

# Succession Planning

By Deborah Alley Smith

**A**lthough succession planning involves common sense, it poses many challenges that must be recognized and managed along the way.

We sometimes can't foresee when a firm transition is coming, but change is inevitable. The long-time managing partner has to step down for personal reasons; the firm's highest business originator meets an untimely demise; the

firm loses its largest client because the new, 40-year-old general counsel is more comfortable with her college sorority sister doing the work than the senior partner who has successfully handled the business since the GC was in elementary school; a crucial administrative staff member—the only person who knows the ins and outs of certain aspects of your business—retires to the Caribbean with minimal notice; one (or more) of your up and coming stars—in whose development you have invested countless hours and lots of money—is cherry picked by another firm. The challenges that such transition issues create for large firms can be significant, but they pale in comparison to the challenges faced by smaller firms. Most first generation law firms do not survive their founding partners, and even one of these events can shake a smaller firm to its foundation.

The key to surviving such changes is planning—anticipating and preparing as early as possible for the changes that will

inevitably come, and preparing, as best we can, for the unexpected “disasters” that may befall us. Given lawyers' general aversion to risk, and considering the myriad leadership and business transition issues that could derail a law firm, someone might assume that most law firms would be right on top of succession planning. But that is not always, or even usually, the case. While today's law firm leaders (most of whom are baby boomers) may be tempted to ignore the issue, or put it off indefinitely—after all, they aren't going anywhere any time soon, and they won't be around to reap the benefits in any event—firms that do not attend to succession planning are much more likely to fail than firms with solid succession plans.

This article will examine what a comprehensive succession plan includes and outline some of the challenges that transition planning presents, as well as suggest ways that some of those challenges can be managed. It is not a comprehensive guide to



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transition planning. Rather, it is intended to alert firms to the issues and to encourage them to get started. Time *is* of the essence.

### **A Comprehensive Succession Plan: What Is It?**

Succession planning, or transition planning, encompasses several different components: business transition planning, leadership transition planning, and disaster planning. Each component is essential to a comprehensive plan.

#### **Business Transition: Holding On to the Business That You Have**

We all know that acquiring new business is generally a long-term and expensive process of building relationships, demonstrating expertise, and positioning to be in the right place at the right time to get the work. We all also know that our best source of business is our current clients. Despite these two truths, we are more likely to spend time and resources on developing new clients than we are on positioning our firm to maintain our existing clients after the originating partner or relationship partner departs. Investment in developing, implementing, and shepherding a business succession plan significantly increases the likelihood of a firm's long-term success.

#### **Leadership Transition Planning: A Rudderless Boat Goes Nowhere Fast**

Leadership transitions can be fraught with problems, sometimes resulting in a reduction in firm profitability. Unplanned transitions compound the difficulties exponentially. A new leader must be identified quickly, increasing the likelihood that the wrong person will end up in the position. In a smaller firm, the pool of candidates may be extremely limited, and identifying the "right" candidate is not always easy. Most law firm leaders seem to agree that individuals who are anxious to serve as a firm's managing partner often are *not* the best candidates for the job. A lawyer with a well-established, profitable practice is seldom excited at the prospect of giving up some or all of his or her practice to make time to lead the firm (or of experiencing the resulting hit to his or her originations and collections, and perhaps ultimately compensation, that sometimes occurs after assuming a leadership position). While

arm-twisting may result in a reluctant agreement to serve, a leader who does not want to lead is not likely to be effective.

A leadership void can be particularly problematic in today's legal environment. To remain profitable and competitive, firms must be more efficient and effective and find ways to give their clients more bang for their legal-spend buck. To do that, firms must change the way that they do business, which requires leaders who have vision and can drive that change. No one is irreplaceable, but a boat with no rudder goes around in circles, something that many firms cannot survive in today's legal environment. Having a well-thought-out leadership transition plan is crucial.

