

Reproduced with permission from ABA/BNA Lawyers' Manual on Professional Conduct, Current Reports, 33 Law. Man. Prof. Conduct 253, 5/3/17. Copyright © 2017 by The American Bar Association and The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

## **Succession Planning: How to Hand Your Firm to the Next Generation of Lawyers**

By IAN GEMMELL

**A**re you prepared for the sea change in leadership and senior management at our nation's law firms within the next 10 years? Does your firm have a succession plan? Does your firm's succession plan adequately transition partner responsibilities, clients and leadership roles to the next generation of lawyers in your office? A panel discussion about succession planning concerns and strategies at the Spring 2017 Legal Malpractice Conference in Boston aimed to help firms answer these questions affirmatively.

Moderator Eileen R. Garczynski, senior vice president and partner at Ames & Gough in McLean, Virginia, led off with a noteworthy statistic from a recent report by Altman Weil: Nearly half of the partners in the nation's top 200 law firms are baby boomers (people born between 1946 and 1964), and 40 percent of those are expected to retire within the next 10 years. The panel educated the conference attendees on the best ways for firms to transition from retiring boomer (or older) partners to the next generation of attorneys.

Accompanying Eileen Garczynski was a panel consisting of Patricia A. Brannan, general counsel at Hogan Lovells US LLP in Washington, C. Erik Gustafson, CEO, LeClairRyan in Alexandria, Virginia and Benjamin Sibthorpe, executive underwriter for Berkeley Select in Chicago. The panelists shared their experiences, practices and advice about the benefits of a succession plan, what the plan should entail, pitfalls of failing to implement a succession plan, how to best transition leadership roles to the next generation of lawyers, and how to manage senior partners' progression to retirement.

### **What is a Succession Plan and How do You Implement One?**

A viable succession plan will establish processes addressing three "key elements" for transitioning a firm through the impending "gray wave" of retiring attorneys: conversion of client relationships; orderly transition of leadership; and effective preparation of senior

*Ian Gemmell is an associate at Peabody & Arnold LLP in Boston who focuses his practice on professional liability defense, including legal malpractice, as well as premises liability and other general litigation matters.*

lawyers for their inevitable retirement. The following summarizes these processes as they apply to three categories of attorneys in your firm.

#### **1. Considerations for Retiring Lawyers**

Your long, rewarding career is drawing to a close. Client and attorney relationships you fostered for years are nearing the end of their financially rewarding benefit to you as a partner in your firm. What happens to your clients, your remaining partners, and valued employees of the rest of your firm when you retire?

All panelists acknowledged that every retirement is unique and subject to the individual's own personality and limitations. No one wants to tell you, the "curmudgeon in the corner office," that it is time to move on. Having a succession plan reduces the stress for both parties in conversations about how and when the retiring partner is supposed to transition out of the firm. Benjamin Sibthorpe emphasized the value of the structure, advance notice, and uniformity inherent in a succession plan to the benefit of outgoing and remaining partners alike.

Some of the most common concerns for retiring partners are whether they are financially secure enough to retire, and if they are, what they will do with their new free time. Do you want to remain in an of counsel position, work reduced hours, take a sabbatical or reduce your management responsibilities? Would you benefit from pairing with another peer or recent retiree to discuss life after the firm? Since a typical successful transition takes three to five years' planning, according to the panelists, you need to be proactive about your visions of retirement and sync them with the firm's succession plan as early as possible. Gustafson explained that some firms, including LeClairRyan, have added reimbursement for financial or post-retirement career planning services to their equity partner benefits. The message from the panel is that firms want to support the transition of retirees, and retirees want to ensure that their clients and partners are not abandoned. The best practice in that regard is to create, participate in and follow a succession plan.

#### **2. Expectations for Succession Lawyers**

If you are a "succession lawyer," or junior partner, you have already demonstrated your leadership, built some foundational client connections, and are motivated to maintain the firm's prosperity. According to both Gustafson and Brannan, a few hallmark characteristics of a succession lawyer who is viewed by firm

management as able work with outgoing partners to retain client bases and fill leadership roles include: an excellent grasp of firm finances, operations and demographics; an understanding of challenges facing the firm in the near and distant future; and wide ranging, experience-based knowledge of your practice areas.

Succession lawyers must protect the past and future of the firm. The panelists each acknowledged the delicate balance as a succession lawyer: You either assert yourself with a client, at the risk of losing the trust and support of the retiring partner who works with that client, or you fail to act and lose that client when the partner retires because you never fortified a relationship. A succession plan fosters a transparent, collaborative handoff of clients.

