

Don't Leave Clients in the Lurch: Prepare a Succession Plan Today

Having a succession plan for a law practice is essential for protecting clients' best interests and bringing peace of mind to the lawyer's family and friends.

BY DEAN R. DIETRICH

Question

I have heard many comments suggesting that sole practitioners need to have a succession plan to address medical emergencies that might affect the lawyer's practice. Is this required under the Rules of Professional Conduct?

Answer

This topic has been discussed at length within the legal community. Sometimes sole practitioners die or have serious medical emergencies that greatly affect the ability to meet clients' needs. Often, in the past, this placed a significant burden on lawyers' families, who did not know what to do with the law practice and the clients.

The short answer is that there is no black-letter-rule language requiring solo practice lawyers to create a succession plan. There is, however, language in the ABA Model Rule Comment to Model Rule 1.3 – Diligence relevant to this issue. SCR 20:1.3 – Diligence provides that “a lawyer shall act with reasonable diligence and promptness in representing a client.” Comment 5 to the ABA Model Rule 1.3 provides guidance for solo practitioners:

“To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability and determine whether there is a need for immediate protective action. Cf. Model Rules for Lawyer Disciplinary Enforcement R. 28 (2002) (providing for court appointment of a lawyer

to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).”

This comment makes clear that sole practitioners must think ahead and prepare succession plans to address the emergency situations that could arise as part of an everyday law practice. The State Bar has a succession registry, which can be used to identify an attorney who will serve as the protector in the event of one of these situations; however, it is still the responsibility of each sole practitioner to develop a succession plan and recruit another attorney to assist in overseeing a law practice in a situation like this.

The State Bar also has resources for sole practitioners to consider when developing an emergency succession plan. It would also be appropriate for small firms and even large firms to have policies in place on addressing emergency situations to protect the interests of the firm's clients. For more information, see Brent Hoeft, *Spring Cleaning for Lawyers: Protect Your Clients Through Planning*, 97 Wis. Law. 35-37 (May 2024), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=97&Issue=5&ArticleID=30421>, and visit www.wisbar.org/successionresources.

Sole practitioners must take steps to prepare for emergencies that may affect their law practice and their clients. This is a logical extension of the duty of diligence owed to clients. **WL**



Dean R. Dietrich, Marquette 1977, with the law firm of Weld Riley S.C., Wausau, is immediate past president of the State Bar of Wisconsin and past chair of the State Bar Professional Ethics Committee. Access the digital article at www.wisbar.org/wl.
ddietrich@weldriley.com

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