EPISODE TRANSCRIPT

Buying, Selling, or Transitioning Your Business: An Attorney's Advice

A conversation with Corey Kupfer, Attorney, Deal-maker, Speaker, and Author.

Mindy Diamond:

Welcome to the latest episode of our podcast series for financial advisors. Today's episode is Buying, Selling, or Transitioning Your Business: An Attorney's Advice. It's a conversation with Attorney, Deal-maker, Speaker, and Author Corey Kupfer. I'm Mindy Diamond, and this is the Diamond Podcast for Financial Advisors. This podcast is designed for advisors like you who are interested in learning more about the evolving wealth management industry through candid dialogue with breakaway advisors, those from the C-suite and industry thought leaders. It's available on our website, diamond-consultants.com, as well as Apple Podcasts and other major podcast platforms. So be sure to subscribe and share it with your colleagues.

At Diamond Consultants, our mission is to help advisors live their best business life. We want every elite advisor to find exactly the right place for their business and their clients to thrive. Whether it's at a wirehouse, a regional, boutique, or independent firm. As the industry's leading recruiters and consultants, we've transitioned more than a quarter of a trillion dollars in assets under management in the past decade. Each year, 25% of transitioning advisors who manage a billion dollars or more are our clients. Curious about where, why, and how advisors like you are moving? Download the latest advisor transition report to learn more, including intel on recruiting deals and our insight and analysis on the latest trends in the wealth management space. You'll find it at diamond-consultants.com/transitionreport. Or if you'd like to talk, feel free to give us a call at 908-879-1002.

It's not easy to consider change. The psychological toll alone is enough to deter most advisors from making what could be a step to greater success. Then tack on all of the more physical and time-consuming requirements such as conducting due diligence, planning the move, advising team members, and preparing client messaging for when it's all said and done. This is exactly why recruiting and consulting firms like ours exist to help advisors manage all the details from education to decision making to deal making and beyond. But let's not forget dotting all the I's and crossing the T's to ensure you're coloring in the lines when it comes to any and all employment agreements that are in place with your current firm.

That's where lawyers who are experienced in securities law and advisor transitions come into play. They identify the proper path for advisors to follow throughout the course of their transitions to ensure the process during and after is as smooth as possible and avoids repercussions from your firm. Corey Kupfer is one such lawyer who lives and breathes in this arena. So we asked him to join us today to share with my partner Louis Diamond what advisors need to know when considering a transition, M&A and other transactions along the way. There's a lot to discuss, so I'll let Louis get to it.

Louis Diamond:

Corey, thank you so much for spending time with us today.

Buying, Selling, or Transitioning Your Business: An Attorney’s Advice

A conversation with Corey Kupfer, Attorney, Deal-maker, Speaker, and Author.

Corey Kupfer:

I'm excited to be here. Thanks, Louis.

Louis Diamond:

To start, why don't you tell us a little bit about your background and how you became an attorney and one focused on the wealth management space in the first place.

Corey Kupfer:

Well, it's interesting. I think most attorneys who are reasonably smart people get done with college, and it’s , "Do I do an MBA or do I do law school?" That's how a lot of people end up. But I was in this special Law, Politics and Community Affairs program at Tilden High School in Brooklyn, which my parents encouraged me to do. I wasn't a very forward-looking kid, so I thank God for them. And we did nothing like I do now, but we visited courtrooms and we had mock presidential elections and mock trials, and that had me believe that I wanted to be a lawyer even going into college. I went into college thinking that I wanted to go to law school, and I ended up doing that.

In terms of the wealth management space, it's interesting, I've been doing this for over 38 years, and it was about 25 years ago that I got into the space. I had my advisor who was leaving, I guess we would now call it breaking away, but back then it wasn't really such a breakaway movement coming out of US Trust, and we did an exit deal or a monetization deal about a year ago. So it was a nice full circle moment after 25 years. And he reminds me that I actually helped him carry his boxes out of US Trust, which is a service I have not provided any of the other advisors since then.

Louis Diamond:

Love it. With that transition, you just found that you enjoyed that type of work or you saw a broader need that you thought wasn't being filled the way that it should be?

Corey Kupfer:

Even outside the industry previously, and now we have clients outside the industry, although this is by far our biggest single sector, we tend to work with entrepreneurs; people starting businesses, growing businesses. I like people like that who have a vision, who think there's a better way to do it than when they were an employee, who create jobs, who serve people. That's always been my niche. And obviously as the independent advisor movement has grown and more and more entrepreneurship has happened, it's just a natural area, and we started out with some clients in the industry and then did more and more of it, and it's just become a place we've been known, and it satisfies that itch. Like I said, outside the industry, we represent the same kind of people in different businesses, but this move to independence is just so aligned with what I love to do.

Buying, Selling, or Transitioning Your Business: An Attorney's Advice

A conversation with Corey Kupfer, Attorney, Deal-maker, Speaker, and Author.

Louis Diamond:

It seems similar to how I think we've seen a massive growth within the independent wealth management channel in particular where smart people like you saw that there was a movement happening. And to us, a big reason why we've seen this breakaway movement flourish is because of support partners like yourselves, folks that can help support advisors who want to break away for the first time and want to run a business. So thank you from the industry for playing a big part in helping folks find their dream of becoming entrepreneurs. So let's pivot then to specifically your role today. Can you explain, you mentioned the entrepreneurial clients, but the typical lines of business that you're in and the ways in which your firm most often engages with your wealth management clients?

