Alaska Bar Association
Annual Convention 2018

Thursday , May 10, 2018
Dena'ina Civic & Convention Center
Anchorage, AK

CLE # **2018-700** 3.0 Ethics & 3.0 General CLE Credits

Alaska Bar Association
Annual Convention
May 9-11, 2018 • Anchorage, AK

CLES HELD IN TIKAHTNU A & B — LUNCHEONS HELD IN TIKAHTNU C

WEDNESDAY, MAY 9

7:30 a.m. **Breakfast, Registration, Exhibits Open**

8:20 a.m. **Welcome Address**

8:30 a.m. **U.S. Supreme Court Opinions Update**
(1.5 General CLE Credits)
Dean Erwin Chemerinsky and Professor Laurie Levenson


Chemerinsky


Levenson

10:00 a.m. **BREAK**

10:30 a.m. **U.S. Supreme Court Opinions Update**
(1.5 General CLE Credits)
Dean Erwin Chemerinsky and Professor Laurie Levenson

12:15 p.m. **Law Day Luncheon - Ticketed Event**
Separation of Powers: Framework for Freedom
Dr. Mara Kimmel

1:30 p.m. **Alaska Supreme Court Opinions Update**
(1.5 General CLE Credits)
Dean Erwin Chemerinsky

3:00 p.m. **BREAK**

3:30 p.m. **Winning With Words: Building the Story with Persuasive Power**
(1.5 General CLE Credits)
David Mann, Storytelling and Persuasive Presentation Specialist


Mann

5:00 p.m. **CLEs end**

6:00 p.m. **Welcome Reception at the Anchorage Museum at Rasmuson Center, 625 C Street – Ticketed Event**

8:00 p.m. **Hospitality Suite Opens at the Marriott Downtown**
Sponsored by the Anchorage Bar Association

THURSDAY, MAY 10

7:30 a.m. **Breakfast, Registration, Exhibits Open**
Section Chairs Breakfast *(by invitation only)*
–Tikahtnu D

8:20 a.m. **Welcome Address**

8:30 a.m. **Rules Versus Principles**
(2.0 Ethics CLE Credits)
Andrew Fastow, Director Advisory LLC


Fastow

10:30 a.m. **BREAK**

11:00 a.m. **AI Application for Corporate Governance/Ethics**
(1.0 Ethics CLE Credits)
Andrew Fastow, Director Advisory LLC

12:15 p.m. **Lunch - Ticketed Event**
Update on State and Federal Courts of Alaska

Book Signings
FRIDAY, MAY 11 AT ABOUT 12:45 PM

Optional book purchase for signing available for $14 each or bring in your own copy.
Testimony by Scott Turow • **Orange is the New Black** by Piper Kerman

THURSDAY, MAY 10 (CONTINUED)

1:30 p.m. **CONCURRENT SESSIONS**
(1.5 General CLE Credits each)

- **Bridging the Gap: Connecting Generations in the Practice of Law**
  –Tikahtnu A
  Dan Negroni, launchbox365


Negroni


Ginsburg

- **Exit Strategies for Retiring Lawyers**
  –Tikahtnu B
  Roy Ginsburg, Strategic Advisor to Lawyers and Law Firms

3:00 p.m. **BREAK**

3:30 p.m. **CONCURRENT SESSIONS**
(1.5 General CLE Credits each)

- **Practical Tips & Tools for Developing Business in Today's World**
  –Tikahtnu A
  Dan Negroni, launchbox365

- **Law Practice for Sale: Strategies for Sellers and Buyers**
  –Tikahtnu B
  Roy Ginsburg, Strategic Advisor to Lawyers and Law Firms

5:00 p.m. **CLEs end**

6:00 p.m. **Reception and Dinner - Ticketed Event**
How to be a Man with Two Heads -
Scott Turow, Author and Attorney


Turow

8:30 p.m. **Hospitality Suite Opens at the Marriott Downtown,**
Sponsored by the Anchorage Bar Association

FRIDAY, MAY 11

7:30 a.m. **Breakfast, Registration, Exhibits Open**
Local Bar Presidents Breakfast *(by invitation only)*
–Tikahtnu D

8:20 a.m. **Welcome Address**

8:30 a.m. ***Nix v. Whiteside: What to do when you believe your client wants to lie on the stand***
(1.5 Ethics CLE Credits)

Moderated by: Jeff Feldman, University of Washington School of Law
Panel Members: Scott Turow, Nelson Page, Bar Counsel, Cynthia Strout, Attorney at Law, Richard Curtner, Federal Public Defender

10:00 a.m. **BREAK**

10:30 a.m. **Orange is the New Black**
(1.5 General CLE Credits)
Piper Kerman, Author


Kerman

12:15 p.m. **Annual Meeting Luncheon - Ticketed Event**
Meeting is open to all members

1:30 p.m. **Convention ends**

Optional Add-On Friday, 1:30 p.m. and 3:00 p.m. Tikahtnu D
Individual Coaching by David Mann

Alaska Bar Association

Annual Convention

May 9-11, 2018 • Anchorage, AK

LUNCHES HELD IN TIKAHTNU C

LUNCH PROGRAMS MAY BE ATTENDED WITHOUT PURCHASE OF A MEAL

TICKETED EVENTS

Wednesday, May 9

12:15 p.m. $36

Law Day Luncheon

Separation of Powers: Framework for Freedom

Dr. Mara Kimmel
Robert Hickerson Partners in Justice Campaign
Rabinowitz Public Service Award

6:00 p.m. $40

Welcome Reception at the Anchorage Museum at Rasmuson Center - 625 C Street

Thursday, May 10

12:15 p.m. $36

Thursday Luncheon

Update on State and Federal Courts of Alaska

Chief Justice of the Alaska Supreme Court Craig Stowers and the Chief United States District Judge Tim Burgess of the U.S.D.C for the District of Alaska

Justice Not Politics Alaska Campaign
6th Annual Human Rights Award
2018 Benjamin Walters Distinguished Service Award
25, 50, 60 year Membership Recognition

6:30 p.m. $75

Banquet Dinner

Keynote speaker: Scott Turow, Writer and Attorney

Pro Bono Awards
Distinguished Service Award

Friday, May 11

12:15 p.m. $36

Annual Meeting Luncheon

Meeting is open to all members with optional lunch purchase. Outgoing Board Members; passing the gavel; Awards

Alaska Bar Professionalism Award
Judge Nora Guinn Award
Layperson Public Service Award

Thursday, May 10 | 8:30 a.m.
2.0 Ethics CLE Credits

Rules Versus Principles

Ethics is understanding the difference between what is right to do and what you have the right to do. The former Chief Financial Officer of Enron Corp. will discuss his own story, and he will describe how he made such profound mistakes.

Thursday, May 10 | 11:00 a.m.
1.0 Ethics CLE Credits

AI Application for Corporate Governance/Ethics

Pro forma "policies" and "controls" are no longer sufficient to insulate a company from the liabilities associated with questionable behavior. Artificial intelligence now provides remarkably effective, unobtrusive, and real-time software tools that identify an organizations' culture and compliance weaknesses, enabling corporate counsel to identify problems before they become lawsuits and enforcement actions. Mr. Fastow will review several such AI tools, including one that identified FCPA, accounting fraud, asset misappropriation, and sexual misconduct violations that were not caught by normal compliance procedures.

Andrew Fastow

Despite today's more regulated and enlightened business environments, we continue to witness "Enron-esque" failures of corporate governance and compliance. Enron's former CFO will make observations about how the ambiguity and complexity of laws and regulations breeds opportunity for problematic decisions and will discuss what questions corporate directors, management, attorneys, fraud examiners and auditors should ask, in order to ensure that their companies not only follow the rules, but uphold the principles behind them.

Mr. Fastow was the Chief Financial Officer of Enron Corp. from 1998 – 2001. In 2004, he pled guilty to two counts of securities fraud, and was sentenced to six years in federal prison. He completed his sentence in 2011, and now lives with his family in Houston, Texas. Mr. Fastow currently consults with Directors, attorneys, and hedge funds on how best to identify potentially critical finance, accounting, compensation, and cultural issues. He is also a Principal of KeenCorp, an artificial intelligence software company.

Mr. Fastow received a BA in Economics and Chinese from Tufts University and an MBA in Finance from the Kellogg Graduate School of Management at Northwestern University. Prior to joining Enron, he was a Senior Director in the Asset Securitization Group at Continental Bank N.A.

Since his release from prison, Mr. Fastow has been a guest lecturer at universities and corporations, and at conferences for management, corporate directors, attorneys, accountants, and certified fraud examiners. Mr. Fastow was recently keynote speaker at the United Nations' Principles of Responsible Management Conference, the FBI's Advanced Financial Crimes Seminar, the Association of Certified Fraud Examiners Annual Conference, the American Accounting Association Annual Conference, and the Financial Times' Outstanding Directors Conference.

Contact information:

Andrew Fastow

FormerEnronCFO@gmail.com

There are no written materials for these sessions.

