

# SUCCESSION PLANNING

*A WIN FOR ALL*

Leslie A. Gordon

**T**he four scenarios to the right illustrate the critical need for succession planning at law firms of all sizes. While attorneys are trained to map out realistic contingency plans for their clients, surprisingly few have created their own succession plans. Attorneys may be too busy to plan or unwilling to hire the necessary professionals (such as consultants, trust and estate lawyers, risk management lawyers, financial advisors, and insurance advisors) to draw up a succession plan. Or younger lawyers may be reluctant to raise the issue for fear of seeming too ambitious. But lawyers avoiding this kind of risk management for their own businesses are akin to the cobbler's children who have no shoes.

## Consider these scenarios



Walking to grab a sandwich at lunch, a solo practitioner is hit by a bus and dies. In addition to dealing with the shock and grief, the lawyer's spouse—who is not a lawyer and has no understanding of the law, let alone professional ethical obligations—must respond to calls from clients demanding updates on their cases and the location of documents.



Two of the five lawyers at a small firm separately announce that they will retire within the next six months, meaning that 40 percent of the firm's partnership will soon disappear.



At a fifty-lawyer firm, one senior partner handles the firm's biggest client, which represents more than a quarter of the firm's total profits. While junior associates may execute some nuts and bolts of the client's matters, the client relationship has been remarkably insular. No one but that one senior partner even knows the cell phone numbers of key individuals at the client's company. One evening on the way home from the gym, the senior partner drops dead of a heart attack.



A big law partnership is composed of a significant baby boomer population. Both the managing partner (a revered, longtime leader with excellent judgment) and a senior partner with an exceptionally narrow specialty that helps differentiate the firm in the crowded legal marketplace, announce their impending retirement, which will leave the firm with profound voids in both leadership and expertise.

Attorneys owe fiduciary duties to their clients and law firm attorneys owe fiduciary duties to their partners. Law firm succession planning protects the firm as an institution as well as client interests by planning ahead for lawyers' retirement, death, or inability to practice law either temporarily or permanently. Attorneys and law firms without such plans may be subject to state bar discipline or even malpractice claims so it's not an overstatement to say that succession planning can preserve a firm's future. Because clients are the most at risk in the various scenarios on page 41, it can even be a competitive advantage to tout a succession plan to clients and prospective clients.

## ONCOMING RETIREMENT "TSUNAMI" AT BIG FIRMS

Currently, mid- and large-size law firms are facing the impending retirement of baby boomers, which account for nearly half the partners in the nation's top two hundred law firms, according to a recent *ABA Journal* article. That demographic will significantly affect firms' financial situations.

"Baby boomers entered the legal profession in unprecedented waves and there will soon be a tsunami of retiring and phasing-down lawyers," says Alan Olson, a partner at consulting firm Altman Weil, who has advised more than eight hundred law firms. "As many as a third to 40 percent of actively practicing lawyers are in this generation. It will have an impact not just on law firms but also on the judiciary and government."

Law firms with a top-heavy group of baby boomers should undertake a major planning initiative now "or be poised to shrink," Olson adds. "This group of lawyers embraced the two-thousand-hour-a-year billable format. They've been a very productive, entrepreneurial, and rainmaking group at the top of their expertise. In my view, their retirement necessitates planning."

To start, law firms should conduct a demographic analysis of the partnership because the retirement of even one



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key attorney can have significant profitability implications. Succession plans must take into account real estate leases, which may be a firm's biggest liability. While some large firms may have "already crossed the Rubicon and been through retirements like this institutionally," other firms—particularly those smaller than one hundred lawyers—are more likely to have transition issues, according to Olson. "In many cases, the founding generation is still present and the firm has never transitioned before."

While Olson admits "it's an uncomfortable topic," the future of the firm could depend on advanced planning. Some law firm partners have a "die-with-my-boots-on mentality," he explains. "As a result, they didn't train the next generation. Their plan may be to bill two thousand hours and then just stop," which could be disaster for the firm as an institution. "In that case, I like to say they're sprinting toward a brick wall."

"A succession plan should consider the firm's expertise,

specialties, and industry knowledge as well as management and leadership, cash flow, and productivity,” Olson says. Younger lawyers must be ready to take over client relationships of rainmakers and the firm must preserve specialties through mentoring, in-house training, or lateral hires. “The substance of a plan needs to be individualized but all firms need this kind of architecture of a plan.”

