

**JUST IN CASE:  
STRATEGIES FOR SUCCESSFULLY  
TRANSITIONING YOUR LAW PRACTICE**

*Written and Presented by:*

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State Bar of Texas  
**LAWYER COMPETENCY IN THE 21<sup>ST</sup> CENTURY**  
November 21, 2014  
Austin

**CHAPTER 11**





## ATTORNEY



*Education*  
J.D., SMU Dedman School of Law,  
2004  
B.A (magna cum laude), Texas A&M  
University, 2000

### Awards

- "Best Lawyers in Dallas" D Magazine, 2014
- Named "Texas Rising Star" by Thomson Reuters, 2011, 2012, 2013, and 2014
- Texas Young Lawyer's Association President's Award of Merit 2010 and 2012

## Rebekah Brooker

### Biography

Ms. Brooker focuses her practice in estate planning and administration, probate matters, trust and asset protection planning, and probate litigation. She is experienced in administering trusts and estates of decedents and counseling clients on estate planning, charitable planning and estate and trust management. Ms. Brooker is experienced in representing entities involved in actions based on tortious interference, breach of contract and breach of fiduciary duty. Additionally, Ms. Brooker is also experienced in commercial and business litigation and matters oil and gas.

### Representative Matters

Counseled clients on all phases of estate planning and the preparation of wills and trusts.

Analyzed and advised clients who recently relocated to Texas on revising or updating wills and trusts from other states.

Represented clients in contested and uncontested will probates and in the administration of the estate.

Represented executors, trustees, and beneficiaries in various estate and trust controversies.

Represented beneficiaries and executors in family settlement agreements in lieu of will probate proceedings.

Prepared estate planning documentation including wills, trusts, financial powers of attorney, medical powers of attorney and directives to physicians.

Assisted in the trial preparation in a complex lawsuit filed by a Chapter 11 debtor against its parent company, officers and directors, and competitors, which resulted in recovery in excess of \$55 million for the bankruptcy estate.

### Memberships

- Board of Directors, State Bar of Texas
- President-elect 2013; Board of Directors, Texas Young Lawyers Association
- Licensed to practice in the United States District Courts for the Northern, Southern, Eastern and Western Districts of Texas

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### Areas of Practice

Estate Planning

Asset Protection

Estate & Gift Tax Planning

Probate Administration

Transfer Tax and Probate Litigation

Wealth Preservation

Wills, Trusts & Estates

Litigation

Real Estate

Landlord/Tenant Disputes

Energy

Oil & Gas Transactions

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## ATTORNEY



- Young Lawyers Division- Credentials Board Member, American Bar Association
- Member, Dallas Bar Association
- Elder Law Committee, Member, Dallas Association of Young Lawyers
- 2006 Leadership Class, Dallas Association of Young Lawyers
- Board of Directors and Life Fellow, Dallas Association of Young Lawyers Foundation
- Texas Aggie Bar Association

### *Awards*

- "Best Lawyers in Dallas" D Magazine, 2014
- Named "Texas Rising Star" by Thomson Reuters, 2011, 2012, 2013, and 2014
- Texas Young Lawyer's Association President's Award of Merit 2010 and 2012
- Named "One to Watch 2009 Dallas Association of Young Lawyers" and Outstanding Committee Chair 2007" by Dallas Association of Young Lawyers.

### *Education*

*J.D., SMU Dedman School of Law,  
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*B.A (magna cum laude), Texas A&M  
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### *Awards*

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### **Education**

B.A., 2007, Angelo State University  
J.D., 2011, Texas Tech University: School of Law

### **Professional Licenses**

State Bar of Texas, 2011  
Federal District Court  
- Northern District of Texas, 2011  
United States Court of Appeals  
- Fifth Circuit, 2012

### **Employment**

Sprouse Shrader Smith, PLLC, Associate, 2011-Present  
72<sup>nd</sup> & 99<sup>th</sup> District Court, Law Clerk, 2009-2011  
Field Manning Stone Hawthorne & Aycocock, Summer Associate, 2010  
Texas Tech University School of Law, Teaching Fellow, 2009-2010  
Tom Green County District Attorney's Office, Intern, 2006  
Harlan Law Office, Runner, 2001-2004

### **Professional Organizations**

American Bar Association  
Amarillo Area Bar Association  
Texas Young Lawyers Association  
Amarillo Area Young Lawyers Association  
Texas Association of Defense Counsel  
National Order of the Barristers