Thursday, May 10 | 1:30 p.m.
1.5 General CLE Credits

Bridging the Gap:
Connecting Generations in the Practice of Law

What is your law firm doing to create a workplace that attracts, engages, and retains the next generation of lawyers? In this provocative, interactive keynote, Dan Negroni shares what millennials want from their law firm and their managers. Hear case studies about leading law firms that are getting it right and leave with 6 key steps to engaging the next generation of lawyers.

Thursday, May 10 | 3:30 p.m.
1.5 General CLE Credits

Practical Tips & Tools
for Developing Business in Today's World

Learn how to be the business developer you need to be. How? Gain a better understanding of yourself and the value that is derived from building real, authentic relationships and find out why it's important to craft your story. Align and articulate your strengths with the values of your firm so that you can create that immediate connection with a client. Learn how the 5 "knows" lead to a yes and find out how to make the ask and build your brand.

Dan Negroni

Dan is the quintessential next generation business management and talent development consultant and coach solving today's critical multi-generational issues. Dan leverages his authentic, no-nonsense approach and a successful 20+ year career with experiences as an attorney, CEO, senior sales and marketing executive, to help companies bridge the gap between managers and their millennial workforce to increase employee engagement, productivity, and profits.

launchbox

BRIDGE THE GAP

B – Busting Myths — I understand DISCONNECTS and BUST MYTHS

Ask these questions:

- What is their motivation?
- What do I think they want to achieve?
- What is their intent?

Double check

- Is this my issue or theirs?
- What do I want to achieve?
- Don't go there, the dark side of negativity - focus on POSITIVE intent
- Replace "but" with "and" – collaborate to create solutions
- Who cares about the way you did it? Give it up it's not relevant

R – Real Deal — I commit to REAL DEAL connecting and caring

CONNECT authentically

- No boring people, just bad questions…
- Care enough to engage
- Can't fake it: They see through it

Create REAL emotional connections

- Share your personal story
- Show your personality and strengths
- Ask how you can help, MEAN IT

Power of the QUESTION

- Ask 5 open ended questions first
- Make them tough and provocative
- Make sure they show your personality

TOUGH Conversations

- Focus on the end goal
- Stay objective, tell the third party story
- Understand their perspective first
- Share your story, with feelings and experiences
- How can you solve the problem together?

GRATITUDE

- Express it in every interaction
- Don't forget this, humility rules

I – I Own It! — I CONTROL myself and live ACCOUNTABILITY

"What happens to you is because of you."

- Find your motivation: duty, responsibility, empathy
- Reframe negative to positive

Operating from STRENGTHS

- Understand yours
- Understand others
- Speak strengths

Personal ACCOUNTABILITY

- Live your brand
- Pick your 3 words
- What is your legacy?

D – Deliver Value

I deliver on MENTORSHIP

Be a GIVER

- Language always = “We” not “me” or “I”
- Check emails, presentations
- Really believe it all comes back in the end

Shift to MENTOR

- Time and investment = quality output
- You are a role model
- Push employees beyond comfort zone
- CHALLENGE your people to create/ innovate

G – Goal in Mind

We create GOALS and ALIGNMENT between individuals and teams

Create a system to create goals

- Create INDIVIDUAL goals
- Individual goal 90% more likely to succeed if written down
- Monitor plans
- Align individual goals with team and firm goals
- Deliver on transparency – share as much as you can
- Brainstorm sessions need to be part of system

E – Empower Success

I EMPOWER my team to succeed

Assess individual strengths

- Supervise each person differently

PAVE the road

- Make them want your job

DELEGATION and creating TRUST are given, not received

FEEDBACK 365 – daily, never stop

CELEBRATE achievements

List the 3 actions that you will take to help bridge the gap with your millennial employees.

1.

2.

3.

Thursday, May 10 | 1:30 p.m.
1.5 General CLE Credits

Exit Strategies for Retiring Lawyers

Your successful career is almost over. Do you know when to retire? Do you have a vision of what you want your retirement to look like? And if you work at a firm with multiple owners, does it have a succession plan that ensures that your law firm survives?

Thursday, May 10 | 3:30 p.m.
1.5 General CLE Credits

Law Practice for Sale: Strategies for Sellers and Buyers

Are you a soon-to-be retired solo practitioner? You may be able to strategically sell your practice to enhance your retirement portfolio. It is critical that you know what your practice is worth, who your optimal buyers are and how to find them, as well as how to structure a fair and balanced deal. And, if you're a buyer, what are the types of practices you should consider and at what price?

Roy Ginsburg
A practicing lawyer for more than 30 years, is an attorney coach and law firm consultant. He works with individual lawyers and law firms nationwide in the areas of business development, practice management, career development, and strategic and succession planning. Roy also runs a part-time solo practice that focuses on legal marketing ethics.

More than 50 bar associations across the country have sponsored Roy's popular CLE programs. He also guest blogs at popular law-related websites such as attorneyatwork.com, lawyerist.com, and myshingle.com.

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STRATEGIES FOR LAWYERS

Roy S. Ginsburg

Exit Strategies for Lawyers

Roy S. Ginsburg
2016

Chapter 1. RETIRING AT THE RIGHT TIME, IN THE RIGHT WAY

When baby boomers cheerfully sang the lyrics to "When I'm 64" along with Paul McCartney and the Beatles, age 64 seemed impossibly far away. Today, not so much. Age 64 (and the concept of retirement) now seems just the opposite—impossibly close.

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.

During their years of active practice, most of these lawyers made a real difference in their clients' lives—and want to continue to have the same impact as they approach and reach retirement. After all, Paul McCartney is still touring at age 72.

With proper planning in the years leading up to retirement, lawyers can ensure that their retirement years provide the same personal fulfillment as their working years.

Why Lawyers Flunk Retirement

Attorneys often find adjusting to a retirement lifestyle very difficult. Perhaps the most fundamental reason is that they do not plan, or even think about, what they are going todo with their time. They plan for their financial futures, but rarely for their practical, day-to-day futures. They naively believe that when they retire, everything will fall into place.

Most overworked lawyers eagerly anticipate having more leisure in their lives. However, they soon learn that a daily routine of golf, movies, and restaurants starts to feel older than they do. In addition, few lawyers honestly assess their relationship with a spouse orpartner. They may have made a commitment years ago "for better or for worse," but often begin to doubt that they can make a similar daily commitment "forlunch."

Sooner Rather Than Later

President John F. Kennedy once said, "The time to repair the roof is when the sun is shining." Similarly, when it comes to retirement, you should start the planning while you are still engaged in active practice. Too often, lawyers assume that professional development ends when they start to wind down their practice.

Instead, a lawyer's focus on professional development should be maintained—and maybe even intensified. Why? Because whatever your goal for retirement, a few years of groundwork are often needed to make a successful and personally fulfillingchange.

Timing Is Everything

The first consideration is "when" to retire. The answer is never simple. Think aboutyour answers to the following questions:

- Do you still look forward to going to work or have you had enough?
- Have your law firm colleagues suggested you slow down or stop practicing?
- Does your law practice interfere with hobbies, volunteer work, travel, family, or other activities on which you would rather spend your time?

- How is your physical health?
- Do you still have the mental edge your clients need and deserve?
- How healthy is your spouse or partner, or other significant relatives? Is there someone you will need to care for?
- Can you afford to retire?

There's no magic formula; the decision about when to retire is always a "guesstimate." Factors will be ranked differently by each individual. In addition, many of the best predictions could be upset with little advance notice. But it is important to at least think about your answers to these questions—and do your best to determine a time that feels right.

Take a Time Out

Once you have an idea *when* you want or need to retire, it is time to think about *what* you want to do when you retire. Here are several "dig deep" questions I use with the lawyers I coach:

- What excites you the most about retiring? What worries you the most?
- What will you miss most about your law practice?
- Think about family, friends, and colleagues who have retired. What have you admired about their approach to retirement? What would you do differently? Why?
- Why did you go to law school? Are there any as-yet-unaddressed reasons that you can accomplish during your retirement?
- As a lawyer or community member, which accomplishments have been particularly
- satisfying and rewarding to you? Can you build on this in retirement?
- What would attendees at your 90th birthday party say about you, based on your current accomplishments? What can you do between now and then to improve that script?
- What do you most enjoy doing in your spare time?
- What do you most enjoy about your vacations?
- What is your ideal way to spend the day on a weekend?

The work of practicing law provides most of us with more than a paycheck; it alsoprovides a sense of purpose and identity. It provides mental stimulation. It provides a vast array of professional relationships inside and outside of the office. Finally, at its most basic, work provides a place to go every day and gives structure to your day once you getthere.

While some lawyers cannot wait to be free from the daily commute, environment,schedule, and tasks, others feel lost without a routine. When planning the "what" of your retirement, find activities to replace the structure and activities that were important to you in law practice—above and beyond the money that youearned.

What Are The Options?

Whether a lawyer works in a firm or as a solo, he or she does not close up shop one day and ride off into the retirement sunset the next. Many lawyers gradually wind down their practices—over months or years—and transition to part-time before retiring completely. Historically, law firms use the "of counsel" designation for lawyers nearing retirement.

Depending upon the needs of the individual lawyer and law firm, a lawyer's productivity can vary

significantly as he or she approaches retirement. For some, "of counsel" status is little more than a destination for socializing and regular lunches with colleagues. Others continue to bill some hours, mentor younger lawyers, represent the firm in the community, and continue to make a significant contribution to the firm and its bottom line.

Even solos usually wind down and work part-time before retiring completely. Some stop accepting new cases and work until all of their active cases are completed. Others transfer active files or sell their practice to former competitors. Either option takes some planning.

Whether a lawyer goes cold turkey or slowly phases into retirement, there will be many more hours of available time in each day. After working hard for 30 or 40 years, rest and relaxation is usually the first goal—sleeping in, renting and watching the movies you've always wanted to see, and reading the daily issues of The New York Times and The Wall Street Journal front to back.

Trouble begins when retirees start expanding two or three hours of relaxation into regular full days of nothing but relaxation. That soon results in boredom and a loss of professional identity.

Many retired lawyers remain happily connected to the legal profession in a number of ways—part-time (and sometimes for pay)—in areas like these:

- Expert witness work
- Alternative dispute resolution (ADR)—mediation and arbitration
- Politics (running for office or working on a campaign)
- Teaching as adjunct faculty at a law school or college
- Teaching continuing legal education programs
- Pro bono work
- Ramping up bar association activities
- Writing articles for print or electronic media, or blogging

Lawyers can also look outside the legal profession for fulfilling activities. There are paid opportunities in corporate America and the entrepreneurial sphere. Based on your interests, you can also consider an active involvement (most likely unpaid) in organizations in the following areas—any one of which would be thrilled to have you as a volunteer:

- Religious
- Social services
- Hospitals
- Civic
- Education/youth services and sports
- Environmental
- Culture/arts
- Community agencies

What Are The Next Steps?

Give your retirement planning the same due diligence you devote to your legal work. Are your goals realistic? Use the Internet to conduct basic research. Read some books and articles. Most importantly, get

out and talk to real people—especially those who have already retired and can provide their "real-world" perspective.

Chances are very good that you know someone, directly or by association, who had retirement goals similar to yours. Did it work? What went right? What went wrong? How much groundwork had to be laid? Was enough time devoted to planning? Have a conversation with these individuals. You will find that they will be more than happy to share their experiences with you.

I strongly recommend that my attorney coaching clients who are still working (but thinking about retirement) "practice" for retirement. Actively engage in some of the things you are planning to do in retirement, and see if you in fact enjoy it. Start taking longer vacations and more three- or four-day weekends. If all goes well and you have planned properly, you will enjoy this time. If you get restless, it may be a good idea to amend your plan and keep practicing—or you run the risk of an unsatisfying retirement.

Assuming that your "practice" time goes well, your retirement planning is still far from complete. You must plan to continuously adjust your expectations and actions as time goes by. When you began practicing law and finally felt you knew what you were doing, you did not hit the automatic pilot button and coast for the rest of your career. You continued to make minor and major adjustments. You needed to be flexible, persistent, and patient. The same is true with your retirement activity plans; tweaks will be needed as circumstances change. Your career was satisfying, but not perfect. No retirement is perfect, either.

Ideally, you will be able to look back at your legal career with a sense of accomplishment. With some thoughtful planning (and a bit of luck), you can have that same feeling of accomplishment about the productive and satisfying years you spend in retirement.

Chapter 2. A SECOND BITE OF THE APPLE: INCOME DURING RETIREMENT

The attorney looking ahead to retirement need not be reconciled to a precipitous loss of income or of the value built up in practice. By carefully planning and negotiating the terms of their departure, retiring lawyers can both ease the transition and come away with more of the value they invested in their practice.

When approaching retirement, most attorneys take a careful look at their assets to determine when they can retire, as well as to get a good idea of what type of lifestyle they can afford. For most, that means a review of their brokerage statements and appraisalsof whatever real estate or other tangible assets they own. After all, except for government lawyers, most attorneys do not have a defined benefit plan to pay them income in their retirement.

Or do they?

Instead of riding into the sunset and leaving behind the books of business and referral networks that they worked for years--perhaps decades--to develop, lawyers shouldevaluate whether their practices can generate value even as they wind them down.

Many lawyers, regardless of the size of their law firm, fail to recognize that their practices may have significant value that can enhance their nest eggs. Depending upon a lawyer's book of business, practice area, geographic location, and degree of advance planning, it is very possible to derive value from one's practice to either enjoy during retirement or pass along to one's heirs.

We've all heard stories of the lawyer who died at his desk without giving any thought to transitioning his practice. When that occurs, as a practical matter, there's little value to recover. If the deceased was a solo practitioner, the estate may collect outstanding receivables, but has no claim on future income generated from clients. Longstandingclients or clients with open files will simply find other counsel, providing no financial benefits to the deceased lawyer's estate.

The result is usually no different if one works in a large law firm. Upon a lawyer's retirement or death, the other lawyers in the firm scramble to maintain the client relationships. Any financial benefits from the book of business go only to the firm's other lawyers.

Even those attorneys who consciously plan a departure date, more often than not, make no attempt to extract any value from their practice. This occurs for a variety of reasons. Some simply do not realize that there are means to obtain value. Among those who do, some conclude that gleaning value from what remains is more bother than it is worth. Finally, of those practicing in firms, some apparently prefer to give the value away to their partners based on feelings of institutional loyalty.

The chapters that follow will discuss options for transitioning into a successful retirement for solo practitioners and attorneys in small firms, as well as offering guidance for attorneys in larger firms and the practices from which they are separating.

Chapter 3. SOLO AND SMALL FIRM OWNER STRATEGIES

Recruiting Your Successor (Promising Premise, Perilous in Practice)

One retirement exit strategy often considered by solo practitioners and small law firm owners is that of recruiting a successor. The idea behind this strategy is to find a young, inexperienced lawyer who is then groomed to take over the practice. During the initial stage of the transition (usually one or two years), the seller and buyer get to know one another. If the fit seems good, the parties then negotiate a "buy out" going forward (usually another one to three years).

On paper, everyone seems to win. The senior lawyer obtains some value for the practice. The younger lawyer obtains an established practice in far less time than it might take to build one. In addition, the successor receives a few years of valuable training/mentoring. However, if sellers and buyers dig a bit deeper into the details, a variety of fundamental flaws with the "recruit your successor" strategy become apparent. In fact, this strategy is so full of holes that I believe older solos should rarely consider it.

Can You Find A Successor?

Problem number one involves finding the one special person to whom you feel comfortable handing down your legacy. This is easier said than done.

In practicing employment law more than 30 years, I have seen many workplace problems that were the direct result of a poor hiring decision. No matter how careful the screening, employers can only glean only so much from a resume, interview and references. In addition, as an attorney coach, I've heard many stories of even well-screened new hires not working out quite as planned.

The bottom line is that it is difficult to find a worthy successor. There may be plenty of qualified candidates in this terrible job market, but personalities and other intangibles still need to mesh. If I were to lay odds on the likelihood of a senior lawyer still being pleased with a hire at the end of the first year of working together, it would be no better than 50/50.

Finding a successor becomes even harder when you carefully scrutinize the likely pool of candidates. Chances are very good that a young lawyer is still paying off substantial student loans, and will be doing so for the foreseeable future. Will this successor have the financial wherewithal to ultimately do a deal to buy your practice? Probably not.

Where's the Extra Cash Coming From?

Problem number two involves finding the cash to pay a potential successor during the "recruit your successor" process. This strategy is based on the premise that the successor has a very small book of business and needs to obtain one. Thus, adding the new lawyer adds no significant revenue to your practice. At the same time, you now have two lawyers working on the same pool of files during the early stage of the transition period.

The successor needs to be paid a living wage. Where does that wage come from? It comes from the take-home pay of the senior lawyer. In the short term, the senior lawyer takes a financial hit because net income is now being shared with the successor.

Going forward, it becomes less certain that the senior lawyer will see a significant payday when it comes

time to transfer the book of business. When valuing the book, the retiring lawyer should try to add the sacrificed income to the overall value of the practice. But anticipate that the successor will be unwilling, or financially unable, to give back anysalary he or she has earned.

Do You Have the Patience?

Problem number three involves training the new lawyer. Training or mentoring takestime, patience and a skill-set completely different from the practice of law. Most solos become successful because they know themselves and purposefully stay small. Many solos have intentionally rejected the idea of hiring associates because they don't want to train and manage others. The process is not going to be any easier in a "recruit your successor" environment.

Will Your Clients Work with theSuccessor?

Problem number four involves transfer of client relationships. From the successor's perspective, doing a "recruit your successor" deal only makes sense if the retiring lawyer's client base is willing to carry over to the successor. Transferring relationships is fraughtwith potential issues.

