



WSSFC 2024

Quality of Life/Ethics Track – Session 3

Protecting Your Firm and Clients When Making a Career Change

Presenters:

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About the Presenters...

Thomas R. Schumacher is a graduate of the University of Wisconsin-Madison where he received his undergraduate degree in Economics and the University of Wisconsin Law School. He is one of the three original shareholders of Bakke Norman, S.C. Tom is a proven community leader in Western Wisconsin. He is respected as a practical solution-based attorney, representing Closely Held Businesses, and structuring Commercial Real Estate and Commercial Finance matters. Currently Tom is utilizing his Certified Exit Planning and Certified Merger & Acquisition Advisor knowledge to assist business owners in positioning themselves and their business to maximize value enabling a transition at any time the owner, the market or potential buyers are ready. Tom is married with four adult children. He is a competitor who loves running and playing golf, but takes special pride in coaching youth basketball.

Thomas J. Watson is President and CEO of Wisconsin Lawyers Mutual Insurance Company (WILMIC). He has been with WILMIC since 2005. Before becoming CEO, he served as the organization's Senior Vice President in charge of Marketing, Communications and Risk Management. Tom was Public Relations Coordinator at the State Bar of Wisconsin for almost eight years, and was in private practice before joining WILMIC. He is a 1981 Marquette University graduate with a degree in Journalism and Broadcast Communications and a 2002 graduate of Marquette University Law School.

**PROTECTING YOUR FIRM AND CLIENTS WHEN
MAKING A CAREER CHANGE**

**State Bar of Wisconsin Solo and Small Firm Conference
October 17, 2024**

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I. Transitioning Your Law Practice – When Do You Know It’s the Right Time?

- A. No single answer to how to transition away from the practice of law.
 - 1. Some lawyers have their whole identity centered around being lawyer.
 - 2. Finding a different (and just as fulfilling an) identity AFTER retirement.
 - 3. What will I do when I’m retired? How will I stay busy?
- B. When do I transition away from the practice of law?
 - 1. When to think about it
 - 2. When to plan for it
 - 3. Different strokes for different folks...when to actually make the transition.
 - a. For some lawyers - set a date several years before – work toward an end-date.
 - b. For others - a “soft” transition where they will move away from the more stressful aspects of their law practice but continue to engage in a limited practice.

- c. Staying involved with pro bono work.
- d. Physical and mental challenges are an important consideration.

C. How?

1. Not a “one-size-fits-all” solution. What may work for one person may not work for someone else.
2. Think about a plan to transition away from the practice of law, develop that plan, and set a timeline – but be flexible. Make changes in the plan when you need to.

3. Consider your clients!

- a. Make sure you communicate your plan to your clients. Provide a safe landing place for them with some choices. Make sure there is a path for them to continue to receive quality services as you transition away from representation.

Communicate your plans. Don’t leave your clients guessing as to their future legal representation.

- b. Find successor counsel that can provide the same level of services.
- c. Meet with clients about the transition plan and the timing of the plan.

D. Options

1. Find and train a successor.
2. Explore opportunities with other attorneys and look for a way to transition clients – joint representation of the client during the transition process is an option.
3. An agreement that the lawyer will continue representation while another lawyer “shadows” the lawyer to become familiar with the issues involved.

