Staying Ahead of the Succession Planning Curve

BY GENE COMMANDER

Effective succession planning strategies help ensure the long-term prosperity of law firms by providing ownership and leadership continuity and stability throughout all aspects of the business enterprise and its workplace culture. Yet in stark contrast to corporate America, where succession planning has been a cornerstone of sound business management strategies for decades, law firms typically have not adopted succession and continuity planning initiatives. Quite simply, such planning has taken a backseat to other law firm management priorities.

But the need for succession and continuity plans within law firms has never been greater. The lingering effects of a pandemic of epic proportions and a tsunami of retiring baby boomers have created remarkable enterprise risks for law firms. Law firm leadership must be prepared to mitigate these risks to stay ahead of the succession planning curve.

A Perfect Storm Brews

Over the past two years, the COVID-19 pandemic has served as a slingshot, propelling people's perspectives in different directions. One reaction stands out: many lawyers now have a better, healthier understanding of what is truly important to them. And they are ready to alter their career trajectory if they believe doing so will improve their lives.

Meanwhile, without the collegial in-person interaction that occurred naturally within healthy law firm cultures before hybrid working conditions became commonplace, law firm leaders have struggled to dial into the real sentiment of their colleagues and clients. These circumstances have undoubtedly contributed to the growing tide of unplanned and unwanted separations, threatening to undermine what had been strong and supportive workplaces and attorney-client relationships before the pandemic.

The personal and professional pause prompted by COVID-19 has effectively masked another nascent weakness in the legal industry: baby boomers are continuing to exit the workforce across all industries at record levels without a pipeline of proven talent ready to meet the demands of our nation's overheated economy. The unavoidably harsh consequences of this generational shift in bench strength are rippling through law firms across the country.

This new reality is coming into focus at the same time Colorado law firms are feeling overwhelmed by an unprecedented surge in client assignments. To compound the problem, most understaffed firms are struggling to attract and retain the qualified, affordable legal talent needed to satisfy their business model and meet their clients' expectations. Firms have had to increase their compensation levels—at an often-unsustainable rate—while lowering hiring standards.

Together, these profound shifts and trends pose new continuity risks for law firms. To mitigate these risks, law firms must adopt an ongoing succession planning process as part of their business growth strategies. A law firm's continued success depends on its ability to effectively transition client relationships, business ownership, and leadership responsibilities.

Simply put, Colorado law firms must have a strong grasp of (1) the continuity risks that necessitate improved succession planning, (2) the adverse consequences that surround a failure to plan, (3) the reasons why senior attorneys avoid retirement, (4) the problems caused by underperforming attorneys, and (5) the best practices for embedding succession planning deeply within a firm's business model and culture.

What Are the Risks?

The risks facing law firms that fail to engage in succession planning often manifest through three common but often overlooked scenarios.

Small and Mid-Sized Firms

In smaller firms, the surprise departure of a key partner creates a "bet-the-company" moment by exposing a serious deficiency in the firm's continuity plan, threatening the firm's financial stability. For example: A founding partner who consistently produces a large share of a firm's revenue and work for others announces that she is leaving the firm in two weeks, along with other practice group members and support staff.

Large Firms

In larger firms, the gradual, unplanned departure of key practice group leaders or productive partners exposes an equally serious deficiency in the firm's bench strength as the compounding effects of multiple departures, whether voluntary or involuntary, eventually threaten the practice group's financial stability. For example: Three key equity shareholders leave a firm over a period of five years, taking with them their books of business and some of their practice group members, along with all the opportunities their established business and community relationships would have provided to the firm for years to come.

Firms of All Sizes

The next generation of key leaders and producers is hesitant to rock the boat by insisting that the firm address the inevitable generational changes that impact all businesses and families. But younger attorneys are increasingly frustrated by the current leadership's lack of awareness or—even worse—their apparent disregard for the need to develop a leadership and ownership succession plan to protect the firm's future prosperity, their careers, and their clients' interests. For example: A firm has been well respected and successful for the past four decades. The senior partners who founded the firm are in their 60s and 70s, their health is good, and they "plan to die at their desks"—but they are no longer particularly productive. The firm is buckling under the weight of the large salaries still paid to them in recognition of their valuable prior contributions.

What Price Are Law Firms Willing to Pay?

Most attorneys will admit they are not diligent enough about setting and pursuing actionable goals for their careers. Given their personal inattention to the challenges and opportunities that lie ahead, it's unsurprising that law firms are notoriously poor planners when it comes to implementing the crucial institutional leadership and ownership transitions that are essential for long-term business success.

Ownership and leadership transitions are tricky in the best of circumstances. These transitions are equally challenging for the next generation of legal talent working their way up the ladder and the firm's senior attorneys approaching the time to make room for future owners and leaders.

And this oftentimes uncomfortable process can be agonizing for everyone when it involves a beloved founding partner or senior leader. It can be painful to watch a departing colleague let go of a lifetime of commitment and loyalty to the firm and the invaluable professional relationships he or she fostered with influential business and civic leaders outside the firm. That's why it's essential for law firms to ensure that ownership and leadership transitions proceed as smoothly as possible. But this can only happen if firms plan ahead.

The lack of intentional and transparent law firm succession plans should be worrisome for everyone who is counting on the firm's future continuity and stability. Without a compelling vision for the future, it is easy for doubts to creep into the minds of every firm's most valuable assets: its trusted employees and clients. Frustrated legal professionals and sophisticated clients will begin listening when recruiters and competitors come calling with more attractive opportunities. Consequently, the timing and clarity of the internal and external messaging related to business growth and succession planning goals and strategies are critical to the plan's overall success.

Long-range continuity planning should also offer thoughtful and well-crafted solutions to long-standing gender and race disparities in the legal industry. Thankfully, there is a heightened awareness to address the challenges and opportunities that come with a genuine commitment to fostering equity, diversity, and inclusion (EDI) throughout the workplace. But law firms must continue to prioritize their EDI efforts and carry them into their continuity planning to safeguard against disproportionately high rates of attrition among women and people of color. True leaders have the foresight to attack these problems head on to ensure sustainable solutions remain at the forefront of the firm's culture.

Clearly, law firms must abandon their aversion to addressing sensitive business transition issues, largely because there is no other viable alternative. Law firm owners and leaders who fail to implement productive long-range succession planning strategies must accept the inevitable harsh consequences of ineffective firm leadership and withering client relationships.

Why Do Attorneys Avoid Retirement?

People are living longer and healthier lives. That has some baby boomers questioning whether it is wise to end their careers at age 65. Regardless of their law firm roles and responsibilities, a significant percentage of potential retirees would prefer to extend their careers by hunkering down in their current jobs for as long as they can. Ego and pride also can be factors. For most people, the decision to retire graciously by voluntarily relinquishing their compensation and control of the business and stepping out of the limelight near the end of their illustrious career does not come easily.

There are at least five major reasons why attorneys try to avoid or postpone retirement. They reflect a common mind-set within the legal profession and explain why senior attorneys are hesitant to even mention "slowing down."

- **Loss of identity:** "Who am I if not a practicing attorney serving clients?"
- **Reluctance to leave clients and colleagues:** "What will happen to my clients?" and "Will my staff lose their jobs or suffer professionally?" and "Should I feel guilty?"
- **Fear of transitioning:** "What will I do with my time if I don't go to the office?"
- **Failure to succession plan:** "Who will replace me?" and "How can I afford to quit working?"
- **Inertia:** "If it isn't broken, don't fix it!" and "What's the problem?"

Individual lawyers and law firm managers can help set the stage for smooth and rewarding career transitions. The key is fostering a business model and culture that values the development of realistic personal and professional goals early on and implementing them through a thoughtful strategy that is respectful to the interests of everyone involved.

Why Do Law Firms Ignore Underperformers?

A chronic underperforming attorney—*not* someone who is having a bad year or two for excusable reasons—creates serious enterprise risks that can undermine a law firm's long-term profitability and workplace culture. But underperformance is a problem over which law firms have complete control. Nonetheless, firm leaders often struggle to mitigate the financial and cultural damage that underperformers cause, rather than effectively managing the problem.

It is conceivable that law firms fail to address underperformance for reasons that derive from their traditional business model, namely: (1) the firm is structured and operated as a "partnership," and (2) the firm's management and decision-making is concentrated in the hands of fellow "partners." But this explanation fosters an idealistic and unsustainable notion of "equality," which readily translates into the perception that it goes against firm culture to tell a partner that he or she is failing to perform satisfactorily. This unfortunate view is still widely held throughout the legal industry, even by those who are chosen to serve their firm's best interests, such as CEOs, managing partners, and board or executive committee members.

A clear trend developed after the 2008–09 recession, however, when law firms began focusing on finding remedies for underperformance. And it is reasonable to expect the "COVID-19 slingshot effect" to propel more firms to address these risks in an increasingly business-like manner.

Do not simply assume that underperformers can be convinced to improve merely by cutting their compensation. Some will gladly accept a reduction in pay as a trade-off for lowered future expectations. Others, however, will feel trapped in a frustrating middle ground if the firm simply tolerates their subpar performance. Either way, the firm pays the price for keeping someone who is either unable or unwilling to pull his or her weight. Both scenarios set terrible examples for everyone else who is putting everything they have on the line for the firm and its clients.

Whenever a colleague shows signs that he or she is struggling to meet expectations, the firm should proactively seek out informal and formal ways to intervene. Are there physical or mental health concerns? Might personal coaching be helpful? Are the personal or professional obstacles insurmountable? Is there a better career platform for this person?

While partner expulsion is a sensitive issue for law firms and a step that is seldom taken, it should no longer be off the table. All firms must be prepared to address individuals who chronically deviate from their performance expectations. The firm's expulsion mechanism should be clearly defined in its partnership or shareholder agreement, and institutionalized through an intentional and transparent succession planning process. When managed kindly and fairly, this approach will become readily accepted, if not entirely welcomed, by those involved.

Never lose sight of how others in the organization and clients will perceive the law firm's treatment of underperformers. All employees should be shown the respect and understanding they deserve, and this can be accomplished even when unfortunate decisions must be made in the best interests of the firm and its clients. It is essential for the firm to offer all employees a thoughtful process that is undertaken with grace and humanity. An equitable resolution will speak volumes about the firm's culture.

How Should Law Firms Start the Succession Planning Conversation?

If it were easy, all law firms would act more proactively. But it is challenging work. The first integral steps in this critical process, which can involve awkward conversations about sensitive personal feelings and professional responsibilities, must often be followed by difficult "firm-first" decisions by firm members who have been close personal friends and business colleagues for decades.

The goal for a successful planning process should be a celebration of accomplishments, namely: (1) finding an amicable and gracious way to preserve the firm's rich culture and the honorable legacies of everyone involved, and (2) preserving the valuable attorney-client relationships and rewarding business and career opportunities that will provide a dependable economic foundation upon which the next generation of firm clients, partners, leaders, and employees can flourish.

The real trick, however, is finding a fair and reasonable way to overcome all participants' economic and emotional barriers. This requires a flexible planning process that features a transparent communication strategy—one that addresses not only the legitimate needs and concerns of the firm's senior members but also those of the young talent moving up within the ranks. If the next generation of producers and leaders is not satisfied that the firm's leadership respects them and intends to treat them fairly, they will feel powerless and disenfranchised. When that happens, they will not buy into the plan wholeheartedly. Without that, there is a greater risk of losing them.

No matter where your career stands as an individual lawyer, you should be asking yourself, "Am I satisfied with my firm's five-year business growth and succession plan?" and "Does my firm's vision provide for the prosperity of my career, the people who work for us, and our clients?"

Law firm leadership should welcome this sort of curiosity. Because today, coming out of the pandemic, the firm's most prized talent is asking themselves these questions. And they are prepared to make career changes if their legitimate needs and concerns are not addressed satisfactorily, because they will have other viable options.

Every managing partner, practice group leader, and attorney should consider adopting the following blueprint as part of an annual business growth and succession planning assessment:

- Identify and prioritize the viable opportunities that could strengthen the firm's book of business while its practice is still robust and has room to grow.
- Recognize and sell the firm's strengths while mitigating its weaknesses to better serve clients and more successfully recruit talent.
- Understand the financial and legal obligations of the firm and its members under its lease, operating line of credit, partnership or shareholder agreement, and professional liability insurance policy.
- Understand the applicable ethical guidelines and regulations to ensure that all changes to the firm's business model and all attorney and client transitions are conducted ethically and professionally.

Conclusion

You can usually trace the long-term prosperity of law firms back to their vision, culture, diligence, and long-range planning initiatives, which—along with good luck—allow them to attract and retain loyal professionals who possess the expertise, dedication, integrity, and entrepreneurial instincts that are essential in this highly competitive and ever-changing business world.

Be sure your firm leadership is looking ahead with a promising business growth and succession planning strategy in place so it is positioned to attract and retain the talent that will be needed to ensure long-term prosperity for the firm, its employees, and clients for years to come.

Good luck. CL

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