

Dealing with Disruptors

Succession Planning for Solo Practitioners and Small Firms

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I. INTRODUCTION TO SUCCESSION PLANNING

“Some days punch us in the gut so hard it seems we can feel the whole universe gasp with despair.”

Does this quote from Curtis T. Jones, Emotional Alignment Coach, Author & Speaker, resonate with you? If the pandemic taught us anything, it was that anyone can experience a sudden gut punch that disrupts our lives instantly and may directly affect our legal careers. Disruptors are defined as a family or personal health emergency, a temporary or permanent disability, a substance use disorder, bar discipline; or the ultimate disruptor—death. In either case, the lawyer who experiences one or more of these disruptors (the “Affected Attorney”) may need to transition their practice by suspending, selling, or closing it.

A. What is Succession Planning?

It is rare for lawyers who are not on the verge of retirement to think about a plan to transition their law practice. However, succession planning emerged as a topic of interest after COVID exposed how vulnerable we all are to sudden loss, incapacity, or burnout. If the Affected Attorney is unable to transition their practice, a designee may be necessary to protect clients, client funds, firm employees, as well as the lawyer and their reputation. A Succession Plan is a mechanism through which a lawyer prepares in advance the information necessary for another lawyer who they designate (the “Assisting Attorney”) to guide the lawyer’s practice through a transition should a disruption occur.

This article covers some basic ethical and practical considerations lawyers should contemplate when creating a Succession Plan. Depending on the disrupting event and/or its cause, the lawyers may have additional obligations that are not covered in this article.[†] When planning, lawyers who are licensed to practice in more than one jurisdiction should be cognizant of what the other jurisdiction(s) may require.

B. Why Create a Succession Plan?

Succession planning is practical and beneficial. If a lawyer practices as a solo practitioner, there may not be anyone to take care of their clients in the case of a disruption. Even if the lawyer shares office space with other solos, their officemates do not have authority to allow others access the lawyer’s computer and client files. They may be able to offer little, if any, assistance to current and former clients who show up looking for the lawyer. Succession planning can alleviate the challenges that the lawyer’s clients, family, and/or career may encounter if their practice experiences a sudden disruption. A Succession Plan:

- can protect clients from uncertainty and interruptions in the representation.

[†] If the lawyer is suspending or closing their practice because of bar discipline, then there may be conditions imposed by the Board or Court Order that the lawyer cannot delegate to others. If the lawyer is selling the practice, then interested nonlawyer buyers or profit-sharing terms may involve additional ethical rules.

- is an aspect of the diligent representation of clients required [by Mass. R. Prof. C. 1.3[‡]](#) (See, [Comment \[5\]](#)).
- could ease the burdens on stressed and/or grieving family members by giving them easy to follow guidelines to help them navigate a difficult time. (See, [Picking Up The Pieces After The Death Or Disability Of A Solo Lawyer.](#))
- could preserve the unblemished reputation that a lawyer has built or is building as an attorney.

Plan for what is difficult while it is easy; do what is great while it is small.

~Sun Tzu, The Art of War

C. What Should Be Included in a Basic Succession Plan?

The content of a Succession Plan will vary based on the nature and size of a practice, but it should at a minimum include:

- (1) The name of an Assisting Attorney who will implement the Plan if a disruption occurs.** Best practices call for a written agreement between the Assisting Attorney and the Affected Attorney that defines the event(s) that would trigger the implementation of the Plan and describes the responsibilities of the Assisting Attorney once the Plan goes into effect. Often, the Affected Attorney agrees to compensate the Assisting Attorney for their work and/or reimburses reasonable expenses. Include the details of the compensation arrangement in the Plan. If a lawyer is unable to get another lawyer to agree to be an Assisting Attorney, the lawyer may be able to designate another responsible party.
- (2) Basic information about office management.** The Plan should include an explanation as to how to access the Affected Attorney's email, calendars, client files, client portals, timekeeping and billing software, trust account recordkeeping, or any other programs used in daily operations. Explanations should include instructions for generating basic reports, like a list of current clients, ledger balances, etc. Also, the Plan should briefly describe the roles of and provide contact information for staff, if applicable. If the firm uses a payroll company, accountant, insurance agent/broker or virtual assistants, include contact information for them in the Plan. If the firm has subscriptions, vendor contracts, or other fee-based services that should be canceled, the Plan should contain those. (*For examples of the types of information that can be included, click this link to Maine's [Proxy Questionnaire[§]](#).*)

[‡] The Massachusetts Rules of Professional Conduct hyperlinked in this article are to the version of the rules that are currently in effect. Please be advised that the Supreme Judicial Court has amended some of the rules referenced herein. Amendments go into effect September 1, 2024.

[§] OBC's inclusion of resources in this article should not be considered as an endorsement of the materials, programs, or services of these particular resources over others that may exist. Each reader should vet independently any materials used for guidance on this topic and choose what best fits the reader's needs. Readers should exercise caution when using materials from other jurisdictions as that jurisdiction may have different definitions for the terminology on this topic.

