



Transition

A Passage from One Place to Another

By Jon H. Kingsepp

In the practice of law, attorneys may experience several transitions in their professional careers. We shift from law student to associate, then perhaps to junior partner, partner, or shareholder. At each level, the role as a producer becomes more paramount. As the saying goes, "You eat what you kill." Hence, if you do not bring in the money, you do not take much out. A 2012 article in *The Belly of the Beast* titled "The Age-Old Problem of Age"¹ highlighted the continuing battle between high-wage earners who bring in fewer clients and hardworking younger partners who earn much less. Another dilemma is the high-wage earners' reluctance to turn over

clients to younger attorneys for fear of losing clients and billable hours.

Forty-seven years ago, I started in an 11-person firm and ended with one in excess of 100 lawyers with offices in and outside of Michigan. While I enjoyed trials and had many, I constantly felt the pressure to bring in more income and work longer hours, often 6.5 days a week and sometimes while on vacation. While it is considered normal for a young attorney to work that hard, I began thinking about the effect of this work ethic on me, my wife, and my marriage. Was I ever going to have control over my life? I had missed the years of my children

growing up and joined all the appropriate groups, yet still felt like I had to compete for my position. I had community respect, age, wisdom, and experience. Holding me back from going it alone and gaining control was the high income level I enjoyed. And fear. I also faced the stark reality that corporate America in Michigan, particularly Detroit, paid hourly rates of \$450 or more to out-of-state attorneys but rarely paid that rate to Michigan attorneys—unless it was an extraordinary matter. Being expected to continue to bring in the revenue with an increasingly high hourly rate, I was becoming disenchanted about my future.

Fortunately, I had the opportunity to explore a solo practice. Although the departure from the firm was bittersweet, I could not help but feel this new challenge would be beneficial and exciting. Of course, the central questions were how to inform clients and to what extent they would decide to remain at my former firm. Typically, there is a battle over clients staying with the old firm or going with the departing attorney. While I contacted clients about my departure, the firm sent out letters indicating it could continue managing the clients' affairs. Many of my clients indicated a desire to remain with me if I could handle their matters as I had in the past. I was fortunate they took the risk to stay with me.

But I was also worried I would be without backup from paralegals, associates, and technical support so essential to a trial practice. Although I lacked a secretary, I could type pretty well since I was accustomed to doing trial preparation and legal research on my own computer at the firm. Thus, if I could continue in the same manner, the absence of secretarial support would not be a problem. Little did I know that a Westlaw staff person would be my closest advisor on legal research. Nor did I expect law students would be anxious to work with me at a low hourly rate just for the experience.

At this juncture early in the establishment of my new practice, I made it a point to advise my better half of everything going on and seek her input. This was crucial for her comfort level and allowed me to hear differing opinions and viewpoints on significant decisions.

Of course, creating a new firm also requires establishing an office, your legal entity, accounting, and bank accounts. In this respect, my personal accountant stepped in and assisted in setting up receipts and disbursements and the electronic monthly reporting required for year-end tax and accounting purposes. I had also done my own legal research on evidentiary issues that would arise at trial and for trial briefs that would be filed with the court. Thus, for me, my legal research skills were important at the outset of my firm's formation. In addition, we

had to coordinate the transfer of my files and removal of furniture, and determine whether I should remove the closed files then in storage. We also had to identify work done but yet unpaid and provide an account of that revenue to the old firm. Similar adjustments had to be made with respect to the balance of any retainer paid by a client staying with me, which had to be transferred to my new bank account. Suddenly, staying diligent and up to date in all matters on my files was essential. I immediately contacted those clients I was retaining to assure them I would continue to provide the same representation. Those who transitioned with me to my new firm stayed with me and continue to do so today.

Also important were those clients who paid monthly, creating a steady revenue stream to assist with costly moving expenses. I was eventually able to hire a graduate lawyer who had just taken the bar exam to assist me. When she passed the bar, she became my partner and was of great assistance. The firm's revenue eventually began to increase, resulting in an annual income consistently exceeding that which I earned during my last year at the old firm.

Most importantly, I had a life. I could set my own hourly rates. I did not have to work six days a week. I had control over revenue and expenses. I could turn away clients. I did not have to attend monthly firm meetings or constantly argue against revenue projections for the litigation group I knew could not be met. I was able to see my family regularly.

There is no template for determining how and when you should transition into a solo or small practice from a larger firm. Setting aside a situation in which you may be forced to make a transition, if you are contemplating making the decision, it must be well thought out in advance.

Now, I have to be candid. If you go on the web and research the downsides of having a solo practice, you will find good stories and some mighty sad ones. There is no template for determining how and when you should transition into a solo or small practice from a larger firm. Setting aside a situation in which you may be forced to make a transition, if you are contemplating making the decision, it must be well thought out in advance. You have to examine the dynamics of *you*. Do you have the mettle to go it alone? Can you suffer disappointment or even failure? Will your life and your family suffer monetarily? Can you get clients and retain them? Do you have a referral source? Do you have a specialty that has significance? How will you handle the lack of camaraderie during the day?

You also need a strategy for getting business. The clients you're able to retain from your old firm may act as referrals, but how do you get others in the door? That game plan is essential to allow for the continued growth and stability of your firm. How do you market your specialty as a *need*? Advertising, of course, is one option, but expensive. Referrals from fellow attorneys and word of mouth from satisfied clients are your best sources.

How will you finance this adventure? What is your income source? Are you using all of your assets? Your significant other should be involved in these discussions. You must consider health insurance, liability insurance, and disability insurance—all costly, but so important. Without the firm's accounting department, you will be responsible for billing and collections. Be prepared to request retainers, bill monthly, and have a cost analysis when you are retained so clients are aware of the range of expense, and advise clients once retained on the strategy you are going to follow in their matters. Be prepared to collect monies. This has been difficult for me, as I was accustomed to the firm's accounting department handling collections. I am an attorney and not a collector, for sure.

Oftentimes, lawyers are not good businesspersons. If you are going solo, you should be aware of need, expectation, and delivery. The *need* is that revenue must be coming in continuously. *Expectation* is recognizing that something may go wrong, anticipating it, and knowing how to correct it. *Delivery* is keeping clients informed and involved in their matters. Report to them regularly; if they don't want to be involved, they will tell you. You will have more time to devote personally to each client. Explain what is happening with a client's matter and why there may be a delay in result. Just be sure *you* are not at fault for something that might be detrimental to a client. Clients can be your best source of referral—or an attorney grievance! As an example, since 1988, I have been involved in mediation/facilitation. In business matters, with some

exceptions, I would ask the client at the outset what the goal was in a particular matter and determine how genuine or important that goal was to the client. Once the case was at issue with the filing of an answer, I would discuss mediation with the client without discovery even being initiated. My reasoning was if the matter involved a dispute between two businesspeople, why should they pay attorneys if they could possibly settle the matter themselves? In those instances in which the parties went to mediation and settled, my best referral was the business client who had saved a lot of money after initially being presented with the cost analysis of his or her case.

With many of my clients, I am a counselor in several areas involving personnel disputes, investment analysis, and business growth—not only because I have a degree in those areas, but because the clients trust my judgment and analysis. I never really had the time to fulfill the role of counselor while at a large firm. Now I can. If your clients value you as a counselor and not an attorney, you will find the relationship grows into a level of trust and confidence that can hardly be broken. Those clients will likely follow you anywhere, and mine did because of that.

As a solo practicing attorney, I now have the time to share more than just legal knowledge with my clients. They sometimes want a business strategy or game plan in negotiations. This involves counseling, not legal advice. After practicing solo for nearly 10 years, I wonder why I hadn't made the decision earlier. But I will also say, working with a medium-sized firm gave me exposure to and experience with litigation I will never forget and will always appreciate.

Good luck with your new transition, and take the leap of faith. You can do it and be successful. ■



For more than four decades, Jon H. Kingsepp has represented clients in jury and nonjury trials in cases involving municipal law, real property, patent and copyright infringement, and complex business disputes. He has authored numerous articles regarding trial tactics and the effectiveness of mediation, participated in hundreds of ADR proceedings either as an advocate or a neutral, and was a founding member of Professional Resolution Experts of Michigan.

ENDNOTE

1. Steven J. Harper, Esq., *The Belly of the Beast, The Age-Old Problem of Age* <<http://thelawyerbubble.com/?s=ihe+age-old+problem+of+age>> (posted April 18, 2012) (accessed September 10, 2015).