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The Legal Profession in Transition

By Stephen P. Gallagher and Leonard E. Sienko, Jr.

In September 2004, Leonard E. Sienko, Jr. and I teamed up to write our first article for the *NYSBA Journal*. The title of that article was *Yesterday's Strategies Rarely Answer Tomorrow's Problems*. In October 2015, we got together again to write a follow-up article, *For Sole Practitioners, The Future Is Not What It Used to Be*. We thought this might be a good time to once again share our thoughts regarding today's challenges. I generally focus on the trends, while Lenny tempers my theories with practical, real-world tales. He has been in the trenches as a solo practitioner in Hancock, N.Y., for 39 years.

Aging of the Workforce

We are both members of the baby boomer generation born between the years 1946 and 1964, so we are part of the group that is responsible for changing the traditional demographic shape of our society. The legal profession, like all of society, is being challenged to design

new approaches that would give lawyers more and better choices for living longer, healthier lives. We are finding that young lawyers as well as mid-career lawyers are just as interested in discovering new ways of knowing and being as more senior lawyers who may be looking to begin winding down their life's work.

Like it or not, traditional forms of retirement are in the process of being replaced by a new stage of life that starts for many in midlife and lasts well into true old age. This new period that essentially amounts to a second half of life is, as yet, ill-defined, but this new stage in life promises to allow boomers to continue contributing to society in new ways, while they pursue deeper meaning and fulfill broader social purposes.

LS: The new reality is that many lawyers and others are in no position financially to retire. A quick perusal of the television ads bombarding prospective retirees about how much money they will need to maintain their standard of living (10x their

annual salary by age 67, says Fidelity) makes one feel less than adequate.¹

We believe aging of the workforce is a phenomenon that law firms and bar associations can no longer ignore, so we hope to start a dialogue about how the legal profession can better utilize the skills of older attorneys, age 55 and up, currently in the workforce. We are also hoping to convince bar associations to create forums that would enable young lawyers to meet with experienced lawyers for support in finding their place in the profession. The third challenge we see before us will be to convince law firms to allow transition planning to begin much earlier. We believe everyone who holds a license to practice law needs to be involved in figuring out how best to take advantage of this aging workforce.

The New Face of Retirement – Encore Careers

Baby boomers are now entering the traditional retirement years to the tune of 3.5 million people every year, including many individuals who are beginning to challenge traditional views of retirement. We now know that many baby boomers are going to work longer than their parents did, whether they have to, want to, or are compelled to do some combination of the two. Even in the legal market, we are beginning to see more and more boomers looking for a second, and even a third, “encore career,” as their health and energy hold out well into their 80s and 90s.

Unfortunately, lawyers who are embarking on these encore careers currently cannot expect smooth transitions because employers – and that includes law firms – generally aren’t helping. Up until now, almost all the drivers to change the status quo have come from individuals themselves, as they refuse to walk away from meaningful, productive careers to be permanently put out to pasture.

Managing the New Path to Transition Planning

Transition is the process of letting go of the way things used to be and taking hold of the way they subsequently become. Transition can be triggered simply by recognizing that you are beginning to seek an alternative to your current state. I see this desire to transition in young lawyers who are not advancing in their careers. Transition occurs again with mid-career lawyers who realize they may not want ownership responsibilities.

In my coaching career, I am also beginning to see increasing interest from lawyers in mid-career who are looking to transition away from full-time practice much earlier than in the past. There has never been much of a market for part-time lawyering, but more flexible retirement options are needed in order to create greater opportunities for all lawyers. Boomers are not necessarily seeking retirement, but many are now seeking something new and different.

Mid-career lawyers and younger professionals must balance busy work schedules with added responsibilities to support aging relatives, adult children, grandchildren,

and siblings. This multi-generational family dynamic is the new transition “wild card.” Far too many law firms follow the mistaken idea that the best way to help people through this transition period is to deny the transition is even taking place. We believe that law firms and bar associations can do much more to help talented lawyers through these periods of transition.

LS: Sandwiched between caring for elderly parents and paying for their own children’s college, many allegedly middle-class lawyers keep working because they have to. Faced with the spectacle of rock stars touring well into their 70s, we are also seeing lawyers of the same age doing the same thing for the same reason – they need/want the money. Paul Campos’s article The Collapsing Economics of Solo Legal Practice states that the average compensation for solo practitioners has declined sharply over the last 25 years. He also suggests that the median solo practitioner is earning less than \$35,000 per year (and this statistic does not include new attorneys).²

I have found that those firms that prize the interdependence and mutual responsibility among all generations are much better prepared to help their employees through these periods of transition. Senior lawyers in these firms seem to approach retirement as a way of gaining renewed purpose in their lives. Everyone looks to each other to find something different, perhaps



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something novel, and certainly something interesting at deeply personal levels. Law firms play an increasingly important role in changing their culture to allow life's transitions to take place.

LS: For solos, the new symbol of retirement is no longer the gold watch or mounted gavel. The solo looks forward to an actual vehicle, i.e., the 18-wheeler truck, which pulls up out front of the office as muscular youngsters scramble down and around hauling out your boxes of files and toss them into the maw of a giant, on-board shredder. Thirty or 40 years of files, hopefully stripped of original documents, previously safely delivered to the clients, are ground up before your very eyes. There is something very final about watching years of your work life ground up and whisked away. There is certainly finality about the bill for the service, which is usually required to be paid in advance.

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A few hours with the shredder truck and you'll understand "transition."

Case Study 1 – Solo to Solo – Then Sold!

Whenever anyone decides to wind down a law practice, selling it to a partner or third party, or bringing in a protégé to transition the practice over time, it is always a challenge. The following comments from a friend may be helpful in understanding why winding down a practice can be so challenging:

I'm still working full time. All of my associates left me last year, I'm back to a solo. Two left the firm at my request. One left to work closer to home – he had a 45-minute commute each day. I had mixed emotions – he was a nice guy and well qualified – but he married a socialite and didn't want to work very hard. The fourth one hurt! He was the one who was supposed to take over the practice in three or four years or maybe sooner. He left, allegedly, to go to a bigger firm so he could work on "bigger estates." Totally unexpected, one-week notice.

I just no longer have my heir apparent, and at 66, I not only don't have anyone on the horizon for succession, I'm now quite gun-shy to hire anyone for that purpose. My thoughts at this time are to just continue for another couple of years, and then see if I can find someone who wants to buy the practice.

On a positive side, I know this individual has been able to continue building his practice for a possible sale sometime in the future. I see far too many solo practitioners who have completely given up on finding another lawyer to work with in transitioning ownership. This is a mistake!

It is our belief that lawyers hopeful of winding down their law practice need buyers, and there are large numbers of less experienced young lawyers looking to position themselves to buy. At the same time, young lawyers who are coming out of school with far too much school debt need training and patience to accumulate the funds to buy into a practice.

LS: What young lawyers need is a system similar to what has been in place for new doctors in rural areas for many years. I well remember in my first few years in practice, serving on a search committee to attract a doctor to our small, rural community. It wasn't enough that there were state and federal programs in place to offer financial incentives and loan forgiveness for practicing in a "medically underserved area" (this was 35 years ago; but the medical student loans were enormous by 1980s standards). The community had to put together a package for the young physician, which would provide free rent, a guaranteed salary, office staff, and full benefits. Some candidates needed full employment for a spouse.

I often thought about the irony of sitting on that committee, suggesting additional benefits for the new doctor, as I figured out how to pay my own rent and start a practice, unable to afford a secretary. It was clear the community thought they needed to provide financial assistance for the new doctor – not the new lawyer.

These days, anecdotally, I don't see much in the sale of practices from retiring solos to young attorneys. I do see older attorneys being taken on as "Of Counsel" for larger firms in nearby cities, feeding their remaining clients to the big firm. The occasional purchase of a practice, by a younger attorney or anyone else, more often than not consists of a purchase of the real estate and furnishings of the solo's law office. If we want to assist young attorneys in taking over "practices" from retiring solos, we need to figure out a way to come up with low-interest financing for such purchases. It would be nice to trade a law office in wintery upstate for a condo in a warm climate. That's the kind of transition I'd like to see a lender support. Maybe solos need a new type of revolving loan fund, a new type of cooperative financial setup.

