EPISODE TRANSCRIPT

Expert Advice for Non-Protocol Moves: What Advisors at Ed Jones and Other Firms Need to Know

A conversation with David Gehn, Partner, Ellenoff Grossman & Schole LLP

Mindy Diamond:

Welcome to the latest episode of our podcast series for financial advisors. Today's episode is expert advice for non-protocol moves, what advisors at Ed Jones and other firms need to know. It's a conversation between Jason Diamond and attorney David Gehn, partner at Ellenoff Grossman & Schole LLP. I'm Mindy Diamond and this is Mindy Diamond on Independence.

Mindy Diamond:

This podcast is available on our website diamond-consultants.com, as well as apple podcasts and other major podcast platforms. If you are not already a subscriber and want to be notified of new show releases, please subscribe right on your favorite podcast platform, or on the episode page on our website. For Apple Podcast users, I'd be grateful if you'd give the show a review. Your input helps us to make the series better and alerts other advisors like you, who may find the content to be relevant. And while you're at it, if you know others who are considering change or simply looking to learn more about the industry landscape, please feel free to share this episode or the series widely.

Mindy Diamond:

One of the greatest concerns advisors have when making a move, particularly those who are transitioning without the protection of protocol, is the fear of legal retribution from their firm. That is the dreaded TRO, or temporary restraining order, which can stop their business dead in its tracks, for it was the protocol for broker recruiting often referred to simply as the protocol that brought a sense of relief to transitioning advisors. The agreement, created in 2004, originally by Smith Barney, Merrill Lynch, and UBS was designed to stave off the common and expensive litigation that occurred when a departing advisor left one firm to join a competitor. Essentially these firms agreed to cease fire of sorts, permitting an advisor to freely leave with a limited amount of client information and actively solicit these clients.

Mindy Diamond:

In 2017, Morgan Stanley and UBS opted out of the protocol, Wells Fargo and Merrill Lynch remain as of this recording, yet there are many other firms that have never been part of the protocol. For example, Edward Jones, a firm that has seen its fair share of departing advisors over the last year, and while advisors leave non-protocol firms each and every day doing so comes with some added risks. So what do advisors from Ed Jones or other non-protocol and protocol firms alike need to consider when making a move? How can they avoid litigation? What's the best next step for these advisors to make? What should advisors be most concerned about? And ultimately how do advisors from Ed Jones and the like position themselves for a successful transition, with the highest level of portability and lowest level of risk?

Expert Advice for Non-Protocol Moves: What Advisors at Ed Jones and Other Firms Need to Know

A conversation with David Gehn, Partner, Ellenoff Grossman & Schole LLP

Mindy Diamond:

In this episode, attorney David Gehn, whose expertise is in representing advisors in transition and who has represented many transitioning Ed Jones advisors, speaks with Jason Diamond in his premier episode as a host on this show. They answer all those questions and more so let's get to it.

Jason Diamond:

Well, David, first of all, thank you so much for joining us once again. Let's dive right in to start with, can you just remind us the role you play at your firm and the types of clients you serve?

David Gehn:

Sure. Thanks for having me, Jason. I run the litigation department at Ellenoff Grossman & Schole. It's about 135 attorney Manhattan-based law firm. The litigation department has 11, soon to be 12 attorneys, in two offices in Midtown New York City, as well as Irvine, California.

Jason Diamond:

Yeah, thank you for that. So you're certainly on the legal front lines, hearing from financial advisors day in and day out, trying to keep their clients calm and informed, especially in these crazy markets. What sorts of questions are they asking you and what advice are you giving them? Or maybe just more broadly, any color you want to share on the industry at large?

David Gehn:

Sure. Well, it's been particularly volatile lately and we remind our financial advisor clients that you show your true stripes and develop the deeper relationships supporting and communicating with clients in rough and volatile times far more than in the good times. You'll remember who that advisor was that helped steward you through the more challenging times. And we're hearing from advisors, in that regard, we're hearing advisors about potential movement, how this could impact movement and quite frankly, a whole range of issues in that regard.

