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Clause for Concern

Synopsis: *People are leaving their jobs in record numbers. Here's how to make sure your firm's clients don't go with them.*

Takeaways: *Include a non-solicitation clause in your employment agreement—and be prepared to spend the money to enforce it. But don't rule out negotiations with the departing advisor.*

Economists and HR consultants are talking openly now about The Great Resignation. The term refers to a new dynamic in the U.S. economy, which seems to have been brought on by Covid and remote work, where an unprecedented number of workers are resigning from their current employment and looking for something better.

I recently talked with Stark & Stark RIA attorney Tom Giachetti about what The Great Resignation could mean for advisory firms, and how they can prepare for the business risks it entails.

Giachetti has faced his own Great Resignation challenges; you may have read in the *Citiwire* publication where three attorneys on his team resigned abruptly and immediately began soliciting Stark & Stark advisory clients. In this environment, they didn't even have to come up with the capital to rent office space; the new firm is operating virtually from the attorneys' various places of residence. Giachetti's response has been to take a high road so high it looks down on the clouds, saying that the departures were a shock, but that he wishes them all

EARLY WARNING

The T3/Inside Information Software Survey has collected 5,000 responses so far, and will be open through the middle of March. (Link: <https://www.surveymonkey.com/r/Z5DKT32>)

Next up on the conference circuit: T3, May 2-4 in Denton, TX, the number one (really the only significant) technology show in our space: (<https://www.t3conferences.com/2021-registration-and-agenda.html>), and the always-excellent NAPFA Spring, May 4-7 in Atlanta, with keynotes and workshops on client service and communications (<https://bit.ly/3LORCj7>).

The AICPA's ENGAGE conference, June 6-8 in Las Vegas, includes the best technical sessions (<https://www.aicpaengage.com/pricing>).

The 2022 Insider's Forum conference, in-person September 28-30 at the Grand America Hotel in Salt Lake City, will feature a keynote presentation on the evolution of the profession and another that will address the profession's future—plus a separate educational track for operations professionals (<http://www.insidersforum.com>; Inside Information subscribers use coupon code INSIDER22).

Tom Giachetti:

"Employment agreements should have non-solicitation clauses, but be prepared for the expense of enforcing them."



the best.

There are, of course, two shocks when longtime staff people suddenly up and walk out the door. The first is that they take all the investment that the firm put into training them (and promoting their career development and visibility in the community) to their own startup firm or a new one. Training the replacement is a not-inconsiderable expense—not to mention the temporary loss of productivity.

But the second shock can be a bigger one: suddenly your clients receive invitations to leave your relationship and work with the departed advisor at the new firm. “In most cases,” says Giachetti, “unless the employee has stolen proprietary information—which is anything more than publicly available contact information—any employee can leave the firm and solicit your clients. There is nothing to stop them.”

The most forward-looking firms are mitigating The Great Resignation by creating a great work environment and actively promoting and developing the careers of their team members. They offer above-average compensation and incentive comp., flexible hours and leadership opportunities.

But in even the best cultures, there is going to be turnover. How can an advisory firm minimize the impact as The Great Resignation sweeps through the profession?

Non-solicitation clauses

Giachetti says in the entirety of his career, he’s been recommending that advisory firms use some form of employment agreement with their existing staff and new hires, and that it include a non-solicitation clause. “We put that in,” says Giachetti, “so that if and when their employees decide

to leave, with or without notice, we have some recourse to stop them from taking the firm’s clients.”

But there’s nothing to stop those clients from finding that employee even if there is an agreement, right?

“The clients can find them; yes,” Giachetti answers. “But the issue is, even if the clients find them, the employee is estopped from taking them on as clients for a period of typically two years, sometimes shorter, depending on state law.”

These agreements are surprisingly customizable. “In some cases, we might build in a transition compensation,” Giachetti explains. “If the employee does not solicit the client, but the client says, *you know, I’ve been dealing with this advisor for years and I really want to go with them, and I am not going to stay with you*, then the agreement would say, *employee, you can have this client so long as you are not soliciting them, and there is a transition compensation of one- to two-times trailing 12 months of revenue.*”

The contract could make this explicit, but more typically this arrangement is the result of negotiation, and Giachetti says that most advisory firms will want to enter these negotiations from a position of strength. “I generally prefer not to put that language in the contract,” he says. “Why? Because it can lead a judge to say, *you already have a remedy. Don’t tell me to stop them from soliciting the clients; you already told the employee they can go ahead and*

solicit so long as they pay you. That's not what the contract says," Giachetti adds, "but that's what the judge might infer."

If there is clear non-solicitation language in the employment contract, then the advisor can look at the clients who have a foot out the door and make some calculations. In some cases, those may not be the most profitable clients, in which case having them go to the new firm is not a terrible outcome. In other cases, having the non-solicitation clause makes it easier to receive compensation for the loss of client revenue.

"So long as you have the hammer to stop them, you could always then negotiate with the former employee," Giachetti explains. "You can say, *okay, you can have these clients so long as you pay me one- to two-times*

trailing 12 months revenue, and so long as you sign off, or your new employer signs off, that you won't solicit any of the other clients. And then we can have a nice transition."

Giachetti also recommends that the employment contract include language saying that the firm is free to notify the departing advisor's new employee about the existence of the non-

there's not a whole lot I can do for them. I can send a cease and desist letter, but it really has no teeth. If the departing advisors have gone in and downloaded proprietary information or a client's personal nonpublic information, then we have an issue. But there is still nothing that stops them from soliciting. They have just stolen information, and we may have a

If you're strong about enforcing your non-solicitation clause, it gives you negotiating leverage to get paid for any clients you might be losing.

solicitation clause, and will hold the firm harmless if it makes that notification.

Why is that important? "Basically, it means I can notify your new employer that you're subject to these covenants," says Giachetti. "Sometimes the new employer will say, *hey, I didn't know that. He told me he had no covenants. He lied to me. So I fired him.* You don't want the employee coming back," he adds, "and saying that you interfered with his new employment."

Negotiations

Giachetti has been called by advisory firms—generally not people he has worked with before—who are facing the situation of a departing employee soliciting clients with nothing to stop them. "The conversation usually is something like: *Help! We're in trouble!*" Giachetti says. "And

cause of action for *that* under state law."

How, exactly, is nonpublic information defined? Anything other than names and contact information—that is, anything other than what can be found online or through other public research options. That includes account information, the financial planning document, even the goals checklist that was created in the initial meeting. Giachetti notes that some of this information is not easily retrieved without the cooperation of the advisor's former employer, which can be another item for negotiation. The departing advisor will benefit from having a copy of the financial and estate plan, and a smooth transition of assets from the former firm to the newly-formed one.

What are some examples of advisory firms who have found themselves trying to defend their clients from being poached?

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Giachetti recalls a not-unusual situation where a firm owner in his 60s was phasing out of his work schedule. He had delegated the day-to-day management of client relationships to three staff advisors. “He had no agreement, no covenant, nothing,” Giachetti says. “The people on his staff decided to leave the firm and start their own, and they called his clients. Seventy percent of them

case to court. “It is not cheap to enforce these things,” says Giachetti. “You ask the court for a temporary restraining order, and the judge tells the departing advisor to stop. You cannot touch, you cannot talk, you cannot do anything.”

During the period covered by the restraining order, the firm’s leadership team has two options. They can try to work out a settlement

firm, then Giachetti might include an exclusion in the agreement. But if the departing advisors formed those relationships during their employment with the firm, even if it’s through their own marketing efforts, then those clients are subject to the non-solicitation clause. “They don’t actually have their own marketing efforts,” Giachetti says. “They were doing it as an employee of the firm, on the firm’s time, while the firm was paying them.”

These days, there are some interesting permutations to these arrangements. Suppose an advisor sold her firm to a larger entity, and then didn’t like the way the clients were being treated after the sale? Giachetti has brokered a number of advisory firm sales—43 in 2021 alone—and he says that anything that you worry about can be covered in the sales agreement.

“In most cases, the seller needs to realize that when you sell, no matter what the acquirer told you, you have to be prepared to no longer decide how the clients will be served,” he says. “You have the right to ask the appropriate questions prior to the acquisition,” Giachetti adds, “and if certain things are important enough to you, have covenants put in the agreement. But you can’t cry foul after the deal is done and you got your money.”

