspect of business management when the need arises.

1. **DON'T FIRE ON FRIDAY.** When you fire on a Friday, the employee has nothing to do but stew about it all weekend. My first choice is Tuesday, followed by Wednesday. The employee will be busy for the balance of the week applying for unemployment, reading employment advertising, searching online, contacting agencies, updating his/her resume and getting copies made, and contacting people who might assist in the job search. By the time the weekend rolls around, the employee will hopefully have moved beyond the past, and be firmly focused on the future.

2. **USE A CHECKLIST.** Both my hiring and firing protocols use checklists to ensure consistency and thoroughness. It's easy to get sidetracked during an emotionally-charged situation and miss something critical. A checklist is essential



in order to ensure you flow smoothly through the meeting and cover all the bases.

3. **PROTECT THEIR DIGNITY.** Being terminated is probably one of the worst experiences one can have. Keep that in mind. Do whatever you can to preserve the dignity of the person being fired. No matter what your personal feelings, you want to try to make it as impersonal and business-like as possible. Make your point clear about why the termination takes place, but don't debate, or overstate. Don't take it as an opportunity to rub salt into the wound, or deliver payback, no matter how much you think it is deserved.

I usually hold the meeting around 4 pm so that by the time the process is concluded, most employees have gone for the day. It helps make it less awkward for the one terminated, as well as for the employees they worked with.

I make sure there are no interruptions. I keep the door closed, and don't take phone calls. I make sure that any paperwork I need (release, severance check, insurance conversion forms and so forth) are with me so I don't go back and forth, leaving the employee alone even for a moment with their fluctuating emotions and thoughts.

4. **EMPATHIZE.** I would not be as accomplished at preserving dignity and keeping the peace were I not able to empathize with the employee. If I sense they want to, or if they actually begin to debate the merits of the firm's conclusion to terminate, I will gently say something like, "we may never have the same perspective about this, and we'll both just have to agree we disagree in order to get through this, because the decision is made and at this point there is nothing to be gained by debating it." I also use phrases like "life is too short to continue to work at a place where you feel you are not properly [appreciated / recognized / compensated etc], when you can find a job somewhere that will make you happier and is a better fit." In other words, I try to emphasize the big picture and let the employee know that the firm they are leaving isn't necessarily the best or only choice for them. Kind of like when you break off a relationship with the "it's not you, it's me" line, which enables the other person to save face, and helps keep things civil.

5. **GET YOUR DUCKS IN A ROW.** Advance preparation is essential. Evaluate the documentation in the file to ensure it is consistent with what you believe to be facts. Look at it from the perspective of an outsider. Keep in mind the employee will have the right to review the contents of their file. Determine that the reasons for termination are valid, and will hold up under scrutiny. Review a pre-termination checklist to ensure that when you hold the actual meeting, you have anticipated the questions and issues which will arise, and have everything you



need in front of you.

6. DON'T GIVE SOMETHING FOR NOTHING. I firmly believe in severance in lieu of notice. But don't go overboard. Give a reasonable amount, based on years of tenure and position with the firm. But don't go overboard without getting something (e.g. a Release) in return. I am a strong believer in getting a release from anyone who might conceivably make a claim against the firm. The more emotional or spiteful the person, the more likely they will make a claim, even if it has no merit. Remember, they can walk to the nearest DOL office and file a complaint, with no skin off their nose. The time and lost revenues to respond to an investigation mount quickly, and the emotional drain on the firm is enormous.

Many firms are reluctant to request a release, thinking that it may give employees an idea they might not have on their own. I feel it's always the explanation that makes the difference. My standard line is "every lawyer knows that one should never give anything of significance without some consideration in return. For that reason, in order to get the additional X weeks of severance pay, we'll ask you to sign a release. We highly recommend you have it reviewed by a lawyer before you sign, because you are giving up your right to sue the firm for any cause of action if you sign." Then I remind them of how much money is at stake as consideration, tell them they are under absolutely no pressure to sign it, and hand them the release to take with them.

5. THINK ABOUT SECURITY. Here's another place where a checklist is essential. I always arrange for the employee's logon, security code, credit cards, passwords, vmail and so forth be disabled or forwarded while the meeting takes place. I make sure their computer and other equipment is turned off while the employee is in the termination meeting. I always watch as the employee packs up personal belongings. I always have a list of items I have to confiscate before they leave, such as keys. I help them carry items to the door, or the car if necessary. During packing, their office door (unless they work in an open area) is closed to help preserve dignity. The escorted walk to the door ensures no awkward encounters or confrontations with any remaining stragglers.

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