Jason Diamond:

Yeah, I want to talk about that a little bit more because obviously given our target audience and given audience, frankly, all advisors, movement and advisors changing jerseys with great deal of regularity of weight is top of mind. What should advisors who are either contemplating a move in the near term, or maybe just it's tangentially on their mind, what should those advisors be thinking about? Are there landmines that seem to come up? Are there things that should be on every advisor's radar?

David Gehn:

Yeah, two things come to mind, Jason, one is introspection and the other is contractual obligations. The introspection is to really be quite candid with oneself to really analyze and forecast what would be best for the individual and or team in the next X amount of time, What model would fit, what services to provide the client, which direction want to go and how successful they would forecast they will be. The other, of course, is the contractual legal element to see if legally they're likely to succeed in implementing whatever plan they may come up with.

Jason Diamond:

Yeah, the second piece is certainly something I want to come back to, the idea of introspection, because honestly we counsel advisors all the time. I can talk about the industry landscape until I'm blue in the face, but ultimately if an advisor doesn't have a really clear picture of what they're looking to solve for, at least some idea of what they're looking to solve for, I don't know that that conversation around the landscape is really value-additive. So on the topic of moves, I want to dive into the meat of today's conversation. Can you talk a little bit about what it means to make a non-protocol move? Because that's obviously a hot button issue, or sort of a buzzword or buzz term, if you will, that gets thrown around a lot and makes advisors nervous. So can you speak a little bit about a non-protocol move and maybe first define protocol for our audience?

David Gehn:

Sure, I'm happy to. The protocol, in its essence, enables an advisor to move from one protocol firm to another protocol firm and take five categories of information, the name, email, address, account type and telephone number of the clients that were serviced by the advisor at the existing firm. That obviously provides a wonderful opportunity to go contact and solicit clients post-departure. A non-protocol transition by definition, doesn't allow the ability to take such information without concern about being sued post-departure. So it makes the decision making process deeper, because the analysis has to be not only how would I want to move and to where and to what platform, under what circumstances, but of course the successful move is one where clients follow the advisors. And thus the analysis becomes, without the ability to take information, how will I be able to, or the clients be able to, follow me and make that move successful?

Jason Diamond:

And maybe just a quick follow up. Morgan Stanley and UBS obviously made headlines for pulling out of protocol. Are there other firms that you would want to highlight that are not in the protocol?

David Gehn:

Well, sure. And quite familiar was very much on the front lines and dealing and have been dealing with advisors of both organizations since that decision. But Edward Jones historically and institutionally and

by design is not a member of the protocol. So we've been doing in assisting advisors in non-protocol moves, quite frankly, I'll date myself here, but since before the protocol was even enacted and created and of course do so to this day. And it just requires again, the understanding of dos and don'ts and practical thought as to how and what the likelihood of success will be leaving a firm, whether it be Morgan Stanley, UBS, or Ed Jones, to the extent there is a non solicit, a restrictive covenant in place, how you can do that appropriately and of course successfully.

Jason Diamond:

Yeah, it's an interesting point you make, and I always chuckle a little bit when advisors ask if or how they can make a non-protocol transition, because we often remind advisors, as you just did, that protocol is a relatively new construct and there were countless successful transitions. I mean, obviously it was the only way people moved prior to protocol being enacted, so it is certainly not impossible. And I'm curious a little bit later, I'm going to pick your brain on the specifics of what exactly it means to make a non-protocol move.

Jason Diamond:

But before I do that, I want to key in on something else you just mentioned, which is Ed Jones because historically, at least in our experience, and I think the street would agree, Ed Jones advisors were a demographic that was unlikely, or at least reticent or reluctant, to make a move for a lot of reasons, the culture, it was a great place to grow and build your book of business. But we've seen and counseled an increasing and honestly a continually increasing number of these advisors, and I think you have as well. What do you think is driving the uptick in momentum or movement away from Ed Jones?

