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'They're Always Watching.' Advisors' Digital Footprints Are Derailing Career Moves.

BARRON'S

By Andrew Welsch
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A Morgan Stanley advisor had scheduled meetings with more than 30 clients in the month prior to his resignation. A JPMorgan Chase broker had been accessing computer files for his top clients on the Saturday prior to quitting his firm. And a team at UBS had printed thousands of pages of client documents in the two weeks before its departure.

Firms are increasingly scrutinizing advisors' actions in the lead-up to their resignations, with an eye to uncovering alleged contract and nonsolicitation violations, sources tell Barron's Advisor. Details like those above have been featured prominently in lawsuits filed by some of the largest wealth management firms against advisors who left to join competitors. None of the firms featured in this article would comment on the practice.

Better technology tools are enabling employers to monitor advisors' actions and computer activity, according to attorneys who represent advisors and firms in legal disputes. Emails, text messages, printer usage, Microsoft Outlook calendars, and more are being placed under the microscope in an effort to uncover alleged transgressions.

"It happens at both large and small firms these days," says Max Schatzow, an attorney at law firm Stark & Stark in Lawrenceville, N.J., and who is not involved in the cases mentioned in this story. "Everyone has either an in-house or outsourced IT department that can uncover forensic evidence for these kinds of cases."

Firms will look through weeks, sometimes months of computer records, Schatzow says. "They're always watching."

Wealth management firms are on guard in part because when advisors switch employers, their clients often follow, and so do hundreds of millions, sometimes billions of dollars in assets. About 70% of client assets typically move when an advisor switches employers, according to research firm Cerulli Associates.

Firms comb through computer activity to buttress lawsuits seeking temporary restraining orders against advisors. Should a judge issue a restraining order, it can derail an advisor's efforts to transition assets to his or her new employer by preventing them from contacting their clients.

"You may find yourself having to start over and build a whole new book," says Sharron Ash, chief litigation counsel at the Hamburger Law Firm in Englewood, N.J. Ash is not involved in the cases mentioned in this story.

Firms don't need to find a smoking gun that proves advisors violated employment or nonsolicitation agreements. Judges will issue temporary restraining orders if firms can show that they are likely to succeed on the merits of their case. Tech tools are making this task much easier.

"The fact that firms are capable of compiling this forensic evidence is advancing their cause significantly," Ash says.

A review of lawsuits filed by firms against advisors this past year over alleged violations of employment agreements shows how details gleaned from computer activity are often key building blocks of a case against advisors.

In July, Morgan Stanley sued an advisor overseeing $540 million who had quit to join UBS. The firm's lawsuit claimed the advisor had solicited clients to move their accounts to UBS before he switched employers. Morgan Stanley cited alleged conversations with clients who

said the advisor told them in meetings that he was moving. The firm also pointed to his Microsoft Outlook calendar which it said indicated that he met with or spoke to more than 30 Morgan Stanley clients in the month prior to his resignation, a detail the company added to its lawsuit as alleged evidence that the advisor was taking unusual actions. The company's legal complaints did not specify how many clients the advisor ordinarily meets with per month.

The firm's lawsuit, which did not name UBS as a defendant, also claimed that the advisor had the "audacity" to seek reimbursement for his travel expenses "even though he incurred all these expenses for the purpose of diverting Morgan Stanley clients to a competitor."

The parties agreed to an injunction restricting the advisor's ability to contact clients pending the outcome of an arbitration case, according to an order signed by a federal judge July 19. Morgan Stanley and UBS declined to comment; an attorney representing the advisor did not respond to a request for comment.

In another case months earlier, UBS filed a nonsolicitation lawsuit against a $2 billion team that moved to Morgan Stanley. UBS accused the advisors of taking client information, pointing to printing records. The advisors had allegedly printed 130 individual client window screens, which include contact information, account numbers, account values, and other sensitive data, UBS wrote in its legal complaint filed in December.

"There was no discernible business reason to print 130 separate client windows in the days leading up to their resignation, particularly since defendants had convenient electronic access to these windows on the UBS systems," the bank wrote.

The advisors printed an additional 3,668 pages of documents in the two weeks prior to their resignation—a period in which advisors were not meeting face-to-face with clients due to the pandemic, the bank wrote.

The advisors disputed the allegations in a court filing; a judge issued a temporary restraining order and the dispute moved to Finra arbitration in January. Morgan Stanley

was not named as a defendant in the case. The company and UBS declined to comment on the matter; an attorney representing the advisors did not respond to a request for comment.

In other legal battles, wealth managers have pointed to even more precise computer records to buttress their cases. J.P. Morgan Securities, in an April lawsuit accusing a five-person team of violating employment and nonsolicitation agreements, pointed to how and when one of the advisors accessed computer records—down to the minute.

Between 3:41 p.m. and 6:13 p.m. on a Saturday prior to his resignation, one of the advisors accessed J.P. Morgan's computer system and opened screens for 19 of the top 100 clients he serviced at the bank, according to the company's lawsuit. J.P. Morgan claimed there was no legitimate reason to view such information on a weekend.

Another of the team members allegedly printed a trust account performance document at 5:38 p.m. on Saturday, April 3, prior to his resignation, according to the bank.

The dispute moved to Finra arbitration after a federal judge granted the bank's request for a temporary injunction April 19. J.P. Morgan declined comment; an attorney representing the advisors did not respond to a request for comment. In a May statement, the attorney said his clients denied the allegations.

Illustration by Brian Stauffer

Printing documents and setting up client meetings are not necessarily problematic, as long as it comports with normal work routines, according to attorneys. Taking actions outside the norm can raise suspicions, if not legal trouble.

"It's happening with such regularity, you have to expect to get asked about it if you switch firms," Ash says.

Advisors should stick to routines and avoid attempting to break or bend the rules, according to attorneys. Giving clients a heads up that you are leaving to join a competitor, even if it involves no solicitation, is bad form, says Tom Lewis, an attorney with Stevens & Lee in Lawrenceville, N.J. "Under no circumstances should the advisor tell a client that they are leaving or intimate that they are leaving—anything like that would be a violation of industry standards."

Lewis also notes some advisors erroneously believe they can reach out to clients ahead of a move, schedule a bunch of client meetings for after their planned resignation, and ask clients to call on a cell phone. "That can be inappropriate and it can raise the suspicion of the firm that loses the advisor," Lewis says.

When advisors veer from normal routines, they create digital records—pieces of a puzzle that former employers can put together, attorneys say.

Advisors should consider hiring an attorney prior to their resignation, according to lawyers. At the very least, they need to know what the terms of their employment agreements are, attorneys say. That can dictate what, if any, information advisors are allowed to take with them when they resign.

"So many times I am working with a client and I ask for their employment agreement, and they say, 'I don't have it.' At that point, we're kind of working in the dark," Schatzow says.

Lewis' best advice? "Stick to business as usual, do what's in the best interest of the client and the firm that you are employed with," he says. "You stick with that mantra, you'll be fine."
