



White Paper: Knowledge Transfer – The missing piece in succession planning in Law Firm

Executive Summary

Succession Planning in Law Firms is a hot topic at the moment as Partners reach retirement age, which means thousands (or even tens of thousands) of retiring Partners over the next few years.

AEBIS Inc. contributes to superior **organizational performance** by helping to leverage **crucial knowledge** held tacitly by the retiring Partner, pertaining both to the way s/he practices law and how s/he interacts with others. Transferring tacit knowledge, by **enhancing the succession planning process**, preserves the “DNA” of the Law firm, maintains **team excellence** and ensures maximum **client retention**.

Introduction

Succession Planning, always a delicate and difficult subject, is even more so at the moment as the Baby Boomer generation reaches retirement age.

According to the ABA¹, there are over 1.3 million practicing attorneys in the USA, whose median age is over 50 years old. Of this population, 200,000 attorneys are expected to retire over the next 5 years, with up to half of these in senior partner positions.² Such substantial volumes of retirements require a robust, systematic approach to the problem, rather than handling each one individually with an ad hoc process.

There is a plethora of advice for ensuring a smooth transition, with increasing focus on law firms. The phrase “Succession Planning” returns over 60,000 entries in ABI/INFORM, almost 3,000 of which also pertain to “law firm”, with exponential growth over the past 2 decades. In particular, for an excellent introduction to succession planning in law firms, see [Friedman 2016]³. The following essential factors in succession planning emerge:

- Carefully identifying successors,
- Ensuring client continuity,
- Financial considerations,
- Transition of managerial and leadership responsibilities.

Each law firm needs a **well-crafted, staffed and managed succession plan** that carefully and thoughtfully addresses these four factors. Moreover, one more key factor underpins all these others and must also be addressed: the need to transfer **tacit critical knowledge**, both legal and non-legal, which must be a part of the overall “Succession Planning” program. We will propose below a **proven approach** to transfer this knowledge.

What do we mean by tacit critical knowledge?

Critical knowledge is both essential to the person and hyper-specific for the firm, indispensable to the firm’s performance and representing some competitive advantage.

Tacit knowledge is the accumulated know-how that is only “in a person’s head”, and which will leave when s/he leaves the firm. It is what allows a person to respond instinctively and appropriately to a given situation, based on their experience, rooted in their own informal empirical knowledge gathered over time: Tacit knowledge is what allows us to “do the right thing”.

A senior partner with 40 years’ experience has amassed a great deal of knowledge about her/his profession. This knowledge covers both the successful way s/he practices law and the relationships s/he has nurtured over time. Such complex tacit knowledge cannot be expressed in a way conducive to being documented, but rather it must be transferred **from person to person** through examples and exercises based on real cases.

These documented cases can also be reused (stripped of sensitive information, of course) for other training needs or business development purposes such as responding to requests for proposal, etc.

¹ www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf

² www.abajournal.com/news/article/as_wave_of_baby_boomer_partners_retire_law_firms_face_increasing_costs_and/; www.lawcrossing.com/article/900044543/2014-AmLaw-200-Law-Firm-Revenue-Firm-Size-and-Breakdown/

³ Friedman, Marc S Esq., “Law Firm Succession Planning: The Key Word Is Planning”, New Jersey Law Journal, 11/8/2016

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As an illustration of the types of tacit knowledge to be transferred, consider the following two cases pertaining to legal knowledge, bearing in mind that in the context of Succession Planning, actual knowledge to be transferred will undoubtedly involve substantially advanced instances specific to each relevant practice area.

Case #1: An attorney has been retained by a small retail business owner. One retail employee has just been caught in the act of identity theft, using the credentials of one of the business' clients, during work hours. The business owner suspects that the employee is looking to sell this information on-line and is unsure whether or not she should press charges.

The lawyer, after researching the matter, advises the business owner not to press charges individually but rather to associate the case with a wider investigation already underway targeting the identity theft network.

This legal principle – the prohibition against simultaneously bringing an individual suit and joining a class action – is well-known in legal circles **as implicit legal tradition** (i.e. tacit knowledge passed from senior attorneys to their junior colleagues). The lawyer uses this **tacit knowledge** to advise the business owner to follow the most beneficial course of action.

Case #2: A junior associate is practicing employment law. Her client, a medium-sized business, is being sued for discriminatory practices. The lawyer and her client wish to show that the middle manager in question was not discriminating, as he treated all employees equally badly. At this point, a more senior attorney cautions the junior associate not to follow this line of defense, **despite its being technically correct according to legal theory**, knowing **from experience** that very few judges are willing to entertain the notion of the “bad boss” as a defense in discrimination cases.

Tacit knowledge allows us to explain and understand the way law is practiced by an experienced Lawyer

The way that a situation or a behavior is interpreted / evaluated with respect to legal rules is fundamentally tacit and human:

✓ *Applicability and compliance or not of a legal rule is always a (professional) **judgment** resulting from an individual interpretation/evaluation.*

In the cases above, tacit knowledge of certain legal principles is conveyed by a legal rule validated by experience (here: individual vs class action; discrimination theory vs real-life). The fundamental point here is not the principles *per se*, which are learned in law school or on-the-job, but their relevance in any particular situation, an **informed judgment** drawn from tacit knowledge, which itself is built upon experience. Without this crucial step, the law could just as easily be practiced by robots!

