

How to Protect Your Clients and Firm In the Event of Death, Disability, Impairment, Or Incapacity

Law practices are not immune from the unfortunate and unexpected events and accidents that occur in everyday life. An attorney's illness, incapacity, or even suspension due to misconduct can result in the temporary or permanent closure of a practice.

Although difficult to contemplate, having a contingency plan in place is part of being a good lawyer and will help to: 1) fulfill ethical duties toward clients; 2) save judges, relatives, colleagues, and attorney staff from some of the difficulties of a temporary or permanent closing of a law practice; 3) facilitate obtaining new counsel; and 4) reduce potential misconduct and/or malpractice claims.

This article can help Texas attorneys plan and prepare for events that could render them unable to practice law and assist Texas judges, as well as relatives, colleagues, and staff with the closure of an attorney's practice and finding new counsel, if necessary.

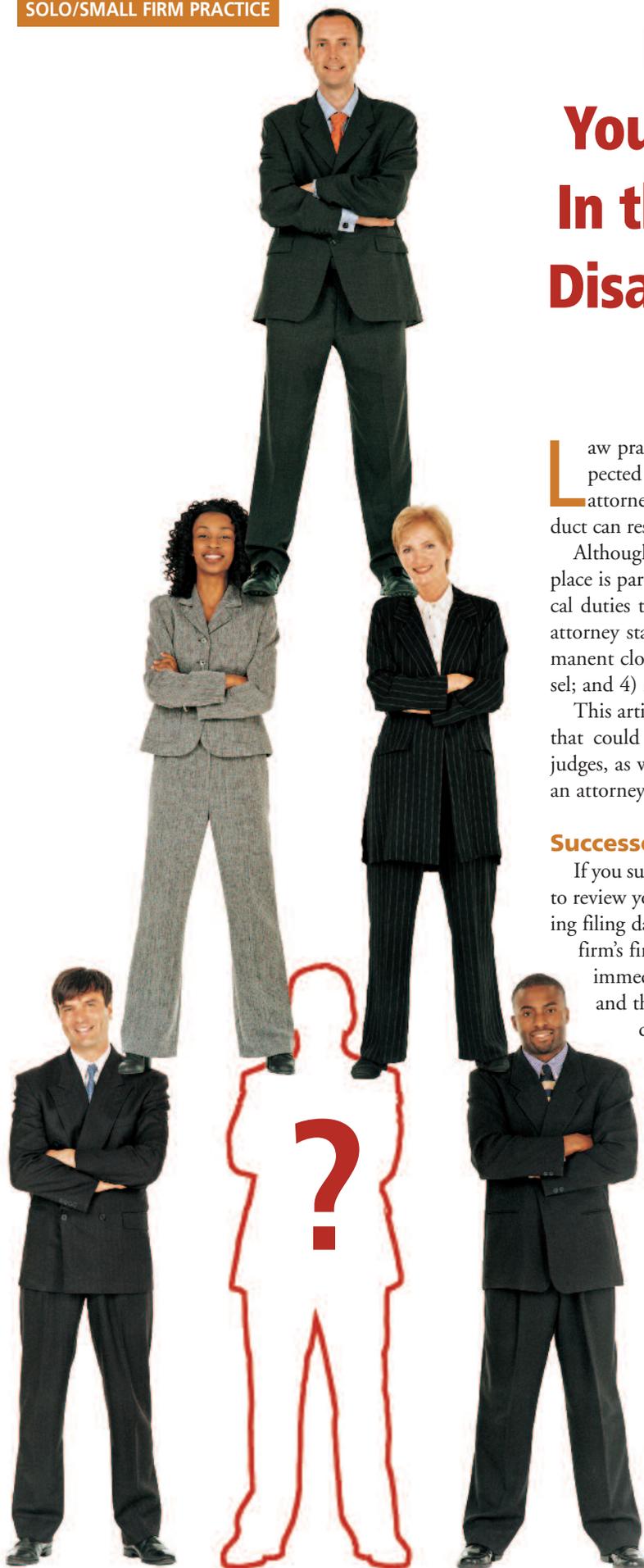
Successor Attorney

If you suddenly become unable to practice law, someone will need to review your case files to ascertain if there are pending or upcoming filing dates, contact clients to return or transfer files, handle the firm's financial affairs, and deal with other issues that may need immediate attention. Due to the content contained in the files and the need to be able to spot legal issues, the best person to do this is presumably an attorney, or a successor attorney.

By determining in advance who will serve as your successor attorney, you offer better protection to your clients and a faster transition out of law practice. Once you have found a suitable attorney who agrees to wind down your practice, it is important to discuss what duties the successor attorney will need to perform, the scope of his or her responsibility, what event will trigger the successor attorney's service, and the systems you employ in your firm to make the job easier to accomplish. Be sure to reduce your agreement to writing so the successor attorney will have the legal authority to perform the duties you have both discussed.

Scope of Responsibility

The need to establish the scope of the successor attorney's duties and obligation to you and/or your clients from the outset is critical. Because conflicts may arise if the successor attorney is expected to represent both your interests and those of your clients, be sure to identify clearly who the successor attorney



ney will represent. If the successor attorney represents you, he or she may be prohibited from representing your clients on certain matters. If the successor attorney represents your client's interests, he or she may be required to disclose to the client if you have made any errors on their case.

Duration and Triggering Event

You will also want to establish what event will trigger the successor attorney to enter your practice and start winding down your business and who will determine that this event has occurred. Will it be a doctor, your spouse, the good faith belief of the successor attorney? How long will the task of wrapping up the practice take? These are all important questions to consider when choosing a successor attorney.

Duties to be Performed

Include in your written agreement a signed consent authorizing the successor attorney to perform certain tasks, for example:

- Review your files for pending deadlines;
- Obtain extensions in litigation matters;
- Contact your clients about returning/transferring files;
- Wind down financial affairs;
- Inform the court and others who need to know of the closure of your practice;
- Collect fees owed to the disabled or deceased attorney; and
- Return unearned fees.

Power of Attorney

If you want the successor attorney to handle your firm's financial affairs, access to your bank accounts will be required. While a written agreement may be sufficient, some banks require that the successor attorney have a power of attorney. Check with your bank to see what documents it will require in order to honor your wishes with respect to the closure of your firm. Again, you'll need to think through what sort of power of attorney you want to grant the successor attorney and how and when the power of attorney will be triggered: Will the successor attorney's power of attorney be triggered by a specific event? Who will determine that the triggering event has occurred? What specific powers will be granted? What will determine the duration?

Notifying Your Client

You will need to notify your clients that you have arranged for a successor attorney to wind down your practice. Since the successor attorney will have access to your client's confidential information, you need to obtain your client's consent. The easiest way to notify your clients and obtain their consent is to put a provision in your retainer and fee agreements.

Ethical Issues

CONFIDENTIALITY

The client must give consent to have his confidential information shared with the successor attorney.

CONFLICTS

The successor attorney will need to conduct a conflict check if the review of client confidential information is being conducted in order to return or transfer the file.

BARRATRY

If the successor attorney is contacting your clients or wishes to represent your clients, he or she should be aware of potential restrictions in the disciplinary rules with respect to barratry or solicitation (Notification of Attorney's Cessation of Practice, see Texas Disciplinary Rule 13.01).

Authorized Signer on the Trust Account

In order to return funds to clients and remit payment for work performed, someone will need to have access to your trust account. If you do not make arrangements, your clients may not receive their funds until a court orders access to the trust account. You may grant this authority to your successor attorney, a close family member, or your personal representative.

Office Procedures

Maintaining good office procedures will aid your successor attorney and provide increased protection for your clients. For example, keeping time and billing up-to-date will help your successor attorney in his or her duties.

CONTACT LIST

Keep a list of contact information for the people who should be notified in the event of your death or incapacity.

PASSWORDS AND ACCOUNT NUMBERS

Create a list of passwords for computer and network log in, email accounts, bank accounts, credit cards, and ATM cards that will need to be accessed. Give the list to a close family member, your personal representative, or the successor attorney for safekeeping.

FEE AGREEMENTS

Maintain written fee agreements for each client matter.

SEPARATE FILES

Maintain a separate file for each client matter.

TRUST ACCOUNT

Maintain a separate trust account and dedicated ledger for each client whose funds you hold.

DOCKET CONTROL

Keep a calendaring system with applicable deadlines.

Termination Letter

When you have closed a client matter, send a termination letter and include any original documents. ❖

This article, prepared by staff of the State Bar Law Practice Management Program and Office of the Chief Disciplinary Counsel, was adapted from the Oregon State Bar Professional Liability Fund handbook, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*. Houston attorney Jimmy Brill consulted on the article. For more information, a checklist for closing another attorney's office, what to do if your boss or relative is no longer able to practice, and guidelines for judges, visit texasbarcle.com/materials/closingapractice.html.