Corey Kupfer:

Yeah. So for many of those clients, certainly the ones that are breaking away, we start with handling their employment transition. How do they get out of the wirehouse, bank, insurance company, whatever it is, without getting sued? What do their agreements say? What do the state laws say? How do they not breach the duty of loyalty? All that kind of stuff. And that's an area where frankly there's only a handful of firms in the country, but there are several others that have done hundreds and thousands of these kind of transitions. So it's us and a handful of other firms that do that, have become known for that. The thing that distinguishes us from pretty much all the other firms that have done that portion of it, the employment transition for the breakaways at the volume we do it, is that pretty much all those other firms are mainly regulatory compliance firms in terms of what else they do for advisors.

Now, I'm not saying they don't have some additional corporate and contractual capacity, but it's not their main thing. We do no regulatory compliance work whatsoever. We partner with some of the top regulatory compliance firms out there on these breakaways and then what our strength is and what our niche is that we're very strong in terms of corporate and capital entity structuring. So as the teams have become much more sophisticated, as time has gone on, they're coming out with much more complex capital structures, corporate structures, equity structures that maybe they even have a capital partner from day one, then they are in growth mode. The difference from 20 something years ago was more of a practice mentality. Now bigger teams are coming out and, they're like, "Okay, we'll get settled in for six months or a year maybe, but we're looking to grow, and we're structuring from day one."

So then we do all of their structuring, all their contract work, all their agreements, and we're structuring them from the beginning for growth. So maybe they need a different equity class if that's part of their model or a phantom equity plan or whatever it is. And then we do a lot of the deal work. So I'm not saying that there's nobody else, but I don't know of anybody who does more M&A work in this space from the sell side. And we do buy side as well. But other than the big law firms that are representing the private equity backed acquirers that are doing many

deals on the buy side, I don't know anybody else who does more M&A in the space than we do. So we're much more focused on the corporate capital structuring and deal side and growth side and the eventual exit side for our clients, and that's what distinguishes us.

Louis Diamond:

So let's double click into those two main areas. First, the advisor transitions or employment transitions, and then the second one is the sell side M&A work that you're doing for clients looking to transact their practice. So on the advisor transition side, what does the typical engagement look like for you as far as the type of work that you're doing? So you mentioned setting up the legal entity and structuring the business, but at what point do advisors typically come to you, and then what specifically are you doing for them or helping them with?

Corey Kupfer:

Sure. They usually come relatively early on because the biggest first thing they usually want to figure out is, how do I get out of here without getting sued? What's the strategy? What am I allowed to do? What am I not allowed to do? Can I solicit clients or do I have to pursue what we call a non-solicitation strategy? Can I take information, and if so, what kind of client contact information or data or not? So that's usually pretty early on because we get referred in from the custodians, consulting partners, we get referred in from people like you, and that's often pretty early on. Once an advisor has decided that they want or at least seriously considering making some sort of move, that's often the entree on the breakaway side. Then, yes, we're setting up their entities. We're incubating, meaning that while advisors are employed, they don't want to have an outside business activity. They can't own an entity, so we own it for them through a holding company and transfer ownership to them when they leave. And we set up that entity in terms of its corporate capital structuring, any agreements they need in place, IAR agreements for employed advisors, sub-advisor agreements, anything they need, and then also obviously the client agreements.

And then also we do all the ancillary work they did around that. So we do trademark work for their branding. If they're signing a lease, we do leasing. We do any of the corporate contract work they need. And then we also have a service that's related to that because one of the issues that comes up. Some of the vendors who are industry knowledgeable, the custodians, some of the tech vendors, whatever, will pre-negotiate everything and you won't have to sign it until after you resign. Folks like landlords certainly and web designers and furniture delivery people, whatever, they're not necessarily going to say, "Oh, yeah, we'll give you the space, but you don't have to sign the lease until you leave." So we will sign leases and contracts into that entity that we're incubating for them, and that's part of the service that we provide so that they really have a fully turnkey operating entity in the moment they resign.

Louis Diamond:

It seems like they're all services that anyone considering change should be interested in making sure that they're following expert legal guidance so that they're not sued and they can avoid the dreaded TRO, but certainly if someone's breaking away, you mentioned eight to 10 different activities that someone has to do differently than if they're just going from one wirehouse to another wirehouse, and it's a lot of things that you wouldn't necessarily think of. So I see why there's a need for your services for all types of advisors, but especially for breakaways. I'm curious, you mentioned setting up the strategy for either a transition where someone can solicit, meaning it's a protocol transition or it's a non-solicit, meaning a non-protocol transition. I'm most curious about the non-protocol side. If you're able to, and I know every situation's different and you're not going to give a non-customized approach to each client, but typically if someone is doing a non-protocol move, so they're leaving from Morgan Stanley or UBS or Goldman Sachs or JP Morgan private bank, what does that strategy look like, and how's that different than if they can freely solicit clients?

Corey Kupfer:

You're right, even within those four employers that you mentioned, there are differences, especially with UBS. And I don't want to make a blanket statement here, please, you need to get your own legal advice and check your agreements and see if there's any exceptions, but in general, even though UBS is off the protocol, in most cases, as long as you pay back your notes, you can still solicit for UBS advisors. You can't take any information. Whereas the Morgan Stanley's, the Goldman Sachs, JP Morgan, they're all going to enforce non-solicits. So there's even differences within that. And then there's differences within state law. For example, if you are an advisor in California, it's not total get out of jail free, but California hates enforcing non-solicit provisions for employees. So you got to look state by state, really you have to take a look at the agreements.

