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REALITY *and* RETIREMENT

The Legal Profession Must Deal with the Challenges
of an Aging Workforce

By Cliff Collins

The explanations are numerous for why many attorneys and law firms keep their heads in the sand on the subject of retirement planning. Among those frequently cited are: The profession remains hidebound in many ways, resistant to change. Lawyers focus their energies on solving other people's problems and too often neglect taking care of themselves. Attorneys counsel their clients to plan long-term, but don't always follow their own advice. Moreover, succession planning is simply a difficult, and often uncomfortable, subject to confront.

So much is written now about how the concept of retirement has changed that the traditional way of defining what retiring means has "become almost a thing of the past," says Stephen P. Gallagher, a Philadelphia-area executive coach with 30 years of experience advising attorneys. However, he adds, "That message is just not being read by lawyers." The legal industry as a whole has yet to recognize that transition plans and phased retirement increasingly are becoming more common among white-collar professionals, he says.

Mike Long, an attorney counselor since 1994 with the Oregon Attorney Assistance Program, says lawyers and firms generally haven't prepared for when senior members slow down or stop practicing. "My experience is, there is little in place," he says. "The larger firms have struggled to develop" succession and retirement plans.

A lot of lawyers in their 50s, 60s and 70s probably want to reduce their work hours but not fully retire, "but it's tough in a firm because they are stuck with the billable-hours requirement," observes Gallagher. "Most midsize to smaller firms don't have a mechanism in place to address these needs. With the legal profession, it's still 'up or out.' It's always, 'You're either a partner or not.'"

Time to Face Facts

One thing is indisputable: Attorneys and law firms are going to have to face the facts involving an aging workforce. By 2018 the youngest members of the baby boom generation will be in their mid-50s, and the oldest will be in their early 70s. Federal estimates are that by the year 2020, about one-fourth of the nation's workforce will be composed of workers 55 and over.

According to a new book from the American Bar Association, *The Lawyer's Guide to Succession Planning: A Project Management Approach for Successful Law Firm Transitions and Exits*, 65 percent of U.S. law firms' equity partners are in their late 50s or early 60s.

Forty-six percent of all active OSB members are older than 50, and 25 percent are over 60, according to the bar's membership database. In some areas of the state — such as the Oregon coast, southern Oregon and the eastern part of the state — the percentages are higher.

Gallagher says some state bars have developed guidelines for winding down a practice, but those focus on protecting clients, not on helping attorneys themselves. He adds that the Oregon bar was the first to craft a written checklist of things to do when closing a practice, and New York and other states have followed our template.

Fewer than a handful of states require mandatory succession planning or designating a receiver or an inventory or proxy at-

torney to protect clients. South Carolina, and most recently, Arizona, require lawyers "to prepare written, detailed succession plans specifying what steps must be taken in the event of their death or disability from practicing law," as stated in South Carolina's wording.

According to Lisa Panahi, senior ethics counsel with the State Bar of Arizona, Arizona Supreme Court Rule 41 was amended in January to require lawyers to plan for their death or disability. The rule further states: "As part of their succession plan, solo practitioners should arrange for one or more responsible transition counsel agreeable to assuming these responsibilities." In addition, attorneys in firms with multiple members and lawyers who are not in private practice, such as those employed by government or corporate entities, "should have a similar plan reasonable for their practice setting."

Long is not aware of any Oregon firms that have established mandatory retirement ages, though such measures have appeared in some of the largest cities such as on the East Coast. Gallagher says some of the top-200 biggest firms have put in place mandatory retirement requirements because "they need it to force their people out" to make space for younger attorneys, given that the firms "don't do any planning."

Carol Bernick, who formerly was managing partner for the Portland office of Davis Wright Tremaine, says, "As far as I know, no firm in Portland has a mandatory retirement age." But she has heard anecdotally that some East Coast firms have such rigid policies that they force out a lawyer at a designated age even if that individual is the most productive member of the firm.

Bernick, who now is chief executive officer of the OSB Professional Liability Fund, doesn't think mandatory retirement is the way to go. "I would not be in favor of that," she says. "It doesn't allow any flexibility." Challenges have arisen around these policies and age discrimination laws, but "whether they're legal or not," a mandatory retirement requirement constitutes bad policy because it "undervalues people," she says. "We should be looking at people as individuals."

That's what Harrang Long Gary Rudnick does. The firm, founded in the mid-1950s and now with offices in Eugene, Salem and Portland, fashioned and has followed a succession plan to prepare a third generation to carry on the tradition, says shareholder Sharon A. Rudnick. No mandatory age requirements are imposed, but when a partner indicates that his or her time has come to begin a transition, the lawyer and firm work together to develop a plan that is mutually beneficial. One partner's transition plan is as long as five years.

"We're encouraging our more senior people to transition clients, but to remain productive in their practice," she explains.

At the same time, more responsibility is turned over to the younger attorneys. For example, about three years ago, shareholder C. Robert Steringer took over as firm president.