Case Study 2 – Firm to Firm – New Beginnings

With the large number of experienced lawyers positioned to leave the profession over the next three to five years, I believe it is critical that law firms look more closely at their own partner age profiles, practice area coverage, and ongoing client relationships. I hope the following story puts a human face to some of the problems and the opportunities.

John admits to being over 65 now. He reports that a year ago, he left a law firm partnership (five attorneys plus himself) to join another local firm as Senior Counsel (two partners, one other Senior Counsel, and four associate attorneys). After notifying the clients he was serving that he was leaving, he was able to take almost 100 percent of those clients to the new firm.

His association with his new firm was enthusiastically supported by the entire firm, its attorneys, and its staff. He was able to bring added value to this firm as he filled a “niche” of sorts and added to one of its practice areas. He has been able to support the clientele of the new firm, and the attorneys in this new firm have provided input and advice for “his” clients. The relationship is based on mutual respect, and it has provided opportunities for added growth. The attorneys are able to consult with each other and share advice and creative thinking for the clients. Needless to say, this transition has been successful. This new firm has been able to take on cases where John’s focus can add value.

John had grown tired of the routines of the old firm, and he wanted to continue to learn new areas of practice, so he decided to start anew with a new group. He remains in good health and he again enjoys meeting with old friends to inform them of his new situation.

If firms ignore the interests of aging partners, there is a strong likelihood that many talented senior lawyers will move to other firms or join the ranks of sole practitioners with renewed energy and a greater sense of purpose.

LS: The single greatest challenge to the profession is the number of senior lawyers who actually cannot or will not retire. Over the past 30 to 40 years, the number of solo and small firms has expanded to meet market demands, and today, many of these same practitioners find themselves unable to retire and still maintain anything even close to their current standard of living.

Most of the existing retirement/succession planning books assume practitioners have ample resources for voluntary retirement to take place. Just surviving this transition into retirement is going to be the biggest challenge for many aging lawyers and the legal profession as a whole. I’d caution that we could be seeing large numbers of 70-year-olds who can’t support themselves if they retire. It could get ugly, especially with pressure from “kids” graduating with a quarter million dollars in law school loans to pay back, who are willing to work for much less than experienced counsel.

Whether the baby boomers are planning on winding down a law practice, selling to a partner or third party, or bringing in a protégé to transition the practice over time, it is our belief that bar associations can do much more to help bring senior lawyers together with younger, less experienced lawyers to find ways to support these transition efforts.

Case Study 3 – Growing from Within – Hope for the Future

Chuck is a mid-career, solo practitioner who knows he wants out within six to 10 years from the law practice he has built over 27 years. Three years ago he made the decision to hire an associate – one of the scariest decisions of his professional life. This turned out to be one of the best decisions of his professional life as it opened

his eyes to light at the end of the tunnel as well as a real possibility that what he built over 27 years actually had a value.

Chuck knows he is the type of person who will never fully retire from the business of running his law practice, but Chuck is now seeing his associate’s potential to (1) assist him with building his practice as the associate is a true rainmaker, and (2) a real potential buyer of the practice as his associate sees the true value of the practice.

Chuck enjoys being a mentor, in part, because he never had a mentor when he was building his practice. Chuck hopes that by sharing his knowledge of the law and the “business of law,” he can help his new partner be more successful. ■

1. Sharon Epperson, *What’s the magic number for your retirement savings?* CNBC, www.cnbc.com/2016/02/11/whats-the-magic-number-for-your-retirement-savings.html (Feb. 11, 2016).

2. Paul Campos, *The collapsing economics of solo legal practice*, *Lawyers, Guns & Money*, www.lawyersgunsandmoneyblog.com/2015/05/the-collapsing-economics-of-solo-legal-practice (May 25, 2015).

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