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Succession Recession

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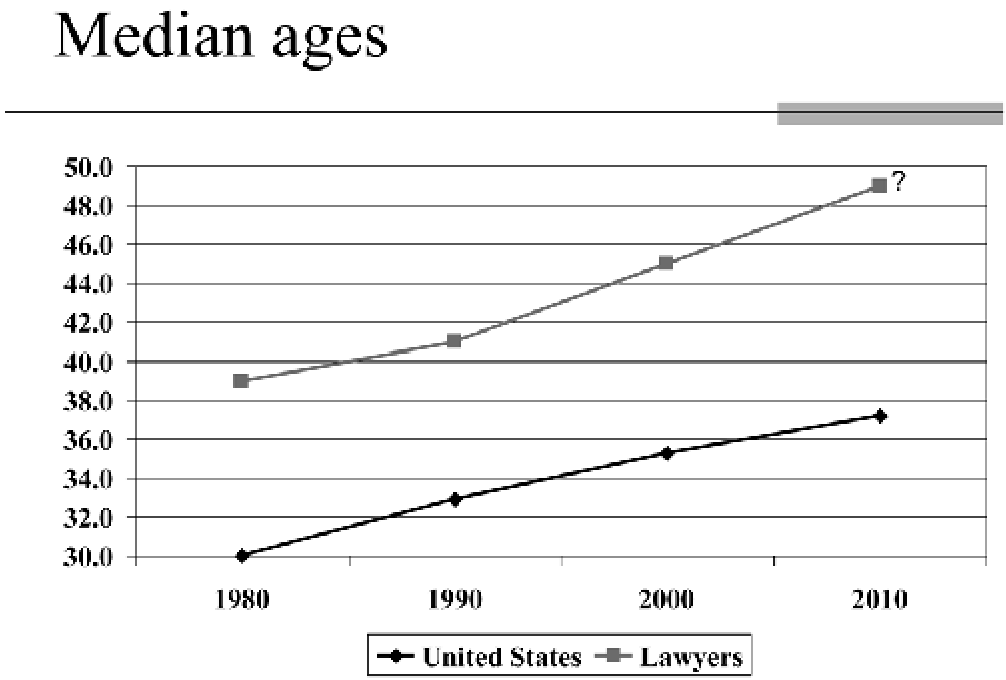
"The future has already happened." Management guru Peter F. Drucker spoke these words during a conversation at The Masters Forum on Jan. 27, 1998. Drucker also penned the article, "The Future That Has Already Happened" in the September-October 1997 edition of the Harvard Business Review. Drucker prepares for the future by identifying major events that have already happened which will have predictable effects on the future. Drucker predicted that the dominant factor for business in the future would be demographics, and his observations were more than 14 years ago.

Indeed, the future has already happened. A demographic crisis has been looming in law firms, and the problem has been exacerbated by traditional short-term thinking in both good times and bad. The current economic recession has created a succession recession, as many firms have tabled thoughts of succession planning primarily due to the fact that the Baby Boomer generation is contributing the most to law firm revenues. However, the failure to consider and then plan for the ramifications of an older and soon retiring workforce will have dire consequences as firms lose important client contacts, critical knowledge and expertise along with these partners.

The Demographics

According to the 2010 U.S. Census, our current population of the 45- to 64-year-old age group was 81,489,445. This is today's Baby Boomer generation, representing an increase of 31.5% over the same age group in the year 2000, which numbered 61,952,636. The Census also revealed that our country's population grew at a faster rate in the older age categories than in the younger age categories. Our workforce is aging, and many of us have referred to this in the legal profession as the "graying of the bar."

The graph below compares the median age of the U.S. population (as reported in the Census) with the median age of the lawyer population (as reported by the American Bar Association's Market Research Department ("ABA") in May 2009). The ABA report reported on median lawyer ages in 1981, 1991 and 2000, and the author has estimated the median lawyer age of approximately 48 for 2010. The growth in median age is both striking and troublesome.



Certain state bar associations and Canadian bar associations have statistics on the age of their respective members, and a sampling of these results reveals that 60% of the Oregon Bar are Baby Boomers; 39% of the Illinois Bar are over 50 years of age; and the Ontario Bar reports that 40.5% of its members are over the age of 50.