David Gehn:

Sure. Yeah, we've been working with advisors that have transitioned from Edward Jones for quite some time and have assisted with well over 100, maybe over 200 at this point. And from what I've heard as time has progressed, it's change of culture, change of firm. It's not the same, and that the policies that have been implemented and are continuing to be implemented are antagonistic to the practices of the advisors that I've spoken with. And I could attribute that to many things, but one of the things that folks don't really focus upon is the dramatic growth of Edward Jones in the financial advisor headcount.

David Gehn:

I recall in June 2012, about 10 years ago, Edward Jones publicly proclaimed its intent to grow to 20,000 financial advisors by 2020 .at the time it had about 11,000, so despite the fact that Edward Jones has been around 100 years, it in the last fundamentally 10 projected and desired to almost double its financial advisory head count. And it's up to about 19,000. It's done a really, really good job in that regard, but in connection with that growth, you certainly lose culture and policies and procedures are

implemented to manage the mass, not the few. And those changes over time have had adverse impacts on a certain subset of advisors who have decided to explore alternatives and quite frankly have seen colleagues successfully explore alternatives.

Jason Diamond:

Yeah, that last point is a good one. I'll say a couple things. I think by the way, this is not picking on Jones. It seems to me what you're describing is a firm, any firm that's targeting growth that's good for the firm, but not necessarily good for the advisors. And I'll tell you from our seat, what we're hearing from the Jones advisors, certainly everything you described about the culture and how it's not the same place it once was. Absolutely true, but it feels like it's the upper tier, the higher end of the food chain advisors at Jones that are most adversely impacted by this. And honestly, that's no surprise. I mean, a firm makes a decision to grow from 10,000 advisors to give or take 20,000 or close to 20,000 advisors. You're not going to be able to recruit 10,000 upper tier top of the food chain advisors.

Jason Diamond:

A lot of who you're filling the ranks with are these trainee or junior type of advisors and those advisors now make up the majority of the rank and file at Jones. And honestly they have not, in our experience, taken the view of bifurcating or segmenting the upper tier to create a unique experience for those top of the food chain advisors like some other firms have. So for advisors doing, call it $750,000 or $1 million dollars, plus those seem to be the ones that are moving with the greatest velocity. The advisor who says, "Why am I being managed from a compliance and management perspective the same as the trainee who started two years ago, when I'm doing 2 million in production and I've been with the firm for 20 years?" And the important flip side of that coin is that many advisors have felt that way in the past too, but historically I think they worried a lot about Jones' tendency to be litigious. So maybe I won't beat around the bush, I'll just come right out and ask, will an advisor be sued for leaving Ed Jones?

David Gehn:

The answer to that is, in my experience, which is pretty substantial dealing with Jones advisors, statistically improbable. Does it occur? Rarely, but I wouldn't have it as an impediment towards contemplation of departure if all of the other elements make sense. And quite frankly, if the advisors are well counseled and by the way, whether through us or other competent counsel in this regard, it really minimizes the likelihood of a lawsuit being filed. It's those that aren't well counseled and well prepared that suffer greater exposure.

David Gehn:

And when I discuss the prospective Edward Jones advisor, I think it's a wonderful platform for the majority of advisors. However, for those that I've experienced and worked with, they've just outgrown

the utility of the platform and it becomes disadvantageous to remain so it just makes sense to move along and you can, again, if you understand what you can and can't do, and it makes sense. I wouldn't have litigation concerns preclude me from really contemplating and perhaps moving if it makes sense for all of the other reasons, if it would benefit clients, if it makes sense and the advisor is comfortable.

David Gehn:

One anecdote I could add is that I've had conversations with advisors who almost feel that they're betraying the organization, that they've been around for a while and they almost feel an attachment to the organization. And while I think that's really wonderful for the fact that you've been there and enjoyed the experience, I remind them that Edward Jones has been around before you joined and Edward Jones will be around after you leave. So if you've had a wonderful experience, great, it's just a business decision and try to take the emotion out of it.

Jason Diamond:

Yeah, I certainly agree with that. And I definitely agree with your point about what served you well in the past does not necessarily serve you now or going forward. And that seems to be driving a great deal of movement, is these advisors realizing this was a fantastic place in every way to build and grow my book of business, to cut my teeth in the wealth management world. But my book of business is just not the same that it used to be, the firm is not the same place it used to be, and I've outgrown the model.

