ETHICS OUTLINE: Lawyer's Doomsday Scenario

Safeguarding your clients against death or disability in a small or solo practice

I. We're all going to Die

A. The United States population over the age of 50 is expected to grow 133 million by 2030. That constitutes an increase of more than 70% since 2000. Lawyers are attending to work later in years, so what happens there? Well, nearly 50% of partners for the nation's top 200 firms are baby boomers, so those born between, what is it, '46 to '64. They're expected to retire in large numbers within the next 10 years. Ida Abbott in a report says, "Succession planning issue is becoming urgent because about a third of equity partners right now in the US are at retirement age." *ABA Formal Opinion 482*.

B. Each year 5% of adults suffer a short-term disability, and 25% of all adults will suffer a long-term disability during their work life according to The Council of Disability Awareness.

C. THE BIG D's: Death; Disability; Disappearance; Discipline; Disaster; and Disease

D. In large part, succession planning is really accounting for something that's going to happen suddenly, most of the time. Not always, but most of the time. How do you handle a sudden event? Well, the primary purpose of the plan is not to account for every eventuality, because if you let the perfect be the enemy of the good, nothing's going to happen. Then also, whatever triggering event is, will have its own unique fingerprint. Not every triggering event is going to require the same amount of planning. What that plan will do is just basically give you the roadmap for your team to move forward in whatever fashion they're wanting to do, whatever the purpose is, continuing the law office orderly, or closing it down. *ABA Formal Opinion 482*.

II. What can we do to prepare for the "Big D's"?

A. Name a successor counsel (and make sure that person knows and agrees)

1. If you're already part of a partnership or firm, come up with a firm succession plan.

2. Communicate your plan with support staff (if applicable).

3. Prepare a document that outlines everyone's roles and responsibilities and what to do in the event of a disaster.

4. Disaster-proof your business: no one is indispensable.

5. Successor counsel doesn't necessarily have to be someone to take over your files. Who's going to handle shutting down practice and communicating that with clients.

B. Think about the information your successor counsel will need

1. Contact lists
2. File locations
3. Locations of important documents (Wills, POAs, contracts, etc.)
4. Passwords
5. Bank account information
6. Book keeping & Accounting
7. Insurance information
8. Access to case management software
9. A manual on how you run your office

C. Having extra money in your bank account can't hurt.

D. File Retention and Destruction Policies

E. Communicate Your plans with you clients (See Rules 1.4 and 1.6)

1. In a solo practice, communication is necessary to avoid breaches of confidentiality

2. In firm situation, the client has t option to stay with the firm or leave once the attorney that has been representing the client is no longer affiliated with the firm.

3. Include this information in your retainer agreement (use retainer agreements).

F. Talk to vendors and providers about what information they need to set up an official successor

1. A successor attorney may not be covered under your malpractice insurance. Be sure to discuss this with your successor attorney and malpractice carrier.
2. Some policies do allow you to list a successor or backup attorney in case of temporary or permanent interruption in practice.

III. What's the worst that could happen (if there's no plan in place)?'

A. With no plan, the person(s) picking up the pieces will have to recreate your office by digging through unmarked stacks of papers, scribbled notes, pleadings, old mail and email (assuming they can even get into your email). They will be in a reactive mode (read: not proactive), making quick decisions and tending to a constant barrage of complaints from impatient creditors & angry clients. With a succession plan, you will have set forth an orderly process to get your law office up and running again, or have a quick and orderly winding down closing process.

IV. Why have a plan? Ethical Duties owed to clients

A. Rule 1.1 Competence
B. Rule 1.3 Diligence
C. Rule 1.4 Communication
D. Rule 1.5 Fees
E. Rule 1.6 Confidentiality
F. Rules 1.7 - 1.10 Conflicts of Interest
G. Rule 1.15 Fiduciary Duties
H. Rule 1.16 Duties upon termination of representation

V. Closing Remarks

A. If your particular office right now is a mess, then you are unable to do an effective succession plan. It's good to have a succession plan because it forces you to clean up your office, clean up your affairs so that it can be orderly. Poor record keeping can be corrected for the purpose of doing a succession plan. The strain upon the public that is your clients and upon your family cannot be overstated.

B. Think of the strain you're lifting off of your friends, colleagues, and loved ones.

C. A succession plan doesn't have to be difficult, but it's important to get your ducks in a row before it's too late.

ADDITIONAL RESOURCES

- *ABA Model Rules of Professional Conduct*
- *Louisiana Rules of Professional Conduct* (Specific Citations Above)
- *ABA Formal Opinion 482*
- *LSBA Practice Transition Handbook* (2017) https://www.lsba.org/documents/LOMAP/LSBAPracticeTransitionHandbook.pdf
- "Every Lawyer Should Have an Exit Strategy" Steven Chung *Above the Law* 2/20/2019 https://abovethelaw.com/2019/02/every-lawyer-should-have-an-exit-strategy/
- "Thinking About a Succession Plan for You Law Firm" *Thompson Reuters* 10/23/2019 https://legal.thomsonreuters.com/blog/thinking-about-a-succession-plan-for-your-law-firm/