

Watch Out for the Bus!! Succession Planning for Lawyers and Their Firms

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WATCH OUT FOR THE BUS!!
SUCCESSION PLANNING FOR LAWYERS AND THEIR FIRMS

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I. Succession Planning from the Lawyer Regulatory Agency Perspective

- A. A Duty to Plan Ahead: Succession planning is necessary to meeting ethical and professional obligations to clients.
- B. Increasing number of states require lawyers to identify a lawyer who will act as an “inventory attorney in winding down the practice of a disappeared, disabled or deceased attorney.
- C. Trend toward a more proactive approach to attorney regulation and discipline: i.e. self-regulation with planning tools.

II. How Illinois Addresses Succession Planning

- A. New Illinois Supreme Court Rule 756(g) requires all Illinois lawyers to provide certain practice related information, including whether the law firm in which the lawyer practices has established a written succession plan.
- B. IL Rules of Professional Conduct that address succession planning

1. Diligence - RPC 1.3, Comment [5]:

[5] To prevent neglect of client matters in the event of a sole practitioner’s death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action. *See* Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases.

2. Safekeeping Property - RPC 1.15(a)(8):

Maintenance of complete records of client trust accounts shall require that a lawyer... (8) make appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice.

3. Sale of Law Practice RPC 1.17.

4. Maintenance of Records: Supreme Court Rule 769:

It shall be the duty of every attorney to maintain originals, copies or computer-generated images of the following:

- (1) records which identify the name and last known address of each of the attorney's clients and which reflect whether the representation of the client is ongoing or concluded; and

- (2) all financial records related to the attorney's practice, for a period of not less than seven years, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports.

III. Establishing a Succession Plan

- A. Which means a written, detailed succession plan that specifies what steps must be taken in the event of the lawyer's death or disability from practicing law.
- B. Some key information to include:
 1. Written instructions concerning how and where client information is stored;
 2. Authorization to contact clients for instructions on transferring their files;
 3. Authorization to obtain extensions of time in litigation matters or other remedial action necessary to protect clients' interests;
 4. Bank account details, including operating and trust account information;
 5. Information concerning disposition of closed client files, law office equipment and payment of current liabilities; and
 6. Instructions to gain access to computer and voicemail passwords.

IV. Talking Points

- A. Why has succession planning become more important to firms and lawyers in the last decade?
 1. Retirement of the Baby-Boomer lawyers.
 2. Large number of solo practitioners.
- B. Keys to understanding successful succession planning.
 1. Understand that plan is win for clients, firm and lawyer.
 2. Start plan at least five years before anticipated retirement.
 3. Have a firm wide program that is a part of the firm culture.
- C. Law Firm Succession Planning Issues.
 1. Substantive legal expertise.
 2. Breadth of practice areas.

3. Client retention and service.
4. Continued business development.
5. Management and leadership.
6. Finances.
7. Emergency plan (for when the bus arrives).

D. Danger Signs.

1. Procrastination by lawyers or firm.
2. First generation firms/founders invincibility.
3. Compartmentalized practice areas/lack of teamwork.
4. Compensation systems as obstacles to transitions.

V. Resources

A. Articles:

Succession Planning and the Duty of Diligence, Illinois Bar Journal, Vol. 99, No. 1 (Jan. 2011) (attached).

The Basic Steps to Ethically Closing a Law Practice, Illinois Attorney and Registration Commission (Oct. 2012) (attached).

Law Firm Succession Planning: Do One Simple Thing -
<http://www.altmanweil.com/OneSimpleThing/> (attached).

Transition Assets: A Foundation for Succession Planning and Lawyer Development: <http://www.altmanweil.com/TransitionAssets/> (attached).

B. Internet Resources:

Illinois ARDC: www.iardc.org

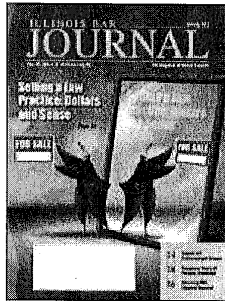
ABA:
http://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning.html

Materials on succession planning including ethics opinions, reports & guidebooks with forms: e.g., *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death* (State Bar of Michigan):
<http://www.michbar.org/file/pmrc/articles/planningahead.pdf>

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New Ethics Rules

Succession Planning and the Duty of Diligence

By
John Cesario

Succession planning will make things easier for those who have to wind up your practice if you die or become disabled. More than that, though, it's probably part of your ethical duty of diligence.

Rule 1.3 is short and direct: "A lawyer shall act with reasonable diligence and promptness in representing a client." But the Committee Comments provide additional guidance and insight. Comment 5 to Rule 1.3 addresses the unique challenges to a sole practitioner and the related duty to have a plan in place to cover sudden death or incapacity. It reads as follows:

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that

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designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. See Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases.

While no one likes to dwell on it, fate is capricious, and it is foreseeable that a sole practitioner could suffer a mishap or misfortune. It is also foreseeable that clients could suffer great harm if no forethought is given to how to advise them. They must be told to consult with another attorney for any ongoing matters and otherwise advised how to minimize harm to their interests. While comment 5 is addressed to sole practitioners, all lawyers would do well to review their plans for dealing with a partner's or associate's death or incapacity.

Such planning is in keeping with the highest calling of our profession to promote and protect the welfare of our clients. It also reflects our natural desire to help grieving family and friends, who would otherwise have to close a law practice with no written directions. This article offers a partial checklist of things to do.

Checklist of topics for a sole practitioner to discuss with a designated successor

A solo should enter into an agreement with another lawyer or law firm to perform the functions described in Comment 5. It is probably best to agree with another sole practitioner to help each other if either dies or becomes incapacitated.

Client list. Instruct family members or support staff in writing how to generate a list of client names and addresses. Also, he or she should be able to generate a list of open matters and closed matters.

In this regard, Supreme Court Rule 769, *Maintenance of Records*, is useful. It has two parts. The first requires attorneys to maintain records that contain the name and last known address of each client and say whether the representation is ongoing or concluded. That allows the attorney to review all matters subject to the duty of care and diligence. Attorneys should keep the telephone numbers of all clients in pending matters so someone can quickly inform them they need to speak to another lawyer promptly.

The second part of Rule 769 provides that an attorney maintain all practice-related financial records for not less than seven years, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns, and tax reports.

Computer records. Leave written instructions, including passwords, that describe how to access a calendar or computer program listing all pending matters and due dates on all cases. Time-sensitive ongoing proceedings are highest priority, and any plan should therefore identify the name, title, and case number of any pending litigation matters, along with the client's name, address, and telephone number. This would allow someone

to inform clients of the bad news and invite them to retrieve the file and to speak to another attorney.

Trust accounts. Prepare careful instructions about any client trust or escrow account, identifying the financial institution where it is located along with its title and the account number. He or she should also describe where client trust account records are located.¹

Voice mail. Explain in writing how to retrieve messages from and change the greeting on the voice mail system. This notifies callers and refers them to a contact person.

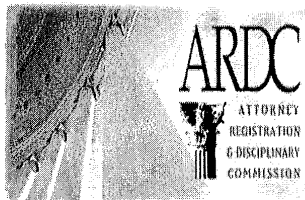
Closed files. Describe where closed files are stored and how they are organized. Instructions should identify any file that may contain an original will, deed, or trust agreement that may have to be returned to the former client.

