

Partner retirement – grasping the nettle

Tony Williams

Introduction

Many law firms of all sizes are now encountering the challenge of the baby-boomer generation of partners starting to retire. These partners have witnessed and been instrumental in achieving considerable growth in the reputation, revenue and profitability of their law firms for the 30+ years that many have been with their firms. Furthermore, this generation of partners hold or have held a range of senior positions in the firm, whether at firm-wide or practice group level and have often been key to the development of the firm's major client relationships. Accordingly, dealing with this generational transition is a key issue – handled well and the firm can go from strength to strength, handled badly and the future of the firm may be in doubt.

This article considers the issues of retirement from the perspective of the individual partner and the law firm and explains some emerging examples of best practice. Understanding the perspectives of both the individual partner and the firm is essential to the effective management of the transition and the development of potential methods of dealing with it. This area was explored in greater depth in the Jomati Research Report “The Paradox of Partner Retirement” published in September 2015 which was based on extensive interviews with law firm leaders and individual partners.

The partner perspective

When addressing retirement, it is important to appreciate that each lawyer will have different views as to when they want to retire, what they want to do if they retire from their current firm and how any transition process will be effected. These views may be driven by a range of personal issues, financial concerns and insecurities, so understanding which apply in individual circumstances is key to finding an approach and outcome that is acceptable to both the individual partner and the firm.

From a partner's perspective there will be a myriad of reasons to continue or to want to retire, some of which are summarised below:

- Practising as a lawyer has consumed most of their time and energy for the last 30+ years (possibly to the detriment of their family and personal relationships) so they have been unable or unwilling to contemplate any option which does not substantially involve practising as a full-time lawyer. Without an opportunity to stand back and consider other options, continuing the status quo becomes the default and indeed ‘safest’ option.
- Conversely, after such an all-encompassing role, some partners may relish the opportunity to reconnect with their family (and possibly grandchildren) and to explore other paid and unpaid roles which have been closed to them while being a partner. Helping a partner to identify what these roles and interests are may enable the partner to maintain control over the process and drive any necessary transition.
- Financial concerns are often an important consideration. While in major firms partners should have achieved a level of financial security, they may not feel that they have. Divorce, particularly later in life, and having children later in life may impact on the feeling of financial insecurity (especially the need to fund children's education and possibly a contribution to their first home may mean that the Bank of Mum and Dad is open longer and suffers more withdrawals than in the past and may eventually morph into the Bank of Grandma and Granddad!). Historic low interest rates and significantly increased life expectancy with the prospect of very expensive medical and care costs in later life raise the spectre of a partner running out of money, however unrealistic a possibility that may be. Good and

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prudent financial advice can help to properly address this issue.

- Professional status and standing not only in the firm but in the wider community may, in the partner's mind, be inextricably linked to their role as a partner in the firm. To lose that status may therefore imply a diminishing of personal standing and prestige. As one New York partner pithily put it "when you retire in New York you have to move to Florida". Understanding what alternative roles may be available can help to mitigate this emotion.

The firm's perspective

From the firm's perspective there are also many reasons for addressing issues of partner retirement and properly planning and transitioning partners to roles outside the firm.

- A firm, to a large extent, works like an escalator – partners join the firm, develop their careers and at an appropriate point get off the escalator to enable those coming up to continue their progression. If younger partners are blocked from progressing, there is a greater risk that they will leave to advance their careers in a firm where such blockages do not appear to exist. This potential hollowing out of the next generation of partners can place the future of the firm at risk when the senior partners do finally leave.
- Law firm remuneration systems, if merit based, tend to favour partners that 'own' client relationships and maintain significant billable hours. Lockstep remuneration systems favour longevity in the partnership. As a result, under either system (or a hybrid of the two) more senior partners tend to be the highest remunerated. Having a remuneration structure that rewards rather than penalises a partner for not only thinking about retirement but actively transitioning client relationships to the next generation is key to addressing these issues.
- The rather simplistic view that partner performance grows, reaches a plateau and then declines with age is widely accepted but often misleading. While that curve may in general be

correct the age at which each stage kicks in may vary dramatically. Some partners may never reach their potential, some may peak early and decline rapidly, others may change their specific roles but still be able and willing to make a major contribution to the firm in later life. Accordingly, simplistic set retirement dates may help to provide a level of certainty, but if not accompanied by rigorous partner performance management may enable some partners to coast towards retirement while others leave to go to a competitor because they still have the energy and drive to work full time. In both cases the firm loses.

- For firms with a significant international presence there may be fundamentally different approaches to retirement in different countries. In certain countries lawyers will qualify much later (as in Germany) or have high levels of student debt (US and now UK) and the business community may be much younger or older. One US partner summed it up as follows: "I don't understand you Brits. You have just developed your practice and got into your stride and then you retire. I am 65 and have no intention of retiring". Understanding these cultural differences is essential to the development of retirement arrangements that are suitable for all locations in which the firm operates.
- Transitioning client relationships takes time and focus. Clients need to get to know and trust the partner working with them. The senior partner can facilitate that process and provide 'air cover' in the early stage of the transition. Law firms also need to appreciate that their clients are also grappling with generational issues. An American Lawyer survey noted that a growing number of GCs are now in their 40s. Many new technology businesses (including so-called 'Unicorns' with pre-IPO valuations more than US\$1 billion) may have all their executives in their 20s and 30s. This does not mean that older law firm partners cannot act for them but, in general, relationships tend to be best built with one's peers. So, developing the right team for the client is both time consuming and continuous.

The worst case is to seek to bounce the client into a transition. A FTSE 100 GC who is also a friend told me of a Magic Circle partner who came to see him with another partner. He said, "I am retiring at the end of this month, so X will be your new relationship partner". As the GC noted to me

"I had never met X, I don't know X, I will not be treated this way and in future I will go elsewhere".

- Good law firms also recognise that their senior partners have made a major contribution to the current success of the firm. They deserve to be treated with sensitivity and respect. Indeed, a partner who leaves the firm will remain an effective ambassador for the firm if the transition is handled well. If not, or if the partner goes to a competitor, the senior partner will become a detractor. This is an important distinction which is too little understood if firms seek to hustle senior partners out of the firm.

Identifying the risks

Too often, law firms have no effective process to identify succession issues and to deal with them effectively. Not only does that put client relationships in jeopardy but it can also adversely impact the culture and morale of the firm. Whatever a firm or its partners think about strategy or procedures, there is one immutable fact – in a year's time we will all be a year older or dead.

The first thing a firm needs to do is to fully understand the extent of the issue.

- For the firm – know the demographics of the team involved in each practice, each office and every major client relationship. Understand the age profile, the abilities or otherwise of the next generation and the extent to which succession issues have been identified and are being addressed. Unfortunately, too many law firm leaders do not have this information readily available and are therefore leaving themselves open to unpleasant surprises. This process not only identifies partners that may be approaching the firm's mandatory retirement age but also those where an understanding of their future plans is necessary. It also helps to identify younger partners who need to be encouraged and retained so that in due course

they are able take over from the senior partners as the gaps in the partner ranks will need to be filled by internal promotions, relocations or lateral hires.

- For every major client – the firm needs to know the identity of the senior executives (eg, CEO, chairman, CFO) and the GC to ensure that the firm's client team is still appropriate for them. As these people move or retire and are replaced this process assumes more urgency. Depending upon the terms of the incumbent's departure, it may be necessary for the firm to demonstrate continuity or a break from the past. Anticipating and planning for this may help to safeguard the client relationship. Every organisation may have different dynamics and a different leadership age profile. Warren Buffett (aged 87) and Carl Icahn (aged 81) may be happy to work with lead partners in their 60s, 70s and even 80s whereas Mark Zuckerberg (aged 33) may not. While this sort of information should be maintained on major clients and the firm's client team, it may also be appropriate to keep such information on key target clients as a change at the top or a new GC may provide the ideal opportunity to usurp an incumbent who has failed to adapt.
- Understand how the firm's remuneration system works and what incentives or disincentives it provides to encourage effective succession plans and the orderly retirement of partners. If it rewards a work until you drop and hold everything close approach, do not be surprised if that is what you get. Be prepared to address this issue before you focus on individual partners. For example, some firms using a merit-based system are prepared, for a short transitional period, to double count client credits for both the transitioning partner and his or her successor to smooth the succession process.
- Model the potential cash flow implications of potential partner departures. This will include the balance of undrawn remuneration, the repayment of capital and any special retirement benefits. Also to be factored in are any potential losses of clients if the transition is not handled well. This analysis may identify a potential bunching of potential retirements which may

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need to be phased over many years to protect the firm's cash flow and business.