But with all those caveats, the fundamental non-solicit strategy is that you cannot actively solicit clients, meaning you can't ask for business, you can't do that on direct phone calls. You can't do that via email. You can't even put out something general that says, "Hey, old clients, I'd love your business." However, one of the great things from the advisor point of view in this industry was that this is a relationship business, and for most of our clients, they have such strong relationships with their clients that their clients will seek them out. So let's start there. I mean, the first thing is, and especially nowadays that clients have advisor's cell phones and other ways to get to them, not to mention how easy it is to find people from publicly available databases, some portion of clients are going to seek you out if you're an advisor who can't solicit. Especially because your former employer of the wirehouse, the bank, whoever it is, will need to tell the clients that you're gone and that someone else is taking over your account. So that will trigger a lot of the clients to reach out. So let's start there.

Then there are a host of non-solicitation strategies, whether it's posting up on social media without solicitation language, what we call tombstone advertisements. There's something called

an oral tombstone or a goodbye call which could increase your risk and is a little different state by state and firm by firm. It's sometimes possible to call clients without asking for their business, but just letting them know that you've left. And, again, you want to evaluate that in detail depending upon what your agreements say, what state you're in. But the bottom line is you're doing a bunch of things that are not asking clients for business to make sure those clients know that you are out there, that you haven't just disappeared into a black hole, that you're actually operating in a different capacity, whether it's fully independent or at your new corporate RIA firm, whatever it is.

And our clients are very successful. At the private banks, it's a lower percentage just because of the ties like lending and trust and stuff like that that clients may have, but people still do pretty well. But out of the wirehouses, the percentage of clients that people take is significantly high.

Louis Diamond:

Do you see a major difference between facilitating a wirehouse protocol transition, meaning where the advisor can freely solicit versus a non-protocol transition where they have to create their own non-solicitation strategy?

Corey Kupfer:

Obviously the strategy is different, but I will tell you the results at the end of the day in terms of the percentage of AUM, client revenue, however you want to look at it, that come with them is really not that different. People who don't know the industry might think it would be a huge difference between being able to solicit and not. But the non-solicitation strategies are so successful these days, again, just because of the client relationships and because it's so easy to get word out there. I mean, there are exceptions if you have elderly clients who are not online, but I would say the success rates are shockingly similar, just the methodology needs to be different if you're talking about especially coming out of the wirehouses,

Louis Diamond:

And honestly from our standpoint as well, it's a very similar result between protocol and non-protocol. It's just a little bit more work, and you have to get more uncomfortable with being uncomfortable if it's a non-solicitation strategy than if you're part of protocol. But typically our message is if protocol or non protocol that shouldn't impact your decision to move or even necessarily what firm you go to, it's more so checking your motivations, making sure you're doing things for the right reasons, et cetera, et cetera. But typically just the fact that you're in protocol or not does not impact portability from what we've seen, and it shouldn't impact an advisor's thinking around whether they're in the right place for their clients.

Since we're talking about non-solicitations, I'm curious to hear your take on a hot topic right now, which is the FTC, and I know New York State and California have had cases as well where the FTC is trying to, in essence, ban the use of non-competes. So I'm curious with just

understanding that potential move, how do you think it's going to impact the overall industry, and do you think that a typical financial advisor is going to be impacted positively or negatively if the FTC moved on this action?

Corey Kupfer:

Yeah, so it's interesting. If you look at what the FTC specifically is doing or proposing, it relates much more to truly non-compete. Let's make a distinction. There's non-competes, there's non-solicits. Those are two different things. People use those terms interchangeably sometimes or refer to non-solicits as non-competes. But non-compete really means that you just can't be in the industry, period. You can't work in the industry even if you don't solicit clients or you can't work in a particular subset or a particular geography, even if you don't solicit clients. A non-solicitation means you can't solicit clients. In general, even before any of these changes, non-competes for employees are much, much harder to enforce across the country than non-solicits.

And the FTC action is really much more directed at non-competes and is trying to protect, frankly, employees that have less bargaining power. So I don't think if you parse through the FTC thing that particularly is going to have a huge impact on advisors. However, and this is important, the trend in the movement generally, whether it's in state laws, Massachusetts has a law within the last couple of years, Colorado has a law, the trend is definitely along those same lines as what the FTC is looking into, which is to be less inclined to enforce non-competes, non-solicits, any kind of restrictive covenants. It's against restrictive covenants. So that trend is definitely going to continue to impact the industry.

And in a way, from the breakaway side, it's only positive because it makes it more and more difficult. I mean, the states are moving more towards the California model. Interestingly, of course, we're on both sides of this because we handle breakaways, whether they're going fully independent or joining a corporate RIA or another platform on the exit side right out of the wirehouses or banks and insurance companies, et cetera. But as the industry's matured, of course, we have so many clients that are in the independent space and now many more breakaways from those firms, which you didn't see in the early days because it was too early. So it makes it more difficult for our RIA clients to enforce these restrictions against people that may leave them. So it's two-sided in the industry.

Louis Diamond:

It's very interesting. I never thought about the double-edged sword where maybe on one hand it's easier for you to depart your current employer to set up your own independent firm. But then on the flip side, if you're building an enterprise and you have talented advisors, it might be harder to hold onto those advisors if there's an action where non-competes or non-solicits are weakened.

Corey Kupfer:

Listen, I have some clients where we've really delved into this a lot on that side, especially the ones where they have a model where they're really training up. You're not just bringing in advisors that have books of business already, but you're training them up from being younger advisors and maybe you have a really strong marketing program that's helping bring in business for them. And so basically between the training and the marketing, you're making a career for them. I have one client who talks about, "Hey, we build these million dollar revenue advisors, and then suddenly they want to leave us." And you look at whether, well, is that really fair? I mean, you've invested in them, you've handed them this business, and should they leave? But listen, fair or not, whatever the state law is going to be, it's applicable it's going to be, and you got to deal with it in the best way you can.