Suppose a staff person of a firm that was sold to a larger company didn’t participate in the sale, but has client relationships that were part of what was purchased? She is now part of the new company, involuntarily. Can the employment contract be voided

***Once your firm has been acquired,
you no longer have any control over
how the clients will be treated.
Get your preferences in writing.***

went with the departing advisory team.”

In another situation, there was a signed restrictive covenant agreement, but the employee called a few clients anyway. The firm had Giachetti file a cease and desist order, but he also encouraged the company leaders to do an analysis—and the analysis showed that these were unprofitable clients who had a close relationship with the departing advisor. “We entered into an agreement,” says Giachetti, “that said, *you can have these, but you cannot touch any others, and you are going to agree to a substantial penalty if you touch any of the others.*”

The most common situation, for Giachetti’s advisor clients who have had him prepare non-solicitation agreements, is that the advisor will leave and violate the terms of the non-solicitation agreement, and the advisory firm has to swallow hard and take the

with the former employee, or they can refuse to settle, and seek a permanent injunction—although in most cases, ‘permanent’ means one or two years. “The clients can go to any other firm in God’s world,” says Giachetti. “But not to the firm that was created or that hired those departing advisors.”

Shouldn’t the firm always negotiate? Why take a hard line when there’s a chance of losing the clients anyway in a year or two? “If you have other employees in a similar situation, this sends them a message,” says Giachetti. “It tells them, we have these agreements and they are there for a reason, and we will enforce them.”

Transition issues

But what if the departing advisors initiated the client relationships in the first place? If the relationships were formed before the advisor came to the

in that case?

“If your agreement says it is binding on successors and assigns, then you have agreed to be bound by the agreement to the new firm,” says Giachetti. If that provision is not in there, then the advisor can leave and solicit clients. This possibility is generally built into the transaction agreement, where there is a set-off against the purchase price if a certain number of clients don’t transition over to the purchasing firm, or don’t stay for a specified period of time.

But Giachetti says that the purchasing firm does not owe the clients of the purchased firm the same level of service that they may have received over the previous ten years. “At the end of the day, we are fiduciaries, and services must be provided in a fiduciary capacity,” he says. “But the way one fiduciary provides services can be totally different from another. Things change when ownership changes.”

The bottom line here is that any time a firm takes on staff leverage—that is, delegates tasks to a new hire—there are risks. The employee could leave, taking his or her training to a new firm. Unless the firm is careful, the departure could impact client relationships—and could even cause clients to leave the firm.

The Great Resignation hasn’t changed that dynamic; it has simply made it a few standard deviations riskier. “Every day, advisory firms are dealing with that risk, and it’s a significant risk,” says Giachetti. “But the good news is that there are ways to protect yourself from some of the worst outcomes.”■

Medical Cost Calculator

Synopsis: *The original i65 program gave advisors instant Medicare expertise. The expanded version models what may be clients’ most significant retirement cost.*

Takeaways: *Traditional Medicare offers much more cost certainty than Medicare Advantage. Healthier, longer-lived clients may need to set aside more than others to cover their future long-term care expenses.*

The average financial planner is intimately conversant with tax and retirement planning, modern portfolio theory and a host of tax-aware retirement decumulation strategies. But how do you realistically estimate the future costs of medical care throughout

been greatly expanded from a Medicare decision tool to a more comprehensive planning instrument that illustrates future medical and long-term care costs. But for advisors who have never used it before, it might help to take a quick look at how i65 would help them address a not-infrequent but surprisingly technical question: should a 65-year-old client stay in a company group health insurance plan or enroll in Medicare? And: when should the client and advisor reach for the CMS-L564 form?

To help you find the right advice, the program walks the planner and client through a series of questions.

Does the company that offers the plan have fewer than 20 employees? The client should enroll in Medicare Part A and B at age 65 and Medicare will function as the primary insurer. The client might want to keep the company plan as the secondary policy, instead of a Medigap policy.

Does the client’s company employ more than 20 staffers? Then i65 offers a way to calculate,

Realistically estimating future medical costs in retirement can be surprisingly straightforward--and complicated.

retirement, and bake those future expenses into the financial plan? How do you help clients determine whether to enroll in traditional Medicare or a Medicare Advantage plan?

To address these questions, the advisor could engage an expert—or, perhaps, the expert in a box, otherwise known as i65 (<https://www.i65.com/>).

The i65 software has recently

side-by-side, the cost comparison between what the client is paying under the group health insurance plan vs. what it would cost to drop the plan and enroll in Medicare. A chart shows the IRMAA surtax that the client would have to pay (based on current and projected income) as a cost on the Medicare side of the ledger.

Of course, Medicare doesn't cover dental and vision coverage. If the company plan does, you would enter the cost of those coverages into the Medicare side of the equation—and the program will provide cost estimates if you don't happen to know them off the top of your head.

Is the client's spouse (and, perhaps, children) covered under the group coverage? If so, then dropping out of the company's group plan can be an expensive mistake. If the client leaves the plan and enrolls in Medicare Part A and B, the spouse (and, perhaps, children) would have to buy health coverage on their own—because Medicare doesn't cover dependents.

"We've run cases where enrolling in Medicare would cost the client an additional \$11,000 a year," says i65 co-founder Melinda Caughill. "But if some of those circumstances are just a little bit different, if there isn't spousal coverage and it is more of a high-deductible plan, then Medicare comes out better than remaining on the employer's group plan."

And, of course, when the client finally retires, the software is there to remind the advisor and client to ask the employer to fill out that CMS-L564 form and submit it to the local Social Security office. Otherwise the Medicare System

EMPLOYER GROUP HEALTH PLAN (EGHP)		ORIGINAL MEDICARE (Parts A & B, a Medigap plan and a stand-alone Part D plan)	
MONTHLY PREMIUMS <i>For awareness only — Do not add this amount to the subtotal.</i> Out-of-pocket maximum \$ 500,000 <i>Original Medicare with a Medigap plan has first-dollar coverage.</i>		2022 Part B Premium	\$170.10
		Part D Premium <i>Not sure? Use the national average of \$33.37¹</i>	\$ 33.37
		Part B IRMAA, if applicable ²	\$ 408.20
		Part D IRMAA, if applicable ²	\$ 77.90
		Any late enrollment penalties, if applicable ³	\$ 0.00
		Medigap Premium <i>Use the national average of \$183⁴ if uncertain.</i>	\$ 183.00
		Dental Plan Premium	\$ 0.00
		Vision Plan Premium	\$ 0.00
Your portion of the monthly plan premium \$ 300.00		MONTHLY SUBTOTAL	\$ 872.57
HEALTHCARE COSTS Your total out-of-pocket healthcare costs in the previous year. <i>Do not include prescription medication costs here.</i> \$ 1,500.00 <i>If your health has changed dramatically from last year, feel free to adjust this amount to better reflect your current needs.</i>		2022 Part B Annual Deductible — <i>This must be paid by anyone purchasing a Plan G Medicare Supplement plan.</i> \$ 233.00 <i>If you prefer a type of Medicare Supplement plan other than Plan G, please add any additional annual out-of-pocket costs here:</i> \$ 0.00	
SUBTOTAL	\$ 1,500.00	SUBTOTAL	\$ 233.00

¹ Medicare's 2022 standard Part D premium ² Determine IRMAA costs on page 5. ³ Late enrollment penalties explained on page 6-7. ⁴ According to www.kff.org

EMPLOYER GROUP HEALTH PLAN (EGHP)		ORIGINAL MEDICARE (Parts A & B, a Medigap plan and a stand-alone Part D plan)	
PRESCRIPTION MEDICATIONS			
Estimate your monthly out-of-pocket costs for your prescriptions.	\$ 20.00	<i>To estimate your drug costs, use the Plan Finder tool at Medicare.gov. Your i65 account home page references a guide that teaches you how to use this tool.</i> Average monthly drug costs \$ 20.00	
OTHER COSTS & CONSIDERATIONS			
Do you have any dependents on the plan?	# of Dependents 1 <i>Adds \$428 per-dependent to "Plan premiums for dependents" to the right¹</i>	Plan premiums for dependents (Medicare covers one person. Dependents must secure other coverage.)	\$ 428.00
Any services not covered by your plan that would be covered by Medicare?	<i>If yes, add these annual costs here.</i> \$ 0.00	Any services not covered by Medicare that would be covered by your plan? ²	<i>If yes, add these annual costs here.</i> \$ 0.00
Do you contribute to a Health Savings Account (HSA)? ³	<i>If yes, calculate your estimated value of continuing contributions to your HSA and add it as a cost to Original Medicare.³</i>	Add the value of continuing contributions to an HSA as a cost to Original Medicare. ³	<i>If yes, add these annual costs here.</i> \$ 500.00
MONTHLY SUBTOTAL	\$ 20.00	MONTHLY SUBTOTAL	\$ 489.67
Premiums Monthly SUBTOTAL	\$ 300.00	Premiums Monthly SUBTOTAL	\$ 872.57
Healthcare Costs Annual SUBTOTAL	\$ 1,500.00	Healthcare Costs Annual SUBTOTAL	\$ 233.00
Additional Considerations Monthly SUBTOTAL	\$ 20.00	Additional Considerations Monthly SUBTOTAL	\$ 489.67
MONTHLY TOTAL	\$ 445.00	MONTHLY TOTAL	\$ 1,381.65
ANNUAL TOTAL	\$ 5,340.00	ANNUAL TOTAL	\$ 16,579.84

