

RETIREMENT AND SUCCESSION PLANNING: PROTECTING YOUR FIRM AND CLIENTS' LEGAL INTERESTS IN TIMES OF TRANSITION

By John Trimble



Lawyers as a group are fearless, ageless, and optimistic. We throw ourselves into our day-to-day work, and we prefer not to be bothered by anything that may distract us from our clients' cases. Many of us do not recognize the word *retirement*, and we assume that as long as our mind is intact, we can practice law as long as we want. Because many lawyers practice in law firms, most law firms do not plan for the unexpected. Indeed, a recent study showed that less than 5% of law firms have any kind of retirement or succession plan in the event of the loss of firm leadership or firm rainmakers.¹

The reality is that every attorney can be sidelined by unexpected death or illness, or the death or illness of a spouse, child, or parent. Life-changing events prompt lawyers to retire when retirement was not in the plan. Too often, firms are not ready for the retirement of a partner, and their lack of readiness can frustrate or prevent a partner from retiring.

The first reason for succession planning is to protect the interests of our clients. The sudden and expected loss of a trusted advisor who understands the legal and business needs of a long-time client can be devastating and expensive for the client. Thus, clients should be concerned about the retirement and succession plans of their lawyers, and lawyers should be thinking about how their clients will be protected in the event that they are unable to continue representing the client.

A second reason for retirement and succession planning is to protect the interests of the law firm. The unexpected death, retirement, or withdrawal of a law firm leader or significant rainmaker can be absolutely disastrous to a law firm. If the departing lawyer has been responsible for a significant percentage of the firm's revenues, then it is certainly possible (if not likely) that a law firm could have to lay off lawyers and personnel (or liquidate) in the event of the unplanned loss of a major player.

The younger, up-and-coming lawyers of a firm may be most vulnerable in the event that their supervisor or mentor retires or is unable to continue practicing law. A comfortable and stable living can be turned into a short-term or long-term period of unemployment when lawyers and law firms have failed to plan for retirement.

This article seeks to address the array of fairly simple and sensible things that clients, law firms, and lawyers can do to plan for the expected and unexpected retirement or departure of a key leader or rainmaker.

GENERAL CHALLENGES TO RETIREMENT AND SUCCESSION PLANNING

The first and most overriding barrier to retirement and succession planning is denial. Many lawyers and law firms simply do not contemplate the possibility of the sudden loss of a highly profitable lawyer, and for a variety of reasons, they do not anticipate the planned retirement of a senior lawyer. The lack of anticipation and planning means that lawyers and law firms frequently do not have *any* of the information they may need to react to a lawyer's death or retirement.

Surprisingly, many law firms do not track or study the percentage of origination of revenue of their lawyers, so they may not understand the extent of the problem that may be faced by the loss of a lawyer's revenue. Depending upon the discipline of the firm, the firm may also lack clear information concerning the unbilled time, accounts receivable, and client fee agreements when the billing partner leaves unexpectedly or retires.

Conversely, a firm may be so origination driven that partners have been incentivized to hoard work

to protect their client relationships from others. In those circumstances, the retiring or departed lawyer may be the only person in the firm who has had a relationship with the client. It is an old and worn adage that "Clients hire lawyers, not law firms." If the retiring or departing lawyer is the only person who had a relationship with the client, then it may be much more difficult for the client and the law firm to move

forward with a new person handling the client relationship.

Financial considerations of a retiring or deceased major rainmaker can be overwhelming to a firm. Frequently, partner agreements or state partnership laws may require immediate and long-term payment to the retiring partner or his or her beneficiaries. If the firm has not made provisions for the financial consequences of the death or

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retirement of an attorney, the firm may be burdened beyond its means in pay-outs at the same time that the firm has lost the revenue of the attorney. This can be compounded if multiple senior members retire in a short time frame.

ELEMENTS OF RETIREMENT AND SUCCESSION PLANNING

THE CLIENT'S PERSPECTIVE

Anyone on the client side of the attorney/client relationship has experienced the time and the cost associated with having to move a legal matter from one law firm to another. It is simply something that clients do not want to do. The challenge and cost of moving a matter is even more troubling when it occurs without much warning due to a sudden departure or a surprise retirement.

A clear starting point for attorney/client retirement or succession planning can certainly reside with the client. It is not only permissible but perfectly reasonable for a client to inquire of their law firm's or attorney's succession plan in the event that a lead counsel retires, dies, or is incapacitated. All clients are concerned about the financial implication of "two-headed" handling of legal matters. They do not want to pay two or more lawyers to review or perform the same legal tasks on a matter. Nevertheless, the client is probably best represented by a *team* approach to the handling of the client's matters. The client has great control over how the team

will be constituted, the diversity of the team, the varying subject matter knowledge and talents of the team, and the client's guidelines as to how the team should bill and operate.

Ideally, a client will have a lead counsel who is responsible for the overall performance of the law firm's team, and there will be a second and slightly junior lawyer who may be available as backup in the event that the lead attorney is unavailable.

At a minimum, the client may wish to inquire as to whether the firm has other partner-level attorneys who would be available to handle the client's business on an interim basis in the event that a relationship partner retires or is unavailable. Having another partner available then allows for the client and the firm to have the time to determine whether the firm will realign the client's team or whether the client will need to move the business to another, better qualified law firm.