(3) Financial operations of the practice. The Plan should include account information for all firm bank accounts, including IOLTA, other trust accounts, and operating accounts. Identify the individual (other than the lawyer) who handles the recordkeeping, and the location of all the IOLTA and other trust account records the lawyer maintains. If the Assisting Attorney will be the authorized signatory for the firm's accounts, most financial institutions require a Power of Attorney, which should be properly executed and appended to the Plan. The Affected Attorney should confirm what their financial institution(s) will require to authorize the Assisting Attorney to access the firm's accounts in the event of a disruption.

(4) Standard documents used during transitions. As a part of the Succession Plan, a lawyer may draft templates for notice letters to clients; templates for clients to request, transfer, and/or acknowledge receipt of their file; and checklists for closing (or selling) that are tailored to the size and management of their practice. These documents should be appended to the Succession Plan to ensure that nothing is overlooked and that tasks (such as notices to clients, court events, etc.) are properly prioritized.

D. What Are the Typical Duties of an Assisting Attorney?

An Assisting Attorney may handle any task that the Affected Attorney gives them the authority to manage under the Succession Plan. At a minimum, the duties should include:

- a) notifying the clients that the Affected Attorney is no longer able to represent them (for guidance on the content of the notice, consult [Rule 1.17\(c\)](#), even if the practice is not being sold);
- b) arranging for the clients to retrieve their files, and disbursing or returning any unearned fees or other client funds and/or trust property the Affected Attorney is holding on behalf of clients [See, [Rule 1.16\(d\)](#) and [Rule 1.15\(b\)\(4\)](#)]; and
- c) taking any immediate action necessary to protect the client's interests until the client secures successor counsel.

Other duties might include managing any financial matters, such as:

- d) maintaining required records of all IOLTA and other trust accounts and performing reconciliations per [Rule 1.15\(f\)](#) requirements
- e) authorizing the payment of operating expenses (rent, subscription fees, personnel, etc.) that should be maintained until the practice has transitioned fully.

North Carolina Bar Association's Professional Vitality Committee published an e-book, [Retire? Reset? Reinvent? – Planning for the Next Stage of Your Law Practice](#) (2021) that contains examples of a succession agreement, template letters, checklists, and other documents mentioned in this section.

II. ETHICAL CONSIDERATIONS IN SUCCESSION PLANNING

A. Confidentiality

Because of a lawyer's confidentiality obligations under [Rule 1.6](#), only an authorized person may go through their client files. Creating a Succession Plan allows a designated, authorized Assisting Attorney to step in immediately for a lawyer when a triggering event occurs. The Plan provides the Assisting Attorney with the authority and information needed to generate a list of the lawyer's current clients in order to notify the clients in writing of your inability to continue the representation. The notice should inform clients of their need to get another attorney and of any actions the client needs to take to retrieve their files, monies, and/or property.

B. Client Consent

A lawyer should notify clients that a Succession Plan exists when the client retains them. Best practice is for the lawyer to revise their template fee agreements to inform clients that the lawyer has a Plan that will take effect if the lawyer is unable to continue practicing law temporarily or permanently. The clause should inform the client that by signing the fee agreement, the client is agreeing that an attorney the lawyer designates may have limited access to the client's confidential information for the purposes of notifying the client of the lawyer's unavailability and taking any necessary actions to protect the client's interest. For active clients who engaged the lawyer before the Succession Plan was written, the lawyer should notify those clients about the Plan and request their assent.

C. Can the Assisting Attorney represent the Affected Attorney's clients?

A lawyer may agree to become an Assisting Attorney in the hope of taking over the representation of the Affected Attorney's clients. However, both lawyers should keep in mind that clients must always be permitted to choose their own lawyer [*See, Meehan v. Shaughnessy, 404 Mass. 419, 431 (1989)*]. Thus, template notice letters to clients should avoid any language that would suggest that the Assisting Attorney is a referral to the exclusion of other lawyers that the client may choose. If the Assisting Attorney meets with the Affected Attorney's clients in person, the Assisting Attorney should be mindful of the restrictions on live person-to-person solicitation, set forth in [Rule 7.3](#).

If a client inquires about retaining the Assisting Attorney as their successor counsel, the Assisting Attorney should only do so if they can provide competent representation in the practice area of the client's matter (See, [Rule 1.1](#)). The Assisting Attorney should explain that a new attorney-client relationship must ensue, and draft and execute a new written fee agreement [[Rule 1.5\(b\)](#)]. Before accepting the client, the Assisting Attorney has a duty to perform conflict of interest checks [[Rules 1.7, 1.8 & 1.9](#), etc.], and obtain informed consent from the client for any consentable conflict. (See, [Rule 1.7 Comments \[18\]-\[20\]](#)).