¹ Calculated using the KFF analysis of healthcare marketplace silver plans in 2022. www.kff.org ² Determine if you require services not covered under Medicare at Medicare.gov — <https://goo.gl/uoSEGP>. ³ If the employer-provided coverage is through your spouse's employment, please skip this section.

would have no way of knowing that the client was legitimately opting out of coverage. Otherwise, a 10% penalty surcharge would be added to both the client's monthly Part A and Part B premium for twice the number of years the client was eligible for Medicare but was not enrolled.

The core part of the i65 tool can show advisors how to help their clients avoid the dumb but common mistake of enrolling in Medicare Part A and B at age 65 while staying

covered by the employer's group plan as the primary insurance (the client would then have to go through underwriting when he/she applies for Medigap insurance). More generally, it walks clients through the decision of whether to enroll in traditional Medicare (with Medigap coverage) or Medicare Advantage. (Key questions: *Do they want to keep their current doctor relationships? Are they comfortable with potentially large out-of-pocket medical expenses if*

they need a specialist who isn't in the insular network of Medicare Advantage doctors? If the client travels abroad frequently, the software recommends Medigap Plan G, which covers foreign travel health emergencies; Advantage plans are generally not helpful if there's a health incident anywhere but in the local community.)

Caughill says that i65 in its original version has been helpful to advisors who are navigating the conflicted advice that is available to consumers—and help them potentially save their clients enormous sums of money down the road.

“I would estimate that half of the local agents out there are not to be trusted,” she says, “because they will make about 30% more selling Medicare Advantage plans than they do supplemental and Part D drug plans. And,” she adds, “Advantage plans are the plans you can't get out of if you have a health incident. I have a lot of horror stories of people who experienced some sort of medical condition and wanted to switch to traditional Medicare, but they couldn't pass underwriting to get a Medigap policy. It's not uncommon for someone to come down with an expensive medical condition, the oncologist they need to see is out of network, the insurance company won't agree to pay for it, and the provider wouldn't accept the PPO payment. So they end up paying significant expenses, completely out of pocket.”

Modeling Medical Expenses

Alert readers will notice that I've used the past tense when

relating these i65 features, even though the program still does all of these things, maybe a bit better today than it did before the recent upgrade. But today, the program offers more than Medicare expertise in a box (which is now called the i65 Roadmap module). Advisors are now using i65 to model a client's total retirement healthcare and long-term care costs so they can create more detailed (or more realistic) financial plans—greatly expanding the program's utility into

Advisors can model a client's total healthcare costs in retirement. The biggest variable is the long-term care and skilled nursing costs.

the broader planning sphere. The software creates a report with cost estimates that can be input into the planning software, and calculates the amount a client would need to set aside by age 65, in today's dollars, to pay for those future health expenses.

“We're trying to facilitate better planning conversations and make healthcare costs in retirement a bigger talking point in the profession,” says Caughill. “Too many people, in their retirement planning, are ignoring what is potentially their biggest cost in retirement.”

How does it work? The iEstimate module starts by asking some basic lifestyle questions as a way to roughly project the client's life expectancy—on the theory that the morbidly obese chain-smoker who is in denial about his alcoholism might live fewer years in retirement

than the vegetarian yoga instructor whose only noticeable vice is a fondness for a warm cup of green tea with breakfast.

Does the client smoke? Does the client have a family history of Alzheimer's, or cancer, or heart disease?

Has the client been recently diagnosed with a life-threatening condition? (Click on an icon and you see that this means end-stage respiratory or heart disease, stage 4 cancer, or the final stages of

Alzheimer's or Parkinson's.)

Does the client have a chronic medical condition (high blood pressure, osteoporosis, diabetes or controlled arthritis)? Does the client have any acute conditions that will heal on their own, such as a respiratory infection?

Does the client live alone? There are questions about the client's ability, now or in the future, to manage their medication regime and personal hygiene.

The program feeds this information into the Center for Disease Control's life expectancy calculator, and provides a projected age at death. Caughill says that planners can to use this number in their planning projections, but she's not optimistic that many advisors will deviate from the age 90-95 default built into most planning software programs.

The total healthcare

calculation projects a variety of expenses over this calculated lifespan. The most basic are the monthly Medicare premiums, which can be surprisingly tricky to calculate. The program assumes traditional Medicare, Part A and B. Caughill explains that Medicare Advantage, with the unknown out-of-pocket costs, would be too difficult to model. “Many healthcare costs are capped by Medicare,” she says. “Traditional Medicare gives you a degree of certainty about what those costs will be, year by year, because you know what the premiums are.”

The program asks about the client’s future income, so it can calculate the annual IRMAA surcharges, if any—and advisors can add to the value of their services by helping clients send in the Medicare IRMAA Life-Changing Event SSA-44 form on the day they retire, telling Medicare that the client’s income circumstances have changed and the IRMAA surcharges no longer apply. The program will assign different IRMAA surcharges for periods when the client is still earning income and when not, although clients with high RMDs may see them come back after age 72. (A sometimes-overlooked reason to consider Roth conversions.)

There are inflation factors built in, which makes the calculation a bit trickier. Caughill notes that part B premiums have been increasing at a 7.5% rate per year historically, which raises the annual costs dramatically toward the end of a 30-year retirement.

Finally, the program estimates

Year-by-year Spending Breakdown

Year	Part A & B	Premium (Medigap/Private)	Part D	Dental	IRMAA	Total Out-of-Pocket	Long-term Care	Total
2022	\$680	\$525	\$146	\$309	\$1,782	\$1,625	\$0	\$5,067
2023	\$2,102	\$1,670	\$450	\$964	\$5,508	\$687	\$0	\$11,380
2024	\$2,166	\$1,770	\$464	\$1,002	\$5,671	\$707	\$0	\$11,780
2025	\$2,230	\$1,876	\$478	\$1,043	\$5,842	\$2,374	\$0	\$13,844
2026	\$2,297	\$1,989	\$492	\$1,084	\$6,017	\$786	\$0	\$12,665
2027	\$2,366	\$2,108	\$507	\$1,128	\$6,198	\$810	\$0	\$13,116
2028	\$2,437	\$2,234	\$522	\$1,173	\$6,384	\$834	\$0	\$13,584
2029	\$2,510	\$2,368	\$537	\$1,220	\$6,576	\$3,102	\$0	\$16,313
2030	\$2,586	\$2,511	\$554	\$1,268	\$6,772	\$885	\$0	\$14,575
2031	\$2,663	\$2,661	\$570	\$1,319	\$6,976	\$1,035	\$18,255	\$33,479
2032	\$2,743	\$2,821	\$587	\$1,372	\$7,185	\$1,067	\$18,803	\$34,577
2033	\$2,825	\$2,990	\$605	\$1,427	\$7,401	\$3,938	\$19,367	\$38,553
2034	\$2,910	\$3,169	\$623	\$1,484	\$7,622	\$1,132	\$19,948	\$36,888
2035	\$2,998	\$3,360	\$642	\$1,543	\$7,851	\$1,166	\$182,937	\$200,496
2036	\$3,087	\$3,561	\$662	\$1,605	\$8,087	\$1,248	\$188,425	\$206,675
2037	\$2,120	\$2,517	\$454	\$1,113	\$5,553	\$858	\$382,776	\$395,390
LIFETIME TOTAL:								\$1,058,382

each year’s dental, vision and Medigap costs. The individual expenses are detailed year-by-year, summed up in a column on the right and then cumulatively added together at the bottom, as a raw number and also as a present value of the total cost.