David Gehn:

Well, I mean, Edward Jones has grown and prospered and really works for the vast majority of the advisors. However, there's a subset that it just doesn't anymore or not optimally. And that's certainly worthy of an exploration of understanding the benefits and detriments of either remaining or moving. And one thing I should add, Jason, is over the last decade, not being forensic about it, but the technological advancement has made movement for financial advisors in general, wherever it may be, a lot easier and less expensive. So it's more economical and financially advantageous to move and you could get the same, or fundamentally the same or equivalent, support and systems that you'd otherwise have. You don't need to rely upon the larger organizations period, no less, nearly as much as in the past.

Jason Diamond:

Yeah, that makes sense. And honestly, almost every firm on the street has gotten infinitely better at handling transitions and supporting advisors as they transition.

Jason Diamond:

Let me ask you a little bit of a more detailed question about logistically or physically leaving a firm like Jones. And we continue to use Jones as an example, but how do these advisors go about resigning? I

know there's often concerns about who do I resign to, is there a script I follow? Can you talk a little bit about that or things they should or should not say, and what that looks like?

David Gehn:

Sure. And again, this fundamentally goes to the legal side, as opposed to the introspective decision-making side. You're an employee at will, meaning you can leave at any time, the organization can relieve you of your duties at any time for any reason, so that's easy. Departure can occur. However, what you are generally prohibited from is soliciting clients and soliciting employees. So legally you are precluded from soliciting, for example, a BOA. Now, is it likely a claim or a lawsuit is going to be filed over such, as we lawyers would call it, a breach of contract? No, because a BOA represents a cost item, not a revenue item. So quite frankly, if a BOA leaves, it reduces cost for the organization. However, that's a legal preclusion. We always inform prospective advisors of that.

David Gehn:

However, it's not unusual that information is provided and we always suggest less is far better than more because, and of course not to solicit. And it's quite frankly for the protection of the BOA, as well as the advisor, so that if an issue arises in the future, the BOA could truthfully say if asked, "What did you know and when?" "Nothing," or, "I found out morning of." As opposed to saying, "Oh, we met at the diner every Sunday for eight months leading up to the departure and texted one another night and day about it." So it would be both in the interest of the BOA and the advisor to fundamentally say nothing. And quite frankly, in form of the departure, the time of the departure, and to the extent there's a loyalty of BOA to advisor, the BOA would say, "Well, you're going in some in substance. Can I join you," which is of course not a solicitation. And then that conversation could flow at that point.

Jason Diamond:

Got it. Yeah, I think that's probably similar a little bit to how it would work handling it on the client side. So can you tell me...? Pretend I'm the manager and you're the advisor. Run me through the script. What does it sound like? I go to resign from Ed Jones when push comes to shove, what do I say? Or maybe the better way to phrase it is, what should I not say?

David Gehn:

There's an acronym that I think most of us learned at some point in the educational process, KISS, keep it simple, silly. And that's what we recommend with resignation letters. Keep it simple. "Effective immediately, I hereby resign from my position as blank at blank." Now we also include forwarding information. There was a notice to members issued by FINRA, MTM, or regulatory notice as they're called now, 1910, which reminds member firms of the obligation, if an advisor leaves, to provide contact information if requested by a client post-departure. So we certainly make reference to that and put

forwarding contact information in. And we suggest just go in head held high and very brief, because you've made a decision. You're off to a new endeavor and focus your energies moving forward and keep your resignation factual.

Jason Diamond:

That's really sage advice. And I'm thinking from the perspective of an advisor, a Jones advisor, I've spent 25 years or my whole career at Ed Jones. And you spoke a little earlier about what does it mean to make a non-protocol move, not being able to even take those five pretty basic pieces of information with you. That must be terrifying. I mean, that's a scary proposition for anybody, whether or not you're somebody you've spent your entire career at Jones or not. I mean, the sort of gathering thoughtful information on clients, how do you go about that? Is there information you can or cannot take? And how do you retain clients not being able to take your so-called protocol list with you?