### **Professional Engagements**

March 20, 2012 – “Judgments: How to Win after Winning”  
- National Association of Legal Secretaries

### **Practice Areas**

Complex Business & Commercial Litigation  
Agriculture & Agribusiness  
Civil Rights / Governmental Entity Defense  
Insurance Defense  
Personal Injury  
Family Law  
Transportation Litigation  
Real Estate  
Trial & Appellate



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## JUST IN CASE: STRATEGIES FOR SUCCESSFULLY TRANSITIONING YOUR LAW PRACTICE

### I. INTRODUCTION

We have all heard the phrase before, “practice what you preach.” We emphasize the importance to others about preparing for illness or disability, but how often do we prepare ourselves for these types of unfortunate events. This paper is here just in case you are unable to pick back up where you left off. Having a backup plan is part of being a great lawyer, and it will help those around you make sure nothing falls between the cracks.

This paper<sup>1</sup> will highlight some of the important things to consider when an attorney becomes incapacitated or deceased. This paper will present a brief overview on the importance of having an up-to-date estate plan as well as address strategies for successfully transitioning a law practice.

### II. RULES 13.01, 13.02, AND 13.03

Believe it or not, there are rules and procedures for taking over and closing a lawyer’s practice. The rules are encapsulated in the Texas Rules of Disciplinary Procedure. Specifically, Part XIII, which is titled “Cessation of Practice,” provides the procedure and framework for when an attorney licensed to practice law in Texas dies, resigns, becomes inactive, is disbarred, or is suspended. Tex. Rules Disciplinary P.R. 13.01.

Part XIII establishes the types of notices that must be completed, as well as the jurisdiction and hearing related to an attorney’s cessation of practice. This paper does not address the details and intricacy of the rules related to cessation of practice; but any “successor attorney” should be familiar with the rules. If you are a “successor attorney” attempting to review case files to determine if there are pending deadlines or other issues that need immediate attention, it is recommended that you review the above mentioned rules.

### III. STRATEGIES FOR SUCCESSFULLY TRANSITIONING YOUR LAW PRACTICE

#### A. Locate a Successor Attorney

Who is going to wind down or take over your law practice in the event you are unable to continue? By determining in advance who will serve as your successor attorney, you offer better protection for your clients and a faster transition.

After locating an appropriate attorney, sit down and discuss the duties and responsibilities the successor attorney will need to perform. Some of the topic for discussion should include the following:

##### 1. Scope of Responsibility

Because conflicts may arise if the successor attorney is expected to represent both your interests and those of your clients, be sure to clearly identify the scope of responsibility or in other words, identify whom the successor attorney 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 may be required to disclose to the client if you have made any errors on their case.

##### 2. Triggering Event

You will also want to establish what event or set of circumstances will trigger the successor attorney to enter your practice and start winding down your business. Additionally, you will want to address the individual that determines when the “event” or “set of circumstances” has occurred. The individual could be a doctor, spouse, employee, or even the successor attorney.

##### 3. Tasks to be completed

Discuss with your successor attorney the duties to be performed, for example:

- Review files for deadlines<sup>2</sup>;
- Obtain extensions in litigation matters;
- Contact clients about returning files;
- Wind up financial affairs;
- Inform the court and others who need to know of the closure of your practice;
- Collect fees owed; and
- Return unearned fees.

Because we live in an age where everyone requires forms and authorizations to be completed in order to do

<sup>1</sup> This paper will borrow liberally from other outstanding papers: “Dealing with the Death of a Solo Practitioner” by James E. Brill and “Planning Ahead: A Guide to Protecting Your Clients’ Interests in the Event of Your Disability or Death” published by the Oregon State Bar. Additionally, this paper will borrow liberally from the wonderful resources provided by The Law Practice Management Program of the State Bar of Texas.

<sup>2</sup> 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

the simplest procedures, it is important to encapsulate the agreement with your successor attorney in writing. Additionally, consider executing a power of attorney specific to the agreement. Finally, discuss with your financial institution what documents they will require in order for your plan to be completed. Some financial institutions may require the successor attorney to be an authorized signer on the trust account.

#### **B. Contact and Client Lists**

Maintain a current listing of all present and past clients, their addresses, email addresses, phone numbers, and a description of all matters handled for them. In addition to present and past clients, maintain a list of people or entities that should be notified in the event of your death. If you are currently winding down your practice, you will need to notify your clients that you have a successor attorney. Because the successor attorney will have access to your client's confidential information, you need to obtain your client's consent. Consider adding language to your engagement/retainer/fee agreements for this addressing this subject.