### 3. The Role of the Junior Lawyers

As a junior lawyer, you want to position yourself to be that next “lieutenant,” as Gustafson described it, for your partners with their clients. As a junior lawyer, you are already laying the groundwork in your everyday practice – discovery, drafting briefs and motions, research, second-chairing trials, or drafting case status reports for clients. Your level of client interaction may vary from none, to being copied on emails, to direct contact with the client in all aspects of an active attorney-client relationship.

Beyond excelling at the X’s and O’s of your practice area, designers of the firm’s succession plan overwhelmingly want to see you demonstrate leadership and acquire institutional knowledge of your firm and your particular practice area. Volunteer or apply for positions on committees, task forces or other firm management positions. For example, Brannan lauded the success of her firm’s decision to add a position on their elected governing board for a member under 45 years old. Gustafson emphasized the importance of junior lawyers acquiring and succeeding in leadership positions with bar associations or other types of organizations rather than being a member in name and dues only.

A viable succession plan necessarily involves senior lawyers identifying which junior lawyers are demonstrating the legal acumen and leadership capabilities that can translate to client exposure for that junior lawyer. Junior lawyers must demonstrate they can eventually fill the inevitable void between outgoing attorneys and the continuation of client relationships.

## Why Does Having a Succession Plan Matter?

### 1. The Next Generation of Attorneys Want Your Firm to Have a Succession Plan

The succession plan is not only about the well-being of the retiring attorneys, but about the future of the firm. Sibthorpe said most firms he meets with clearly recognize the need for succession plans, but most are reluctant or lax in developing and following them. This might explain that 70 percent of first-generation firms do not survive their founding partners. A succession plan will help your firm from becoming part of that statistic.

The biggest risk of not having a succession plan is a failure to secure the continued client relationships forged by outgoing partners resulting in the loss of institutional clients that keep the firm alive. Drastic harm

may also arise after unexpected events, like the untimely death or early departure of a rainmaker, when no succession is in place to absorb and manage the orphaned clients and cases. An unprepared firm could be forced to shutter its doors. A surviving firm may find itself replacing the reliable clients it lost with less desirable clients, lower revenue work and poorer quality cases, or it may have to reduce or overwork staff. These scenarios expose the firm to unwanted risk or outright collapse.

### 2. Your Clients Want Your Firm to Have a Succession Plan

The panelists agreed that an underappreciated reason to have a succession plan is that your clients want you to have one. Gustafson acknowledged that at least one client audited his firm to determine its continuity and stability for a sustainable, long-term relationship. Many prospective clients seek the personalization of direct attorney relationships but want to feel the support and stability of being an institutional client.

Client contacts are often changing and advancing within their own internal advancement structures. Junior claims handlers or managers are promoted and replace retiring members of their own companies. As these clients transition to leadership roles the clients’ expectations and goals similarly evolve. This creates a natural opportunity for a firm to implement a succession plan that accounts for its clients’ circumstances and fosters long-standing institutional relationships between law firm and client even as everyone ages. A succession plan adds value to the relationship and benefits the client.

### 3. Your Insurers Want You to Have a Succession Plan

Be aware that a clear succession and retirement transition plan is something insurers look for when evaluating firms’ risks, according to Sibthorpe. It does not necessarily need to be a plan in writing, although that is preferred. But insurers are paying attention to how a lack of succession planning might increase risk. It is not clear to what extent a lack of succession plan hurts your firm’s rating, if at all, but Sibthorpe stated simply, “Firms that haven’t focused on collaborative transitioning of client relationships, but instead tend to focus on originations and billings, are at risk.”

Sibthorpe also outlined a number of pitfalls involving the incomplete or undefined transitions of senior partners into retirement. Retired attorneys still practicing part-time and holding themselves out as members of the firm, or a firm failing to monitor the quality of work being performed by an attorney with a foot out the door or with diminished ability to practice at a high level, are risky behaviors. Failure to set a mandatory retirement age, carefully define titles for retired or transitioning attorneys, or actively communicate with clients about the status of a transitioning or retiring attorney, can all create exposure to malpractice claims. A proper succession plan can protect firms against these risky practices.

## Conclusion

Establishing a succession plan is a complicated but necessary endeavor for firms, the panel made clear. It can be the difference between the continued success

---

and preserved reputation of the firm or its closure. Every level of attorney and management in your firm can play a critical role in the process. Having a plan to transition clients, transition leadership and cooperatively

prepare senior attorneys for retirement, and then following that plan, are the three keys to your firm's continued success.