David Gehn:

Absolutely no script. This goes towards the introspection part because Diamond Consultants could do the best job explaining the landscape and assisting with the decision making process. I, as an attorney could go through the depth of my experience, review contracts and give legal advice. And of course, whichever firm that will be receiving the advisor can do its best to support the advisor in connection with a smooth move and getting up and going. What none of us have the ability to do is forecast whether a client will decide to remain or if a client will decide to leave. So the introspection part is, and we do a lot of work with it, it's one of the larger pieces that we work with advisors when we counsel on transitioning is contemplating and strategizing how the client may move, how you could get the information out.

David Gehn:

And we do that with a holistic view of what is your book? What are the components of the book? How many households are in the book? Where are they geographically located? What are your relationships with your clients? How do you service them, is it telephonic, in person, in office, in home? How did you generate those clients? Did you bring them to your current firm where there's no legal claim to the extent that you departed that firm with the relationship you brought? Do you have centers of influence, whether it be through other professionals or family members, accountants, attorneys that you have mutual client relationships with? Are you a member of the rotary, the school board, temple, church?

David Gehn:

And based upon a holistic analysis, you can generally determine, and of course, length of service, length of relationships, strength of relationship, how to go about hopefully being in a position where you could communicate with them and basically based upon the fact that you moved, the trust and loyalty will

trigger immediately and then that client will indicate that desire to move, without a solicitation but just a communication of fact of the departure and a decision by client to move. That's a time consuming process.

Jason Diamond:

No question. And what you're describing is the business or professional introspection. There's also a personal introspection that has to take place, probably even before that, which is, do I really want this? Because any transition, protocol or not, Ed Jones or not, I mean, we tell advisors all the time, a transition is a lot of work. Moving is a hassle and staying put is the path of least resistance. So there's no question that this introspection piece is not just, is my book portable, are my clients going to follow me, and what's that going to look like? Of course that's critical, but it's also, do I have this in me, or am I cut out for this? And the flip side to that is your point from earlier, which is that firms have gotten infinitely better at supporting transitions and counseling advisors on transitions.

David Gehn:

When it comes to protocol, Jason, the protocol is a benefit, but the lack of protocol shouldn't be a barrier because fundamentally the protocol just makes it easier. However, the client relationship with the advisor is strong. You don't need the protocol. They're going to move. Again, it's one less arrow in your quiver, but it should far from have a preclusive effect.

Jason Diamond:

Well said. So we're talking now assuming as happens most of the time, and I certainly agree with you in our experience, probably 99 times out of 100, these transitions go smoothly and there's really no issues to solve for. But ultimately a worry that a lot of advisors have is, let's just assume for argument's sake, things go wrong. Can you talk a little bit about the dreaded TRO? What does it mean and how likely is it that an advisor would receive a TRO, or have a TRO filed against them?

David Gehn:

Sure. And I agree wholeheartedly with your predicate. I describe a move often as you don't want to steal defeat from the jaws of victory. The statistical likelihood and probability, if you are responsible and you're well counseled and well prepared and well thought, if you've thought your process out well, is you're going to be successful. The risk, however, of failure is great, because it could be institutional. This is the business you've serviced that you're looking to port. So if it's not done with great care and appropriately, it could be jeopardized. So whereas the likelihood of success is great, the risk and the impact of loss is also great. So a TRO if filed would be an action filed in court by the firm to seek a temporary restraining order. And that effectively, if ordered by a court, could shill client movement, it

could have a preclusive effect, minimally short term. And quite frankly, not only could it have the preclusive of impact, but it could be quite costly too in the context of litigation.

David Gehn:

And then of course, if an arbitration is filed, which it would have to be filed simultaneously with that court application, that too could be costly. And oftentimes when I speak with advisors, they think of it merely in terms of, oh, there's going to be legal cost, which there certainly will be. However, there also may be a cost if you go to a hearing and lose and or if there's a settlement. So again, the costs can be an impact, could be dramatic. However, if well-planned and well-thought through, then the likelihood of that happening is really insignificant.