#### **C. Fee Agreements**

It is important to maintain written fee agreements with all clients. Entire CLEs are devoted to written fee agreements, so this paper does not go into detail regarding the do's and don'ts of fee agreements; however, as noted above, you should consider including language regarding your death or disability. Additionally, you could include language regarding the successor attorney.

#### **D. Calendaring system**

Be mindful to calendar all deadlines into some type of calendaring system. You should consider keeping a backup calendar system in place as well. One of the first priorities of any successor attorney is going to be determining all applicable deadlines.

#### **E. Time and Billing**

Along with keeping up with deadlines, it is important to maintain current time and service records. While we recognize that it is sometimes difficult to keep track of time on a daily basis, it is the preferred method. If you record all of your time at the end of the month, you run this risk of dying without any time recorded for an entire month. Additionally, you should bill regularly and maintain accurate financial records. These simple yet effective practices will greatly assist any successor attorney in winding down your practice.

#### **F. Trust Account**

While you should already be doing this, be sure to keep a separate trust account with a detailed and

dedicated ledge for each client whose funds you hold. Most electronic accounting software already performs this "bookkeeping," but if you are not already doing this, start today. Without a dedicated ledge for each client whose funds you are holding, the successor attorney's job will be extremely difficult and stressful.

#### **G. Closure Letter**

When you have completed a matter, you are encouraged to send a "closing letter" or a "termination letter." You should inform your client that your services have been completed and the matter is closed. Additionally, you should return all original documents and materials to the client. Not only is this a good practice in general, a good "termination letter" will inform any successor attorney of the status of the matter.

#### **H. Passwords and Account Numbers**

There was an article the other day about keeping fast food gift cards in your vehicle in order to give to people less fortunate than yourself. When I read that article, I really thought it was a neat and original idea. If you take away anything from this paper, take away the next tip. We live in an electronic age where most services are accessed through a username and password. Please consider investing in some type of password management system. There are multiple options out there. The password management system can store your usernames and passwords or all of the various services. In other words, create a list of passwords that are necessary for computers, email accounts, bank accounts, and other vital systems that your law practice relies upon. Give this list to someone for safe keeping.

### **IV. IMPORTANCE OF UP-TO-DATE ESTATE PLANNING**

If a person dies without a will, the law disposes of his or her property. The public policy of statutes governing the intestate distribution of property is to provide for the orderly distribution of property at death. The law does not play favorites, so the distribution is determined by how closely the heir was related to the decedent, not by the nature or quality of any relationship between the heir and the decedent. Dying without a will may trigger undesired results and unexpected costs and delays.

Because one usually has an idea of how he or she would like his or her property to pass to others, undesired results can arise if he or she dies without a will. Dying without a will risks that the property will not be inherited as the decedent wished.

Dying without a will can tie up assets for an undetermined period of time. A court proceeding often is required to determine who are the heirs, although in

certain limited circumstances it may be possible to clear title to the assets without an heirship proceeding. An administrator, who may be responsible to the court for settling the estate, may have to be appointed. The administrator may be required to post a bond to insure that the duties are performed properly. The administrator's duties include locating the heirs, inventorying the assets, classifying and paying off debts of and claims against the estate, and distributing the property to the heirs. Transfer of ownership of some of the assets by legal documents, such as deeds and certificates of title, may be necessary. If the estate cannot be settled amicably, the court will resolve the disputes. Because of congested dockets, court proceedings often are slow. Legal fees and court costs may begin to mount. Depending on how difficult it is to divide the property and whether the heirs agree on the value assigned to it, court proceedings could be so lengthy and costly that the estate is depleted. The bottom line is that dying without a will costs time and money.

All of the above issues can significantly affect the transition of a law practice. With impending deadlines and client's funds in trust accounts, the last thing a successor attorney needs is an attorney to die without an up-to-date estate plan. Additionally, your estate plan should include instructions or information regarding your arrangement with the successor attorney. Any personal representative of your estate will want to know the specifics of your arrangement with your successor attorney.

## **V. CONCLUSION**

You should start now and begin searching for a successor attorney. Also ensure that your estate planning is up-to-date. Use this paper as a broad outline of some of the things you need to do just in case you die, become disabled, become impaired, or in some other way cannot continue the practice of law.