“You’re looking at a fairly predictable year-by-year cost structure in retirement,” says Caughill. “Dental is an estimate, inflation is an unknown, but otherwise the costs of my healthcare are controlled by the insurance that I’ve signed up for. It’s not requiring any kind of crystal ball.”

The joker in the deck, of course, is long-term care costs—which turns out to be a BIG unknown expense, and often unexpected. “Many people think Medicare will cover long-term care costs,” says Caughill. “And of course that isn’t true.”

You can see a sample output above, which assumes high RMDs in retirement (thus high IRMAA surcharges), several years of in-home care and the last year of life in a skilled nursing facility. Taking

more optimistic scenario for a younger person, assume a client who dies in 2051 will only need to spend one year of in-home care, and then, as her health deteriorates, she’ll move into a skilled nursing facility for a year before she dies.

Based on current inflation rates, that final year will cost roughly \$580,000, which turns out to be about half of her total running costs of healthcare during the 30 years of retirement.

Present value of that future cost: roughly \$142,000.

If the client has a family history of dementia, or if the client has a family history of living to ripe old ages, then this most optimistic scenario would have to be revised. Healthy, long-lived clients whose cognitive powers are gradually declining might spend 2, 5 or even 10-15 years under the care of a skilled nursing facility.

Caughill expects i65’s iEstimate report to facilitate two planning conversations between advisors and clients. The first, obviously, is about accounting for healthcare costs in the retirement

expense projections—adding them to the projected lifestyle expenditures that are more typically modeled by planning software.

The other conversation would be about long-term care insurance, which, unless the projected expenses are staring the client in the face, can be a tricky topic to bring up. “Most people don’t realize how much skilled care actually costs,” says Caughill. “And they usually don’t know anything about their chances of needing it. We’re trying to start hitting, head-on, all those things that people aren’t thinking about in one comprehensive planning and talking tool.”

Interestingly, a number of advisory firms are starting to apply the i65 tool to clients’ parents—and in some cases they’re realizing that the parents made unwise decisions decades ago.

“A majority of adult children wind up assisting their parents as they age,” says Caughill. “Not knowing or understanding the Medicare choices your parents made can leave you struggling with significant challenges when your parents experience declining health.”

This becomes another expense for clients approaching or early in retirement—and it’s much more difficult to model without an assessment. “I deal all the time with children of aging parents who are now playing Medicare catch-up,” says Caughill. “We just did a consultation for a woman whose mother and father have moved into an assisted living facility in Florida. They have a retiree plan, but the plan switched to an Advantage type of structure, and the long-term care

facility they live in will not take Advantage plans. So now,” she continues, “the children are left to figure out, *what are we going to do? We thought their plan would pay for everything.*”

Facts and Myths

The i65 program includes a third module, which provides a needs assessment for advisors

clients’ aging parents are making won’t affect them.

Cost? The i65 program is priced at \$35 per client per year, which includes unlimited needs assessments, Roadmaps and iEstimates for the individual client for a full year. There’s a minimum of 3 purchases, and renewal options as well.

The bottom line here is that i65 was, initially, a unique tool—

i65 can also be used for clients who are looking at their retirement options, helping them decide how to enroll and their Medicare eligibility.

to use with clients who have not reached retirement age. The module is designed to dispel some common myths about Medicare and bring up the healthcare cost factor in an advisor/client retirement conversation. The questions include marital status (domestic partner situations can be particularly tricky); whether the client has paid Social Security and/or Medicare taxes for ten years (the program now includes calculations for people who are receiving benefits through the Railroad Retirement Board); and whether the client is currently receiving disability or retirement benefits through Social Security.

You can think of the output as an educational tool, preparing a client to think about long-term care costs, when to enroll in Medicare, the fallacy of assuming your employer’s group coverage is superior to Medicare or vice versa, and the dangerous assumption that the Medicare decisions that the

indeed, we had to put it in the ‘miscellaneous’ category of the annual software survey because it didn’t have any competition as a Medicare-expertise-in-a-box solution. But now it offers a broader value proposition, helping advisors model a category of (significant) retirement costs that have been either ignored or crudely estimated in the past.

Having played with the program myself a bit, I would definitely recommend that advisors go through the training videos, and perhaps even a live demo before using the program with clients.

But that said, I don’t think there is a better solution on the market for starting a meaningful long-term care insurance conversation with clients. If it has to be in a category all its own, we can at least be grateful that i65 fills a variety of needs that a hypothetical Medicare expertise and healthcare modeling category would encompass. ■

Pulling Advisors out of the Rut

Synopsis: *Productivity Uncorked melds two consulting arrangements into a comprehensive solution for breaking through the growth ceiling.*

Takeaways: *Prioritize your most essential tasks, and make sure you get to them despite all the urgent (but not necessary) tasks that present themselves. Train your COIs on how to describe your services and productively refer you to clients who*

In my conversations with advisors around the country, I often encounter what might be called the “ceiling paradox.” In the course of the interview, the advisor (and sometimes a COO or operations manager) will confess that he or she feels ‘stuck’ (the technical term) at a certain stage of growth, and would really like to be doing more, serving more clients and generating more revenue.

At the same time, he or she feels overwhelmed, working 50 or even 60 hours a week. “If suddenly, magically, more clients walked in the door,” they’ll tell me, “I honestly have no idea how I would find the time to work with them.”

Of course, these advisors could reach out to a consultant or coach, but many of these coaches and consultants specialize in one side or the other of this paradox, helping advisors better manage their business lives, or helping them attract more clients—but seldom both. The nature of the ceiling paradox is that a resolution has to come from both sides at

once, maybe a bit of progress on the overwhelm side to create some time to devote to new clients, then some on the marketing side to raise the client count and revenue, then additional consulting to keep from becoming overwhelmed again—until the advisor manages

Advisors who are feeling stuck might be looking for marketing advice. But they might need to improve their productivity first.

to spiral up through the growth ceiling into a place where he or she can comfortably accommodate consistent progress.

I do happen to know of one resource that addresses both ends of the ceiling paradox as needed. Patty Kreamer and Michelle Donovan had been working as independent coach/consultants on, respectively, professional organizing and productivity

coaching, and marketing coaching. Over the years, each discovered that many of their advisor clients needed the services of the other in order to drive their planning firms out of the rut.

“We were constantly referring clients back and forth,” says Kreamer. “We finally decided: *this is really silly. Let’s join forces and coordinate our efforts.*”

The business marriage resulted in a consulting/coaching firm called Productivity Uncorked (<https://productivityuncorked.com/>) which can be regarded as something of an all-star team. Kreamer is a Certified Professional Organizer and author of three books: *Success Simplified*; *But I Might Need It Someday*; and *The Power of Simplicity*. She and Donovan have co-authored: *A Woman’s Way: Empowering Female Financial Advisors to Authentically Lead and Flourish in a Man’s World*; and *The 29% Solution: 52 Weekly Networking Success Strategies*.

Both are prodigious bloggers on productivity and marketing strategies and are currently leading their first classes of an online 60-day Profitable Productivity Plan educational program. Both are certified in DISC assessments, which allows them to help people better relate to their co-workers and potential referral sources, and to improve the internal communication and work dynamics of staff teams.

All of these varied services are aimed directly at the ceiling paradox that plagues so many advisors and advisory firms. “Many of our clients are at a

plateau,” says Kreamer. “They’re stuck and they can’t figure out why. Usually people can’t become more profitable until they become more personally productive, so they usually start working with me,” she adds. “Once I get them to the point where they’re running on all cylinders, then they go to Michelle. And Michelle’s job is to help them fill that newly-created capacity with new clients.”

“I often discover that they aren’t doing the right activities on the marketing side,” adds Donovan. “They may not be happy with how well their clients are referring, or they’re not happy with their CIOs [centers of influence], or it could be that they don’t even have COIs. I don’t bring to the table a cookie-cutter approach; it is about working with that particular advisor to start with what they feel comfortable with, and what will work with their existing relationships.”

Prioritization and Delegation

Advisors and operations managers who are not feeling at all stuck, who are comfortable with their personal productivity and flow of new clients, might be advised to stop here and move on to the next article. Otherwise, consider some of the challenges that the Productivity Uncorked team addresses—and most importantly, how they address them.

