



# PROFESSIONAL COUNSEL<sup>®</sup>

Advice and Insight into the Practice of Law<sup>®</sup>

## Securing Tomorrow Today: A Strategic Guide to Lawyer Succession Planning

Succession planning is a crucial aspect of any business, including law firms and solo practices. However, in the legal profession, where clients entrust their most critical matters to attorneys, the need for effective succession planning is even more pronounced. As seasoned lawyers approach retirement or in the event of unforeseen circumstances, having a well-conceived plan in place ensures the continuity of services and maintains client trust. In this article, we explore the significance of succession planning for lawyers in law firms and solo practices and provide practical insights and best practices for developing and implementing effective strategies.

### Understanding Succession Planning

In the legal context, succession planning involves identifying and preparing future leaders within a law firm to seamlessly transition into key roles when current leaders retire or leave the firm. It encompasses both the allocation of management responsibilities, as well as the transfer of client relationships, institutional knowledge, and firm culture.

Succession planning is equally relevant to a solo practice when attorneys may unexpectedly become disabled, disappear, or die. In this context, a succession plan is a very specific, detailed, and written list of steps to implement in order to fulfill obligations to the client temporarily or permanently in the event of the inability to effect the legal representation. The plan explains what should happen to clients' cases if a lawyer suddenly becomes incapacitated or dies, identifies a successor and office procedures, and outlines a comprehensive strategy that provides for client files and financial distributions, including the lawyer's share of present and future earnings and client trust funds.

Succession planning also pertains to the clients, staff, and family of the lawyer. Clients must have their legal rights protected from the adverse consequences of unforeseen events caused by an attorney's death, disappearance, or disability. A lawyer's family also requires protection against avoidable financial injury and being encumbered with the responsibility of taking over the attorney's law practice. Certainly, no one wants to think about unexpected events that may cause an attorney to abruptly cease practicing law. But what would happen if the attorney had an accident and had to be hospitalized for an extended period of time? What would happen to the law practice? What would happen to the clients and their cases? What would happen to the staff, payroll, accounts payable/receivable?

Succession planning is also part of a lawyer's duty of diligence. While not a required element of Rule 1.3: Diligence of the American Bar Association ["ABA"] Model Rules of Professional Conduct, it is addressed in the Comments to the Rule. Specifically, Comment [5] provides that "[t]o 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."<sup>1</sup> Moreover, many state jurisdictions mandate that a lawyer name a successor and/or create a succession plan. In addition, malpractice insurers may inquire about succession planning during the underwriting process.<sup>2</sup> Although this Comment is directed to solo practitioners, it also applies to the firm setting with a partner or associate's incapacity or death.

<sup>1</sup> See ABA Model Rule of Professional Conduct 1.3 (2021) and also Rule 28 of the ABA Model Rules for Lawyer Disciplinary Enforcement.

<sup>2</sup> See [ABA State Mandatory Succession Rule Chart](#) and [ABA State-by-State Caretaker Rules When Lawyer Disappears, Dies or is Declared Incompetent](#).

### Challenges Faced by Law Firms and the Solo Practitioner

Law firms encounter various challenges when it comes to succession planning. One of the primary challenges is the unique nature of legal practices, where relationships between attorneys and clients are deeply personal and built on trust. Clients often select a law firm or lawyer based upon the reputation and expertise of specific attorneys, making it challenging to transfer these relationships smoothly. In addition, law firms may experience challenges with attracting and retaining young talent, especially in highly specialized fields, small or boutique practices, or in rural areas. These issues pose a significant obstacle to succession planning, as developing future leaders requires a long-term commitment to mentorship and professional development.

For solo practitioners, most have worked alone for years and renouncing control, having another lawyer join in the practice, or take over client matters creates dissonance. In addition, many small law firms are first generation firms that have been led by their founders during their entire existence and are not ready or willing to think about the next generation. They have been the leaders and rainmakers and have not looked for or developed other lawyers with the same leadership and marketing skills that they possess. As a result, the other lawyers assume a supportive role and do not develop the skills necessary to successfully lead the firm.