As a part of the client's inquiries with the firm about retirement and succession planning, it is certainly within the right of the client to seek specific information about one or more of the following:

- Other substantively educated and experienced attorneys.
- The firm's billing policy with respect to the need for a new lawyer to get up to speed and take over a case.

- The firm's procedure with respect to appointment of new relationship partners.
- Whether the firm will allow the client to participate in the selection of replacement counsel within the firm.
- The financial wherewithal of the firm to carry on with the business in the absence of the departed partner.

THE LAW FIRM'S PERSPECTIVE

As a starting point, all firms of *any* size should engage in strategic planning every three to five years. That strategic planning process should include a short-term and long-term look at how the firm would respond to the expected and planned loss or retirement of attorneys and key law firm personnel. A good strategic plan that addresses predictable succession and retirement planning will address most of the concerns and fears presented by the possibility of the loss or retirement of firm leaders, firm rainmakers, and firm administrators.

The following is a list of questions about issues that could impact a firm's client relationship in the event of the death or retirement of a rainmaking or managing attorney:

- Does the firm track and understand the percentage of origination of revenue of each lawyer in the firm?

- Does the firm's partnership agreement (or other governing document) address how a partner's law firm share will be paid to a departing partner or the partner's beneficiaries?
 - Does the partnership agreement provide a balance between the needs of the departing or retiring partner/partner's beneficiaries and the firm so that the firm is not strained or rendered insolvent by the departure or retirement?
 - Does the firm have key-person life or disability insurance that may be available in the event of death or disability to bridge the financial needs of the firm and the departing partner or partner's beneficiaries?
 - Does the firm have other attorneys who have the experience and subject matter knowledge to step in to handle client legal matters in the event of death or disability or retirement of a lead attorney?
 - Does the firm's compensation system incentivize profitable partners to share client relationships and origination with younger lawyers and successors or are they incentivized to work late into life?
 - Are younger lawyers mentored and trained to understand the array of factors that a relationship manager must know in order to establish the bond of trust and performance that will be suitable to maintain a client relationship?
 - Are younger lawyers cultivated or encouraged to view themselves as successors to the firm's client relationships?
 - Is the firm's structure of equity partners, non-equity partners, associates, counsel, and contract lawyers sufficiently balanced to allow for the right number of lawyers to rise within the firm to become successors?
 - Has the firm engaged in conversations with the client concerning how the client relationship would transition in the event that the primary attorney was to die or be disabled or retired?
 - Is the firm financially prepared to absorb the costs that may be necessary for successor attorneys to get up to speed on client matters so that the client does not bear the cost?
 - Does the firm ask its more senior attorneys to advise the firm of the attorney's retirement plans? If so, at what age does the firm begin asking, and how often does the firm ask?
 - Has the firm studied the profitability of its client's account so that it can determine whether it wishes to *keep* an account in the event that a partner dies, departs, or retires?
- The above list is anything but exhaustive, but these questions taken as a whole will enable the firm to study its retirement and succession issues in a way that allows for emergency or planned retirement as the case may be. There is no ideal timetable for planning succession, but at least


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one expert has suggested that a firm allow at least five years for a planned retirement.²

TIPS FOR ATTORNEY RETIREMENT AND SUCCESSION PLANNING

The following is a checklist of things that a firm should do as it plans for succession and retirement of its lawyers:

- Make sure that you have a handle on what you might owe a retiring or departing partner. Do your bookkeeping records or partner agreement clearly define what a departing or retiring partner may be entitled to proceed?
- Set up your partnership agreement so that payments to a retiring partner or their estate can be paid over a period of
- years in a manner that the firm can afford.
- Consider paying capital to a soon-to-retire partner in advance of their retirement so that the firm can reduce the amount it would have to pay at retirement.
- Study the firm's compensation formula. Does it inadvertently incentivize older partners to keep practicing even when they may be less productive? Conversely, does the firm do anything to incentivize a senior lawyer to retire? Does it incentivize a younger lawyer to assume a practice area?
- Consider providing financial planners to assist senior lawyers in retirement planning. (Many senior lawyers do not retire

because they are uncertain whether they have saved enough to retire comfortably.)

- Bring in retirement and financial planning experts to provide workshops for lawyers and staff of all ages. Through education and planning, lawyers and staff can be encouraged to begin saving at an earlier age so they will be ready to retire when the time comes.
- If possible, provide a 401(k) or IRA program to encourage saving for retirement.

IN SUMMARY

In summary, law firms must be intentional in their planning for retirement and departure or death of partners. Firms can be ruined due to lack of planning. Firm leaders need to make sure that orderly succession and retirement planning can occur as partners age and approach retirement. It is not difficult, but someone needs to help lawyers overcome the denial that has long prevented them from retiring when it would be best for them, their families, their clients, and the firm. ☯

John Trimble is a senior partner and firm counsel at the Indianapolis firm of Lewis Wagner where he has completed 42 years in practice. He is a self-described bar association "junkie" who loves writing a column entitled, "Eye on the Profession" in the Indiana Lawyer. His subjects often turn to issues of law practice management, strategic planning, and retirement. For several years he has taken an interest in practice management and for the last decade has had a small consulting practice for small to medium-sized firms. He is presently working with the ISBA on a guide to retirement for Indiana lawyers.

ENDNOTES

1. John Sterling and John Remsen, Jr., *Planning for the Future*, Legal Management (2015).
2. *Id.*

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