Louis Diamond:

Thank you for sharing that perspective. Let's pivot then to mergers and acquisitions, which is the other major segment of your business. So what are the ways that you help a practice or a firm that's looking to sell? You mentioned you're on the sell side. How do you help them, and what are the reasons why someone is looking to sell their business should engage an attorney, whether it's you or one of your competitors?

Corey Kupfer:

Sure. And just to be clear, we do a lot on the buy side as well because a lot of our firms are looking to grow and do acquisitions to tuck in. So we have also been brought in specifically to represent some of the bigger acquirers, especially on something we could talk about, which is personal goodwill deals, which is a really interesting development in the industry. But let's talk about the sell side first. So on the sell side, to answer your question, first of all, we have a maturing industry. So in the early days there wasn't a lot of deal activity. Nobody was looking to sell. People were just getting started and figuring out the industry. And you also didn't have, as you alluded to, not only with firms like mine, but there's all kinds of infrastructure and an ecosystem that helps independent firms now, right? Practice management, compensation consulting, obviously all the technology, all that stuff. So there's much more of an ability to grow to the point where you become attractive to buyers.

Plus, of course, the huge difference is the capital that's come into the space. I talk about this, it was only a dozen years ago or so where there was barely any lending in the space. Forget private equity, and now private equity is coming significantly. So what's happened? The valuations have gone up significantly, the multiples have gone up significantly, and there are many more choices. And similar to the wirehouse advisors and others who are getting approached all the time by the BDOs at the custodians telling them, "Hey, there's a better way for you. You can leave the wirehouse and become independent." These firms are getting solicited all the time by the aggregators and integrators and the PE back buyers and all those folks.

So what has happened? Firms are reevaluating. I mean, I'll just give you one example, which has become pretty typical. I had a client who we did a deal for him last year, and I had spoken to him the year before and I said, "Hey, where are things at?" I keep up with the clients in terms of what their vision is. And he said, "Yeah, listen, I think I got a good five, seven years left in me. I want to continue to build this thing. Maybe I'll exit at that point." And then a year later I get a call from him, and he said, "Hey, look, Corey, I think we're going to sell. We got some buyers coming at us. What investment banker should we work with?" And I said, "What's the change?" And he said, "Listen, I've got to be honest with you. I can't pass up these numbers. It's just too much money. Who knows how long this is going to go, and that's a lot of money I can take off the table."

And in his case in particular, he wasn't disappearing in the sunset. He was going to roll into and have an ongoing role in his acquirer. So that's a big thing that's happened. Frankly, just the numbers become too compelling. And then also the value proposition of some of these models. And it's interesting for the folks that have left wirehouses because they're often rolling into bigger models, but the value proposition of having additional capacity, whether it's tax, whether it's family office, whether it's trust, whether it's just other things that clients want to give a fuller offering, which could be built but would take a lot of time and energy, and maybe you do it right, maybe you don't, to build it on your own, that becomes attractive.

And then the second bite of the apple, a lot of these buyers are not only offering good valuations up front, but there's an equity rollover piece of it where you can get the multiple arbitrage if things go well where they say, "Hey, your equity's worth X times, but when we sell, it's going to be 50% or 100% more than that, and you'll have an equity piece and get another bite of the apple." So those are all reasons why people are considering selling.

Louis Diamond:

So for those clients who you're counseling on selling, what type of work are you doing for them specifically? What documents are you drafting? What documents are you reviewing, and where do you think you're doing your best work for those types of clients?

Corey Kupfer:

So let me start the early consulting advice stage. Just because we do so much of this work and we're familiar with, it's become so broad and I'm not saying that we know every platform or every acquirer, but we know most all of them and what models are, what the advantages and disadvantages are. Clients often ask us our view or opinion. We're not investment bankers, we're not consultants per se, but because we have so much experience, a lot of times we get involved early with the clients. Especially if they're ongoing clients of ours saying, "Hey, Corey, even which investment banker should I work with?" We work with all of the active ones in the industry and have good relationships. So we'll get involved in recommending them, helping them evaluate their options in terms of the buy side. On the legal side, we always recommend

getting us involved at the LOI stage. A lot of people think you don't get the attorneys involved until after the letter of intent is signed because it's non-binding except for the confidentiality and exclusivity.

But the problem is if there's anything significant, which there often is that's not in the LOI, you then need to negotiate later. It's sometimes seen as a re-trade, so it makes sense to get us involved early because we're the kind of attorneys that aren't going to kill the deal, we're going to get it done. There's no downside to that. So we handle advice and changes to the LOI. And then, of course, you have all the definitive documents, which is most often an asset purchase agreement because most of these deals are structured as asset deals. Occasionally it's stock purchase, and then all the ancillary documents, which often include employment agreements for the key people. And what is that going to look like going forward, and how does it breakdown in terms of the structure and the earn outs and what are the triggers? But, yeah, so we'll do all that legal documentation in connection with the sale. Usually if you're on the sale side, you're reviewing documents that the buyer's attorneys prepare.

Louis Diamond:

Interesting. And, yeah, I would agree with part of what you said, which was that it makes sense to involve you before letter of intent is solved. We advise that whether it's an M&A transaction or if it's someone who's just getting a traditional recruiting deal because once an LOI is signed or verbally agreed to, the leverage that you as the seller or the transitioning party has diminishes. In the case of an LOI, once it's signed, there's an exclusivity period. So if there are meaningful changes that you want changed in the LOI, it makes sense to get them sorted out earlier when you can always walk away from the deal and have an additional layer of leverage. Then once the LOI is signed, where typically other options may go off the table, and it's just harder to get the type of change that you would likely recommend. So I just wanted to reiterate that.