### The Consequences of Inadequate Succession Planning

The failure to address succession planning adequately can have severe consequences for law firms and solos. For example, in *State ex rel. Okla. Bar Ass'n v. Silvernail*, 522 P.3d 464 (Okla. 2022), a lawyer who was convicted of assault and battery with a deadly weapon and then sentenced to two and one-half years in prison failed to take steps to close his practice. While in jail awaiting his formal sentencing, he had 60-70 pending client matters and attempted to continue to represent his clients from his jail cell. He did not permit stand-in counsel to have access to his client files, and asked his brother, who had no experience with law office management, to take over the day-to-day operations of his firm. He also had discussions with and about client matters on phone lines monitored by jail officials. The attorney was ultimately disbarred.

In the absence of clear succession plans, firms and attorneys risk losing clients, key talent, valuable institutional knowledge, and potential financial insecurity. Moreover, the sudden departure, death, incapacity, or retirement of senior partners can lead to instability within the firm, affecting morale and potentially causing disruption to ongoing cases and client matters. Furthermore, the absence of succession planning may result in disputes over leadership and ownership succession, leading to internal conflicts and damaging the firm's reputation in the legal community.

In addition, lawyers may encounter legal and ethical challenges. For example, clients' cases may be mishandled or neglected, with the possibility of deadlines missed, or confidential information compromised. These exposures may lead to legal malpractice claims and disciplinary violations which will outlive the lawyer's incapacity or death. In addition, the lack of a succession plan, a solo practice may be placed into a receivership directed by the state bar or other regulatory authority.

By implementing a well-structured succession plan, lawyers can mitigate these risks and ensure that their professional obligations are fulfilled. However, the content and context of the plan will vary depending upon the lawyer's practice setting.

### Key Elements of Effective Succession Planning in Law Firms

To ensure the seamless transition of leadership and preserve the continuity of services, law firms should focus on several key elements when developing succession plans.

**Early Identification of Potential Successors:** Law firms should identify high potential individuals within the organization who demonstrate the necessary skills, expertise, and leadership qualities to assume key roles in the future. This process involves assessing performance, leadership abilities, and commitment to the firm's values.

**Mentorship and Professional Development:** In the firm setting, implementing mentorship programs and providing opportunities for professional development are essential components of succession planning. Senior partners should actively mentor junior associates, imparting knowledge and experience while grooming them for future leadership roles.

**Client Transition Strategies:** Law firms must develop strategies for transferring client relationships from senior partners to younger attorneys. This protocol may involve introducing junior attorneys to clients gradually, involving them in client meetings and matters, and ensuring continuity of communication and service.

**Knowledge Management:** Effective succession planning encompasses the preservation and transfer of institutional knowledge within the firm. Documenting processes, case histories, and client preferences ensures that vital information is accessible to future generations of attorneys.

**Contingency Planning:** Although succession planning seeks to anticipate and prepare for planned transitions, law firms also must develop contingency plans to address unexpected events such as sudden retirements, illnesses, or deaths of key partners. These plans should outline procedures for managing client matters, redistributing workloads, and ensuring business continuity.

### Key Elements of Effective Succession Planning for Solo Practitioners and Small Firms

No one can predict the future, and attorneys must be prepared in the event of unforeseen circumstances. Creating a succession plan can serve to eliminate confusion for clients, family members, and staff. Here are some key steps for establishing an effective succession plan:<sup>3</sup>

- **Designation of an Assisting or Successor Attorney:** The attorney should enter into a written agreement with another lawyer or law firm to perform the functions, as noted in Comment [5] of ABA Model Rule 1.3. The selection of this individual should be taken seriously and the choice of a successor must be an attorney who is willing and licensed in good standing and has the skill set to competently and responsibly take over and continue (in the event of a temporary disability) or conclude the practice. A discussion with the successor attorney to determine if he/she/they is comfortable with this role and understands all of the duties that will be involved is critical. Some solo practitioners may prefer that their law offices continue even if they cannot and may wish to consider grooming their successor to become the owner of the business. Over time, this lawyer may be offered a partnership, which can then be linked to an exit strategy with an appropriate compensation arrangement in the event of retirement.

