



WHAT'S YOUR EXIT STRATEGY?

Ellen Freedman, CLM
Law Practice Management Coordinator
Pennsylvania Bar Association

My father, rest his soul, always had his exit strategy from work clearly defined. His plan was to work until he dropped dead; hopefully on the fairway of the 18th hole of his favorite golf course. There was no further strategy required other than to live and enjoy every day to the fullest until the inevitable happened.

Growing up, my grandparents exposed me to this simple proverb many times: *Man plans, God laughs!* They were right. The last ten years of my father's life were not as planned, and certainly worse than he was capable of ever imagining. Otherwise, he would have worked harder to create better options. He should always have had, at least, Plan "B."

Having a solid exit strategy, with viable options depending on how circumstances unfold, is necessary for *all* lawyers, regardless of age, and regardless of the size of the firm in which they practice.

Over the years I have written quite a number of articles regarding the need to start thinking of your exit strategy far in advance. One of the early articles, "*Salvaging Sweat Equity*," appeared in the PBA Solo & Small Firm Section Newsletter in Summer/Fall 2002. I remember I had to go back a few years later to revise it after the sale of a law practice became officially sanctioned under the Rules of Professional Conduct.

For attorneys who are part of mid-size or large firm practices and intend to stay there until they cease to practice law, exit strategies are definitely simplified. At least for those who have a book of business. Usually there is a path of progression wherein one can slow down, transition clients to younger partners, transition oneself to an "of counsel" relationship, and slowly decrease ones activity level and presence at the firm. If you're one of those fortunate attorneys, you probably don't need to read on.

Ah, but what if the next generations at your firm aren't satisfying your clients? By the time you realize this strategy isn't working, you may be too close to retirement to start again with another partner or another firm. What's Plan "B"?

If you're a service partner at a mid-size or large firm, your choices will not be nearly as desirable or numerous. Unless you have an expertise which is difficult to come by, you will be regularly examined, from a purely business-model perspective, as a profit center. If / when your profitability to the firm fails, you will face a reduction in compensation, or more likely, a relatively abrupt termination. So it becomes even more desirable to create an exit strategy which enables you to leave under your own steam, for a desirable location or avocation, before that happens.

At some mid-size and large firm practices, mandatory retirement still looms large. By today's standards, the age is relatively early, and can force an attorney out while still healthy, and a capable and active rainmaker or contributor to firm management. Most consultants have been recommending that firms delete mandatory retirement clauses from their partnership agreements. But many firms still have them. What if you're at one of these firms?

What's the big deal, you're thinking. It's not like it's a surprise or anything. Heck, you see it coming a mile away and can make suitable arrangements to move on, reinvent yourself in another career, or move gracefully into retirement. And there's plenty of time for financial saving, too. But too often that's not what happens. The feelings of self-worth many attorneys have emanate from their jobs, and in particular their success on the job. Without the job, they can no longer see their own self-worth. Depression often ensues. And after the past few years during which we've watched retirement savings shrink significantly, let's not even discuss that financial preparedness issue.

In addition, as most of you know, legal careers are so all-consuming for most, that there is little ability to develop a host of activities and interests outside of the workplace. So aside from family and friends, and perhaps travel, few attorneys nearing retirement have sufficient interests and hobbies to keep them occupied and happy post-retirement. (Hey, if you're not sure about that, just ask your spouse, you know, the one in the corner quietly praying you work until you drop!) If you've been blessed with good health, your reward will be to outlive many of your friends, with whom you'd hoped to enjoy your senior years. And by the time your career comes to an end, most of your family will be off living their own lives to the fullest. So now what?

Ok, you solo and small firm attorneys, I know you've been waiting patiently to see what I'd say about your prospects. Well, Dorothy, OZ is least friendly for the solo and small firm attorneys. Despite the passage of Rule 1.17 [Sale of a Practice], your path to retirement is fraught with the most traps. Some of which make those flying monkeys in OZ look like attractive house pets.

And actually all of this is what's prompted the writing of this particular article. The volume of calls on the hot line from solo and small firm attorneys at or approaching retirement has taken a sharp upswing. But you've not been alone. I get my share of calls from those who have been abruptly "rousted" from larger firms, too. And even those with comfortable books of business looking to make their well planned client transition and take their exit, only to find that the next generation at the firm aren't impressing their clients sufficiently to make it happen.

Yes, I definitely predicted this upswing in volume when I wrote "*Preparing to Say Goodbye to the Baby Boomers*" which appeared in the May 1, 2006 issue of the PA Bar News. I was just hoping you'd all be a little better prepared by now.