Informing clients. Consider referring to the contingency plan in any attorney-client agreement with new clients. The statement could be as simple as including language to the effect that your office has made arrangements for attorney John Smith to review files and notify clients and take other action in case of your illness or death.

Time devoted to planning for death or incapacity will give sole practitioners and their loved ones peace of mind. Such a plan could lower the cost of administering the deceased attorney's estate and make efforts to sell his or her law practice pursuant to the provisions of Rule 1.17 more feasible.

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1. The Attorney Registration and Disciplinary Commissions' *Client Trust Account Handbook*, which describes the basics of maintaining and reconciling a client trust account, is online at www.iardc.org/toc_main.html.



The Basic Steps to Ethically Closing a Law Practice

There are many different reasons why a law practice closes, some are planned, *e.g.*, retirement, merging firms, or entering public office, and others can be unplanned, *e.g.*, disability or death. The ethical duties of the lawyer in each of these situations, however, are similar - to protect the clients' interests. There are no specific rules covering what lawyers must do in winding down a law practice. This publication focuses on the basic ethical obligations when closing a law practice. The forms and suggested procedures provided here are meant to assist lawyers in accomplishing a smooth and efficient transition that meets a lawyer's ethical obligations. Lawyers with questions are encouraged to call the *ARDC Ethics Inquiry Hotline* at either the ARDC Chicago office: 312/565-2600 or 800/826-8625 or Springfield office: 217/52-6838 or 800/252-8048.

☐ SET TARGET DATES

Closing a law practice requires preparation, organization and time. Once the decision to close a practice has been made, set a target date for when the practice will close and target dates for completing the many tasks in closing the practice, particularly when to notify clients. Planning is essential and you should probably allow at least six months to one year to complete the many tasks necessary to close a law practice.

Appendix: LAW OFFICE CLOSING CHECKLIST

☐ PREPARE AN INVENTORY OF CLIENT FILES AND RECORDS

Client Files

The first task is to inventory of all client matters. First, determine which matters are active and which are closed.

For **open** client matters, the inventory should include the following information:

- ✓ name and last known address of the client;
- ✓ telephone numbers both for work and home of the client;
- ✓ nature of the client's legal matter;
- ✓ the current status of the representation and what remains to be done for completion of the representation;
- ✓ any time limitations and/or deadlines;
- ✓ title and case number of any proceeding, if applicable;

- ✓ whether any funds or property is being held in trust; and
- ✓ the location of the file and whether the file contains any original documents, such as a deed, contract or will.

For **closed** client matters, the inventory should include the following information:

- ✓ name and last known address of the client;
- ✓ telephone numbers both for work and home of the client;
- ✓ nature of the client's legal matter;
- ✓ date when the representation was concluded;
- ✓ title and case number of any proceeding, if applicable;
- ✓ whether any funds or property that were held in trust have been disbursed; and
- ✓ the location of the file, destruction date and whether the file contains any original documents, such as a deed, contract or will.

Office Records

For key practice management records, the inventory should include the following information:

- Business And Trust Accounts:
 - o Institution names and locations
 - o Account numbers
 - o Signatory name(s)
- Safety Deposit Box And/Or Storage Facilities:
 - o Location
 - o Access information
- Computer And Voice Mail:
 - o Access codes/passwords
- Important Business Documents
 - o Leases
 - o Maintenance contracts
 - o Business credit cards
 - o Client ledgers
 - o Other books and records relating to business and trust accounts
- Computer Data and/or Hardcopy Backups of:
 - o Conflicts
 - o Calendaring backup
 - o Time billing records
 - o Accounts receivable/payable
 - o Active client file inventory
 - o Closed file storage location and inventory

□ NOTIFY CLIENTS

Write to clients with active files, advising them that you are unable to continue representing them and that they need to retain new counsel. Your letter should inform them about time limitations and time frames important to their cases. The letter should explain how and where they can pick up copies of their files and should give a time deadline for doing this and should be sent certified mail, return receipt requested, so that a record is created of who was contacted and who received the notice.

Appendix: LETTER ADVISING THAT LAWYER IS CLOSING HIS/HER OFFICE***Open Client Matters***

If the legal matter is still open, the letter should advise the client of the following:

- ☐ the anticipated termination of representation and the closure of the law office time frame;
- ☐ the need to retain new counsel and, if desired, will refer them to three qualified attorneys and to the local bar association's lawyer referral service;
- ☐ the status of their matter and any time limitations and time frames important to their cases;
- ☐ an accounting of all trust property being held by the lawyer and the lawyer's disbursement of same;
- ☐ the current status of fees earned and amounts owed and request for payment on all open invoices;
- ☐ Directions from the client regarding
 - ☐ their authority to transfer their case to another attorney
 - ☐ consent to withdraw and submit a motion for an order to withdraw as attorney of record
 - ☐ picking up their original file materials, evidence
 - ☐ paying outstanding bills
 - ☐ disbursement of trust monies, etc.
- ☐ explain how and where they can pick up copies of their files and should give a time deadline for doing this, e.g., asking them to pick up their files within 30 days (beyond which they will be destroyed, unless otherwise required by your engagement agreement or applicable law).

Closed Client Matters

If the legal matter is closed, the letter should advise the client of the following:

- ☐ the closure of the law office time frame;
- ☐ the law firm's file destruction policy; and

- ☐ explain how and where they can pick up copies of their files and should give a time deadline for doing this.

Sale of a Law Practice Notice

If the practice is closing due to a sale, ILRPC 1.17(c) requires additional notices to clients, as follows:

The seller gives written notice to each of the seller's clients regarding:

- (1) the proposed sale;
- (2) the client's right to retain other counsel or to take possession of the file; and
- (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. ILRPC 1.17(c). The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file. ILRPC 1.17, cmt. [8].

If the purchaser has identified a conflict of interest that the client cannot waive and that prohibits the purchaser from undertaking the client's matter, the notice shall advise that the client should retain substitute counsel to assume the representation and arrange to have substitute counsel contact the seller. ILRPC 1.17, cmt. [11].

Receivership Notice

If a practice is closing due to the lawyer's death, disability or disappearance and if "no partner, associate, executor or other responsible party capable of conducting the lawyer's affairs is known to exist," Supreme Court Rule 776 provides for the appointment of a receiver to inventory the law firm files and fulfill the duties necessary to close the practice. The receiver does not necessarily take over the deceased lawyer's practice, but instead owes fiduciary duties to the court for the proper disposition of the practice. The appointment order authorizes the receiver to "take custody of and make an inventory of the lawyer's files, notify the lawyer's clients in all pending cases as to the lawyer's disability, or inability to continue legal representation, and recommend prompt substitution of attorneys, take appropriate steps to sequester client funds of the lawyer, and to take whatever other action is indicated to protect the interests of the attorney, his clients, or other affected parties." S.Ct.R. 776(b).