III. A SUCCESSION PLAN CAN PROTECT A LAWYER'S REPUTATION.

A lawyer's seeming abandonment of their practice often results in complaints from clients to bar counsel and bar counsel's investigation of the complaint, and sometimes results in discipline. Having a Succession Plan may prevent all this. The plan will allow the Assisting Attorney to provide the clients timely notification of the Affected Attorney's unavailability and undertake other

actions to protect the clients' interests. Implementing the Plan means there will be minimal disruption to the Affected Attorney's practice when a triggering event occurs. This will decrease the chances that clients will file a complaint with bar counsel about lack of communication, a missed filing deadline, or failure to return an unearned fee; or that your landlord will contact bar counsel about an abandoned office with unsecured client files, potentially violating [Rule 1.6](#). Also, a Succession Plan allows the Assisting Attorney to keep the Affected Attorney's financial recordkeeping in compliance with [Rule 15\(f\)](#) and avoid an insufficient funds notice on a trust account [See, [Rule 1.15h\(4\)](#)].

Lawyers, family members, and/or clients are often misinformed about the role and authority of the Office of Bar Counsel when a lawyer becomes unable to practice. Bar counsel's role is investigating and prosecuting violations of the Massachusetts Rules of Professional Conduct. Neither bar counsel nor the Board of Bar Overseers takes possession of a lawyer's files, funds, or firm assets when a disruption occurs. Only in rare cases, where bar counsel receives multiple complaints about a lawyer who has abandoned their practice, will the office petition the S.J.C. to appoint a commissioner pursuant to [S.J.C. Rule 4:01, § 14](#). In any event, a commissioner's role is limited; they will leave unattended several tasks that a Succession Plan would cover, like coordinating with insurance carriers; cancelling leases, subscriptions, and services; or disposing of and/or selling any firm property (e.g., furniture, equipment, etc.).

IV. A SUCCESSION PLAN CAN PROTECT A LAWYER'S FAMILY.

Having a good Succession Plan can reduce the physical and mental toll on a lawyer and their family if the lawyer becomes incapacitated or dies. *Thinking* about death, serious medical conditions, or other stress-inducing events can be overwhelming. Imagine how much more overwhelmed a lawyer or their family would be while *in the throes of it*. In Dowell's article, [Picking Up the Pieces](#), he provides an extensive checklist of tasks for which family members would likely feel responsible should a solo practitioner experience an incapacitating disability or a sudden death. Perusing that list gives lawyers a glimpse of how daunting an unexpected practice transition can be. Lawyers should consider using that list for additional provisions to include in their Plan.

Ideally, lawyers will inform their family (or others likely to deal with their practice if something happens to them) that they have a written Succession Plan. Give them a copy of the Plan and a general idea of the practice, key staff, and the Assisting Attorney's role. Having a plan will offer the Affected Attorney and their family some predictability and comfort should a lawyer's practice experience a sudden disruption.

V. READY TO START PLANNING?

The question that most solo practitioners have is "Where do I start?" There are many ways to tackle this task. The answer for each lawyer will depend on how long they have been in practice, the size and nature of their practice, and how organized they are. Lawyers Concerned for Lawyers (LCL) offers an approach to the process of succession planning in their webinar:

[Navigating Succession Planning: Strategies and Essential Steps for a Smooth Transition of Your Practice](#) (March 5, 2024). Also, LCL provides helpful resources that you can access by clicking this link, [LCL Digital Library: Succession Planning](#). LCL resources and support are free.

Lawyers may find that something altogether different works for them. Do that. If planning and organization are not the lawyer's strengths, they should pay someone to draft the Plan because the process will be faster and better.

Succession Planning is the prudent way for lawyers to protect their clients, their family, and themselves.

Start today!

SOURCES

In addition to the materials referenced throughout this article, the sources listed below were reviewed for education and insightful guidance on Succession Planning and may be useful for lawyers as they plan.

- Washington State Bar, [Transition Your Practice: Looking to Transition Your Law Firm?](#) (Updated: Jan. 9, 2024)(Last visited, April 1, 2024).
- Colorado Supreme Court, Office of Attorney Regulation Counsel, [Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death](#) (2019).
- Ohio Board of Professional Conduct, [Ohio Ethics Guide: Succession Planning](#) (2017).
- Mary F. Andreoni, [The Basic Steps to Ethically Closing a Law Practice](#), Illinois Attorney Registration & Disciplinary Commission (Revised 2017).
- Lawyers Mutual Liability Insurance Company of North Carolina, [PLAN AHEAD FOR CLOSING A LAW PRACTICE: Procedures for Retirement, Moving to a New Firm, or Your Death or Disability \(Risk Management practice guide of Lawyers Mutual\)](#) (July 2016).
- Barbara S. Fishleder, [Planning Ahead: A Guide to Protecting Your Clients' Interests In The Event Of Your Disability Or Death - A Handbook and Forms](#), Oregon State Bar Professional Liability Fund (2015).