#### **Disaster Planning: It's Not Just About the Tsunami**

A firm must have a disaster plan in place to assure the continuation of the business if a disaster occurs. Hopefully, most firms have developed some type of plan to deal with a physical disaster—such as the firm's building being destroyed (*e.g.*, 9/11) or becoming inaccessible (*e.g.*, Hurricane Katrina). But other types of "disasters" can derail a firm as well, such as the unexpected passing of a key administrative staff member, and firms need to have contingency plans for these types of events, too. If your accounting manager is the only person who knows the ins and outs of your billing system, how do you keep your practice going if he or she is hit by the proverbial bus? Depending on whether your firm has prepared in advance, accidents and other events can be a mere blip on the radar or huge time and revenue drains.

#### **The Challenges of Succession Planning**

Significant challenges must be overcome to prepare, implement, and follow through with a comprehensive succession plan.

#### **Tough Conversations**

Conversations about transitions of leadership and clients can be awkward and fraught with emotion, apprehension and fear. Face it, at some point a leadership transition must occur; at some point, your firm will be faced with the need to transition business to the next generation. Transition planning requires law firm leaders and senior partners to think ahead to retirement

and life after the law. That can raise financial concerns about retirement and anxiety about giving up their clients and their identities as lawyers and facing their own mortality; it can also create animosity or resentment if lawyers feel underappreciated. These conversations also can raise concern among younger lawyers about the viability of a firm after the senior partners are gone.

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Establishing a culture of open communication within a firm will make conversations about transition planning much easier. Mabey & MacKay, *Financial Aspects of Succession Planning*, 37 Law Practice, no. 3, 2011, at 43, 46. All the partners within the firm should feel comfortable discussing all business matters with one another. Senior partners should not fear backlash for speaking the word "retirement" or think that their wants and needs will be dismissed by the other partners, nor should they feel threatened or be offended if younger partners or firm management broach the subject. The younger lawyers should not panic or assume the worst if a senior partner announces plans to retire. Open communication allows transition plans to be prepared and adjusted to accommodate the needs of all concerned.

#### **Limited Time and Resources**

Similar to strategic planning, succession planning is not a one-and-done prospect. Rather, it requires a long-term commitment, constant focus, and reexamination and tweaking on a regular basis. In short, it takes time and resources away from generating revenue. Generally, smaller firms can less afford to allocate time and resources to "nonessential" activities. If the members are committed to the long-term success of their firm, however, transition planning should be considered a vital activity in any firm.

The best way for firms, particularly smaller firms, to plan for transition with

minimal disruption is to begin the process far in advance. Without question, the sooner the firm gets started, the better off it will be. Recognizing that transition planning is a process, not an event, is crucial. Ideally, the process should begin five to 10 years before a lawyer approaches retirement. See Arthur G. Greene, *Succession Planning for Solos and Small Firms*, 83 N.Y. St. B.J., Feb. 2011, at 30,

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32. Smaller firms particularly may not have the resources to transition clients and lawyers if they wait until the senior partners are halfway out of the door or the managing partner resigns. Spending a few hours a month planning for a transition and spending a few hours a month developing the younger lawyers over the course of several years is much easier and achievable, but it requires focus and discipline.

Obviously, buy-in from leadership is crucial to the success of transition planning, but finding time amid the other leadership responsibilities to focus consistently on transition planning issues may prove challenging. Without one or more individuals invested in and driving the process, it will not receive the attention that it needs and deserves. The task of driving the process may fall to the younger lawyers. They should be invested in the process since their long-term success may depend on it. Care must be taken, however, because pushing from a lower level can create friction with the senior lawyers, particularly if generational or communication issues already exist.

#### **Senior Partner Buy-In**

Senior partner buy-in to the process of transition planning for their practices is essential. Mabey & MacKay, *supra*. Senior

partners often don't even want to talk about the inevitable need for transition, much less assist in planning or training their successors, and eventually turning over their leadership positions or clients to others. I choose to believe that most of our senior partners ultimately have the best interests of our firms at heart and that those who are reluctant to participate in the transition planning process simply find it threatening or don't recognize the need to start the planning process early. They may not be ready financially or emotionally to think about retirement. They may be concerned that if they start the process of turning their clients over to younger lawyers, they won't be needed anymore, or the younger lawyers will take the clients and leave the firm.

Firms should consider developing a comprehensive senior counsel program because ad hoc discussions with senior partners about transitioning can create the impression that a particular individual is being singled out because of age or energy level, or that a particular individual is being treated more favorably than others. See Alan R. Olson, *Planning Successful Transition Programs for Senior Counsel*, 30 Law Prac., no. 3, 2004, at 44. It should be understood, however, that while the process will be consistent, the specifics will be tailored to each individual lawyer. *Id.* Allowing for specific tailoring within the program will help the senior partners resolve their individual needs and concerns and will make the process less threatening to the senior lawyers. The program may provide options for continuing to work after retirement from equity status, such as part-time arrangements or consulting on particular matters. Including access to resources to help senior partners plan financially for the period after they give up their full-time status also should be considered.

#### **Compensation Issues**

One significant issue that arises in making transition plans for equity partners is how their earnings will be affected and when the effect will begin. Mabey & MacKay, *supra*. This issue may prove especially difficult to deal with in smaller firms with more limited resources. Again, the earlier that planning is undertaken, the easier these issues are to address.

As explained elsewhere, “[m]ost compensation systems don’t effectively or fairly address how practitioners will be compensated when it comes to transitioning out of equity status. As one partner eloquently put it, retiring partners are expected to be ‘philanthropic.’” *Id.* at 46. Many senior partners fear that the transition process will leave them with inadequate compensation. This means that “[f]or any client-succession plan to work, the senior lawyer must be provided with some level of income protection that rewards the lawyer for furthering the goals of the plan.” Roy S. Ginsburg, *Successful Succession: Keep Your Best Clients When Boomer Lawyers Retire*, 85 Wis. Law., Mar. 2012, at 28, 30. Consideration also must be given to how the senior partner will be protected if his or her greatest fear is realized, that is, he or she successfully transitions his or her business to someone else, who then departs the firm taking the business. Regardless of the compensation method the firm chooses, it will need to be sufficiently flexible to be tailored to each senior partner’s individual circumstances and needs. Michael Moore, *Untying the Gordian Knot: Law Firm Compensation*, 85 Wis. Law., Mar. 2012, at 4.

#### **Generational Issues**

Generational issues may have a significant effect on transition planning. There are many more baby boomers than gen-xers, so it can be difficult to identify individuals to whom baby boomers’ business can be successfully transitioned. See Phyllis Weiss Haserot, *Bridging the Gap*, 25 Legal Mgmt., no. 6, 2006, at 94, 96. Differences in work styles can also create issues. Both older and younger lawyers may feel undervalued or misunderstood. Younger lawyers may believe that they are not taken seriously or are expected to give up too much of their personal time; older lawyers may think that the younger lawyers do not respect their wisdom and years of experience, are lazy, or don’t have their priorities in order. *Id.* When the generations feel at odds with one another, transitioning is not likely to be successful, so these issues must be resolved before or during the planning process.

#### **Client Retention**

Clients need to feel secure in the ability of a firm to meet their needs after “their law-

yer” is gone, so they must have relationships with, and confidence in, younger lawyers in the firm. Clients hire lawyers, not firms. Comfort and chemistry are crucial for a successful lawyer–client relationship; it is important to provide a client with the time and opportunities to develop trust in new lawyers while the senior partner is still involved to ensure that the client’s needs are met. Ginsburg, *supra*. If relationships have not been built with younger lawyers in the firm, the client will not remain after “their lawyer” departs.

A good transition plan will encourage the senior lawyers to make younger lawyers more visible and to build the clients’ confidence in them. Including younger lawyers in meetings and phone conferences (at no charge to a client if appropriate), encouraging younger lawyers to build their own relationships with the client, and giving them responsibility for writing and calling the client directly with updates will allow the client to get to know the younger lawyers and learn about their expertise and experience. Client confidence also can be built by giving credit to younger lawyers when they do good work, deferring to them in meetings, talking about their good results for other clients, mentioning their important outside activities, and so forth. See Sally J. Schmidt, *Transitioning Your Client Relationships: Key Steps for a Smooth Succession*, 32 Law Prac., no. 2, 2006, at 56–57. After client confidence has been built, gradually giving a younger lawyer more and more responsibility for the client’s work and the client relationship can allow a seamless transition. But the process takes time, anywhere from three to 10 years by some estimates. See Greene, *supra*, at 32, 35.

Involving a client in the transition planning process may be the single most important thing that a firm can do to increase the likelihood of retaining that client through the transition process. Clients may be the first to focus on the fact that “their lawyer” is now a “senior” lawyer or that the lawyer’s health is declining. Clients may be thinking (or even worrying) about the succession question before a firm ever considers the issue; they may identify and even hire a new lawyer before “their lawyer” is ready to pass the torch. Schmidt, *supra*. Seeking

client input in the transition planning process can give clients the comfort of knowing that the firm is planning and preparing for the client’s future needs.

Candid conversations with long-term clients early on in the transition planning process will go a long way toward avoiding problems down the road. What the firm envisions going forward, who should be in charge of the client’s work, the time frame for phasing out the current primary lawyer, and related issues should be discussed. *Id.* The client may provide invaluable feedback about your plans. You may find, for example, that a client has little or no confidence in the successor who you propose. If you implement a transition plan without knowing about the client’s lack of confidence in the successor, there is little chance of transitioning the business. If you know of their concerns, you have the opportunity to correct the situation by either finding another successor or building the client’s confidence in the one who you propose.

Obviously, that kind of candid conversation is not appropriate with all clients. When the business involves clients with whom a lawyer has weaker ties, or who have had no contact with other lawyers in the firm, baby steps may be required. Test the waters by getting permission for a younger lawyer to handle a smaller matter, or one aspect of a larger matter, and if it goes well, progress from there. Regardless, once the transition plan is implemented, periodic feedback from the client should be sought to assess how things are going. Ask clients directly whether they have any concerns and whether they are satisfied with their new primary contact and make adjustments if necessary. *Id.*

### Retaining the Middle

Most lawyers no longer remain with the same firm for their entire careers. Changing firms several times is not unusual. Much has been written about why young and mid-career lawyers leave firms. See, e.g., Kate Mayer Managan, Erin Giglia & Laurie Rowen, *Why Lawyers Leave Law Firms and What Firms Can Do About It*, Law Practice Today (Apr. 14, 2016), <http://www.lawpracticetoday.org/article/why-lawyers-leave-law-firms-and-what-firms-can-do-about-it/>. Addressing those issues is beyond the

scope of this article. It is important, however, for firms to recognize the problem and the effect that it may have on succession planning. Losing mid-level lawyers can create significant issues for law firms, particularly smaller firms, and it can wreak havoc from the standpoint of transition planning. After all, even the most well-thought-out transition plan will fail if the

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individuals set to assume clients or leadership roles abandon ship.

Formulating and implementing a well-reasoned transition plan may actually increase the likelihood that mid-level lawyers will stay with the firm. When mid-level lawyers can see the direction that the firm is headed, and their place in the firm’s future plans, they feel more secure. Regardless of the perceived satisfaction of a firm’s lawyers, however, a succession plan must include contingencies to deal with the potential departure of young and mid-level lawyers.