□ NOTIFY TRIBUNALS, OPPOSING PARTIES/COUNSEL AND OTHERS

In all pending matters, ILRCP 1.16(d) requires:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

For cases that have pending court dates, depositions, or hearings, discuss with the clients how to proceed. Where appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmations of these extensions, continuances, and resets to opposing counsel and to your client. For cases pending before tribunals file the appropriate motion and obtain the consent of the tribunal to withdraw. In cases where the client has chosen a new attorney, be certain that a substitution of counsel is filed. Pick an appropriate date and check to see if all cases have a motion and order allowing your withdrawal as counsel. The tribunal has discretion as to whether to allow the withdrawal. It is possible the lawyer will be required to postpone retirement, delay a new job opportunity, or put the sale of the practice on hold until the pending matter has been concluded. ILRPC 1.16(c); see also ILRPC 1.17, cmt. [12].

Registration Information

Contact the ARDC Registration Department and update your registration as to status and contact information. Supreme Court Rule 756(c) requires you to notify the ARDC of any change of address within 30 days of such change. The recommended method for changing your registration address is to use the ARDC on-line registration program at <https://www.iardc.org/registration/changeofattorneyregaddress.html> or complete the ARDC Change of Registration Address form at https://www.iardc.org/information/online_forms/changeofaddress.pdf, sign it and return by either email (registration@iardc.org) or mail (ARDC, Attn.: Registration Department, 130 E. Randolph, Suite 1500, Chicago, IL 60601).

If the law firm is organized as a professional service corporation, professional association, limited liability company or limited liability partnership, as permitted under IL Supreme Court Rule 721, you will need to file dissolution papers with Illinois Secretary of State and also notify the Clerk of the Illinois Supreme Court of the dissolution.

☐ **DELIVERING FILES TO CLIENTS**

A record needs to be made of whose files are returned and the dates of return. It helps if you explain to clients in the initial notification letter how their file will be returned and of the need for security measures. Makes copies of files for clients and retain your original files. All clients should either pick up their files (and sign a receipt acknowledging that they received them) or sign an authorization for you to release the files to their new attorneys. If a client is picking up a file, original documents should be returned to the client and copies should be kept in your file. If the client directs you to release the file to someone other than the client, such as his new counsel, get that direction in writing or have the client sign something that indicates that the file is sent according to the client's instruction.

Appendix: AUTHORIZATION OF RECEIPT OF FILE AND AUTHORIZATION OF TRANSFER OF FILE

Files can be picked up in person or mailed to the client. Files sent by mail should be done by certified mail. The proof of delivery receipt provides sufficient proof of the return. The transfer of the file should be made in such a way as to preserve the confidences and secrets of the client, ILRPC 1.6, such as by hand delivery. Mailing files can also be expensive. Therefore, you may want to encourage clients to pick up their files in person whenever possible.

☐ **RECOMMENDING PROMPT SUBSTITUTION OF COUNSEL**

It is understandable that clients may ask you to recommend successor counsel. You can make such recommendations so long as it is clear that the selection of new counsel is up to the client. If you will be receiving a fee for the referral then under ILRPC 1.5(e) you must: (1) agree to assume joint financial responsibility for the representation; (2) the client must be informed of the amount each lawyer will receive and agree to it in writing; and (3) that the total fee is reasonable.

No client file should be sent to a successor lawyer without the client's prior approval, which should be obtained in writing.

☐ **BILLING AND FEES**

A lawyer is entitled to be compensated for work performed prior to closing the practice and the client is entitled to an accounting and statement of any amounts owed. Steps should be taken so that the settlement of client accounts is done promptly even if fees for some pending cases might not be resolved or collected until the representation matter is resolved (e.g. contingent fee payable on "recovery"). In the case of a lawyer's death,

ILRPC 5.4 allows for the payment of money over a reasonable period of time after a lawyer's death to the lawyer's estate or other specified persons.

☐ DEALING WITH OFFICE AND TRUST ACCOUNTS

You first need to make an inventory of all funds and property held in trust. Review the law firm's trust account ledgers and reconcile them with the monthly bank statements and identify all funds to which clients or third persons are entitled to receive. Promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, promptly render a full accounting regarding such property. In the event funds are transferred to another lawyer chosen by the client, the check should be made payable jointly to your client and the lawyer when disbursed from your trust account.

Checklist

- ✓ Determine closure dates for firm accounts and notify the financial institution(s) to find out closing process; allow some time lapse between the actual closing of the practice and the closing of the accounts in order to allow final checks to clear; cancel firm credit cards;
- ✓ Prepare final reconciliation of firm trust account(s) and determine any client funds that need to be disbursed;
- ✓ Make sure all trust funds are properly disbursed: client's funds returned to client; attorney's earned fees and administrative moneys (to cover necessary bank charges) are paid to lawyer; and third party bills (experts, doctors) are paid off;
- ✓ Escheat to the state any funds the firm is unable to ascertain the owner or is unable to return to the client after reasonable attempts have been made; and
- ✓ Determine if other client property (non-cash) being held in trust needs to be returned (obtain receipts).

If one or more person (one of whom may be the lawyer) claims an interest to what is being held in trust, the funds shall kept separate by the lawyer until the dispute is resolved as provided in ILRPC 1.15(e).

Also, for instances where there is an unclaimed or unidentified amount of funds in the trust account due to (1) the disappearance of a client or third person before a trust account check could have been issued; (2) the fact that the trust account check has yet to be cashed; or (3) there is an unexplained amount of money that cannot be traced as belonging to either a client, a third person or the lawyer, take all steps reasonable under the circumstances to resolve the situation. If a person entitled to funds has disappeared without a forwarding address or a trust account check was issued but not cashed, you

should at a minimum (1) determine whether the person left a forwarding address with the U.S. Postal Service; and (2) send a letter to the client's last known address by regular mail and by certified return receipt advising that person that if, for example, the trust account check has not been cashed, unless that person advises the lawyer to issue a replacement check, the funds will be presumed unclaimed in accordance with the Uniform Disposition of Unclaimed Property Act and the funds will be remitted to the Illinois Unclaimed Property Division. Funds that remain unclaimed for five years, under the Uniform Disposition of Unclaimed Property Act, 765 ILCS secs. 1025/1 *et seq.* (1992), are presumed unclaimed and the lawyer may remit the funds to the Illinois Unclaimed Property Division of the Illinois State Treasurer. To report unclaimed property to the state, contact the Office of the State Treasurer, Unclaimed Property Division, P.O. Box 19495, Springfield, IL 62794-9495, (217) 785-6998 or go to the "I-Cash" program on the Illinois State Treasurer website at <http://icash.illinois.gov/>.

□ ADVERTISING AND SOLICITATION

ILRPC 7.1 prohibits any communications about a lawyer's services which are false or misleading. Advertising contracts or other listings which would give the appearance that the lawyer is in business, when that is not in fact the case, need to be cancelled. Signs should be removed, letterhead and business cards collected and destroyed, and firm names changed.

