

Transition and Retirement Planning: Ethics Issues for Solo and Small Firm Practitioners

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Presenting our program today we have Robert Louis, Stephen Seckler, Edward Cheng, Thomas Lenfestey, Bill Hairston, Dennis Rendleman, and Julie Jason. Robert, you may proceed with the program.

Robert Louis: Thank you very much. I want to do a brief introduction. We have a lot to cover today and I want to get right to it. This is a program that we have discussed and planned for several months in the Senior Lawyers Division. It's aimed specifically at sole practitioners and lawyers and small firms. Although, there is information here that can benefit all lawyers. We are very pleased to have an outstanding group of speakers with extensive experience in this topic.

Our challenge will be to fit it all into two hours, but really we're only presenting the highlights of a very complex process. Let's get started with the presentation by Steve Seckler. Steve has extensive credentials which you can read online as do the other speakers who we'll introduce later. Steve has some important insights to offer as we begin our discussion. Steve?

Stephen Seckler: Okay, thanks so much. I'm really excited to be here. We're going to get started with a poll, and first poll question is, what is your primary reason for attending this session? If you could all click on your screen and answer that question just so that we as the panelists can get some sense of who is here, we would greatly appreciate it. I know that I'm attending the program because I want to learn as much as I can.

I've been really enjoying learning a lot about this subject. Particularly since the pandemic started I've gotten much more interested in working with senior lawyers. I am just about, I guess, technically a senior lawyer myself and we are really excited to have so many people coming here today. We're going to just keep the polling going for a little bit longer. If anybody who hasn't responded could please respond. We'd appreciate and we will start with this one question, and then I have a second question.

Are we almost done? I am not controlling the poll, but it's being closed out by our handy trustee member of the team at the ABA. I believe we are just about finished. It

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looks like we have all of our answers in, is that correct? I believe I don't need to do anything in order to answer. The second poll. We've got a mix here of people who are thinking about retiring, mostly people who are thinking about retiring. Some are thinking about selling their law practice.

Now, what is your biggest obstacle to making a change? I will be talking about some of these issues in a few moments, but we just wanted to find out why all of you are here. Again, if you can please finish responding, we would greatly appreciate it. I'm supposed to be like the auctioneer here. I'm not supposed to stop talking. I'll just keep blabbering away here until we get enough people answering the questions. Not surprisingly it's looking like we have a lot of people who are not sure and don't have a plan. We have a mix of people who are thinking about retiring in the next 12 months or thinking about making some kind of a transition in the next several years. I think we are probably done with our polls. The polls have finished. Thank you, Sabrina. I guess I can now move along.

Whoops, I don't think I did that. Let me see, I'll push back the slides because I am not going to be going through slides. You're just going to get to listen to me. We have a nice mix in our audience today. My name is Steve Seckler. I'm in the Boston area and for the last 20, 25 years, I've been coaching lawyers. I've also done some recruiting, but I'm going to tell you a little bit about that in a few minutes.

Some of you are here because you're thinking about making a career transition in the next few years. Some of you are here because you want to sell your law practice. Some of you are here because you're at firms with aging partnerships, and you're trying to figure out what to do about that and how to help the lawyers and the senior partners work through these issues. We'll be talking about a mixture of business issues surrounding succession, and you'll get a good dose of ethical requirements. We have some great panelists that are going to be talking about that.

We'll also hear an overview of the financial planning considerations in making a transition which are really crucial and you guys have already indicated that in your polling answers. We will end with a case study. Before we get into these issues, I'd like to spend a few minutes discussing some of the more existential issues that senior lawyers face in making a transition. I'd like to start with my own story.

In 2017, my wife and I became empty-nesters. At that time, we joined a group on aging, which met for the better part of a year. It was a great group of professionals, there were a couple of lawyers, but it was really a mix of all other professionals. It really motivated my wife and I to think more critically about what we wanted from our lives now that our children were out of the house.

We didn't get the memo, everybody else in the group was at least 10 years older than us. They were all at different stages of life, but what was so great about it was that it made us realize that it's never too soon to start planning for the future. In 2019, I bought myself a nice Martin guitar and started playing again for the first time in years. I also began thinking about putting a lot more energy into my coaching business and shifting away from recruiting.

In early 2020, I went back out on my own for the third and final time, I call it Steve Seckler, 3.0. I became much more selective about the searches I would work on. I shifted more of my energy to coaching. It feels like my authentic self to be coaching, especially when I'm helping lawyers focus on what they want to achieve. I started writing more about career transitions, I started writing about more on marketing, and those were two areas that I was already coaching on. I began recording more podcasts interviews about these subjects and I began taking on a lot more coaching clients.

At the time I thought I would increase my coaching business slowly. Recruiting can be pretty lucrative and despite my frustration with it, you don't have control over the candidates. You don't have control over the clients. My running joke is that I keep a defibrillator by my desk. While recruiting has been profitable for me, I've always gotten a lot more meaning from coaching. Then in April 2020, both of my parents died of COVID.

While it was very sad to lose my 95-year-old father and 94-year-old mother in the same week, there were some mixed blessings. They had lived long lives, enjoyed more than two decades of retirement, didn't suffer, and they were with each other to the end. We had moved them to Boston about a decade before and saw them a lot. Because of COVID, all of my adult children were living with us, and we had two lovely Zoom memorials that brought together friends and family from all over the country. This experience made me think even about how I wanted to spend the next stage of my own career.

My father's legacy is one of integrity. He taught me that there was nothing more important than honesty in life and in business. While there are ways to be a recruiter and operate with integrity it is challenging when you're being rewarded for consummating deals. I decided that coaching is the way I could operate at the highest level of integrity. It didn't hurt that we had paid our last college tuition and that we had purchased our home in 1993. That gave me more options and I feel very, very fortunate about that. At that time, I also began to do more coaching work with senior lawyers who were thinking about these issues.

The pandemic has been a catalyst for many lawyers like you who have been practicing for decades. It was conversations with our financial planner and with some of my coaching colleagues that finally convinced me that the time was right to focus heavily on the work that gives me meaning. While I will continue to help a select group of partners and associates make lateral moves as a recruiter, coaching is where I am focusing my own next stage. It took a few years of planning to get me to this point. Which leads me to the main point I'd like to make, and the main point I'd like you to take away from this program. You need to have a plan and planning takes time. That's why it's called succession planning, and that's why I call my own work with senior lawyers career succession planning.

The second point I'd like you to take away is that there are many people and resources out there to help you, including members of this panel. As lawyers, we are trained to think we can go at it alone. Whether you're thinking yourself about making some transition or trying to effectuate a succession plan at your firm, these are difficult transitions that can take time, you need to plan if you want the transition to

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go well. Your clients need time, your firm needs time, your family needs time, and you need time, and it's hard to do this all by yourself.

Let's talk a little bit about why succession planning is so important for your firm. I'd like to share several stories to illustrate the importance of this. A few years ago, I worked with a young partner in a boutique law firm which serves high net worth individuals and family offices. My client enjoyed the sophistication of the work and for the most part, he got along well with his partners. About five years ago, the senior partner at the firm, who he considered his mentor told him that he was in line to inherit the practice. The tacit understanding was that my client would sacrifice some income in the present because, at some point in the future, the practice would be his.

For several years in a row, the senior partner kept telling my client that the next year would be the year that the transition would begin, but year after year, nothing changed. My client felt undervalued and frustrated and approached me for career coaching. Ultimately, he decided to leave the practice and launch his own firm. He realized that "some point in the future" was not coming anytime soon. After launching his new firm, he reached out to his clients to announce the change. Many of them followed him and his old firm lost a significant amount of business.

The second story was one that was shared with me by the CEO of a mid-sized firm in Boston. He was a senior partner at the firm, who had demonstrated no interest in scaling back and had taken no steps to transition his practice. While many lawyers like many of you can be productive well into their 60s, this partner had already begun to show signs of cognitive decline by the age of 70.

At first, younger partners began to notice, then some of the clients began to notice. Despite this, the partner was unwilling to start transitioning his clients or even having a conversation with the firm. Eventually, clients began leaving the firm, especially when there had been management changes including succession with their client companies. Eventually, the partner left the firm, and sadly, he passed away one year later without having had the opportunity to enjoy any kind of retirement or career transition.

The final story is of Bill Lahey, which I wrote about in the materials that I included. Bill was an environmental lawyer who decided about six years ago in the Boston area to make a transition. Each year for four years, he reduced the salary by 25%, and simultaneously reduced his hours the same amount. During that time, he made a conscious effort to transition work to the younger partners at his firm. During that time, he also conducted a series of mini-experiments to decide how he wanted to spend his time after leaving the firm.