"We are working at both ends of the issue, finding the right way for our partners who are ready to retire" to develop a plan that is good for them and that gradually turns over leadership to "our up-and-comers," says Rudnick. "We are working hard at it. It's new territory for us. We are all very committed to being successful at this." Rudnick adds that she herself benefited from mentoring from the firm's founders, "and we want to give this same opportunity" to the firm's younger attorneys.

Mentoring is part of the planning process. "We tend to work collegially. Generally, it's pretty obvious who the successor should be" for any individual partner, but with the succession plan, "it becomes more formalized," Rudnick says.

Many lawyers have been with Harrang Long for years, so succession planning is not easy, she admits. "It's tough. It's emotional. It's personal, especially in a firm our size with our history; we are committed to the firm. It's difficult to let go. But it's important if we want the firm to exist for a third generation."

At Davis Wright Tremaine, Bernick approached the issue similarly. "We looked at it on a case-by-case basis," she says. A particularly difficult matter is when older attorneys want to continue, but the work is not coming in for them. "What I tried to do was find ways to make them feel valuable. I really focused on what could you do internally for the firm," such as assuming "significant mentoring roles" and "shepherding" associates through the process of becoming partners.

Sometimes the firm would develop mentoring relationships where the senior partner serves as a "shadow partner," immersing himself in a case and supporting the younger attorney when needed. Allowing senior lawyers the ability to continue to contribute makes the transition better for them, for the younger attorney, for the firm, and for clients, she says. Rather than paying the older partner for what they "brought in," they were paid "based on what they generated for others." They were given credit for work done that made the transition successful.

Such arrangements often were for senior lawyers who weren't ready to retire but who didn't necessarily want to continue to carry the work volume they had in earlier years. In a big firm, that is probably easier to accomplish, Bernick says, because the administration can work to find opportunities for giving older attorneys ways to contribute.

"It's delicate," she concedes. "Many of these lawyers have put in 35 to 50 years of work in this firm. You want to be respectful and try to be supportive — and try to find a solution that is helpful."

She recalls one equity partner whom she had advised that it was in his and the firm's best interest for him to move to being a contract partner. Although he initially was reluctant, he afterward told Bernick, "That was the best decision ever, because the pressure has been lifted from me, and now I can contribute" to the firm's continued success.

But she adds, "It doesn't always work that way. Sometimes you do have to gently nudge. It's hard for most of us." It's hard being a manager at 50, telling an attorney who is 70 or 75 and has

been a pillar in the firm for decades, "You're no longer meeting expectations."

"I think the firm tried very hard to think about practicing in teams, so that the client thinks of Davis Wright as their lawyer, not an individual lawyer," says Bernick. She considers the succession planning requirement implemented by Arizona a good idea. She notes that even if that program was set up mainly to address protection of clients of a sole practitioner if something happens to the lawyer, for any firm, having something in place would go a long way toward making it easier to have that initial conversation, such as: "Now is a really good time to transfer your biggest client to a younger partner."

Setting an Example

Two pairs of Portland lawyers who specialize in succession planning practice what they preach. In doing so, they present an example for their legal peers of a way to cover all the bases in the realm of retirement planning.

Miller Nash Graham & Dunn's Kay Abramowitz and June Wiyrick Flores formed a mentor-mentee relationship a dozen years ago — one that has endured within what is now their third firm working together.

Abramowitz met Wiyrick Flores in 2004 when Abramowitz joined the Buckley Law firm in Lake Oswego. Because Wiyrick Flores is a little more than 30 years younger than Abramowitz, and they shared expertise in estate and succession planning, the two decided early on to work together in a symbiotic fashion, "always with the notion that we would have an active plan and she would be my successor," says Abramowitz. "We work on each other's clients. We want that continuity," so that if something happens to one of them, their practice stays preserved and their clients continue to be served.

In 2008, Ater Wynne recruited both lawyers to establish an estate planning department, where the pair practiced for six years. In 2014, the firm that merged in October of that year to become Miller Nash Graham & Dunn wanted to bolster its Portland estate planning department, found Wiyrick Flores on Ater Wynne's website, and said, "Wouldn't it be great if we could get Kay too?" Wiyrick Flores related. "We were fortunate that the firm wanted both of us." Eventually, they also were able to bring their paralegal to join them in their current practice.

Abramowitz says some of her clients express nervousness about whether she will still be practicing when the clients' family-owned businesses transfer ownership to the younger generation. Whenever she gets those questions, Abramowitz calls in Wiyrick Flores and tells the client, "This is my succession plan." It has given clients who've worked with her for a long time the peace of mind to know that when and if there is a transition, they will be in good hands with someone with whom they are familiar.

"It's amazing having her as my succession plan," says Abramowitz. "It has allowed me to continue a thriving practice." Firms want to retain good clients, and "to have people who can continue those relationships is important," she says.

"By nature we are planners," observes Wiyrick Flores. "It's very much taking our advice about 'What happens if?' Having that in place is going to help your clients if something happens to you."

Both attorneys say another advantage of their relationship

is that they know each other so well that they can be comfortable holding candid conversations and asking each other honest questions.

Wiyrick Flores says that when they first began working together at Buckley Law, she possessed solid legal skills but needed “professional development,” such as how to build a client practice. Two years after they formed a mentor-mentee relationship, Wiyrick Flores became a partner. “I probably wouldn’t have gotten that without that mentoring. Kay and I, from the beginning, our relationship has been mutually beneficial,” she says. “I have grown significantly.”

At Holland & Knight, J. Alan Jensen and Joshua Husbands — both of whom also specialize in estate planning and business succession planning — have had a similar relationship. Husbands first came to Jensen’s firm in 1998 as a law clerk and joined the firm the following year as an associate. That firm merged with Holland & Knight in 2001.

“Since day one, Alan has been a mentor to me,” says Husbands, now a partner in the firm. “We were planning for succession and taking intentional action. Alan started bringing me in to meet clients immediately. You are learning your trade and also meeting new clients. That helped me greatly.”

Advising family businesses is a “relationship-driven practice more than others,” Jensen says. Many clients remain over several generations, and they come to trust their lawyer. Those clients appreciate knowing that someone they have also come to know, Husbands, will be ready to take care of them if or when Jensen retires, he says.

The pair started this mentorship process within the firm, and now others within the family business section are starting to emulate their example, Jensen says. But Husbands points out, “It’s impossible to just apply a formula,” because “every process is going to be flavored by the individuals involved.” Both lawyers and clients have to feel comfortable with transitioning to the next generation in order for the relationship to work, he says.

However, Husbands adds that any firm that wants to survive past the original names on the door has to establish a formal succession plan. “Any attorney or team of attorneys that has ongoing relationships with clients has to have this. If you have long-term relationships with clients, personal or entity-based, it’s a necessity to have a transition or succession plan in place in order to keep this relationship intact.”

A challenge the legal profession faces in regard to succession planning is that, since the Great Recession, many clients have begun scrutinizing their expenditures more closely and “really don’t want to see more than one lawyer in a room” or “more than one lawyer’s name on a bill,” Husbands says.

Even though the arrangements these two pairs of lawyers follow works well for their type of practice, the OAAP’s Long cautions that mentorship relationships don’t always pan out in sole practices.

He says the Oregon State Bar “has taken the lead on its mentoring program in terms of the effort to make a connection between older and younger lawyers.” But sometimes when a sole practitioner brings in a younger attorney to mentor, the younger lawyer ends up getting tired of waiting for the older lawyer to re-

tire, and takes the firm’s clients to set up his or her own practice. “It’s clients’ choice as to who they want to go with,” Long says. That may be another strong reason why setting up a formal succession plan that includes a time frame for transition is advisable.

Phased Retirement

Gallagher, the executive coach (www.leadershipcoach.us), says a method sometimes referred to as phased retirement is becoming increasingly popular. It includes setting retirement goals and exit strategies. As a rule, retirement plans involve both long-term goals — such as to continue working three days a week for two more years — and more immediate performance goals that move lawyers toward those long-term goals. An example of the latter would be to transition 10 clients to younger partners over the next 30 days.

In one firm with which Gallagher is working, a senior partner in a 20-member firm is offering his colleagues a five-year plan for him. To wit: “I will take half the pay and work fewer days a week; keep 20 percent of my clients, those who bring in 80 percent of our income; and in five years I will receive my capital contribution back from when I joined the partnership.” A phased-out parting of the ways gives the firm extra cash to hire a younger person than if it had to buy out the partner all at once, Gallagher notes. “It really makes sense: a win-win thing.”

The firm Hershner Hunter in Eugene adopted a stages-of-career perspective. Those three stages are: learning your trade, building your practice, and the process of transitioning to others, with the goal of leaving the firm stronger than you found it, says K. Patrick Neill, managing partner.

The 70-year-old firm always keeps the long term in focus, recognizing the need to attract talented young people, he says. Hershner Hunter has a retirement policy in place, with no mandatory numbers but with transition in mind. “We owe it to the firm to give plenty of notice,” Neill says.

The firm holds annual meetings of lawyers 55 or older and any others considering retirement in a few years. Topics include personal transition of clients, of the leadership of the firm and of practices. “We’ve developed a list. It’s healthy to get us thinking and proactive,” he says.

“We have been successful with our succession efforts,” says Neill. “As our baby boom generation leadership has aged and continues to age, we are successfully dealing with retirements and transitioning client responsibilities smoothly. A key factor in making this possible is the investment we have made in people over the years so that we have strength throughout our generations to step into the next level of responsibility to our clients.”

This transition planning also is important to the firm’s clients, who themselves are dealing with transitions in leadership as their baby boom leaders retire and they have a need for advisers they can trust and count on into the future, he adds.

“Firms have got to wrestle with this,” counsels the PLF’s Bernick. “Lawyers have got to wrestle with this. They have to face the reality that they have to have these hard conversations. The clients are entitled to it; they need to know there is a plan in place to pick up the pieces, and it’s better to have that in place.” ■

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