Delayed Partner Retirement Has Its Costs For Firms

By Shannon Henson

Law360, New York (June 25, 2009) -- As the economic downturn decimates mutual funds and the real estate market, more partners are delaying retirement — a development that could create mentoring and other opportunities for younger lawyers, but also could mean that law firms are putting off succession planning.

Many partners who would have considered retiring are declining so they can keep receiving a paycheck, legal consultants said. The trend can be both a positive and negative development for firms and younger lawyers.

If senior attorneys stay, younger attorneys may have to wait longer to take the reins of major cases and clients, which can slow down the development of the future face of the firm. But senior attorneys may be in a position to do more mentoring and destigmatize flex-time and part-time work — a benefit to younger attorneys.

"Who better to open doors than someone who has been in the business for 40 years?" said Jim Cotterman, a principal with consulting firm Altman Weil Inc. "If I am an associate or young partner and I need a contact, who better than a senior partner? They have the best Rolodex or Outlook contact list. They can be extraordinary mentors. If firms are smart about it, it is a great advantage to have these people."

Deborah Epstein Henry, founder and president of Flex-Time Lawyers LLC, echoed the idea that partners prolonging their time at firms may result in increased mentoring opportunities.

And Henry also said partners who are delaying retirement may want to work reduced hours, which could shift perceptions of what a work day must be like at a law firm.

"If baby boomers work more flexible and reduced schedules as they transition into retirement, ideally those types of flexible arrangements will be less stigmatized. They will no longer be associated exclusively with the working mom," Henry said.

However, consultants said, retirement delays can also have a negative impact on young attorneys and on law firms. The trickle-down effect is that law firms delay succession planning, so the next generation has to wait to rise, Henry said.

"The process is being stunted by the fact that baby boomers are hanging around," she said.

The situation is more complicated because law firms are already facing a dearth of talent when baby boomers leave, Henry said.

That is "compounded by the fact that Generation X hasn't had same level of responsibility," she said.

Cotterman said some law firms might also be looking forward to the retirement of senior partners because they want to phase out some practice areas or aspects of the firm. "As firms evolve and business models evolve, some practices are not part of the future."

Many partners don't have the choice of remaining at their law firms. A 2007 Altman Weil survey of managing partners and executive committee members at U.S. law firms with more than 50 attorneys indicated that mandatory retirement policies were fairly common and were more prevalent at larger firms.

Half the respondents to the survey indicated that their firms had mandatory retirement policies in place.

Just more than 75 percent of respondents who said their firms had mandatory retirement policies worked in firms with between 250 and 499 attorneys, as opposed to a little more than 32 percent of attorneys at firms with 50 to 99 lawyers. Forty-eight percent of respondents from firms employing more than 500 attorneys said their firms had mandatory retirement policies.

But in 2007, the New York State Bar Association came out in opposition to mandatory retirement policies. Later that year, the American Bar Association also recommended that law firms stop forcing their attorneys to retire.

Law firms have been too focused on the impacts of the economic downturn to reconsider their mandatory retirement policies, Cotterman said. The source of trepidation for firms considering disbanding their policies is that they don't know how they will get senior partners to leave if there aren't policies in place, he added.

"Firms have not had to have these difficult conversations," Cotterman said. "It's hard for a partner to have a conversation with someone who is his or her senior and may have been his or her mentor and say, 'It's time to retire.'"

The process would be difficult even if law firms had performance evaluation processes in place. However, Cotterman said he thought laws firms were up to the challenge of not having a mandatory process.

"The corporate world has figured it out. There's no reason law firms can't as well," Cotterman said.

Jerry Kowalski of law firm consulting company Kowalski & Associates said the process of retirement could be sticky for law firms.

More partners, he said, are seeking waivers so they can stay with the firm if there is a mandatory retirement policy. But sometimes, the firm wants them to depart. “It is awkward,” Kowalski said.

Even if senior partners leave their firms, they are often not done practicing law. More than 60 percent of respondents in the Altman Weil study said they planned to continue working in some capacity after retirement, and 48 percent said they planned to continue to practice law.

Older partners entering the lateral market are often among the easiest to place, Kowalski said. Those looking for work after retiring from large firms are likely nowadays to find a spot at a midsize law firm — just like other laterals looking for placement.

"It's a combination of the business they carry with them, the skill set they have and the marquee benefit of having somebody join the firm that came from prestigious one," Kowalski said. "Demand may be more strident than supply."

--Additional reporting by Ben James