



ATTORNEY'S REPORT

Winter 2013

MAKING A GRACEFUL EXIT

Succession Planning for Attorneys

With a wave of baby boomer attorneys rushing toward retirement, law firm succession and exit planning is one of the most compelling issues facing the legal profession today. Firms that fail to proactively manage the exit of senior attorneys face challenges ranging from the unfunded retirement of partners/owners to defections by younger lawyers not willing to finance the buyout of a retiring partner with future earnings.

Ultimately, lawyers have a professional and ethical obligation to have an exit strategy in place. After all, your departure has an impact not only on you, but on your staff and clients as well.

Make a Graceful Exit

With a well-thought-out succession plan, retiring partners can exit gracefully, with a payout from the firm that fully rewards them for the contributions they've made over the years. Consider these key steps in planning for a seamless succession:

- **Start planning now.** Succession planning is a process, not an event. Plan on spending a solid three to five years to groom successors, transition clients and make a proper exit. Of course, your time horizon may need to stretch further in cases where several partners will be retiring within a few years of each other.
- **Agree on the financials.** The services of an experienced accounting professional can be invaluable when arranging structured payouts for departing partners. Not only are the amounts critical, but how they are paid (e.g., profit shares vs. capital) and the timing of the payouts is important as well. Here, an experienced CPA can help ensure that payouts are made as tax-efficiently as possible.
- **Transition workloads.** Consider including a formal wind-down program in the succession plan, allowing for a phased transition of clients and workload for

departing partners. Establish at what age a partner can begin the transition, and set targets for the phasing out of duties.

- **Create some options.** Not all lawyers want an abrupt and absolute exit from what has been their professional life for so long. More likely is the feeling of, "I want to work when I want to work." Consider options for reduced but still meaningful roles for retiring partners — everything from of-counsel arrangements and consulting/contract roles to mentorships, public appearances and even business development. There's no reason not to utilize the experience, contacts and skill sets of retiring partners.
- **Transition clients.** Whether or not a firm is able to retain a departing partner's clients depends largely on how it maintains those relationships in the time leading up to the partner's exit. That's why departing attorneys should begin transitioning their clients three to five years prior to an anticipated exit from the firm.

The key to law firm succession is to plan strategically and implement effectively.

Consider a compensation system that rewards, rather than penalizes, the senior partner for sharing his clients with the next generation of lawyers. For example, a retiring partner could receive 40 percent of fees during the transition and the firm 40 percent, while the working partner receives production credit up to 20 percent.

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Succession Planning for Attorneys, Cont'd.

- **Don't forget practical matters.** Finally, establish a timeline for all of the practical matters that play into an orderly exit — how and when to notify staff, courts and administrative bodies; how to handle closed client files; etc.

Inertia Is Not an Option

The good news is that a well-formulated succession plan allows for a seamless transition from current

leaders to the next generation - in both client relationships and management responsibilities. The key is to plan strategically and implement effectively.

Contact our office for guidance on reviewing your firm's succession plans.

ALTERNATIVE FEE ARRANGEMENTS

Making Fixed Fees Work

Fixed fees are becoming increasingly common for routine legal matters — from wills and real estate closings to uncontested divorces and even straightforward criminal cases, such as impaired driving

Clients prefer them for obvious reasons. But how does an attorney offer fixed fees without jeopardizing profitability? Certainly, there is an element of having to make an “educated guess.” But there are steps that can increase the likelihood of a fixed fee being profitable.

- **Capture the information.**

Committing to a fee based on inaccurate or incomplete data can cost you money. Therefore, take the time to make an honest assessment of where you make money — and where you don't — before deciding whether to offer a fixed fee. Carefully analyze the average amount of time you spend on different types of cases and set your fees accordingly.

- **Build in a cushion.**

Factor in unexpected time expenditures and costs (like being in court on a simple uncontested matter and winding up last on the docket). Likewise, plan for matters that may not conclude. To cover the eventuality of matters in which clients decide not to

proceed, consider charging on an hourly rate basis up to the value of the fixed fee.

- **Head off trouble.**

Excessive calls from a needy client are undoubtedly a drain on your time. Yet, these calls are often just an attempt to get a status check - especially during periods of inactivity in the matter.

Head off problems with a simple e-mail explaining the current status of the matter. Or, formalize the process by assigning someone to prepare a brief status report every time there has been no communication with the client for a pre-determined period of time (such as 30 days). Simple steps like these can keep a client from reaching for the phone.

- **Employ “change orders.”**

Take a cue from the construction industry and utilize “change orders” to cover additional steps and fees when the client requests services in addition to those already outlined in the fee agreement. At each change in scope, spell out the changes and charges, and have the client sign it.

- **Provide for an “upcharge.”**

Consider adding language to the fee agreement outlining actions that will move a client into a

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“premium” mode that includes upcharges. For example, you could add a provision that “excessive phone calls” from the client may be billed at the lawyer’s normal billing rate. Cost-conscious clients will comply (or modify their behavior in response) while others may be willing to pay more for greater access.

Put Leverage to Work

Partners who enjoy the highest per-partner incomes are usually those who are able to leverage their time and expertise. Quite simply, they make more money when they can delegate work to less-highly-compensated associates and spend more of their time developing new business.

To this end, an efficiently managed fixed-fee arrangement helps facilitate pushing matters down to appropriate levels (i.e., to the “lowest competent level”) and thus increasing overall firm profitability.

