Exit Strategies for Lawyers

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Introduction

Law Firm Succession Planning in the Wake of COVID-19

If there's anything the COVID-19 pandemic has taught us, it's that we're not in control of a lot of factors affecting our daily lives. There are steps we can take, however, should the unthinkable or unexpected happen.

If you're a practicing lawyer in your 60s or 70s, one step you can take is to put a succession plan in place. If you don't think you need one or haven't even considered creating one yet, it's time to acknowledge why so you can move past any roadblocks and take care of business.

Which Mindset Has Held You Back From Your Law Firm Succession Plan?

Do any of these mindsets sound familiar?

- You've been unable to save for a rainy day and your savings are woefully inadequate for retirement. All you have time to think about is paying the bills.
- You love what you do. All you have time to think about is closing the next deal or winning the next case.
- You hate what you do but you fear the unknown of retirement. You follow the mantra, "better the devil I know than the devil I don't." All you have time to think about is how you detest change.
- You don't see yourself as a strategic thinker and often say to yourself, "Everything has worked out fine so far, so why bother now?" All you have time to think about is how lucky you've been.
- You believe you're indispensable to so many people: your family, clients, staff, and community. All you have time to think about is how fortunate these people are to have you in their lives.
- Your identity is so wrapped up in being a lawyer you can't imagine going through life in any other way. All you have time to think about is how the law has been—and will always be—your first and only true love.

The Real Victims of Your Succession Planning Paralysis

If any of the above mindsets ring true for you, you've fallen victim to succession planning

paralysis. This paralysis doesn't only harm you, however. Let's examine who will suffer the real consequences should you become seriously ill or die without a plan in place.

- **Your beloved spouse or significant other.** If you're a solo lawyer, do you want your grieving spouse to make decisions about what to do about active cases and the future of your firm? Your spouse is likely not a lawyer. They aren't qualified to do this type of work under the best of circumstances; they certainly aren't under circumstances laden with emotion.
- **Lawyers and staff at your firm.** These will be the people on the front lines, along with your heirs, making the crucial decisions you should have already made. They may not be as burdened by emotion as your heirs, but they will likely be burdened by a lack of competence.
- **Clients.** Are you one of those lawyers who has been preaching for years how much you care about your clients? Well, how much care are you showing when you leave no guidance about who should handle their pending and future matters? By failing to plan, you're forcing your clients to fend for themselves and secure counsel—possibly counsel you've never liked or trusted.
- **Heirs.** You've already named the people in your will to receive the rewards of your successful career. If you're a solo, do you want the value of your firm determined in a "fire sale" atmosphere? If you're an owner who works with other attorneys and you don't have a buyout in place, your heirs will likely get next to nothing for the firm's value. Instead, the value will probably accrue to the firm's other lawyers—at little cost to them and no benefit to your loved ones.

I'm not going to lie to you; getting old sucks. But facing your departure from practice now and taking steps to protect what you've created is necessary. Failure to do so is a sign of selfishness, pure and simple.

Set Goals

Lawyers are typically not a reflective lot. We rarely spend time taking a step back to ask, "What am I trying to accomplish here?" Instead, most lawyers just "shoot and then ask questions." This dynamic is present at the time of retirement when determining an exit strategy. And even when the timing of the exit is carefully thought out, the goals are often not.

Sample Questions to Help You Identify Your Exit Strategy Goals

Here's a list of questions to consider, listed in no particular order of importance:

- When do you want to begin to slow down?
- When you begin to slow down, what don't you want to be doing that you're doing now?
- How gradual do you want your slow-down to be?
- How long do you want your slow-down to last?
- When do you want to be completely done practicing law or having anything to do with what was once your law firm?
- How important is it that your successor has a similar philosophy of practicing law?
- How important is it that your clients continue to receive the same quality of service that you have provided over the years?
- How important is it that your staff has jobs after a transition?
- How important is it that your transition yields the most amount of money reasonably possible?

Knowing Is Only Half the Battle

You should know the answers to most of these questions. But the key isn't simply knowing what you want to accomplish, it's also about prioritizing your objectives. The world isn't perfect. It's unlikely that you'll be able to achieve everything you want in your exit. But if you know what's most important, your chances of a satisfactory exit improve significantly.

Build Flexibility Into Your Exit Strategy

Consider how flexible you're willing to be once you've made up your mind about your goals. For instance, what happens if as you begin to slow down, you realize that having more time on your hands is not such a bad thing after all? Would you be willing to accelerate some of your target dates?

Also, don't be surprised if your initial goals need some tweaking once you start executing your exit plan. The best exit strategy plans have built-in flexibility.

Take Control Now to Decide the Future of Your Practice

Planning your exit doesn't necessarily mean you'll be unable to practice law. Depending upon the plan you create, you can continue to practice. Will the circumstances be the same? Probably not. Will the benefits be the same? Not likely. You may lose flexibility, earn less, or even have to take orders from someone else. But at least you will have had the final say in how your practice lives on.

Are You Planning to Fail?

Winston Churchill once said, "He who fails to plan is planning to fail." Without a formal succession plan in place, a failure to plan during your later years will inevitably bring anguish, distress, and despair to the people you've loved and cared about during your career. They deserve more from you. And you deserve a better legacy. Stop planning to fail and get started on your law firm succession plan today.

Chapter 1. Retiring at the Right Time, in the Right Way

When baby boomers cheerfully sang the lyrics to “When I’m 64” along with Paul McCartney and the Beatles, age 64 seemed impossibly far away. Today, not so much. Age 64 (and the concept of retirement) now seems just the opposite—impossibly close (if not in the rear-view mirror).

For approximately the next two decades, about 10,000 people a day will turn 65—including many of the nation’s most experienced and respected attorneys. The American Bar Association estimates there are 400,000 Baby Boomer lawyers—approximately one-third of the nation’s current total.

During their years of active practice, most of these lawyers made a real difference in their clients’ lives and want to continue to have the same impact as they approach and reach retirement. With proper planning in the years leading up to retirement, lawyers can ensure their retirement years provide the same personal fulfillment as their working years.

Why Lawyers Flunk Retirement

Attorneys often find adjusting to a retirement lifestyle very difficult. Perhaps the most fundamental reason is that they do not plan, or even think about planning, what they are going to do with their time. They plan their financial futures, but rarely their practical, day-to-day futures. They naively believe that when they retire, everything will fall into place.

Most overworked lawyers eagerly anticipate having more leisure time in their lives. They soon learn, however, that a daily routine of golf, movies, and restaurants starts to feel older than they do. Also, few lawyers honestly assess their relationship with a spouse or partner. They may have made a commitment years ago “for better or for worse,” but often begin to doubt that they can make a similar daily commitment “for lunch.”

Retirement Phases

Riley Moynes, an author and retired educator, is well-known for the framework he devised to help people plan the “what to do” part of retirement. His book is The Four Phases of Retirement: What to Expect When You’re Retiring. You can also listen to his

excellent [TEDx Talk on the Four Phases of Retirement]. Here is a summary of his ideas.

Phase One: Vacation/Liberation

To the extent people ponder what their retirement will look like, many think pickleball, movies, travel, new restaurants, etc., i.e., an extended vacation, without having to check your smartphone every 15 minutes. There is little or no routine to your day. Not surprisingly, many become bored with this phase and, in fact, begin to miss the routine of working. This phase can last as long as a year.

Phase Two: Disappointment

Boredom leads to disappointment and, for some, even depression. Retirees feel lost and miss what work provides:

- Routine
- Identity
- Relationships
- Purpose
- Power

They realize that working provides a lot more than simply a paycheck.

Phase Three: Trial and Error

To minimize the length of time you spend in Phase Two, you must change the narrative and engage in "trial and error." Put simply, you need to do something different and regain what you lost when you stopped working. You begin to experiment to find meaning in what you do.

This is the most frightening and anxiety-provoking phase of retirement. That is because not all of your experiments will succeed. The challenge is to not give up. If you do, you're back to Phase Two. The goal is for Phase Three is to evolve into the next and final phase.

Phase Four: Reinvent and Rewire

Here's where you utilize the lessons of Phase Three to seek a renewed sense of purpose and fulfillment. You have successfully adjusted to retirement and have found new ways to

be fulfilled and satisfied. For many, that involves service to others, be it family, friends, or community.

How the Framework Can Help You

Think back on your career as a lawyer. Was it all smooth sailing? Of course it wasn't. Then why should retirement be any different? Moynes' framework can help you plan a retirement that minimizes the frustrations of Phase Two and maximize the length and satisfaction of Phase Four.

Make Friends Before You Need Them

As noted earlier, most lawyers think long and hard about how best to invest their financial assets. They want to maximize their financial health. Few, however, think about how they should invest their time to maximize their physical and emotional health during retirement. The answer is to invest in their relationships with family and friends. A long-running study out of Harvard University concludes that the best predictor of longevity, health, and happiness as we age is the quality of our relationships.

Invest in Your Relationships

Many attorneys' careers are all-consuming, leaving little time to create and support genuine personal relationships with family members and friends. Just think about how many good friends you had when you were in college and law school. Those of you reading this as a practicing attorney probably don't have as many strong friendships as back then. The same is likely true when you think about your family relationships.

Nurturing relationships takes time and effort. One study by a social scientist from the University of Kansas concluded that it can take as long as 200 hours over a few months to establish a new close friendship, and 60 hours for a casual one. Staying connected with already existing friends or reconnecting with old friends will, of course, take less time. How many close friends does one need? Another study out of Stanford University suggests a minimum of three. Depending upon your family relationships, you may need fewer.

Take the Time

Just like many of you take the time to regularly exercise to stay physically fit, a similar time investment in relationships also goes a long way toward your well-being. And if you want to kill two birds with one stone, why not start taking long walks with family or friends? It's a great way to get a little exercise and strengthen relationships.

Sooner Rather Than Later

President John F. Kennedy once said, "The time to repair the roof is when the sun is shining." Similarly, the time to plan your retirement is while you're still engaged in active practice.

Too often, lawyers assume that professional development ends when they start to wind down their practice. Instead, they should maintain—and maybe even intensify—their focus on professional development. Why? Because whatever your goal is for retirement, a few years of groundwork may be needed to make a successful and personally fulfilling change.

Timing Is Everything

Your first consideration is "when" to retire. The answer is never simple.

Think about your answers to the following questions:

- Do you still look forward to going to work or have you had enough?
- Have your law firm colleagues suggested you slow down or stop practicing?
- Does your law practice interfere with hobbies, volunteer work, travel, family, or other activities on which you would rather spend your time?
- How is your physical health?
- Do you still have the mental edge your clients need and deserve?
- How healthy is your spouse or partner, or other significant relatives? Is there someone you will need to care for?
- Can you afford to retire?

There's no magic formula; the decision about when to retire is always a "guesstimate." Everyone will rank these factors differently. Additionally, many of the best predictions could be upset with little advance notice. But it's important to at least think about your

answers to these questions—and do your best to determine a time that feels right.

Take a Closer Look at Your Health

The number of attorneys practicing after reaching the age of 65 has grown by more than 50% in the past decade. Roughly 15% of all practicing lawyers are 65 or older. As a group, lawyers also seem to work longer than others. Only 7% of the general workforce stays employed beyond 65.

Of course, working after 65 is not the problem. The problem is that cognitive impairment risk increases significantly after that age. One in nine people over age 65 have Alzheimer's. If you do the math, probably 1-2% of practicing lawyers suffer from reduced mental capacity leading to an enhanced risk of incompetency or lack of diligence.

How Big is the Problem?

This type of accident waiting to happen is even more likely for solo and small firm practitioners, because there are fewer colleagues in the office to notice the attorney's decline. Probably fewer still have the courage to intervene, or, if too late, the ability to clean up the mess.

No one really knows how big the problem is now, or how likely it will get worse. State disciplinary authorities and lawyer assistance programs have little to no data on this problem. Common sense, however, suggests that the issue is not going away soon. Indeed, one bar leader in Illinois has predicted a "tsunami" of disciplinary complaints, and he may not be crying wolf.

Continuing to kick the can down the road and delay deciding when to retire is a risky game. By doing nothing, you're choosing to live in a state of denial. And I hate to break it to you, but no one—not even the most successful lawyer—can practice law forever. By avoiding the issues, you face spending your last years of practice wrestling with a level of uncertainty.

And when you inevitably suffer a serious illness or pass away, your firm will fall into a crisis mode. This often leads to a costly, chaotic, and disruptive process for clients, colleagues, and close family members (oftentimes, your spouse and children). Your past inaction now forces others to assume unfamiliar responsibilities. It compels them to make

decisions they may not be qualified to make, usually under emotionally charged circumstances.

In short, the consequences of your delay and denial are, at best, unpredictable and, at worst, disastrous.

You've already been dealt a pretty good hand and have had a pretty good career. Don't overplay that hand as you age. Remember, the mortality rate of lawyers remains 100 percent. Retire sooner rather than later. It will allow you to fully enjoy your sunset years while also ensuring you do what is best for your clients, staff, and family.

It's Not About the Lease

Clients often ask me, "Roy, what is one of the bigger mistakes that lawyers make when considering the timing of their retirement?"

My answer? They permit their office situation, specifically a lease obligation, to muck things up.

When family and friends ask why you've chosen this very moment to retire, do you really want your answer to be, "Well, my lease was up"?

I sure hope my answer is a more thoughtful one.

When your lease expiration date drives your retirement date, you may face one or two not-so-desirable outcomes. First, you may retire prematurely. If the most compelling reason to stop practicing law is that your lease is up, perhaps the time may not be right for retirement. Alternatively, when you sincerely want to retire and your lease still has a ways to go, you may find yourself practicing longer than you desire.

Deciding the right time for retirement, however, can be problematic. Let's say you're 67, in good health, and know that you're not ready to retire. But you're not completely sure when you will be ready, and your lease is expiring. Now what? Do you sign on for five more years and keep your fingers crossed?

There's no simple answer. But flexibility is the key.

One option is to try to negotiate a lease term for less time. Sure, you may have to pay more per month. Or you may have to move to find a shorter term. But think about it. This is a

small price to pay in comparison to facing one of the following two scenarios while stuck in a long-term lease:

- **Your or your spouse's health takes a sudden serious turn for the worse, requiring you to slow down or completely retire.** Not a likely occurrence in your 40s or 50s, but a realistic possibility during your 60s and definitely in your 70s.
- **The unanticipated occurs.** For example, you lose a major client, a key staff member moves on, the economy moves in a direction that threatens your practice area, or new legislation or a court ruling adversely impacts your practice area. In the past, your practice may have easily rebounded. But such turnarounds are usually measured in years, not months. Do you want to expend all of that effort, just to retire as soon as you start reaping the rewards?

At the end of the day, deciding what to do about a lease when you're approaching retirement age is no more or less than a calculated risk assessment—something lawyers are presumably well trained to do.

Take a Time Out

Once you have an idea of *when* you want or need to retire, it's time to think about *what* you want to do when you retire. Here are several "dig deep" questions I use with the lawyers I coach:

- What excites you the most about retiring? What worries you the most?
- What will you miss most about your law practice?
- Think about family, friends, and colleagues who have retired. What have you admired about their approach to retirement? What would you do differently? Why?
- Why did you go to law school? Are there any as-yet-unaddressed reasons that you can accomplish during your retirement?
- As a lawyer or community member, which accomplishments have been particularly satisfying and rewarding to you? Can you build on this in retirement?
- What would attendees at your 90th birthday party say about you, based on your current accomplishments? What can you do between now and then to improve that script?
- What do you most enjoy doing in your spare time?

- What do you most enjoy about your vacations?
- What is your ideal way to spend the day on a weekend?

The work of practicing law provides most of us with more than a paycheck; it also provides a sense of purpose and identity. It provides mental stimulation. It provides a vast array of professional relationships inside and outside of the office. Finally, at its most basic, work provides a place to go every day and gives structure to your day once you get there.

While some lawyers cannot wait to be free from the daily commute, environment, schedule, and tasks, others feel lost without a routine. When planning the "what" of your retirement, find activities to replace the structure and activities that were important to you in law practice—above and beyond the money that you earned.

What Are the Options?

Whether a lawyer works in a firm or as a solo, he or she does not close up shop one day and ride off into the retirement sunset the next. Many lawyers gradually wind down their practices—over months or years—and transition to part-time before retiring completely. Historically, law firms use the "of counsel" designation for lawyers nearing retirement.

Depending upon the needs of the individual lawyer and law firm, a lawyer's productivity can vary significantly as he or she approaches retirement. For some, "of counsel" status is little more than a destination for socializing and regular lunches with colleagues. Others continue to bill some hours, mentor younger lawyers, represent the firm in the community, and continue to make a significant contribution to the firm and its bottom line.

Even solos usually wind down and work part-time before retiring completely. Some stop accepting new cases and work until all of their active cases are completed. Others transfer active files or sell their practice to former competitors. Either option takes some planning.

Whether a lawyer goes cold turkey or slowly phases into retirement, there will be many more hours of available time in each day. After working hard for 30 or 40 years, rest and relaxation is usually the first goal—sleeping in, streaming movies you've always wanted to see, and reading the daily issues of The New York Times and The Wall Street Journal front to back.

Trouble begins when retirees start expanding two or three hours of relaxation into regular full days of nothing but relaxation. That soon results in boredom and a loss of professional identity.

Many retired lawyers remain happily connected to the legal profession in many ways—part-time (and sometimes for pay)—in areas like these:

- Expert witness work
- Alternative dispute resolution (ADR)—mediation and arbitration
- Politics (running for office or working on a campaign)
- Teaching as adjunct faculty at a law school or college
- Teaching continuing legal education programs
- Pro bono work
- Ramping up bar association activities
- Writing articles for print or electronic media, or blogging

Lawyers can also look outside the legal profession for fulfilling activities. There are paid opportunities in corporate America and the entrepreneurial sphere. Based on your interests, you can also consider an active involvement (most likely unpaid) in organizations in the following areas—any one of which would be thrilled to have you as a volunteer:

- Religious
- Social services
- Hospitals
- Civic
- Education/youth services and sports
- Environmental
- Culture/arts
- Community agencies

A Real-Life Example

A few years ago, I was out to dinner with some friends. One friend announced to the group that, after working for a large telecommunications company for more than 25 years, he was being offered an opportunity to retire early with some very nice incentives.

He further informed us that he had intended to retire within the next year. So, the offer was not going to change his planned retirement date in any significant manner.

Nevertheless, he seemed paralyzed about whether to take the deal, fearing he was not as ready to retire as he had thought. Wanting to offer helpful insights, I probed deeper, asking him questions involving three key areas:

- **Status.** I asked, “Is your identity tied very closely to being an upper-level manager at your well-known, prestigious company?” He said, “No.” He wouldn’t have any problem meeting new people identifying as a retired executive. His ego was a modest one. He was not going to be particularly concerned about what others thought about him now that his relevance in corporate America would be over. Not a biggie.
- **Engagement.** I then asked, “On a scale of 1 to 10, how much enthusiasm and passion do you have for your job right now?” His response? “Somewhere around a 5.” Not much fire in the belly, but I suppose it could have been worse.
- **Vision.** Finally, I asked, “What do you think you will do when you’re no longer employed?” “Initially, I’d do more woodworking,” he said. He very much enjoys it. In the past, he has been involved in some serious projects. It would be nice to devote more time to this longtime hobby, he said.

All three answers led me to confidently say, “You’ll do just fine in retirement. Take the money and run. Quite frankly, you’d be a fool to walk away from such a generous offer.”

If any of the following statements sound like you, be prepared for a very rough ride if you’re close to retirement.

> “*You mean the only relevance I will have to the legal profession is the occasional pro bono case that I may do? Who’s going to be impressed with that?”*
>
> “*I just love doing deals/I still love the fight. I still get a high when the deal gets done and I see the smile on my client’s face.*”
>
> “*I don’t remember the last time I took a vacation, and billing 50 hours a week hasn’t given me much time to even think about what I will do. Practicing law is the only thing I know. I suppose I will figure it out once I have all that time on my hands.*”

Bottom line: Retirement works well for those who, during retirement, are content with their new identity and are enthusiastic about doing something besides practicing law. Do yourself a favor and take a lesson from my friend. Start dreaming about what you can do in retirement now. Because if you don't, you'd better worry—you won't be happy.

What Are the Next Steps?

Give your retirement planning the same due diligence you devote to your legal work. Are your goals realistic? Use the internet to conduct basic research. Read some books and articles. Most importantly, get out and talk to real people—especially those who have already retired and can provide their "real-world" perspective.

Chances are very good that you know someone, directly or by association, who had retirement goals similar to yours. Did it work? What went right? What went wrong? How much groundwork had to be laid? Was enough time devoted to planning? Have a conversation with these individuals. You will find that they will be more than happy to share their experiences with you.

I strongly recommend that my attorney coaching clients who are still working (but thinking about retirement) "practice" for retirement. Actively engage in some of the things you're planning to do in retirement and see if you enjoy it. Start taking longer vacations and more three- or four-day weekends. If all goes well and you've planned properly, you will enjoy this time. If you get restless, it may be a good idea to amend your plan and keep practicing—or you run the risk of an unsatisfying retirement.

Assuming that your "practice" time goes well, your retirement planning is still far from complete. You must plan to continuously adjust your expectations and actions as time goes by. When you began practicing law and finally felt you knew what you were doing, you did not hit the automatic pilot button and coast for the rest of your career. You continued to make minor and major adjustments. You needed to be flexible, persistent, and patient. The same is true with your retirement activity plans; tweaks will be needed as circumstances change. Your career was satisfying, but not perfect. No retirement is perfect, either.

Ideally, you will be able to look back at your legal career with a sense of accomplishment. With some thoughtful planning (and a bit of luck), you can have that same feeling of accomplishment about the productive and satisfying years you spend in retirement.

Chapter 2. What's My Law Practice Worth?

The Difficulty With Law Firm Valuation

Your law practice is worth what someone else will pay for it. Yes, I know that almost sounds cliché. Yet, it's true.

If you need a more precise answer, consider this: the literature on valuation, written primarily by bean-counters, describes a wide range of methods. Many of these valuation methods are difficult to comprehend unless you have a strong finance background. Even then, the formulas typically have little or no bearing on what is actually paid for a law practice.

Rule of Thumb

Lawyers commonly try to use the "rule of thumb" valuation method because of its simplicity. Under this method, a firm's value is expressed as a multiple of revenues—usually gross revenues. In most other industries, you can derive the multiple statistically from the sales of many businesses of the same type.

For example, the multiple for an accounting practice may be 1.5. Thus, if the accounting firm's annual gross revenue is $200,000, the rule of thumb equates the firm's worth to approximately $300,000. Change the multiple to 1.0, and the value of the firm equals $200,000.

The suggested multiple for law practices is all over the place. In the literature that I've reviewed, the authors suggest a range from as low as 0.2 or 0.3 to as high as 3.0 or 4.0. No one supports their choice of the multiple with anything remotely resembling a statistical analysis of like-sales data. Indeed, it seems they base their multiples on anecdotal evidence alone. If I didn't know any better, I'd think they have pulled these numbers right out of thin air.

The Challenge of Finding the Right Multiple

The marketplace for law practices is very immature and underdeveloped. There is no meaningful database of deals. One reason for that is most law firm deals are confidential—only the lawyers themselves know the terms.

Even if a sufficient database of knowable transactions exists, you would be hard-pressed to find a worthwhile multiple due to incomparable data. Practice areas are too different.

Indeed, using a multiple assumes that a criminal law practice generating half a million in revenue is worth the same as a bankruptcy practice and an immigration practice generating the same revenue. They are not. In my opinion, they are way too different to use the same multiple. The only thing the three practices have in common is that the firms are all owned by lawyers.

In short, my rule of thumb for valuing a law practice is that there is no rule of thumb.

How to Determine if Your Law Practice Is Worth Anything

Think about the following:

> "Imagine it is a Friday afternoon. After years of hard work, you are ready to ride off into the retirement sunset. When Monday morning comes, will existing clients or prospective clients still contact the office and agree to work with your successor?"

If the answer is "yes," consider two more questions:

- How much revenue would a successor generate during the first few years after a transition? Put another way, how much predictable future revenue will there be?
- If you were still actively practicing and referred all of that work, how much would you expect to receive in referral fees as a percentage of the revenue?

Of course, no referral fees are exchanged, but thinking about predictable future revenue in the context of referral fees is a concept that lawyers can wrap their heads around. When the math is done (a percentage of predictable future revenue over a set time frame), we have a starting point to determine a reasonable value for your law firm. To predict the amount of revenue that would continue with a successor one needs to examine *how* the revenue has been generated. Let's take a closer look at the various ways.

Revenue From Repeat Clients

Some practices rely on repeat revenue from clients who have developed strong relationships with their lawyers and have a continued need for legal services. Examples include those who provide general counsel type work for small businesses, immigration

services for companies, and patent prosecution work for high-tech companies. In all of these situations, the lawyer has created and maintained a deep relationship with certain company executives.

One must then ask, is it possible to transfer those strong relationships to a successor attorney? The most probable answer is that some relationships should transfer, but not all. Some clients will presumably be happy to work with a successor after the proper introductions to ensure that there is the requisite "comfort and chemistry" between lawyer and client. Indeed, many clients will be grateful that a successor has been vetted and would rather work with one than try to find new counsel. However, it is unrealistic to assume that *all* of these relationships will undergo a successful transition. A handful may not "like and trust" the successor and instead go elsewhere.

Old Files – A Gift That Keeps Giving

For those with an estate planning practice, some past clients will need to have their estate plans revised. In addition, some clients will pass away and require plans to be probated. After a transition, if past clients contact the firm and learn that the original attorney is no longer practicing, it is reasonable to assume that some of those clients will happily work with a successor, if for no other reason than to avoid the search for new counsel. Others will work with a successor taking comfort in the fact that someone was vetted when the practice was sold. Some may even wrongly assume that they must work with the firm that drafted the original documents. Of course, some may choose not to work with a successor and have alternatives at hand and for whatever reason, prefer them to a successor.

Referral Network – Understanding Goodwill

For some practice areas, referrals provide predictable revenue in the form of a steady stream of new clients. Referral sources are usually former clients, attorneys, or other professionals.

Work generated by referrals is acquired from one of two types of goodwill: *professional* (sometimes referred to as personal) goodwill and *practice* (sometimes referred to as "business" or "enterprise") goodwill of the firm itself. The two types impact a firm's value very differently.

Professional Goodwill

Many believe that the goodwill of a law practice is too personal to have market value. This belief stems from the conventional wisdom that clients hire *individual lawyers*, not law firms, due to the individual lawyer's education, experience, skill, and reputation.

This type of goodwill is known as professional goodwill. Under most circumstances, a selling attorney can't transfer such goodwill to a successor attorney.

Think about the most prominent criminal defense attorney in town. When someone wants to hire that attorney, the potential client wants *that lawyer only*. Clients are not very likely to hire the prominent attorney's successor.

In this setting, the goodwill of the owner is so personal that it cannot realistically be transferred to anyone and accordingly has no value in the marketplace. After a transition, one should assume that new business based upon professional goodwill will cease.

Practice Goodwill

Contrast professional goodwill with practice goodwill. Practice goodwill *has* market value. Here, it's the *law firm's* reputation or brand identity that has value and stands apart from any individual lawyer. This can exist for any size law firm—even ones where the firm's name contains the owner's last name.

The scenario where clients hire *law firms*, not *individual lawyers*, is as follows. Think about law firms that are known as the "go-to" ones for certain practice areas. Clients may not have an expectation, nor do they particularly care, which lawyer is assigned to them. They simply want a lawyer from that *law firm*.

How does one distinguish between the goodwill types? The answer is more straightforward than one might think. Do new clients insist on retaining the selling owner attorney or have they been content in the past to work with others at the firm? When new clients are quite satisfied to work with attorneys from the *law firm*, it can be safely assumed that past referrals have been based upon practice goodwill and that such referrals should continue for the short term with a successor in place.

Websites

The issue of valuing revenue generated from website traffic varies significantly depending upon the buyer. Let's examine two types. The first buyer is a small, new player in the market. Here, the value is considerable. The buying firm will likely shut down its existing site and fully utilize the selling lawyer's website's search engine optimization (SEO) benefits and capabilities.

But what if the buyer already has a well-established web presence? Here, the benefits cannot be quantified. There is no consensus among internet marketing experts about *how* to best merge two websites so that the buying firm can maximize the selling firm's popularity. Further, even if there was, there is still no consensus about what the impact of merged websites would be. The secrecy surrounding Google's algorithms makes that impossible to predict. Bottom line, it is very speculative to place a value on a firm's website and the traffic it generates.

Systems

There are a handful of practices that oftentimes require little individual attention to clients and involve lots of paper-pushing by legal assistants. These owner lawyers make their money by processing the paperwork efficiently.

A personal bankruptcy practice that relies heavily on advertising and employs many well-trained, non-lawyer staff that gets clients in and out of the door fast is a good example of such a practice. In short, the seller has a "system" that buyers may need to keep the business operating and profitable.

The existence of a system may increase the attractiveness of the law firm. But don't overestimate how much the system enhances the value. Many buyers think their system is sufficient and may not want to pay a premium for yours.

Office Space

There are occasions where superior office space can either increase the value of a practice or, at a minimum, make a practice more attractive and easier to sell. This is especially the case for potential buyers who have inadequate space to take on the seller's practice or, coincidentally, have their lease nearing expiration.

But these situations are few and far between. Indeed, at times, a seller's office space can hinder a sale. Often, possible buyers have absolutely no interest in moving. While there are myriad reasons why, here are two common ones:

- The buyer likes where they are now and already has enough space to absorb the seller's practice.
- The buyer is locked into a long-term lease that would be costly to break. (Conditioning a sale upon purchasing or leasing existing space will make most practices less attractive and more difficult to sell.)

Bottom line: Don't assume anything about the impact an office will have in a sale scenario. Depending upon the buyer, it can cut either way.

If your lease is soon expiring and you think you may want to retire within the next few years, you'd be well advised to *not sign a lease for a term that extends beyond the length of time you want to practice*. If you do, you may have to reject an appealing buyer who doesn't need your space. Or, just as bad, you may be forced to eat the remainder of a lease when doing a deal with an appealing buyer. Either way, your exit strategy will be less favorable than what would otherwise be possible.

Other Variables Impacting Value

Even when a buyer is convinced that the phone will keep ringing without the presence of the seller, other factors may impact how frequently the phone rings. Buyers should carefully assess the competition in the practice area in the locality. In addition, buyers and sellers should be attuned to practice area trends when negotiating a price. For example, a personal injury practice will be worthless if it's located in a state where tort reform may seem likely shortly. As another example, should there ever be immigration reform, one would expect the value of immigration practices to increase significantly.

Selling Is Not Divorcing

There is one circumstance in which legal practices are regularly assigned a value: when the lawyer is going through a divorce. Valuations in a divorce context assume that the divorcing attorney intends to continue practicing law. They are meaningless in a marketplace setting when the attorney wants to sell his or her practice.

In a divorce situation, there's relative certainty about the amount of business going forward. Few factors are changing. If a lawyer going through a divorce has grossed $250,000 annually for the past three years, it's very reasonable to assume that those numbers will not change significantly in the near future. In contrast, when a law practice is transitioned to someone else, many factors are changing. You can't make the same assumption about revenues going forward.

My Method to Value a Practice – A Hypothetical Appraisal

Now that we know the reasons why certain practices have value, let's work through a hypothetical appraisal.

Assume your law firm has consistently grossed $500K annually for the past few years. You believe that for the next four years, it should gross $400K, $300K, $200K, and $100K, respectively, from your old clients/files based on some of the factors noted above. The revenue predictions go down every year because revenue attributable to you will likely decrease the longer you've been away from the practice. In essence, you're "referring out" $1 million worth of business to a possible buyer. (I want to be clear that my method should not be interpreted in any way, shape, or form that actual referrals are taking place.)

Now, what percentage of future fees do you think you're entitled to as the selling lawyer? There's no magic percentage if that's what you're hoping to see. Here's why.

Think about why personal injury lawyers have historically relied on the "third-of-a-third" referral fee. Based on my research, there's no rhyme or reason. If I had to make an educated guess, about 50 years ago some lawyer decided to do just that. Then another lawyer across town heard about it and thought, "That sounds OK to me. I think I'll do that, too."

Before you know it, the concept spread so much that if you asked someone, "why a third of a third?," the answer you hear is the same one that lawyers use to justify just about anything: "That's the way we've always done it." In short, there's no rationale to support the third-of-a-third formula, but we still do it.

With that said, I don't think that 33 percent is necessarily the percentage one should use when calculating law practice values. I do, however, think it's the highest it should ever

be. Don't forget that the buying lawyer still has overhead to cover. If too much revenue goes to you, the retiring lawyer, there will be insufficient profit to generate interest from potential buyers.

Looking at the other end of the spectrum, I believe that the lowest acceptable percentage is in the five to ten percent range. Anything less than that is probably not worth the effort to make a deal.

So where does that leave us?

To me, 10 to 25 percent "sounds OK." I'll be the first to admit there's no science to support this range. Instead, I base it entirely on experience. In many of the deals that I've been involved in (as well as deals where I haven't), the parties used a percentage within that range. So it apparently sounded "OK" to them, too. I, therefore, see little reason why it shouldn't "sound OK" to potential sellers and buyers as a starting point to calculate a practice's value.

Let's apply this thinking to the example above. If you assume a 20 percent share of the $1 million future revenue, you get a $200K value.

Of course, this number is a very soft one. The percentage figure is subject to the parties' negotiations. Further, the $1 million gross revenue is, at best, an educated guess of future revenue.

If the parties agree to 15 percent and a predicted revenue of only $500K, the value quickly goes down to $75K. On the other hand, if the parties use 25 percent and $1.5 million of revenue, all of a sudden, the same practice is "worth" $375K.

Why My Method Is Better

Even with the admitted lack of precision, I prefer my methodology to any bean counter's fancy formula for two reasons.

As an initial matter, it's simple enough for both the buyer and seller to understand. Have you recently read explanations of the capitalized excess earnings or the discounted future earnings approaches as methods to value a practice?

Second, both parties should be able to come to the table with a gut feeling that the

valuation method used is reasonable. Few in our profession question the logic and fairness of referral fees. It's an accepted professional custom when the referring lawyer still practices. Shouldn't the same fairness perception carry over when the "referring" lawyer or, more accurately, the transitioning lawyer, no longer practices? Why should the cost of obtaining a "referral" be viewed differently than securing future revenue from the selling lawyer's clients?

Another way to think about valuation is in the context of law firm compensation origination percentages. All lawyers know that, in varying degrees, law firms reward origination. Lawyers are used to this; they believe that they should be "rewarded" for simply bringing in business.

Accordingly, a retiring lawyer could be "rewarded" for future work from former clients/files. But, here again, there's no magic percentage. Anecdotally, the range at many law firms is 10 to 30 percent for origination. Why shouldn't that be the range for a practice that is being sold?

Admittedly, the range is a very wide one. But if no consensus exists among law firms (or even lawyers at the same firm) about what a fair percentage should be to reward lawyers for origination, why would there be a consensus in the marketplace about what a practice is worth?

There's even a way to turn my method into a "rule of thumb." Using my earlier example where the annual gross revenue was half a million dollars, a multiple of 1.0 yields a half a million-dollar value; a 0.5 multiple; a quarter of a million-dollar value.

If you use my method, you can back your way into a multiple by playing with two figures: the estimated predictable revenue over a period of time and the agreed-upon percentage of that revenue that goes to the seller.

Thus, if the predictable revenue is one million dollars over four years and one assumes a 25 percent payout to the seller, the practice is then worth a quarter of a million dollars. Since the firm's annual gross revenue was half a million dollars, you get a multiple of 0.5 after the fact. Change the percentage to 15 that produces a value of 150K, the multiple then becomes 0.3.

it is important to acknowledge that my calculations are premised upon two key

assumptions. First, that buyers will pay for four years of revenue, and second, that the firm's attributes that provide value (e.g. repeat clients, practice goodwill) will last four years; assumptions based purely on my experience. I have to rely on that because there is no reliable data. Accordingly, one could credibly argue that the four-year assumptions should be less or more. In other words, if I were to use a three-year assumption or a five-year assumption, the firm's value would go down or up substantially from the present calculations and one would be hard-pressed to prove that one assumption is more valid than the other.

At the end of the day, my method is based upon logic, reasoning, and my observations about the market. It is not the seemingly precise number-crunching exercise that some expect to see. With that said, my method *does* put forth a logical framework to arrive at your firm's value.

Excluded Items

Keep in mind, my method appraises a law firm's goodwill value—what someone would be willing to pay for a future stream of revenue. It doesn't include several items, including hard assets such as furniture and computers. These items usually require separate negotiations. Accounts receivable are also not typically valued and included as part of the purchase; they usually stay with the seller.

Further, open files may need to be negotiated separately:

- **For firms that bill hourly,** open files are rarely a problem. At the date of transition, future billings belong to the buyer and past billings become part of the seller's accounts receivable.
- **For firms with contingent fee practices** such as personal injury, open files can complicate deals. Buyers and sellers will need to create a method to share fees when these cases ultimately settle.
- **For firms with fixed-fee practices** such as immigration, open files can also create complications. Buyers and sellers will need to determine how they will handle fees in situations where some work has been done before the transition, some fees have already been paid, but not all, and an undetermined amount of work will still need to be completed post-transition.

Ready. Aim. Fire.

Overall, if you want a “gut check” of what your law practice may be worth, make two assumptions. First, determine how much predictable revenue there will realistically be for your successor. Second, consider what would be a fair “piece of the action” percentage for you to receive for that future revenue. Both numbers are moving targets, but at least now you know where to aim.

Chapter 3. Succession Planning for Solo and Small Firm Owners

Solo and small firm owners essentially have three choices when selecting an exit strategy:

1. Recruit a successor and then have the successor buy you out or what I call the "hire to retire" strategy
2. Have an existing associate or associates buy you out (applicable to firms with other attorneys)
3. Transition to a third party (sell to or go "of counsel" with another firm)

Each will be discussed separately, however, I want to emphasize that the first option, recruiting a successor is rarely, if ever, a good idea. I discuss it only because so many lawyers try it unsuccessfully.

Option 1: Hire to Retire

One retirement exit strategy often considered is the "hire to retire" one. The idea behind this strategy is to find a young, inexperienced lawyer who is then groomed to take over the practice. During the initial stage of the transition (usually one or two years), the seller and buyer get to know one another. If the fit seems good, the parties then negotiate a "buy out" going forward (usually another one to three years).

On paper, everyone seems to win. The senior lawyer obtains some value for the practice. The younger lawyer acquires an established practice in far less time than it might take to build one. In addition, the successor receives a few years of valuable training/mentoring.

If one digs a bit deeper into the details, however, a variety of fundamental flaws with the "hire to retire" strategy becomes apparent. Indeed, this strategy is so full of holes that I believe older solos should essentially never consider it.

Can You Find a Successor?

Problem number one involves finding the one special person to whom you feel comfortable handing down your legacy. This is easier said than done.

In practicing employment law for more than 35 years, I've seen many workplace problems that were the direct result of a poor hiring decision. No matter how careful the screening is, employers can glean only so much from a resume, interview, and references. In

addition, as an attorney coach, I've heard many stories of even well-screened new hires not working out quite as planned.

Don't underestimate the difficulty of finding a worthy successor with a personality and work style that meshes with yours. Finding a successor becomes even harder since chances are very good that a young lawyer is still paying off substantial student loans and will be doing so for the foreseeable future. Will this successor have the financial wherewithal to ultimately do a deal to buy your practice? Probably not.

Where's the Extra Cash Coming From?

Problem number two involves finding the cash to pay the newly recruited lawyer. The "hire to retire" strategy is based on the premise that the potential successor usually has no book of business. Thus, adding the new lawyer adds no significant revenue. At the same time, you now have two lawyers working on the same pool of files during the early stage of the transition period.

The successor needs to be paid a living wage. Where does that money come from? It comes from the take-home pay of the senior lawyer. In the short term, the senior lawyer takes a financial hit because income is now being shared with the successor. In effect, any future buyout simply returns the lost profits that the selling owner earlier forfeited.

Do You Have the Patience?

Problem number three involves training the new lawyer. Training or mentoring takes time, patience, and a skill-set completely different from practicing law. Many solos become successful because they purposefully stayed small. They have intentionally rejected the idea of hiring associates because they don't want to train and manage others. The process is not any easier in a "hire to retire" environment.

Will Your Clients Work With Your Successor?

Problem number four involves the transfer of client relationships. Doing a "hire to retire" deal only makes sense if the retiring lawyer's client base is willing to do business with your successor. Transferring relationships is fraught with potential issues. Will they feel comfortable with a younger lawyer? Will they be willing to work with a less-experienced and perhaps less-skilled lawyer, or will they take their business elsewhere?

Can You Trust Your Successor?

Problem number five involves whether or not you can trust your potential successor. There is always the risk that the successor leaves your practice and takes some of your clients. Ethics rules prohibit you from imposing restraints on the successor. Are you willing to trust someone you barely know with that possibility?

Why Do Some Successor Deals Seem to Work?

Anecdotes you hear about successful successor deals are rarely the consequence of a new hire as an integral part of the senior lawyer's exit strategy. More often than not, these situations involve a successor who has already been working for years with the senior lawyer.

Problems are less likely to arise in this situation because the successor: 1) is experienced; 2) is already being paid out of current revenue; and, 3) already knows many of the clients or is fully capable of serving them. Finally, the parties have worked together long enough to develop mutual trust. They will treat each other fairly.

To summarize, the "hire to retire" exit strategy may look appealing but is often considerably more trouble than it's worth.

Option 2: Pursue an Associate Buyout

If you have any associate attorneys working for you, you should always first consider whether they can be your successor. Doing so rewards their loyalty, puts cash in your pocket, and provides uninterrupted service to your clients.

Many small firm owners wrongly assume that finding a third-party buyer is more lucrative deal than an internal deal with an associate. At times, that is true, but more often than not, it is not.

Let's first debunk some assumptions owners make when comparing the two options.

My associates lack the "right stuff" to succeed as a successor.

Yes, you are correct. Your internal successors are not as good as you. They probably would have left you years ago and started their own firm if they were. Using the standard of "are they as good as me?" is unrealistic. For an internal transition to succeed, good may be

good enough. Further, assess whether they have the potential to get closer to being as "good as you." The emphasis is "closer." Assess their capability to grow into an ownership role. Give them the benefit of the doubt.

A third party will pay me more.
Don't be so sure. It's the rare deal, internal or external, where the buyer pays a fixed price. Most are structured as earnouts. That is, sellers receive payments based on the future performance of the law firm. Thus, an earnout structure does not provide an external deal with any advantages, pricewise, compared to an internal deal.

In addition, I'm unaware of any data supporting the notion that a third party will pay more. My experience as a consultant over the last fifteen-plus years does not support it. The marketplace for law firms remains too immature and underdeveloped to assume anything.

Why Internal Deals Can Be Preferable
Here are the advantages to an internal deal with an associate.

They are more predictable.
I believe in the adage that it is better to work with "the devil you know than the devil you don't." You know your associates, warts and all. Face it: you have little to no idea how a third party will perform. It's a crapshoot. You can plan how to handle the warts. With a third party, you have to make it up as you go along.

Your brand may be lost.
Sometimes, the best buyers are successful firms in your geographical location or practice area and already have a well-established brand. Typically, they have no interest in yours, including the firm's name. Sure, they will want things such as your client list, website content, staff, etc., But that intangible value of the firm's brand will be lost with most third parties and your ability to monetize it.

Contrast that with insiders. They will have every reason to keep some portion of the firm's name and benefit from that recognition. However you attempt to monetize that, insiders will want to capture its value.

Third-party buyers may not be so easy to find.

At times, buyers are not as easy to find as one would hope. I've had countless clients tell me their firm is perfect for this type of lawyer or law firm. I usually agree but then feel compelled to inform the client that, yes, your firm would be ideal for this so-and-so type, but I'll be damned if I know how to find that lawyer type. For example, your firm may be perfect for an unhappy big law associate or a big city lawyer looking for a better work/life balance.

Now, tell me how to locate that lawyer other than directly contacting pretty much every lawyer in a particular market or practice area that might fit that profile. There is no central clearinghouse for law firms like other small businesses. You can't just place your firm up for sale on Amazon or eBay, knowing that thousands will see it. The marketplace is too underdeveloped and will remain that way for the near future.

In short, don't automatically reject the possibility of an internal deal, assuming that it would be no problem finding a willing and capable buyer. That assumption may prove not to be true.

Be Realistic

The marketplace for law firms is fickle. Yes, I know your insiders are not perfect, but remember, don't let perfect be the enemy of good.

Buyout Misunderstandings

It's important to dispel a couple of fears you may have about buyouts.

Compensation

One of the most misunderstood consequences of adding new partners is compensation. Many owners wrongly assume that once you make someone a partial equity owner, the new partner automatically participates in the firm's profits based upon ownership percentage.

Think about big Wall Street law firms. They don't automatically share profits based on ownership percentages but instead have separate compensation formulas. Using conventional accounting methods, your compensation decisions can remain completely

within your discretion while you remain the majority owner during the early years of a buyout. Your accountant should be able to provide more guidance.

Governance

The same principle that applies to compensation also holds for firm governance. Only when the successor lawyer owns a majority of the firm can he or she call the shots. Of course, in most situations, the hope is that you and your successor will collaborate on major decisions, irrespective of control.

Buyout Structure - Create a Two-Phase, Multi-Year Succession Plan

A type of buyout plan to consider is one that contains two phases. Combined, the phases can last as many as ten years or even more. How long each phase lasts depends upon:

- When you want to turn over the reins and give up control
- How ready the associate is to step to the plate and run the firm

Let's talk about a sample two-phase, multi-year plan.

Buyout Logistics

During Phase One, you remain the majority owner and the associate or associates become minority shareholders and begin to buy you out. When Phase Two begins (the "tipping point"), they become the sole owners and the seller's ownership interest completely goes away. As explained in more detail below, as a practical matter, the key terms of the firm's sale begin at the tipping point when Phase Two begins.

Keep in mind, you will now have to open your books for the associates for two reasons. First, as part of their due diligence, they will want to know the financial condition of what they are buying. Second, once they become minority owners, they are entitled to know how the business is doing.

Phase One (Years 1 to 5)

In this example, Phase One lasts five years, but this phase can be as short as a year or two. The buyout begins and the senior associate becomes a minority partner and the equity stake gradually increases. You remain the majority owner during this phase and never sell 50 percent or more in total. You continue to evaluate whether the associate has the "right

stuff" to lead the firm. This is also when you begin to transition administrative and leadership responsibilities. Five years should be more than enough time to do that and to make any necessary adjustments along the way.

As for the mechanics, the buy-in should begin immediately. The initial cost, however, as well as the ownership percentage received, should be modest. Keep in mind that the primary purpose of the early payments is for the associate to demonstrate a commitment to buy you out. They are *not* intended to provide substantial amounts of extra cash. That comes later in Phase Two. In other words, Phase One payments do *not* bear any relationship to the firm's value. Instead, they are driven by practical considerations. If you ask for too much, you run the risk of scaring the associates away. Further, should Phase One not go according to plan, the financial consequences of buying the associate back out would not be onerous.

It is important to communicate to the associate that the relatively low Phase One payments for the minority ownership are not connected to what's expected during Phase Two and that Phase Two payments will be *substantially higher*.

Ultimately, you will need your accountant's advice to determine the precise buy-in amounts, ownership percentages, and other related issues. That expertise is also necessary because tax consequences or other financial considerations may also drive how amounts and ownership percentages are structured and paid.

Phase Two (Years 6 to 10)

The "tipping point" occurs when Phase Two begins and for this example, it occurs in year six and lasts an additional five years. Ultimately, the terms of the payout will dictate how long Phase Two lasts. This is the time when you lose your majority owner status, and your remaining ownership percentage is sold to the associate. It is the hope that by this time you can envision the firm successfully moving forward with the associate as the firm's leader. This is also the time that you may choose to remain at the firm in a part-time "of counsel" role.

During Phase Two, the buyout continues. It is now that you begin to receive significantly higher payments and in essence, are the key financial terms of the buyout. Unlike Phase One payments, which are somewhat arbitrary and bear little relation to the firm's value, Phase Two payments *are* based on what the parties agree the firm is ultimately worth.

How To Determine the Firm's Sale Price for Phase Two

As noted earlier, there is no plug-in formula to establish the firm's value for determining a payout schedule for Phase Two. Deciding upon a value is further complicated by the fact that the "tipping point" may not occur for a few years after the buyout has begun. What the firm is worth at the beginning of Phase One may not necessarily be the same at the tipping point.

There are a variety of ways that parties handle this timing issue. They can:

- Agree on the price when the buyout begins and have the parties assume the risk that the firm may have a different value in the future
- Agree on a price when the buyout begins, but also agree to some type of formula that would adjust the price based upon certain agreed-upon financial measurements
- Defer the decision and negotiate the final price and payout scheme shortly before the tipping point

A professional comprehensive appraisal should provide you with the parameters and rationales to begin negotiations. It is a good place to start, but it will probably not be the final word.

For most insider deals, parties ultimately agree on a price that seems "fair." While "fair" may sound far too ill-defined, two significant factors come into play that strongly influence what constitutes "fair." These are how the parties perceive one another and the other employment options for the associate buyer.

Party Perception of One Another

Some retiring sellers are more than happy to practically give away their firm to those who have been loyal associates for years. Others view a sale as an arms-length transaction with

the hope of significantly enhancing their retirement portfolio as much as possible. In my experience, most sellers fall somewhere in between these extremes.

Buyers also come to the table with differing attitudes. Some are more than happy to fund the retirement for an owner who has provided them with steady employment. Others take a more entitled view and believe that the firm should almost be given to them on a silver platter in return for their years of hard work. Here again, in my experience, most buyers fall somewhere in between.

Marketplace Factors

If you ask for too much, the associate will start to make a completely new calculation: what would it cost to start a firm as compared to pursuing a buyout? Smart insiders realize the huge advantages of staying in place given the value of a firm's practice goodwill, its systems, and staff. However, they also recognize that those advantages are only worth so much. In essence, they will compare the risk and associated costs of hanging out their own shingle to the known cost of buying in. They may also compare the risk of the buyout to finding another comparable job.

How will the associate afford the more substantial payments during Phase Two? As an initial matter, they should be making more money because the firm's profits will be going to them and not you. In addition, at times parties negotiate terms that include payments that could last as long as 5 to 10 years, thereby making yearly amounts more affordable.

One-Phase Buyout

Occasionally, an associate is ready to take over immediately, and the owner doesn't need any time to evaluate or train the associate. In this scenario, the entire buyout deal is negotiated all at once.

Option 3: Transition to a Third Party

The final exit strategy involves selling your practice. Changes in ethics rules now make this previously unethical strategy possible.

For years, selling a law practice was prohibited because ethics regulators believed clients, files, and a firm's goodwill were not something that could be sold. This prohibition didn't

affect larger law firms, which would just buy out partners, i.e. the partnership would return the percentage of the equity owned by the retiring partner.

Solos had to be more creative. Selling the firm's physical fixtures and furnishings for more than their reasonable market value was a common way to get around the prohibition. Another way was to create a sham partnership, in which the departing lawyer received "retirement benefits" from the new partner. Solos who were unwilling or unable to take advantage of one of those options, would simply give away their clients—or just close up shop.

All of this began to change about 30 years ago. In 1989, California became the first state to adopt a rule permitting the sale of a practice. The following year, the ABA adopted Model Rule 1.17 allowing the sale of an entire practice. In 2002, the Model Rule was amended to permit the partial sale of a practice. Most states, though not all, have adopted Model Rule 1.17 or a modified version.

This policy change was largely based on a desire for transparency and to level the playing field between solos and small firms and firms of larger sizes. In addition, regulators decided it would be better to have client matters placed in the hands of a (presumably) pre-screened lawyer than to force clients to find a new one.

Ethics Issues Surrounding the Sale of a Law Practice

Before the Deal Is Done: Confidentiality & Competence

Generally speaking, Model Rule 1.6 prohibits lawyers from disclosing confidential information. But Comment 7 to Rule 1.17 states that the disclosures pursuant to a sale are treated in the same manner as disclosures when attorneys switch law firms or law firms merge. The release of generalized information about clients and files is permissible—and to a certain extent is indeed required—to identify possible conflicts of interest.

Disclosure of information beyond the general requires actual client consent. And, of course, prospective buyers have a duty to maintain the confidentiality of any information they learn during the sales process.

Model Rule 1.1 states that a lawyer shall provide competent representation to clients. Comment 11 to Rule 1.17 provides that the duty of competence also applies in a sale.

Sellers are obligated to exercise competence in identifying purchasers qualified to take over the practice, and buyers are obligated to undertake its future representations competently.

What Must Be Sold

To prevent lawyers from selling only those clients who are less valuable, a lawyer must put the entire practice or an entire area of practice up for sale. No cherry-picking is allowed. Rule 1.17 (b).

Permissible Terms: Covenants Not to Compete

Under Model Rule 5.6, lawyers are prohibited from entering into any agreement that restricts the right of a lawyer to practice. Comment 3 to the same rule, however, specifically states that Rule 5.6 does not apply to prohibit restrictions contained in a sale. Such restrictions would still have to comply with the applicable state's law on covenants not to compete, of course.

As a practical matter, such covenants are presumably unnecessary since the selling lawyer is usually retiring and has no desire to continue to practice. With that said, it's better to be safe than sorry. Lawyers have been known to change their minds. Moreover, there are times when selling lawyers are middle-aged. In those instances, covenants not to compete are very much needed to protect sellers.

Ethics Concerns in Pricing the Deal

Deals are usually structured with a fixed fee or earn-out. An earn-out is where the buyer pays an agreed-upon percentage of future revenue over an agreed-upon time frame. In an earn-out, the total price ultimately paid is not known until the expiration of the time frame.

There are no ethical issues with a fixed sum. However, when the amount paid to the seller is contingent upon the future revenue of the buyer, ethics rules involving fee-sharing could be problematic because the buying lawyer would be sharing client fees with the selling lawyer.

The first issue is whether lawyers have to jump through the various hoops of Model Rule 1.5 (e) that governs fee-sharing between lawyers. That rule requires written individual

client consent to the sharing arrangement. The division must also be either proportionate to the work performed or each lawyer must assume joint responsibility.

A second issue arises in those situations where the selling lawyer relinquishes her license. Here, future payments are arguably an improper referral fee since the fee is being shared with a non-lawyer, as addressed in Rule 5.4.

The New York State Bar Association's Committee on Professional Ethics considered these issues in an opinion issued in 2013. Although the opinion only applies to New York, its well-reasoned analysis will likely be persuasive in other states.

In a nutshell, the committee opined that since a purchase price, whether fixed or contingent, contains a component for goodwill, it makes little sense to permit that component in fixed sum deals in which the parties attempt to place a present value on anticipated revenue when negotiating a purchase price, but not for deals where the purchase price is based on actual future revenue.

The committee provided the ground rules for payment of future fees. It noted that the extent of fee sharing must bear a reasonable and bona fide relationship to the value of the "goodwill" involved. Even the most well-known lawyer's reputation and connections fade over time. Any provision for fee-sharing must, therefore, be limited in amount and time.

Twenty percent of the seller's net income for three years was used as an example of reasonableness by the committee.

After the Deal Is Done: Client Notifications & Fees

Once sold, the lawyer must notify his or her clients, in writing, that the practice will be sold, that they can hire a lawyer other than the buyer and have their file returned, and that consent will be presumed if the client does not take action or object within 90 days of receiving the notice.

Without this notice (if a client cannot be found, for example), a court order is necessary to transfer the representation to the buyer. The sale cannot increase the cost of representation. In other words, the buyer cannot increase fees to recoup the purchase price.

What Can Sellers Ethically Do?

Rule 1.17 states that after a sale, sellers must "cease to engage in the private practice of law." Does that mean you must hand over the keys, walk out the door, and immediately ride off into retirement sunset? And if the answer is "yes," how is that possible?

The buyer might want you to stay involved in some of the open files, especially when your knowledge of the file could be important. The buyer might not understand the nuances of a lawsuit, for example, or grasp the history of an ongoing deal. But helping the buyer would still be practicing law.

What the Comments to Rule 1.17 Say

Nothing. And until recently, there were no reported ethics or disciplinary decisions about transitioning a practice to a new owner. That meant you could be disciplined for helping a buyer after a deal closes. Any help you might give after the sale could be subject to discipline. A recent ABA ethics opinion (Formal Opinion 468) now offers some guidance regarding the type of activities sellers can perform.

The Rule's Purpose

Effectively, Rule 1.17 levels the playing field for solo practitioners. Since retiring lawyers from firms have always been permitted to assist former colleagues transition client matters, why should solos be prohibited? In addition, allowing post-sale activities is consistent with Rule 1.16(d)'s overriding philosophy that lawyers continually have a duty to "take steps to the extent reasonably practicable to protect a client's interest."

Staying Involved

According to the ABA opinion, you can only perform transitioning activities that are "reasonably necessary to accomplish the orderly transition of active client matters." You must also stop accepting new matters. How long you can stay involved will "depend on the circumstances, including the rules and rulings of courts or other tribunals in pending matters."

Accordingly, it would probably be fine to conduct a deposition or help negotiate the deal two weeks or maybe two months after you sell your firm. It's highly unlikely that those activities would be allowed two years after the sale, however.

Charging the Client

Rule 1.17 is crystal clear that clients must not experience any adverse economic impact from the sale of your practice. Fees cannot "be increased by reason of the sale … [and] existing arrangements … must be honored by the purchaser." Therefore, billing for transitioning activities would be an increase that is not allowed. If you want to be compensated for transitioning time, you will have to negotiate your fee with the buyer.

ABA opinions are not binding on the states. Nonetheless, the purpose of Rule 1.17 and the persuasiveness of the opinion means states will likely follow it, but you should do your own research in your jurisdiction.

Deal Structures for Buyouts and Third-Party Sales (Selling Stock or Assets)

There are two ways to approach the sale of your firm, whether it is a buyout or a sale to a third party. One method is to sell your stock in such a manner that the firm's entity remains intact. Under this scenario, the parties agree to a fixed price for the shares of equity; in essence, the value of the entire firm. After the sale, the buyer will then own the firm's assets and non-excluded liabilities.

Alternatively, the buyer may prefer to create a brand-new entity and then have the new entity acquire the firm's assets. The new law firm entity buys the files, website, contact information, etc. In this scenario, sellers are often paid via an earn-out based upon an agreed percentage of future gross revenue over an agreed-upon time period. What should the percentage of revenue be? It's usually in the range of 10 to 25 percent. If it's less than 10 percent, it will probably take forever to get completely paid off. Anything above 25 percent will probably leave little or no profits for the new owners.

Buyers usually prefer an earn-out option via an asset deal because their risk is considerably less than a fixed price via a stock purchase. They also favor asset purchases since they also avoid unknown liabilities.

As is the case with all business deals, there's risk involved. When there's an agreed-upon fixed price, the buyer may pay something for nothing if the hoped-for future revenue does not materialize. With an earn-out, the buyer assumes absolutely no risk of losing money other than perhaps a negotiated down payment. If there's no future revenue, the buyer pays the seller nothing more. In exchange for this, however, the buyer assumes a different

kind of risk. Should future revenues exceed the anticipated amount, the buyer pays more.

Given the general risk-averse nature of attorneys, most buyers prefer the earn-out method, where they pay only if the anticipated business materializes. Most sellers, on the other hand, would rather have the certainty of fixed payments, avoiding the risk of an earn-out where future payments could be minimal.

Finally, there are si*gnificant* tax consequence differences for both seller and buyer in the two approaches. It's therefore critical you discuss the options with your accountant.

Other Methods of Doing a "Sale"

"Of Counsel" Relationship

There are alternatives to an outright sale of a practice to a third party. One way to avoid any Rule 1.17 issues is to make the retiring lawyer "of counsel" with the successor's firm. By doing so, there's no actual sale; thus Rule 1.17 does not apply. In most instances, the selling lawyer shuts down the firm and then joins the acquiring firm. Some think of such arrangements as mergers.

The ABA has defined an "of counsel" relationship as a "close, regular, personal relationship" with the law firm. The "of counsel" alternative can be a very attractive means to structure a succession arrangement for those retiring lawyers who still want to practice on a limited basis during their last years.

Whatever the label, as a practical matter, the law firm is "buying" a practice. Unlike a sale, where there would typically be a set price or earn-out, the retiring/selling lawyer in an "of counsel" arrangement gets paid for the practice via the law firm's compensation structure. Most firms will usually tweak their existing formula and compensate the "of counsel" selling lawyer for seller-originated files. Signing bonuses replace the down payment that you often see in fixed-priced deals. Some firms will also compensate non-billable time for transitioning clients and any necessary training and mentoring.

Create a New Entity

Another alternative is to create a new law firm. Buyer and seller create a partnership or other legal entity with a compensation arrangement where the retiring lawyer is paid over a period of time while working and slowing down at the new firm.

Hedging Your Bets – The Contingent Exit Strategy

But what if I'm seventy and in excellent health, and want to work three to five more years at almost a full-time pace, and I'm wise enough to know that a sudden health issue could leave a mess for clients, staff, and especially grieving spouses and children?

The sensible strategy is to find a successor law firm (usually in an "of counsel" role) sooner rather than later and eliminate the risks of dying at your desk. But doing so may come with a financial cost and a practical one.

Here's the financial cost. If you still want to work, your earnings will decline during those last years while at a successor firm for two reasons. Your successor's overhead costs will likely be higher than yours were as a solo, especially if the new firm has multiple lawyers. You will also have to share some of your profits with the successor law firm's owners. Combine the two, and your take-home pay will take a hit during your last years.

The practical cost? You won't be able to do things "your way." Indeed, some successors may tell you that you can, but don't believe them. You're joining their firm, and they like how they already do things. They will probably not listen to you very much.

Finding the "Win-Win"

There is a solution. Find the successor now, join in minimalist "of counsel" role, but keep your solo firm fully operational. Most, if not all, states, allow solos to have "of counsel" relationships at other firms as long as clients know whether you are doing their work as a solo or as a representative of the successor firm.

For this type "of counsel" arrangement to work, you need to have some kind of bona fide relationship. The amount of work you do in the "of counsel" role can be minimal. Examples could be co-counseling on matters where you might need a warm body to help out or referring select matters.

Most importantly, you specifically include a provision stating that the law firm will serve your clients in the event of death or disability that provides for a method to determine a purchase price. It should also have a future transition date when you plan to join the successor law firm for all of your work and close your solo practice. Finally, don't forget

that client conflicts need to be handled properly, but in most small to mid-size firms, client conflicts between the “of counsel” attorney and the successor firm rarely exist.

This is a win-win for the senior solo lawyer and the successor law firm. The senior lawyer can maximize earnings in the last years without adjusting to a new setting. The law firm has the assurance that it will eventually benefit from a retired lawyer’s book of business. Further, both parties can use this newly solidified “of counsel” relationship to learn how to best work together and prepare for when you are ready to slow down or exit so it can be a seamless transition when the time comes. And finally, there will be far less panic for everyone should the unexpected happen.

Potential Third-Party Buyers

The best buyers are usually experienced. With that said, there are times where a less seasoned lawyer may be a good candidate. For example, in those practice areas where the learning curve is not very steep, a less experienced lawyer may be capable of filling the shoes of the seller.

The most likely candidates for potential buyers are going to be competitors or firms that want to expand into a new practice area or geographic area. When considering law firms seeking practice or geographic diversification, make sure the law firm has someone capable of taking over the practice. If not, you may face the training/mentoring problems of the “recruit the successor” strategy.

Problematic Buyer Characteristics

Sellers often overestimate the attractiveness of their firms to both internal and external buyers. They do that because they do not fully understand how potential buyers think.

“I Can’t Afford It.”

Although many lawyers make a respectable income, most buyers usually don’t have tens of thousands just sitting around. Indeed, some potential buyers are still paying off law school debt. When lawyers learn about the possibility of buying a practice, they simply assume it will cost money they don’t have or require financing they can’t access.

"It's Too Risky."
Every deal has an element of risk. Hell, lawyers make a living providing doomsday scenarios to clients. We've gotten so good at dispensing such advice it becomes hard not to take it to heart. I will not lie to you; buying a law firm involves risk. But the risk can be managed easily. Do an earnout deal as explained above. That way, you only pay if the purchase increases your profits. Counterintuitively, buying a practice can be a less risky strategy to reach new clients than the old-fashioned way of determining how much time and money to spend on marketing.

"Why Would I Do That?"
Finally, lawyers sometimes do not know a good deal if it hits them on the head.
Let's face it. Business acumen is often not a strong point for lawyers. They don't teach that stuff in law school. At times, it can even be a struggle to get CLE credits for a seminar that, heaven forbid, tells you how to make more money. But you don't need an MBA to understand why buying a practice can be a low-risk, high-reward way to build a practice.

How to Find Buyers

There are a variety of ways to find buyers, many of which are not mutually exclusive. Some attorneys try to do it on their own. Usually, the best ways to get the word out that you're looking for a buyer are through networking and advertising.

Others who don't want to take the time and effort to find buyers rely on consultants and brokers. Besides saving time, using outsides experts provides other advantages from the DIY method. They include:

- Confidentiality (Some lawyers prefer to remain anonymous. Do you want the entire legal community to know about your planned retirement?)
- Broader reach of potential buyers
- Better vetting of potential buyers
- More expertise in valuing and structuring deals and getting them done

Finding outside assistance is not all that different than finding a lawyer. The best ways will usually be by referral and the internet.

One word of caution: Be wary of retaining a consultant or broker who is not familiar with the legal industry. Even those with experience assisting other professional service-type firms such as accountants, doctors, and dentists, usually do not understand that law practices are different and fail to grasp the nuances of law practices. Yes, we are different.

Downsizing

There's one strategy that is rarely considered, though it may make the most sense in terms of the retiring lawyer's financial and personal well-being. That strategy is downsizing. It's a rather simple concept that works well for both solo practitioners and small law firm owners. In a nutshell, the attorney takes fewer cases and works less while reducing overhead expenses.

Downsizing works well for several reasons. First, I rarely meet a lawyer who, when contemplating retirement, wants to quit the practice of law cold turkey. It's difficult to go straight from being a full-time practicing lawyer to someone whose primary focus is their golf handicap. Many attorneys want to wind down over a few years and gradually ease into full-time retirement. Gradually reducing one's caseload accomplishes this objective.

Second, when contemplating retirement, many lawyers get nervous about depending upon only Social Security benefits and their IRAs to fund their retirement lifestyles. Downsizing can free up the time to take those vacations you always wanted to go on, while still bringing in income to fund them. Here's how it works.

Take Fewer Cases or Better Ones

How do you do that? For example, if you're a personal injury attorney, you become even more selective when screening cases. In the past, you may have taken risks accepting cases that were "close calls." When downsizing, decline those cases at the outset, and refer the prospective clients to other attorneys. If you're a family law attorney, you screen out cases that are likely to be overly contentious if you're tired of doing those, or the lower-asset cases where you were never sure you were going to get paid anyway. In estate planning, set a higher asset threshold for clients or stop doing probate work if you prefer a more predictable schedule.

Raise Your Fees

Another effective way to reduce your caseload is to increase your fees. This weeds out potential or existing clients who are way too price-sensitive and are often difficult clients to begin with. If they don't want to pay the higher fees, let them take their business elsewhere. I'm hardly suggesting that you gouge your clients, but why not price your hourly rate or fixed fees at the higher end of your market? Your extensive experience justifies the higher fees. After all, many experienced lawyers are more efficient and exercise better judgment than younger, less experienced ones. Clients should be willing to pay for that benefit.

Will you lose some business by raising your rates? Of course. That's the whole point. But not as much as you may fear. Some clients may actually be impressed by lawyers who charge at the top of the market. To a certain extent, there's a cachet to being one of the highest billing lawyers in town or your practice area.

Reduce Your Overhead

Reducing overhead can be accomplished in several different ways. If your firm has staff, perhaps some can work fewer hours. Some may not be even needed at all. If this is the case, you may need less space. Another way to reduce overhead is by reducing your marketing budget, since building a caseload isn't as important as it was in the past.

Admittedly, some practices will be able to save more than others. It will be harder to cut expenses for solo practitioners who have no staff than for small firms that do. Regardless of your situation, though, you can find some savings if you look hard enough.

Can I Still Sell After Downsizing?

Maybe. It will depend upon how much of the practice is left. If there's very little, don't lose too much sleep worrying that you left money on the table by not getting out early enough. While that may be the case, you likely recouped that money and perhaps more by having worked a few more years.

In short, for those who still enjoy practicing law and are not sure what they will do if they retire completely, downsizing is an exit strategy that allows for an easier transition while still enhancing a retirement nest egg.

Preparing Your Practice for Sale? Don't Do Stupid S**t.

Soon-to-be-retired solo practitioners and small law firm owners who are thinking of selling their law firms frequently ask, "Is there anything special or unique that I should do now to maximize my practice's value?" Whenever I hear that question, I can't help but think of President Obama's remark about how to best manage world affairs: "Don't do stupid s**t." That advice holds for lawyers contemplating selling their practice.

So what passes as "stupid s**t" when you're considering selling your practice? While one could stipulate over a laundry list of items, I'm going to keep this very simple. Here's the best and most common example of a stupid thing to avoid: Signing a long-term lease after turning 65.

There's nothing magical about 65. The point here is once you reach your mid-to-upper 60s, all bets are off about the likelihood of your or your spouse's continued excellent health. While the odds of a premature death remain low, the odds that you or your spouse will have a serious medical issue increases substantially. Health issues will give you enough to worry about. Why add the stress of a big lease obligation?

In addition to health, there's another reason to stay away from longer leases. When you least expect it, you may uncover an opportunity to sell your practice sooner than you anticipated. A long lease could prove to be a major obstacle to a deal. You should never assume a buyer would want to take over your lease obligations. Some will, some won't; it will all depend on the situation at hand. Don't make your life more difficult than it has to be.

Is That All?

Yes! I'm well aware that other consultants frequently advise solos and small firm owners to enhance marketing efforts, systematize operations, clean up financial records, and go paperless, among other things. But let's get real. You know you should have been doing all of that stuff years ago. Do you really think you're going to do it now? I doubt it.

Save yourself the trouble of thinking about reinventing how you operate your firm. You made a nice living doing it your way. Smart buyers will still see plenty of value and will come ready to make a deal. Just be sure not to get in your own way by doing stupid s**t.

Closing Versus Selling a Law Practice

If you've read this far, some of you may be thinking, "I'm just going to shut it down. That'll be a lot easier."

I'm not going to sugarcoat this for you. Finding the right buyer and determining the best way to transition the practice to your newfound successor can be a hassle. But I can assure you that to "shut 'er down" is no walk in the park. Trust me, properly closing a law practice is also a hassle. Don't believe me? Just conduct a Google search of "how to properly close a law practice" and you'll see what I mean.

Both Require Similar Efforts

Here are just some of the many items you will need to address to close your law practice:

- Notify clients
- Transfer active files to other counsel
- Store, return, or destroy old files (just doing this is often a nightmare)
- Close out client trust accounts
- Determine what, if any, malpractice coverage is needed
- Dispose of hard assets (furniture, etc.)
- Close out vendor contracts and equipment leases

This list is pretty much the same when you sell your practice. And the reality is that both are a pain in the you-know-what.

Get Some Cash to Reward Your Efforts & Supplement Your Retirement

Our profession does not make it easy for solo lawyers and small law firm owners to ride off into the retirement sunset. But you can make that ride more pleasant by getting some money for your efforts. You won't regret it—especially when you realize you can now afford the overseas travel that was originally beyond your retirement budget.

Dying at Your Desk Is Not the Right Answer

You may now be thinking you can avoid all the hassle of selling or closing by "dying at your desk." There's some truth to that. *You* will avoid all the hassle. But items on the to-do list don't just go away. *Someone else* will be forced to clean up your mess—usually your spouse, children, or an unlucky colleague.

Don't leave the end of your practice in the hands of someone who doesn't know it as well as you. And don't leave money on the table when your retirement is staring you in the face. Before you settle on simply closing up shop, be sure you weigh all the pros and cons of closing versus selling your practice.

Speaking of dying at your desk, if that's your intention, now more than ever you need to have a contingency plan in place should you die or become incapacitated unexpectedly. Of course, you should already have one in place, but creating one now is better late than never.

Emergency Contingency Plan Basics

The best plans involve these two items:

- **The selection of a successor.** You must find an attorney who can competently take over or wind down your practice. If that's not possible, select a trusted professional colleague, friend, or relative who can assist with a wind-down.
- **The formalization of a plan.** Put your plan down in writing. This can be done through either a power of attorney or some other written agreement.

Moreover, every plan needs to cover answers to these two questions:

- What do to with active files?
- How to wind down the business aspects of the practice?

Active Legal Matters

Here's a to-do list to memorialize in your written succession plan:

- How to find a list of active files, calendars, deadlines, and appearances so that time-sensitive matters can be identified and properly handled
- How to contact clients, usually with the following options available to clients:
    - Retain the successor attorney, if that successor is competent to handle the matter and there's no conflict
    - Access to a list of alternative counsel, if feasible
    - Request the return of their files so they can secure alternative counsel on their own
- How to find and access closed files

Business-Specific Matters

While solo and small firm lawyers are professional service providers, people tend to forget that they are also small business owners. As such, there are accompanying liabilities and responsibilities above and beyond their professional liabilities and responsibilities that must be tended to upon incapacity or death.

Here's a checklist to add to your plan that covers the business-related issues involved in a successful succession:

- Information regarding all bank accounts and trust accounts and accompanying records
- Location of any safety deposit box and information on how to access it
- Location of client original documents, if any
- List of owned property (e.g., car, real estate)
- How to access computers, emails, voicemails, and any accompanying passwords
- List of vendors, suppliers, and malpractice carrier
- List of any contracts with long-term liabilities (e.g., lease, copying machines)
- Location of billing records and accounts receivable
- Record retention policy, if any

Have a Plan? Share It!

When an attorney dies, the successor works on the behalf of the deceased lawyer's estate. It's therefore important for the attorney's heirs to know the identity of the successor and vice versa. Whether you have already created a plan or you're starting one as soon as you're done reading this, ensure that part of your process includes sharing your completed plan with all relevant parties.

Begin With the End in Mind

Lawyers still have a 100 percent mortality rate. Practicing forever is simply not an option. Plan for the unexpected and the inevitable. Without proper planning, your calamity will become your family's and clients' calamity. Everyone deserves better than that.

Chapter 4. Succession Planning for Larger Law Firms

Transitioning out of practice has its challenges, not only for retiring attorneys but for the firms that employ them. While certain transitions may be made simpler by the structure of the large firm, just as in a small firm, failure to plan for change can lead to a loss of revenue.

Take a careful look at your law firm's most influential leaders and biggest rainmakers. Chances are good that these individuals will be retiring over the next two decades. Is your law firm prepared for the impact of this seismic generational transition?

The impact will be felt well beyond the law firm itself. Clients who have been well-served for years will find themselves bereft of the lawyer with whom they have built and maintained a personal and professional relationship over the years. Who at your law firm is prepared to step to the plate and keep these clients equally satisfied?

The future health of your law firm depends upon how today's leadership plans for the firm's post-boomer viability. This important effort is called succession planning. You may have done it for your clients' businesses. What's stopping your law firm from doing effective transition planning?

Obstacles to Planning

Afraid to Plan

To plan for the future of your law firm, you need to know the retirement plans of the firm's senior lawyers. Obtaining this knowledge is easier said than done. It can be problematic to simply start a conversation about the subject. Many senior lawyers avoid raising the issue on their own due to a variety of real or perceived fears, including the potential reduction of compensation or loss of clout among partners. Others resist any conversation that involves thinking about the end of their professional career, with its hints of their eventual mortality.

Junior lawyers whose future is at stake have their own fears about starting the conversation. If handled incorrectly, broaching the topic of succession could, in some firms, be political suicide. Younger lawyers fear being perceived by their elders as putting their self-interest ahead of the firm.

Too Busy to Plan

Lawyers are notorious for contemplating every possible way in which a client deal or transaction can go wrong—even if it would not occur for years. Paradoxically, when it comes to the future of the law firm, thinking ahead is hardly a blip on their radar screens. Each lawyer's focus is on day-to-day issues such as handling client crises, billing and collection matters, or dividing up firm profits. They cannot see the forest for the trees.

Too Selfish to Plan

There are also some partners who, quite frankly, care about themselves more than they care about the firm. If they have a big book of business, they are usually tolerated. These lawyers will disrupt the law firm by leaving on their own terms, planning only for themselves and not their colleagues.

Starting the Discussion

In theory, any discussion about succession planning should be started by the firm's managing partner or management committee. Alternatively, influential and well-respected partners can raise the issue.

In reality, many of these individuals suffer from the fears mentioned above. In that case, one effective tactic is to camouflage the firm's succession planning within its strategic planning process. This can be particularly effective when the strategic planning process is facilitated by an outside consultant. Unlike the lawyers in the firm, outside consultants have no vested interest in the outcomes of succession planning. The objectivity of the consultant inspires more candor from attorneys who might otherwise be territorial or suspicious of the process. This, in turn, makes the process more efficient, and the consultant's fees an investment rather than an expense.

The best way to engage selfish partners in the process is to focus on the client side of succession planning. Even partners who do not particularly care about their colleagues typically care very much about their clients. When the emphasis is placed on meeting client needs and not on the firm, the chances of getting their attention improve substantially.

Nuts & Bolts

The objective of creating and executing a succession plan is to ensure continuity in firm management and client relationships. This objective should guide the firm in the practical tasks—the “nuts and bolts”—of succession planning.

Leadership

Responsibility for transitioning firm leadership falls to the managing partner or management committee and, at larger firms, the practice group heads. Firms led by managing partners should elect or select a successor to be an “assistant managing partner” to work with the incumbent managing partner for months, or even years. This allows time for the new leader to be mentored and gradually assume management responsibilities. Firms led by a committee should adopt a rotation process that maintains continuity while providing a steady infusion of fresh blood and future leaders.

Client Relationships

Transitioning the clients of a senior attorney to the next generation is the most challenging component of any succession-planning equation. Client input is essential. Success requires managing and finessing human relationships, a task that—even with the best of intentions—is never easy. It can take years to successfully transition a client relationship.

The successor lawyer needs time to obtain the necessary expertise and client/industry knowledge. More importantly, it takes time for clients to feel the requisite “comfort and chemistry” that is so crucial for a successful lawyer-client relationship. Finally, time should be set aside to accommodate any adjustments to the plan. There will be inevitable bumps in the road that will require some time to absorb shocks and make any necessary repairs.

Furthermore, a comprehensive client-transition succession plan actually involves multiple plans. Each senior lawyer needs a plan, and, within that plan, there must be a plan for each significant client. Remember, however, that all clients are not created equal. Allocate the bulk of your time and efforts to the clients that are most crucial to the firm’s bottom line.

To put together a client transition plan, ask the following questions:

- Which firm clients are being served by senior lawyers?
- How long do these senior lawyers intend to work?
- Are any junior lawyers serving those clients? If not, who can be introduced to the relationship?
- What types of training and mentoring do these junior lawyers need? How long will that take?
- What are the clients' concerns about the potential loss of the firm's senior lawyers?
- Do they have successor preferences?
- Are any of your key clients going through their own transition process? Do you have a relationship with the client's post-boomer generation?
- How will successor lawyers be introduced to clients—both socially and in a working relationship?

The answers to these questions will help your firm develop a plan to transition clients. Will your plan work? Only if your firm has asked and answered one additional crucial question: What will motivate the senior attorney to begin to let go? More often than not, the answer is money. Without the proper financial incentives, the client-transition plan is destined to fail.

In most law firms, the firm's compensation policy must be adjusted for those impacted by the plan. If the firm's policy is heavily weighted towards billable hours, senior lawyers are unlikely to delegate to junior lawyers. If the firm wants senior lawyers to delegate work, the senior lawyer needs to be rewarded for taking that action. Additional adjustments will most likely be necessary when compensating for origination and non-billable time (e.g., mentoring). For 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.

Flexibility, communication, and accountability are also critical to the success of any succession plan. Since each lawyer may want or need a different timeframe for transitions—to address personal as well as client needs—plans must be flexible. Firm management, senior lawyers, junior lawyers, and clients must communicate regularly to ensure that the expectations of each party are being satisfied. If not, individuals must be

held accountable to get them back on track.

Finally, any succession plan should take into account the role of a retiring lawyer after the client transition has been completed. Can the lawyer add mentoring or marketing value to the firm in an “of counsel” role? If the cord is to be cut completely, has the firm provided resources to ease the individual’s change to a retirement lifestyle?

It’s Never Too Late

With one-third of the nation’s lawyers contemplating retirement, it’s time to start or ramp up your firm’s discussion of succession planning. It’s never too late. Even a few months or a year of planning is preferable to a crisis generated by the precipitous retirement of a critical partner who rides off into the sunset, never to be heard from again. I can guarantee that this unhappy scenario occurs more often than you would expect!

If your law firm wants its best clients to stay when your baby boomer lawyers leave, succession planning is the most effective insurance policy to accomplish that goal.

Chapter 5. Conclusion

Though large law firms and small practices experience different challenges when faced with an attorney's retirement, the same adage remains true for both: Failure to plan is planning to fail. The "failure" may be a failure to glean the income that could be realized from a law practice you've spent your career building. It may be in creating a crisis for clients who are not sure where to turn when a trusted attorney suddenly retires.

By reading this book, you've taken the first step in creating a successful retirement plan for yourself. The more time you have to implement that plan, the better. But, as noted earlier, any planning is better than none.

In keeping with the John F. Kennedy quote at the beginning of this book, the time to design your retirement is well before you need or want to retire. All of the retirement strategies discussed in this book require time: time to determine the best strategy and then time to implement it. Trust me, it will be time well-spent to ensure that you can spend well during retirement.

About the Author

Roy S. Ginsburg has been helping lawyers sell their practices for more than a decade. Like the attorneys he works with, Roy is a lawyer. He has practiced for more than 40 years—in law firms large and small, as well as in-house counsel.

Roy has assisted over one hundred attorneys capture and maximize the worth of their practices. He knows how to value a legal practice, the best methods to find a successor, and the most effective way to put together a deal.

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