He joined a number of boards, investigated pursuing a degree at the Harvard Divinity School, enrolled in a bioethics program at Harvard Medical School, decided not to complete the program because there were too many papers to write, and purchased a farm on the north shore of Boston. By the end of 2019, he had completely handed over all of his clients to other members of the firm, and today he enjoys to have significant civic and personal commitments which he enjoys, which includes some pro bono work.

I'd like to talk very briefly about why this is so hard for lawyers. I asked you in the polling question, what are your biggest obstacles? There are a lot of reasons why making these transitions are so difficult for many lawyers. People are living a lot longer and retirement can last a long time, and that's a scary prospect for many of us as professionals. Here's my list of seven reasons why these transitions are particularly hard for lawyers.

For starters, lawyers are risk-averse. If we don't know what's coming next, it's hard to leave what seems to be working. It's actually an occupational hazard of being a lawyer. We spend our days thinking about what can go wrong for our clients. That can get in the way of making our own change. Second, a lot of lawyers have trouble seeing a future without a connection to work because work brings status.

Third, for many of us, being a lawyer is strongly tied up in personal identity so leaving the practice seems like stepping into the abyss. Fourth, excuse me. Lawyers are always used to getting to the next level. If we leave the practice or make a transition, it's not clear what the next rung in the ladder will be. Fifth, lawyers believe that their clients need them and don't want to work with other lawyers.

Six, and this I think, is probably the hardest one for most of us. Giving up the income is hard. No one thinks they have enough money to retire. Bill Lahey told me a story that he went to his financial planner. He went to his planner several times, and he kept asking him, "Can I retire?" The planner kept saying, "Yes, you have enough money to retire." After his fourth or fifth visit to the financial planner, the financial planner said to him, "Bill, you don't need a financial planner, you need a therapist." We're going to be hearing a little bit more about financial planning later in the show, in the program, and I encourage you to hang on and listen to that too.

Then the last one is, seven is fear of obsolescence. Who am I going to be if I'm not practicing law? What do lawyers do in retirement? Retirement looks different for everyone. Many lawyers who retired continue to practice, but in different ways or in different fields. Some drop certain types of matters from their practice: you don't feel like doing certain types of litigation, or you don't feel like representing certain types of clients, but you do want to continue practicing. Some become ambassadors for their firms focusing on business development, recruiting, or just speaking at conferences.

Some take on mentoring roles at their firms. I have a client who's a litigator who is getting tired of the day-to-day combat of litigation, he's going to focus more on mediation in the next few years. Other lawyers enjoy careers in new fields, some start businesses, they care for grandchildren, many volunteers in or run nonprofits or do more pro bono work. Some pursue athletic or other recreational interests, take up writing, studio art, or music.

When my mother-in-law retired, she wasn't a lawyer, but she has a very interesting story to tell about retirement and a lot of wisdom on the subject. She became an affordable housing activist, she joined the temple choir, she traveled, she remained active on the board of trustees of her college, and she spent more time with my kids when we can get her to do that.

Here's your homework. Start a spreadsheet, keep a running list of activities that you might like to pursue. Make a column for the activities, and then make a column for notes. In the notes section, indicate what you might do to explore these activities, what steps can you take to try them out or reengage with them if they are old interests? Like for me, I used to play guitar, and I've started to do that again after many years. Making the list doesn't mean that you have to do anything now, just start the list. Don't evaluate what you are putting on the list. If it crosses your mind, add it to the list, just keep adding. When you're ready to focus on a plan, you'll already have a big head start.

I'd like to end by suggesting a process for addressing these challenges. This is the process I use with my clients that comes from the work of Dan Evans and Bill Burnett or with a design program at Stanford University. In their book, *Designing Your Life: How to Build a Well-Lived Joyful Life*, Bill and Dan talk about the elements of a good career search process. According to them, effective career exploration is like design thinking. When engineers set out to solve a problem, they invoke a number of things.

The first element is curiosity, being open to exploring the world, having an open and non-judgmental mindset about what you might do next. The next element is biased to action. Designers test things out. They create prototype after prototype, failing until they find what works and solves the problem. This is not the way most lawyers think. The next element is reframing. Reframing is how designers get unstuck. Reframing allows us to make sure that we are working on the right problem.

I'm talking about reframing in part, reframing some dysfunctional or self-limiting beliefs. Like I have to continue to monetize my law degree or I have to earn enough money to support every adult member of my extended family. The next element is awareness. Recognize that it's a process, mistakes will be made and prototypes will be thrown away. I mentioned Bill Lahey who started a couple of degree programs and jettison them when he realized it wasn't what he really wanted to do.

Then finally radical collaboration, getting input from others and collaborating with them, which means friends, family, colleagues could be working with somebody. Getting out of your own head and talking to other people is really important. I'd like to recommend a great workbook for anyone who would like to do some self-guided work. The book is called *Retirement by Design*, and it is by Ida Abbott. I'm a huge fan of Ida, she has been writing a lot about these topics the last couple of years. I had her as a guest on my podcast and her workbook is a great way to start doing some of this work by yourself.

I also have some other resources I'm happy to share with you, including a great checklist that Ida created. Just send me an email and I'll respond, it's steve@seckler.com and of course, I would be happy to speak to you about your own situation and see if I could be of help to you in your process. In conclusion, the excitement of retirement is that you get to choose what you want to do. If you have the means and the time to start exploring a transition, start now. You can start slow. Give yourself time to come up with a plan, start executing and make modifications along the way. Confer with your colleagues.

The transition will go a lot more smoothly than if you wait until you have no choice and seek out help. There is no reason to go it alone in this process. David Brooks of the New York Times wrote a piece a few years ago, talking about resume virtues and eulogy virtues. The resume virtues are the skills you bring to the marketplace. The eulogy virtues are the ones that are talked about at your funeral, whether you were kind, brave, honest, or faithful, were you capable of deep love? Senior lawyers who have achieved resume success and financial independence have the luxury of being able to focus on eulogy virtues? My final question for you is this, what are you waiting for?

Thomas Lenfestey: Thanks, Stephen. My name is Tom Lenfestey and together with Dennis Rendleman and Edward Cheng, we're going to go through the aspects of the nuts and bolts really of selling or closing your practice. Really I think Stephen did a great job of looking at what is it to look at retirement, to look at the next stage, and the motivation, some of the challenges that us as attorneys really have emotionally and otherwise. Really what we hope to talk about in the next few minutes is the structures, the paths that are open to you under the quote of selling or succession or retirement planning for lawyers.

Always, I look through it and go through the aspect of, the options are endless because the one thing and I think Stephen, as he noted, even though attorneys are risk-averse, they're also creative as anything. The opportunity to create your own succession strategy, to look at what works best for you, your firm, your clients, your community, the ethical opportunities or challenges that are there based on the nature of it is really yours to control. Hopefully, today over the next few minutes, we'll go through some of those options and it'll help you guide some of your decision-making wherever you are in your timeline to really look at those different structures.

First and foremost, I would just want to cover what this selling really means. When we talk about selling your law practice or selling your law firm, really we're talking about succession planning, we're talking about transition over time. It is essentially not about stopping the practice of law. As Stephen mentioned, it's looking ahead and taking the time to put a plan in place so that your firm or your practice has a plan for when essentially you are not there and maybe that is going to be a sudden event or maybe that is going to be something that you pick and choose when your retirement timeline is.

As I note to everybody really in my mind, selling or succession planning is really about if your law firm is going along and is a train along the train track, it is about you deciding when you want to get off, which stop are you going to get off that train? That's your personal decision. The train being your law firm or law practice is going to continue going forward with or without you. Do you have a plan for it to move forward as needed in the hands of another? Or have you decided that the train's going to pull into the house and that's going to be it, and that's the end of the firm? Again, those options and paths are for you, but it's about having a decision and putting a plan in place to affect that decision.

I also talk a lot about having a succession plan or selling is really practicing without fear. Once you can implement a disaster succession plan and an overall sells strategy or succession strategy, your personal timeline, and personal impacts that

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life may throw at you are at less risk. You have a plan. If life throws you a curveball, whether it's health or other events, you have a succession strategy for your firm so you can continue to practice law based on your timeline, hopefully, without that fear of the, "what ifs." What if this happens to me as a solo practitioner, what am I supposed to do?

Attorneys like to take control, take control of this piece. The selling the succession structure as you carry that forward. The last piece on this slide, just an overview of selling and succession is, selling and succession do take time for solo practitioners especially. If we sell a solo practice or we help develop succession strategies, the more time that you can give yourself, the better. That's easy to say sometimes hard to do. Again, if you remember that your personal timeline of practice isn't impacted by putting together a sell or a succession strategy, give yourself time to do so because it does take time to hand off the responsibilities and those different things that you have to somebody else.

Just flipping back real quick. Again, next to go through and cover the options and structures for selling. Dennis and Edward, I know you guys will chime in here as well, but really when we look at for selling a law firm or a succession strategy, what are those different options? I think Dennis also wants to talk about potentially the no plan option in a little bit more detail, but the no plan option is of course an option. Don't do anything and you can work until someone closes your office or you close it, you can wind it down.

You can go forward without a plan or your plan is to really close it down or anything else, but I would tell you, those are the ones that really don't go well. They really don't preserve your legacy or carry that forward. Dennis, anything to add to that no-plan option for those?

Dennis Rendleman: The no plan option is basically don't die because you're going to leave a mess for your family, for your clients, and for the courts. In some states such as Illinois, we have a rule where a receiver can be appointed to help wind down the practice, but that's the least favorable option. In some states, such as Florida, Delaware, Indiana, you are required to name a successor even as a solo practitioner, a lawyer who will take responsibility for your practice if you are unable to continue the--

Edward Cheng: If I can just jump in.

Dennis: Go ahead, Ed.

Edward: I was just going to say, I was in a situation where there was an attorney in Massachusetts who passed away in his 30s, and in his iota, there was over \$6 million and in his client files, there were over 322 matters. I had to figure out how to return all the files. We sent out 322 individual letters, and we figured out how to distribute most of the \$6 million, but it was not easy.

Dennis: One of the most important things is not waiting. We're talking about planning, there are planning things that you should be doing throughout your practice. One of the questions that has been asked illustrates some of the good

things you should be doing. A sole practitioner has noted that they never keep original estate planning documents of any kind. That should be an ongoing practice for everyone whether solo or not.

When you close a file, return all original documents. Keep only copies of original documents that you think you need for future reference. Return any original property that the clients may have given you so that you have purged the files so that when you dropped it in your 30s, like Ed's case, you don't have to worry about finding the client to return files. Additionally, some states have requirements, Illinois, for example, that a lawyer retains records of the name, the address, and the nature of the case that you handled. Those need to be retained in perpetuity. Also, they require seven years of financial records to be retained.

You need to have a person, preferably multiple people, who know where those are. If you look at rule 1.1 on competence which includes technical competence, you need to have someone who knows how to access those computer files. As Ed mentioned, the trust account, how to access those trust account documents. I have an aunt who has been dead for over 10 years, but I still get a notice on Facebook for her birthday. Someone needs to be in charge of taking care of all your computer access matters.

Generally speaking, putting all of this in some type of succession plan as Tom was talking about that is written up, that is, in essence, a will for the practice, that details everything you want done when you're no longer here is the type of succession planning that will make your heirs much less distressed about your departure.

[crosstalk]

Edward: Yes, I was going to say I can't emphasize enough the point about computer passwords, having someone know them because we were never able to access the decedent's computer. That was a tremendous hindrance to resolving his practice.

Thomas: Yes, I think one of the things with the no-plan approach is putting it off and not taking the time to really implement that will for your practices. As attorneys, especially attorneys who have had great careers, we pride ourselves on the legacy, our professional legacy. That is definitely not a way to have that legacy be remembered in a chaotic situation like Ed is sharing where they have to really go through and have somebody appointed and go through the mess that it is that you've left there. Just something to consider.

The other option, of course, when you talk about options or structures for selling or succession is truly to wind down over time. Your plan is to co-counsel cases. Be more selective in those cases that you take on. Really start to refer over different things to different firms, to trusted peers to try to slow down. The caveat there is to make sure that a surprise, a what-if life situation doesn't happen, but I think that's where a lot of solo practitioners go. They try to control the workflow overtime to do that by using co-counsel, again, just managing how much they want to handle and how much they want to send out. Any thoughts on that, Dennis or Ed?

Edward: Yes, I would just jump in to say my recommendation would be to either sell your practice or to merge or join another firm and then wind down in that context

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because there's a lot of value to your practice and to let it just die on the vine when there are clients and matters out there that needs service, to just let it just die on the vine without any guidance as to where those clients and matters goes, you're missing an opportunity to well to be paid for the hard work that you've done for your whole career in gathering these clients and gathering these matters.

I think, Tom, you're going to talk a little bit more about this. You can sell your practice. That's governed by Module Rule 1.17 called Sale of Law Practice or you can merge or join into another firm which is probably the better approach because Module Rule 1.17 has certain requirements and obligations that you may not want to follow. Tom?

Dennis: If I can jump in, there's another component to 1.17 that not all states, in fact, I'm not sure how many states have actually adopted it, but it allows the sell of a portion or an area of your practice. One thing to consider in and, of course, looking at your state's rules is to sell a portion of your practice that you're no longer wanting to continue, then continuing a lesser part of your practice as a way of winding down.

If you've been family law practice all your life and you've decided you've had enough of that and want to just concentrate on animal law, although those may be the same thing, you can sell off the family law practice and concentrate on animal law within the guidelines of 1.17 within your state.

Thomas: Yes, I think those are great points. Ed, to follow up to yours, you've built something. Of course, this is what I do, this is what our company does is help attorneys sell their practices so that they can monetize that value that they've built. What I always tell everybody is a lot of times, instead of winding it down and you going through all of those steps, shift that burden to somebody else as part of that sell transaction or succession, merger, whatever it is.

Yes, there's a lot of different ways versus just slowing it down to reap some of those rewards and shift some of those responsibilities and burdens on time to a party who would see it as a great opportunity for what you've built into. Can you continue that forward? As you both mentioned, another one of those options are really to sell the practice to an outside lawyer or an outside firm. One of those structures is, of course, an outright sell which 1.17, as you mentioned, does provide for. The other is a merger or a joinder where you would go through that aspect where I think of counsel relationship becomes very important and everything else.

The sell to an outsider, I think a lot of attorneys in the past have dismissed, but those structures are available. It's not throwing the keys and walking out the door. It is usually that merger, that joinder with of counsel over time. As Ed and Dennis have mentioned, the nice part is there's your succession strategy, there's your lawyers who can take over an event of disaster versus trying to do it on your own. There's great ways to monetize that. A lot of the sell transactions that we do are structured as merger-type deals or otherwise. There's a great way to be able to receive the reward for what you've built in your personal and your firm value.

As it applies to 1.17, an outright sell to a lawyer or a law firm, or if it's a merger, a joinder, an of counsel or maybe creating a new partnership. Ed, Dennis, anything to add on the ethical side to be considered as part of those structures?

[crosstalk]

Dennis: There are two things that can apply--

Edward: Yes, part of the reason why-- Go ahead, Dennis.

Dennis: Yes, first of all, that's the way traditionally a law firm was sold is a solo or a small firm would bring in new people, new associates, new partners, and that existing partners would slowly ride off into the sunset. That was the pre 1.17 process. The second point is simply merging or bringing in new people should not be considered a document dump where you take all your prior files and dump them into the new entity and ignore your responsibilities for those clients and those files.

You're still going to have the obligation that we discussed earlier to go through those files that you should have been going through at the moment you close them to communicate if there is some outstanding document or issue with those clients to make sure they understand that you're returning documents to them or that you're no longer going to be their attorney or that you're transferring and some of the same components that exist in 1.17 really should apply in the same setting, whether it's an outright sell or whether it's a merger or recombination of a firm. Sorry, Ed, go ahead.

Edward: No problem. The thing to think about as Tom had mentioned you're trying to monetize your practice and the key is always retaining clients. How do you retain clients in a way that whether you merge or sell your practice that that's where the value is? The more that you are involved in the post-transaction, the more likely the clients are going to and matters will follow you. Which is why the thing is a sell of practice under 1.17, you're required to provide a written notice to clients regarding the proposed sell, the client's right to retain other counsel or take the file, and the client's consent to transfer. It will be presumed if there's no objection within 90 days, but with a sell like that and especially if you're not with the new firm, there's a pretty good chance of a scattering of your clients and matters which substantially diminishes the value of your practice and so you've defeated the purpose of selling your practice.

Whereas, if you were to move to another firm you're still maintaining those relationships, and then over a period of time, you can gracefully and tactfully transition your matters to other attorneys, and especially for an existing matter, the new attorneys will be earning fees of which you can take a portion of it and that's part of your retirement plan. These are things that you can talk to and should talk to someone who handles these matters like Tom because there are ethical issues and ethical obligations. I've just walked you a little bit through 1.17 in terms of what you have to do to make disclosures to your clients, how you can treat your partners, and so on. Tom?

Tom: I think a great focus that we look at, and I think Ed as you bring up is what we call the transition plan, right? Stephen really hit on this at the beginning of the

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program too, it's, what is that focus? What is that plan? When we look at determining a value for a law firm or a law practice especially with solo practitioners or solo owners, so much of that value is attached to you individually. You can't throw the keys and walk out the door.

You're going to have a tremendous, as you mentioned Ed, loss of clients, loss of referral relationships and that's really, I think what the state bars and the ethics want to look to is focus on the clients, and a transition plan after merger, that time that you're going to be working as a goodwill ambassador, as Stephen mentioned or slow down to hand off cases. That has such an impact on making this a success for you, for whoever is your succession partner and firm and everything else and that's why the more time you can give to this because we really talk with everybody and Stephen and I have had some conversations about this, of worst-case scenario you want to give yourself 6 to 12 months post-sell, post-merger, post joining affirm as of counsel to really work on transitioning those relationships, everything else.

If you can live longer, it's wonderful but that transition timeline and transition plan is really what makes it all work depending on which option you choose or anything else. Dennis, you mentioned this as well, of course, one of the options, and sometimes one of the preferred options is if you're a solo, either you have an associate, or the idea is basically to hire an associate to bring them in and everything else, just a quick comment on that is even though that apprenticeship model, in theory, should work wonderfully, we actually see it not work great.

We see associates that come and go and never really move up to the partnership or the equity status that you want them to. Really, our option is don't put all of your eggs in that basket with, "I'm going to hire this attorney to come in and be my successor." That's great and that might be a key option, a key potential for you, but it also has lots of reasons why they may not be your buyer or your successor or anything else. They may not want to own the firm.

It's important to keep all these others structure options about merger, a joinder with another firm, sell to another attorney or law firm open in your mind, and to start that timeline and communication process early. Ed and Dennis, I don't know if you have anything to add to the "hire your buyer, hire that associate apprenticeship" model to chime in on or any of the other structures that we discussed.

[crosstalk]

Dennis: Certainly that model is something that needs to be outlined at the beginning of the relationship and not something that you play hide the pickle and hire someone and in the back of your mind, you say, "Gee, I'm going to do this," but rather when you bring them in that is part of the long-term plan with that individual. There have been cases, I know one in particular in Chicago of a leading litigation lawyer who kept everything in his own name and he died, and 50 associates and senior associates were told, "Thanks a lot. You're out of a job, goodbye." Cases were simply referred to other lawyers and that was the way it was done. That's no way to either treat your associates or treat your clients.

It's somewhat analogous as one person to ask on the question. It's analogous to a merger and it's the way it was done before. There's a story about after Lincoln was elected president and Herndon said, " Shall I take the sign down and just put Herndon's name?" Lincoln said, " No, leave it Lincoln and Herndon, I'll come back." That doesn't always happen. You need to have an agreement with the associate or associates that you're bringing in to know that that's what the deal is. Ed, go ahead.

Edward: I think [inaudible 00:48:58] is a practical one which is, if I'm trying to wind down my practice, the last thing I want to do is to have to worry about things like retaining the client files, training up this associate, making sure this associate is suitable to take over the client files and the matters. What I'm hoping for is some sort of the residual income from the matters after I retire, or, once I've wound down are, as I'm winding things down. To me, having an established firm that I can jump into works better than still having my name on a shingle trying to retire, and yet making sure everything still works smoothly after I really want to stop being a lawyer.

Those are all things I think you should be thinking about.

Thomas: I think [inaudible 00:50:03] just to sum that up, those are some of the basic structures. Of course, the no plan, hopefully, we've persuaded you not to go that route. The wind-down, which, as Ed and Dennis mentioned, has some drawbacks as well, loss of value, everything else. Then sale of your practice to an insider, an existing junior partner an associate, or to look to those outside opportunities, sale to an outside attorney, or a merger with another firm of counsel relationship. All those provide a lot of great benefits, so some things to consider based on that.

What I wanted to do, and for our section, again, compress this, sometimes we can do a full half-day on just these portions, but I did want to cover the steps to the process. Again, when we're talking about selling, we're really talking about that succession strategy. Dennis and Ed, I'd love your thoughts here as well, because the first step that I usually talk about when you're looking at starting that sale process, or considering it, is really to prepare yourself and your firm.

Stephen talked about this and noted Ida's book as well. Part of that is mentally, emotionally preparing yourself. Is to get yourself ready to do that. I think Stephen works with attorneys just to go through that coaching element. For all of us attorneys that like to say, "That's not going to be a problem." I have been at the closing table with strong attorneys, who all of a sudden have tears coming down their eyes, and it's tears of some happiness, some sadness, but those emotions can come out in different ways.

Again, this is what we do, we are known as attorneys, we see sometimes succession retirement as the end to that. Doesn't have to be. Stephen mentioned lots of ways to continue on and do that with a firm or otherwise, but it is to go in and prepare. What I would say is, prepare yourself financially, retirement planning or otherwise, mentally, emotionally, and then your firm. You don't have to do a full overhaul to prepare your firm to hand it off to somebody else, but I will tell you, you've got to take care of the problems.

Just like, if you were going to sell your house, and you've got some things that are on the honey-do-list or anything else that needed to be done, you need to do those to your firm before you really go forward or as part of that process. Get it in the best shape possible, determine those options that we just talked about. Talk to people, start communicating about ideas and your plans as part of this step one discovery.

Then really my aspect, and I can chime in a little bit more on this is, you probably, if you are going to look at sale, merger, some kind of financial result, get a law firm valuation. Get an idea of what your practice is worth so you know how you can put that together in terms. That's a lot of again, what we do for clients, is just start there. I will say every law firm has value. The question is how much value your firm has? What's that specific number or what are those terms that may work best for you and your potential successor.

Again, I just say step one in the process is discovery, a little bit of self-discovery as attorneys to prepare yourself. Look around your office, your firm, what issues and problems have to be approached, resolved, and then really start with the financials, get that value. Again, step one. Ed, anything to add to that as far as that discovery stage?

Edward: I would say, as you're thinking about these issues, and this is for people in small firms with partners, the two golden rules is that you have to treat your clients fairly, and you have to treat your partners fairly. We can go a little bit more about that as you talk about the next step, Tom, but those are the two golden rules. Each state has elaborates on them to some degree, and you're going to need to know what the rules are in your state.

Dennis: Let me add that---

Thomas: Then next-- Go ahead, Dennis.

Dennis: Two factors. First of all, get a life before you change your life. Don't let your life revolve around your practice and nothing else or when you decide to leave your practice, you won't have anything else. Secondly, everything we've been talking about are really things you should be doing regardless of when or how you decide to retire. File Management, backup on passwords, making sure that you have people who can cover for you, if you, as has happened to a friend of mine, are jogging along the road and a car hits you and kills you. These things can happen at any moment, so you need to be prepared for them at any moment.

Run your practice as if you're going to be hit by a car tomorrow.

Thomas: That's a great point, Dennis. To tie that into just the valuation piece. I talk to a lot of attorneys and any of the things that you will do to prepare your firm for transfer, transitions, succession, are going to actually increase the overall value. Your firm will be better performing, ready to transition everything else. If you don't want to do it because you are burdened to do it, but you want to maximize value or make it an easier transition, any of those problems you have that you can solve will help drive value otherwise.

If discovery, self-discovery, getting evaluation, personal financial planning is really step one in the process. Step two is to start to communicate. Maybe that's communicate amongst your family, just start preparing and communicating to your partners, your potential successors, talking to who may be merger partners or anything else. My key part there is just to have a purposeful plan and to make sure that those discussions are confidential.

We're big believers, even though we're attorneys, is having NDAs in place, everything else, but is to make those purposeful and actionable discussions. That's why I go back to have an evaluation or knowing your path, and knowing those potential elements that you're looking for because those are really going to help once you start to communicate and move those things along. Then once you go forward in that communication, really, step three is to bring it together, it's doing some due diligence mutual.

If you're looking at a merger partner or anything else, maybe conflicts checks, or otherwise, which Ed and Dennis, I know, you may want to comment on. Going through that transition plan development, what is your role going to be after you come together of a post-sale or a post-merger or anything else? Then really, what are the announcements, the marketing plan, those different elements? Go into it knowing all those elements, so that when you get to that day, you feel good, your successor feels good, everybody's pulling in the same direction.

Really get prepared for those elements. Don't let them take you by surprise. Dennis, anything to add to that communicate, negotiation step, or to that close or post-merger steps?

Dennis: Well, the one point that you mentioned that we hadn't brought up yet was the conflict of interest issue, the need to run conflict checks if you're merging your practice with another practice, the need to make decisions. As 117 says, in terms of notifying the clients, et cetera, that's going to be a key component, particularly with a merger or sale, and that's going to be true no matter what format or what process you take. I would emphasize that as something else to add in, not only in terms of present conflicts but certainly former client conflicts as well.

Edward: The two parts of this transition, especially to another firm, are the communications to your partners and your clients a, and b, the communications to the new firm, the firm that you would be joining. This is where the ethical issues really start to become more important, and you have to be careful. ABA model rule 1.6(b)(7), and it's in the materials that we gave out, it provides, that you can disclose enough information for conflicts check that is if the point of your joining another firm is to bring your clients and matters with you, it's unhelpful if your biggest client is conflicted out when you join the new firm. You can generally disclose enough information for a proper conflicts check by the new firm but and this is a key but, you cannot compromise the attorney-client privilege which is what Tom was alluding to and you cannot prejudice the client's interests by your disclosure.

You can start making more disclosures after there have been what they call, substantive discussions, but detailed disclosures requires a client's consent. Now, you may be saying, "Well, what in the world would be a problem with a conflicts

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check?" One example might be if you are representing Elon Musk and you're a divorce attorney. That would be of interest to a lot of people, and the mere disclosure that Elon Musk is consulting with you, a divorce attorney, is in itself attorney-client confidential information that you cannot disclose.

Similarly, if you're an M&A attorney and you're talking to Elon Musk, again, that's something that you have to be very, very careful about disclosing. That's where 1.6(b)(7) comes into play. Tom.

Thomas: Yes. Again, we've talked about conflicts checks and those are a key part of due diligence, something that would be handled early in the process, ethically to keep everything confidential but also to make sure if there's too much conflicts in a merger situation, it may not make sense. All the other things may line up, but in the immediate out of the gate, conflicts do not. Again, just thinking about key steps of the selling, the succession process, first discovery.

Basically, prepare yourself, prepare your firm, prepare financially. Know your numbers whether that's your firm valuation or your retirement needs or otherwise. The second step is communicate, which really is, have an actionable proposal. Know what your terms are going to be or what you need them to be so that when you have communications, negotiations, anything else, you can make a movement. The third is really to close. Close that sale or succession, and really that's implement the plan with knowledge. There shouldn't be surprises.

The plan has been worked through in that due diligence phase, everything else but it's really to spend the time in going through that. As we jump and we are getting short on time, and I know there's lots of questions in the chat that we want to save for the end of the program, but just a couple key reminders, things to know from my end, and then Ed and Dennis any other ethical reminders that you'd like to relay?

The key reminders from this side is finding the right buyer, or the right successor does take time. It's a hugely rewarding process even if that's a firm that you're going to join as of counsel, if that's a new associate that you're going to hire, the fact of what you've built that can continue forward and that your clients can continue to be served even though you're not going to serve them anymore or anything else is tremendously beneficial.

The succession and sale process is a focus on the client aspect. Really it's those client relationships, those referral relationships, what need to be preserved, but it's a tremendous way to again focus on those, make sure those are strong, and you can transition those the right way to somebody else over time. Situational and circumstances do impact value. If you're in a small town, the practice area you have, anything about your firm's structure or your marketing, the financials, all of that are going to impact, and it's also potentially going to impact your timeline.

Again, just as a last reminder for the selling or succession structures, do give yourself time and do get started today. Selling and succession is not about stopping the practice of law, it's just about implementing a plan so when you're ready you will be okay to step off that train and the firm and what you build will continue on to serve those clients and communities that you have for so many years. Ed and Dennis, I'll

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turn it over to you just for any other ethical considerations regarding the sale or succession structures.

Edward: I had just alluded to the other issue is letting your partners know and letting your clients know that you are departing and moving to another firm. That is tricky, or that can be tricky. It depends on the relationship with your clients and your partners. For example, when I departed one of my firms, it was clear whose client was whose and so it was a very, very easy transition. I just had a very nice chat with some of the other attorneys, and we sent the letters to the appropriate people and that was easy.

It's not always going to be that easy, and so you need to know your particular state's rules and ethical guidelines, and requirements in terms of the timing of letting your partners know that you're departing and letting your clients know. For example, ABA formal opinion 489 addresses this issue. The minimum requires that you let your partners know at least the same time that you let your clients know that you're going to be departing. It suggests or recommends that you issue a joint letter to your clients.

In Massachusetts, a joint letter to your clients by you and your partner is mandatory. That's what I mean by there is sometimes a divergence between the state requirements and the ABA model rules. Again in Massachusetts, there is a case that describes and discusses in detail what you mustn't do or not do with respect to your partners in terms of the steps that you're taking to depart the firm, and I had alluded to it before which is, you still owe a fiduciary duty to your partners as you're making preparations to leave so that's the lens by which it's looked at.

Dennis: I would just conclude by saying that the main purpose and ethical obligation through all of this is the client. The client is not a commodity, the file is not a commodity. While the rules have been amended in recent years to allow the "Sale of a law practice," it is not intended to mean the sale of a client. Everything you're doing, as Ed and Tom, both mentioned relates to continuing the service and the representation of the client as you go forward in your life, but it's not selling cattle or widgets. It's a process that requires the fidelity to the client.

Thomas: Yes, I think that's a great point, Dennis.

Robert: Well, thank you very much. Tom, Ed, and Dennis, thank you so much for these comments. I think at this point before we go on to Julie there are some issues that have been raised in questions that I think would be very helpful to talk about now. The first thing is, Steve made some very good points which most of us have probably heard lawyers say to us about why lawyers don't do things that they're risk-averse and so forth and so on.

These are all reasons why people don't do anything but in discussing this with my partners, both retired and still working, I have found a lot of hesitation in doing this. I will say as well that whenever I have met a retired lawyer and asked them about what they're doing, I have never met one that wanted to go back to work, and I have never met one that didn't have a full day of things to do. Nobody is sitting around watching TV shows in the afternoon.

It's important that you don't just fill your time with things that you find things that you're interested in. The other thing I think that I found as I transitioned my practice at the beginning of last year, lawyers are in demand by a lot of other organizations and interest groups, and so forth. If we don't know it, we have excellent training in organizing things and getting things done, and so you don't have to go very far to get people to want you to be involved in a lot of activities.

It reminds me that I did one of these programs long ago when a guy got up, it was in Pittsburgh and he said, "I'm afraid that if I retire I'll spend all day with the boys in the coffee shop." Well, that just never happens, just never happens if you plan it in advance. Steve made the important point that you do have to plan things in advance. You can't retire and say, "What do I do now?" A couple of questions have come up of an ethical nature, and I'm going to suggest these to Dennis and Ed. Somebody's asked the question, "Suppose you're shutting down your practice and you have old clients that you haven't heard from in some number of years and so forth, how much effort do you have to make to contact clients to tell them what you're doing?"

If you haven't done some work for somebody in say 20 years, which is possible, there may be 100 different places they've moved to, what's your obligation in that situation?

Dennis: Well, ideally when you close the file you send a closure letter saying, "Thank you very much, here are any of the documents that were originals that were generated and our relationship is now concluded," such that you have no obligation to further communicate with the individual, with the former client. The problem comes if you didn't do that and that's why I said earlier much of this planning needs to be done throughout the course of your practice in terms of how long.

I see that question because it relates to estate planning. That's a problem. If you've got the original will, you've got to do due diligence no matter how long it's been, I think. I had a friend who contacted me trying to help her find the law firm that had done her brother's will because they couldn't find the copy of it, and they had no idea who the law firm was except it was some firm in Chicago which didn't know [crostalk] **[inaudible 01:12:12]**

Robert: A couple of questions have come up about the idea of bringing in a younger lawyer as someone who will be your successor. A point was made, I forget by whether it's Dennis or Ed or both, that the problem is, will the older lawyer actually do it? Will there be a time frame, what's going to happen? Someone has raised the question about drawbacks and one of the drawbacks that maybe you could comment on is the opposite.

That a younger lawyer comes in, is gung-ho about doing the work, and then one day comes in and says, "I think I'm going to open my own office with all of your clients." How do you deal with that?

Edward: Honestly, there's not a lot you can do because part of the issue is the ethical rules also say that you can't restrict the right of a lawyer to practice after the termination of a relationship. Going back to what I was saying before, which is if an attorney is departing from a firm that is your firm and the associate's someone who's

departing, they have the right to send a letter to all the clients for which they have an active role in representing that client to send you a letter and let the client know that that client can depart with the associate.

That's just the way it works. As Dennis had said earlier, the golden rule behind all of the ethic rules is that it's the client's interest that comes first. They're not commodities and we can't control whether or not clients stay or leave with the firm.

Robert: I have many more questions that have come up but I think we probably need to move on, and we'll see how much time we have at the end. The next speaker is Julie Jason, and you see her credentials. Julie is going to talk about investment issues and retirement, Julie.

Julie: Yes. The presentations have been very interesting, and they all have to do with one common thing and that is anticipating the future and preparing for the future. In my law practice, I practiced law on Wall Street for 10 years before moving into money management, it is absolutely essential to take those lawyerly skills and apply them to all the work that has to go into preparing for retirement.

What I'd like to talk to you about is just what does that look like when I, for example, work with a lawyer who is approaching retirement. What I can share with you here is some of the processes. What are the things that you need to think about before you can launch into that transition, that very large transition of retirement? I'm looking at it from the point of view of managing wealth and what it takes to manage net wealth for an attorney. This applies to any wealth so it's not limited to just high net worth individuals.

What we're going to go through is how you define your time horizon and your goals, of course, the goal is always set the tone. How you transition to a portfolio. Most people do not have a portfolio. They may call it a portfolio, but it's usually a collection of stocks, collection of accounts, collection of holdings that is not organized in a way that helps secure their retirement. The other question that people need to address is, do you invest on your own or do you hire an advisor?

SEC rulemaking helps here, SEC rulemaking which I will go through. I will also talk to you about mistakes that I see and how to avoid them. My money management practice just as an aside, so after practicing on Wall Street what happened next was I was recruited to manage two different kinds of money management functions within a large brokerage environment and then subsequently set up my own fiduciary firm almost 30 years ago.

It's 30 years of managing retirement wealth, we have a specialty in retirement wealth. The reason we have a specialty in that field is because it is the most complex of the goals that one has in life. The complexity of managing a retirement portfolio is more complicated than any other time when you're running a portfolio. Let's talk about time horizons for a moment. When you're thinking about a portfolio, you have to think in terms of what is the time horizon that you are going to be working on.

It used to be that you could think in terms of a lifespan of through let's say, age 70. Today, lifespans are longer but there's something else that's very important, and that

is that you really have to think about legacy as well. Most individuals don't think of their investing as terminating when they do and most of the time, the portfolio is set up so that there is at least a potential for leaving a legacy too. You can see on this chart how legacy changes the dynamic of the horizon and it also changes the goals as well.

In the discussion here that I've been listening to, we've been talking about preparing yourself for the future, and preparing financially is part of what we're talking about. Time horizon goals, it all hinges on your audit. Audit of yourself. Unlike investing when you're 30 or 40 when you're thinking only of creating wealth and on managing wealth, you've got one goal, and that is to grow your assets. When you're thinking of retirement, you'll have more than one goal. The most important one is to continue that income stream.

What happens to the salary, what happens to the income? Well, that has to be addressed. How do you do that? You start with a situation audit. What do you look at? You look at your spending, you look at non-portfolio income, you look at portfolio income. Two different things you have to separate those two out for a reason which I'll go into momentarily. You also have to look at your methodology for producing cash flow and then based on that, you can come up with a plan.

The thing about investing for retirement and achieving financial security in retirement is the focus is no longer outward, it's not on stocks bonds and what you can buy and who you can be, whether Nvidia is a good buy today, and whether you should buy Tesla. Has nothing to do with that. Now it has to do with you and your situation, your needs, your goals, your fears, your hopes, and your dreams. If you're married, incapacity planning is extremely important.

How does one do this? The investment policy statement is the document that is typically used by investment advisors. I will talk to you about the difference between investment advisors and broker-dealers and dual registering shortly. This is a document that states what is the goal? How are we going to meet the goals, and what are the rules. A cash flow analysis, a sequence analysis, tax, selling rules, constraints, et cetera. This is the document that sets the rules and it sets the rules for monitoring progress. Otherwise, it's random.

One thing about investing for retirement is there is no one size fits all situation. As you can imagine, every person on this call has a different financial situation, different horizons, different goals, whether or not the individual will actually liquidate a practice, or continue in a practice, these are all questions that have different answers for every person on this call. The methodology that you will use to create that cash flow that need after you retire will depend on those self-assessments.

A lot of it depends also on experience in investing, in making investment decisions. For example, someone who has no experience whatsoever and does not want to get involved in managing a retirement portfolio has an easy solution. The insurance industry provides an easy solution, an immediate annuity sold by a life insurance agent, works fine if it's carefully reviewed, and fully understood. Some annuities are sold with inflation adjusters, that is also possible.

Of course, what you're doing here is you're giving assets to an insurance company to run with, you're giving away those assets, those assets will not come back to you. You really have to think about whether this is an option that is good for you. However, it takes away the burden of managing a portfolio. If someone is experienced with substantial assets and legacy goals, then retaining an investment advisor skilled in retirement portfolio management is something to think about as a possibility. Again, I'll go through the various types of investment advisors and broker-dealers that one would want to retain.

On horizons and goals again. Think about, what is your horizon? Is it lifetime or legacy? Are you concerned about leaving money for self and the next generation? What are your cash flow needs? What is a methodology for meeting those cash flow needs? In other words, some people will sell a holding to withdraw funds. Well, when you sell a holding to withdraw funds to pay your utility bill, those holdings are gone. Is that a good method of creating cash flow in retirement? I would say no, there are other methods.

What are your skills and personal interest? What about your spouse's skills and personal interests? One of the things that we see in our practice is that usually in a couple there is one person who is more interested in making investment decisions and the other person is less interested. If the person who is more interested becomes incapacitated or predeceases extra vulnerability resides in the surviving spouse that has to be addressed.

One way to address that is to think of retirement as a joint venture between spouses. Very important concept to think about because if the husband and wife are both equally sharing information about their financial futures, and knowing that if the follower is the survivor, or in the case of incapacity, the follower needs to take care of the person who's more interested, you have, as I said before, extra vulnerability and you just don't want to face that extra vulnerability if you don't need to.

What about your desire to organize your investments at your portfolio? Again, how interested are you? It's a desire to consolidate your accounts. Many times we find that individuals have multiple accounts with no DPS. Nothing is guiding the structure or the management of those accounts. When you are facing retirement or in retirement, who's in charge? Who's in control? If you have multiple accounts who's in control of those multiple accounts, so many times it is to your advantage to consolidate those accounts. Your thoughts about incapacity, or premature death, your thoughts about legacy for horizon, charity. These are all intertwined in the preparedness to transition into a portfolio.

I'll show you a couple of tools here that are helpful or can be helpful in discerning what is important in the plan, how do you plan. It starts with the budget. A lot of people don't want to do a budget, and that's fine. However, the more data you have on what you need to live on, the better off you will be. This is an example of something that sets out an extra layer of attention on discretionary expenses.

If you look at that red arrow, you'll see there's a column that says discretionary percentage. What this does is it takes you through each category of expenses and allows you to say what proportion of that expense is discretionary. For example, I

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have a lawyer-client who's been with me for 20 years, who has three club memberships. He counts those three club memberships as completely non-discretionary, these are essential expenses for him.

Now, I would not know that, unless he told me that and this monthly budget with that discretionary column helps. Why do you need to know what your discretionary expenses are versus your required expenses or essential expenses? In a tight position if all hell breaks loose, and you have a problem, you can hold off on discretionary expenses, but you're not likely to hold off on essential expenses. Knowing your discretionary expenses gives you power, gives you authority, gives you control.

By the way, one of the reasons why it's so important to go through the preparatory work before jumping into some retirement portfolio or retirement activity, retirement investment activity, is that aspect of what can you control and what you do not control. One thing you control is how much money is coming out of the household? How much you're spending. It's such an essential number to know the difference between discretionary versus essential.

The next step is taking that information and doing cash flow assumptions, and this is just very, very basic. What are the accounts? What are the ages? One thing that is interesting to look at is different expense scenarios. This is where different financial planning software will ask you what are you spending, and then the software then projects out over the years and potentially into a Monte Carlo analysis. I don't like that kind of software, I'd like to see actual control over variables.

You can do this with a spreadsheet, and you can see the expense scenarios vary ABCD, put in whatever numbers you want, and then that controls your outcome. You'll see down below, it's just an example of tax-deferred accounts versus tax-free accounts, which are Roth accounts, taxable accounts, property, et cetera. It's just a little glimpse at what goes into cash flow assumptions that will then lead to what a portfolio will look like.

A sensitivity analysis also gives you control. This again shows you if you look down at scenario A, which is in the middle of the screen, you'll see expenses at different dollar levels. Scenario A would be an expense level of X dollars. Then you'll see returns, percentage returns. I'd like to model different after-tax returns, and what that does is it throws out different portfolio values at different ages. The question we have is when the portfolio go to deficit. If you look over at the far right, you'll see a column that shows a portfolio going to a deficit at age 89 if a return is X percent, the percentage numbers are not in here but it gives you the idea of how to think of the years between today and when a portfolio might go to deficit gives you ammunition and it gives you, again, an element of control over how the portfolio would be structured and run so that there is no fear of running out of money.

The key is to understand the demands of the portfolio when a retirement portfolio is structured. The best way to structure it is based on the demands. What do I mean by the demands? Well, what are you withdrawing from the portfolio to live on? What about taxes? What about inflation? Taxes and inflation go into projecting into the future, but that basic question is what do you need the portfolio to do for you? You

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have to think in terms of after-tax and after-inflation numbers because that's the reality.

Here's a quote from Ed Slot, Ed Slot, if you have not come across him is an expert on IRA, he's a CPA, he writes a lot about IRA distributions. Taxes will be the single biggest factor that separates people from their retirement dreams. Yes, indeed. Especially if one has a tax-deferred cash balance plan, pension plan, IRA, 401K, taxes have to be managed.

