

# Succession Planning and the Coming Senior Tsunami

*By John Cesario*

Illinois is expected to see a dramatic rise in the number of attorneys over 65 years of age engaged in the practice of law over the next 10 to 15 years. This situation will present some challenges to the bench and bar, particularly as more practicing lawyers suffer from age-related impairments. In turn, clients may suffer from a lack of care and oversight by attorneys suffering from those impairments.

The ARDC is attempting to address this challenge by various means, including making presentations to bar associations and other groups relating to the aging of the profession and including relevant topics in the Proactive Management Base Regulation (PMBR) program approved by the Illinois Supreme Court in January, 2017. The ARDC has also added information to its website on the topics of closing a law office and succession planning.

Another issue relates to the need for sole practitioners to have a succession plan in place in case the attorney becomes unable to attend to client matters. The ARDC has made several presentations each year to bar associations and other groups about how to create succession plans. In making presentations to bar associations, the ARDC emphasizes the following points about creating a succession plan.

- First, attorneys should have written instructions to family members or support staff to describe how to generate a list of client names and addresses for both pending client matters and closed matters. In this regard, Supreme Court Rule 769 is instructive. That rule, entitled *Maintenance of Records*, requires attorneys to maintain records which identify the name and last known address of each of the attorney's clients and whether the representation of the client is ongoing or concluded. This information is important for good office management because it allows attorneys to list and review all matters that are subject to the attorney's duty of care and diligence. Although not a rule requirement, attorneys should also maintain client telephone numbers and email addresses to facilitate communication with clients if the lawyer becomes incapacitated.<sup>1</sup>
- Second, attorneys should have written instructions about how to locate a calendar or computer program that lists all pending matters and future court dates and filing deadlines on all cases. The instructions should include relevant user names and passwords. Since ongoing proceedings are time sensitive, they are of the highest priority, and any succession plan should focus on such matters. The plan should therefore include the names, titles and case numbers of all pending litigation matters, and the names and addresses, telephone numbers and email addresses for all clients with pending matters.
- Third, attorneys should prepare careful instructions about any client trust accounts or escrow accounts. These instructions should identify the financial institution where accounts are located, the titles of all accounts and all account numbers. In addition, the attorney should describe where the client trust account records are located in the office.
- Fourth, there should be written instructions about how to access and retrieve messages from the voice mail system, email messages and, where warranted, text messages from clients, colleagues and opposing counsel. Information about how to change the greeting to the voice mail system should also be included. This can be a simple and effective way to alert callers to the situation and to refer them to a contact person who can provide more information and arrange the return of documents to clients.
- Fifth, there should be instructions regarding closed files. The instructions should describe where closed files are stored and how those files are organized. The attorney should take care to identify any closed file that may

contain an original will, deed or trust agreement that may require additional care and effort to return to the former client.

- Sixth, lawyers should consider whether to include a reference to the succession plan in initial attorney-client agreements so that clients are aware of the plan in case of the lawyer's death or incapacity. The statement could be as simple as including a paragraph to note that in case of death or serious illness, the law office has made arrangements for attorney "John Smith" to wind-up the attorney's practice.

Time devoted to planning for unfortunate circumstances will bring peace of mind to sole practitioners and will be enormously helpful to family and friends attempting to close a law practice under difficult conditions. A good succession plan may also ease the cost of administering the estate of a deceased attorney, and facilitate efforts to sell the lawyer's practice pursuant to the provisions of Rule 1.17 of the Illinois Rules of Professional Conduct.

Interestingly, several States actually require attorneys to designate a successor in the event the attorney dies or becomes incapacitated. These jurisdictions differ slightly in the details, but in essence require every sole practitioner to state whether they have designated a lawyer, or law firm, to review files and records and communicate with clients if they became ill or died suddenly. Although the dangers are most acute with sole practitioners, lawyers who practice in firms should also establish procedures for disaster contingencies as numbers do not guarantee safety in the modern world.

### **Concluding thoughts and observations**

The challenge of an aging legal profession creates difficulties and opportunities for the bench and bar. There is an increasing need to develop programs to identify and address age-related impairment issues that seek to balance the need to protect the public with the need to respect the dignity and respect the abilities of senior attorneys. Older attorneys who may no longer have the ability or desire to practice law full-time have many opportunities to serve the profession in pro bono capacities. The Illinois Supreme Court anticipated this phenomenon by amending Rule 756(k) to allow attorneys in inactive and retirement status to provide pro bono legal services under the auspices of a sponsoring entity that is a not-for-profit legal service organization.

Finally, the ISBA has formed a Special Committee to study Succession Planning and Transition issues. The Special Committee has created a website with articles, proposed forms and information about how to implement a succession plan. See [www.isba.org/committees/successionandtransitionplanning](http://www.isba.org/committees/successionandtransitionplanning).

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<sup>1</sup>Additionally, Supreme Court Rule 769 provides that an attorney shall maintain all financial records related to the attorney's practice, for a period of not less than seven years, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports.