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Oregon State Bar Bulletin JULY 2005

Managing Your Practice

PLAN AHEAD

Are you prepared for the unthinkable?

By Beverly Michaelis

As lawyers, we are trained to look out for the interests of others. We counsel our clients on the importance of having an up-to-date estate plan. We prepare them for the possibility of illness or disability and talk about who will make health care and financial decisions on their behalf. We advise clients to inventory their assets and keep accurate records. We do all of these things very well. Seldom, however, do we follow our own advice.

THINK ABOUT THE UNTHINKABLE

Imagine that while you are driving home this evening, a careless driver runs a red light and hits your car. You are badly injured and lose consciousness at the scene of the accident. At the hospital, your family is told you need emergency surgery and may not live. What is your family feeling at this moment? Can they, or should they, be expected to worry about the motion you are scheduled to argue tomorrow? What about the distraught client you have an appointment with the next afternoon? Or the bills you need to pay, or the trust account you haven't reconciled? Could your loved ones make sense out of your office: What should be done with your mail? Which files are open and which are closed? Where do you keep your accounting records? What are the passwords for your e-mail and voice mail? Do you have a safe deposit box? Where is the key? Does anybody need to be notified that you are incapacitated?

This scenario is just the tip of the iceberg. We take for granted that we will live long lives, free of serious illness or debilitating injury. We believe it won't happen to us. We think to ourselves: "I don't have to worry." Or, "If something happens, someone else will take care of everything." Unfortunately, the dilemma described above is not far-fetched. In recent years, the Professional Liability Fund has helped colleagues or loved ones close the law offices of attorneys who committed suicide, were murdered or died unexpectedly. Lawyers who have a health crisis, drug or alcohol dependency, depression, severe stress reaction, or accidental injuries all need to make arrangements to cover their practices. We all do. It can happen any time to anyone.

PLAN AHEAD TO PROTECT YOUR CLIENTS

How can you spare your loved ones the stress and uncertainty of closing a practice that is not in order? How can you protect the clients who are depending on you? How can you protect yourself and ensure that when you recover you will come back to a viable practice? The answer is to plan *now* and arrange to have someone close or watch over your practice. The process starts by finding someone, preferably a fellow attorney, who is willing to close or manage your practice if necessary. If you don't know a colleague who can do this for you, contact the Oregon State Bar Lawyer-to-Lawyer Referral Service at (503) 684-3763 or (800) 452-7636.

The arrangement you enter into with this attorney (the "assisting attorney") includes a variety of features. It should include: a signed consent authorizing the assisting attorney to contact your clients for instructions on transferring their files; authorization to obtain extensions of time in litigation matters when needed; and authorization to provide all relevant people with notice of the closure of your law practice. This agreement can also include arrangements for payment by you or your estate to the assisting attorney for services rendered.

The PLF offers a handbook entitled *Planning Ahead: Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death* (1999). The guide is free and contains solid, practical advice any lawyer can use, including:

A checklist for creating a plan.

Sample agreements to allow another lawyer to close or temporarily manage your practice.

Casemaker™
User Guide (PDF)
Casemaker™ EULA (PDF)

Form letters to use in communicating with clients when a lawyer is unable to continue practicing.
Document hosted at [JDSUPRA™](http://www.jdsupra.com/post/documentViewer.aspx?fid=88444225-c841-41f4-a750-3a97087c4e81)
<http://www.jdsupra.com/post/documentViewer.aspx?fid=88444225-c841-41f4-a750-3a97087c4e81>

A comprehensive list of contacts, assets and other essential information loved ones or others would need to close a practice.

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PLAN AHEAD TO PROTECT YOUR LAW PRACTICE

If your practice must be closed due to death or sudden illness, there will be many business repercussions, which may include: canceling your office lease; selling or moving your office equipment and furnishings; meeting final payroll obligations; paying bills; issuing final statements to clients; collecting fees and the like. There may be an entity or partnership to dissolve. And what about the funds on deposit in your trust and office accounts? How will clients — who must now hire a new lawyer — get their money back?

Tending to these financial matters will be your family's responsibility. Your planning — or lack thereof — will determine how easy or difficult it will be for them to take the proper steps.

Reconsider the car accident scenario. What if you are the only signer on your trust account? Will your family members be able to persuade the bank to release trust funds? The odds are good if you previously signed a durable power of attorney. Otherwise, a conservatorship may be required. If you die without a second signer on the account, the bank probably will refuse to disburse funds to anyone other than a court-appointed personal representative. As a result, a probate or small estate proceeding may be required when none was intended.

Preparing a durable power of attorney or adding a second signer to your accounts are possible ways to avoid these scenarios. The pros and cons of these approaches are thoroughly discussed in the PLF handbook referenced above. You can also ensure that the business aspects of closing your law practice are handled properly by giving your assisting attorney authority to wind down your financial affairs, provide your clients with a final accounting, collect fees on your behalf and liquidate or sell your practice.