According to the Pew Research Center, for the next 19 years, about 10,000 people a day will turn 65 — including many of the nation's most experienced and respected attorneys. The American Bar Association estimates that there are 400,000 Baby Boomer lawyers — approximately one-third of the nation's current total. And guess what? Not all baby boomers are considering full-time retirement. Pew also reports that the typical baby boomer feels nine years younger than his or her actual age — so indeed, we can round up and say 60 is the new 50.

During the next few years, firms need to plan the transition of their business to the younger generation. Failing to implement strategies now will result in both a leadership gap and revenue gap in a few years' time. The resulting internal problems will more likely than not escalate to a crisis as firms lose critical knowledge and the means to serve clients in an effective manner.

Challenges and Obstacles

Why is succession planning so difficult? It resides in the definition of succession planning — which is the identification and development of potential successors for key positions in the firm, through a systematic evaluation process and training for positions the candidate has likely not been in before.

Other difficulties are presented in a number of ways. First and foremost, firms and lawyers tend to be complacent on this subject. Lawyers are very good at contemplating every possible way in which a client transaction or other matter can go wrong — even if it would not occur for years. Paradoxically, when it comes to the future of the law firm, thinking ahead is outside their comfort zone. Firms get a false sense of security from having a strong leader for a long time, hence no one is groomed for succession.

Another challenge is firms have difficulty planning on a number of levels. In order to plan for the future of the firm, you need to know the firm's senior lawyers' plans for retirement. Obtaining this knowledge is easier said than done. It can be problematic to simply start a conversation about the subject; many senior lawyers avoid raising the issue on their own for a variety of real or perceived fears, including potential reduction of compensation or loss of clout among partners. Others resist any conversation that involves thinking about the end of their professional career along with its hints of their eventual mortality. Apparently, musician Paul McCartney understood this issue when wrote the music for "*When I'm Sixty-Four*" at the age of 15; he later created the lyrics in honor of his father's 64th birthday.

Another challenge firms need to confront is the reality of client succession. It is a challenge to establish trust and confidence in the client that the firm's next generation can perform at the desired level of service. Not surprisingly, the senior relationship partner needs to maintain this same level of confidence, and he or she will be reluctant to let go of client relationships.

Firms also have a multitude of generational issues to contend with. Communication gaps need to be bridged; younger lawyers need to work on developing their "soft" skills with respect to relationship management and more, building appreciation for different attitudes and work styles and dealing with potentially emotional issues when older lawyers begin reporting to younger lawyers.

Yet another challenge is the free agency partner. Unfortunately, partner mobility seems to be a given in the industry and for the most part, is an unforeseen event. A partner's decision to make a lateral move is usually sudden and therefore cannot be predicted.

Lastly, a significant number of senior lawyers are not considering retirement. Think of this quote from Sheldon Adelson, famed Las Vegas Sands casino magnate and billionaire, "Why do I need succession planning? I'm very alert, I'm very vibrant. I have no intention to retire." Adelson is currently 78 years old. And the ever helpful U.S. government, under the auspices of the EEOC and ADEA, will curtail law firm efforts to enforce mandatory retirement policies. Firms will reconsider such policies especially in light of the amount of law firm capital senior partners hold — anywhere from 40% to 50% of total capital.

Lessons from Corporate America

With the possible exception of Hewlett Packard, one of the most important functions of the corporate board of directors is to ensure strong succession of their chief executive officer and other key members of the "C" suite. Strong leadership and planning include a relentless focus on the identification and development of star talent. Those who are judged to have leadership potential are most often developed and nurtured for a period of years.

Compensation also plays a role as we can see from the charge of the Compensation and Succession Planning Committee of YalePharma: "The role of the Compensation and Succession Planning Committee is to recommend, establish, oversee and direct the Company's executive compensation policies and programs and to recommend to the Board of Directors compensation for executive officers. In carrying out this role, the Committee believes it is important to align executive compensation with Company values and objectives, business strategies, management initiatives, business financial performance and enhanced shareholder value. *The Committee is also responsible for meeting periodically with management to review and make recommendations with respect to succession planning and management development.*" (Emphasis added)

Planning Steps

When do you start? A Chinese proverb states, "The best time to plant a tree was 20 years ago; the second best time is today." The timing will depend on the circumstances of your firm. Some firms will have an immediate need, some firms will require 18 months, while others will have a planning horizon of five years.