“I’ve worked with people who literally get out of bed in the morning, and go to bed at night, who don’t even know what’s on their ‘to-do’ list,” says Kreamer. “They’re running by the

emergencies of the day, whenever the phone rings or whatever email they get—and they never get around to putting time into the things that are really important. If it’s not urgent, they never get around to it,” she continues, “even if it may be much more important than the things that are demanding

communicate with the person you are delegating to,” she says, “so they and the person who will be taking on the task are comfortable with the hand-off.”

She also helps advisors plan their days—meaning identifying two or three things that absolutely need to be accomplished in the

Many advisors are constantly dealing with urgent tasks like phone calls and emails, without prioritizing the much more important and necessary tasks on their plates.

their attention all day long.”

Among the dysfunctions: handling their own email instead of having someone else route the important ones and screen out the others. Booking client meetings themselves by going back and forth on calls with clients. Doing everything themselves when there are others who can be hired, sometimes cheaply, to do them.

The first step, she says, is to identify the things in the firm that only you can do. “That allows them to recognize the things they can delegate,” says Kreamer.

Of course, delegation is hard; you have to add a fairly complex task to your 60-hour week: teaching someone else how to do something mundane that you’re completely familiar with, and hope they do that mundane task as well as you would. “This,” says Kreamer, “is why so many people don’t delegate.”

Kreamer helps coach advisors on how to get that task forever off their desk. “I have them go through some processes with me on how to

next workday, even if it means pushing some of those urgent tasks aside. “And I have them write down and envision exactly how a perfect week would look,” says Kreamer. “If you don’t want to see clients on Monday and Friday, then never book a client on a Monday or Friday. You want to golf on Friday afternoon? Mark it off. You want exercise? Family time? Put that down on your ideal week.”

Gaining productivity is also about setting boundaries. “Some people, when a client calls up and says, *well, I can only do evenings or Saturdays*, even if the advisor doesn’t want that, they do it anyway,” Kreamer explains. “They end up working in the evenings and on Saturdays. I say: *do you want to do that?* The answer is no. So we work on language for how to tell clients that you aren’t available those times. And if the client won’t go along with that,” she adds, “then they are probably not your ideal client to begin with.”

More subtle boundaries have

to be set for clients who take up more of an advisor's time than they're paying for. "We talk about segmenting their clients, and how many meetings are appropriate to have with each client segment," says Kreamer. "Sometimes they are just at the whim of these clients, meeting 12 times a year. Most clients don't need you that often,

typically do with advisors around COIs is have them start thinking about, what are their expectations? And what are the qualities and characteristics that they're looking for in their COIs? What are their expectations in the relationship?"

In a surprising number of cases, the advisor who is expecting those referrals is fated to be

from a liability standpoint. I said: *how does that make you feel?* She said, *well, he does such a nice job with my clients.*"

At that point, the advisor has a much clearer set of options: continue referring to the banker with no expectation of reciprocity, or look for a new banker who might be more amenable to returning her many favors. "Ultimately," says Donovan, "she made the decision to stay with that banker, but in addition, she will be looking for another person to fill that role."

Donovan says that most advisors don't know how to have the referral conversation with COIs or with clients. In the case of COIs, there is a right way and a wrong way to approach the topic.

"You cannot approach a COI and say: *this is what I want from this relationship, and you're not giving it to me. So what are we going to do about that?*" says Donovan. "But what you *can* do is approach it as an invitation to a mutually-beneficial relationship. The advisor can approach the COI and say something like: *Hey, I've been doing some work on what I really want from my business relationships, and I have created a list of things I am going to commit to in this relationship. This is what I'm going to commit to you. What are your thoughts on this?*"

The key point here is that the advisor has taken the lead, laying out his or her commitments. "Nine times out of ten, the COI will follow that lead," says Donovan. But she also says that a part of that conversation is to help the accountant, attorney or banker

Most advisors don't know how to have the referral conversation with their COIs, and many of them may not realize that they are never going to get those referrals.

but if they do, then you need to be compensated for that additional time."

Referral pipelines

Let's suppose that this consulting regimen has helped an advisor clear out some space on the daily schedule, and he or she is ready to meet new clients. Except... there aren't any. In fact, the advisor has been relying on getting referrals from a local accountant that he/she has been referring clients to for tax work, and no new clients are coming back. Can Donovan help unclog those referral pipelines?

"That scenario is one of the biggest complaints that I hear from advisors related to COIs," says Donovan. "It's the whole lack of reciprocity."

Donovan will start by helping advisors gain clarity about the situation as it stands. "One of the biggest things that I will

disappointed, but doesn't realize that she's relying on a dead end situation. Donovan tells the story of an advisor who had a relationship with a local banker, who she referred clients to on a consistent basis. The advisor complained to Donovan that she wasn't getting any clients back.

"I asked her: *what did the banker say when you had a conversation about this?* She said, *well, I never had that conversation,*" says Donovan. "*I don't know how to HAVE that conversation. We did some coaching around that, about how to have that conversation, and she came back to me the next time and said: I had the conversation, and it turns out that this banker is NEVER going to give her any referrals.*"

Why? "She said that the bank that he works for doesn't believe in giving referrals to an individual advisor," Donovan explains. "They only refer to larger wirehouse firms, where they feel more secure

understand what kind of client the advisor is looking for.

Until the coaching engagement, the advisor might not have clarified these things in her own mind.

“I encourage advisors to really think about who they do their best work for,” Donovan says. “If they decided to target in and become more focused, then their COI referral relationships can become way above average, a whole lot more targeted, a whole lot more specific and creative.”

Similarly, there are right and wrong ways to approach clients about referrals. Donovan says she regularly runs into advisors who say the same thing about clients that they do about COIs: *My clients seem happy with my service, and sometimes I say, hey, can you give me some referrals? But they're still not referring me.*”

That, of course, illustrates the wrong way to elicit new business from your existing client base—and Donovan says that many advisors compound the error by introducing the referral conversation at the end of their client meetings—which suddenly turns the tables on the meeting, from it being about the client to being about the advisor.

“This helps explain why people feel so uncomfortable and uneasy with that ask,” says Donovan. “When you’re talking with clients in a scheduled meeting, you want it to be all about them, not about you.”

Donovan coaches advisors to teach clients how to refer them. “There are all kinds of studies which tell us that the main reason

why happy, satisfied clients don’t refer,” she says, “is because they really don’t know how, and they don’t know what their advisor wants. So they won’t risk getting it wrong. Like anybody else,” she adds, “a client needs to be taught who exactly makes a good client for you, how to refer to you effectively, and what, specifically, they can be listening for and how to open up a conversation.”

Once again, this requires the advisor to come to his or her own mental clarity about

Growth obstacles

Both Kreamer and Donovan run into a lot of obstacles when they’re helping advisors and COOs resolve their ceiling paradoxes, to the point where it sometimes seems like people prefer to stay stuck in the rut. Those obstacles are seldom external in the world outside; more likely, they reside as limiting beliefs inside the advisor/COO’s head.

“One limiting belief we get

You have to teach clients how to make effective referrals, which means you first have to articulate your preferred clients and your value proposition.

what kind of client is ideal. Then the conversation becomes client-focused; the advisor is communicating and teaching, not ‘asking’ for referrals or going into sales mode. “The pressure is taken off,” says Donovan, “because they don’t feel as though they’re asking clients for something. They feel like they are more in the role of teaching, informing and educating.”

But if not at the end of client meetings, when should advisors have that conversation? Donovan’s coaching includes helping advisors analyze their client relationships, to determine who would be ready or appropriate for that conversation. Then the advisor can sit down with a client separately for 30-45 minutes, maybe over coffee, and talk about how to make a productive referral.

is: *if I say ‘no’ to somebody, I’ll get a bad reputation, or I’ll damage the relationship,*” says Kreamer. “Another is: *If I tell a client that I can’t meet with them in the evening, it will hurt their feelings. Or: If I say ‘no’ to someone, someone else will get the opportunity, so I really have to accommodate anything they ask for.*”

A truly dysfunctional limiting belief: *I work better under pressure, so it’s actually good that I’m a procrastinator.*

Kreamer lists a few others: *if I don’t do this mundane task, nobody else will do it—or: nobody else can do this mundane task as well as I can. Or: I have to help everybody in the world with whatever they ask for. Every email that comes in is so important and urgent that I have to answer it right now.*

"I help people understand that they don't deliver insulin for a living," says Kreamer. "Nobody is going to die if they don't respond instantly."

