

# LAW WEEK

## COLORADO

## Managing the Law Firm Break-Up

*An attorney who oversaw major law firm closures weighs in how they're done*

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No one enjoys thinking about what will happen if their firm fails.

Because if it does, it could stir up a maelstrom of obligations to creditors, grievances from clients and potential lawsuits among now-former colleagues. But the average firm partner isn't prepared for all of the considerations to be made when his or her firm must dissolve, according to Denver attorney David Seserman.

Seserman was the liquidating agent of Gorsuch Kirgis in 2005 and then Isaacson Rosenbaum in 2011, which were two of the largest Denver law firms to fail at the time.

Since then, other firms have approached him for advice on potential dissolution based on that experience and the administrative tasks it entailed.

Seserman, formerly of Brousseau Bartlett Seserman, opened a solo civil trial practice in July, and he operates part-time out of a LawBank coworking space in Denver. Strictly speaking, law firm dissolution isn't part of his legal practice — which mostly deals in employment issues such as employee benefits, discrimination claims and trade secrets.

He has consulted with other law firms mulling a closure, and he said he wasn't at liberty to discuss which firms those were.

Gorsuch Kirgis, co-founded by Justice Neil Gorsuch's grandfather, was a 60-year-old Denver-based firm with more than 50 lawyers when it dissolved in 2005.

Seserman spent the first two decades of his law practice there, and he was put in charge of its dissolution along with an outside counsel hired to be a co-liquidator.

After that Seserman was approached by 50-year-old firm Isaacson Rosenbaum, which closed in 2011. The firm retained him as a dissolution agent to guide it through the wind-down process. No lawsuits or grievances arose from the closure or that of Gorsuch Kirgis.

Dissolving a law firm isn't the same as closing down any other private company of similar size.

"[A law firm] is not like a business that you can just say, 'OK, we've closed down the widget factory, we can just throw out all the widgets,'" Seserman said. "There are client files. There are all kinds of ethical obligations."

### KEEPING THE INSTITUTIONAL KNOWLEDGE

When a firm fails, often it begins with the departure of a fruitful partner or practice group, which can then trigger an exodus. "[In] a law firm failure, the death spiral sets in really fast," Seserman said.

If a practice group of attorneys ends up leaving a 30-attorney firm, those remaining lawyers are left with the same overhead, paying the lease on excess office space and unused office equipment. Other attorneys will see the writing on the wall and devise exit strategies of their own. "In the meantime lawyers are trying to get their own jobs, and staff is panicking," Seserman said.

But for a dissolution to be run smoothly, a failing firm can't let all of its institutional knowledge walk out the door right away. One of the dissolution agent's first tasks is to identify key partners and staff, like the CFO, and convince them to stay on and assist with at least part of the liquidation, Seserman said. That entails negotiating compensation deals that incentivize them sticking around and turning down job offers they might have in hand elsewhere.

### TAKING CARE OF THE CLIENTS

One of the primary tasks in winding down a firm is notifying clients of the closure and returning their files to them when necessary. That can be a monumental task: in the Gorsuch Kirgis dissolution, the firm had 16,000 Bankers Boxes of stored client files that staff had comb through and then notify those clients at their last known addresses, Seserman said.

Since then, Colorado has adopted

ethics rules dictating firms' responsibilities for document retention, and today firms must also account for the vast amount of electronic files they have and deal with them accordingly.

"One of the things that we as lawyers and companies have to remind ourselves of occasionally is, if you have a document retention policy that says a client file is to be destroyed two years after the matter has closed ... that applies to electronics too," Seserman said.

There's also the question of continuity and making sure that clients' matters aren't dropped. Sometimes a departing attorney will keep an active case, but other times the firm will have to find "a new home" for the case, Seserman said. "What if a lawyer says, 'I don't want that case to come with me?' Then who's the lawyer? The firm is. You've got to make sure the ball isn't dropped." The firm must notify clients in active litigation that their lawyers have gone elsewhere and what their options are.

### MANAGING THE CREDITORS

When a firm has to close, odds are it doesn't have money to pay off all of its creditors. And that's where the firm has the highest risk of a lawsuit, Seserman said. "Creditors by and large are going to get aggressive."

The lease on office space is often the largest exposure, as firms typically sign expensive multi-year terms. Isaacson Rosenbaum had seven years left on its lease at the time it was shutting down, Seserman said. Law firms try not to sign a lease with a personal guaranty, which would put them on the hook when they break the lease, but most of them end up with guaranties on their lease agreements, he said.

Making the landlord unhappy during liquidation can lead to a host of worst-case scenarios for a law firm because it often has the power to lock a firm out of its office, denying access to files and computers. Could the landlord be liable if a case is about to go to trial, but gets dismissed because it prevented the lawyers from



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accessing their case files? That might be negotiable on the front end, Seserman said.

Many firms sign multi-year terms with office equipment leasing companies, as well, and breaking those leases can likewise bring unexpected issues. A five-year, \$300-a-month lease for printers and copiers, for example, "may very well say ... in the event you stop making payments or otherwise breach, all of the remaining payments are accelerated and you're responsible for shipping the equipment back to [the leasing company]," Seserman said.

The closing firm could have many outstanding balances with smaller vendors besides, owing money to a web developer for work on the website, for example, and may try to prioritize one creditor over another.

Then there's the decision on whether to declare bankruptcy. "It provides a lot of protection on the financial side, but it also costs a lot of money," Seserman noted. Bankruptcy also entails giving up control over the disposition of assets and client files. Gorsuch Kirgis and Isaacson Rosenbaum didn't end up going bankrupt, he added. •

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