

What happens to clients upon your death or disability?

Recently, the Office of Lawyers Professional Responsibility has been appointed as trustee for seven attorneys who died unexpectedly without a plan in place to return client files or disburse funds in trust. One or two trustee appointments a year is typical; seven is very unusual. More surprisingly, several of the appointments did not involve senior attorneys—the most recent involved a 47-year-old solo practitioner who had a heart attack mowing his lawn.

Court rules provide that the Supreme Court may appoint the director of OLPR as trustee of an attorney's files or trust accounts when no one else is available to protect the clients of a deceased, disabled, or otherwise unavailable lawyer.¹ Most states have similar "caretaker" rules. Some states, however, are going beyond these rules to impose specific ethical obligations on attorneys to plan for their death or disability.



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The Iowa Supreme Court recently amended its rules to require all solo practitioners to have a written succession plan in place no later than January 1, 2017.² Maine has a bar rule that requires attorneys, irrespective of the nature of their practice, to disclose on their annual registration the name of a proxy attorney who is willing to act as a receiver of files and trust account funds upon the attorney's death, disability, or unavailability.³

Minnesota does not have any such rules, but given an attorney's obligation to exercise diligence, to safeguard the client's property, and to ensure that a client's interests are protected when the representation ends, it is ethically incumbent on counsel to ensure there is a "Plan B" in place if you are unable to complete the representation due to your unavailability for any reason. Your malpractice carrier may also require you to have an office closure plan in place to reduce the risk of malpractice claims against you or your estate. For attorneys in practice with others, this may be pretty straightforward. For others, not so much. From an ethics standpoint, your Plan B need not be extensive, but please take the time to have one.

What should a Plan B look like?

Iowa requires a written plan designating a primary and alternative active attorney who agrees in writing to review your client files, notify each client of your death, disability, or unavailability, and to determine in the first instance if any protective actions are necessary to protect the interests of your client.⁴ Further, the plan must authorize the designated attorney to prepare a final trust accounting for clients, to disburse funds in trust, to dispose of inactive files, and to arrange for storage of files and trust account records.⁵ Optionally, the plan may authorize the designee to collect fees, pay firm expenses, terminate leases, and otherwise liquidate or sell the practice, and to perform such other law firm administration tasks as may be required.⁶

For solo practitioners in Iowa, this is the minimum they must do with respect to succession planning as of January 1, 2017. In Minnesota, such a plan, while not required, would go a long way to responsibly and ethically protect your clients and estate and certainly would be considered good practice. Absent such a plan, a minimal amount of planning is better than no planning. You can start the development of your plan, whether

formal or informal, by asking yourself some common sense questions not unlike the ones you would answer in creating a good office procedures manual:

- Do I have an updated list of client matters with current client contact information? Could someone find the list if I'm not around to provide it?
- Can someone access my computer if need be, and do they know where I keep and how I organize my client files, active and inactive?
- Could someone access my calendar to discover important client deadlines and appearances?
- In which matters have I filed a notice of appearance?
- Do I have a list of my bank accounts and safe deposit boxes, and does someone know where I keep my financial books and records? What are the account passwords? Who may access any safe deposit box, and how?
- What would an individual need to transact business under my financial accounts? Will the bank accept a power of attorney?
- By whom and how should my clients be notified of my death or unavailability?
- What is the best way to protect client confidences?
- Should someone invoice for time not yet billed, and is there a list of accounts receivable?
- Is my own will up to date, and is any designated personal representative aware of my practice plans?

This list is not exhaustive, but it gives you an idea of things you may want to consider. Once you start asking yourself these questions, try not to feel that to do this right will take more time than you have available! The last thing you want to do is leave your clients and family in the lurch; just having basic information regarding your practice accessible

to someone other than yourself goes a long way toward alleviating the burden that may be caused by your unexpected unavailability.

Resources

While I am not aware of any free resources for Minnesota attorneys to help with planning ahead for the unexpected (something this Office or the Minnesota State Bar Association may wish to consider), there are a number of resources on-line from other states that may be helpful to an attorney in order to ethically plan ahead for the unexpected. For example, New Mexico has published a succession planning handbook for lawyers, which, at 162 pages, provides a wealth of information.⁷ Colorado also has a succession planning handbook.⁸

No one likes to think of their own mortality. Unfortunately, an accident, unexpected illness, or sudden death can happen to anyone at any time. Please do not leave your clients' interests unprotected if the unthinkable does occur. While this Office is available to step in as a matter of last resort, trusteeships—as you may expect—place a tremendous burden on our resources. Spending time to plan for the unexpected serves to protect your clients, your hard-won reputation, and your family. It is the professionally responsible thing to do. ▲

Notes

¹ Rule 27(a), Rules of Lawyers Professional Responsibility.

² Rule 39.18, Iowa Client Security Commission.

³ Rule 1(g)(12), Maine Bar Rule.

⁴ Rule 39.18(a), Iowa Client Security Commission.

⁵ Rule 39.18(b), Iowa Client Security Commission.

⁶ Rule 39.18(c), Iowa Client Security Commission.

⁷ *Succession Planning Handbook for New Mexico Lawyers, Protecting Your Clients' Interest by Providing for a Smooth Transition After Your Retirement, Death or Disability* (July 2014), www.nmbar.org/NmbarDocs/formembers/succession/successionhandbook.pdf.

⁸ *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death (One of Which is Inevitable)* (2007), www.coloradosupremecourt.com/pdf/regulation/closing_practice.pdf.