

#2016-009



Home / Your Voice / Abuse of power within law firms: The rainmaker...

YOUR VOICE

Abuse of power within law firms: The rainmaker dilemma

BY KAREN KAPLOWITZ

POSTED FEBRUARY 27, 2018, 7:30 AM CST

Tweet Share



Karen Kaplowitz

Abuse of power is the common thread behind the sexual misconduct claims that have recently brought down powerful media, political and business leaders. Law firms, which have been beneficiaries of an avalanche of legal work from sexual misconduct, must now look within and confront the dilemma of powerful rainmakers who are abusive, whether the abuse is sexual in nature or otherwise.

Despite their obvious economic value to their organizations, Bill O'Reilly, Matt Lauer and Harvey Weinstein were quickly sacked. Law firms by contrast have often tolerated bad actors who are major rainmakers. Can law firms tolerate abusive rainmakers in the current business climate? Do firms need to be more aggressive about confronting abuses of power?

Rainmakers have always been powerful, but because lateral hiring is so pervasive and laterals are highly mobile, rainmakers have become even more powerful. Law firm management understands that confronting abusive rainmakers may cause them to pick up their clients and leave.

And abuse is not necessarily related to sexual misconduct. There are many forms of tyranny in law firms: greed and excessive demands for compensation; screaming and use of obscenities; unreasonable work demands; bullying, and many forms of disrespect. Firm management has often looked the other way or allowed rainmakers to work in silos, without much external supervision or review, if they produced.

In a post on my blog (<http://www.newellis.com/PDFs/2017/NewEllis-120417.pdf>), I list some questions to ask to help you avoid becoming media fodder over lawyer behavior. If your firm is concerned that a scandal involving an abusive rainmaker will damage the firm and is ready to confront the abusers, here are some strategies for doing so:

Carl Peters, a prominent law firm consultant, says most firms tolerate rainmakers' abusive behavior unless it threatens something essential in the firm's culture. Peters says firms must draw a line when the "fabric of the firm" is at risk. "The firm must win. No one, not even a rainmaker, can be allowed to destroy the fabric of the firm."

That was the situation that confronted the managing partner of a 50-lawyer New York boutique when he had to deal with an abusive lateral who accounted for one-third of the firm's total revenue. Other partners were nervous, but the managing partner felt they had no choice. The rainmaker caused constant chaos, complaining about everything. It was not hard for the rainmaker to find another home, and he was gone in short order. The firm took a big hit financially, but everyone was relieved and more productive when the rainmaker left.

In dealing with troublesome rainmakers, Peters also recommends that firms analyze just how much of a contribution the rainmaker is making. Peters described a situation in which one partner's client accounted for 10 percent to 15 percent of a firm's revenue, which resulted in the firm's being very deferential to the partner. When Peters did a profitability analysis, he discovered that the partner and

his team were taking nearly 100 percent of the profits generated from the client as compensation, which meant the rest of the firm got no benefit from this group. When these facts emerged, the partner's power diminished radically, and the firm was able to address the abusive behavior.

Keith Wetmore, who joined legal recruiting powerhouse Major, Lindsey & Africa last December, was the chair of Morrison & Foerster for 12 years and chair emeritus for five years. He recommends that firm management act quickly when bad behavior happens to make clear to the people involved that their actions are non-conforming behaviors that will not be tolerated. He believes law firms cannot shape behavior among young lawyers to conform to the firm culture if young lawyers see the firm is tolerating bad behavior among established lawyers. But Wetmore emphasizes that firms can only enforce norms that reflect how most people behave generally, so the firm management is only acting against clear outliers.

Allison Rhodes, co-chair of Holland & Knight's Legal Profession Team, advises law firms dealing with troublesome behavior to involve the troublemakers in adopting new policies when possible. She calls this strategy "getting their fingerprints on the weapon." When they violate a new policy, they can't complain as much if they were involved in its formulation. For example, one firm had a partner who may have been sending excessive bills to clients because he did not record his time daily. The firm adopted a policy that if hours for the week were not recorded by Sunday, they could not be billed at all. The partner who sparked the policy left the firm.

When firms finally decide that a rainmaker must go, Rhodes reports, the process is often easier than expected. Most lawyers leave without a formal expulsion vote. Expelled partners do not want to have to disclose to another employer that they were expelled, and they voluntarily resign, usually with agreed statements on both sides.

David Greenberg, a senior adviser at ethics and compliance consulting firm LRN, recommends that law firms that are serious about addressing abusive lawyers should make bad behavior cost people in compensation.

LRN frequently helps companies develop codes of conduct. Interestingly, law firms have not widely adopted codes of conduct, with some notable exceptions like Baker McKenzie

(https://www.bakermckenzie.com/-/media/files/about-us/bm_codeofconduct_oct15.pdf?la=en).

Firms have become more active in training personnel, in some cases because mandated by state law, like in California.

In our new era of intense media attention to scandal, law firms should also be prepared with outside professional help from a crisis management firm. Leah Johnson, a crisis management and public relations professional who heads LCJ Solutions, encourages law firms to bring in outside professionals even though they are often involved in managing their clients' crises. She emphasizes the importance in a time of crisis for firms to avoid "groupthink". Many law firms these days, like their clients, have a crisis management firm on speed dial.

Law firms are less likely than their major corporate clients to attract national media attention, but law firm scandals will inevitably be covered in depth in the legal press and business press. If your firm has tolerated abusive conduct by powerful rainmakers in the past, it is time to develop some new strategies and the fortitude to implement them.

Karen Kaplowitz, the founder of The New Ellis Group, has been a business development strategist and coach for over 20 years. She publishes a blog (<http://www.newellis.com/MondayArchive.html>) on business development strategy for lawyers and is a senior adviser to the Working Mother Best Law Firms for Women Initiative. Karen can be reached at kkaplowitz@newellis.com.

ABAJournal.com is now accepting queries for original, thoughtful, nonpromotional articles and commentary by unpaid contributors to run in the Your Voice section of our ABAJournal.com. Details of the new policy are posted at "Your Submissions, Your Voice

(http://www.abajournal.com/voice/article/your_voice_submissions)."