"Some advisors believe that their clients will never refer them," says Donovan, "or that they're too busy to refer them. Or: *I won't get*

have some of the same issues that women face, but they haven't revealed that to anybody but us."

Donovan adds that women sometimes don't realize—until the coaching engagement—that they may have some advantages over their male colleagues. "There are studies that show that women

direction.

Getting Started

So what should an advisor know going into an engagement with Productivity Uncorked? "The one thing you need is to be coachable," says Donovan.

"That can be a deal-breaker for some people," adds Kreamer.

In the initial meeting, both Kreamer and Donovan will be on the phone (or Zoom), asking questions about the challenges they're going to be asked to address, looking for issues in their areas of speciality, triaging which of them the advisor or COO should be starting with.

"Nine times out of ten, the advisor comes to us wanting to get more clients," says Donovan. "So we listen very closely to find out if they're ready to get more referrals. Some of them are," she says, "and they'll start directly with me and never go to Patty at all. But many times," she continues, "we'll uncover some things where they really need Patty first to develop some space before they can move into better business development."

From there, the client might work with Kreamer, then move to Donovan, then back to Kreamer—generally for two to three years, though a couple of productive relationships are now in their fifth year.

Some women advisors will want to start with the 60-day online course: *The Profitable Productivity Plan for Female Financial Advisors*. "It's a condensed version of our coaching," says Kreamer, "except that we don't have a cookie-cutter

Kreamer and Donovan often find that the advisors they're coaching have a lot of limiting beliefs that are invisibly holding them back.

any referrals because people don't like to talk about money. Or: if I ask for referrals, I'll sound salesy. We hear so many of these beliefs, and people may not even realize that they have them until we talk to them and it comes to the surface."

Donovan and Kreamer unabashedly prioritize working with female advisors, although at the moment a majority of the advisors they're working with are male. "As female business owners, we understand the challenges of working in a predominately male business environment," Donovan explains.

She says that she and Kreamer will routinely encounter situations where a man might be less competent than a woman, as measured by skills, training or experience, but the woman will be much less confident in a business setting than the man.

"We deal a lot with the confidence and self-esteem issues," she says. "And there will be times when we're dealing with men who

will pick up seven times more facial cues and body language cues than men do," says Donovan, "which gives women an advantage when it comes to the relationship connection."

She adds that this is obviously not true of all men and all women. But Kreamer cites the example of a female advisor who was meeting with a client couple alongside a male colleague. "The guy advisor was going through the numbers on the review report, *this is what your investments look like, this is where we are with your retirement plan*," says Kreamer. "The female advisor was looking at the couple, and saw that they weren't paying attention. And she said: *can you stop for a second?* Then she asked the couple: *Is everything okay?*"

At that point, the wife began to cry. The couple had been having serious issues with one of their children, and their distress had been missed by the male advisor. The meeting proceeded in a very different—and more productive—

approach when we're coaching; that is, our personal service is not curriculum-based."

You might also sample the Kreamer and Donovan at industry conferences, where they are not-infrequent speakers. And of course, their blogs are a good source of insight on different topics related to the ceiling paradox and feeling stuck.

Team efficiency

What do advisor clients think of Productivity Uncorked's services? Yohnee Gordon, COO of JMG Financial Group, headquartered in Downers Grove, IL, has found the Productivity Uncorked team to be valuable to her firm in an area that wasn't discussed much above: the DISC profiling service. JMG has enjoyed what might, in an understatement, be described as above-average growth the last few years, now to \$4.6 billion AUM. As the growth was ramping up, in 2019, Gordon asked Kreamer and Donovan to profile her staff and then offer some general advice on how to work together more smoothly.

DISC, as most readers know, is a personality profile assessment which helps define how different people approach each other and the world; D stands for Dominance, I for influence, S for steadiness and C for conscientiousness, and there are many permutations of these core characteristics. The instrument offers insights into how other people might respond in different situations and to conversational cues, and how they

show up in their work and personal relationships.

The DISC exercise did such a good job of helping the JMG staff understand each other that now, on a list next to every staff member's name and contact information (when they need to connect remotely), the firm also lists that

A group DISC exercise helps everyone on the team understand how to communicate with each other, and who would be ideal for different projects.

person's DISC profile.

"When new people come in, their name and profile is added," says Gordon, "and now, I will hear people in the office say things like, 'oh, that person is a D, and that is why they would be good at this project.'"

Kreamer and Donovan helped create internal reports which helped the firm allocate support staff to specific advisors. "They know, at the beginning of the relationship, how they are similar and how they are different," says Gordon, "so they can communicate with one another effectively and they can be successful working together."

The engagement also included some individual coaching sessions, which focused on particular issues within the team. "Michelle did a session with one of our younger advisors who had progressed to the point where he needed to start focusing on business development," says Gordon. "But for some reason, he was uncomfortable with that. He

said, *I didn't sign up to be a sales person.*" Donovan helped him see that talking about the firm with outsiders, and explaining its value proposition, was a natural part of conversations. Being attentive to finding ways the firm could help people in their financial lives was a service, not a sales approach.

Another, newer advisor seemed to have insurmountable problems with time management, to the extent that Gordon suspected that he was actually fearful of achieving personal success. "Patty worked with him on his time management, organization and confidence, and it has made a noticeable difference," she says.

More generally, Donovan has been coaching individual staff members on how to ask for referrals and how to cultivate relationships with COIs.

The results haven't been difficult to track. "We hit record number of new business last year," says Gordon. "I have advisors who were just promoted last year, who are busting now with the number of clients they have."

Folding emails

Susan Tackett and Ron Butts co-founded Hanford, CA-based Athena Financial Group in 2005, after having worked at a successful



“As you can see, I plan to retire next week, and I haven’t saved a dime. This is your chance to become a legend in your profession.”

State Farm P&C agency in an office that hired Tackett to start a financial planning service. The firm handles financial chores for 350 households with only four employees (two advisors), which could be described as unusually productive. And in the process of working with Productivity Uncorked, the growth rate has picked up dramatically.

“Michelle helped tremendously on helping us understand how to develop relationships with COIs, and teaching them how to refer us,” says Tackett. “Before, they would give out our business card. Now, I’ve trained them to call me with the prospect in the office, or ask their permission to have me call them.”

The firm has developed five solid COI relationships with local realtors and CPAs.

Tackett also recalls some great—and somewhat shocking—

advice she got from Kreamer early on in the relationship. “I was lamenting the stack of magazines that I had next to the desk, and she told me: *throw them out*. She said: *there is only so much you can know; you can’t know everything*.”

Butts has had a tag-team relationship with Donovan and Kreamer. “Patty has been great on the organization side,” he says. “A lot of it was paper clutter and understanding and dealing with email clutter and the distractions that come when you have 1,736 emails in your inbox, and it sits on your mind while you’re doing something else.”

Butts may have been the only person who has ever been plagued by email clutter, but in case there’s a reader or two who might also have faced this distraction, what does he do now differently than what he did before?

“Patty helped me create an organized way to folder them,” says

Butts. “There are all these industry emails coming at you; I needed them to be out of my sight so they didn’t interrupt everything else I as doing, but I also thought there might be a time when I wanted to recall some of that information. So now I can get them out of my sight instantly by putting them in the right folder.”

Client emails that create tasks for him are left on the desktop; check-in emails are filed under client names. “At any given time, I will have fewer than 25 emails in my inbox now,” says Butts. “And once a year, I may go back to, say, 2015 and throw away everything from that year. If I’ve got something in a folder from 2015, it is probably not a pending thing.”

Tackett adds that Kreamer helped her be strong about her fees for service. “It may be harder for women than it is for men,” she says, “to say: *I have to charge you for my time*. I am always reminding myself, you can’t just call your attorney and get free information. Why should we be any different?”

Butts adds that Kreamer and Donovan have also helped him be accountable for the changes that he and Tackett have committed to. “It’s a very gentle accountability, and I appreciate that,” he says. “Sometimes I fail to do the homework I was supposed to do, or to get something done that I had prioritized. They’re gentle in the way they remind me of what I need to do, and over time they will move our needle forward—which,” he says, “is the key: moving the needle forward.” ■

Coping With the New Normal

Synopsis: *The 2022 PFP Summit offered some very specific practice management insights and (as Congress once again mulls tax changes) a checklist of issues to cover with clients.*

Takeaways: *One of the best ways to involve younger staff in your company culture is to create committees and give them input into solving specific challenges you're facing.*

Quick confession: I was really disappointed when the AICPA PFP Section decided to hold its Summit meeting virtually this year. The annual gathering of 100 experienced, generally tax-sophisticated advisors was a great opportunity to network and compare notes, especially since the organizers build in evening chat sessions where everybody would gather and talk about what they had learned (and how to apply) from each day's presentations.