Presumably, most of the retiring lawyer's relationships are with individuals who are older than the successor. Will they feel comfortable with a younger lawyer? Will they be willingto work with a less-experienced and perhaps less-skilled lawyer, or will they take their business elsewhere?

Can You Trust the Successor?

Problem number five involves whether or not you can trust your potential successor.Could the successor leave your practice, taking some of your clients? Ethics rules prohibit you from imposing restraints on the successor. Are you willing to trust someone youbarely know with your livelihood? Some you can trust; some you can't. Can youdistinguish between the two?

Why Do Some Successor Deals Seem toWork?

Anecdotes you hear about successful successor deals rarely involve a new hire as an integral part of the senior lawyer's exit strategy. More often than not, these situations involve a successor who has already been working for a while with the seniorlawyer.

Problems are less likely to arise in this situation because the successor is: 1)experienced;2) already being paid out of current revenue; and 3) already knows many of the clients or is fully capable of serving them. Finally, the parties have worked together long enough to develop mutual trust. They will treat each other fairly.

Seek Experience

A better solution is to find an experienced fellow solo practitioner with some capacity to grow, or another law firm with an experienced practitioner or practice group that would like to expand. Also, it helps to plan a shorter transition period. This solves a number of problems:

- You are taking less of a gamble when the field of candidates includes experienced practitioners;
- The "successor" is already earning a salary, paid by someone else. No need to subsidize the successor lawyer or law firm;
- With experienced practitioners, no significant training or mentoring needed;
- With experienced practitioners, relationships should transfer more easily;

- There's no book of business to steal, since under this structure the senior lawyer is out of the picture sooner rather than later.

To summarize, the "recruit your successor" retirement exit strategy may look appealing, but is often considerably more trouble than it's worth. Instead, in order to obtain maximum value for your practice, transition your practice to more experienced lawyers.

A Better Strategy: Selling Your Practice

A relatively new exit strategy involves selling your practice and turning it into cash to either enjoy during retirement or pass along to your heirs. Changes in ethics rules now make this previously unethical strategy possible.

For years, selling a law practice was prohibited because ethics regulators believed clients, files, and a firm's goodwill were not something that could be sold. This prohibition did not really affect larger law firms, which would just buy out partners, i.e. the partnership would return the percentage of the equity owned by the retiring partner. Smaller law firms were able to "sell" themselves by merging with other firms.

Solos had to be more creative. Selling the firm's physical fixtures and furnishings for more than their reasonable market value was a common way to get around the prohibition. Another way was to create a sham partnership, in which the departing lawyer received "retirement benefits" from the new partner. Solos who were unwilling or unable to take advantage of one of those options, would simply give away their clients — or just close up shop.

All of this began to change about 25 years ago. In 1989, California became the first state to adopt a rule permitting the sale of a practice. The following year, the ABA adopted Model Rule 1.17 allowing the sale of an entire practice. In 2002, the Model Rule was amended to permit the partial sale of a practice. Most, states, though not all, have adopted Model Rule 1.17 or a modified version.

This change in policy was largely based on a desire for transparency and to level the playing field between solos and small firms and firms of larger sizes. In addition, regulators decided it would be better to have client matters placed in the hands of a (presumably) pre- screened lawyer than to force clients to find new counsel on their own.

The Difficulty With Law Firm Valuation

It almost sounds like a cliché, but your practice is worth what someone else will pay for it. If you need a more precise answer, consider this: the literature, written primarily by bean- counters, describes a wide range of valuation methods. Many valuation methods are difficult to comprehend unless you have a strong finance background. Even then, in my opinion, the formulas typically have little or no bearing on what is actually paid for a law practice.

Why do the usual valuation methods rarely work for law firms? Primarily because of unpredictability. Other professional service businesses that are frequently bought and sold, like accounting practices and medical or dental practices, have fairly predictable books of business. The transferability of an attorney's book of business is much harder to predict. In large part, this is because many services that lawyers perform are one-time or at best sporadic. In addition, certain client relationships may be not be as easy to transfer as the seller and buyer hope.

In theory, comparables can help determine a fair price. In practice, not so much. The marketplace for selling law firms is very immature. There are few comparable sales. Furthermore, there is no standardized way to find out what other law practices sold for. It is not like finding comparables for the house that sold down the street.

You may know of a law firm in your area that has sold recently, and might be thinking, "Those parties must have determined a value somehow." Indeed they must have, but it is unlikely that this number was based on any strict accounting valuation method. Most deals of this sort are insider deals. In other words, the parties knew each other and have worked together for years, many times in the same law firm. The actual method in such cases is "what seems fair." For arms' length transactions, the determination of "fair" creates a much bigger problem.

There is one circumstance in which legal practices are regularly assigned a value: when the lawyer is going through a divorce. However, valuations in a divorce context assume that the divorcing attorney intends to continue practicing law and maintaining relationships full-time. They are meaningless in a marketplace setting when the attorney wants to sell his or her practice.

In a divorce situation, there is relative certainty about the amount of business going forward. Few factors are changing. If a lawyer going through a divorce has netted $250,000 annually for the past three years, it is very reasonable to assume that those numbers will not change significantly in the near future. Moreover, the parties in a divorce *must* strike a deal or a judge will do it for them.

In contrast, when a law practice is transitioned to someone else, many factors are changing. You can't make the same assumption about revenues going forward. Also, there is no court mandate in a buy/sell situation. Neither party is required to do a deal. Either party can walk.

How To Determine If Your Law Practice Is Worth Anything

Will it be worth the effort to attempt to sell a practice? The most significant determinant of the answer to this question is whether and for how long the practice can continue to produce revenue once the seller is gone.

Are future revenues predictable?

When purchasing a law practice, the buyer hopes that clients will continue to knock on the door even though the seller is no longer there. For some kinds of practices, this will not happen. Very prominent criminal defense attorneys and other well-known litigators are good examples of practices where future revenue is very unlikely to be generated if the practice changes hands. These practices are too closely linked to the reputations of the sellers. Simply put, the goodwill of the seller is too personal. Buyers will discover that clients want to hire only the particular lawyer who is selling, no one else. In contrast, some practice areas are extremely likely to generate future revenue. In those cases, projected revenue can be based on a variety of different factors.

Old files can be a gift that keeps giving

Estate planning is one practice area in which practices often produce future revenue, despite the departure of the lawyer who originally opened the files. When a buying lawyer takes over files that contain wills for living clients, it is reasonable to assume that some of those clients will want to revise or update those wills. In addition, the death of some of those clients can launch the probate process, for

which it's natural for the family to turn to the office which prepared the will in the first place.

While there should be future revenue, it is virtually impossible — without a crystal ball — to predict how much. You don't know for sure how many clients will seek to have their estate plans revised or will die and set into motion the probate process. In addition, it is possible that some clients may prefer to work with counsel other than the buyer.

Key client relationships generate revenue

Other practices likely to generate future revenue are those where the retiring lawyer's book of business is based on relationships with clients and/or referral sources. In theory, when such a practice is transferred, the selling lawyer can make an introduction and vouch for the buying lawyer. Ideally, the relationship will indeed transfer and the flow of business will continue.

A variety of practice areas fall into this category. One example an intellectual property lawyer with a patent-prosecution practice whose relationship is with the key general counsels of a few companies. Others include an immigration lawyer who helps employers with foreign-worker issues, whose relationship is with key human resources VPs, or a small business attorney who has productive referral relationships with a handful of CPAs. In these situations, a successful transfer of the relationship should lead to future business.

As would be the case in the estate planning practice example, however, the amount of future revenue is unpredictable. If a retiring lawyer's book of business is based on eight key relationships, there is no guarantee that there will be eight smooth transitions. It is reasonable to assume that at least some of the relationships will transfer, but precisely how many will do so is anyone's guess.

Contact information can generate revenue

For certain consumer practice areas, a website domain name and phone number could be valuable. For example, a well-trafficked website for a personal bankruptcy attorney with an address of www.nodebts.com and a phone number of 1-800-NO-DEBTS should continue to attract business long after the seller is gone. Many clients find such a firm only because of the firm's unique website and phone number.

Brands can generate revenue

Lawyerist.com is a respected blog on law practice, legal marketing, and legal technology. Should the owner-partners at Lawyerist ever decide to sell, the blog's name would be a crucial component of the ultimate valuation. Why? Because the blog's name is well known in the legal blogosphere and the blog's good reputation will likely continue for some future time. For that reason alone, it would continue to attract readers even if the existing management leaves.

The same holds true for the names of certain law firms. Let's go back to our friends at nodebts.com. If the name of the firm is the No Debts Law Firm, and if that name has been heavily advertised on billboards, radio, TV and the web, there will be consumers who seek bankruptcy assistance simply because they remember the name and then contact the law firm. The brand stands on its own. The presence or absence of the owner-seller is negligible in determining the firm's future revenue.