Let's pivot now. I've got a grab bag of questions for you. A lot of them are frequently asked questions that folks ask of us. But before we do that, I don't want to miss a thread that you gave, which was personal goodwill deals. So I assume by that you mean if an advisor is employed by a firm, they don't technically own their own equity, they don't have their own LLC, their own legal entity, et cetera, I believe you're talking about that. And how those types of individuals, employees, if you will, are able to potentially sell or transact their practice at long-term capital gains. Am I right in what you're talking about?

Corey Kupfer:

That's 100% right. And traditionally the thought was that if you are employed at a wirehouse or private bank, insurance company, whatever it is, and exactly what you said, you don't have an entity, you don't even own your clients. I mean, obviously in our industry the advisors say, "My clients, my clients," but legally they're not your clients if you're in an employment model. They're clients of your employer, of the wirehouse or bank or whoever it is. That's who the employee is

contracted with. So there's no asset, but you don't even own a client list that you can sell, meaning that you don't own the clients. So traditionally, a lot of folks thought, "Well, okay, there's no capital gain structures available for these folks." And it's why some of the industries with these models where people would roll out independent, wait 13 months, so they get long-term capital gains and then sell.

However, there is this ability to potentially do a personal goodwill transaction. Now, I will say upfront that these are very complicated, that the IRS is not a fan generally of personal goodwill transactions. However, if you meet the requirements and you do it right, it is generally felt that these things would be upheld and knock on wood, we haven't had one challenge yet, and I would argue that the whole concept of personal goodwill is to say, "Hey, you don't truly own an asset, but because of your reputation, relationship, personal brand, however you want to look at it, there's value in that, and that is an asset that can be transferred at capital gains rates." And I would make the argument that there's almost no better industry to argue for than this industry, because of exactly what we talked about earlier, Louis, whether it's in connection with an M&A deal or just breakaways, recruiting deals like what we talked about earlier, which is the percentage of clients that come with these advisors when they leave.

So if you don't own the client relationship, you don't own a client list, you have no legal ability to force clients to go. What else is the reason why advisors are getting 85, 90, 90 plus percent of their clients coming over with them? Well, the argument would be it's only personal goodwill. So we have evidence of it. So what's happening is it's a new trend, and this is where we've been brought in, even though some of the aggregators, the big acquirers, use some of the bigger firms, we have a lot of familiarity with these transactions and also a combination of that and really understanding the RIA space.

So we've been brought in as additional counsel on the buy side to co-counsel with their regular M&A firm for some of these acquirers that are now pitching these wirehouse advisors to say, "Hey, you don't have to do an interim step. You don't have to do an ordinary income recruiting deal. We can actually get you capital gains treatment on your personal goodwill, and you can monetize the capital gains rates right out of the wirehouse."

Louis Diamond:

It's so interesting because I'd say we're right now front row and center of this trend really taking shape, which is wirehouse advisors or employees of banks or employees of RIAs looking to skip the step that was needed before, which you alluded to, I need to be independent for 13 months to get long-term capital gains. But instead saying, "I don't really want to be independent. I believe in the model, the benefits of the RIA channel, but I'd rather monetize my business upfront and not have to wait that period of time." So I think with the types of advice that you're giving around personal goodwill and just the realization by a lot of these big RIAs and private equity sponsors that the breakaways are a segment that are worth paying attention to. This is a

trend that's only going to keep growing. So thank you again for the work you're doing, the thought leadership around personal goodwill, because I think that's going to be a major catalyst for this private equity backed RIA movement really taking shape for wirehouse advisors.

Corey Kupfer:

100%.

Louis Diamond:

So let's get to the other questions. What advice would you have for an advisor who is really thinking about changing firms or changing models now or in the future? What's some of the initial advice that you would give them?

Corey Kupfer:

Yeah, so a couple of things. One of the blessings, but also in a way not a blessing, it's a little bit of a curse, is that there are so many options now. So what happens is it used to be that maybe there was some inertia, people wouldn't want to move because they were worried about whether it'll work out or what is this independent movement. Now, it's such a well-worn path. There's so many thousands of advisors that have moved in various ways. People usually know somebody who they've seen leave. Now what happens is it's like, "Okay, now, I have such a menu of what I can do," whether it's fully independent, that it's supported, unsupported, so to speak, all of these platforms, minority investment platforms, places where you get equity, places with just employment models. So the first thing I would say is, and listen, this may seem like strange advice from a lawyer, but my first thing is always to listen.

You've got to get quiet and look inside because there's so many options. You've got to find the one that fits for you. There's no inherent right or wrong. Obviously, I have a big bias towards the independent movement, but even so, I have said that there are plenty of advisors who should never leave a wirehouse. That's the right environment for them, all right? I much more believe in the fiduciary and the independent model as a model, but you have to figure out what fits for you. So do you want to be an entrepreneur? Do you want to have your own shop and be able to 100% call the shots, but also be 100% responsible for those decisions and for making payroll and clients happy? Do you want a supported model because you want to be able to deal with the clients, but you want someone else to handle everything else?

Do you want to go to an existing, firm, a corporate, a platform, whatever it is, and what are their benefits? So the first thing you got to do is figure out, what are my objectives? What do I really want? And here's a key point. There's usually two things that are driving the people, and you got to make sure that both of these make it successful. One is what's driving you out of where you want to leave. You're frustrated at the wirehouse or the private bank because of compliance, because of inability to handle clients the way you want to handle them, because of a bad manager, whatever it is. But that's not enough to be really successful. You got to figure out what

you're driving towards. What is the vision of what you want to create or the environment you want to be in? And if you get clarity on that, it'll help you get clarity on which of these options and platforms and models that would be best for you.