Jason Diamond:

Okay, so my client calls me. I don't want to run abreast of my non-solicit, but my client calls me and said, "I heard through the grapevine, you've left Ed Jones." What does my response to that sound like?

David Gehn:

If the client calls the advisor, then the answer would be, "Yeah, I did." And then the likelihood is there'll be a follow-up question. The conversation wouldn't just end, "Oh, thanks." Click. It would likely be followed by... and I've actually started to use this analogy or comp to the game show where they would say, you'd ask a question and then you'd have your top four or five answers. And the survey said, and the likelihood's going to be, "What happened?" Family Feud. I blanked out on the name. And then top answer, "Oh, where did you go?" Number two answer. "Can I join you?" So there's likely going to be a conversation that will flow. And again, to the extent that the client determines that 'I want to join', you didn't solicit. And what we do with advisors that we work with is we suggest obtaining semi customized attestations signed by the clients, briefly memorializing and describing the circumstances that led to the movement of the account and the decision of the client to move their money and have it managed by the advisor.

Jason Diamond:

All right. So that's the sort of detail side of it, the 'how', if you will. I want to talk now about what does success look like. I mean, obviously success in a transition is based upon transitioning over assets, whether that's 100% of assets in whatever period of time, or whatever percentage of assets you deem to be a success. But maybe just venture some examples. You obviously don't have to use names of course, but when you're seeing these advisors leave successfully, where are they going and can you talk a little bit about some of the successful transition you personally have worked on?

David Gehn:

Sure. Quite frankly, I would flip that and say we really haven't had an unsuccessful transition in quite some time. And again, I don't define it in terms of 100% client retention. We discuss with all advisors pre-departure that don't expect it. It's unusual. There isn't a surprise where you think someone would most certainly decide to move with you and they don't, but we also discuss what would be a successful transition. Oftentimes, and again, just use Edward Jones as an example, the Edward Jones platform, I kind of refer to it as there's no client too small. Thus, oftentimes Jones advisors, more than others that I work with, it's not unusual that when I speak with them, the amount of households they're servicing could be staggered, hundreds and hundreds and hundreds. And a lot of which are smaller accounts, which to me create potential liability without necessarily profitability, because it's a drag on resource. There's only, in my opinion, so many accounts that you can expend appropriate time servicing.

David Gehn:

And oftentimes advisors like to shed some households. So they're not even looking to move 100% of their book. They'd be pleased to move X, whatever that definition, 70%, 80%. Of course it's, which households move? That's the far more impacting question. And if you move a good majority of your most valued relationships, which most do, and again, if you introspect and you think it through, that's likely to occur and you'll have a very satisfactory move.

Jason Diamond:

Totally agree. And this concept of shrink to grow is a critical one. You're absolutely right, especially when we're talking with Jones advisors who seem to have, in some cases, upwards of 1000 accounts. So you said it better than I did. It's not that we define a successful transition as 100% portability. I think you hit the nail on the head. But can you talk a little bit about specifics, some examples, where are these advisors going? I certainly know there's not one blanket answer, but maybe you could offer a few representative examples.

David Gehn:

Sure. I've seen a lot of movement and I've been... I'll date myself, but I'm going on my 30th year of practicing law. And I've seen a move towards independence over time, get greater and greater and starting a little bit more than 10 years ago, there was a significant movement from the traditional model to the independent model. And now that's even going a little bit, one step further and going towards the RIA model. And it's just the independence, again whether it be RIA or independent broker dealer, offers a lot of solutions to financial advisory practices right now. It gives greater flexibility to the advisor, greater autonomy to the advisor, greater payout to the advisor and the technology and support systems are available pretty seamless. So again, paying 50% or 60% to the house, old school for services that can be obtained for a lot less, and having less compliance issues regarding the running of one's practice are quite appealing.