Systems

There are a handful of practices that oftentimes require little individual attention to clients and involve

lots of paper pushing by legal assistants. These owner lawyers make their money by processing the paperwork efficiently. Personal bankruptcy practices such as nodebts.com that rely heavily on advertising will usually employ many well-trained non-lawyer staff that get clients in and out of the door fast. In short, the sellers have a "system" that buyers will need in order to keep the business operating and profitable. The existence of a system should increase the value of the law firm.

Other variables

Even when a buyer is convinced that the phone can keep ringing without the presence of the seller, other factors may impact how frequently the phone actually rings. Buyers should carefully assess the competition in the practice area in the locality. In addition, buyers and sellers should be attuned to trends when negotiating price. For example, a personal injury practice will be worthless if it is located in a state where tort reform may seem likely in the near future. Should there ever be immigration reform, one would expect the value of immigration practices to increase significantly.

At the end of the day, two factors will ultimately determine the value of a practice: 1) supply and demand and 2) the parties' next-best alternative to doing the deal. If you are the only interested buyer, a low-ball offer might work. If your offer is too low, however, the seller may simply walk—thinking it's too much bother to do a deal for so little.

How Much Is My Practice Worth

Let's assume you have a practice that has predictable revenue. Then ask two questions.

- How much revenue do you realistically think would continue with your successor from your former clients/files for the first few years after the transition?
- If you were still actively practicing and had referred all of that work out to another attorney, how much would you want to be paid for that in the form of a referral fee?

Then do the math (a percentage of predictable revenue over a time frame) and, voilà! There's a number to start with to determine a reasonable value range for a law practice.

Hypothetical

There is no better way to explain my method than to work through it with an example: Assume your law firm has consistently grossed $500K annually for the past few years. You realistically believe that for the next 4 years, it should gross $400K, $300K, $200K and $100K, respectively, from your old clients/files. You should probably assume that the revenue attributable to you will likely decrease the longer you have been away from the practice.

In essence, you're "referring out" $1 million worth of business. Now, what would be a fair referral fee in that type of scenario if you were still actively practicing? Or, phrased in a valuation context, what percentage of future fees do you think you are entitled to as the selling lawyer?

No, there is no magic percentage, if that's what you are hoping to see. Here's why. Think about why personal injury lawyers have historically relied on the "third-of-a-third" referral fee. Based on my research, there is no rhyme or reason. If I had to make an educated guess, however, about 50 years ago some lawyer decided to do just that. Then another lawyer across town heard about it and thought, "That sounds OK to me. I think I'll do that, too."

Before you know it, the concept spread so much that if you asked someone, "why a third of a third?," the answer you hear is the same one that lawyers have used to justify just about anything: "That's the way we've always done it." In short, there is no rationale to support the third-of-a-third formula, but we still do it.

With that said, I don't think that 33% is necessarily the percentage one should use when calculating law practice values. I do, however, think it is the highest it should ever be. Don't forget that the buying lawyer still has overhead to cover. If too much revenue goes to you, the retiring lawyer, there will be insufficient profit to generate interest from potential buyers.

Looking to the other end of the spectrum, I believe that the lowest acceptable percentage is in the five to ten percent range. Anything less than that is probably not worth the effort to make a deal.

So where does that leave us?

To me, 15% to 25% "sounds OK." I'll be the first to admit there is absolutely no science to support this range. Instead, I base it entirely on experience.

In many of deals that I have been involved in (as well as deals where I haven't), the parties used a percentage within that range. So it apparently sounded "OK" to them, too. I, therefore, see little reason why it shouldn't "sound OK" to potential sellers and buyers as a starting point to calculate a practice's value.

Let's apply this thinking to the example above. If you assume a 20% share of the $1 million future revenue, you get a $200K value.

Of course, this number is a very soft one. The percentage figure is subject to the parties' negotiations. Further, the $1 million gross revenue is, at best, an educated guess of future revenue.

If the parties agree to 15% of predicted revenue of only $500K, the value quickly reduces to $75K. On the other hand, if the parties move forward with 25% and $1.5 million of revenue, all of a sudden the same practice is "worth" $375K.

Why my method Is better

Even with the admitted lack of precision, I prefer my methodology to any bean counter's fancy formula for two reasons.

As an initial matter, it is simple enough for both the buyer and seller to understand. Have you recently read explanations of the capitalized excess earnings or the discounted future earnings approaches as methods to value a practice?

Second, both parties should be able to come to the table with a gut feeling that the valuation method used is reasonable. Few in our profession question the logic and fairness of referral fees. It's an accepted professional custom when the referring lawyer still practices. Shouldn't the same fairness perception carry over when the "referring" lawyer or, more accurately, the transitioning lawyer, no longer practices? Why should the cost of obtaining a "referral" be viewed differently than securing future revenue from the selling lawyer's clients?

Referral fees vs. compensation origination fees

I want to be clear that my method should not be interpreted in any way, shape or form that actual referrals are taking place. But thinking about future revenue from a retiring attorney's book of business in the referral context is a concept that lawyers can get their heads around to determine what might be a fair value for a law practice.

An alternative and just as valid way to think about valuation is in the context of law firm compensation origination percentages. All lawyers know that, in varying degrees, law firms reward origination. Lawyers are used to this; they believe that they should be "rewarded" for simply bringing in business.

Accordingly, a retiring lawyer could be "rewarded" for the future work from former clients/files. But, here again, there is no magic percentage. Anecdotally, the range at many law firms is fifteen to thirty percent for origination. Why shouldn't that be the range for a practice that is being sold?

Admittedly, the range is a very wide one. But if no consensus exists among law firms (or even lawyers at the same firm) about what a fair percentage should be to reward lawyers for origination, why would there be a consensus in the marketplace about what a practice is worth?

"Rule of thumb" valuation

There is even a way to turn my method into a "rule of thumb." The "rule of thumb" method assigns a multiple to annual gross revenue to arrive at a value. Using my earlier example where the annual gross revenue was half a million dollars, a multiple of 1.0 yields a half a million dollar value; a 0.5 multiple; a quarter of a million dollar value.

If you use my method, you can back your way into a multiple by playing with two figures: the estimated predictable revenue over a period of time and the agreed upon percentage of that revenue that goes to the seller.

Thus, if the predictable revenue is one million dollars over four years and one assumes a 25% payout to the seller, the practice is then worth a quarter of a million dollars. Since the firm's annual gross revenue was half a millions dollars, you get a multiple of 0.5 after the fact. Change the percentage to fifteen that produces a value of 150K, the multiple then becomes 0.3.

Ready. Aim. Fire.

If you want a "gut check" of what your law practice may be worth, make two assumptions. First, determine how much predictable revenue there will realistically be for your successor from your clients/files. Second, consider what would be a fair "piece of the action" percentage for you to receive for that future revenue. Both numbers are moving targets, but at least now you know where to aim.

Deal structure

In the vast majority of sales, the deals are structured in one of two ways. The parties either agree to a fixed sum (which may include a payment plan) or the amount paid is contingent on future revenue. This latter method is often referred to as an "earn-out." The amount of the earn-out is dependent upon the negotiated earn-out percentage, as well as the length of time over which revenue is calculated.

As is the case with all business deals, there is risk involved. When there is an agreed- upon fixed price, the buyer may pay something for nothing if the hoped-for future revenue does not materialize. However, if

there is an extraordinary amount of future revenue, the seller may have left some money on the table by agreeing to a fixed price.

With an earn-out, the buyer assumes absolutely no risk of losing money other than perhaps a negotiated down-payment. If there's no future revenue, the buyer pays the seller nothing more. In exchange for this, however, the buyer assumes a different kind of risk. Should future revenues exceed the anticipated amount, the buyer pays more.

Given the general risk-averse nature of attorneys, most buyers prefer the earn-out method, where they pay only if the anticipated business actually materializes. Most sellers, on the other hand, would rather have the certainty of fixed payments, avoiding the risk of an earn- out where future payments could be minimal.

Ethics Issues Surrounding the Sale a Law Practice

Before the deal is done: confidentiality and competence

Generally speaking, Model Rule 1.6 prohibits lawyers from disclosing confidential information. However, Comment 7 to Rule 1.17 states that the disclosures pursuant to a sale are treated in the same manner as disclosures when attorneys switch law firms or law firms merge. The release of generalized information about clients and files is permissible — and to a certain extent is indeed required — in order to identify possible conflicts of interests.

Disclosure of information beyond the general requires actual client consent. And, of course, prospective buyers have a duty to maintain the confidentiality of any information they learn during the sales process.

Model Rule 1.1 states that a lawyer shall provide competent representation to clients. Comment 11 to Rule 1.17 provides that the duty of competence also applies in a sale. Sellers are obligated to exercise competence in identifying purchasers qualified to take over the practice, and buyers are obligated to undertake its future representations competently.

What must be sold

To prevent lawyers from selling only those clients who are less valuable, a lawyer must put the entire practice or an entire area of practice up for sale. No cherry-picking allowed. Rule 1.17 (b).