Louis Diamond:

We are reading from the same song sheet. We always say the same thing before jumping in and even writing a check to retain someone like you and really digging into the process, you first have to be clear of what we call the pushes and pulls. So what's pushing you to leave? Is there enough pain? And then what's pulling you? Is there a model or type of firm that you think is exciting enough to put your clients through a move and for you to put in all the work and the risk of making a transition? So I would agree with you. In your view, are there legal best practices that an advisor can implement before they make a move? So let's say they just heard this episode, they're not looking to move anytime soon or maybe they'll move in six months or a year. Is there anything folks can start doing proactively so that they're better prepared?

Corey Kupfer:

One of the things we say to folks is that at least on the employment transition side of what we do, it's never too early to get advice because we end up in situations where people come to us and they've already done things, and then we've got to try to figure out how to mitigate them or hope that they don't come up. I'll give you some stuff that people should start thinking about now, but if you're leaving in six months or a year, whether it's us or one of our competitors, go retain employment counsel early to understand what you can and can't do because you're going to need that advice anyway. And you might as well get it earlier because it's not just about, "Oh, when I leave can I solicit? Can I not solicit?" Especially around things like the risk of being seen to be taking data or how to gather information. And also this duty of loyalty concept, right?

I mean, the high level on duty of loyalty is that you're supposed to act in the best interest of your employer until the moment you resign. Now you're allowed to what we call "prepare to compete," meaning (supposedly not on business hours) you can look at the alternatives. You can speak to people like Louis and the folks at Diamond. You can speak to attorneys. You can look at the platforms. You can look at real estate. You can decide what your name is. But in terms of the way you're operating, you've got to act in the best interest of your employer. So, for example, you're not supposed to talk to clients in advance. If you have prospects, you're not supposed to hold off those relationships and not bring them into the firm because you think you're going to be leaving.

All of those kinds of things you want to understand what you can and can't do and with respect to those things because even six months or a year before you leave, you could do things that could create more risk in your transition unnecessarily.

Louis Diamond:

This is a common question we get. We hear this a lot from advisors at Edward Jones and some of the firms that are known to be more aggressive with pursuing advisors who leave. But in your experience, how likely is it that an advisor gets TRO'd?

Corey Kupfer:

Yeah, so I'll answer that in a couple of ways because it depends on a few factors. Sometimes people think they know what they're doing, don't get advice, and maybe they may have went through another transition and they think they know how to do it. Those folks are much more likely to run into trouble. And, listen, we're plenty busy. I'm not pitching for me. Go use one of my competitors, if not me, rather than trying to do it on your own. So the folks that get advice from good attorneys obviously do a lot better. And for us, we have a process where we don't just give them oral advice, we actually give them a written roadmap. It's literally an employment transition roadmap that lays everything out for them. Because the thing is when you're making a transition, there's so many moving pieces, and it's so easy to mess something up.

So we give them a written roadmap. In our case, the percentage of folks that get sued that get TROs even attempted against them is such a small percentage. It's really tiny. I'm talking less than 1%. Having said that, I'll tell you the ones that do. Occasionally you got, and this is rare thing, thankfully, because most of our clients follow our advice, but occasionally you got that cowboy or cowgirl who thinks they know better. And no matter how many times I tell them that you can't beat forensic computing these days, that they're going to run a forensic review. And anything you do online, whether it's downloading, zip driving, sending something, even printing, whatever, they're going to find. Somebody thinks they're smarter than that, and that's very rare, but it does happen occasionally. I remember one case a few years ago where a client swore they didn't take anything, and I gave my whole speech on forensics 12 times during the process, and then the former employer produces forensic evidence that they did. So obviously that's stupid, and that's rare.

The other time though that was legitimate is, listen, if you are a very big team, multi-billion dollar team, you may get sued just because even if there's not honestly a strong basis for it, just because the firm is sending a message and wants the other advisors to understand, it's not going to be easy to get out. Now, you may eventually win that case. You may settle it for very little money, but they're doing it for two reasons. One, they want to distract you from bringing your clients over, and, two, they want to send a message. So that's an unfortunate situation. I'm not saying it happens all the time to the big teams. The far majority of big teams we take out, it's not there. But occasionally you run into that where it's much more about future advisors and showing them that it's going to be hard for them to get out. So that happens. Again, we're talking still within that tiny percentage where it happens, but that's sometimes a driver.

Louis Diamond:

That's a very helpful perspective, and I appreciate you being candid about that. So in over 99% of transitions that your firm helps facilitate, assuming someone follows your guidance closely and doesn't try to color outside the lines, they are not going to get TRO'd?

Corey Kupfer:

That's our experience.

Louis Diamond:

Nothing is a certainty ever, especially in transitions, but that's probably as close to a sure thing as you can hope for. So I think that the big takeaway here is hire someone like Corey, follow their advice, and you're not going to have problems. That's the key.

Corey Kupfer:

And, listen, just in the full transparency, there's a higher percentage of those cases where we might get some sparring, whether the firm's attorneys might allege something and send a cease and desist, and even that's less than 20% of the time. And most of those times we can spar with them a little bit and make it go away. It doesn't end up in litigation. So it's a higher percentage of the time where they try to make some noise, but it ends up going nowhere.

