



SUCCESSION FOR SUSTAINABILITY

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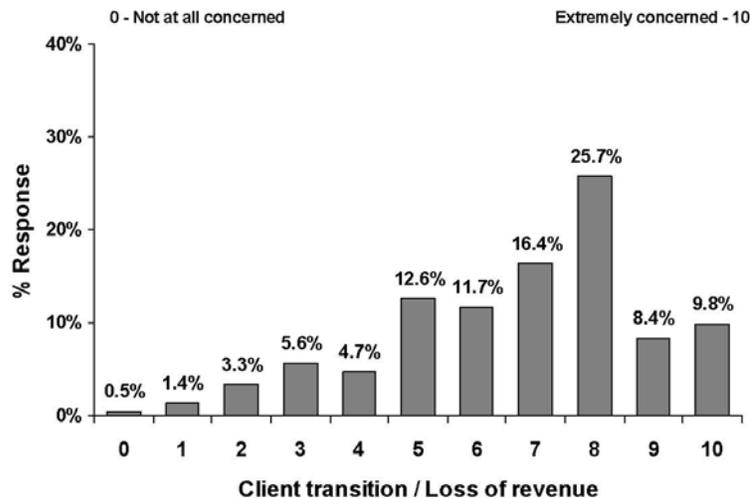
by James D. Cotterman

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I'm writing this article as the 2012 Summer Olympic Games come to a close. In four years the summer games will be hosted by Brazil. The Olympic website states that the process to select a host city begins nine years prior to the event with the bidding process. Operational planning begins five years out. An Olympiad requires extensive lead times.

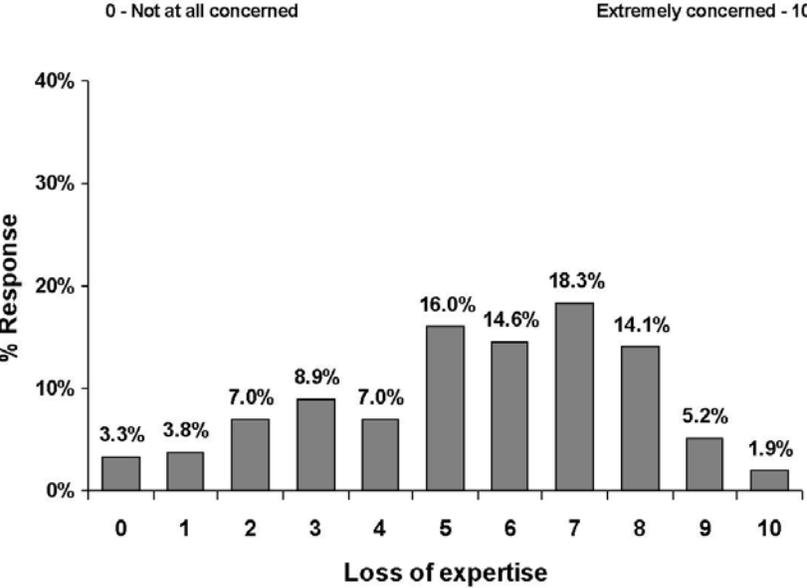
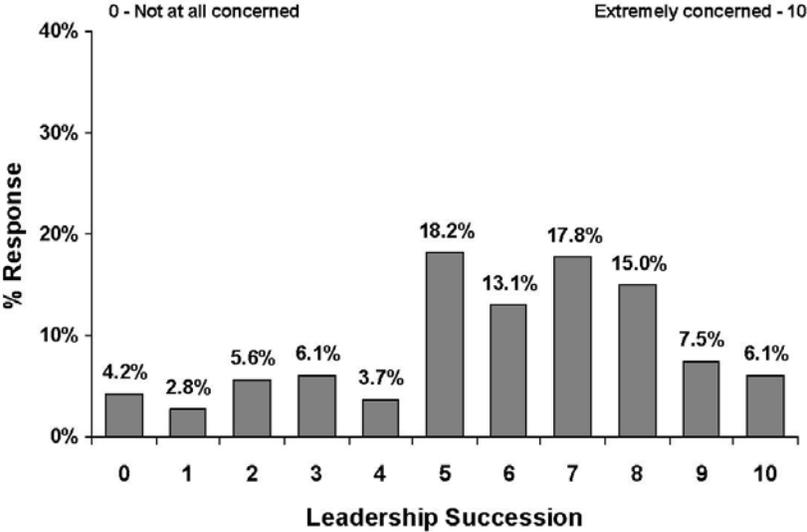
General Electric has had 12 leaders in the last 120 years, and has a history of great leadership. Probably its most well-known leader is Jack Welch, who said in 1991, a decade prior to his retirement, "From now on [choosing my successor] is the most important decision I'll make. It occupies a considerable amount of thought almost every day."¹

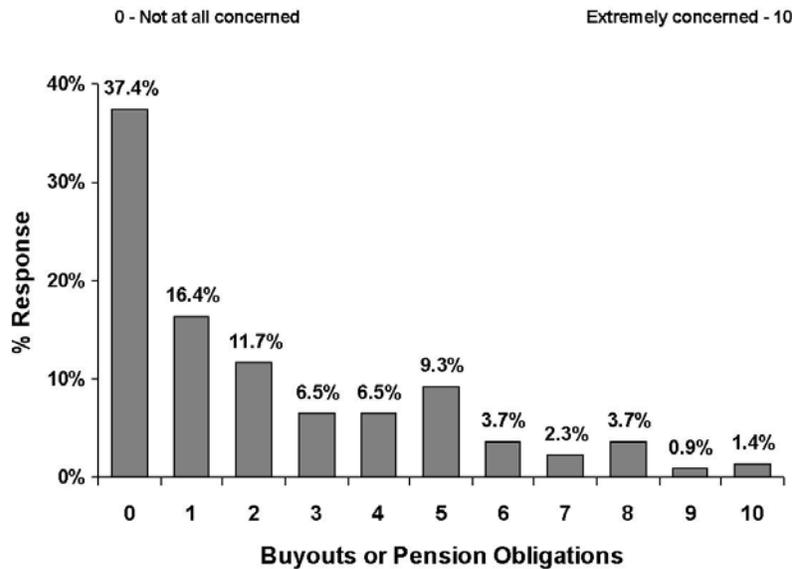
In Altman Weil survey, *Law Firms in Transition*², law firm leaders responding identified the retirement/succession of the Boomer generation (those individuals born between 1945 and 1964) as a key issue facing their firms. When asked about four succession issues involving the Boomers, the survey respondents rated their level of concern as follows:



¹ Built to Last, Collins and Porras, 1994 hardback & 1997 paperback, Page 169 paperback.

² 2012 Law Firms in Transition, an Altman Weil Flash Survey, Conducted in March and April 2012 by Altman Weil, Inc. with 238 respondents out of the 792 US law firms with over 50 lawyers at that time.





The last response on “Cost of Buyouts or Pension Obligations” was surprising. The costs of retiring partners includes a return of capital, additional buy-out (if any), and un- or under-funded retirement obligations (if any). Compensation, capital and retirement entitlement in law firms tends to be skewed towards the more senior pre-retirement group.

In 2005, likely more than half of the total US lawyer population was comprised of the Boomer generation³. It is also likely that the Boomers in a firm today would represent about half of its lawyer population and certainly receive quite a bit more than half of the partner compensation and capital. The older sub-group of the Boomers (ages 57 to 67) are likely to be the firm’s top producers, highest earners, hold the highest capital account balances and accordingly represent the bulk of the Boomer dollar obligations.

³ Analysis of data from the 2000 and 2005 Lawyer Statistical Reports published by American Bar Foundation. In 2000 the Boomer generation lawyers were approximately 56% (582,497 of 1,034,900) of the total lawyers in the report. In 2005 the study used a different age bracket at the upper end of the Boomer generation, which likely overstates the Boomers as a percentage of the total population by some margin when calculated at approximately 62% (685,966 of 1,103,035) of the total lawyer population.

Retirement Movement

Demographic analysis⁴ shows that the 65 and over population in the US will grow much faster than the rest of our society. Law firms and their clients are all subsumed within this data and these trends should affect how law firms plan.

A law firm’s senior lawyers should be at the pinnacle of their careers. They have a client following, are well known/respected in their market, have life/work experiences that permit them to provide very nuanced advice and counsel. It is natural for some to turn their attention to new challenges beyond the law, while others cannot fathom doing anything other than continuing to practice. A 2007 study⁵ discovered a fairly broad range of views regarding personal retirement plans.

Calendar Year	Population (000s)				Dependency ratio	
	Under 20	20-64	65 & over	Total	Aged (1)	Total (2)
Actual						
2005	84,158	179,763	37,231	301,152	0.207	0.675
2010 (3)	85,230	188,906	40,896	315,032	0.216	0.668
Intermediate Assumption Projections						
2030	94,500	202,741	72,609	369,850	0.358	0.824
2040	97,857	213,901	79,702	391,459	0.373	0.830

Notes:

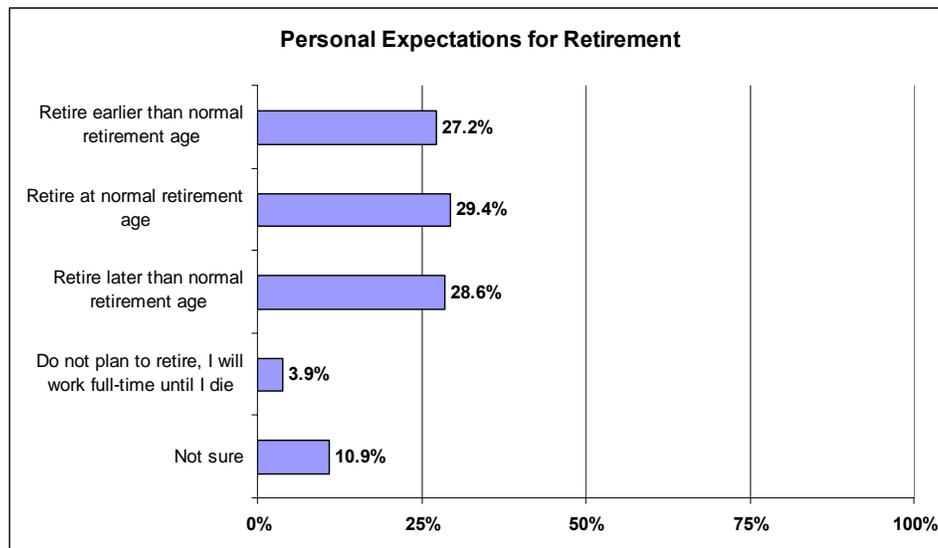
- (1) Ratio of the population at ages 65 and over to the population at ages 20-64.
- (2) Ratio of the population at ages 65 and over and the population under age 20 to the population at ages 20-64.
- (3) Estimated.
- (4) Historical data are subject to revision.
- (5) Totals do not necessarily equal the sums of rounded components.

Source: The 2011 Annual Report Of The Board Of Trustees Of The Federal Old-Age And Survivors Insurance And Federal Disability Insurance Trust Funds

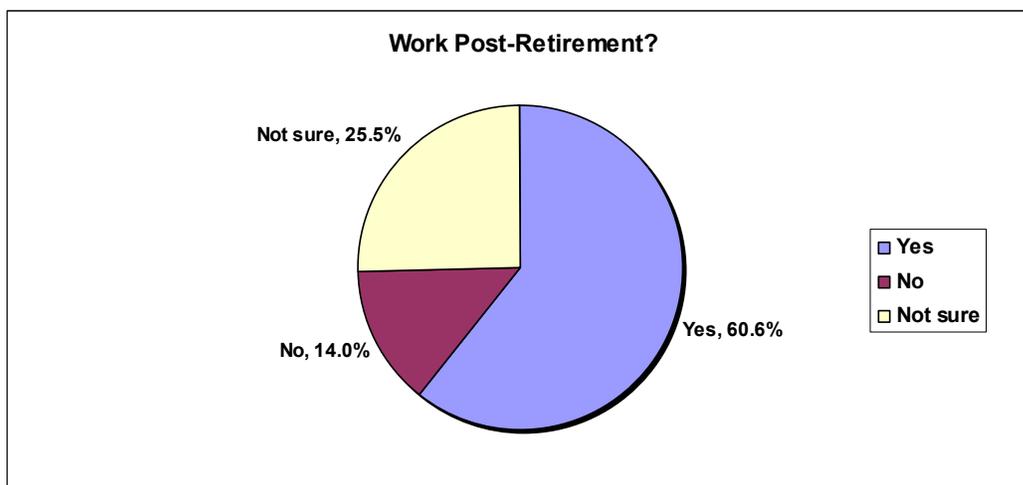
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⁵ 2007 Lawyer Retirement, An Altman Weil Flash Survey, Conducted in It was conducted in September 2007 and polled managing partners and executive committee members in US law firms with 50 or more lawyers. It reports responses from 521 individuals, or 12% of the 4,345 surveys sent

