



**PROTECTING YOUR PRACTICE:  
PREPARING FOR DISABILITY, DEATH,  
OR RETIREMENT**

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The PA Bar Association hot line usually gets one to two calls every week from distraught and bewildered staff, anguished relatives, or compassionate colleagues regarding an attorney who has suddenly died or become incapacitated. What they want to know is, well, everything. What do they do? How do they do it? Where do they start? Much will depend on whether the attorney made any advance preparations for such an eventuality. Most don't, but hopefully you will after reading this article.

Before you decide you're too young to worry about this eventuality, let me point out that calls come in regarding attorneys young and old. Tragedy respects no age barrier. Common events like fires and car crashes which result in an attorney's unexpected death are reported to me several times a year. Even a heart attack or stroke can occur at any age, although we usually tend to think of them as age-related. Even the serious illness of a family member can cripple a solo practice without proper advance preparation and forethought.

Martin N. Ghen, a Doylestown, Montgomery County practitioner, wrote an article in Winter, 2002 entitled "When I die . . ." which appeared in the American Bar Association [GP Link](#) newsletter. In his article, Ghen points out that preparing one or two documents in advance will maximize the value of your practice to your estate if you are a solo practitioner. If you in a law firm with other attorneys, some simple advance preparation can save the firm and your clients from a potentially crippling blow. The sample letter Ghen includes in his article is an excellent tool to help you think through most of the details you should organize and document.

Probably the best materials assembled to date come from Pittsburgh, Allegheny County solo practitioner Virginia Cook. She created them as part of a seminar presentation entitled "Managing Your Practice Dead or Alive." Virginia's sensitivity to this topic was a result of her personal experience when she assisted a colleague who ultimately died of cancer. Her seminar, which I attended many years ago, was my first exposure to this topic. The story she tells is heart-wrenching, and motivates most who attend to do at least some preparation for the unexpected.

In recent years I have presented essentially the same seminar, entitled “Survival 101 for Your Law Firm.” Whenever possible I include Bob Johnston as a guest speaker. Bob is the current managing partner of Belden Law in Greensburg, Westmoreland County. His firm is that of former PBA President Reginald Belden. If you’re too young to remember, Reggie was stricken with brain cancer and passed away about a year after diagnosis. He was essentially unable to return to work from the time he first became suddenly and dramatically symptomatic.

Your situation is particularly unique because it is complicated by issues of client confidentiality, along with the need to protect the client’s claim or pending lawsuit. Your situation is made even more critical in your absence because of some of the client property you may keep, such as wills, codicils, or trust funds comprised of undistributed settlement dollars, or advance payments, without which the client may not be able to afford to go elsewhere.

### **SICKNESS, INJURY OR DISABILITY**

There are a number of steps to take in case you become sick, injured or disabled to the extent you cannot practice law or run your practice.

**1. Make sure you are adequately insured.**

You should have a sufficient amount of disability insurance to cover your income if you can’t work. Just because you’re not working doesn’t mean the bills stop arriving in your home mailbox. You can keep the premium reasonable by buying a policy with a 90-day waiting period, and maintaining a personal emergency fund sufficient to cover your bills during that time.

Office overhead expense insurance guarantees that the rent, insurance, payroll and other expenses get paid in your absence. Again, you can keep the premium reasonable by including a waiting period, and keeping sufficient cash reserves to cover that period of time. Remember, your secretary can’t stay if he or she isn’t getting paid.

**2. Document your bank accounts and execute a Durable General Power of Attorney.**

You need to make sure someone can access all of your accounts and kept



properties in order to keep the practice running. These will include operating, client cost, payroll, and trust / IOLTA accounts; safe deposit boxes; lines of credit; and so forth.

Remember that only another lawyer should hold the power for your trust accounts. If there is no Attorney in Fact on an IOLTA account, then the PA Rules of Disciplinary Enforcement (Rule 321) require a Conservator be appointed. This can take months, and on rare occasion, even a year or more. Once a conservator is appointed, their job is to quickly reassign your client files to other attorneys in order to safeguard the client's interests. Without proper preparation you could return to your practice only to find it has been essentially dismantled by the court-appointed conservator.

