

Succession Planning - Preparing for the What-If's

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In the event of a sudden death or disability of a practicing attorney, what happens with their law practice? If they are a member of a large firm, the firm members should be able to make the necessary contacts, perhaps take over the handling of the client's matters, and proceed without much of a hiccup. However, when a solo or small firm practitioner becomes incapacitated, what happens to their practice in the event the lawyer made no provision for a Succession Plan, detailing what happens to a clients' file? Through some of the various committees of the State Bar of Georgia and the General Counsel's office, Georgia lawyers may soon have concise Succession Rules that will pertain to all disabled or deceased lawyers in the absence of a Succession Plan. If you've ever been involved in assisting a surviving spouse or clients of a disabled or deceased lawyer, you know that it can be a daunting and trying task. Having personally experienced this role on a number of occasions, I can state with some certainty that the solos and small firm lawyers need to work on protecting their practices.

In early 2009, an attorney friend of mine died by suicide. As the Bar Association Chaplain for that year, it was my responsibility to contact the family to express my condolences and those of the Bar as a result of this tragic event. As I announced the death to the members of our Board, I remember commenting that if there was something in place where this lawyer could have gone to for guidance, compassion and

understanding, maybe his death could have been avoided. From that tragic event, the Cobb County Lawyers Helping Lawyers (LHL) got its start.

In the past, the majority of the issues that came before the LHL Committee involved a deceased solo practitioner who had no Succession Plan in place. Members of our committee developed procedures for ensuring that the clients of the deceased attorney were notified at the earliest possible time, and for transitioning their case to a substitute attorney was accomplished with little or no prejudice to the client. Through the years of helping in this process, we learned that most of the spouses of the deceased lawyer had little or no knowledge of the inner workings of the law practice, and had no idea how to access the computer, billing records, client information, etc. Some were even unaware of whether or not the deceased attorney maintained an escrow account or what bank even held the funds.

In many instances, the deceased attorney had pending cases with unused retainers or flat fee cases that had been paid but the case hadn't been completely concluded. We referred these cases out to volunteer attorneys to conclude the case, many of whom accepted the cases without compensation. What we learned is that there are many attorneys in our State who unselfishly gave of their time to accept pending cases for which they may not receive any compensation. They saved the client from having their case remain stagnant, the Courts from carrying the cases on their dockets, the Estate and the surviving spouse from claims for return of unused retainers, and the Georgia Bar from complaints by unhappy clients. This process helped us realize that although there are

many attorneys willing to offer their time and talents to help one another, we need to understand that one day we may be the attorney who unexpectedly dies or loses the capacity to practice law. Therefore, we need to prepare for the unexpected. As attorneys, many times our job is to anticipate the unexpected and plan accordingly. Not only do we need to ensure this for our clients, but also for ourselves, as well as our estates. If we care about our spouses and families and the difficulties they may face in the absence of a smooth transition of our law practice, then we need to make a Succession Plan a priority.

Documents Needed for Your Files

For most larger firms, and some sophisticated smaller and solo practitioners, it would be a simple process to determine the client contacts, pending cases, status of the cases, fee contracts, balance of retainers, etc. However, over the years we have found that certain vital information is often not located within the client's file, and computers did not assist in the process of locating that information. We recommend that you picture what information a Receiver for your law practice would need in order to ascertain who your clients are, how to get in touch with them, your fee agreement with them, current status of the case, what needs to be done to complete their case, and the balance of your fee arrangement. Having this information readily available will save the Receiver hours of work trying to piece together the status of your practice.

In making suggestions of documents to be included in your file, we view it through the lens of a Receiver and what information would be most beneficial to obtain in order to make a quick assessment of the status of each case. We have included a few documents

that you can use as guidelines that should likely be included in every file that you open.

The **Client Information** sheet should be the first document in your file. That should provide enough information to know and contact the client, the opposing party or counsel if represented, and the Court if there is a pending case. It's also important to note any critical dates, such as discovery periods, the statute of limitations, etc.

Every file should also include an **Attorney-Client Fee Contract**. A sample of an hourly contract with an initial retainer is attached. Whatever fee contract you decide to use, make sure it clearly spells out the fee arrangement, whether hourly or flat fee, the requested retainer and the amount initially received. Although the attached contract doesn't include a provision for a successor attorney should the need arise, it is recommended that such language be included in your agreement so that a client will not be without an attorney in the event of a sudden death or incapacity.

There are many case management programs that attorneys use in their practice, such as Clio, MyCase, Zola Suite, etc., but make sure that whoever must be called upon to determine the status of your billing, that they have the necessary access. For the solo practitioner or those who don't have a case management system, you can create your own **File Time Sheets**, much the same as the Time Sheet included herein.

Along with the Time Sheets, the Receiver will need to ascertain the balance of the fees in each case. Of course, a good case management program will readily provide that information, but in its absence have some program, or even a simple **Fee Balance Sheet**, which is included herein.

Suggested Documents - Power of Attorney and Will Provision

If you have selected a successor attorney to handle your practice in the event of your disability or death, we would recommend a **Special Power of Attorney**, such as the attached **Durable Special Power of Attorney for Attorney at Law Regarding Law Practice**, which could be given to your designated successor. It certainly doesn't have to be as comprehensive as this document, but it should give the Successor the ability to deal with your practice "in the event of my disappearance, disability, incapacity, incompetence, or inability to act on my own behalf". This Power of Attorney should only be utilized while you are alive.

Upon death, it may be a good idea to include a provision in your Last Will and Testament that gives your Executor and the attorney representing your Executor the authority to handle the transition of your law practice. Also attached is a document titled **Special Provisions for Attorney's Will - Instructions Regarding my Law Practice**. This document may not be applicable to the large firm attorney, who may be subject to certain firm rules and contracts, but could be useful to the solo and small firm practitioner.

Having a Succession Plan should be a goal of every lawyer. Whether in a large firm or a solo practice, an attorney should plan ahead for uncertain events that could leave his clients, remaining partners, associates and your spouses in a difficult position. Make it a resolution that you will seek to protect those that count on you for your help, guidance and support.