II. How to Handle Continuing Liability After Leaving Your Practice

- A. The Preliminaries: What They Don't Teach Us in Law School.
1. Vicarious Liability (per Black's Law Dictionary) is the imposition of liability on one person for the actionable conduct of another, based solely on a relationship between the two.
 2. SCR 20:5.1 - Responsibility of partner or supervisory lawyer to make reasonable efforts to be sure the firm has appropriate measures in effect to follow the Rules of Professional Conduct; make sure those under your direct supervision follow the Rules; and you can be responsible for violations of Rules if you order a breach or allow it to happen when you could take remedial action to prevent it.
 3. An attorney is always responsible for his or her own ethical and malpractice violations.
 4. On a statutory basis:
 - a. Wis. Stats. §178.12(1): Liability of partners is joint and several for wrongful acts or omissions within the ordinary course of business or on account of a partner with authority causing a loss or injury to another and for breach of trust, receipt and misappropriation of money; jointly for other debts and obligations of the partnership.
 - b. Wis. Stats. §178.12(2) and (3): Limited liability Partnerships—partners not personally liable for torts or contracts except for the partner's own omissions, negligence, wrongful acts, misconduct or malpractice, or that of any person acting under the partner's actual supervision and control in the specific activity.
 - c. Wis. Stats. §180.1915 and Chapter 183: Shareholder not personally liable for debts and obligations of the entity or for the malpractice of others unless they are under the shareholder's actual supervision and control in the specific activity where malpractice occurs.

- d. The corporation is always liable for malpractice in rendering of professional services.
 - e. The individual is always liable for self and those supervised.
5. To obtain benefits of limited liability entity in Wisconsin, must also follow SCR 20:5.7. This means the firm must: register annually with the State Bar and pay a fee; have malpractice insurance to minimum limits set out in the Rule; use limited liability designation in name; provide plain-English summaries to all clients.

NOTE: May not be effective for any work done out of state, depending upon state law and lawyer disciplinary regulation of other state. Watch the multi-disciplinary practice information as these rules continue to develop.

- B. Provide notice to former clients, other attorneys, the courts, regulatory agencies, banks, and suppliers.
- 1. Determine what your fee agreements will be between you and successor lawyers.
 - a. How will the successor lawyer be compensated for his or her time spent closing your practice? (See SCR 20:1.5 and comments.)
 - b. How will accounts receivable be handled?
 - 2. Provide for file access and storage.
 - a. Where will your files be kept? If your practice ceases to exist, what will happen to client files? How will you maintain client confidentiality? (SCR 20:1.6 Confidentiality, Wisconsin Ethics Opinion E-98-1)
 - b. Former clients should be contacted and asked to pick up their files.

- c. Because the long tail of liability follows you indefinitely, the designated colleague ideally would keep a copy of closed files.
- 3. Trust account access by other lawyer
 - a. Do you need to authorize your designated colleague as a co-signer?
 - b. Under what circumstances can someone else access your accounts or distribute funds?
- 4. Make sure the assisting or successor attorney has access – including passwords to your:
 - a. Office procedures manual
 - b. Calendar/docket
 - c. Contact information – clients, courts, opposing counsel
 - d. Email
 - e. Voicemail
 - f. Accounting records

Make it a habit to document – and update – passwords and office procedures!

C. Solo practitioner – business side of practice

- 1. Solo practitioner could designate someone – a non-lawyer, such as an accountant – to take care of the business side of law practice. SCR 20:5.4(a)(1)(2), Professional Independence of Lawyer, describes how legal fees can be distributed.
- 2. How current are your billing records? Will someone collect your accounts receivable? What about contingent fee agreements? Fee splitting agreements?
- 3. What financial obligations do you have, for example, salaries, rent, equipment leases, utility bills, and insurance premiums?
- 4. Who is authorized to access your client trust account? Under what circumstances?

5. Where are your bank accounts located? Who are the account signers?
6. Who will need access to your post office box, safety deposit box safe, and locked file cabinets?
7. Where are your insurance policies kept?
8. Where is your will or estate plan located?
9. Who is the personal representative for your estate? Is the personal representative apprised of your agreement with another lawyer to close your practice?
10. Who has health care power of attorney for you? Under what circumstances will your practice be closed?
11. Consider how your practice will be valued for sale. (See attached article, "Valuation of a Law Practice," James D. Cotterman, *GPSolo*, January/February 2000.)
12. Instructions for continuing your professional liability insurance coverage.