I probably shouldn't confess this, but I don't see the Summit as all business. The format, the people and the locations are also designed to be fun—although, of course, as a diligent reporter, I would never actually consider participating in any of the attendee-bonding activities that are scheduled each afternoon. (That person with the false nose and funny eyeglasses is definitely not me.)

The 2022 Summit was scheduled, as it is every year, for the second half of January (the

better to avoid tax season). This turned out to be near the peak of the Omicron variant of Covid—so the virtual decision turned out to be a good one. I attended Virtual Summit 2022, the PFP Section's 6th, the afternoon of January 26. In the opening session, Lisa Craf-

Advisory firms are challenged to maintain their culture, adapt client relationships and recruit new talent.

ford, Head of Business Consulting at BNY Mellon/Pershing, moderated a panel discussion about how to address some of the thornier practice management and human capital challenges posed by the very pandemic which had moved Summit to virtual.

The challenges of our New Normal tend to fall into broad categories. Crafford noted, in her introductory remarks, that advisory firms and their team members were having to rethink the nature

of their work and what roles they were playing in a virtual workplace. They were also adjusting to changes in the nature of the workers themselves; that is, whether virtual work would require different skillsets. The third broad category of changes is the evolving nature of the workplace itself—which Crafford defined under the broad term 'culture.'

Beyond that, there was a shift in client relationships as client meetings moved from in-person to virtual. Hiring and building staff has become more of a challenge, since the prospective remote employees have more leverage in their employment negotiations than they might have had when their job searches were confined to a 30 mile radius.

At the same time, the advent of larger firms has allowed the profession to evolve a greater degree of specialization among many staff organizational charts: the positions now include dedicated marketing people and full-time tech support workers, which can force the recruiting process to go a mile or two outside of established networks.

Committees and Culture

Crafford's panel included Andrea Broughton, VP and Managing Director at SBK Financial in Richmond, VA; Samantha Macchia, CEO of Summit Financial Strategies in Columbus, OH; and Michael Goodman of Wealthstream Advisors in New York City. In their introductory remarks, all

three said that, initially, they were very much against the idea of having their staff work from home—until, of course, the scope of the pandemic became clear. All of them felt that their office environment facilitated not just a tight company culture, but also more opportunities for mentorship and staff development.

their only job is to manage and plan activities to support our firm’s culture and each other.”

In fact, having people serve on internal committees as a way to maintain culture became a theme of the discussion. Summit Financial facilitated additional team connections by organizing new investment and marketing commit-

forward, going to be coming from different sources? More firms are moving to digital marketing. How is that going to change business development?”

The internal committee concept proved to be surprisingly flexible. “There are committees for other things we’re working on, which gets people engaged,” Goodman said. “And it tells the younger folks that we value their input, and helps them feel a part of our larger processes, and generally keeps people engaged.”

Goodman also instituted what he described as ‘random breakouts.’

“We would start off together, and somebody would push a button and you would find yourself in a virtual room with three other people, and you wouldn’t know I advance who they were going to be,” he explains. “Everybody would interact on things like their favorite streaming shows or work through a question which might or not be work-related.”

The encouragement of sharing personal information, with people interacting outside of their team, allowed the team members to get a third dimensional perspective in their relationships with co-workers.

Macchia offered a positive client-related development from the imposed remote protocols. “We’ve always had a client portal, but getting clients to use it was not easy,” she said. “Often, clients would say, ‘I’ll just bring that document to you when I see you in a couple of months.’”

But once they knew they

Interestingly, the virtual workplace allowed advisor leaders and their teams to get to know each other on a more personal level.

As Goodman put it: “We’re having to learn new ways to preserve and maintain our cultures. We’ve had to revamp how we train people, now that they can’t sit down next to us and listen.”

Interestingly, each of them also said that the virtual workplace they were forced into allowed them and their teams to get to know each other on a more personal level—even if they had to develop creative solutions to arrive at that place.

For instance? In an effort to facilitate connection among staff people who were working at kitchen tables scattered all around greater Columbus, Macchia’s firm created a virtual tap room. She encouraged people to post funny memes and offer updates on their personal lives—with a separate network on Microsoft Teams reserved for strictly business interactions.

“We’ve also created a culture committee,” she said, “and

tees, which allow people from different departments to share ideas and get more familiar with each others’ roles and perspectives.

“It’s been really fun to see people gravitate from one committee to another,” Macchia said, “and it’s a great way for people who are not on your wealth management team to have exposure to you, and for new people to feel like they have an immediate opportunity to be involved and heard on important topics.”

Goodman’s firm has used the internal committee approach, not just to facilitate connection, but to more directly address projects and issues that might otherwise have been neglected in the eye of the Covid storm. For instance, the marketing committee is looking at how to shift outreach initiatives to reflect the new Covid realities. “How has business development changed?” Goodman said. “Are you leaning on the same COIs, or are clients, going

would not be coming into the office, clients became less resistant to using their portals. And they found that they liked using Zoom more than they liked driving in traffic.

“Even local clients are now telling us, I want to do all my meetings like this,” said Macchia. *“I love seeing you, but it’s easier this way; I can meet with you during my workday.”*

Broughton said that when her firm shifted to virtual client meetings, the advisors naturally gravitated to shorter but more frequent interactions, which seemed to improve client connections.

Mentoring and office design

All three panelists said that they feel like they have to play defense in terms of keeping their workers onboard during this Great Resignation business environment. Goodman said that the alternative is not pretty. “You make these big investments in training and educating people to bring them along,” he said, “so losing them can be really costly.”

He said that he has doubled down on something the firm was already doing: making sure each member of the staff is moving ahead in their careers. “Hopefully,” Goodman said, “that keeps them from leaving for a job that offers a couple bucks more around the corner, or because they’re bored and don’t get the opportunity to flex their muscles. If somebody was interested in playing a different role in their careers, we would look for those opportunities

here for them.”

The mentoring theme hit a nerve with the panel. “We’ve always focused on training and mentoring,” said Beauchamp.

Macchia noted that, with her staff of 30 people, there were 30 different opinions on how to safely navigate Covid in the office.

“But in the last couple of years, we’ve really worked to step that up, trying to elevate everybody and give them a reason to interact more. We’ve been amazed,” she added, “at some individuals who we didn’t expect to be as strong as they were at mentoring other staff at the firm.”

Macchia said that her firm has made mentoring more formal and added wrinkles, like having staff members change their mentor at least every two years.

Beauchamp said that she’s been focusing on identifying the things that her staff values in the firm’s management system—which, of course, is different for different people. She has found that the operations staff is more comfortable working remotely than the client-facing advisors, who tend to like being around people. But both have one thing in common. “They want us to make sure they’re getting opportunities, and they’re being coached,” she said.

She also noted that there is a wide spectrum of sensitivity to the potential dangers of returning to the office, which required SBK

Financial to develop a customized and flexible approach to who has to come in the office and how often.

Later, Macchia chimed in,

saying: “We have 30 people, and 30 different opinions on Covid.”

Goodman agreed. “You really have to listen and not make the kind of assumptions that, for example, young people aren’t as concerned about Covid than older staff members,” he said. “We focus on listening to our clients, but do we listen enough to the people that we work with?”

Flexible culture

Macchia said that Summit Financial Strategies is tending its culture in a more direct way, by inviting everybody on staff to nominate another staff member who has exemplified the firm’s cultural values. “Once a month,” she said, “we read all the shout outs, and we do a drawing, and the person who nominated somebody wins 50 dollars, and the nominee gets 50 dollars in cash.”

She has also raised her transparency level with the staff, by making a point to acknowledge her mistakes, and telling the group what she learned from them. “Then other people,” said Macchia, “will say, *okay, if SHE can*

admit that she made a mistake, then I'm more comfortable jumping in to talk about something I did that I learned from."

And finally, as the firm looks for new office space, she said that the criteria has been changed as a result of Covid.