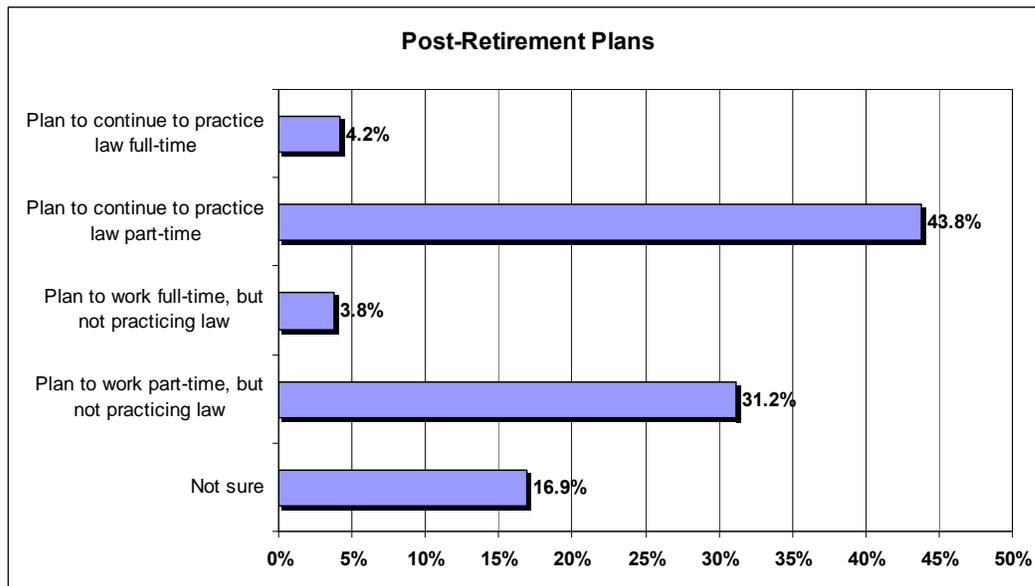
What are your personal expectations for your own retirement?
 (“Normal retirement age” is defined here as Social Security retirement age.)



After retiring from your firm, do you plan to continue working in some capacity during retirement?



Which of the following best describes your retirement work plans?



The challenge facing law firms is how to plan for such an array of likely departures from law practice. Senior leaders in law firms can best address this with a program centered on early dialog and flexibility. While it may be hard to say with accuracy when one wants to retire and what his or her post-employment retirement activities will be (much changes due to personal and family situations and the unexpected turns of economy and health), the firm can begin an open exchange of views to frame what preparatory steps are appropriate. Regular, open and candid exchanges provide opportunities to revise plans and refine actions.

A senior partner at a law firm once said to me that his goal was “to have no client responsibilities and no work to do on my last day at the firm.” He went on to say, “But I sincerely doubt if I can have all that happen on the same day!” That sums up nicely the ongoing juggling act engaged professionals have as their careers enter their final years.

Here are four key areas around which firms should develop their succession and sustainability program.

Transfer of Relationships, Knowledge and Presence

Law firm leaders can better preserve client relationships by expanding and extending the number of individuals actively involved with a client. By establishing deeper and broader relationships employing multiple lawyers at the firm and multiple members of a client organization, the firm will strengthen its relationship with a client. The firm should focus its efforts on creating both lateral and vertical relationships. Of particular importance to sustainability are the vertical relationships. The younger lawyers in a firm

are not going to hold onto a client unless the future decision makers in the client organization know and trust them. And trust is not earned overnight.

Servicing a client with a team of lawyers best serves the firm's goal of transferring skills and knowledge from a senior practitioner to others within the firm. If the senior lawyer who holds the primary relationship is a good teacher and developer of talent, this will occur quite naturally. If not, then leaders should seek assistance in creating the best possible environment for this to happen. Such assistance may come from within a firm's own HR department. Otherwise, a firm may need to seek assistance from outside executive coaches/trainers.

Finally, the senior practitioner can assist younger colleagues to get established in public forums relevant to the specific practice and the client's business, possibly by sponsoring their membership or selection to a committee. From there, the individual should make the best use of that assistance by devoting sufficient time, energy and talent to that organization's goals and networking with other like-minded individuals.

Performance and Productivity

How law firms measure lawyer performance can make it more challenging to transition key client relationships. The legal profession, at least in the US, is heavily invested in merit-based pay concepts. The top factors law firms use to make pay decisions are productivity as both a working lawyer and business generator (both measured on a collected fee basis).⁶

How then does a law firm pry productivity – in terms of working lawyer and business relationships – from aging partners in a way that meets the interests of all stakeholders? A partner's economic leverage is his/her book of business. The retention of relationships up to the moment of retirement is important to status, ego, annual pay and the ability to negotiate future income into the early retirement years. And high individual working productivity is a matter of pride, if not a source of status. As many partners have said, "It's how we keep score." However, both personal productivity and business relationships are likely to decline as one approaches retirement.

