



SUCCESSION PLANNING – WHAT’S HOLDING YOU BACK?

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Based on the percentage of all calls I get through the PBA hotline, as well as the percentage of private consulting calls that have to deal with succession planning, it is clear that firms have not been effectively tackling this issue. In fact, a majority of small and solo firms have avoided the issue entirely. With approximately 40% percent of remaining Baby Boomer partners who will retire in the next ten years still controlling a disproportionate 63+ percent of revenue generation, it is easy to see why this is a serious issue.

A study of the Altman Weil “2016 Law Firms in Transition Survey” offers some scary insights. Let me give you just one. When management was asked about their level of concern about the firm’s preparedness (or lack thereof) for retirement and succession of Baby Boomers, over 16% of respondents were extremely concerned, and another 42% were highly concerned.

My first strong article on this topic — strong being defined as one intentionally written to scare the reader so as to spark a call to action — entitled “Preparing to Say Goodbye to the Baby Boomers,” originally appeared in the May 1, 2006 issue of the *Pennsylvania Bar News*. Fast forward thirteen years. I have spent more than a decade repeatedly pressing the call to action button through articles and seminars.

Baby Boomers have been exiting from firms into retirement in droves in the ensuing years. We have witnessed the results: more law firm closings than we can count; Pennsylvania being one of the highest ranking in the nation for law firm mergers, as firms try to regain the economy of scale required to maintain reasonable profit margins and hold onto talent; record number of dissolutions and reformations as the only apparent solution to put an end to the deadlock in determining what is “fair” for one’s equity upon departure. (Remember how many times I have said “Pigs get fed, but hogs get slaughtered!”) In sum, lots of internal fighting, frayed nerves, destroyed relationships and bad feelings, lots of lost “next generation” talent because they saw no room being created for them to progress and so much stress and negativity that could have been avoided with good communications and planning.

Creating and implementing a succession plan is essential for firms. Every managing partner should be making this a top priority and lead the firm in this endeavor.

The succession planning needs to apply to everyone at the firm. It doesn't apply just to rainmakers, nor just to attorneys. You need to make sure that your key staff positions are handled in a consistent, thoughtful manner, too. All require an equally applied process and open communication that begins well in advance of anticipated retirement.

Establish the triggers which set the process in motion. What makes sense is a specific age or recognized health or cognitive changes. I often say that 75 is the new 65. And although many people will work far beyond 75 and be highly productive, if we can assume a possible retirement age of 75 makes sense, then 65 could be established as the age trigger for beginning the process. Serious health events such as cancer, stroke, heart attack and so forth should start the process. Cognitive decline will call for a different process but should also immediately start the process.

Note that I am not in any way suggesting a mandatory retirement age. I know a lot of firms have that in place. I don't agree it is a healthy strategy, although it was heavily recommended by consulting firms at one time in order to ensure the firms could continue to create room at the top for up-and-comers. Too many people who still had a lot to offer were and still are cast adrift under this one-size-fits-all solution. On the other hand, de-equitization at a certain age so that management and control of the firm passes on is not at all a bad idea. That still allows those with much to offer to work and contribute to the firm's success.

When a trigger is pulled, the "succession committee" meets with the attorney. The issues to discuss:

- Do you have any thoughts about how far away from retirement you are?
- Do you think you will want to fully retire or scale back?
- What type of continuing role(s) would you want to have with the firm?
- Is there currently sufficient younger talent at the firm to service your clients either in an emergency or as successor once you retire? Who are they? How much exposure have they been given to clients? How long until you believe they will be ready?



- Do we need to look outside the firm for the necessary talent?

Based on the first answer, the firm may schedule another meeting for a year later. But at least five years ahead of anticipated retirement, the rest of the answers should result in setting transition goals, monitoring progress and recruiting new talent where necessary.

A thorough review of practice areas, key client relationships, referral sources and spheres of influence should be undertaken with the attorney and documented. The goals set will be to transition a number or percentage of clients and relationships and referral sources each year. Goals should be set to open the door into spheres of influence for possible successors, if they desire.

Consistent review must be made to ensure that the attorney is making progress. Note that when it is identified early on that the firm doesn't have existing talent, it should plan to start looking for recruits earlier than five years ahead, depending on how many years of experience are needed and the scarcity of talent.

One of the biggest issues that undermines the firm's succession efforts is compensation. Compensation is usually based on revenue generation. Few people want to work themselves out of compensation, even if it's for the good of the firm. So when someone is in active succession mode, they must be rewarded for successfully transitioning clients and referral sources over time.

The attorney(s) picking up the new work may believe they are immediately entitled to additional compensation for increased relationship responsibility and working hours. There must be a frank discussion ahead of time about the fact that their future income is being created. Those additional rewards must mostly come later, so that the firm can continue to reward succession behavior.

Other factors which will get in your way include what I lovingly refer to as "Lawyer DNA". Resistance to change is probably first in line after compensation. So getting buy-in for the process is very important not just for the partner for whom the trigger is pulled, but for all. Determining what is "fair and reasonable" in terms of buy-out may mean a change in existing rules, assuming your firm has already established buy-out provisions. Often they were established without regard to possible marketplace changes or long-term financial welfare of the firm once partners start lining up to retire.

Another factor is fear of losing clients when succession is started. Sometimes clients give that impression by insisting that "their" attorney handle everything. Usually they just don't want to be passed off and made to feel less important.



Clients must know that assistance of another attorney and the process of succession planning ensure that their matters will continue to be handled properly in the event of an unexpected unavailability of their attorney. Once clients realize that it is behavior for emergency and succession purposes and not a “demotion,” they will cooperate. If a lateral is being considered, be sure to determine whether key clients have opinions one way or another.

Senior partners have a fear of being forced to retire. That’s another reason they resist succession planning. Once they know they can continue to practice and participate in other meaningful activities for the firm as well, the fear evaporates.

Lastly, perceived awkwardness of discussions leads many firms to avoid the discussion altogether. Yes, for many attorneys, avoidance is the normal method of dealing with conflict or unpleasant topics. That’s why it’s so important to try to discuss these issues in advance of needing to implement transition and retirement.

I have more to convey on this topic. But I am far beyond my word limit for articles and suspect that much of what I write may not make it past the editor’s red pen. So, let me remind those readers who are PBA members that I am here to assist you further.

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