

## Advice for Law Firms in Serious Trouble

By [Michael D. Short](#) on April 16, 2013

Law firms are fragile organizations that are held together by the will of the Partners to keep showing up for work each day. Many firms are one or two key defections away from the start of a downward spiral in confidence that can quickly pull *any* law firm apart.

A dissolving law firm is viewed much as one views a car collision ahead of you on a road – you slow down, take a hard look, try to quickly discern what happened, whisper to yourself “there, but for the grace of <insert deity name here> go I”, and then drive away...feeling lucky, but knowing that the potential for such an unforeseen event remains for all drivers no matter how careful or risk adverse.

The “discern what happened” step can be valuable if approached in a respectful and objective manner. The key challenges are that a) dissolutions are, thankfully, few and far between, and b) each dissolution has a unique underlying story, so drawing any broad “lessons learned” – other than the fact that the overall confidence in the institution could no longer hold the partnership together – may not be applicable to your firm.

If dissolutions are rare, then why write about them? We believe that there will be a number of small to mid-sized firms and a large firm or two that will, for a variety of reasons, find themselves in a crisis. Once a crisis begins, rapid decision-making is critical – to either save the firm or maintain asset value if the firm is not salvageable. Saving the firm typically happens in one of two manners –

1. A rapid, radical restructuring. Our methodology requires a very short timeline and no ties to the past or off-limit topics. The solution must be holistic and designed to serve the greatest good. The existing assets, systems, structures, and processes are restructured from a “blank slate” perspective.
2. A “savior acquirer” (law firm) to step in and absorb the firm in crisis. This option is the path of least resistance, which is why we don’t see many more dissolutions in the press. These transactions look like acquisitions and the solutions happen out of the public’s purview.

Those that cannot achieve either of these options may face the difficult, yet sometimes correct, decision to dissolve the firm. If you get to this point, seek help from someone who has been through the process so your firm can benefit from their experiences.

For your consideration, I offer some advice from two experienced counselors. First, here are my personal “Top 3” observations:

1. Fighting too long to save a dying institution may, in the long term, do more harm than good. For as painful and emotional as this decision can be, it is better to bring a failing firm to a quick conclusion rather than endure a process called “death by a thousand little cuts” by those who have suffered through it.
2. Once a partnership reaches the conclusion that it should cease to exist, the goal is to wind down the firm’s affairs without declaring bankruptcy *if at all possible*. This requires a) having a small, empowered, and experienced wind-down team, b) developing an effective relationship with each creditor – secured and unsecured, and c) generating enough money from the firm’s assets to cover its liabilities at a sufficient level for each creditor.

3. Dissolution is not a means to another end...it is an end. I occasionally hear from a disaffected segment of a partnership that is considering dissolving in order to effectuate a difficult change, with the goal of immediately reforming with the change (e.g., without certain undesirable Partners) in place in a "new" firm. The risks associated with such a move are immense and some key partners will use this opportunity to look around. The marketplace will know about it, and good people will have many opportunities -.

I also shared these thoughts with **Yann Geron, a Partner at Fox Rothschild LLP** and a member of our small group of experienced professionals in this unique area. He offers the following observations:

1. Once the firm decides to wind down, it is of paramount importance for the firm to maintain credibility with its key creditors throughout the wind down process. In addition to maximizing creditor recovery, the firm will need a team of specialists in this area to communicate effectively with creditors and provide them with transparency into the dissolution process so as to establish reasonable (and achievable) expectations in the creditor group. The skill, credentials and prior experience of the wind down group are important, because the group's credibility with the firm's creditors will inform how those creditors react during the wind down process.
2. When the wind down becomes broadly known internally, the firm's attorneys (at all levels) and staff will quickly look for safer employment. This causes a rapid degradation in firm's ability to administer itself, so the wind down plan must implement steps to avoid a leadership vacuum. The wind down team will develop incentives and leverage with each of the firm's internal constituencies to drive the wind down process forward efficiently and quickly, with a particular focus on billing and collections. Another issue that requires careful consideration is what exposure, if any, do partners may face for compensation they received prior to the firm's decision to wind down. Whether they need to repay anything, and if so, how and when it will be repaid, could be the lynchpin for a successful wind-down which avoids both bankruptcy and unwelcomed publicity.
3. Open client matters will need to be transitioned to new firms as billing partners shift to those firms. Much has been written lately about potential liability which those partners and their new firms may face on account of the open client matters which they took to their new firm. Early in the wind down, the wind down team will need to work with the relationship attorneys to ensure that clients and their files are transitioned properly, so that receivables are collected and creditor recovery is maximized, all in an effort to avert bankruptcy. As recent publicity on large law firm bankruptcies shows, once a bankruptcy is filed, the liquidation process changes dramatically, often to the detriment of the partners and others at the firm. In many circumstances, the organized transition of client files for the mutual benefit of the "prior" and "successor" firms could further decrease the possibility of a bankruptcy.

We sincerely hope you never have to rely upon any of this advice. If, however, you get to this point, keep the emotion of the situation at bay and do what the firm logically and factually needs...and do it quickly.

By Mike Short and Yann Geron