

Bylaws authorizing the continuing operations and functions of the YLS under the provisions of this Rule.]

Rule 14 Succession planning

14.01 Successor designations

The duty of diligence may require that an active member of the West Virginia State Bar who is operating as a sole practitioner prepare a written succession plan specifying what steps must be taken in the event that the member is unable to continue their law practice due to death or disability. *See* West Virginia Rules of Professional Conduct, Rule 1.3, Comment 5. As part of any succession plan, a lawyer should arrange for one or more successor lawyers to protect the interests of the lawyer's clients in the event of death or any disability that precludes practicing law. Such designation may set out a fee-sharing arrangement with the successor lawyer or lawyers. Nothing in this rule or the lawyer's designation shall prevent a client from seeking and retaining a different lawyer or law firm. Any lawyer to be designated as a successor must consent to the designation.

14.02 Registry of successor designations

The West Virginia State Bar shall maintain a registry of successor designations and identify the existence of a member's succession plan as part of the Bar membership information. Active members who are operating as sole practitioners shall disclose to the State Bar whether they have a designated successor and a succession plan. Such disclosure shall be made annually on or before July 1 and submitted in the form required by the State Bar.

14.03 Responsibility for costs if court-appointed trustee is required

If a trustee is appointed for a deceased or disabled lawyer under Rule 3.29 of the Rules of Lawyer Disciplinary Procedure, and no successor designation is on record for that lawyer as part of the State Bar membership registry, then the lawyer, or the lawyer's estate, shall be adjudged responsible for payment of the reasonable and necessary fees and costs of the trustee that are assessed by the appointing court pursuant to Rule 3.29. To the extent that the trustee's fees, costs, and expenses are paid by the Office of Disciplinary Counsel or other third party, the lawyer or the estate shall be liable to make reimbursement for such payment or payments.

[CLERK'S COMMENTS]: Rule 14 is a new rule to address a recurring circumstance that gives rise to problems that could largely be avoided with advance planning. It makes reference

to the new comment in the Rules of Professional Conduct which states that “the duty of diligence may require” sole practitioners, in the event of death or incapacity, to designate another lawyer to protect client interests. Although the designation is voluntary, Section 14.03 incorporates a provision regarding liability for payment of the costs of a trustee if one has to be appointed following a lawyer's death or disability. Rule 3.29 of the Rules of Lawyer Disciplinary Procedure was amended by the Court to accomplish the cost-shifting result, but that rule leaves it in the discretion of the appointing court as to whether to enter a judgment against the attorney or attorney's estate. Rule 14.03 adds further incentive by making entry of judgment non-discretionary when there was no successor designation. Rule 14.02 also encourages succession planning by incorporating a disclosure requirement.]