ILRPC 7.5(a) allows lawyers in private practice to use trade names so long as they are not misleading. Trade names typically are considered to be misleading if they misrepresent either the nature of the underlying entity or the relationship of the lawyers to that entity. The circumstances under which a law firm may ethically retain in its name the name of a lawyer no longer associated with the firm generally depends on whether the name partner died, retired, moved to another firm or went into another business. For partners who have died, Comment [1] to Rule 7.5 states that a firm may use a trade name that includes the names of deceased members where there has been a continuing succession in the firm's identity. *See In re Burkhart*, M.R. 25174, 09 CH 99 (Ill. March 19, 2012) (after agreeing to buy the law practice of deceased sole practitioner, lawyer suspended for, among other things, using deceased lawyer's name in the title of his newly-formed firm).

When a living partner leaves a firm, the circumstances of the departure determine whether the firm may continue to use the partner's name. Generally, if a lawyer, who is a name partner in a law firm, is retiring or who has become "of counsel," the lawyer's name may be retained in the firm's name provided that the firm takes reasonable steps to show the partner's status such as indicating on the firm stationery the years during which he or she practiced., *see* ABA Formal Op. 90-357 (1990), but using the name of a partner who has left to join another firm or for other reasons is considered misleading. *See* ILRPC 7.5, cmt. [1] ("it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm"); ISBA Adv. Op. 03-02 (2004).

The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. ILRPC 7.5(c).

☐ STORAGE AND DESTRUCTION OF CLIENT FILES

An important consideration in the closing of a law practice is the retention and destruction of client files. Long before the decision is made to close the practice, the firm should have in place an established record retention and destruction policy. While much has been written on the subject, the Rules of Professional Conduct do not set forth particular rules or guidelines on how long a lawyer must retain client files or how a lawyer can properly destroy client files.

Before Closing a File:

- Determine if all work is done
- Review file and discard duplicate copies
- Return all original documents furnished by client
- Give file a file closing date and keep it somewhere separate from active files
- Determine need for electronic backup of firm's computer data
- Arrange for secure storage location and retention period

Upon closing the file, remove any unnecessary documents such as copies of documents that are available from another sources such as the court or government office unless there is any legal or other reason for retaining the document or multiple copies of the same document.

What Records to Retain

A lawyer must maintain records that identify the name and last known address of each client, and reflect whether the client's representation is active or concluded, for an indefinite period of time (S.Ct.Rule 769).

A lawyer must keep complete records of trust account funds and other property of clients or third parties held by the lawyer and must preserve such records for at least seven years after termination of the representation (ILRPC 1.15).

A lawyer must also maintain all financial records related to the lawyer's practice for not less than seven years (S.Ct.Rule 769).

There are no rules that specifically cover how long a lawyer must keep records contained in a client's file. Upon termination of the representation, the lawyer is required to return all papers and property received from the client (Rules 1.15(a) and 1.16(d)). For other records, the lawyer should exercise prudent judgment in determining how long to retain the client file, taking into consideration such things as when the statute of limitations for legal malpractice has expired, any particular difficulties in the relationship with the client

or the representation, if the client was a minor or incompetent that might extend the period of limitations, whether the file contains any original documents that the client might want back, and whether any documents if destroyed would be difficult to reconstruct from other sources. *See* Thar, Anne E., How Long Should You Retain Client Files?, 83 ISBA Bar J. 649 (Dec. 1995). Most client files should be kept a minimum of 7 years after the representation has ended and until the statute of limitations for legal malpractice has run or has been tolled, e.g. cases involving a minor who is still a minor at the end of 7 years, estate plans for a client who is still alive 7 years after the work is performed or files of difficult clients. *See* ISBA Adv. Op. 12-06 (January 2012). Note that there is no statute of limitations for a client or other person to complain about a lawyer's conduct to the ARDC.

If document exist in electronic form only they should be either printed and placed in the client's file or moved to an electronic file and maintained for the retention time period determined for that client's file. The electronic version can then be permanently purged or moved to a storage media. The retention of electronic data should be consistent with the retention policy for paper files.

Establish a Record Retention Policy

A good file retention and destruction plan usually involves a two-step process:

1) *At the beginning of the representation* - Nothing in the ethics rules prohibits lawyers from having clients stipulate in advance, typically at the beginning of the representation, contained in the engagement agreement how items in their files will be handled [returned, destroyed or saved] after a specified period of time after the representation concludes.

2) *At the end of the representation* - When the file is closed, each file should have given a destruction date and that date needs to be calendared. If the client was not advised in the engagement agreement of how the client's file will be handled by the lawyer after the representation is concluded, the lawyer can address this in an end-of-the-engagement letter to the client.

Below is a sample record retention provision that may be included in the retainer agreement (Sample #1) and a sample end-of-the engagement letter to the client at the conclusion of the representation (Sample #2) taken from *NY Com. on Professional and Judicial Ethics Formal Op. 2010-01 (2010)*.

Sample #1

[Lawyer] will maintain [Client's] file for ____ years after this matter is concluded. [Client] may request the file at any time during, upon conclusion of, or after conclusion of, this matter. ____ years after the conclusion of this matter, the file may be destroyed without further notice to [Client].

Sample #2

Once our engagement in this matter ends, we will send you a written notice advising you that this engagement has concluded. You may thereafter direct us to return, retain or discard some or all of the documents pertaining to the engagement. If you do not respond to the notice within _____ [e.g., 60] days, you agree and understand that any materials left with us after the engagement ends may be retained or destroyed at our discretion.

Notwithstanding the foregoing, and unless you instruct us otherwise, we will return and/or preserve any original wills, deeds, contracts, promissory notes or other similar documents, and any documents we know or believe you will need to retain to enforce your rights or to bring or defend claims. You should understand that "materials" include paper files as well as information in other mediums of storage including voicemail, email, printer files, copier files, facsimiles, dictation recordings, video files, and other formats. We reserve the right to make, at our expense, certain copies of all documents generated or received by us in the course of our representation. When you request copies of documents from us, copies that we generate will be made at your expense. We will maintain the confidentiality of all documents throughout this process.

Our own files pertaining to the matter will be retained by the firm (as opposed to being sent to you) or destroyed. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and account records. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials retained by us within a reasonable time after the termination of the engagement.

For a discussion on the related issue of responding to a client's request for a lawyer's copy of closed files *see* ISBA Adv. Op. Nos. 94-13 and 94-14 (January 1995) which can be obtained from the ISBA's web site at www.illinoisbar.org.

Destruction of Files

Destroy files in a manner that does not compromise client confidences – shredding or incineration (don't just put in garbage can). Determine disposal options for computer equipment. Scrub computers of software, firm and client information

Organize closed files into a way that makes it easier for you to know which files to review for destruction. One suggestion would be to separate closed client matters into groups according to the year the work was completed each year and place those files into one of three groups: files that are 7 years and older; files that are less than 7 years old; and files that need to be kept longer than 7 years. Label files with special retention issues e.g. "REVIEW BEFORE DESTROYING" so that you can easily identify files that should not be destroyed with first reviewing the file

Keep a permanent inventory of destroyed files and the destruction dates.

Review a file before it is destroyed.

□ DESIGNATE A SUCCESSOR ATTORNEY

When a sole practitioner dies or becomes disabled the question becomes what happens to open client matters as well as the client files and any funds that may be on deposit in the trust account. ILRPC 1.15(a)(8) (added in July 2011) provides as part of the client trust requirements that lawyers shall:

(8) make appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice.

