



# **MANAGING THE CHALLENGING EMPLOYEE**

**After the  
Love is Gone**

JOANALYS B. SMITH

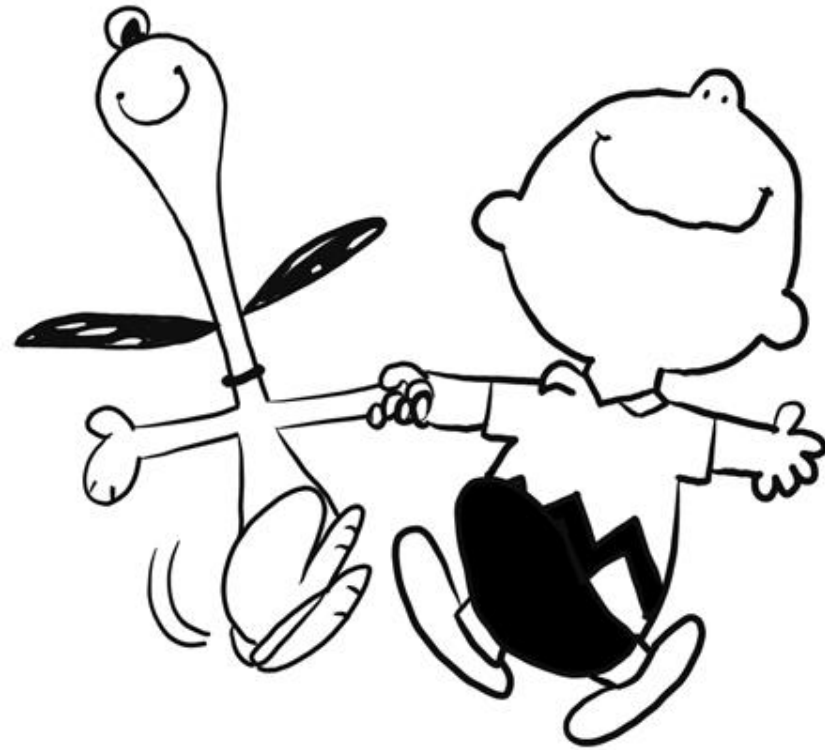
SMITH & ASSOCIATES LEGAL  
COUNSELORS



DID I MENTION????????

Providers **WON** the QAF  
Appeal!!!!

# HAPPY DANCE





# **AFTER THE LOVE IS GONE**

What used to be right is wrong

- Earth, Wind & Fire



# EMPLOYEE ISSUES

Injury

Grievance

Performance



# EMPLOYEE INJURY

Evaluate policies and coverage

Assume litigation; only defense for non-subscriber is “sole proximate cause”

Evaluate course and scope; impose all discipline

Manage care and treatment

Within restrictions press the flesh; feel the love

# TALE OF TWO INJURIES

#1 Staff denied consumer a smack purchased with his allowance. Consumer smacked staff. Staff went to ER. Doctor released to work in 48 hours, staff complained of fear of consumer and got a couple more days off. Provider disciplined staff for failure to follow BSP. Provider assigned staff to a shift at a new home after release ended and staff no call no showed. Provider terminated for cause, defended and prevailed on TWC claim. After seeking medical care from shamans and healing crystals, staff sued. Medical bills \$45K, \$15K from ER.

#2 Staff slipped on front step of group home injuring her leg. Provider escorted her to their medical director and paid for the resulting surgery and rehabilitation at a discounted cash price. Provider paid staff through rehab. Provider called staff periodically to check in and received rehab reports, including the one saying staff had missed recent appointments. After warning staff and offering a light duty job if staff was ending rehab, Provider stopped the salary payment. Staff sued.





# DO'S & DON'TS

#3 Consumer continued to flash pretty young staff and talk about her sexual body parts. Staff failed to intervene as provided in the consumer's BSP. Instead she raised her voice and told him that was not the way to treat a lady. Staff reported harassment to management and the proper BSP intervention was verbally discussed. Staff quit and sued.



# EMPLOYEE GRIEVANCE

Follow your policy

Control access to leadership

Document all communications

Have a witness in every meeting

Understand the difference between Empathy  
and Explanation- Less is More

Have good boundaries

# EMPLOYEE PERFORMANCE

Is this a “Too much water under the Bridge” employee – one that has been unfairly treated for a long time before leadership became aware of the situation.

Ask 2 questions:

- Is management at fault for either the performance issue; and
- Can this employment relationship be saved with this much water under the bridge?

The first question is critical to future operations. Is there a flaw in the system or in the leadership which led to this personnel problem? An answer “yes” to either means the problem can happen again. Separate the person from the problem and analyze how the problem got started. After system review, consider how the situation went on so long before you became aware. Is there a concern is for either a cover up, conspiracy of silence or misguided loyalty. A small problem can snowball into a larger one when ignored or dismissed. Still, misguided loyalty is the easiest to correct with re-training.

Misguided loyalty is the easiest to correct with re-training. Staff think and want to do the right thing, but in the wrong way.

Cover up is easier to fix than a conspiracy of silence. Both involve an effort to prevent bad news from going up the chain of command, but a cover up is usually an isolated event where management wants one person the leave or a single leader attempts to keep a problem with one person from being exposed. This does raise management integrity issues which may be hard to balance when the identified leader is critical to program success.

Conspiracy of silence. A leader has controlled, suppressed and scared subordinates. This control extends to the personnel problem typically with an individual who is not going along with the conspiracy. Common elements have included a problem that just does not make sense, a team with numerous related staff and an environment where communication is extremely channeled. It is implausible that other staff do not remember or did not see things we would expect them to see and remember.

Cover up or Conspiracy, require leadership change. Many changes may be necessary to purge the organization of integrity lapses. Replacement of management may wait until program control is secure in new leadership. Sometimes only an owner has the credibility to step into this role.

# AFTER THE LOVE HAS GONE

Relationship with the employee cannot be restored to a constructive and committed one.

Document required personnel policy action only. More can have unintended negative consequences.

Follow procedures and communicate as those procedures require but no more. Communication which cannot or will not solve the problem can only be used to fan the flames of discord, to contribute to a conclusion of prejudice or bias or to create a hostile work place when none existed before.

Strictly follow a plan which arises from the personnel procedure

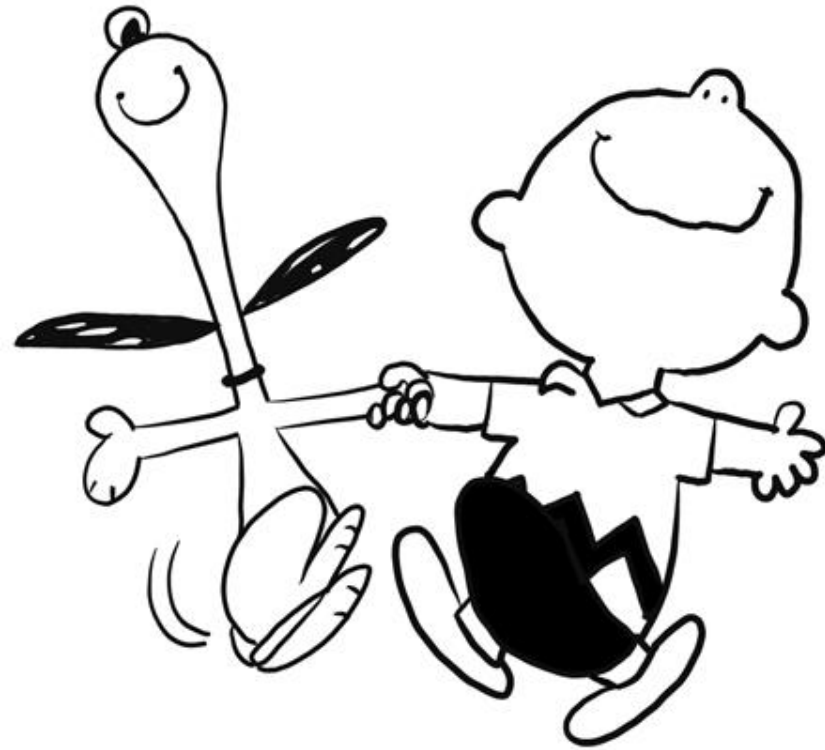
Allow time for the affected employee time to eliminate themselves from a place where they will not recover their desire to positively contribute.

If systematic or leadership failure, separation can be combined with severance, the opportunity to resign or even assistance or recommendation to secure another job.

If the involved employee has a predisposition for generating problems, drama or conflict, then there should be clear and narrow tasks, close supervision and swift separation when non-compliance arises

Treat new complaints with a new process

**DID I MENTION PROVIDERS WON THE QAF APPEAL  
LET'S PLAY STUMP THE SHYSTER!!!!**





**THANK YOU!**  
**FIND ME AT 512/261-9990**  
**OR JOANALYS@LAWOFFICESJBS.COM**