PLAN AHEAD TO MAKE YOUR PERSONAL WISHES KNOWN

In addition to steps you may take to protect your clients and your practice, you should also protect yourself and your estate. Prepare an advance directive. Keep your will and any related estate planning documents current. If you are incapacitated because of an accident or a sudden medical emergency, your loved ones will know your wishes and will have the proper authority to act. Consider what might happen if you fail to take these steps. It is not uncommon for family members to disagree vehemently about medical decisions or how to handle a lawyer's financial affairs when the lawyer dies intestate. At the PLF, we have witnessed several such disputes, all of which could have been avoided had the lawyer planned ahead.

ORGANIZATION IS KEY: Office Systems, Client Files and Avoiding the Albatross

Arranging for an assisting attorney to close or temporarily manage your law practice fulfills your ethical responsibilities and ensures that your clients' interests are protected in the event of your disability or death. (Or Formal Ethics Op 1991-129,¹ ABA Formal Op 92-369.) You can take a number of steps now to make any transition go smoothly. The key is to keep your office organized.

Office Systems.

Make sure your office procedures manual explains how to produce a list of client names and addresses for open files.

Move closed files to storage promptly to avoid confusion.

Record all deadlines and follow-up dates on your calendaring system.

Keep client files documented well.

Maintain current, accurate accounting records.

Be punctual about posting time and expenses and also about billing clients.

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BarBooks™ Online Info
Online Bookstore
New Releases
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Pro Bono Information
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Pro Bono Attorney Resources
Pro Bono Reporting
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Rules (PDF)
Roster (PDF)
Staff Contacts
Committees
Committees Home
Committees, Councils & Groups
Program Advisory Committees
CommitteeAssignments (PDF)
Leadership College

Reconcile your bank accounts, especially your trust account.

Document hosted at JDSUPRA™

<http://www.jdsupra.com/post/documentViewer.aspx?fid=88444225-c841-41f4-a750-3a97087c4e81>

If your office is in good order, it will be less costly for the assisting attorney to close your practice. Your law office will then be a valuable asset that can be sold and the proceeds remitted to you or your estate.

Client Files. Proper maintenance and handling of client files is obviously an integral part of keeping your practice organized. The PLF recommends that you keep client files for a minimum of 10 years to ensure that the files will be available to defend you or your estate against legal malpractice claims.² If you die or are incapacitated by sudden illness or accident, the documentation in your files will be the only line of defense against a claim. Talk to your family today about the importance of keeping these vital records. At the same time, don't overburden loved ones by keeping more than you need. Generally, client files more than 10 years old can be destroyed. Don't leave this task to your family. Create and implement a file retention and destruction policy now.

For a complete discussion of this subject, consult the PLF publication, *A Guide to Setting Up and Running Your Law Office: Avoiding Malpractice Through Efficient Office Systems* (2003) or the PLF practice aid entitled *File Retention and Destruction*. Both may be found on the PLF website at www.osbplf.org. Click on Loss Prevention and follow the links to Books and Publications and to Practice Aids and Forms, respectively.

AVOIDING THE ALBATROSS: Deeds, Contracts, Wills and Other Client Originals

Original client documents such as deeds, contracts and wills pose a special problem for family members when a lawyer's practice must be closed. Original client documents are the property of the client and should be returned to the client or properly stored. Original wills are specifically protected by ORS 112.815, which requires that 40 years elapse before a will can be destroyed. To avoid burdening your family with the responsibility of returning, storing or protecting these items, do not retain original client documents in your files. Return original documents to the client at the conclusion of your representation. The PLF offers a *File Closing Checklist* that will remind you to perform this important step each time a file is closed. The checklist can be obtained on the PLF website at www.osbplf.org. Click on Loss Prevention, follow the link to Practice Aids and Forms, and look for the category "File Management." For information on how to return original wills to clients, contact the PLF practice management advisors at (503) 693-6911 or (800) 452-1639.

TAKE THE FIRST STEP TODAY

Start now. This is something you can do *now* to plan for your future, protect your assets and spare your loved ones additional heartache. It takes only a small amount of time and costs virtually nothing. Don't put it off — start the process today.

Download a copy of *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of your Disability or Death* (1999) from www.osbplf.org. Click on Loss Prevention and follow the link to Books and Publications. If you do not have Internet access, contact the PLF at (503) 639-6911 or (800) 452-1639 and request a hard copy.

Endnotes

1. The Oregon Formal Ethics Opinions will be renumbered and reissued in late 2005 in accordance with adoption of the Oregon Rules of Professional Conduct. Monitor the Oregon State Bar Web site, www.osbar.org, for developments.

2. While probating your estate may be effective to cut off some client claims (such as fee disputes), it will not cut off the client's right to assert a legal malpractice claim within the statutory time limit.

ABOUT THE AUTHOR

The author is a lawyer and practice management adviser with the Professional Liability Fund. If you would like assistance improving your office systems or planning for the closure of your office, contact one of the PLF's practice management advisors at 503-639-6911 or (800) 452-1639. The practice management advisers are available to assist lawyers throughout the state in setting up efficient, cost-effective office systems. Practice management assistance is free and confidential.

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