Permissible terms: covenants not to compete

Under Model Rule 5.6, lawyers are prohibited from entering into any agreement that restricts the right of a lawyer to practice. However, Comment 3 to the same rule specifically states that Rule 5.6 does not apply to prohibit restrictions contained in a sale. Such restrictions would still have to comply with the applicable state's law on covenants not to compete, of course.

As a practical matter, such covenants are presumably unnecessary since the selling lawyer is usually retiring and has no desire continuing to practice. With that said, it is better to be safe than sorry. Lawyers have been known to change their minds. Moreover, there are times when selling lawyers are middle-aged. In those instances, covenants not to compete are very much needed to protect sellers.

Ethics concerns in pricing the deal

As described in the earlier example, deals are usually structured with a fixed fee or earn out.

There are no ethics issues with a fixed sum. However, when the amount paid to the seller is contingent upon the future revenue of the buyer, ethics rules involving fee sharing could be problematic because the buying lawyer would be sharing client fees with the selling lawyer.

The first issue is whether lawyers have to jump through the various hoops of Model Rule 1.5 (e) that governs fee sharing between lawyers. That rule basically requires written individual client consent to the sharing arrangement. The division must also be either proportionate to the work performed or each lawyer must assume joint responsibility.

A second issue arises in those situations where the selling lawyer relinquishes her license. Here, future payments are arguably an improper referral fee since the fee is being shared with a non-lawyer, as addressed in Rule 5.4.

The New York State Bar Association's Committee on Professional Ethics considered these issues in an opinion issued in 2013. Although the opinion only applies to New York, its well- reasoned analysis will likely be persuasive in other states.

In a nutshell, the committee opined that since a purchase price, whether fixed or contingent, contains a component for goodwill, it makes little sense to permit that component in fixed sum deals in which the parties attempt to place a present value on anticipated revenue when negotiating a purchase price, but not for deals where the purchase price is based on actual future revenue.

The committee provided the ground rules for payment of future fees. It noted that the extent of fee sharing must bear a reasonable and bona fide relationship to the value of the "goodwill" involved. Even the most well-known lawyer's reputation and connections fade over time. Any provision for fee sharing must therefore be limited in amount and time.

Twenty percent of seller's net income for 3 years was used as an example of reasonableness by the committee.

After the deal is done: client notifications and fees

Once sold, the lawyer must notify his or her clients, in writing, that the practice will be sold, that they can hire a lawyer other than the buyer and have their file returned, and that consent will be presumed if the client does not take action or object within 90 days of receiving the notice.

Without this notice (if a client cannot be found, for example), a court order is necessary to transfer the representation to the buyer. The sale cannot increase the cost of representation. In other words, the buyer cannot increase fees in order to recoup the purchase price.

What can sellers ethically do?

Rule 1.17 states that after a sale, sellers must "cease to engage in the private practice of law." Does that mean you must hand over the keys, walk out the door, and immediately ride off into retirement sunset? And if the answer is yes, how is that realistically possible?

The buyer might want you to stay involved on some of the open files, especially when your knowledge of the file could be important. The buyer might not understand the nuances of a lawsuit, for example, or grasp the history of an ongoing deal. However, helping the buyer would still be practicing law.

What the comments to Rule 1.17 say

Nothing. And until recently, there were no reported ethics or disciplinary decisions about transitioning a practice to a new owner. That meant you could be disciplined for helping a buyer after a deal closes. Any help you might give after the sale could be subject to discipline. A recent ABA ethics opinion (Formal Opinion 468) now offers some guidance regarding the type of activities sellers can perform.

The Rule's purpose

Effectively, Rule 1.17 levels the playing field for solo practitioners. Since retiring lawyers from firms have always been permitted to assist former colleagues transition client matters, why should solos be prohibited? In addition, allowing post-sale activities is consistent with Rule 1.16(d)'s overriding philosophy that lawyers continually have a duty to "take steps to the extent reasonably practicable to protect a client's interest."

Staying involved

According to the ABA opinion, you can only perform transitioning activities that are "reasonably necessary to accomplish the orderly transition of active client matters." You must also stop accepting new matters. How long you can stay involved will "depend on the circumstances, including the rules and rulings of courts or other tribunals in pending matters."

Accordingly, it would probably be fine for you to conduct a deposition or help negotiate the deal two weeks or maybe two months after you sell your firm. However, it is highly unlikely that those activities would be allowed two years after the sale.

Charging the client

Rule 1.17 is crystal clear that clients must not experience any adverse economic impact from the sale of your practice. Fees cannot "be increased by reason of the sale … [and] existing arrangements … must be honored by the purchaser." Therefore, billing for transitioning activities would be an increase that is not allowed. If you want to be compensated for transitioning time, you will have to negotiate your fee with the buyer.

ABA opinions are not binding on the states. Nonetheless, the purpose of Rule 1.17 and the persuasiveness of the opinion means states will likely follow it, but you should do your own research in your jurisdiction.

Other Methods of Doing a "Sale"

"Of counsel" relationship

There are, of course, alternatives to an outright sale of a practice. One way to avoid any Rule 1.17 issues is to make the retiring lawyer "of counsel" with the successor's firm. By doing so, there is no actual sale; thus Rule 1.17 does not apply. When the retiring selling lawyer joins another small firm, many think of these arrangements as mergers.

The ABA has defined an "of counsel" relationship as a "close, regular, personal relationship" with the law firm. The "of counsel" alternative can be a very attractive means to structure a succession arrangement for those retiring lawyers who still want to practice on a limited basis during their last years of practice.

Whatever the label, the law firm is "buying" a practice. Unlike a sale, where there would typically be a set price or earn out, the retiring/selling lawyer in an "of counsel" arrangement gets paid for the practice via the law firm's compensation structure. Most firms will usually tweak their existing formula and

compensate the "of counsel" selling lawyer for seller originated files. Some firms will also compensate non-billable time for transitioning clients and any necessary training and mentoring.

Create a new entity
Another alternative to a sale or "of counsel" arrangement is the creation of a new lawfirm. Buyer and seller create a partnership or other legal entity with a compensation arrangement where the retiring lawyer is paid over a period of time while working and slowing down at the new firm.

Potential Buyers

Best buyers
The best buyers are usually going to lawyers who are experienced. With that said, there are times where a relatively inexperienced lawyer may be a good candidate. For example, for those practice areas where the learning curve is not particularly steep (e.g. basis estate planning), a less experienced lawyer can fill the shoes of the seller without any significant training.

The most likely candidates for potential buyers are going to be competitors or firms that want to expand into a new practice area or geographic area. When considering law firms seeking practice or geographic diversification, make sure the law firm has someone capable of taking over the practice. If not, you may face the training/mentoring problems of the "recruit the successor" strategy.

Finding buyers
There are a variety of ways to find buyers, many of which are not mutually exclusive. Some attorneys try to do it on their own. Usually the best ways to get the word out that you're looking for a buyer is by networking and advertising.

Others who don't want to take the time and effort to find buyers, rely on consultants and brokers. Besides saving time, using outsides experts provides other advantages from the DIY method. They include:

- Confidentiality. Some lawyers prefer to remain anonymous. Do you want the entire legal community to know about your planned retirement?
- Broader reach of potential buyers
- Better vetting of potential buyers
- More expertise in valuing and structuring deals and getting them done

Finding outside assistance is not all that different than finding a lawyer. The best ways will usually be by referral and the internet.

One word of caution: Be wary of retaining a consultant or broker who is not familiar with the legal industry. Even those with experience assisting other professional service-type firms such as accountants, doctors and dentists, usually do not understand that law practices are different, and fail to grasp the nuances of a law practice.

Downsizing

As discussed above, the options for solos and small law firm owners for transitioning out of law practice include recruiting a successor or selling the practice. Both have advantages and disadvantages.

However, there's one strategy that is rarely considered, though it may make the most sense in terms of

the retiring lawyer's financial and personal well-being. That strategy is downsizing. It's a rather simple concept, and works well for both solo practitioners and small law firm owners. In a nutshell, the attorney takes fewer cases and works less while reducing overhead expenses.

Downsizing works well for a number of reasons. First, I rarely meet a lawyer who, when contemplating retirement, wants to quit the practice of law cold turkey. It's difficult to go straight from being a full-time practicing lawyer to someone whose primary focus is their golf handicap. Many attorneys want to wind down over a few years and gradually ease into full- time retirement. Gradually reducing one's caseload accomplishes this objective.

Second, when contemplating retirement, many lawyers get nervous about depending upon only Social Security benefits and their IRAs to fund their retirement lifestyles. Downsizing can free up time to take those vacations you always wanted to go on, while still bringing in income to fund them. Here's how it works:

Take fewer cases, or better ones

How do you do that? For example, if you're a personal injury attorney, you become even more selective when screening cases. In the past you may have taken risks accepting cases that were "close calls." When downsizing, decline those cases at the outset, and refer the prospective clients to other attorneys. If you're a family law attorney, you screen out cases that are likely to be overly contentious if you're tired of doing those, or the lower- asset cases where you were never sure you were going to get paid anyway. In estate planning, set a higher asset threshold for clients or stop doing probate work if you prefer to venture out of the office less and have a more predictable schedule.