Key provisions that may be included in the written agreement are the following:

- Authority for the successor to notify clients of the death or disability of the affected lawyer.
- Authority for the successor lawyer to access and serve as a signatory on the operating and client trust account(s) of the practice and for the successor to assume possession of client files in order to inventory and review files.
- Compensation, including reimbursement for costs of the successor.

- Any indemnification of the successor lawyer by the practice or the estate.
- In the event of death or termination of practice due to incapacity, an indication as to whether the successor attorney will assist in winding down the business affairs of the law practice, including paying business expenses, storage/distribution of client files, collecting outstanding fees, terminating malpractice insurance, and purchasing a tail policy.
- Potential conflicts of interest between the lawyer and successor lawyer
- Specification of a termination date.

### Access to Information

- **Client lists:** The assisting/successor attorney, a family member or support staff need to have access to a list of current clients, with contact information and open cases/matters. A writing also should be provided on how to update, generate, and access this data.
- **Written instructions** that list user names, passwords (computers, cell phones, voicemail), software/operating systems, how to access calendaring/docketing systems listing all pending matters and due dates, professional liability insurer and policy number, and locations of files (both physical and cloud-based, client and billing) or identify the individual who knows this information.
- **Financial records:** A listing of all business, operating, and client trust accounts (bank names, account numbers, signatories) and where computerized or physical records/checks are maintained. Consider a springing power of attorney to enable assisting/successor counsel to gain access to the solo practitioner's trust and operating accounts so that any expenses can be paid, as well as collection or disbursements of any settlements and judgments.
- **Closed files:** A listing of where closed files are stored and how they are organized. Instructions should identify any file that may contain an original will, deed, or trust agreement that may have to be returned to the former client.<sup>4</sup>

<sup>3</sup> Many states have created helpful material and handbooks on succession planning for lawyers. For example, see, [New Mexico](#), [New York](#), [Colorado](#), [Arizona](#), [Iowa](#), [Washington](#), [Illinois](#).

<sup>4</sup> The ABA and many state jurisdictions have issued legal ethics opinions offering guidance on succession planning. See, ABA Formal Op. 92-369 (1992); Cal. Ethics Op 2021-206 (2021); N.H. Ethics Op. 2020-21/03; Phila. Ethics Op. 2014-100 (2015); MI RI-374; NM Formal Ethics Advisory Opinion 2023- 001; NYSBA Ethics Opinion 954.

## Informing Clients

Consider referring to the succession plan in any attorney-client engagement agreement with new clients. The statement could be as simple as including language to the effect that your office has made arrangements for attorney Pat Smith to review files and notify clients and take other action in case of your illness or death.<sup>5</sup>

## Conclusion

In an increasingly competitive and dynamic legal landscape, effective succession planning is essential for law firms to thrive and maintain their relevance. By investing in the development of future leaders, preserving institutional knowledge, and implementing robust transition strategies, firms can ensure continuity of services, retain client trust, and sustain long-term success.

Although succession planning may require careful planning and commitment for the solo practitioner or small firm, the benefits far outweigh the challenges and serve to minimize the risk of harm to clients and mitigate the potential for malpractice and disciplinary issues to arise. By embracing succession planning as a strategic imperative, law firms, small firms and solo practitioners can position themselves for growth, resilience, preparedness for unforeseen events, and continued excellence in serving their clients and communities.

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<sup>5</sup> See CNA's Lawyers Tool Kit 5.0: A Guide to Managing the Client Relationship, Sample Engagement Agreement – Preemptive Client Consent for Sole Practitioners, page 52, for sample language.

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