When Society 54’s Jill Huse, a former lawyer who’s now a law firm consultant, asks clients about their succession planning as part of an overall strategic plan, in each case, the clients’ firms failed to have one. “With baby boomers starting to retire in the next five to ten years, it’s very alarming,” Huse says. “What’s going to happen to the legal industry? Whether you’re planning to retire or just recognizing that you could get hit by a car tomorrow, you need to be thinking of these things.”

In the case of aging baby boomers, an early dialogue with transitioning lawyers is recommended. “Five years in advance of a phase down, maybe when lawyers are in their early sixties, firms have to start planning,” Altman Weil’s Olson advises. “There should be a firmwide program with no exceptions.” The dialogue should include decisions about the length of a phase-down period, the retirement date, details about compensation and capital contribution payouts, and expectations postretirement.

In addition, potential successors’ strengths and weaknesses—including not just legal skill but also client development and people skills—must be assessed to prevent hasty appointments. The firm’s culture must always be a primary consideration. A neutral third party such as an outside law firm or a consultant can facilitate discussions. In some cases, the firm’s most important clients may appreciate being consulted about succession plans.

“Firms can craft a succession plan internally among themselves, but the discussion is best when it’s mediated” by a neutral third party, according to Huse. “Succession planning involves a lot of emotions. Some partners get very defensive and take succession planning very personally. So a third party can say, ‘It’s not about you, it’s about

the firm,’ and help the transitioning lawyer think of it like a business decision, rather than considering it from an ego-centric perspective.”

In these cases, it may be helpful to remind lawyers that training people below them is a way to leave a legacy. “The transition team can also find ways to keep retiring lawyers engaged with the firm, such as having them share their experience through mentoring and recruitment so they still feel valued,” she adds.

Huse recommends that a designated transition team craft a written succession plan that includes compensation policies and procedures. “If it’s discretionary, there are too many variables and you can’t have different lawyers getting different deals,” she says. At the very least, there should be guidelines that take into account the particular culture of the firm. “Maybe the partner is not immediately de-equitized, maybe it’s a slow transition out. But at least there should be a check-in process.” Every succession plan—for a firm of any size—should be uniquely crafted and at the same time be a dynamic document that can change with the firm.

Importantly, there are profound risks to doing nothing, Olson insists. Crisis-driven succession planning—such as when a rainmaker dies unexpectedly—should be avoided at all costs. “Why spend money on a plan now?” he asks. “Because it’s an ounce of prevention.” A successful transition can take years and every kind of firm can benefit from advance planning. Even a bare-bones document detailing succession is better than cobbling together something haphazard in a crisis.

## RESOURCES FOR SOLOS

Unlike law partnerships, solo practitioners typically have no default mechanism, which has “even more potential for a critical situation,” according to Olson. “By definition, a solo doesn’t have a next generation within the firm. And the economics [of transitioning] may be trickier.”



The penalties for not thinking ahead can cause havoc not just on the life of the clients but also on the deceased lawyer's family. In fact, an estate can be personally liable for malpractice claims.

Solo practitioner succession plans should be as specific as possible. They must set forth a backup attorney, client notification procedures, and the transfer or disposal of client files. It should also explain how and where client information is stored, details about office leases or contracts, financial liabilities, instructions for accessing computer and voicemail systems, how clients will be contacted, who will file notices with the courts, who will send out bills, who will pay rent, how a successor will be compensated, and in the case of the lawyer's temporary inability to practice, who will field calls from potential clients. Solo practitioners who are considering phasing down their practices in advance of retirement may even consider a merger as part of succession planning.

For solos, these kinds of considerations may actually be required by ethics and professional responsibility edicts, according to Deborah Fox, estate planning lawyer at

Skootsky & Der. For example, California Business and Professions Code section 6180 sets forth who must be notified upon a lawyer's death, incapacity, or resignation and when the practice may be subject to the court appointing an administrator.

Similarly, California Probate Code sections 730–735 cover transferring client documents, and ABA Disciplinary Rule 28 details actions upon a lawyer's death. The penalties for not thinking ahead can cause havoc not just on the life of the clients but also on the deceased lawyer's family. In fact, an estate can be personally liable for malpractice claims, according to Fox.

Fortunately, there are resources available. The State Bar of California Attorney Surrogacy program provides a model agreement for designating an attorney to administer another's law practice during disability or incapacity. The state bar also has a sample Agreement to Close Law Practice in the Future. Taking time to prepare for these scenarios may prevent loved ones from being burdened with the chaos of closing down a law practice.

“Succession planning is a win-win-win,” Olson insists. “It's a win for clients who need to continually be served with certain expertise; it's a win for firms who need to ensure they replicate leadership and production; and it's a win for lawyers—both the ones phasing out and the ones on their way up.”

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