Considering fixed fees and other alternative fee arrangements? We can help you run the numbers and provide the guidance you need.

Fixed-Fee Alternatives

- **Hybrid quotes** – This is a partly time-based, partly fixed-fee arrangement. You agree to charge an hourly rate for the initial phases of a matter until the scope is better known, at which time a fixed fee is charged for the final phases.
- **Capped fees** – With this modified form of a fixed fee, the client and attorney agree that fees to perform specific work will not exceed a certain dollar figure.
- **Unit pricing** – This approach breaks down billing by the various tasks or phases of a matter, setting a fixed amount, regardless of how long it takes to complete. Payment is then requested after the agreed-upon task or phase is successfully completed.
- **Task-based billing** – This approach may be beneficial at the beginning of an uncertain matter. Instead of agreeing to an unlimited number of depositions for a fixed fee, you might formulate a “per deposition” fee. This task-based fee would cover preparing for and taking each deposition - perhaps charging one rate for depositions taken locally and another for those requiring long-distance travel.

DO THE MATH:**Valuing Ownership Interests for Retiring Partners**

While some law firms follow a “free in, free out” model for valuing the ownership interests of retiring partners, most firms require new partners to pay for shares and retiring partners to receive value for selling their ownership interest in the firm.

The first step in valuing ownership interests for the purpose of transfer is gaining an understanding of what is actually being sold. This typically includes hard assets, work-in-process, receivables and goodwill (i.e., the value of clients retained going forward), with a reduction for any debt.

A comprehensive valuation is the cornerstone of an equitable succession plan that rewards retiring partners for their contributions without saddling the remaining partners with onerous obligations.

In practice, three general methods have historically been used for valuing law firms:

1. Arbitrary valuation process

For lack of a better approach, some small firms simply set an arbitrary price when transferring an interest in the firm between partners. Sometimes the amount to be charged is set out in the partnership agreement, while at other times it is set on an ad hoc basis when transactions occur.

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2. Formula technique

Other firms follow a more formalized process that focuses on the firm's financial data (such as calculating goodwill) but does not go to the extent of utilizing sophisticated business valuation techniques. Such an approach might compute the following:

A percentage of receivables (deleting from the computation any receivables over 120 days or those that are clearly uncollectible)

+

A percentage of the work-in-process

+

The value of any real estate held by the firm

+

The fair market value (or book value) of any furnishings, equipment or other personal property

Any applicable debt

This amount is then divided by the number of shares (or points) outstanding to arrive at a value for each share or point.

3. Traditional business valuation techniques

Still other firms opt to apply fundamental business valuation techniques, such as valuing earnings or cash flow, establishing a value for goodwill, or valuing intangible assets (e.g. workforce in place, customer relationships, going concern value, etc.).

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Unless you have a financial background and experience in law firm valuations, you will probably need help from an outside source. Certified public accountants, especially those with experience valuing law firms similar to yours, can be an invaluable ally.

How to Submit Bills That Get Paid

The “rules” behind legal billing are simple. “Bill promptly, bill specifically and show value,” recommends noted trial lawyer and author Leonard Bucklin. With that in mind, consider these tips for streamlining the review and payment of client invoices:

- **Itemize bills** – Block billing (i.e., billing time for multiple tasks in large blocks) is notorious for sending up a red flag for clients. Instead, itemize each task separately with a corresponding time and charge. Also, consider organizing bills by categories that are in line with the client's profit centers.
- **Spell out charges** – Don't just bill for “legal research.” Indicate what specific authority or area of the law was researched. Likewise, don't let abbreviations, acronyms or work codes (e.g., “CW” for “conference with”) slip into your invoices. Spell everything out clearly, without using any jargon.
- **Convey action** – Use present tense verbs to convey the actions you are taking on your client's behalf. Words like draft, confer, prepare, examine, determine, analyze, summarize and organize all dynamically convey the services you are providing.
- **Summarize everything** – Consider creating a one-page summary of all active matters with the client.
- **Convey value** – Itemize even those services performed for free to remind clients of the value they receive from you.
- **Mark it due** – Add a “Payment Due By” date to every invoice. Not doing so, or simply indicating “Net Due Upon Receipt,” leaves it open for the client to decide when to pay you.
- **Offer payment options** – Consider offering credit card payments and automatic debits through your firm's billing software. Auto-debits can be scheduled to occur automatically - you may be surprised to find how many clients are amenable to this in lieu of scrambling for cash each month.

Mueller Prost PC is a team of CPAs and business advisors headquartered in St. Louis. From humble beginnings on a ping-pong table in 1983, the corporation has grown into one of the leading CPA and business advisory firms in the area, operating out of two locations with more than 90 staff members. By **Advising with Vision**[®], we offer clients new and unique ways to look at their businesses. Our forward-thinking CPAs and advisors stand ready to provide depth of expertise, strategies and resources required to help clients set and achieve their goals at every stage of the business lifecycle. As a member of PKF North America (an association of independent CPA firms), our team has the ability to leverage national resources when needed to benefit client engagements.

Our firm offers a full range of professional tax, audit, accounting, litigation support and management advisory services to the legal community.

For more information, please contact **Mike Prost, CPA/ABV/CFF, CVA, ASA** at 314.862.2070 or mprost@muellerprost.com.