First, you will need to analyze the demographics of your firm by age, anticipated retirement age sorted by management and leadership roles, significant client relationships, industry practice area, and geographic locations, among others. It would be beneficial to project pending retirements together with the admission of new partners over a period of five to 10 years in order to determine the overall impact to the firm.

Leadership and Management

Depending on the size of your firm, responsibility for transitioning firm leadership will fall to either the managing partner or the management committee. Firms will need to make it a priority:

- To know the career plans of firm leaders (including practice group chairs) — which should be part of the agenda during annual compensation meetings;
- To identify the criteria needed for future leaders in light of the changing dynamics of the business and profession;
- To accelerate the development of lawyers the firm has identified for future leadership roles;
- To identify opportunities for skills development through: 1) Outside leadership programs, 2) Special firm-related projects; 3) Leadership of significant committees, 4) Mentoring programs, and 5) Upward review programs; and

- To ask for partner feedback on firm direction and firm performance.

Client Succession

Transitioning the clients of a senior attorney to the next generation is the most challenging component of any succession-planning equation. Client input is essential. Success requires the soft skills of managing and fostering human relationships. Recognize that it can take years to successfully transition a client relationship. The successor lawyer(s) needs time to obtain the necessary expertise and client and industry knowledge.

In order to put together a client transition plan, firms must consider the following:

- Stay current on key client relationships: 1) Which firm clients are being served by senior partners? 2) Review financial and matter metrics. 3) Review nature and number of new matters. 4) Make it a priority to discuss career plans of relationship partners.
- Implement a client team strategy to broaden and deepen the relationship among other partners and practice groups.
- Obtain regular (semi-annual) feedback from clients independently of the relationship partner; ask what the firm is doing right or wrong; ask where the client's business is headed and assess the future legal needs of the client.
- What are the clients' concerns about the potential loss of the firm's senior lawyers? Do they have successor preferences?
- What key clients are going through their own transition process? Do you have a relationship with the client's post-boomer generation?
- What types of training and mentoring do your junior lawyers need? How long will that take?
- How will successor lawyers be introduced to clients — both socially and in a working relationship?

Compensation

The answers to these questions will help your firm develop a plan to transition clients. Will the plan work? Only if your firm has addressed one additional crucial question: What will motivate the partner to let go? More often than not, the answer is compensation. Without the proper financial incentives, the client succession plan may fail.

For most firms, the compensation policy should be modified for those impacted by the succession plan. If the firm's policy is heavily weighted toward billable hours, partners are unlikely to delegate to junior lawyers. If the firm desires partners to delegate work, the retiring partner should be rewarded for taking that action. Additional modifications will most likely be necessary in compensating for origination and time investment activities (*e.g.*, mentoring, training and development). For any client-succession plan to work, the senior lawyer should be provided with some level of income protection that rewards the lawyer for furthering the goals of the plan.

Firms will need to be more flexible both in terms of revisiting existing retirement policies but also in offering flexible work arrangements. We have heard from Generations X and Y for their need for flexible schedules, and this will be equally desired by the Baby Boomers. While firms will need to continually monitor the activities of aging partners (physical and mental health), there is value to the firm in retaining some of this talent. Reports and various surveys differ, but it is reasonable to assume that upward of 60% of lawyers plan to continue working in some capacity after retirement.

Conclusion

If you are a first-generation law firm, consider this statement by Peter Drucker, "For whom the gods would destroy, they first grant 40 years of business success." Not by coincidence, 40 years represents one generation and the average lifespan of a business.

By embracing the challenge now, firms will both ensure the continuity of their practice and dare I say impress clients with the necessary long-term thinking that protects their business interests. The legal industry has done enough "navel gazing" on these and other business issues. Now it is time to think strategically about succession planning.

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