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7 Key Steps for Successful Succession Planning

Succession planning can be a touchy topic for many attorneys. It's not just about retirement — it's a conversation about compensation, financial planning, professional identity, personal identity and physical health. Taking the "deal with it later" approach can make the firm unnecessarily vulnerable. But dealing with it now makes the lawyers feel vulnerable, because it forces uncomfortable conversations that they typically avoid at all costs.

A well-thought-out plan is not only focused on the planned exit from the practice of law (succession), but also the unplanned exit — temporary or permanent — from the practice of law (contingency). A firm typically has some time to plan for succession, but there is no time to plan after an unexpected event removes a lawyer from their practice. Prior proper planning allows for a reasoned response, while limiting the emotional strain that accompanies such events. For this reason, it is important for firms to take a thoughtful approach to these critical strategic issues.

There are seven areas that should be considered and worked into every plan:

1. SUBSTANTIVE LEGAL EXPERTISE

What kinds of work does your firm do where there is no backup? Is there additional training needed to ensure the firm is not put in a vulnerable situation if there is a contingency event? What is the long-term plan for each practice area? For smaller practice areas where fewer attorneys are involved, you should take a very close look to assess the firm's vulnerability.

2. CLIENT RELATIONSHIPS

Some say that people hire lawyers and not law firms. When a client's attorney is unavailable, the client is unlikely to trust the firm's other attorneys simply because they work for the same firm. It will likely take many years to show clients they can count on

other lawyers in the firm, so there is no time like the present to start nurturing each client's relationship with more lawyers in the firm.

3. REFERRAL SOURCES

Law firms are relationship businesses, and it is likely that many of your best new clients come from referral sources. Exploring ways to develop relationships with more than one person at the firm for your most valuable referral sources is therefore an invaluable investment. Again, this process will likely take years, so starting now is important.

4. COMMUNITY INVOLVEMENT

Whether it's giving back, community leadership or serving on a board, it is important that the younger attorneys in the firm recognize the value of these experiences and that the firm sets some parameters related to expectations for community involvement. Community involvement can be an important part of the firm's reputation, so be sure to invest the right amount of time and the right people in these activities.

5. FIRM LEADERSHIP

An unplanned exit of a managing partner, a practice area leader or even a management committee member can leave a leadership void. Identifying your future leaders and mentoring them early is a key to building a structure where the leaders of the future are well poised to step into a leadership role at the appropriate time.

6. INDIVIDUAL FINANCIAL PLANNING

Are your partners who are approaching retirement financially prepared to retire? Do you have a plan in place for your

partners to slow down? How will that plan affect the revenue they generate for the firm and their compensation?

7. FIRM FINANCIAL PROTECTION

Is your partnership agreement up to date? Do you have life insurance policies tied to a buy/sell agreement to protect the firm in the event of the untimely death of a partner? Have you considered long-term and short-term disability and long-term care insurance? Have you considered what would happen if one of your rainmakers is no longer able to practice? There are many ways you can protect the firm financially in the event of a key partner's unplanned exit from the practice.

The last item is particularly important. In the event of the untimely passing of an attorney, there are several financial considerations the firm must anticipate in addition to the business operations that need to be handled. The surviving equity partners will want to:

1. Retain control of the business without interference from the deceased partner's heirs.
2. Enact a prompt transfer of the deceased partner's interest at a fair price.
3. Preserve the loyalty and support of employees, clients and creditors during and after the transition in ownership.

All three goals are most effectively met through a buy/sell agreement that is funded by underlying life insurance policies on the equity partners. A formal, written buy-sell agreement:

1. Establishes a fair price for the business interest and terms of sale that are acceptable to all parties.
2. Establishes a value for estate tax purposes, which helps avoid estate settlement delays and IRS challenges.
3. Establishes the basis for determining the amount and funding of life insurance needed to fund the purchase of the business by heirs or others.
4. Encourages confidence in the ongoing vitality of the business in the eyes of clients, creditors and employees.

In many cases we see firms that have either the buy/sell agreement or the life insurance in place, but not both. Just life insurance without the benefit of a well-thought-out buy/sell agreement can cause more problems than it solves; the agreement is what governs the transfer of the equity back



to the firm, establishes the method of valuing the firm for purposes of the transfer, and protects the firm and surviving partners from litigation from the deceased partners heirs as well as IRS challenges to valuation. It is highly recommended that you work with an attorney outside your firm who is experienced in this type of work to bring the objectivity needed to this type of agreement. You should also be working with an experienced insurance agent who understands the intricacies of the following:

- Various types of buy/sell agreements
- Key person policies
- Disability insurance policies
- Specialty policies like business overhead expense policies

While these issues are critical when it comes to the lawyers in your firm, be sure to also think through your succession and contingency plan for paralegals, support staff, firm administrators, IT directors and any other key positions in your firm. Tackling these issues has benefit beyond the security of knowing how to respond when an attorney leaves the firm. The organization required for succession and contingency planning will also set up the firm to work more efficiently and effectively now. Younger lawyers interested in their own careers are excited to work for firms that are actively planning, where they understand their path to equity and leadership. Succession planning can also help identify lawyers who should not be part of the firm’s future and can help nip potential issues in the bud.

None of this gets fixed overnight — most issues take months or years to fully address. Succession and contingency planning must then become part of your culture. When you hire someone, when people move to a new practice group, when family situations change, when health issues arise, be sure to think about how those situations affect the firm’s succession and contingency plan. The creation of your plan is not a

one-time event. A planning mindset is the best way to put your firm in the best possible situation when issues, both unexpected and expected, arise. ■

ABOUT THE AUTHORS

Debbie Foster is a nationally recognized thought leader on management, efficiency and innovation in professional legal organizations. Her 20-plus years of experience — combined with a mix of strategic management and strong leadership skills — has enabled her to work with law firms and legal departments to help them navigate the ever-changing legal services delivery landscape. Foster has been working with law firms and legal departments since 1995, earned her Lean Six Sigma Certification and is relied on by firms all over the country as a management consultant.

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