- Identify commitments to third parties that the partners have made. This may include guarantees to the firm's bankers for the firm's borrowings or guarantees to landlords for the firm's premises. There may also be covenants in the firm's borrowings requiring a minimum number of partners or limits on the number of partner departures in any one year. This can be crucial. Especially in the United States, it is not unusual for firms to merge or dissolve because the older partners were not prepared to accept personal obligations under a new office lease for, say, the next 10 years.

Dealing with the issue

It is never too early to gain an understanding of a partner's plans.

- Some larger firms adopt a more institutional approach using outside specialists (one such in the United Kingdom being Career Milestones, <http://careermilestones.com/>) to facilitate private discussions with partners about their personal career development and aspirations. Some firms use these throughout a partner's career (eg, at five-year intervals) to normalise the process and to ensure that a partner remains invigorated and under control of their career rather than becoming stale and increasingly susceptible to a head-hunter's call. At a later stage these discussions can help to identify potential 'second careers' or other interests that the partner would like to pursue. The confidential nature of these discussions (with only agreed communication with the firm's management) tends to make such discussions more open and less confrontational.
- Encourage the respectful discussion of a partner's role and a level of openness as to the future. A law firm leader starting a conversation with: "when are you retiring?" is unlikely to have a productive meeting.
- Consider ways in which a retiring partner can

maintain a link with the firm. Some firms adopt consultancy arrangements for a limited period, others use retired partners to undertake client satisfaction reviews or the review of potential partner candidates (these have the additional benefit of freeing up continuing partner time for fee earning). Others permit retired partners to continue to use the firm's email addresses or provide some office and secretarial services to retired partners. An effective alumni and retired partners programme including regular communication of news relating to the firm can also help to maintain the connection. Used appropriately these not only demonstrate respect for the retired partners but make it more likely that they will remain ambassadors of the firm.

- Inevitably what a firm does will be impacted by its culture and partnership terms. An immutable retirement age will have an impact and may even result in partners leaving before then to give themselves time to become established in a new firm. However, an immutable retirement date has the benefit of clarity and some firms may consider that this advantage outweighs the occasional disadvantage. No approach is necessarily wrong, but every approach has consequences and these need to be clearly understood.
- The effective working of the firm's remuneration system and the development of 'normal' rather than bespoke partner retirement terms helps to provide clarity as to what deal is acceptable to both the firm and the partner and thereby facilitate engagement.

These tools can and do help but the process can still be emotionally difficult. Both law firm leaders and retiring partners have described such discussions as the most excruciatingly embarrassing and difficult discussions of their careers. As a result, both sides often seek to avoid them until the last possible moment – hardly a recipe for effective client transition and a constructive partner exit. Unfortunately, in

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recent years a growing number of law firm mergers have largely been attributable to the smaller firm's failure to manage succession issues effectively.

It does need to be appreciated that law firm succession issues are not limited to partner retirements. Law firm leaders, whether of practices, offices or the entire firm, need to understand that their effectiveness and acceptability in such roles has a 'sell by' date. Going when most of the partners want you to stay and effectively handing over to your successor is likely to enshrine your legacy as an effective and visionary leader. Staying on too long risks a messy outcome in which your failings are remembered, and your achievements forgotten. This is not just for law firms but equally applied to Margaret Thatcher and more recently Robert Mugabe. Again, self-awareness on this issue can be disappointingly rare. We privately advise many law firm leaders on whether or not they should do a further term. In some

cases it is right to do so. In others, moving on is right for the leaders and for the firm. Of course, we can only advise but have had a fair number of instances where, despite our clear advice, a leader has continued and then regretted it as they see their reputation and legacy trashed. Some firms adopt term limits on certain roles to mitigate this issue. But there are also ample examples of long-serving law firm leaders who have driven their firm to a better and more sustainable place and developed potential successors for an orderly handover at the appropriate time. Clearly, the development of a cadre of potential successors is important but relatively few law firm leaders have the self-confidence to do so.

Succession is a difficult issue to address effectively but I hope this article has shown that there are tools and techniques to improve the odds of success. Grasping the nettle before it has grown too large is, as any gardener will tell you, a far less painful experience.

Tony Williams is the principal of Jomati Consultants LLP, a leading UK-based legal practice consultancy. He has over 35 years' experience including senior roles at Clifford Chance and Andersen Legal.

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