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Law Practice Management

Succession Planning for the Solo/Small Law Firm

Succession planning is a major issue for solo/small law firms. While many attorneys guide their clients in this regard, like the shoemaker without shoes, attorneys do not plan for their own succession. Succession planning incorporates what the firm must do when one of its partners leaves the firm (whether voluntarily or as a result of dismissal), dies, becomes disabled or retires. For the purpose of this article we will be referring to partners in the firm. The same provisions apply to shareholders of a corporation or members of a limited liability entity.



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In identifying a succession plan the firm must understand its ability to deal with the departure of a partner. Will the remaining partners be able to fill the void left by the departing partner? Are there associates that have the ability to take more of a role in the practice and potentially become partners? Is

the cash flow sufficient to pay the partner or the partner's estate or will a financing arrangement be necessary? What can be done if the firm determines that the loss of a specific partner or partners will adversely affect the firm's ability to survive? In making these determinations the firm must honestly review its infrastructure and client base.

When the firm determines that it can survive the loss of a partner the best way to ensure a smooth transition is through the implementation of a thorough partnership agreement. While the agreement should have provisions concerning the day-to-day operation, from the perspective of firm succession the focus should be on retirement, death, disability and withdrawal (voluntary or involuntary) of a partner.

While death can have the greatest emotional effect on the remaining partners, it can often be the easiest to deal with. Most death-time buyout agreements can be funded through insurance, either owned by the surviving partners or the partnership. However, in order to ensure the proper distribution of the insurance proceeds, thought

should be given to the use of an insurance trust with an independent Trustee responsible to distribute the proceeds in accordance with the buy-sell agreement.

The more difficult decisions relate to the retirement of a partner or their voluntary withdrawal.

As to retirement: Consideration must be given to the terms and conditions of retirement. For example, is there to be a mandatory retirement age?

How much notice must the retiring partner give to the firm? How is the payment to the retiring partner and the terms of payment to be determined? Is a junior partner or an associate of the firm a candidate to acquire the interest of the retiring partner?

As to voluntary withdrawal: The major issues relate to what payment, if any, is to go to the withdrawing partner? Which clients are leaving with the partner and how should this be



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accounted for in determining any payment due to the withdrawing partner or due from the withdrawing partner? What restrictions as to practice are placed on the withdrawing partner? It should be noted that Rule 1.17 of the New York Rules of Professional Conduct states "The seller and the buyer may agree on reasonable restrictions on the seller's private practice of law ..."

If the succession plan includes the transitioning from senior partners to junior partners, the success of the plan is heavily dependent upon the actions of the senior partner. The retention of that partner's client base is the key to the plan's effectiveness. The senior partner must be willing to have the junior partners involved with his client base before his retirement is announced to the clients. If the junior partners are first introduced to the clients at the time of or after the retirement has been announced the plan is doomed to fail. A client that is being asked to rely upon and trust the new partner needs to see that the retiring partner has the same reliance and trust in that individual.

When a firm is "senior heavy" the plan must be devised in a manner which will not encourage a race to retire. This would produce a financial burden that could destroy the ability for the remaining partners to continue the firm. Therefore, the agreement might contain a provision that discourages more than one partner from retiring within a specific time period. An alternate approach would provide that payments to the retired partners would be spread over a longer period of time if multiple retirements occur within a stipulated period of time.

If it appears that the firm cannot survive the loss of the partner (*i.e.* the partner is too integral to the firm's revenue) an alternative



approach must be considered. For example, the firm, while still successful, might consider merging with another firm that has similar practice areas or areas that complement their areas of practice. However, merger is a delicate process. While, on paper, the firms may seem to be a perfect match in practice areas or might appear to complement each other, a clash of cultures might cause the merger to fail. Therefore, in addition to reviewing the client base and financials of the other firm, time must be spent learning the personalities of the members of the firm and understanding how the firm conducts its business.

For the sole practitioner the issue of succession planning generally requires a different approach. The sole practitioner has the following areas to pursue:

1. Try to arrange a sale of the practice. This approach may take considerable time to find a buyer who practices in the same general area of law and who has the capacity to handle the additional client

base. In addition, clients may not stay with an attorney that they have had no dealing with and may feel that the new attorney has been "forced on them." Therefore, consideration may have to be based upon "retention."

2. Try to arrange a merger with another law firm. This takes advanced planning to merge with another firm. There must be enough time allowed for the new partners and the clients to become accustomed to each other.

3. Hire an associate who could one day become the successor to the sole practitioner's practice. This approach may require the most advanced planning. Finding the right person who has both the technical ability to service the clients and the personality necessary to retain the client base may take a number of attempts.

Before attempting any succession plan, the practitioner must be familiar with Rule 1.17 of the NY Rules of Practice, the requirements regarding notice that must be given to clients and the other applicable ethical standards. In addition, on the Senior Lawyer's website (www.SeniorLawyers.org) you can find a Checklist for Closing or Selling a Law Practice which can be of great assistance to the selling practitioner. Finally, the Solo/Small Firm Resource Center of the NYS Bar Association website (www.nysba.org) is an excellent source of information relating to succession planning for lawyers.

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