Lawyers need to put in place a contingency plan that protects both the clients and the lawyer. A prudent lawyer should consider succession planning and spell out how the practice should be maintained in the event there is an interruption in the practice.

Appendix: LAW FIRM LIST OF CONTACTS

Currently if a lawyer dies or becomes incapacitated without having made any arrangements about the future of his or her practice, the ARDC seeks a court order to take over the practice, referred to as a receivership. As a receiver the ARDC collects the lawyer's files and attempts to return those files to the clients.

Several jurisdictions already have some form of mandatory advance designation, caretaker or surrogate lawyer rules that encourage and enable lawyers to plan for law practice contingencies by designating in advance another lawyer who is willing and able to assume the lawyer's practice or to assist in the transfer of client matters and papers and electronic files. *See, e.g.,* The New York State Bar Association publishes a comprehensive "Planning Ahead" Guide ("Planning Ahead: Establish an Advance Exit Plan to Protect Your Clients' Interests in the Event of Your Disability, Retirement or Death (2005)"), available free online. The Planning Ahead Guide comes complete with downloadable forms, checklists and guidance for the advance designation of a successor attorney. <http://www.nysba.org/CustomTemplates/SecondaryStandard.aspx?id=27713>

Appendix

LETTER - LAWYER IS CLOSING HIS OR HER OFFICE

Re: [*Name of Case*]

Dear [*Name*]:

As of [*date*], I will be closing my law practice due to [*provide reason, if possible*]. I will be unable to continue representing you on your legal matters.

I recommend that you immediately hire another attorney to handle your case for you. You can select any attorney you wish, or I would be happy to provide you with a list of local attorneys who practice in the area of law relevant to your legal needs. Also, the [bar association] provides a lawyer referral service that can be reached at [phone number].

When you select your new attorney, please provide me with written authority to transfer your file to the new attorney. If you prefer, you may come to our office and pick up a copy of your file and deliver it to that attorney yourself.

It is imperative that you obtain a new attorney immediately. [*Insert appropriate language regarding time limitations or other critical time lines that client should be aware of.*] Please let me know the name of your new attorney, or pick up a copy of your file by [*date*].

I [*or, insert name of the attorney who will store files*] will continue to store my copy of your closed file for ____ years. After that time, I [*or, insert name of other attorney if relevant*] will destroy my copy of the file unless you notify me in writing immediately that you do not want me to follow this procedure. [*If relevant, add: If you object to (insert name of attorney who will be storing files) storing my copy of your closed file, let me know immediately and I will make alternative arrangements.*]

If you, or your new attorney, need a copy of the closed file, please feel free to contact me. I will be happy to provide you with a copy.

Within the next [*fill in the number*] weeks I will be providing you with a full accounting of your funds in my trust account and fees you currently owe me.

You will be able to reach me at the address and phone number listed on this letter until [*date*]. After that time, you or your new attorney can reach me at the following phone number and address:

[*Name*]

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[*Address*]

[*Phone*]

Remember, it is imperative to retain a new attorney immediately. This will be the only way that time limitations applicable to your case will be protected and your other legal rights preserved.

I appreciate the opportunity of providing you with legal services. Please do not hesitate to give me a call if you have any questions or concerns.

Sincerely,

[*Attorney*]

[*Firm*]

Adapted from Florida Bar Ethics Department, Law Office Management Assistance Department (LOMAS). Reprinted with permission.

ACKNOWLEDGMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received a copy of my file from the law
office of _____[name].

[Name]

[Date]

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AUTHORIZATION FOR TRANSFER OF CLIENT FILE

I hereby authorize the law office of _____ to
deliver a copy of my file to my new attorney at the following address:

Client Name

Date

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LAW FIRM LIST OF CONTACTS

ATTORNEY NAME:

Social Security OR State Bar #:

Federal Employer ID #:

State Tax ID#:

Date of Birth:

Office Address:

Office Phone:

Home Address:

Home Phone:

SPOUSE:

Name:

Work Phone:

Employer:

OFFICE MANAGER:

Name:

Home Address:

Home Phone:

COMPUTER AND TELEPHONE PASSWORDS:

(Name of person who knows passwords or location where passwords are stored, such as a safe deposit box)

Name:

Home Address:

Home Phone:

POST OFFICE OR OTHER MAIL SERVICE:

Location:

Box No.:

Obtain Key From:

Address:

Phone:

Other Signatory:

Address:

Phone:

SECRETARY:

Name:

Home Address:

Home Phone:

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BOOKKEEPER:

Name:
Home Address:
Home Phone:

LANDLORD:

Name:
Address:
Phone:

PERSONAL REPRESENTATIVE:

Name:
Address:
Phone:

ATTORNEY:

Name:
Address:
Phone:

ACCOUNTANT:

Name:
Address:
Phone:

ATTORNEYS TO HELP WITH PRACTICE CLOSURE:

First Choice:
Address:
Phone:

Second Choice:
Address:
Phone:

Third Choice:
Address:
Phone:

LOCATION OF WILL AND/OR TRUST:

Access Will and/or Trust by Contacting:
Address:
Phone:

PROFESSIONAL CORPORATIONS:

Corporate Name:

Date Incorporated:
Location of Corporate Minute Book:
Location of Corporate Seal:
Location of Corporate Stock Certificate:
Location of Corporate Tax Returns:
Fiscal Year-End Date:
Corporate Attorney:
Address:
Phone:

PROCESS SERVICE COMPANY:

Name:
Address:
Phone:
Contact:

OFFICE-SHARER OR "OF COUNSEL:"

Name:
Address:
Phone:
Name:
Address:
Phone:

OFFICE PROPERTY/LIABILITY COVERAGE:

Insurer:
Address:
Phone:
Policy No.:
Contact Person:

OTHER IMPORTANT CONTACTS:

Name:
Address:
Phone:
Reason for Contact:
Name:
Address:
Phone:
Reason for Contact:

OTHER IMPORTANT CONTACTS:

Name:
Address:
Phone:
Reason for Contact:

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GENERAL LIABILITY COVERAGE:

Insurer:
Address:
Phone:
Policy No.:
Contact Person:

LEGAL MALPRACTICE—PRIMARY COVERAGE:

Provider:
Address:
Phone:
Contact Person:

LEGAL MALPRACTICE - EXCESS COVERAGE:

Insurer:
Address:
Phone:
Policy No.:
Contact Person:

HEALTH INSURANCE:

Insurer Name:
Address:
Phone:
Policy No.:
Persons Covered:
Contact Person:

DISABILITY INSURANCE:

Insurer Name:
Address:
Phone:
Policy No.:
Contact Person:

LIFE INSURANCE:

Insurer Name:
Address:
Phone:
Policy No.:
Contact Person:

WORKERS' COMPENSATION INSURANCE:

Insurer Name:
Address:

Phone:
Policy No.:
Contact Person:

STORAGE LOCKER LOCATION:

Storage Company: Locker Address:
Phone:
Obtain Key From:
Address:
Phone:
Items Stored:

SAFE DEPOSIT BOX:

Institution:
Box No.:
Address:
Phone:
Obtain Key From:
Address:
Phone:
Other Signatory:
Address:
Phone:
Items Stored:

LEASES:

Item Leased:
Lessor:
Address:
Phone:
Expiration Date:
Item Leased:

LAWYER TRUST ACCOUNT: IOLTA:

Institution:
Address:
Phone:
Account Number:
Other Signatory:
Address:
Phone:

INDIVIDUAL TRUST ACCOUNT:

Name of Client:
Institution:
Address:

Phone:
Account Number:
Other Signatory:
Address:
Phone:

GENERAL OPERATING ACCOUNT:

Institution:
Address:
Phone:
Account Number:
Other Signatory:
Address:
Phone:

BUSINESS CREDIT CARD:

Institution:
Address:
Phone:
Account Number:
Other Signatory:
Address:
Phone:

MAINTENANCE CONTRACTS:

Item Covered:
Vendor Name:
Address:
Phone:
Expiration:
Item Covered:
Vendor Name:
Address:
Phone:
Expiration:
Item Covered:
Vendor Name:
Address:
Phone:
Expiration:

ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES:

State of:
Bar Address:
Phone:
Bar ID #:

LAW FIRM CLOSING CHECKLIST

CLIENTS

	Date Completed
Inventory Client Files	
Active Open Files	
Inactive Open Files	
Closed Files	
Open Files	
Notify Clients	
Highlight Time limitations or deadlines	
Discuss successor lawyer	
Prepare Transfer memo	
Withdraw/Terminate Representation	
Obtain permission from tribunal	
Take steps to avoid prejudice to clients	
Arrange for Turnover of Files	
Notify Clients of deadline for file collection	
Offer option of pickup at office location by date certain	
Offer terms for mailing or delivery	
Prepare form for client acknowledgement of receipt of file	
Arrange for Appropriate Transfer of:	
Client Property	
Funds in trust	
Closed Files	
Determine which former clients required notification	
Notify former clients	
Establish retention duration & destruction schedule	
Arrange for turnover, storage or confidential destruction	
Arrange for retention of confidential materials	

NOTIFICATION OF CLOSURE

	Date Completed
Clients	
Lawyer Licensing Jurisdictions	
Change in Registration status	
New Address	
State and Federal Agencies (if applicable)	
Bar Associations	
Vendors	
Building Leases	

ACCOUNTS

	Date Completed
IOLTA Client Trust Accounts	
Name # Bank	
Reconcile balance	
Arrange for turn-over of funds to client/third person	
Close Account	
Individual Trust Accounts	
Name # Bank	
Reconcile balance	
Arrange for turn-over of funds to client/third person	
Close Account	
Operating Account	
Name # Bank	
Retain adequate funds for closure expenses	
Business Credit Cards	
Name # Bank	

ADVERTISING/COURT LISTS

	Date Completed
Cancel advertisements	
Notify lawyer referral services to remove name	
Notify courts to remove name from court appointment roster(s)	

INSURANCE CONSIDERATIONS

	Date Completed
Legal Malpractice Coverage	
General Liability Coverage	

PERSONNEL MATTERS

	Date Completed

PRACTICE PROPERTY

	Date Completed
Dispose of office related equipment	
Consider confidentiality concerns related to electronic data	

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LAW FIRM SUCCESSION PLANNING: DO ONE SIMPLE THING

by Alan R. Olson

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Recently, a major rainmaker in a 100-plus lawyer firm, who had virtually sole responsibility for a client generating well over \$2 million in revenue per year, announced his retirement, providing his colleagues with 30 days notice. When asked about this abrupt departure, he responded that he had acted in accordance with his firm's ownership agreement.

Altman Weil's analysis of US and Canadian Bar demographics indicates that 30%-40% of actively practicing lawyers are at an age and stage where they are beginning to retire, phase down, or contemplate phasing down. A majority of law firms, small and large, have actively practicing lawyers in their late 60s and 70s, many of whom are rainmakers.

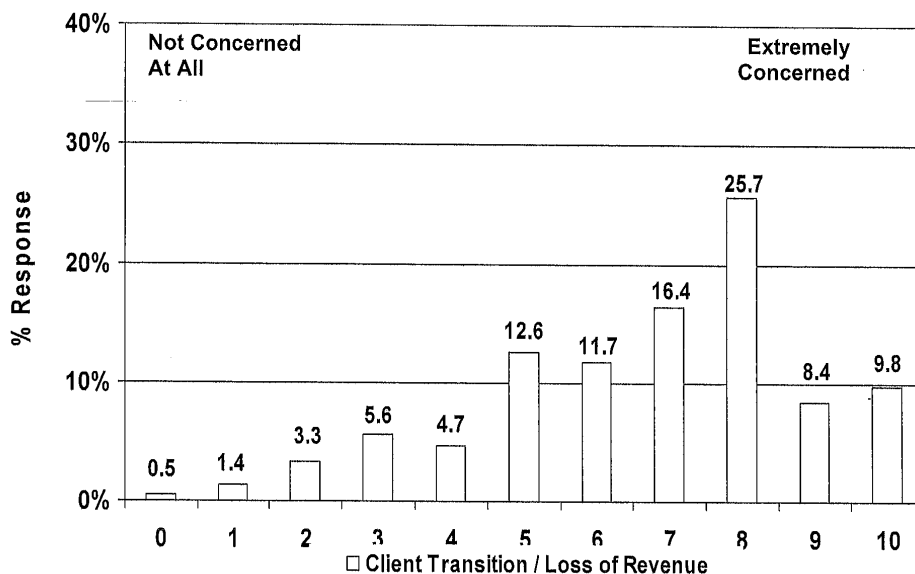
In instances where transition plans do exist, on close scrutiny, those plans often include overly optimistic assumptions, have strategic gaps, or lack realistic contingency plans. However, in our experience, many lawyers, and their firms, are simply avoiding the subject.

Tsunami of Change

The huge wave of baby boomers who entered legal practice 30 or 40 years ago, today represent a rapidly cresting tsunami of change. Many law firms are on the brink of rapid and dramatic personnel shift. The depth of change will be most stark in law firms where baby boomers have been instrumental in building, growing, managing and leading.

This dramatic demographic event has not gone unrecognized by law firm leadership. In the Altman Weil *Law Firms in Transition Survey 2011*, 47.3 percent of law firm leaders cited their respective law firms' preparedness to deal with retirement/succession of baby boomers as an area of most concern (the highest response rate for this question). In the *Law Firms in Transition Survey 2012*, failure to successfully transition key clients with resulting loss of revenue was the top succession planning concern (depicted below), followed by concerns over leadership succession and loss of expertise.



CLIENT TRANSITION / LOSS OF REVENUE**Knowing is Not Doing**

One of the main themes in Jeffrey Pfeffer and Robert Sutton's highly pertinent book, *The Knowing-Doing Gap*, is that identifying, and talking about, an issue or problem is not the same as addressing or solving the problem. This principle is especially applicable to law firms. Lawyers generally excel at issue analysis and discussion, but law firms are seldom structured for easy implementation of new ideas.

Despite the generally high recognition of the need for succession planning, many law firms have been reluctant, or lax, in developing adequate succession plans. Many—if not most—law firms have been dealing with succession planning case-by-case (which might be appropriate), and ad hoc (which is not). Moreover, lawyer succession issues are often addressed belatedly, if not grudgingly. Many firms persist in avoiding the issue, hoping that, given time, transitions will spontaneously take shape and work out.