Now let's turn to whether one should think about investing on their own or with an advisor and a lot of it has to do with your personal interest, how much you're interested, and how much you know, but I can share with you if you're saying you're 65 and your situation is your expenses are covered by a pension, an annuity, social security, and you have small investment accounts to manage.

If you're available to dedicate time monthly, and you have a high interest of investing on your own but you do not have a disinterested spouse or partner, this is the perfect scenario for someone to invest on his or her own. On the other hand, if there are multiple accounts, if you're selling a business law practice, if you have a large or large brokerage accounts, if you have complex estate plans, if your expenses are not covered by pension but from savings and you have minimal time, that's when you want to hire an advisor. It really comes down to your personal preferences and your background.

At age 85, things are a little different. Again, you might want to move from do-it-yourself to hiring an advisor if you are concerned about capacity, longevity, estate planning, and taxes, and you just don't have the time or interest and your spouse is disinterested.

How do you know who to choose? Now, I don't know whether you are focused on your mail enough to know whether you have received a form CRS from your brokerage firm or your investment advisor if you work with an investment advisor, but this is what the CRS looks like. It is a new disclosure document that the SEC started requiring financial firms to provide this new disclosure documents in 2020.

You should have a copy of your firm's CRS and because it is so short and because it is so focused, it is worth your time to either dig it out or go online and find a new one from your firm. The CRS is packed with key information. It took years for the SEC to come up with what the SEC thought was important for the customer of the brokerage firm or the client of the investment advisor to know.

One of the most important things about this form from my perspective is it gives you a very easy way to compare and contrast firms. What I would do is take whatever firms I'm working with now. Let's say I have four or five firms that I'm working with now. I would lay them out and compare and contrast them. What would I be looking at? The first thing I'd be looking at is conflicts of interest. Second thing I'll be looking at is disclosures, disciplinary disclosures, litigation disclosures. They are highlighted in this form.

I would want to know who I'm working with. What is the culture of the firm? Why do I want to know that? Well, because going into retirement, retirement can last decades and it can involve a change in interest. It can involve a change in capacity. You want to know that you're at the right firm where the culture fits your needs.

Again, whether you're investing alone or with an advisor, the CRS will tell you whether your advisor has disciplinary disclosures, whether your advisor has conflicts of interest, such as getting paid more if you buy a certain product over another, and whether the services that you thought you were getting are what the advisor provides.

There is a great confusion on the part of investors about who's who in terms of financial firms and very quickly, retirement investing really requires monitoring. Well, only a certain type of firm provides monitoring. Brokerage firms do not provide monitoring. What they provide is recommendations. Dual registrants, so this is a firm that is regulated both as an investment advisor and as a broker-dealer, some pieces of the firm, and some of the representatives do provide monitoring. The form CRS leads to proper questions that you would then ask.

What is your relevant experience, including your licenses, education, and other qualifications? Now, this is a question that is embedded in form CRS. It's called a conversation starter. The SEC wants you to ask whoever you're working with these questions, and some of these questions are not questions that you would normally ask because they can be embarrassing. Look at the third one. How might your conflicts of interest affect me and how will you address them? It's not a typical question that a client of a financial firm would ask.

Look at the next one, as a financial professional, do you have any disciplinary history, for what type of conduct? Again, not the kind of question you might ask but clearly required and desired. The regulators want everyone to be asking those questions and they provided this super easy two or four-page document to help you through those questions.

I want to turn to mistakes to avoid, and I'm conscious of the time here. Let's just go through the major things that we see in our practice. Biggest mistake is not recognizing that investing in retirement is nothing like investing when you're 30 or 40. The reason is your goals are different.

Number one, you have to create cash flow. What is going to create cash flow for you? How will you get paid? What is paying you? How is it being produced? Is it being produced through interest in dividends? Is it being produced by selling something? Is it being produced by purchasing an annuity? How is it being produced?

At the same time, you have to create something that will offset inflation and taxes over 10, 20, 30 years. How is that happening? What is the plan? It's nothing like investing when you're 30 when your whole focus is just capital appreciation. It's much more complicated and because it's much more complicated, the important thing is to do the homework in advance and make sure that you're with an advisor who is skilled at this, not all advisors take the time or have the privilege of working on

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retirement portfolios because some firms don't want their salespeople taking the time to do this sort of work.

Number two, not knowing yourself, strengths and weaknesses, your cash flow or your experience, big mistake, otherwise not being prepared, you're winging it. Three, not involving a spouse or partner because of incapacity and death. We already talked about that. Number four, not setting a long-term strategy. Strategy is more important than anything else because you cannot monitor without a strategy. You don't know if you're on track or not.

I'll give you an example. Many times people on their own will look at their brokerage statements and they'll look at last month's statement and they'll look at this month's statement. Last month, they were down, this month they're higher. They're happy. Next month, it's the reverse. They're unhappy. What does that do for you? Does it lead to a decision? Does it lead to something to think about and something to act on? The answer is absolutely not.

With an investment policy statement, a strategy is laid out in writing, and now you have something to monitor against. Is income being produced in the dollar amount necessary? Are the returns being produced at the risk level that is acceptable, et cetera, et cetera, so now you have a way to monitor. Next not to starting on portfolio [unintelligible 01:40:11].

Bob: I think we need to move on.

Julie: I'm sorry, Bob. Bob?

Bob: We do need to move on.

Julie: Okay. All right.

Bob: I believe there's so much covered here.

Julie: All right, I will move on right now to key takeaways. Creating your own pension. Tools will depend on your skillset. Next step, consider your situation, any need to change, review your methodologies, review mistakes to avoid, and when to start? Today. Thank you for your attention.

Bob: Thank you. I know this was difficult because there was so much material to cover, and this is obviously a subject in which we could have two hours just on this. I do want to get a move on. We've had a lot of discussions about things you might do, things you should do. I've invited Bill Hairston to talk to us because he did these things. I want to ask Bill to review what he's done. I'm going to just preface this by asking Bill, how did you decide that you wanted to make a change, how did you decide to change, and how has it worked out? Bill?

Bill: Thank you, Bob. Before I get into that discussion, I want to thank Julie because having a financial advisor I think at this stage going into a retirement decision or a sale decision is a must, and finding the right advisor to help you out is also a must. I think I went through three different advisors before I found the right one, and his

input and his comments were invaluable to me as I went through it, so reiterate what Julie said, you need to have an advisor.

I also wish I had Steven, Tom, Dennis's and Edwards's guidance before I jumped into this decision. I didn't get to know them beforehand, but in 2017, I decided that I needed to retire from the active practice of law. I wanted to do so because I knew I had to take care of my demented mother who's still alive, and along with providing more time to the ALI, and the uniform laws commission in developing laws for the state of Alabama.

I wanted to go into a teaching career, didn't know where I was going. I've done some teaching in the past but wanted to do that more full-time if full-time is a correct word. I also wanted to get rid of all of the administrative headaches that come with managing a law firm. In 2017, I decided it was time to retire. The first thing I did was figure out when I should retire.

Now, before I get to the win, well, I did it. So I figured out when I should retire, and I arbitrarily picked the renewal date for the next malpractice insurance that my firm had knowing that I probably need some tail coverage at that time. I arbitrarily picked this date which happened to be one year out from where I was.

[sound cut] own with my spouse, Julie mentioned that, I sat down with my advisor and didn't tell anybody else. I didn't disclose it to my partners that I was interested in retiring, but I sat down with this small group, who also included a counsel, independent counsel that I hired to make sure I was going through this correctly. We sat down with this small group and charted out what the retirement might possibly look like, what I could be doing, what steps I needed to take, would it work?

My advisor said, sure it would work, and so I felt confident in that avenue. I recognize that as a partner in the firm, and I use that term to mean the board of directors or one of the managing officers that I had certain fiduciary duties to my firm that I had to **[inaudible 01:44:47]** and so I needed to make sure that when I was informing people of retirement that I was acting for the benefit of the firm to which I owed a fiduciary duty to as opposed to my individual benefit.

This first three-month period, first three months of my year planning for retirement was spent not notifying anybody of the retirement, just to get my act together, to figure out what was going on. I wanted to have in place everything that I needed to make sure the retirement was affected, and so I did extensive preparation before announcing to my partners that I was going to retire.

I did this because I had been representing some other firms when the owner announced his or her retirement at the firm said, "Great, bye. Leave your desk. I don't want to see you. I knew that in this first three-month period of time for planning, I had to have everything right, and so I tried to put everything in place to make sure I was able to handle the entire retirement or transition process.