"Historically, the way we

most sense. Everybody contributed to the protocols we were setting up, based on the conversations we had with them," she added. "Our people want to have a say in how they are going to get their jobs done, because they proved during Covid that they CAN get them done."

"I never thought that the leadership decisions that I would have to make could result in somebody, or somebody's family, getting sick or dying."

looked for office space, we were thinking more about, what does the CLIENT want to see?" Macchia said. "What should the CLIENT experience be? That's still important," she added, "but now we're also changing our mindset to put more emphasis on what is important to our team members, what do they want to see? What is going to make them say, *you know, I am not going to work from home. I really want to come into that office.*"

Beauchamp said that the process of deciding when and how the firm should return to the office had the unexpected effect of strengthening her firm's culture.

"It showed up in how we made the decision, and how we listened to them before any decision was made," she said. "There were people who were really concerned about their safety, and others who were not quite as much concerned, and so we went back to having conversations with our teams to figure out what made the

Macchia allowed her staff members to overrule her own preferences. "I wanted everybody to come back on a certain date," she said. "But we got a lot of push-back that we hadn't come up with a work-from-home policy. So we came up with a policy before we asked anyone to come back—and it was a demonstration of being flexible and listening to your people."

She added a lament that many advisory firm leaders might echo. "I never thought that the leadership decisions that I would have to make," she said, "could result in somebody or somebody's family getting sick or dying. That was an overwhelming responsibility on my shoulders."

Planning Checklist

I'm going to focus on one other Summit session, which was designed to collect the audience's best thinking about how to advise clients in an environment where

Congress has threatened to raise capital gains taxes, lower the estate planning exemption, eliminate a lot of tried-and-true estate planning strategies, and where inflation is high and the markets are dodgy. Lyle Benson, of L.K. Benson & Associates in Baltimore, MD, listed a variety of things that advisory firms should be thinking about—and, this being a session within the AICPA's PFP section, many of them revolved around tax and technical issues.

The most efficient way to report on this session is to list the topics that Benson introduced. The session did not harvest all the chat responses from the audience—that will come in a report that will be sent out to the attendees—so the reader will not find detailed conclusions or debates about the best way to approach these topics. Still, the laundry list is valuable as a guide to the key planning topics in what could prove to be a turbulent 2022:

Tax bracket management. Capital gains tax rates are predicted to go up, so does it make sense to harvest long-term capital gains at today's lower rates? This, of course, can be done more precisely in separately-managed accounts composed of individual stock positions—something that CPA planners seem to be gravitating to.

Also: multi-year tax planning, especially for clients who are about to start taking RMDs. Does it make sense to recommend partial Roth conversions now to clients who have accumulated large IRAs, to bring down their fu-

ture tax brackets and incidentally trigger fewer taxes on their Social Security benefits and lower their IRMAA surtax on Medicare premiums?

Charitable giving.

There's a lot of tax planning interplay as a client looks at creating a donor-advised fund vs. contributing property that has accumulated high capital gains, vs. using qualified charitable distributions if they have to take RMDs from their IRAs.

Benson noted that however a client wants to go, it takes some time to get these things set up administratively, so it would be best to start preparing now rather than waiting until later in the year.

Estate planning. There are proposals to lower the federal estate tax exemption in the next tax act, and in any case, the exemption will drop to something like \$6 million, per individual, in 2026 when the current law sunsets. Benson said that many advisors are putting their clients into different categories:

- those who will have an asset base above today's exemption thresholds (roughly \$24 million for two spouses), who will benefit from traditional estate tax minimization strategies, who should act now because some of those strategies are on the Congressional chopping block if/when a new tax bill is passed.

- those who are clearly below the \$12 million (two spouse) threshold, who should focus on maximizing the step-up in basis; and

- those who fall somewhere

in between, who might want to use spousal limited access trusts to shift assets out of their estates, as a hedge against the possibility of a declining exemption.

Naming executors, trust-

Benson offered a list of issues that advisors should be discussing with clients in light of potential tax changes and the dodgy investment markets.

ees, guardians and beneficiaries. And, of course, checking to see not only if these have been named, but if the individuals named are up-to-date.

529 plans. Some clients see these as an excellent way to create longer-term tax deferral, by overfunding their plans beyond what their kids are going to use in college, so that the funds can be used for future generations.

Qualified small business stocks. Benson said that Congressional proposals would eliminate the tax break on dividends and gains on these investments, so does it make sense to make those commitments now?

Investment conversations. Resetting client expectations about future returns, reminding them that the past two and a half years are not what they should project out for the next five or ten. Making sure clients are focused on the returns they need to reach their goals, and to help clients stay away from the temptation to over-concentrate their portfolios, trying to shift cash and bond allocations to stocks as a way of chasing re-

turn.

Life conversations. Many clients have received an unexpected wealth windfall these last two years, and at the same time their response to the pandemic may be

to rethink their priorities—leading to the larger phenomenon called The Great Resignation. Are they thinking about retiring ahead of schedule? Do they want to move closer to family?

As mentioned above, the input from Summit attendees on these issues won't be immediately available, and will only be sent out to those who signed up for the meeting. Benson concluded this list of issues to address by noting that it is more important than ever to take a holistic view of client circumstances, bring all the pieces together and make sure you understand your clients, their situations, and their goals.

I really hope Summit will be able to return to in-person, and don't see why it wouldn't, seeing that the larger AICPA ENGAGE meeting was in-person last June, and is on schedule to be so again June 6-9 in Las Vegas.

If Summit returns to in-person next January (probably in Austin, TX), I'll be there to report on two days worth of sessions—and I can't promise that this time I'll avoid the fun.■

Parting Thoughts

Yet Another Modest Proposal

You may have read about a recent ruling by a Superior Court judge in Georgia who discovered what I think we all knew: that FINRA runs its arbitration system like a kangaroo court, putting its thumb firmly on the side of the scales of justice that benefit its member brokerage firms. I think it's long past time for the financial planning community—and anybody who cares about protecting consumers—to call for an end to the arbitration agreements that the brokerage firms routinely had to their clients. I could be talked into letting them require arbitration agreements, but only if the forum is actually neutral, like the American Arbitration Association.

The specific ruling was pretty serious; the judge actually dismissed an arbitration decision that had been reached and apparently settled two and a half years ago. The FINRA arbitration panel ruled, in 2019, in favor of Wells Fargo against a customer who claimed the firm had mismanaged his account to the tune of \$1.5 million. But the customer presented evidence that the three arbitration panelists were not selected using a computer-generated process that supposedly randomizes who will be hearing the case. Instead, the law firm representing Wells Fargo was allowed to veto some of the prospective panelists—making the judge-and-jury in the case anything but random.

What makes this a serious ruling is that these arbitration decisions are very seldom second-guessed in the courts; indeed, the whole idea of the arbitration clause is to keep the proceedings out of the courts. That way, the case, the facts of the case, and the potential damage to the brokerage firms being sued can be kept confidential—as opposed to the public hearing that would ensue in a court of law. Since there are anywhere from 5,000 to 8,000 arbitration cases heard each year, the tsunami of very specific client complaints, if they were reported in the press, might do serious damage to the reputation of the brokerage community.

But, of course, there's another reason why FINRA wants to control how customer complaints are handled: the potential settlements themselves. Securities attorneys have long complained that the arbitrators are inevitably selected as former brokers, brokerage firm executives and other friends of the industry, who will dismiss any case where the evidence

is not overwhelming, and in the cases where there is undeniable misconduct, will shrug their shoulders, cut the baby in half, and give restitution that amounts to half of the damage the client suffered.

Which means that even in cases where a court would find clear evidence of malfeasance, the broker and brokerage firm end up with a profit on the abusive business relationship. And the arbitrators in the FINRA system have no obligation—and no inclination—to explain their decisions.

Our system of justice is—theoretically, at least—supposed to avoid obvious instances of favoritism. It's very hard to see how the trade organization of brokerage firms could be allowed to serve as the only forum for resolving customer disputes against the FINRA member brokerage firms. If FINRA manages to skate past this latest example of blatantly conflicted resolution processes, then I'd like to make a (very) modest proposal on how to fix the situation once and for all. Let's replace the cozy FINRA arbitration list entirely, with customers who have lost arbitration cases in the FINRA forum. There are tens of thousands of them who, I believe, would eagerly serve on panels, hearing cases just like theirs, that they would be familiar with.

I'm sure they would be just about as impartial as the system we have now. ■