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MARKETING THE LAW FIRM

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Without Mandatory Retirement, Lack of Succession Plans Threaten Small and Midsize Firms

By Dan Roe, Justin Henry and Jessie Yount

The pandemic initially caused many lawyers to speed up their exit from the profession. But it was also the reason some decided to stick around, exacerbating one of the most common impediments to succession planning: the transition of institutional clients to up-and-coming partners.

Of lawyers aged 62 and up who said the pandemic changed their retirement plans, 47% said the pandemic caused them to hasten their plans while 53% said it caused them to postpone retirement, according to the American Bar Association's 2021 Profile of the Legal Profession. And if the economic downturn continues into 2023, even more lawyers could reconsider their retirement plans.

In the post-pandemic era, widely adopted flexible work arrangements have given lawyers a new view of their work, said legal management consultant and *Marketing the Law Firm* contributor, Tim Corcoran. But in a profession without mandatory retirement policies, a partner's decision to keep practicing may not entail a discussion of the ultimate succession of their practice and clientele.

"Maybe I can continue practicing part-time, or have a more flexible practice for a lot longer than anticipated," Corcoran said, channeling recent conversations with senior law firm partners. "It's already happening in some places, and while some firms have mandatory retirement, most don't."

A lack of succession planning has traced the downfall of many storied and successful firms, including a handful of 2022 acquisitions and dissolutions that followed a lawyer's retirement or pull-back from management duties. At the heart of many such situations, according to interviews with firm leaders, management consultants, and recruiters, is an equity partner's unwillingness to pass on client relationships and a firm's failure to plan for the transfer of its most valuable clients to a new relationship partner.

Quiet Quitting: Retirement Edition

While introducing clients to the younger generation of legal practitioners is crucial to a firm's continued existence, many lawyers are territorial about their client relationships. Daniel Siegel, a legal ethics

attorney based in Pennsylvania, said many of firms' challenges with succession planning comes from the large amounts of compensation paid to partners for originating client relationships.

Citing a recent exchange with a "very senior partner," Corcoran said the lawyer expressed an unwillingness to part ways with their clients.

"I'm doing the firm a favor by sticking around," Corcoran recounted. "I'm billing minimal hours, but I'm maintaining relationships with key clients so they don't go anywhere."

Older lawyers who delay their retirement often do so under the pretext of helping the firm maintain profitable client relationships, Corcoran said, although compensation driven by origination credit is sometimes an incentive lurking in the background.

"On one hand you can say 'how nice of you'," Corcoran said. "On the other hand, what's happening behind the scenes is that the lawyer keeps all the origination credit for that client for as long as they want to stay, which means they'll earn a handsome income even if they're billing almost no hours — why wouldn't you linger?"

Such behavior is magnified by the fact that a firm's highest-earning lawyers are among the most difficult to convince to buy in, said Aon Law Firm Advisory Team consultant George Wolf. "It means he or she at the top, by nature, is going to have to send money downhill," Wolf said.

Idle equity partners can also dilute profit margins and crowd-out opportunities for younger lawyers, said Corcoran, causing many firms with a top-down management structure to lose mid-level partners who aren't inheriting books of business.

It's not like territorial senior partners are alone in their unwillingness to pass on client relationships; it's common for clients to identify more with a single partner rather than the partner's firm as a whole, not trusting colleagues to handle their legal matters as much as their primary lawyer at the firm.

Firm Leaders Rely on Culture to Fix Management-Level Problems

Above every client relationship-hoarding partner is a firm leader or group of managers who enable such behavior. Without succession planning built into a firm's management structure, consultants said many firm leaders allow the question of when and how an equity partner turns over valuable clients to linger until the lawyer begins discussing retirement. At most firms, there's no hard timeline for when that conversation starts.

"I have lawyers in their 80s who are still crackerjack lawyers, and I have others in their 70s who probably need to move on," said the managing shareholder of one national midsize firm.

A majority of Am Law 200 firms don't have a mandatory retirement age or policy, according to Carlos Pauline, the Atlanta-based executive director of MLA's partner practice group. Small and midsize firms face the same issues, but tend to have fewer resources to facilitate the transition of client relationships to the next generation of lawyers.

"We keep a running list and have data on 167 of 200 firms in the Am Law 200, and ... 80% don't have a mandatory retirement age," Pauline said. "Of the 20% that do, I would say almost all of them have some sort of mechanism where there's an exception that can be granted on a case-by-case basis."

Although many firms rely on their culture to guide them through difficult situations, Corcoran said some firms' cultures prevent managers from initiating those discussions altogether. "A surprising number of firms refuse to have that conversation," Corcoran said. "Whether it's a culture of autonomy, a sense it

would be offensive to a partner, or feeling like it's not our business — they'll make the decision when they want to tell us.”

Midsize firms may also face generational challenges as senior partners don't feel obligated to educate junior partners on client and leadership succession. “Through exit interviews, what I've seen is the partners who are about 10 to 12 years in, in their early to mid-40s, saying well what's my path at this firm?” said Miami-based legal talent coach and *Marketing the Law Firm* Board of Editors member Sharon Meit Abrahams (see her article on team management skills elsewhere in this issue). “What you'll hear from the people currently running the firm is, ‘Nobody told me how to do it 10 years ago.’”

And to the extent that senior partners are reluctant to turn over longtime clients, firms that fail to intervene by mandating the introduction of younger partners to key clients are also culpable.

Granted, not all firms are equally equipped to pass on client relationships, despite firm management's best planning efforts. It's not uncommon for small and midsize firms to have an attorney whose focus on a niche practice area makes it difficult to pass on those knowledge skills to younger lawyers, said Ellen Freedman, owner of law firm consultancy Freedman Consulting.

“All of the sudden if there's a cancer diagnosis ... it starts to unravel very quickly in midsize firms,” Freedman said. “Then in solo firms, the minute that something happens to the attorney, everything falls through the cracks.”

Internal succession planning requires a pipeline of younger lawyers who are ready to take up the mantle when the senior partners retire. And the associates most apt to meet the moment are often those targeted by larger, better-paying firms for recruitment, said founding and managing member Mary Vandennack of Nebraska boutique Vandennack Weaver: “If you're a solo or small firm, the ability to hire and keep a successor is just more difficult.”

But for lawyers who are worried about sending a signal of their retirement by introducing clients to younger lawyers, Corcoran said the senior partner's age already serves as such a signal.

“If you're waiting until you're 65 to introduce your successor, you're already sending that signal,” Corcoran said. “But if you start bringing in junior people when you're in your 50s, then clients aren't fearing your retirement in the near future.”

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