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Jason Diamond:

It's funny to me that you say that. I completely agree by the way. Your commentary is spot on that most Jones advisors, if not pulling the trigger and moving to independence are at least curious about independence. They're at least asking the question and there's certainly still some that are looking at more traditional employee options, like regional firms, like a Raymond James, or even potentially a wirehouse. But you're absolutely right that the lion share of them seem to be moving towards independence.

Jason Diamond:

The reason I say that's funny to me is because historically, a non-protocol advisor, take a private banker for instance, which is sort of the classic non-protocol advisor, it was the least likely subset of advisors to consider independence. It was expensive. It was the biggest leap. It probably carried the most risk. So it's odd to me that so many Jones advisors are making that move given it's non-protocol. Why do you think that is? And are there any special considerations that go along with a move to independence as a non-protocol advisor?

David Gehn:

Sure. It's a complex answer, but fundamentally and institutionally, a Jones advisory practice is a paradigm for an independent model practice. You're acting in a lot of ways independently, yet subject to the large organizations, supervision and compliance policies, which have been getting, from what I understand, more and more onerous as the organization has grown. Yet to flip that switch, it's also been a great training ground for an independent practice so that fundamentally, of course, you're changing signage and whatnot, but you'll have your own office. You'll have your own space. You'll run your practice. Of course, it'll be under a different umbrella.

David Gehn:

And again, the protocol, non-protocol issue, I think it's a red herring because if you are a mature advisor with deep relationships, the clients are going to move and you will have the services. And firms are also cognizant of the fears of the move and they support the advisors in connection with the move, to the extent that some unfortunate litigation type circumstance would occur. And again, seeing success and just all gravitates towards minimally exploration. And quite frankly, it's not for everyone. Some people explore it and decide, I'm uncomfortable where I am. But it is a natural next step, particularly in, again, within the Jones model, for those advisors who've achieved a certain level of success. The policies are almost disadvantageous to further growth within its system and again, enable for a nice platform transition. And again, the independent model just seems like a natural next step.

Jason Diamond:

Smart commentary, because you're exactly right. They're already set up as sort of a more autonomous or independent workforce than say a wirehouse advisor, as an example. They're not in the traditional branch or team construct. So I think that's a really, really good point. And certainly we're seeing that play out. It's not that every advisor is going to move to independence and this is true industry-wide, not specific to Jones. There's no question. There's been a legitimization of the independence space with more and more top teams heading in that direction. Almost every advisor we speak with, even if they know for a fact, "Look, independence is not for me. I'm not entrepreneurial. I need the brand. I need the scaffolding and support of a traditional broker dealer." Almost every advisor at least wants to hear about independence. So it's not surprising that we're seeing that play out and it sounds like you are as well.

Jason Diamond:

Let me ask you two more questions. First, can you share any best practices for an advisor who's not yet there, but knows they have a move in them at some point in the future? Like, is there a way to get your ducks in a row as you think about your future and how things are going to play out, how you should be conducting yourself beyond the, obviously, the number one rule, which is don't tip your hand. Anything else you'd offer?

David Gehn:

Yeah, I would say three things that come right to mind, don't be emotional, which is difficult, that's why you get counsel. And again, doesn't necessarily have to be legal counsel per se. Get counsel from Diamond Consultants. Just have an objective sounding board, common sense and business as usual. Because again, if your relationships are strong and you vetted your decision, wherever it may be, you'll succeed. Preparation, preparation.

David Gehn:

And I've used this example. I've actually spoken on the topic about you Usain Bolt, formerly the world's fastest man. The only thing that beat Usain Bolt was himself with a false start. Don't do a false start. If you need a false start, that could be self defeated. When I see issues arise, it's because people get too nervous and they just act in a manner inconsistent, A, with advice, but also with common sense and they create their own issues.

David Gehn:

Organizations know it's client choice. Period, end of sentence, hard stop. And if the client chooses to move, all the organizations know that's risk. By the way, people also forget, whether it's Ed Jones, Morgan Stanley, or anywhere, they don't own the assets within the account. Those are the clients' funds. They own the account number associated, the data. And if a client says, "I have X amount of

funds within my account and I want..." They could move it today with the advisor they're currently working with, they could move it tomorrow. It's their money and if the client chooses to move their money, it's client choice.

