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LOOKING AHEAD

Welcome to 2023. As with every new year, the idea of change is on everyone's mind—at least until you realize that all the work you did not finish in 2022 has taken up adverse possession on your desk. There is no way to predict what 2023 may hold for you, your law firm, or your clients, but one of the most significant changes all of us may face is the exit of an attorney whether through retirement, disability, or an untimely passing. To date, no attorney has practiced law forever—not Thomas Jefferson, Learned Hand, or even Johnnie Cochran. And now that change is on everyone's mind, it is time to look ahead and plan for this inevitable change.

Many lawyers have no estate plan in place at all and others have at best a piecemeal and disjointed plan. Every lawyer should have at a minimum a Will, Durable General Power of Attorney for Business Affairs and Healthcare, Living Will, and possibly other advanced directives. Your Will should identify an Executor to be in charge of the administration of your Estate. A lawyer's Executor should probably be someone with familiarity with the practice of law and be sufficiently sophisticated to deal with the issues that arise after the death of a lawyer. Your spouse might be very savvy, but unless he or she is licensed to practice law, your spouse cannot take over your practice or be a co-owner of a law firm.¹

On that note, if your Executor is not a lawyer, make sure you have a conversation with her or him about RPC 1.17 (Sale of Law Practice) and RPC 5.4 (Sharing Fees with Non-Lawyers) and how that affects any equity interest you may have in your Firm or in the real property or building that houses your Firm.² Also make sure your Executor is familiar with whatever plan your Firm has in place to redeem your equity interest and any policies your Firm may have on the payout of AR or other collections as a benefit upon the death of an attorney. If your Firm does not have such a plan, then now is the time to get started on one.

If you are a solo practitioner or practice in a small law firm, the ABA recommends that you specifically include a designated successor attorney(s) to take over your practice or specific concentration areas of the practice in your estate plan.³ The Tennessee Supreme Court has addressed this as well in Rule 9, 29.9.⁴ Do consult with the designated successor attorney(s) during the planning process to make sure he or she is willing to take on that responsibility.

Hopefully, your Firm already has a plan to transition client relationships to other attorneys when retirement is on the horizon, but here are a few, additional tips to soften any transition—whether it is due to retirement, disability, or death.

Most lawyers are dutiful in retaining a calendar diary system that contains upcoming deadlines, statutes of limitation, and similar time limitations that are critical to client representation. However, that does not answer the question, "what needs to be done right now?" which is what your successors will be asking the walls of your office when you are not sitting there. My legal assistant and I have attempted to answer this

question by keeping a docket of every active case that lists the nature of the case, the court in which it is filed, documents that are required to be prepared and filed, the deadlines for filings, documents and other activities that have been completed on the file and any other information regarding a client's file that would be helpful upon quick review to determine what needs to happen on the file and when. We maintain this docket in one single electronic file and it is updated daily.

Passwords. Your successors have to be able to find them. Even if you use software like Lastpass or other encrypted electronic format to retain all passwords, it is a good idea to retain a hard copy paper list of all user names and passwords for all personal and business electronic access information. Keep the list in a secure location, but make sure someone knows where it is just in case you can't tell them. As passwords are updated or changed, update the list.

Who else is an authorized signatory on your firm's operating and trust accounts? If you are a solo practitioner, there should be a second person. Similarly, who else knows where all of the important contact and account information is stored for the relationships that are vital to you and your Firm: clients; PO box or other mail service; bookkeeper or accountant; landlord; firm entity documentation and filing deadlines; office property; general, professional liability, and workers' comp. insurance carriers; health insurance, disability and life insurance providers; leases (office space & equipment) and the term remaining on each; operating and trust accounts; individual trust account ledger access information and trust account activity information; business credit card; location of all paper files, and access codes and indexes for active and retired files; identity of designated successor attorney(s); and location of your Wills, Trusts, and other estate planning devices. This is just a summary of the information that should be maintained to assist with the transition of an attorney's practice.

Yes, it is a lot of work. But let's face it: you aren't going to go to the gym every day in 2023. So, why not make a resolution that you can keep? Look ahead, plan for the day that you will no longer be practicing law, and take some of the burden off your loved ones, clients, and law partners.

¹ Tenn. R. Prof. Conduct 5.4.

² Keep in mind that, pursuant to TCA § 31-2-103, real property vests automatically at death in the testamentary heirs of a decedent unless the Will specifically makes the real property part of the Probate Estate and gives the Executor custody and control with power of sell of the real property. If you, as an individual, own the real property or building that houses your Firm, this "automatic vesting" statute could make things very complicated very quickly because your heirs may suddenly become your Firm's landlord—or be co-owners of real property with your law partners. By then, it will be too late to "get your house in order," so you may as well plan for it now.

³ American Bar Association, Succession Planning, https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning/, last visited Dec. 8, 2022.

⁴ Tenn. S. Ct. R. 9, 29.9. "An attorney may designate in advance another attorney by contract, appointment, or other arrangement to handle or assist in the continued operation, sale, or closing of the attorney's law practice in the event of such attorney's death, incapacity or unavailability."

About this column: "The cobbler's children have no shoes." This old expression refers to the fact that a busy cobbler will be so busy making shoes for his customers that he has no time to make some for his own children. This syndrome can also apply to lawyers who are so busy providing good service to their clients that they neglect management issues in their own offices. The goal of this column is to provide timely information on management issues. If you have an idea for a future column, please contact Caitlyn Elam at 546-4646.