Louis Diamond:

So a couple more questions for you. Very common line of questioning that we get as someone gets closer to making a transition is, I'm really good friends with X,Y,Z client, or my biggest client, who's 13% of my business is the key to whether I'm going to go through with the transition or not. Realistically, I know we talked about solicitations, pre-solicitations, protocol, non-protocol, but is there any way that an advisor can, let's say, take the temperature of his or her clients before they make a change? Or would you always say, just do absolutely nothing?

Corey Kupfer:

I mean, listen, if I only have my pure lawyer hat on what's legal, what's not legal, I'm going to say do nothing, right? But the way I always speak with my clients about it is that we have to talk about a risk spectrum. What's your risk tolerance, and whether you want to increase risk versus the benefit? I still do not recommend speaking to clients. Now, do I think that some of my clients may have whispered in the ear of a couple of their big clients? Yeah, I wouldn't be surprised if that's happened. But it's risky. I will tell you what more people do. And listen, I find that a lot of people have even done this over the years. There are ways that, especially if a client has had a negative impact of something at the current employer, which by the way, we talk about pushes and pulls, often one of the pushes is that the wirehouse or the bank couldn't do something the client wanted or screwed something up or whatever.

And this may have happened two years ago. So a lot of times those things open up dialogues with clients, not about the fact that you intend to leave or whatever, but about the client's frustration or concerns or issues with the current employer. And certainly we've had many clients even not knowing they're leaving, who will reiterate to their clients that, "Hey, listen, we're always going to do what's in your best interest. That's what I care about. And for as long as that is being here at my current employer, we're going to do that, but we're going to make the decisions that are in your best interest wherever they lead us." So some folks have been able to really set that context with their clients in advance. And that's much less risky than saying to a client, "Hey, we're leaving. Are you going to come with me?"

And so a lot of them do have a feel for their clients about the level of relationship they have with them, but also maybe the concerns or dissatisfactions that the client already has with their current platform. And in that case, I always say to them, "That's probably enough." A lot of times clients, meaning the advisors, our clients are concerned that a close client of theirs will be upset with them that, "Why didn't you tell me in advance?" And what I always say to them is, "Listen, they're going to be your first call after resignation." And if they express any frustration, what you're going to tell them is that, "Listen, I really would've wanted to call you in advance, but my attorneys advised me against it, not only because it could have gotten me in trouble, but because it could have embroiled you in a lawsuit eventually. You could be subpoenaed if you knew if there were conversations, et cetera. And I didn't want to put you in that position, but you were my first call."

I almost never had a situation. In fact, I don't think I know of a situation, even if a client were... Most of them understand by the way, they are sophisticated people, but then even the ones that are a little frustrated, usually that response to them afterwards helps them understand why you didn't call them in advance, but you were their first call after resignation.

Louis Diamond:

I think that would work on me. Just the thought of being subpoenaed is enough to say, "Hey, thank you. I appreciate you not letting me know."

Corey Kupfer:

Right, right. Exactly.

Louis Diamond:

A couple more questions for you. So some of our listeners are independent advisors. They're running their own independent practice on the LPL or Northwestern Mutual or MassMutual or Commonwealth platform for advisors that are already independent or maybe they're IARs or an RIA, obviously the employment transition stuff is either not a factor or it's much less important. Does an advisor who's moving from one independent firm to another, do you think they should hire legal counsel? And if so, what are the big things that you help them with?

Buying, Selling, or Transitioning Your Business: An Attorney's Advice

A conversation with Corey Kupfer, Attorney, Deal-maker, Speaker, and Author.

Corey Kupfer:

Yeah, I mean, 100%. And I'll tell you, for those folks who don't have any non-solicits, we have what we call our Basic Employment Transition offering (as opposed to our full one) at a lower price because there's not as much work. However, the reason why it's crucial that they do get advice is because there are things on a lot of these platforms that they assume or they don't understand, including a big one, what information are you properly allowed to take? And this is an interesting thing because on various models, the understanding is, "Oh, we own our clients." But really when you look at the legal agreements, it says that you don't have any non-solicits. And maybe even the firm will commit not to try to retain the clients, but maybe they won't. Sometimes they could in theory compete for them. You just have no non-solicits. And then also very often the ability to take data is not fully covered.

So there are at least three factors that govern what information you could take, whether it's client contact information, personally identifiable information like social security numbers, tax ID numbers, and then let's say the rest of the file, notes, things like that, historical performance reports, all that kind of stuff. And one of the factors is, what does the agreement between you as the advisor and your IBD or other platforms say? Second, is what is in the investment management agreement, a client agreement between the IBD let's say, and the clients in terms of what the client has agreed to in terms of permission on transferring data when their advisor leaves. And then three, what does the privacy policy of the firm say? And then there's an additional factor. Are you in an opt-out state where even if all those things have lined up, a client could opt out from that?

And how do you know that? So it's a more complex area than most people think. People in a lot of these platforms think, "Oh, I can take anything." And here's the other thing that's very interesting. Some of these platforms have practices where they allow you to take certain things that technically don't actually meet the legal requirements to take them. And then you've got to understand they're letting you take this data, but you know what? You're taking client social security numbers and the right paperwork and all those things that I talked about, privacy policy, et cetera, is not in place, so you could have some risk there, and we want to evaluate that risk. So I just went down that rabbit hole a little bit because it's the one that comes up most, and the simple answer is yes, you should get legal advice even leaving a platform like that.

Louis Diamond:

I would agree. We facilitate those types of moves all the time. To me, paying for good legal advice is an insurance policy. It might be expensive now or more expensive than hiring no one, but it's much cheaper to proactively get the right advice and avoid litigation or any sort of thing that's going to slow you down or distract you, so I would agree with you. Let's do two more questions to wrap up today. From a legal perspective, do you believe that the leaders of the wirehouses and the various banks have anything up their sleeves to try to retain advisor talent?