It is important here to see the distinction between “tacit” versus “explicit” knowledge which is critical (as long as human beings are not robots.....). Formulation of basic legal principles rests on a handful of keywords, conveying a particular signification for the legal profession as a whole: these basic legal principles (whether written or implicit) are reinterpreted at each use. Trying to exhaustively document all possible cases and claim that “in such or such circumstances these are applicable” may lead to a sort of Streetlight effect⁴, i.e. looking only where it is easiest (where it is already written down.....).

We maintain that these legal principles may be transferred, even if they only exist in the oral tradition, as the DNA of the legal profession, without being frozen in time or (geographic) space. This transfer is all the more important as today's legal professions have become increasingly specialized.

Further, the way an experienced lawyer theorizes and practices Law is always specific to them and belongs to their tacit knowledge. As such, it can never be fully expressed, and therefore, can never be automated.

⁴ https://en.wikipedia.org/wiki/Streetlight_effect

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Understanding a lawyer’s tacit knowledge pertaining to relationships

Tacit knowledge of an experienced lawyer also encompasses the lawyer’s relationships, including those illustrated in the following diagram:



As an illustration of the types of tacit knowledge to be transferred pertaining to non-legal knowledge, consider the following two additional cases:

Case #3: A senior attorney is heading up the effort to value intellectual property assets for one of the world’s largest corporations. He recognizes that this will require a team effort far beyond the scope within which most legal professionals are used to working. Drawing upon experience in the corporate world, he adapts standard project management and team-working principles to the particularities of his law firm. During the valuation effort, he seeks to instill these principles throughout his team so that they will eventually permeate the entire firm.

Case #4: A senior attorney is mentoring junior staff on the importance of personal branding and marketing. While it is straightforward to capture the basic principles in a checklist, the rationale behind the actions (to avoid them becoming rote and mechanical) and the ability to judge the effectiveness of the actions are recognized as tacit knowledge items that would be beneficial to pass along to the junior staff.

How to transfer a Lawyer’s tacit knowledge

We have seen that even in world-class collaborative environments, the sheer volume of accumulated knowledge and experience makes it humanly impossible to effectively share all that is essential. Nor is it possible to exhaustively document all this knowledge.

At the same time, this volume makes it doubly impossible to sort through and identify the handful of truly critical elements that can make or break the future success of the new managing partner.



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Traditional approaches to the knowledge transfer inherent in succession planning include:

- One common approach relies on “**knowledge dumps**” of some sort (structured or unstructured);
- Other firms opt for **shadowing** during the transition: the outgoing partner performs their task and designated successor obtains the knowledge through observation and imitation.

These solutions, while well-intentioned, generally **fall short** of producing the desired result, namely transferring the most critical knowledge, due to their unstructured nature which does not guarantee that any particular subject or instance will be handled. They are also time-consuming and require the willing cooperation of the key persons to devote significant time and effort on top of their normal jobs.

In addition, if the organizational culture values knowledge-hoarding as opposed to knowledge-sharing, it may be necessary to manage the resistance that such an open approach is likely to generate.

The Knowledge Transfer Enhanced Succession Planning process

Our highly effective approach begins by identifying the **critical knowledge** of the departing Managing Partner, which is both essential to the person and hyper-specific for the firm, not something that can be gleaned from internal documents, Internet searches or even learned in a classroom.

We work with **you**, the law firm’s leadership team, to build real life cases based on **your partners’ experience** that give your firm its competitive advantage. We propose an agile, lightweight, and effective, transfer plan encompassing a rapid 4-part learning process:

1. Welcome and introduction to the **Big picture**;
2. Observation of **real-world** work situations;
3. Practice via individual **exercises** (real or simulated cases) to cement the knowledge;
4. Performing targeted, well-structured **dual-controlled** work (outgoing and incoming managing partners), analogous to the way one learns to drive a car or fly an airplane.⁵

To obtain quickest results, multiple parts are generally performed simultaneously (e.g. 2 & 3 or 3 & 4).

What are the expected benefits?

Retaining the firm’s most valuable Clients is the greatest payback.

From our experience, the following additional results can be expected from enhancing the Succession Planning Process:

- ✓ 40% less time spent by the departing Manager in dual (i.e. concurrently with the Successor) working activities;
- ✓ Half the learning curve time for the arriving partner to grasp the specificity of the position of “Manager”;
Together, these previous two factors allow you to limit the lull in billable hours during handover;
- ✓ 60% fewer avoidable errors in client cases;
- ✓ Fewer risks to the law firm’s reputation;
- ✓ Increase the firm’s attractiveness to new partners.

These benefits will be measured from start-up, as an integral part of such an institutionalized enhanced Succession Planning Process.

⁵ As opposed to unstructured shadowing, the observation and dual-controlled work are carefully selected in order to cover the most critical aspects of the departing partner’s responsibilities.



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Who are we?

Aebis Inc. is the US branch of BFD SAS, a French consulting firm founded by its CEO, **Philippe Michelin**. BFD, headquartered in Paris, is specialized in:

1. Advanced Business Information Systems;
2. Systems Architecture;
3. Process Improvement;
4. Knowledge Management.

Since 1988, IT departments at banks, insurers and other financial institutions have trusted our team to help achieve and maintain peak performance through better modeling of information, processes, and knowledge.

Some of our customers in France:

