



In UBS-RIA spat, a warning for advisors switching firms

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In UBS's dispute with an \$8 billion team that split off to form an RIA, a warning can be found for other advisors planning a career change: Be careful of what you put into writing.

A federal judge handed the breakaway brokers [a victory last week](#) in their fight with their former employer, but his ruling hinged on the fine print of the Broker Protocol and an intense scrutiny of the advisors' communications, right down to a team member's text messages to UBS clients.

"Advisors think as long as it is not on their firm email address it'll be okay. But it isn't," says Ross Intelisano, an attorney at New York law firm Rich, Intelisano & Katz, and who is not affiliated with the case.

There is little case law on the [Broker Protocol](#) — disputes are typically settled in FINRA arbitration. The judge's detailed 40-page ruling may therefore

indicate how future fights are decided, including a pending FINRA arbitration case between UBS and the Shelton, Connecticut-based Procyon Partners.

The decision is also timely. Three wirehouses have announced recruiting cutbacks. Plus, there has been a recent uptick in legal battles between large teams and their former firms, putting greater burdens on advisors to avoid even a hint of Broker Protocol violation, Intelisano says.

And during a lawsuit, every private message can surface: emails, texts, Facebook chats, memos and other documents.

"This case is definitely a lesson of what could go bad," Intelisano says.

An attorney representing the advisors declined to comment. A spokeswoman for [Dynasty Financial Partners](#), which assisted Procyon's move to independence, declined to comment. Last week, speaking on behalf of the firm, she said that the judge's decision rejecting UBS's request for an injunction against the team was a "welcome development."

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'GIVE US ONE MORE SHOT'

When U.S. District Judge Victor Bolden issued his ruling, he focused attention on advisor Phil Fiore's messages to clients and colleagues during the interlude between his November termination from the firm for violating UBS policies and the June launching of Procyon Partners.

"Hey buddy," Fiore texted a client according to court documents, "so I'm feeling like 90% so I'm on track getting rid of whatever I had!! Thanks for caring!! I also signed with Dynasty last night just wanted you to know buddy!! Hope you are well pal!!"

Fiore's team served both private clients and institutions, some of which he had been serving since before he joined [UBS](#) from Merrill Lynch in 2009.

When a client asked how his post-UBS plans were going, Fiore texted back: "Excellent buddy — looking forward to making a huge announcement soon!! I should have done this years ago bro."

Fiore addressed another client's concerns about his financial plan, and tried to set up a meeting between the client and Jeffrey Farrar, an ex-team member who was still at UBS at the time of the messages, but who later joined Fiore in launching Procyon.

"I'm with ya [sic] and yes I'm out of the loop which is complicating this a bit and I made a huge tactical error in having Jeff [Farrar] as I'm giving him a huge amount of responsibility in building our new operation," Fiore said in a text message according to court documents. "But I hear you and agree!!! However, give us one more shot!! I will make this right!!"



Bloomberg News

During the case, UBS obtained records of these and other messages between the advisors and clients as well as between team members, showing not only an informal relationship with some clients, but also that Fiore continued to have contact with his fellow team members after his termination.

Brian Neville, an attorney at New York law firm Lax & Neville unaffiliated with the case, says he has heard advisors talk about having one team member leave to be point man for setting up a new RIA. Though there are obvious differences with this case — Fiore did not leave voluntarily, for example — that strategy carries risks, Neville says.

"These are at-will employees," he says. "You are free to go to interviews if you want to. There's no prohibition against that. But you still have to be loyal to your existing employer until the day you resign."

And though advisors may understandably want to sound out clients on whether they'll support their move to independence or another wirehouse, doing so can put one in jeopardy.

"By not following the letter of the Protocol, they are running just a huge risk," Intelisano says.

The judge observed in his decision that the messages revealed that Farrar and Fiore were coordinating on opening the new RIA as early as February. In March, they were looking at real estate. And in May, Farrar emailed his teammates and Fiore about setting up their Broker Protocol lists, which departing advisors provide a copy of to firms notifying them of the clients they intend on contacting. Farrar asked his team mates to proof read the list.

"If there are an errors no matter how small lets fix so we don't give UBS any stupid reason to object," Farrar wrote, according to court documents. He added: "I sorted the [private client] list by Zipcode just to [expletive] with them a little. It's the small things...."

In his ruling, Judge Bolden noted that the one of the documents attached to the email included a list of private client information, showing that the advisors "sent a UBS file containing confidential client information, in the form of account numbers, to Mr. Fiore, who had been terminated from UBS."

The judge took a critical eye to some of the advisors' actions, asserting that there was a "record of questionable behavior." But he found that this did not violate the spirit of the Broker Protocol "because full private client contact information was still listed in the Protocol lists and UBS was not, therefore, hindered in its ability to contact the clients on the list."

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The firm isn't the only one benefiting from a still strong breakaway movement.

'TAKE THE HIGH ROAD'

Fired advisors are not covered by the Broker Protocol. Neville says he has advised certain advisors who fear that they could be fired to be prepared to resign before their employment is terminated.

"We literally have had clients walking around with resignation letters in their briefcases," he says.

In Fiore's case, the firm contended that he violated a non-solicitation agreement that he had previously signed.

In addition to parsing whether Fiore's texts and other messages "rose to the level of solicitation and therefore violated his agreements with UBS," Judge

Bolden also scrutinized a blast email the team sent out after launching Procyon.

The judge noted that courts have previously found that an announcement saying an advisor joined a new firm could amount to solicitation if that message also asked clients to do business with the departing advisor at his or her new firm.

The judge found that the blast email Procyon sent out to approximately 1,600 email addresses amounted to solicitation, and that "UBS has shown a likelihood of success on the merits as to Mr. Fiore violating his non-solicitation agreements."

But Judge Bolden [ultimately ruled against UBS](#) because the firm could not prove irreparable harm, noting that the wirehouse could easily calculate the revenue lost from departing clients. UBS could still win damages in the pending FINRA arbitration case.

A spokesman said the firm looked forward to vindicating itself in arbitration.

"UBS is pleased with the court's specific finding that UBS was likely to succeed on the merits of its claim that Mr. Fiore violated his non-solicitation agreements," the spokesman said.

But the court case, attorneys say, spotlights an important fact advisors too often forget: Anything put in an electronic communication never really goes away.

"It could make you look small, petty and certainly not professional," Neville says. "My advice is always to take the high road."



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