## The Right Skills

Transition planning must encompass assuring that individuals with the knowledge and the correct skill sets are ready to assume an area of business or a particular client when the senior partner retires. This can be challenging under the best of circumstances. When firms lose lawyers, it often leaves a knowledge and experience

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gap that must be filled, either by training current lawyers or by hiring laterally. From the succession planning standpoint, these gaps in knowledge and skills should be filled as early as possible. A younger lawyer may need to acquire subject matter knowledge, develop or enhance practice management skills, gain more practical experience, or a combination of these to be in a position to assume control of a client's business successfully. Alan R. Olson, *A Foundation for Succession Planning and Lawyer Development*, 34 *Of Counsel*, no. 2, 2015, at 6, 7. Unfortunately, “[t]oo many small firms hire because they need to cover an existing workload—not with the idea that they are choosing future partners.” Greene, *supra*, at 34. Positioning younger lawyers with the skills to step into the shoes of a senior lawyer should be part of every firm's associate training goals and should be actively considered each and every time that a new lawyer is hired. Again, it's long-term process.

## Identifying and Developing Future Leaders

The firm also must develop one or more effective future leaders. This involves identifying individuals with leadership skills or potential and determining how to train or develop those skills so that they can become successful firm leaders. That can be significantly more burdensome when mid-level lawyers leave the firm.

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the qualities that are often cited include a focus on high potential, not just performance; a high level of engagement; accountability; multitasking abilities; communication skills; evidence of empathy and emotional intelligence; decisiveness; and the ability to admit failure and accept responsibility. The firm's culture will dictate which qualities are most important for its future firm leaders, but a vision for the future and the ability to effect change are characteristics that are particularly important in today's challenging legal environment.

Leadership is distinct from management, and leadership skills are more difficult to acquire, so it is important that firms identify and begin developing the leadership skills of individuals with leadership potential as early as possible. Some lawyers have natural leadership skills, but training and experience can develop even those individuals into better and more effective leaders. If the development process is started early, as it should be, a young lawyer can be mentored and coached by the then-current firm leaders. Olson, *supra*. There is no substitute for actual experience, so giving young lawyers increasingly more significant leadership tasks will allow them to hone their skills and allow the firm to assess their progress. In fact, some recommend that firms “look[] for opportunities to involve all lawyers in some aspect of management, in order to evaluate whether they have the skills to be future leaders of the firm.” Greene, *supra*, at 32. When firms are on a restrictive time schedule, leadership seminars and leadership coaching may be the best option.

## Disaster Planning

Firms should consider and plan for all manner of “disasters.” Most firms will never need to access their data and continue to serve their clients without physical access to the firm's offices, but if your firm does face that situation, having a well-developed disaster plan can be the factor that determines whether your firm survives. How do you access your data? Where do you work? How do you contact employees and notify them about how your firm will continue its business and what your expectations are for them? Who

is responsible for doing that? How do you notify your clients, and who is responsible for doing so? All of these things must be considered, and plans and procedures must be fully documented and understood by everyone in the firm. See generally Lloyd D. Cohen, *Being Prepared with Law Office Emergency Planning*, 4 *GP Solo*, Summer 2008, <http://www.americanbar.org>.

“Disasters” come in all shapes and sizes, so proper disaster planning must also address smaller events that can disrupt your firm's ability to conduct business, serve clients, and remain profitable. This is particularly significant for smaller firms that have fewer employees involved in management and administration. Have you cross-trained employees on all essential functions? Are all job duties and procedures fully documented? Who is responsible for various job functions performed by a key employee in their absence? Where are the login information, the passwords, the account numbers, the alarm codes, the office keys, and other essential information maintained, and who has access to them? Are all vendor contacts kept up to date (who, regarding what, and so on)? Are the expiration dates of licenses and contracts documented in one place and calendared? Have you identified an outside, go-to source for assistance with IT issues and your billing system? All of these issues must be addressed in a disaster plan. Once a plan has been created, it must be stored in multiple formats, and all key employees must understand it and know how to access it in the event of an emergency. *Id.* The plan and the underlying information must be updated regularly.

## Conclusion

Most of what needs to be done in succession planning is common sense, but it poses many challenges that must be recognized and managed. Perhaps the biggest challenges are recognizing the need to do it early enough and maintaining the momentum and focus to prepare a plan and implement it successfully. One thing is clear: a comprehensive succession plan will significantly decrease the chances that a firm will be derailed by an unexpected event. Is your firm prepared? If not, get started: the sooner, the better.