And the reason I'm asking this question is because there's a fairly healthy amount of attrition from all the major firms, whether it's four, five or six percent of the overall workforce that ebbs and flows each year. So obviously you would think that if you're the head of wealth management at one of these firms, there's potential that more people are going to leave.

And my guess is they're thinking about ways to keep their jobs and to try to keep advisors in their seats. So it's a complex question. I know you're not in these types of meetings, but in your view, are there any strategies that these folks are thinking up or that you could think of that would bind advisors and clients to the firms more so than they do today?

Corey Kupfer:

Yeah, so obviously the attrition continues and the movement away from these platforms continues. So obviously they're going to continue to try to react to that. I mean, listen, there's been everything from times that they were doing big money retention deals and then pulled away from that, and now it's come back a little bit. There's been talk about the wirehouses setting up separate models, obviously like Wells Fargo with FINET. The problem is that I honestly do not believe... Well, let me say two things. The wirehouses aren't going anywhere. They're going to continue to lose advisors, but that model will be around for a long time because there are advisors who are never going to move to independence. And just also people, I think the brand equity has been significantly shaken, especially ever since 2008, 2009, great financial crisis. But still, there are people who buy into that, so they'll be around, and they're going to continue to fight.

But ultimately, it comes down to model. One of the things I say, even to my clients who are frustrated advisors looking to leave and they're frustrated by compliance, which is really 90% risk management, it's not actual legal compliance. It's just things they don't let you do because they're not going to take the risk. I always say to them, "Listen, here's what you've got to understand. If I were running UBS or Merrill Lynch or any of those folks, I'd probably do the same things." Because if you have hundreds and thousands of advisors and they're all over the place, you have to manage down to the lowest denominator, you have to have some guardrails in place because you can't just let everybody decide, "Oh, I'm going to put my client in these alts. I like them."

Because, yeah, some people do it right, some people won't. So the model just dictates that there has to be certain things that will frustrate folks that have any kind of entrepreneurial spirit or have their own vision of the way they want to do it. So do I think the wirehouses are going to continue to try to find ways to compete? Of course. They're losing advisors. Do I think they're ultimately going to be successful and that the independent movement's going to be slowed in any way? I don't see it.

Louis Diamond:

I tend to agree with you. People ask us all the time about retention deals, and our opinion is it tends to be pretty similar no matter what year you ask us is that retention deals are very expensive, and they don't necessarily need to pay retention deals because they have sunset programs, which are the new age retention deals, where an advisor agrees to transfer their clients to a team member or another individual within the firm. They get a payout based upon how much they're doing, and then they're locked in pretty much in perpetuity. And then the inheriting team is locked up five, six, seven, eight, even nine years sometimes, and that tends to be enough to retain advisors. So I tend to agree with you that attrition will continue, but they don't have a massive tool at their disposal to really stop attrition. It's going to be people, the opinions of firms ebbs and flows.

If an advisor's frustrated enough, regardless of what types of things their firms try, typically when there's a will, there's a way. And if someone's motivated enough, they'll figure out a way to do what's best for their clients and for their families, and for their business. So I'm with you there.

One last question, something we ask every guest, any parting advice for advisors considering change?

Corey Kupfer:

I mean, listen, I already said the know thyself one, which is my biggest advice, but after that, the ones who do it successfully really surround themselves with right team, whether it's working with folks like you. There's so much infrastructure out there, there's so many people out there, and the right experts, the right advice, the right people to guide you, who you can trust, they can help people parse through. Again, it's not a matter of taking a machete and whacking and making your own path, it's a matter of, "Oh, I just stepped out and there are a hundred paths I can go on." So getting that guidance from people who know the paths, who know the models out there, who could not only explain to you.

And it's two things about it, because the way some of these models are presented and what really they are, are sometimes two different things. And I don't mean that in a way that anybody's hiding anything or whatever, it's just that there are complexity in these models that sometimes you have to delve into. So really understanding the models truly and then helping match the right model to what your vision and goals are, your personality, what you're looking for at that time, I think is the biggest thing that you can do right or wrong. And having the right team around you is key in that.

Louis Diamond:

I agree with you. So a little bit self-serving here saying I agree with you with surrounding yourselves with the right team or your transition board of directors, we call it. So having the legal counsel, which would be you, having a consultant like us to help you organize everything and make sure you're following through on your initial plan and looking at the right things, and then

Buying, Selling, or Transitioning Your Business: An Attorney's Advice

A conversation with Corey Kupfer, Attorney, Deal-maker, Speaker, and Author.

also having the actual physical team that you have the right individuals on the bus that can help you transition and ultimately are going to help set you up for success. So once again, I am with you on what you said.

Corey, I want to thank you for joining us today. I know I learned a lot. I live and breathe transitions all day long, but hearing about the various ways that a specialist attorney like you can help an advisor with an employment transition, with an M&A transaction and understanding the actual likelihood of an advisor getting a TRO, and then just some other practical ways that advisors can think about change were probably my biggest takeaways, but there's many more. So thank you again for doing this and spending some time with us.

Corey Kupfer:

You're welcome, Louis, and pleasure to be on the show. I've appreciated our longstanding relationship in the RIA industry.

Mindy Diamond:

Curious about where, why, and how advisors like you are moving? Download the latest advisor transition report to learn more, including intel on recruiting deals and our insight and analysis on the latest trends in the wealth management space. You'll find it at diamond-consultants.com/transitionreport. Or if you'd like to talk, feel free to give us a call at 908-879-1002.