III. Law Firms Also Need a Plan!

- A. Needs will differ, depending on if you are a
 1. Sole practitioner
 2. Member of a firm
 3. Member of a "collective" – outward appearance of law firm
- B. The moment a client walks into your office, ask yourself:
Who will handle this client's matter if I retire?
- C. Law firm
 - Need to be communicated to clients!
 1. Advanced fee agreement – Advanced fee agreement and engagement letter are good places to emphasize that the client has

retained the firm, not the individual lawyer, and that the firm will continue to represent the client until he or she directs otherwise.

2. Engagement letter sample language:

“My objectives are to provide you with excellent legal services and to protect your interests in the event of my retirement or unexpected absence. To accomplish this, I have arranged with another attorney to assist with closing my practice upon retirement. In such event, my office staff or the assisting attorney will contact you and provide you with information about how to proceed.”

Source: Oregon Professional Liability Fund

3. Initial interview is ideal opportunity to introduce other attorneys within the firm who can be called upon after you leave to assist client.
4. Initial interview also is time to introduce staff as a knowledgeable resource for clients.
 - a. Elevates your staff in the eyes of the client.
 - b. Frees up your time when staff can answer administrative questions.
 - c. Paves the way for a future transition.
5. Transition is easier if you communicated these issues in engagement letter and at the time of the initial interview!

IV. Merging Practices

1. Exploring a merger
 - a. List of likely candidate firms with which to merge
 - b. How good a fit would it be?
 - c. Discussions with possible merger partners
 - d. Check with malpractice carrier on future insurance coverage for merged firm
 - e. What happens to staff from both firms?
 - f. Do your research!

V. Selling a Practice

A. Selling: A Rare Approach to Succession

1. Establishing the 'value' of a law practice is key in the decision to sell when a lawyer is ready to retire.
2. In reality, the sale of a law practice rarely occurs. Lawyers winding down their practices generally look for a merger opportunity or join another firm, bringing their book of business with them.
3. Whatever the end goal, having a plan is key.
4. Entrepreneurs, including solo lawyers, tend to work **IN** their businesses and not **ON** their business. Agreements for partners who leave, retire or die take a back seat to day-to-day concerns.

B. Balancing the Business Side of Law

C. Reduce Practice Commitment

1. Make sure long-term clients can continue working with trusted counsel. It answers the main concern about taking care of their clients, doing a good job of transferring a relationship built over many years.
2. There is a benefit to firms that solo lawyers join as they prepare to retire. The larger firm has access to new clients and increased revenue, and both sides benefit from different viewpoints and new ideas.

D. Valuing a Practice

1. *Have you worked ON the business or just IN it?*
2. Location, experienced support staff who might stay with the practice, owned real estate or a lease agreement. All have quantifiable value. But the most important thing is good will. Lawyers selling a practice must find a way to account for that.

3. Many professionals working solo tend to underestimate what their practice is worth. They can overlook the fact there is value in having a good reputation in the community and with clients.
 4. Solo lawyers also often operate with a minimal business set up that can lead to imprecise record keeping and infrequent financial statements. Bringing all that up to date is critical—*for doing business and for selling a business!*
 5. If there is a succession plan and valid financial information, there is a better chance for a transition built on the value of the practice to go smoothly.
- E. Who are the buyers?
1. The usual options are other lawyers in the community who know the lawyer selling the practice and someone known by clients of the practice for sale.
 2. Another approach is finding someone willing to relocate to the community and take the practice over.
- F. Mentoring a Buyer
1. One option for a solo lawyer making a plan for succession is to develop a successor, or recruit a lawyer interested in taking over the practice in the near future. Maybe someone with an appreciation for small-town life since that is where many solo and small practices do business.
 2. Professionals fresh out of law school are worth considering. Student debt is challenging for new lawyers. But as law firms find creative ways to help new associates manage that debt, it opens up possibilities on all sides.
 3. Bringing someone in to buy or succeed an older lawyer in an existing practice takes time.

G. Find a Connection, Use Technology

1. Looking for people who have a connection to the area, an interest in the firm's practice areas and who shares some of the same values is important.
2. Consider a lease agreement. The two parties agree on a purchase timeframe. They establish a plan for the seller to receive a gradually declining percentage from the firm's income over a set number of years until the purchase is complete. It is a selling option many businesses use to transfer ownership.
3. Using technology as another way to introduce new hires to the firm. Law clerks can work remotely from other locations for a period of time before making the move to your firm.