How do you prepare for the scenarios that may be in your future? What should you be doing? I have a number of thoughts, although I am quick to admit I don't have all the answers. I'm fairly confident, though, that I've uncovered most of the questions and issues. What I do know, is that just about each and every one of you will be inclined to wait too long to take meaningful action. Truth is, you should start planning your exit strategy about ten years in advance.

Every plan must begin with an analysis. What is your situation? Are you facing some of the challenges now, or possibly in the future, which have been identified above? If so, list them. Not in your head. Write it down.

Every plan must have a number of goals. Do you want to work until you are no longer able? Do you want to have time for travel and family? Do you want or have hobbies or other interests to pursue? Would you like to reinvent yourself in a different career? Again, write it down.

Every plan must take the unpredictable into account. Have you even thought about disability or something which will prevent you from the continued practice of law? Have you thought about the prospects of the financial failure of your practice, or your main practice area? What if your firm breaks apart as you near your goal line? What if you lose your key partner and can't or don't want to sustain the practice on your own? What if your firm loses the "next generation" and you have no one to whom to transition your clients? Write these possibilities down.

A growing number of firm partners are surprised to learn that the up-and-coming generation doesn't necessarily want to become an owner of the firm. These "young'uns" want to make sure that their investment (whether there is buy-in or not, it is still at least an emotional and career investment) is a wise one. After all, they will inherit your risk and liabilities along with everything else. Plus, they are becoming increasingly savvy and taking a closer look at your firm culture, reputation or brand, and management structure. They sometimes conclude that

starting their own firm is an easier route to the environment in which they wish to practice. If your exit strategy counts on this generation stepping up to the plate, what is your Plan "B"? Write it down.

It's increasingly difficult for solo attorneys to slowly fade away. The simple act of scaling back can quickly have a negative impact on office profitability. Sometimes the attempt to scale back causes a ripple in the rumor mill which enables competitors to take those clients who you most want to hold onto until the end. Why is it that they never take the ones you *want* to lose? If scaling back is the path you want to take some day, then you'd better start understanding which areas of practice you enjoy most, and which are most profitable. They're not always one and the same. That information will have an impact. You need to know how to get to that information. Write that down.

Many solos hire a young protégé hoping to effect an eventual transition of the firm, and thereby salvage some sweat equity. The same problems cited above often arise. Plus there is the additional factor of impatience. Because no matter how much one plans to let go and pass the firm along, when it gets right down to it, emotionally many are not really ready, and hang on for years after predicted, promised, or anticipated. Those waiting in line get impatient and leave.

Sale of one's practice is fraught with its own difficulties. Probably most glaring is the simple inability to easily pair up buyers and sellers. Most solos don't want anyone to know they are seeking to sell their practice. It might undermine client confidence, and decrease the firm's value. Buyers struggle to find firms willing to sell, and then both sides struggle with the intricacies of conflict checking, payout, notifications, and all the vagaries of Rule 1.17.

Valuation of a practice is yet another area fraught with uncertainty. There are some things which are clearly valuable in a firm. For example, a high volume personal injury firm may have a great internet domain name, a great 800 phone number, or a premium position in the phone book. All of these will tend to continue to generate a high volume of leads, all of which accrues to the benefit of a new firm owner. Likewise, an estates attorney who has spent a lifetime writing trusts, wills and estate plans, has a huge amount of sweat equity which will eventually reap benefits.

On the other hand, practices which are based on intensely personal high trust relationships between lawyer and client have little sale value, because retention of the relationship requires years of careful transition, and all with no guarantee.

Most attorneys and firms fail to track the statistics which will enable them to present a reasonable justification for the firm's value, whether needed for sale or merger. The same goes for individual attorneys at larger firms. For example, do you know where your clients are coming from, specifically, and how much revenue that represents to the firm? Don't think someone will pay you goodwill for your 800 number if you can't track the revenues it generates. As another example, how many estate matters does the firm open each year which represents return work on a previous will, trust or estate plan? How much revenue is generated each year on that work?

If you were thinking that I would present you with a simple checklist to follow to create your exit strategy in the space of one article, or even a series of articles, you're mistaken. Each of you has enough of an original situation to warrant an individualized strategy. The important thing — what I have tried to accomplish with this article — is for you to start thinking about it now. I will be glad to help you with this process. And when we've accomplished what we can, there are a whole host of financial advisors, consultants, career counselors, and others to enable you to further develop your strategy. I know many of them, and am always open to receiving recommendations from any of you as well, based on positive experience. Ok, so the time to start thinking begins . . . now!

A version of this article originally appeared in The Pennsylvania Bar News issue of April 4, 2011. © Ellen Freedman – all rights reserved.

This article is for informational use only and does not constitute legal advice or endorsement of any particular product or vendor.