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## Business of Law

By Frank Michael D'Amore<sup>1</sup>

### Are You Foolishly Loyal?

I could have never imagined that I would ever link the words “foolish” and “loyal”. I started playing organized sports at age seven, which coincided with being taught by nuns who drilled certain points into our consciousness seemingly without end. One of those precepts, which my coaches and the sisters of the I.H.M. drove home, was that one should be loyal. This was an absolute—no conditions precedent, no caveats, and no qualifiers.

Loyalty, after all, is the bond that holds families, organizations, and even nations together. It thus merits a sacred spot in our lives. This most recently evidenced itself in organizing a homecoming football game and fundraiser for my grade school, whose hallowed halls I left more than 35 years ago.

As I have aged and progressed in business, it has become evident that very few things are black and white, though. Perhaps this is impacted by being a lawyer, as we are quite adept at skillfully working in shades of grey and in understanding nuance.

A telling example occurred when I was in private practice and was part of a team drafting a pretrial brief. The senior partner (whom I admired) gently chided me for continuing to stress the need for consistency in our brief, as he recounted Emerson’s famous quotation: “Consistency is the hobgoblin of little minds.”

As I was on the brink of partnership, I very carefully, and with some trepidation, noted that a key word was left out of his quote, for Emerson actually wrote: “**Foolish** consistency is the hobgoblin of little minds.” Perhaps this served as the genesis of the word “foolish” being a significant one in my lexicon and, interestingly, as important an adjective when paired with consistency as with loyalty.

As professionals do not operate in a vacuum, the concept of loyalty takes on a more complex perspective in the multi-spoked wheel of our lives, than the one that was sanctified in

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my youth. Loyalty is not just owed or pledged to a firm or company, which many persons reflexively proclaim as an absolute. Rather, it is similarly owed to our family members, clients, and, perhaps most importantly, ourselves, as we came into this world alone and will leave that way. In considering loyalty, then, it very much becomes a balancing act that changes over time.

For some persons, loyalty is rather easy to uphold and requires little measuring. For these chosen few (the average person changes firms or companies approximately every five years), they have found the perfect firm that treats them well, stands by them in good and bad times, and deserves every ounce of their fealty. As in any relationship, the firm and the lawyer may have their challenges, but a mutual commitment to doing the right things, long term, is often the glue that holds them together.

I spoke with a partner a few years ago who sought me out as he was enmeshed in a sticky conflicts issue in his firm and wanted to leave. As he carried a \$5 million book of business with him, my Pavlovian response was to meet with him the next day. As we delved deeper into his situation, it became eminently clear that, despite his current predicament, he was in a firm that had supported him (and vice versa) throughout his career, and, in my opinion was likely to figure out a way to solve the conflict. I thus advised him to stay, and, sure enough, the issue was resolved. I firmly believe that he is in the right place and will retire in that firm some day.

At the other end of the spectrum are lawyers in firms that are missing budgets and other key financial targets by wide margins, have suspect leadership, are personally taking significant financial hits, and are working in environments that are fraught with discord. There also are lawyers in firms that are doing well, but, nonetheless, find themselves at variance with the firm's strategic goals or practice models. For these lawyers, this lack of consonance is significant, as it may be impacting their ability to service clients and grow their practices.

Earlier in my recruiting career, when I would talk to lawyers who were in these latter situations, I understood when they told me that their loyalty to their firms compelled them not only to stay, but to foreclose even considering a move. This was in line with what I was taught and their unflinching commitment seemed admirable.

As time has passed, though, this unblinking loyalty has often proved to be well intended but, in the end, foolish. Over the past few years, I have spoken to partners across the country, with good practices, who were in firms that evinced the tell tale signs of likely extinction or extended stays on life support. Many rebuffed any advances, as they felt they owed it to their firms to 'hang in there unless the ship was actually going down.'