H. What Is My Practice Worth?

1. Leaving a law practice has an economic interest for a lawyer – monetizing a career-long investment in building a client portfolio and a referral network.
2. What is being valued?
3. What is the seller providing?
 - a. Trust-based relationships with clients and referral sources
 - b. Market presence
 - c. Infrastructure to deliver legal services
4. What is being transferred?
 - a. The business – assets and obligations
 - b. The practice – source of revenue: access to clients, contacts, referrals
5. Common factors
 - a. Market demographics and location
 - b. Stability and quality of client base
 - c. Source of clients and referrals
 - d. Ability of remaining lawyers to perpetuate the business

- e. Name recognition
- f. Type of practice
- g. Profitability of practice
- h. Size of firm
- i. Stability of partner group
- j. Level of risk undertaken
- k. Quality of infrastructure

VI. Closing a Practice

- A. Plan for the future before taking any big steps
- B. Assisting staff with future employment elsewhere
- C. Protect your clients – arranging for future representation for them
- D. Talk to other lawyers who have done it
- E. Have a succession plan in place
- F. Dispersing stored files

VII. “Tail” coverage, or “Extended Reporting Period” Endorsement

- A. Professional liability policies are claims-made, not occurrence policies.
 - 1. To have coverage, you must have an insurance policy in place when you first learn of the claim and give notice to the carrier.
 - 2. It may take years for an attorney’s error to be discovered. The critical issues for coverage are the dates a reasonably prudent lawyer should have known there could be a claim and written notice is given to the carrier. Both of these events must occur during the same policy period. If there is no policy in effect at that time, there is no coverage.
 - 3. Most professional liability policies are one year policies. These policies are written as new policies for each period of coverage. When a policy expires, no claims may be made under that policy unless you have an extended reporting period endorsement (“tail”).
- B. Tail insurance equals an extended reporting period endorsement.

1. Extended reporting may be a right you have under your policy or, in some policies, the tail is underwritten and not automatic. This distinction could be very important to a firm, especially after a large claim.
 2. Needed when a firm breaks up or changes carrier (firm tail).
 3. Also when a lawyer ceases practice for any reason: becomes a judge, changes careers, retires, dies (individual tail).
 4. The effect is to extend the one-year reporting period for the length of the tail issued: e.g., 1, 3, 6 years or an unlimited time.
- C. Tail coverage is an endorsement to an existing policy. You cannot purchase a tail separately or increase the limits for the tail policy. It must be purchased within the time limits set in the policy or the opportunity is lost.
- D. If the policy contains a retroactive date for the firm or lawyer, that date will continue to apply. That is, there is no coverage under the tail endorsement for any legal work performed prior to the retroactive date of insurance.
- E. A lawyer must continue to provide the carrier with written notice of any claim during the tail policy as soon as possible.
- F. Important Questions To Consider
1. How can you reduce your risk of negligence in your legal representation if you are unable to practice?
 2. Can a client who is harmed by your failure to plan for your own absence claim malpractice?
 3. How can you make sure that client matters will not be neglected after you retire?
 4. Can you retire with peace of mind concerning the legal service you provided during your years in practice? (Statute of limitation for legal malpractice is six years, however, the discovery rules apply.)

G. Why bother with insurance at all?

1. You consider yourself a professional and part of your professional duty is to protect your clients from your errors.
2. You want to protect your peace of mind and best performance.
3. Mistakes really do happen—even by excellent lawyers (the average lawyer will face three legal malpractice claims in a career).

VIII. Ethics Considerations Before Taking Down the Shingle

- A. Notify current clients
- B. Reconcile Trust Accounts
- C. Closed Files – Retain and Communicate Policy
- D. Getting rid of electronic equipment
- E. Malpractice Insurance