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Succession Planning for Your Practice

by Natalie Vance

Have you thought about what would happen to your clients if something happened that prevented you from practicing law? Most people think it won't happen to them and that they will be able to practice competently until they choose to retire. That may be true for some, but are you prepared to gamble with your clients' cases or your practice? If not, then it is never too soon to create a succession plan to protect your practice.

Why have a plan?

Accidents, illness, injuries, family problems, and even death can occur when least expected. Chronic conditions like addiction and depression can eventually become so debilitating that they prevent a lawyer from continuing to practice. The consequences of *not* having a plan are potentially disastrous, particularly for solo and small firm practitioners who may not have colleagues able to pick up the slack when they can no longer manage their case load. If this happens, it is only a matter of time before bad things happen, e.g., case dismissals, sanctions, malpractice complaints, Bar problems.

A client, another attorney, or the Bar can petition the court to assume jurisdiction of an attorney's practice in the event of addiction, mental or physical disability or infirmity that renders an attorney incapable of providing the quality of service necessary to protect the clients. (See Bus. & Prof. Code, § 6190, et seq.) The consequences of the court assuming jurisdiction of a law practice during a disability are severe. First, the attorney will be listed as inactive with the Bar and will be ineligible to practice law unless and until the attorney petitions the Bar for reinstatement. Second, the court will appoint another attorney to review the case files and locate attorneys to take over the representation of clients, essentially liquidating the entire law practice. If the disabled attorney obtains treatment and recovers from the disability, the attorney must then seek reinstatement, and by the time the attorney returns, there will likely not be any practice to return to.

The Probate Code provides an alternate—perhaps less onerous—procedure, allowing a personal representative or conservator to petition the court for the appointment of a successor attorney to take control of a disabled attorney's practice. (See Prob. Code, § 2468.) In such cases, the court will normally appoint the successor attorney identified by the disabled attorney in a power of attorney, partnership agreement, or other succession plan.

Having a succession plan is optimal. It helps to ensure that someone you trust can make sure your clients get the

representation they need and preserve your practice while you recover.

What Should Your Plan Include?

1. Appoint a successor attorney: locate an attorney you know and whom you can trust not only with your clients' cases but with your practice, someone who will take care of your office staff, and ensure expenses and clients are paid. Make sure that the designated successor remains ready, willing and able to assist in the event of an emergency.
2. Familiarize your successor with office procedures, passwords and access to files; keep documentation of your procedures where the successor can access it.
3. Keep case files, calendars, and billing records up to date.
4. Tell key personnel, a spouse, or other confidantes about the plan so they know whom to contact in case of emergency.
5. Create a system for conflicts checks when the successor comes in and have a plan in place to handle cases the successor may be conflicted out of.
6. Document how the successor will be compensated for the time spent managing your practice and working on your clients' cases in advance.
7. Include language in your retainer agreement which includes client consent to your successor taking over cases in your absence.
8. Update the plan on an annual basis.

Having a succession plan in place is the responsible thing to do to ensure that clients are protected if and when you are no longer able to do so.

Resources for Creating a Plan

The California Bar has created a sample agreement which allows a successor to take over and close a law practice for a disabled or deceased attorney in compliance with the relevant provisions of the Business & Professions Code and Probate Code. See <http://ethics.calbar.ca.gov/Ethics/SeniorLawyersResources/AttorneySurrogacy.aspx>. The agreement has some sample language but does not really address the situation of an attorney who is temporarily disabled and plans to return to practice law.

The New York Bar has a checklist of recommendations to include in agreements between attorneys and proposed successors, including agreements to take over matters on a temporary basis during a disability or impairment. See NYS-BA.org/planningaheadguide2016/. 