This allegiance seemed laudable, but, when their firms did fail, it brought to mind just how foolish that blind loyalty was. Clients were the first party who were hurt in such situations, as their matters were may not have been staffed by lawyers who knew them best (and were the most qualified), as they had left. Additionally, as chaos descended, it was difficult for those partners to stay focused on their matters, as their professional lives had been turned upside down. The end game was that lawyers who worked very hard to build practices often saw some prized relationships fritter away, as partners in more stable firms seized the opportunity to take some of that business away. When they finally were ready to move, it became infinitely more difficult, as the diminution in their books compromised leverage and attractiveness in transitioning to another firm.

As firms' struggles deepen, it almost automatically means a significant reduction in compensation, often measured well into the hundreds of thousands of dollars. As dollars are not, and should not be, the ultimate factor, they are important, especially when considers the loyalty that runs to family and others who are dependent upon that income. The absence of such dollars can put a tremendous strain on close relationships, delay retirement by many years, be the difference in allowing a child to attend the college she really desires, or hurt charities and other organizations that one believes in and rely upon your generosity.

And, 'lest one think that the financial impact ends there, it often does not. When firms fail, individuals, creditors, insurers, and others look for anyone with assets who arguably could have liability. As one lawyer in such a firm jokingly rued, the 'circular firing range' often ensues, which is expensive, a major distraction, significant time drain, and is a wrenching process.

Lawyers who outgrow their firm—in terms of its platform, for example—face somewhat similar issues on the loyalty front. I have spoken to many partners over the years who can't understand how a former colleague, who is now in a different firm, has a bigger practice than him, makes more money, is more highly recognized, etc. These partners lament that they are brighter than these other lawyers, defeated him in a trial (or outwitted him in a deal), work harder, or excel in some other way. How could they have been passed in this way?

Well, in many cases, this stems from their inflexibility in even considering a change. Loyalty to their firm may have been estimable, but ultimately held them back. This could have been driven by not getting the greater support a different firm, with deeper resources, had to offer, having more rate flexibility in another that would have drawn in more clients, or just being unburdened by the institutional nicks and dings that have chipped away at their soul over the years, which a move often heals spontaneously. As with lawyers in troubled firms, these lawyers

who are no longer in sync with their firms, have resultant loyalty issues with clients, family, and others that are often minimized in only weighing obligations just to their firms.

It was Mark Twain who wrote that: “Twenty years from now, you will be more disappointed by the things you didn’t do than by the ones you did.” At a minimum then, this requires one to periodically step back to assess one’s situation and not, as someone with whom I recently spoke (whose firm is mightily struggling), ‘keep my head down and just do the work that is in front of me, as I’m too busy and don’t want to deal with this.’

I worked with a lawyer who had spent virtually all of her career in a firm that she had outgrown. She chafed at the separation between her and colleagues in other firms, but refused to do anything about it. As luck would have it, her firm eventually began to spiral downward, also. The stress on this partner had been unrelenting, and, as she freely admitted, affected clients and her family. She struggled mightily with guilt, as she felt it was incumbent upon her to fight to save her firm, even though that was not the role that she aspired to play. She eventually fretted about her clients and became angry over the significant amount of dollars that she left on the table in the past few years and made her move.

I met with this lawyer a few weeks after her move and could not believe the transformation. She seemed at least five years younger and freely smiled, which nary happened during our earlier meetings. While she recognized that she was still in the honeymoon stage at her new firm, she could not stop saying how liberating and energizing her change had been.

So, if your firm is doing well, treats you fairly, meshes with your practice, is a good home for your clients, and has an atmosphere that enables you to go home in a good state of mind at night, cherish it. Otherwise, the loyalties that flow to your clients, family, and you must be weighed against the fealty owed to your firm. You instinctively know when that see saw is well out of balance. Hoping that things will somehow miraculously change or deferring a rational examination, due to the work associated with exploring or making a change, are not the type of logical and sensible decisions made by an intelligent professional. Better days lie ahead if you have the conviction to do something about it.

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