In addition to the knowing-doing gap, there are myriad reasons why law firms, populated by highly intelligent, forward-thinking and risk-averse stakeholders, have

continued to avoid succession planning issues, taken minimalist approaches, or practiced brinksmanship. Some typical excuses we hear from law firms are:

- **Inertia or aversion to planning:** Historically, things have worked out over time; we've never had to plan this before; we're busy enough with the day-to-day pressures of serving our clients and running our business without worrying about what *might* happen;
- **Concern over lawyer retention:** We have seniors who are highly productive, at the top of their profession, and they are not receptive to discussing phase downs, transitioning their clients, or becoming lame ducks – *we don't want to antagonize productive partners*;
- **Concern over client retention:** We've been going above and beyond to retain and serve our clients, be completely reliable and responsive; if we broach the topic of transition, we are by definition, raising the prospect of change and potential instability;
- **Lack of viable successor(s):** Our next-in-line, or our next generation, might not have the high-level expertise, client and industry knowledge, or the requisite "fire in the belly" to take the baton;
- **Over-reliance on compensation systems:** Our (formulaic or subjective) compensation system provides for decreasing compensation as individuals reduce production—therefore, our transitions are covered automatically.

Solutions—The Way to Get Started (or Make a Fact-Based Decision Not To)

Clearly, law firms must not only recognize the need for succession planning, but also plan, act, manage, and compensate for upcoming transitions. The best solution is to factually determine if the firm has significant succession issues, and whether their breadth, depth and substance merit development of a succession plan of some kind.

There is one simple thing you can do immediately to objectively assess (and demonstrate to your partners) the need for succession planning in your law firm.

Conduct a demographic analysis of the ages of your lawyers. Subject to firm size, the analyses should typically be done at the firm, practice/industry group, and office levels. The chart below, based on hypothetical data that might represent a

small firm or large practice group, illustrates that clear, impactful conclusions are available through an easily undertaken demographic analysis.

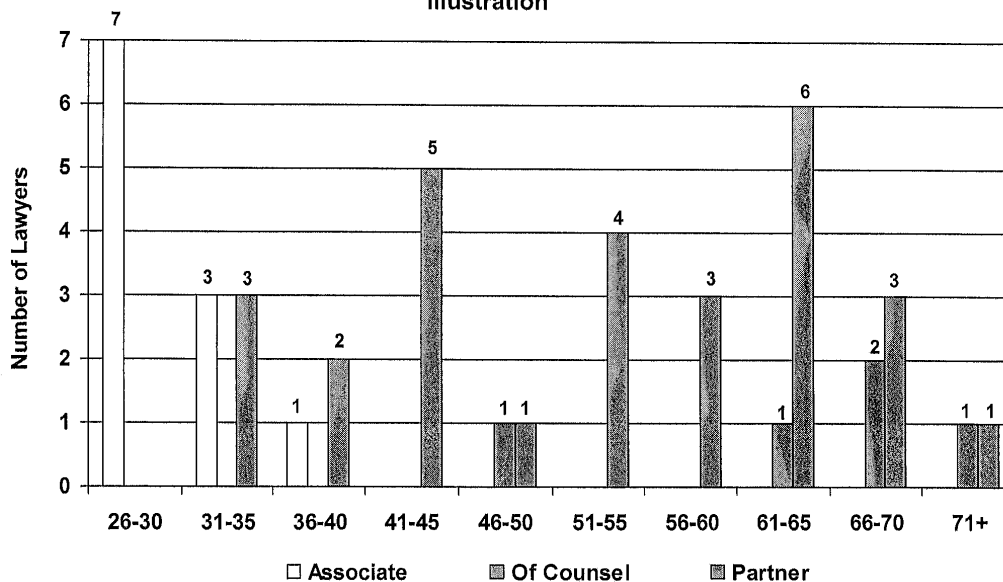
In this example we see a firm or group that has 14 lawyers age 61 or above, including 10 partners. It's likely that, in most firms, these 10 partners will be responsible for very substantial client revenues. The eight partners age 46 to 60 are, in general, most likely to be "next in line" for assuming major client responsibility—but, of course, the firm can not *assume* that client transitions will occur, nor be successful. Clearly, the demographics raise important questions:

- Are there sufficient seasoned lawyers to transition the clients of 10 senior partners, or 14 senior lawyers?
- Does the firm have the requisite levels and types of expertise, skill and ambition to successfully transition and retain the seniors' clients and legal work?

If it has not already done so, this firm (or practice group) should conclude that it needs to begin evaluating the specifics of pending changes, and developing concrete transition plans—and do so immediately.

XYZ Firm (or Practice Group)
44 Lawyers

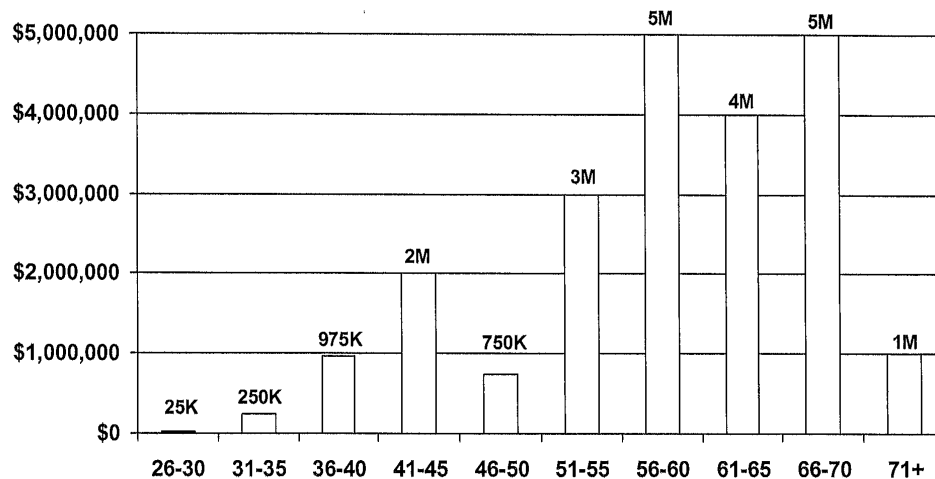
Illustration



Altman Weil, Inc.

Next, using the same demographic breakdown by age range, show Billing Attorney totals (or alternatively, Originating Attorney totals). This adds a dollar value to the equation and may inject a more immediate sense of urgency. In the representative example below, a major succession planning initiative appears warranted—and perhaps critical.

XYZ Law Firm
Total Billing Attorney Revenues by Age Group
44 Lawyers; \$22M Revenues



Conclusion

This fact-based, numeric depiction of your firm and practice group demographics, and accompanying origination statistics (or Responsible/Billing Attorney totals), will provide a concrete starting point for decision making regarding succession planning. It will also indicate the size, scope, breadth, and severity, as well as potential benefits of planning, potential risks of inaction and the overall level of urgency of your firm's challenge.

The elements and details of the succession plan you need, will vary substantially by firm. What is common in law firms, of all sizes, shapes and specialties, is the absolute need to get started today.