Yet, productivity, relationship development and succession planning are precisely what must be done. The firm should acknowledge the importance of client relationship succession, accept the time and "off the clock" effort transitioning requires, recognize those efforts when attempted and reward the results as they occur. Further, there is a balance between those receiving and giving that is necessary for this collaborative effort to be successful. The firm must also balance these ideals with the necessity of maintaining productive timekeepers to ensure a profitable law firm.

⁶ See *Survey of Compensation Programs in Law Firms, 2009 Edition*, Incisive Legal Intelligence Surveys.

Personalities and Practices

Lawyers' diverse personalities will be a challenge. Some practitioners will undertake to be benefactors, introducing team members to their clients, encouraging and orchestrating opportunities for new relationships to be established. They will do so because they understand that it is in the best interests of the firm and that it allows them to grow their practice even larger. Some practitioners will be less generous, not actually impeding transitions, but certainly not taking the lead to ensure they occur. And finally there will be those who hold their client relationships close, allowing only the most superficial contact with others in the firm.

Likewise among the beneficiaries of relationship handoffs we find those who instinctively understand the importance of relationships and actively build them within client organizations. Others wait their turn, looking to inherit the client when the senior partner retires. And still others prefer to simply sit at their desks and solve legal problems, possibly thinking they would be much happier if the clients would simply post the work in their inboxes so the time and effort of building relationships could be avoided.

The unique characteristics of different types of practices will also shape succession opportunities and challenges. Some practices require the partner to be heavily involved in the delivery of the legal services. This is true for practices that require senior level advice and counseling in which the experience and expertise of the individual is critical. Succession in these areas will be quite difficult. Other practices may lend themselves more easily to leveraging major aspects of the work and offer multiple opportunities to develop additional relationships.

And finally, some practices are transactional, while others are more ongoing. Each will present different opportunities and challenges. Transactional practices turn over clients more quickly and rely more on reputation and referrals to continue.

Pay Programs

Pay proportional to performance[®] is an essential characteristic of a good pay program. Such programs do not cause the right behaviors, but should recognize the right efforts and results and ensure they are rewarded appropriately. Succession for sustainability should become a part of the firm's culture and values and should be included in its strategic thinking. Incorporating these behaviors and rewarding them is valuable, if for no other reason, because it is easier and less expensive to keep clients you already have in this very competitive legal market, than go out and try to take business away from another law firm.

Compensation decision makers need some degree of flexibility in how they assess performance. Because most law firms have a mix of the partner attributes and practice characteristics mentioned earlier, one single approach is unlikely to provide a good

outcome. So the pay program needs a certain amount of flexibility if decisions are going to support management's efforts to obtain the desired results.

Consider a typical compensation program that recognizes originating, working, and responsible lawyer fee collections – the basic production oriented system. The management message it supports is to develop a client following, work hard, and manage the portfolio of matters. The message to invest time off-line to transfer relationships, either as benefactor or beneficiary, is not supported. The older practitioner may view splitting credits for origination and responsibility, while logical, as a sure path to lower compensation. And the younger practitioner sees only his/her independently produced book of business as the Holy Grail. Neither is 100% right or wrong. It requires a blend of independent and collaborative efforts.

Many law firms continue to retain unfunded deferred compensation arrangements as part of their withdrawal provisions. Much has been done since the late 1980s to eliminate, reduce or manage the projected costs of such plans. One new development might actually revitalize those programs. Some firms have experimented with paying departed partners in excess of their capital accounts to recognize value that partner has left in the firm. The clearest and most tangible expression of that value is the clients who remain with the firm or, essentially, the future fee receipts that the firm will earn from those clients.

This is tricky to measure, because the legacy a retired partner leaves requires ongoing trust involving the successor to secure and maintain the clients. In today's competitive environment, clients are rarely "passed on" from one generation to the next without the risk that they will consider moving to a new firm. This means that younger partners must also contribute to the succession efforts and their independent efforts to establish trust with and retain the client must be recognized and rewarded as well.

In summary, law firms would benefit from the Olympiad's long-term planning horizon. They would also benefit from General Electric's view that succession is critical to sustainability and that it should command leadership's full attention.

About the author:

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