One of the things I did was make sure that not infrastructure needs were available to me at home. This is [sound cut] pandemic. Now, this is probably taken care of by everybody in the post-pandemic world, but I wanted to make sure my infrastructure

needs were taken care of, and I wanted to make sure that I no longer needed an assistant to help me, most of us have lived life practicing with an assistant at our beck and call to help us with some of the processes, et cetera, but I had to get away from having that assistant to help.

I saw no reason for telefax that may not be where you are if you're dealing with governmental medical practices or certain other items, but I wanted to make sure I had the road warrior paraphernalia available, and I wanted to make sure I had handled all the other infrastructure needs. I did that during the first three months before I've told anybody of my retirement.

One thing I didn't do, and this is what I regret to this day not having done, is worry about health insurance. I had mistakenly assumed that I would be able to get health insurance when I left the firm's health insurance plan. That was a mistake. I should never have made that assumption and you'll see where this comes into play as we go later through my analogy.

Anyway, that takes us up for the first three months of my one-year plan. At the nine-month mark, I went public with the partners, with my fellow partners. I informed them that I was going to retire. I needed to give them ample time to prepare for this retirement that was to come, to prepare for me not being there. I knew also that it would take my partners a little while to understand what was really happening.

During this second three-month period from month six to month nine prior to retirement, I went through and started involving other partners with all my matters. I went through and started writing out what my matters consisted of and what was going on in all those matters because someone needed to take over these matters. My initial plan was not to practice law post-retirement. My initial plan was to help ALI ULC, help the-- and teach, so you got to keep that in focus.

At the end of the six-month period or six months prior to my retirement, I brought the associates into the conversation as well as the staff of the law firm telling them to tell no one. The thought was, as we have discussed on this program, that one of the associates would want to step up and take over my clients. That didn't prove to happen. The associates really didn't want the clients. The associates didn't really want to continue on in that practice. That model may work with the right associate, that model did not work in my situation.

At the end of this three-month period, six to three months or three months prior to retirement, or my retirement, I sent out what I believe it was Ed referred to as the joint letter, I refer to them as a dual letter where you send a letter to all your clients that says, in my case, "I have decided to move into a teaching role. I have decided to move into a public service role and it's been a pleasure for me to serve you over these years. I hope you the best of luck with the firm."

The firm sent out a second letter, the second part of the dual letter that says, "We appreciate what Bill's done for us and we hope to continue representing you in your various matters and look forward to a further association with you."

When that letter went out, I got a number of calls from clients that said, "Can you still help us?" I had not planned on practicing law but that suggested that maybe I go into a solo practitioner. I still had a fiduciary duty to my firm members don't forget. I'm still on the board. I'm still a fiduciary in connection with them. To tell those folks [sound cut] That's what we actually did.

What that also communicated to me too was in addition to getting tail coverage from the malpractice carrier [sound cut] the coverage from the malpractice carrier. I ended up talking with the malpractice carrier and combining that into a practical or practice coverage so I could go out on a solo if that option, we learned how to pivot during the pandemic if that option ever presents itself to me.

During this last three-month period, I ran [sound cut] it looked like I'd have to stay on the firm's health insurance plan. That means I had to provide some services for the firm. That means I needed to be some position for the firm to qualify for that health insurance program and thus, we determined that I would be of counsel with the firm for a period of time.

That's when I entered into with the firm a post-retirement agreement that defined what being of counsel means. There's no definition for that by the way. It's whatever you agree to with your former partners as to what it is. I also made sure in that post-retirement agreement that I was released from any future fiduciary duties to the firm.

Now, I could go out and practice on my own [sound cut] having to worry, and thus I became of counsel. I had imposed on me because I needed to make sure I had health insurance in place. I had imposed on me certain obligations to the firm while that health insurance was maintained by the firm. We worked through those for a period of time.

I did not talk and I need to talk about data. You will find that your firm has a number of files with your personal information in it, with your personal documents in it because we all keep our personal stuff at the firm. You need to make sure, and I did this during the first three-month period back 12 months before I planned on retiring, I needed to make sure that I got retrieved or copied from the firm's servers all of that **[inaudible 01:54:08]**. If the firm did tell me to walk out the door, I could do so with that information in hand.

They came when I [sound cut] Following my retirement, I've made appointments with several colleagues who had transitioned to other areas of practice, finding out that I was not alone in this transition. One of those contacts opened me up to an adjunct teaching position at Cumberland, Sanford. I teach there. A number of those clients that had talked to me during my, following the dual notices letter, I approached them again or they approached me with de facto in-house counsel type position which is what I'm spending most of my time doing in addition to teaching.

About two months after, I was able to get on another health insurance plan which allowed me prevent or stop performing my services for the firm but still let me be a part of the firm. I say be a part of the firm because of two issues. One is I had some ancillary business arrangements between the firm and myself and one of my firm's partners who was a partner with me in the ancillary business. This was a lease.

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We needed to work that out. I should have done that before, but I had the health insurance problem that prevented me. The firm also owes me some seed money and I needed to work that out. So far, we haven't gotten too far on that regard.

Ed mentioned-- I'm sorry. We mentioned compensation. One of the things that I had done pre-notice of my retirement dealing with other firm members leaving was already established what the compensation model would be for a retiring or leaving firm member. That didn't work in my favor when I left but so much I got the benefit of it while I was a part of the firm.

That's basically my story in a nutshell. I know we're running out of time. I know that was a fast pace. Look through all of that. I sincerely wish I knew Steve, Tom, Dennis, and Ed before I went through this because I could have used their guidance as they told us earlier on in this program. I'll turn it back over to you, Bob. I want to see if we have a couple of seconds to handle questions.

Bob: Well, thanks very much, Bill. This was very interesting. Bill makes a couple of very important points that are dealt with in some of the questions here. One is that you do need to do planning ahead for this. You need to think about what you want to do and what you want to accomplish. You also need to think very importantly about malpractice coverage. Bill mentioned this. Bill mentioned tail coverage which is the coverage you get when you've stopped practicing but claims might still come up after you stopped practicing which is obviously the case. Very important issue. How you plan that can have a significant financial difference on your retirement years.

Bill made this point as well. He didn't really retire. He just transitioned. He changed how he was doing things. Part of the overall discussion here is that retirement is not the same for everyone. Retirement is not everyone's going to sit on their front porch, have a cup of coffee and that's about it. People do a variety of things that as Bill has demonstrated and as the other speaker Steve and Dennis and Ed and Tom have mentioned. Retirement can be a whole lot of other things as well.

Now, as I said, it's important to give some thought to tail coverage. Bill mentioned that he's continuing to practice in some ways. He has both the regular coverage and tail coverage. You really need to contact your malpractice carrier well in advance of whatever you're going to do because there might be things you have to do, very important. Bill also talked about his status as of counsel. Sorry, go ahead.

Bill: Bob, you mentioned tail coverage. The policy that I was able to work my malpractice carrier into giving me is now full coverage with tail coverage and to it. Whenever I stop practicing law, I automatically get the tail coverage.

Bob: Right. People who don't do what Bill has done who actually retire, they'll have to think about tail coverage but you must contact your malpractice carrier because the worst thing that can happen to you in retirement is you don't have coverage and a claim comes up. Bill also talked about his status as of counsel at his firm. An of counsel, as a couple of the questions that brought up, means a whole variety of things. It's not just one thing. It can be all sorts of financial arrangements, all sorts of responsibilities, and so forth. Again, it depends on the deal you make.

Just to fall back a little bit, again to what Bill said, this is where it would be so important to talk to people, like the other speakers that we've had here, who have experience on transitions. Whether you [coughs] excuse me, sell a practice or retire from it, or walk away from it, or refer all your clients away, you really need to get some professional help. We always tell our clients when they want to sell their business, you need to get some kind of professional help to do this. Whether it's an investment banker or someone else, same is true of lawyers. This is what we have to do.

One last thing in 10 seconds. Health insurance. Bill made this point, this is so important to know when you're going to retire, where are you going to get health insurance? Because again, it can make a tremendous difference. Do you have Medicare? Do you have outside insurance and so forth? I apologize, we need to end the program. That's all the time we have.

I appreciate all the speakers who have done so much and had to squeeze so much into such a short period of time. I want to thank Stephen Seckler, Edward Cheng, Thomas Lenfestey, Bill Hairston, and Dennis Rendleman, and Julie Jason for sharing your expertise. On behalf of the ABA Senior Lawyers Division, I am Bob Louis thanking you for joining us.

I just want to say one more thing. Today is November the 10th, the day we're recording this. Tomorrow is Veterans Day. Let's remember to thank the people, men, and women who have served our country. I will now turn you over to our operator who has some additional information.

Operator: Thank you. On behalf of the American Bar Association, Senior Lawyers Division, I want to thank you for participating in this program. To learn more about the sponsors, you can visit the ABA website at www.americanbar.org. Thank you. Please click on the evaluation link. We value your feedback.

[02:02:14] [END OF AUDIO]