About the Author

Alan R. Olson is a principal of Altman Weil, Inc., serving clients from the firm's Midwest office in Milwaukee, Wisconsin. For over twenty-five years, he has advised law firms across the country on strategic planning and practice management.

Mr. Olson is a thought-leader in the emerging discipline of succession planning for law firms, including leadership and management transitions, practice transitions, compensation systems and key client retention strategies. In 2011 he co-authored the *Altman Weil Flash Survey on Law Firm Succession Planning*.

Contact him to discuss succession planning at arolson@altmanweil.com.



**Transition Assets:
A Foundation for Succession Planning and Lawyer Development**

**By Alan R. Olson
Altman Weil, Inc.**

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Many U.S. law firms have a significant proportion of baby-boomer aged partners that are responsible for an even more significant proportion of their law firm's clients and revenues. Time and time again, in small, mid-sized and large law firms, we see a concentration of lawyers 55 to 68 (and older) who control an even more pronounced concentration of clients and revenues.

This demographic dominance is a tribute to the size and magnitude of the baby boomer generation as major economic contributors, builders, and "drivers" in their respective firms. However, for many law firms, their future success—and even survival—may depend on recognizing and acting on this demographic phenomenon. In other words: *This has been great—but now what are we going to do about it?*

Stumbling Blocks to Succession Planning

According to the 2013 *Altman Weil Law Firms in Transition Survey*, the two most prevalent "stumbling blocks" to effective succession planning in law firms are:

- Senior partners do not want to retire (cited by 77.6% of survey respondents); and
- Senior partners don't want to forfeit current compensation by transitioning client work (cited by 73.2% of respondents).

Additionally, the same survey found that only 27% of, U.S. law firms with 50 or more lawyers have formal succession plans, while 49% have an "informal/*ad hoc*" succession planning process. In our experience, informal/*ad hoc* plans often resemble little or no plan at all.

Another significant stumbling block to succession planning is that it is simply "awkward to discuss." Forty-five percent of survey respondents indicated that they have this problem in their law firms.



These difficult discussions with senior lawyers frequently delay and heighten sensitivities surrounding succession planning. However, law firms need to broach the subject and plan effectively for the successful succession of lawyers and transition of their clients, *as well as a broad spectrum of other assets.*

Transition Assets

In our work with law firms, we have identified an array of critical 'Transition Assets' to address in order to successfully retain maximum value for the firm as a senior partner phases down his or her practice.

Those Transition Assets include:

- Substantive legal expertise
- Range/blend of specialties; sub-specialties; industry knowledge
- Client relationships
- New business development skills and experience
- Firm management and leadership skills and experience
- Practice management and leadership skills and experience
- Profitability and cash flow

In specific law firms and practice areas, this list of Transition Assets should be used to identify the elements—*the assets*—of each individual transition. These assets can be assessed and prioritized for each senior partner:

- *What are the primary assets that this senior partner has built in his/her practice?*
- *Which of these assets can we seek to transition?*
- *Alternatively, which of these assets can we seek to replicate?*

For a senior partner who is highly productive, is the point person for several key clients, and is a Practice Group Leader, the primary assets being considered for transition and/or replication might be a lengthy list. Nevertheless, it is essential to follow the threads asset by asset.

Specific priorities will depend on the firm, the clients, the practice, the lawyers, the economics and the timing. However, many of the assets are likely to have multiple combinations of primary and secondary importance in a transition. Often profitability and cash flow is a primary focus driving transition planning.

Developing Successors

Next, these assets can provide a foundation, and an approach, for examining which transition areas are well-covered within the firm, and which areas must become priorities if transition or replication of an asset is to be successful. In other words, these assets provide guiding criteria for lawyer development.

The usual starting place for transition planning, and for lawyer development, will be the legal expertise and range/blend of specialties and sub-specialties offered by the retiring partner. In addition, the successor, or "next lawyer-up" might need to develop or enhance practice management skills (client relationship skills; supervisory skills) and business development skills. Other factors and intangibles will undoubtedly be significant, such as responsiveness, communication skills, and the ability to work with the retiring partner.

Internal and External Resources

In advising firms on succession planning, we believe it is important to look internally first for viable successors to retiring lawyers. Firm management and senior partners should begin where they have the most knowledge of and experience with possible successors. Moreover, looking outside first is likely to send a negative message and undermine current lawyers' morale.

In recent years, many law firms have been focusing on lateral hiring to achieve growth. And many firms, and practices, have benefited from well-planned, strategic lateral hiring. Nevertheless, from a succession planning perspective, the starting point for identifying the next generation for transition and succession purposes should begin with a firm's current lawyers and be planned "inside-out."

This applies on a programmatic level to a firm's overall talent pool, in terms of identifying any significant demographic "gaps" in the next generation(s). It also applies to individual senior transitions, in which an individual or a team must strive to replicate and cover the retiring senior's Transition Assets.

If it is clear that the firm does not have viable successors for a particular practice or client, or if there are gaps in needed coverage, the first channel of planning should be internal – training or re-tooling individuals at a high level, or combining the talents and skills of next generation lawyers currently in the firm.

If an internal transition does not appear viable, then the firm might need to look outside for particular laterals who can fill the gaps and make a future transition more likely to succeed.

Advance Planning—and Getting Started—Are Critical

This discussion underscores the absolute need to approach lawyer development early and often in lawyers' careers, independently and well in advance of possible future transitions. Altman Weil stresses the need to begin succession planning at least five years in advance of beginning a phase-down.

From the perspective of successfully transitioning clients, five years can be used to begin introducing new lawyer(s) into increasingly important roles, accomplish high level training and convey what is necessary to help both the successor lawyer(s) and the clients feel comfortable, and develop trusted working relationships, collective memories and wisdom. Five years can also allow a firm and senior lawyer to "re-boot" if a planned transition is not working.

Lawyer development should, of course, pre-date any five year transition "window"—and be undertaken throughout lawyers' careers, as they advance from associate to ownership status, take on increasingly complex matters, and develop and grow a book of business. With an ongoing commitment to development, the firm can begin conversations early regarding long range transitions of expertise and other less tangible assets.

Conclusion

Successfully transitioning senior lawyers who have built major assets during their careers will be a key step in moving most law firms into the next generation. Firms that identify, assess and prioritize critical Transition Assets will make an important first step toward an effective succession planning program.

Along with engaging senior lawyers in constructive strategic planning and succession planning discussions, it is equally important to develop the next generations of lawyers who will work together with their more senior partners to transfer important assets and maintain the scope and quality of practices and services the previous generation has built.

In this era of slow or no-growth, it is axiomatic that client retention and expansion are even more important to the success, if not the survival, of U.S. law firms. An effective succession planning program should lock in this most valuable transition asset — *your clients*.



Transition Assets:
A Foundation for Succession Planning and Lawyer Development

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About the Author

Alan R. Olson is a principal of legal management consultancy, Altman Weil, Inc., serving clients throughout the United States and Canada from the firm's Midwest office in Milwaukee, Wisconsin. For over twenty-five years, he has advised law firms on strategic planning, succession planning and practice management. Contact Mr. Olson at arolson@altmanweil.com.