Jason Diamond:

Yeah, absolutely. I think you said it to me, it might have been offline, that the courts have certainly take that approach or that view as well. And I love what you said about common sense because so much of what we spoke about today, and of course no offense, but even without a law degree, so much of what we spoke about could be solved with just simple common sense. I mean, you see these headlines in AdvisorHub and they're intended to be scary. They're intended to be calling people out who broke the rules and who did things the wrong way. It's the firm's way of saying, "Look, this is what could happen to you." But this common sense approach, I think solves for a lot of that. And if you do things the right way, we certainly agree, there's every reason in the world that you should be successful and shouldn't have to deal with these potential legal landmines that we laid out.

David Gehn:

The best decisions made are objective, unemotional decisions. Shakespeare wrote centuries ago that an attorney represents himself or herself as a fool for a client. It doesn't mean that it's a bad attorney. It just means you need objective advice and because you're involved in that circumstances, you are subjective and emotional by definition. And in connection with a move, which is inherently emotional, you're moving your business, you're at a place of employment. There's all kinds of anxiety and fears that naturally arise. Get objective advice to ensure that you keep common sense and objectivity in connection with that move. Then you'll be fine.

Jason Diamond:

Let me ask you one more question in closing and then I'll let you go. Obviously, no surprise, Ed Jones or not, there's been a lot of movement across the street. Do you think the leaders of the big brokerage firms like Jones have anything up their sleeves to retain talent? Or maybe another way I'd ask the question is, should the 100th advisor who's going to leave be more worried than the first advisor who left?

David Gehn:

I don't think so because the organizations know what's happened. I mean, it's data driven. And if there was a decision that a certain percentile, or a certain group or profile of advisors are leaving, they could make a decision to attempt to address it and remediate it and preclude it or not. And again, in particular with the Jones, it's understanding that... by the way, it recruits in two. It's not just a one-way street and it recognizes that advisors come, advisors go. Net the number headcount way up and their assets and

revenues way up. And people also get caught up within themselves and their own lives and their own circumstances, yet that's in a vacuum because in the larger context, if 1, 2, 5, 10, 50, or even 100 advisors leave out of 19,000, it's not cataclysmic. It's cost of doing business and they'll be replaced along the way. So I think firms are generally aware of market trends and certainly they'll make decisions accordingly. And again, if there's a decision that they want to address a certain subset, they will.

Jason Diamond:

I just want to extend, once again, a heartfelt thank you. This has been incredibly smart and important commentary, I think not just for Jones advisors, but for really all advisors, some really great advice. So appreciate your time. And you are welcome anytime.

David Gehn:

My pleasure, Jason. Anytime. Happy to have this chat,

Mindy Diamond:

They say that bad news always hits the headlines first and while occasional news of an advisor who was slapped with a TRO serves as a cautionary tale, the reality is that many more successful moves are made by advisors each and every day, which never make the headlines. Ultimately, following the advice of legal counsel is key to any successful move, from protocol and non-protocol firms alike. I thank you for listening and I encourage you to visit our website diamond-consultants.com and click on the tools and resources link for valuable content. You'll also find a link to subscribe for regular updates to the series. And if you're not a recipient of our weekly email, Perspectives for Advisors, click on the articles link to browse recent topics. These written pieces are an ideal way of staying informed about what's going on in the wealth management space without expending the energy that full on exploration requires.

Mindy Diamond:

You can feel free to email or call me if you have specific questions, I can be reached at 973-476-8578, which is my cell, or my email mdiamond@diamond-consultants.com. Please note that all requests are handled with complete discretion and confidentiality and keep in mind that our services are available without cost to the advisor. You can see our website for more information. And again, if you enjoyed this episode, please feel free to share it with a colleague who might benefit from its content. If you're listening on the Apple Podcast app, I'd be grateful if you gave it a star rating and a review. It will let other advisors know it's a show worth their time to listen to. This is Mindy Diamond on Independence.