Raise your fees

Another effective way to reduce your caseload is to increase your fees. This weeds out potential or existing clients who are way too price sensitive and are often difficult clients to begin with. If they don't want to pay the higher fees, let them take their business elsewhere. I'm hardly suggesting that you gouge your clients, but why not price your hourly rate or fixed fees at the higher end of your market? Your extensive experience justifies the higher fees. After all, many experienced lawyers are more efficient and exercise better judgment than younger, less experienced ones. Clients should be willing to pay for that benefit.

Will you lose some business by raising your rates? Of course; that's the whole point. But not as much as you may fear. Some clients may actually be impressed by lawyers who charge at the top of the market. To a certain degree, there's a cachet to being one of the highest billing lawyers in town or in your practice area.

Reduce your overhead

Reducing overhead can be accomplished in a number of different ways. If your firm has staff, perhaps some can work fewer hours. Some may not be even needed at all. If this is the case, you may need less space. Another way to reduce overhead is by reducing your marketing budget, since building a caseload isn't as important as it was in the past. Admittedly, some practices will be able to save more than others. It will be harder to cut expenses for solo practitioners who have no staff than for small firms that do. Regardless of your situation, though, you can find some savings if you look hard enough.

Can I still sell after downsizing?

It depends on the nature of the practice, as well as how much overhead can be reduced. When you're ready to completely retire, there may not be much of a practice left to sell. If that's the case, don't lose too much sleep worrying that you left money on the table bynot getting out early enough. While that may be the case, you likely recouped that money and perhaps more by having worked a few more years.

In short, for those who still enjoy practicing law and are not sure what they will do if they retire completely, downsizing is an exit strategy that allows for an easier transition while still enhancing a retirement nest egg.

Chapter 4. MEDIUM AND LARGE LAW FIRM ATTORNEY STRATEGIES

So far, we've talked about ways that solo practitioners and small-firm attorneys can transition to retirement. Now, let's take a look at the options available to larger-firm lawyers using the situation of hypothetical lawyer, Sara Sage:

Sara has been with Dewey, Cheatem, & Howe for 30 years. At 62, she's earned a comfortable living, but is thinking she'd like to wind down. Sara would like to earn some income at least through her late 60s, but she wants to spend a few months a year traveling to see her grandkids, who live in other states. She wants to work part-time and be done in about five years. Sara's book of business is better than that of most of her partners. Her firm doesn't have a mandatory retirement date, but there's no formal retirement plan either.

When partners are done, the firm throws a party, and the retiring partner sends postcards from Florida.

Sara has a number of options to consider that will enable her to continue to benefit from her investment in her firm.

Option # 1: Of Counsel, Same Law Firm

A first option for Sara is to go "of counsel" with her firm. Historically, the profession has acknowledged the notion of older lawyers winding down their practices. Especially at larger law firms, attorneys would become "of counsel" and negotiate an arrangement that suited the needs of the law firm and the "of counsel" attorney. This can be a win-win situation: the "of counsel" lawyer may work fewer hours and accept lower compensation, but keep an office, some support staff, and most importantly, his reputation as an experienced practitioner and role as a rainmaker and mentor.

The firm is relieved of some financial obligations and continues to receive business and the benefits of the attorney's institutional knowledge or substantive expertise. Most importantly, a well-thought-out "of counsel" arrangement provides a timeframe and blueprint to properly transition clients of the "of counsel" attorney to others at the firm.

As defined by the ABA, the term "of counsel" signifies that the lawyer has a "close, regular, personal relationship" with the firm. From an ethics perspective, the relationship provides the firm and the lawyer greater flexibility in sharing fees that may be generated by the lawyer continuing to work on files or from new business originated by the lawyer. Indeed, the advantage of the "of counsel" model is that the terms and conditions of the financial arrangement are usually limited only to the creativity of the lawyer and the law firm. When negotiating its terms, lawyers like Sara with a respectable book of business may have more leverage than they think.

Transitioning clients takes time and effort, and one should be compensated for what is, for all intents and purposes, a sale of the lawyer's goodwill to the law firm. In larger firms, management may wrongly assume that some clients feel loyalty to the entity. In an increasingly competitive legal marketplace, that assumption could prove to have disastrous consequences for the firm when the "of counsel's" client relationships turn out to be far more personal than institutional.

On the flip side, though, Sara should not overplay her hand. Some of her relationships may very well be with corporate constituents who are also retiring and may not be so easy to transition.

There is no typical or standard compensation arrangement for an "of counsel" lawyer. Much like partners in any size firm, attorneys "of counsel" typically are compensated based on revenue collected, hours worked, and business brought in. The only real difference is that the formula may recognize the time and effort spent transitioning the attorney's book of business to others at the firm. After all, someone like Sara will be transferring her goodwill to the benefit of her partners and its worth should be taken into account. Hence, it may be appropriate to pay the retiring lawyer a percentage of the fees generated by other lawyers' work done on behalf of clients formerly handled principally by the retiring lawyer.

The formula should provide incentives for both Sara and the lawyers on the receiving end of the client transition to cooperate with one another. That can sometimes be a challenge for both the law firm and the retiring lawyer. Firms understandably prefer formulas that emphasize a percentage of future fees expected to be generated; retiring lawyers will usually want something more fixed.

Option #2: Of Counsel, Different Firm

Now let's suppose Sara's law firm offers her an "of counsel" agreement that in her mind undervalues the book of business that she could transfer to others at the firm. Depending upon the portability of her book, she might want to consider going "of counsel" somewhere else. Most law firms, small and large, are willing to talk to 30-, 40-, or 50-something-year-old partners with a book of business who are thinking of switching firms. Smart law firms will similarly want to talk to a 62-year-old partner with a well-thought-out client-transition plan. That plan would include a description of the lawyer's key clients, a history of fees billed and collected, hours worked, and an indication of how many years and how many hours each year the attorney plans to work.

Changing law firms in an "of counsel" role is easier said than done. As would be true any time a lawyer wants to leave one law firm for another, the lawyer needs to "shop" the practice to other firms; the market may not be as robust or predictable as one would hope. Furthermore, switching firms can be problematic for all of the familiar reasons, including conflicts, culture, and governance. Most importantly, there are no guarantees that one's book of business will follow to the new firm.

Those who are thinking of moving their practice elsewhere need to be aware that their firm's retirement plan may restrict their ability to practice law while receiving retirement benefits. Although Rule 5.6 of the Model Rules of Professional Conduct prohibits non-compete agreements for lawyers because they limit clients' freedom to choose their attorneys, the rule specifically exempts agreements "concerning benefits upon retirement." The ABA has recently opined that as long as a lawyer is genuinely retiring, a law firm may impose geographic, temporal, or subject matter restrictions on the departing lawyer's practice, or prohibit the lawyer from practicing law entirely, as a condition of receiving the retirement benefits. Therefore, if Sara decides to pursue the option of becoming of-counsel at a firm other than Dewey, Cheatem and Howe, she needs to consider these issues before making the change.

Chapter 5. SUCCESSION PLANNING FOR ATTORNEYS IN LARGER FIRMS

Transitioning out of practice has its challenges not only for retiring attorneys, but for the firms that employ them. While certain transitions may be made simpler by the structure of the large firm, just as in a small firm, failure to plan for change can lead to a loss of revenue.

Take a careful look at your law firm's most-influential leaders and biggest rainmakers. Chances are good that these individuals will be retiring over the next two decades. Is your law firm prepared for the impact of this seismic generational transition?

The impact will be felt well beyond the law firm itself. Clients who have been well-served for years will find themselves bereft of the lawyer with whom they have built and maintained a personal and professional relationship over the years. Who at your law firm is prepared to step to the plate and keep these clients equally satisfied?

The future health of your law firm depends upon how today's leadership plans for the firm's post-boomer viability. This important effort is called succession planning. You may have done it for your clients' businesses. What's stopping your law firm from doing effective transition planning?

Obstacles to Planning

Afraid to Plan. In order to plan for the future of your law firm, you need to know the retirement plans of the firm's senior lawyers. 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 due to 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, with its hints of their eventual mortality.

Junior lawyers whose future is at stake have their own fears about starting the conversation. If handled incorrectly, broaching the topic of succession could, in some firms, be political suicide. Younger lawyers fear being perceived by their elders as putting their self-interest ahead of the firm's.

Too Busy to Plan. Lawyers are notorious for contemplating every possible way in which a client deal or transaction 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 hardly a blip on their radar screens. Each lawyer's focus is on day-to-day issues such as handling client crises, billing and collection matters, or dividing up firm profits. They cannot see the forest for the trees.

Too Selfish to Plan. There are also some partners who, quite frankly, care about themselves more than they care about the firm. If they have a big book of business, they are usually tolerated. These lawyers will disrupt the law firm by leaving on their own terms planning only for themselves and not their colleagues.

Starting the Discussion

In theory, any discussion about succession planning should be started by the firm's managing partner or management committee. Alternatively, influential and well-respected partners can raise the issue.

In reality, many of these individuals suffer from the fears mentioned above. In that case, one effective tactic is to camouflage the firm's succession planning within its strategic planning process. This can be

particularly effective when the strategic planning process is facilitated by an outside consultant. Unlike the lawyers in the firm, outside consultants have no vested interest in the outcomes of succession planning. The objectivity of the consultant inspires more candor from attorneys who might otherwise be territorial or suspicious of the process. This in turn makes the process more efficient, and the consultant's fees an investment rather than an expense.

The best way to engage selfish partners in the process is to focus on the client side of succession planning. Even partners who do not particularly care about their colleagues typically care very much about their clients. When the emphasis is placed on meeting client needs, and not on the firm, the chances of getting their attention improves substantially.

Nuts and Bolts

The objective of creating and executing a succession plan is to ensure continuity in firm management and client relationships. This objective should guide the firm in the practical tasks, the "nuts and bolts," of succession planning.

Management. Responsibility for transitioning firm leadership falls to the managing partner or management committee and, at larger firms, the practice group heads. Firms led by managing partners should elect or select a successor to be "assistant managing partner" to work with the incumbent managing partner for months, or even years. This allows time for the new leader to be mentored and gradually assume management responsibilities. Firms led by committee should adopt a rotation process that maintains continuity while providing a steady infusion of fresh blood and future leaders.

Client Relationships. 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 managing and finessing human relationships, a task that—even with the best of intentions—is never easy. It can take years to successfully transition a client relationship.

The successor lawyer needs time to obtain the necessary expertise and client/industry knowledge. More importantly, it takes time for clients to feel the requisite "comfort and chemistry" that is so crucial for a successful lawyer-client relationship. Finally, time should be set aside to accommodate any adjustments to the plan. There will be inevitable bumps in the road that will require some time to absorb shocks and make any necessary repairs.

Furthermore, a comprehensive client-transition succession plan is actually multiple plans. Each senior lawyer needs a plan and, within that plan, there must be a plan for each significant client. Remember, however, that all clients are not created equal. Allocate the bulk of your time and efforts to the clients that are most crucial to the firm's bottom line. In order to put together a client transition plan, ask the following questions:

- Which firm clients are being served by senior lawyers?
- How long do these senior lawyers intend to work?
- Are any junior lawyers serving those clients? If not, who can be introduced to the relationship?
- What types of training and mentoring do these junior lawyers need? How long will that take?
- What are the clients' concerns about the potential loss of the firm's senior lawyers?

- Do they have successor preferences?
- Are any of your key clients going through their own transition process? Do you have a relationship with the client's post-boomer generation?
- How will successor lawyers be introduced to clients—both socially and in a working relationship?

The answers to these questions will help your firm develop a plan to transition clients. Will your plan work? Only if your firm has asked and answered one additional crucial question: What will motivate the senior attorney to begin to let go? More often than not, the answer is money. Without the proper financial incentives, the client-transition plan is destined to fail.

In most law firms, the firm's compensation policy must be adjusted for those impacted by the plan. If the firm's policy is heavily weighted towards billable hours, senior lawyers are unlikely to delegate to junior lawyers. If the firm wants senior lawyers to delegate work, the senior lawyer needs to be rewarded for taking that action. Additional adjustments will most likely be necessary in compensating for origination and non-billable time (e.g., mentoring). For any client-succession plan to work, the senior lawyer must be provided with some level of income protection that rewards the lawyer for furthering the goals of the plan.

Flexibility, communication, and accountability are also critical to the success of any succession plan. Since each lawyer may want or need a different time-frame for transitions—to address personal as well as client needs—plans must be flexible. Firm management, senior lawyers, junior lawyers, and clients must communicate regularly to ensure that the expectations of each party are being satisfied. If not, individuals must be held accountable to get them back on track.

Finally, any succession plan should take into account the role of a retiring lawyer after the client transition has been completed. Can the lawyer add mentoring or marketing value to the firm in an "of counsel" role? If the cord is to be cut completely, has the firm provided resources to ease the individual's change to a retirement lifestyle?

Never Too Late

With one-third of the nation's lawyers contemplating retirement, it is time to start or ramp-up your firm's discussion of succession planning. It is never too late. Even a few months or a year of planning is preferable to a crisis situation generated by the precipitous retirement of a critical partner who rides off into the sunset, never to be heard from again. I can guarantee that this unhappy scenario occurs more often than you would expect!

If your law firm wants its best clients to stay when your baby boomer lawyers leave, succession planning is the most effective insurance policy to accomplish that goal.

Chapter 6. CONCLUSION

Though large law firms and small practices face different challenges when faced with an attorney's retirement, the same old adage remains true for both: Failure to plan is planning to fail. The "failure" may be a failure to glean the income that could be realized from a law practice you've spent your career building. It may be in creating a crisis for clients who are not sure where to turn when a trusted attorney suddenly retires.

If you've read this book, you've taken the first step in creating a successful retirement plan for yourself. The more time you have to implement that plan, the better. But as noted earlier, any planning is better than none.

In keeping with the John F. Kennedy quote at the beginning of this book, the time to design your retirement is well before you actually need or want to retire. All of the retirement strategies discussed in this book require time--time to determine the best strategy, and then time to implement it. Transferring client relationships and one's caseload requires effort; it will not just happen overnight. The bare minimum amount of time required is probably one year. And depending upon the pace at which the retiring attorney wants to wind down, the complete transfer may last as long as five years. In any event, it will be time well-spent to ensure that you can spend well during retirement.

Retirement Handout

- What excites you the most about retiring?

- What scares you the most about retiring?

- What will you miss most about work? Have you thought of ways you may be able to replace some of those things?

- Think about family, friends, colleagues, etc. who have retired and you have watched what they did during their retirements. What have you admired? What would you do differently?

- Why did you go to law school? Of those reasons, is there anything remaining to be accomplished that you can do during your retirement?

- Is there anything that you had hoped to accomplish as a lawyer or as a member of the community that to date you have not and can do during retirement?

- As a lawyer or community member, have you accomplished anything that has been particularly satisfying to you? Can you do something similar during retirement?

- If attendees at your 90th birthday party are asked how you want to be remembered, what would you like them to say?

- During your spare time now, what do you enjoy doing most?

- What is your ideal way to spend a weekend day?

- In the past when you took a one or two week vacation, did you get restless? Why or why not do you think you won't get restless when you retire?

- If your life expectancy was only six months, how would you spend the time?

Group A

	5 Strongly Agree	**4** Agree	**3** No Opinion	**2** Disagree	**1** Strongly Disagree
Work is enjoyable, meaningful and interesting.					
Work structures my day (and the money isn't bad, either)					
These are my prime earning years—the more money I earn, the better my retirement will be.					
I can't retire until I am Medicare eligible, or can afford health insurance.					
My closest friends are colleagues, and they're still working – so why retire?					
I just don't know what I would do with myself if I retired.					
Work is who I am and what I do – I plan to die with my "work boots" on.					
I'm not emotionally ready to retire – I'm not ready to be "*old."*					
Being retired is another way of saying I'm unemployed or unemployable.					
Totals:					

Group A Total: _____

Group B

	5 Strongly Agree	**4** Agree	**3** No Opinion	**2** Disagree	**1** Strongly Disagree
I'll gladly sacrifice a steady paycheck to free myself from the clock and my clients.					
My financial retirement goals have been reached – money won't be an issue.					
Work is stressful, uninteresting, and no one appreciates what I do.					
I want to retire while I'm young and healthy enough to enjoy the rest of my life.					
My colleagues and friends have already retired—I want to join them.					
Retirement is my opportunity to live someplace else.					
My aging parents need assistance and/or my children need help with the grandkids.					
There are so many exciting places to see and visit – I need to get that "Bucket List" going.					
Retirement is my time to do whatever I want to do – my life, my way.					
Totals:					

Group B Total: ____

Roy Ginsburg has provided the following links to blog posts which were written more recently and are of topics which are not covered in his book.

- https://www.planningforlawfirms.com/retirementsuccession/2018/02/08/approach-difficult-conversations-succession-planning/
- https://www.planningforlawfirms.com/retirementsuccession/2017/08/04/retain-clients-lawyer-retires-plan-skill-gap/
- https://www.sellyourlawpractice.com/attorney-retirement/2017/12/28/solos-small-firm-owners-dont-delay-succession-planning/
- https://www.sellyourlawpractice.com/selling-a-law-practice/2017/06/05/preparing-practice-sale-dont-stupid-st/
- https://www.sellyourlawpractice.com/selling-a-law-practice/2016/11/14/rule-thumb-valuing-law-practice-not-use-rule-thumb/
- https://www.sellyourlawpractice.com/attorney-retirement/2016/10/04/career-expire-lease/
- http://mnbenchbar.com/2017/11/succession-planning/
- http://mnbenchbar.com/2016/07/succession-planning-rewarding-the-senior-lawyer/

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