In addition to the Durable General Power of Attorney, be sure to sign a Power of Attorney form with each institution where you maintain business accounts, including brokerage firms.

**3. The tax man waits for no one.**

Include in your Durable General Power of Attorney the ability to sign tax returns on your behalf. These will range from monthly or quarterly payroll returns for employment taxes (941) and unemployment compensation (940), to partnership returns (1065), personal income tax returns (1040) and even Pension Reporting forms (5500).

**4. Qualified Retirement Plans.**

Special attention is required for qualified retirement plans because for these, an Attorney in Fact designation isn't enough. Your actual plan document must name the person authorized to act when the Plan Administrator (you) cannot. Make sure there is a Specimen Signature designation in the plan document. If you are over 55 and disabled, you or your family may need to be able to distribute pension assets to yourself. If you are incompetent to do so and no one else has been designated, you will be unable to access the funds. Likewise, an employee would not be able to withdraw contributions or take a loan against their account.



**5. Document how you run your practice.**

Your Attorney in Fact and your secretary need to know how you run your practice. Things to document include:

- § Your filing system
- § Your calendar / docket system
- § Your lease obligations and contact information
- § Your payroll information
- § Your business debts and when you pay them
- § The combination to your office safe, the location of your bank accounts, the location of your safe deposit box and key
- § A list of documents and property in the safe deposit box or kept in safekeeping elsewhere
- § A list of client wills and codicils, and corporate minute books kept by the firm
- § How files are organized in your computer
- § Where closed client files are, how they are organized, and how to retrieve them.
- § Any claims pending against you or the firm by a creditor, client, or the Disciplinary Board
- § Your client list, active and inactive, with full contact information.
- § Your employee list, current and former, with full contact information.
- § Contact information for key vendors such as your accountant, your retirement plan administrator, your investment advisor, your insurance broker and so forth.
- § Your personal information, such as your PA ID number, social security number, business tax ID number, and passwords.



## DEATH

It still surprises me that many attorneys need to be told that they need a Will. The old analogy of the cobbler's children running barefoot applies here. Often attorneys place their own needs at the end of the line. Move yourself up the priority list on this one, because there are no second chances for a "do over."

Essential to include in a Will is the appointment of a Personal Representative, who is authorized to continue to operate your practice whether a sole proprietorship, partnership, or corporation, during the Administration of your Estate. Your Personal Representative will need all of the information your Attorney in Fact would need.

According to Virginia Cook's seminar materials, your Will needs to contain the following language. If it does not, your Personal Representative will have to seek Court approval (20 Pa.C.S. A Section 3314) to continue to incur and pay expenses in your practice while your estate is being administered.

"In addition to the Powers conferred by law, my Personal Representative shall have the power to retain any interest which I have in any business and to continue to operate the same during the administration of my Estate . . . ."

Your Personal Representative will have a lot to do. For example, determining the value of your accounts receivable for purposes of Inheritance Tax, notifying the Supreme Court of your death, notification to clients, return of property and funds to clients, perhaps even the valuation and sale of your practice. Now that sale of a practice is an available recourse for solo practitioners, you want to make sure your family can salvage as much of your sweat equity as possible. That means having everything properly documented and prepared in advance such that the sale can be consummated before your clients scatter to the wind.

If you appoint a family member, such as a surviving spouse, as your Personal Representative, you should seriously consider an appointment of an attorney as the Co-Executor of your estate. Remember, client information is confidential, and a surviving family member who is not an attorney cannot review client files, nor should the trust accounts be managed by a non-attorney. And in all likelihood, your surviving family members will be stretched to their limit by grief and other harsh realities without trying to learn how to run a law practice in short order.



Sale of a practice as part of your Estate is not as easy as sale upon retirement. Without proper forethought and planning, many of the client's files may need to be assigned out quickly to safeguard client interests and claims, and protect your estate from malpractice claims. Others may quickly seek other counsel when they are notified of your passing. As a consequence, the practice may become quickly devalued to the point where sale is not feasible.

## RETIREMENT

The thought of the sale of a practice brings me to the final consideration: retirement. For many lawyers retirement seems synonymous with death. But as my colleague Steve Gallagher, (former Practice Management Advisor for the New York State Bar Association), points out in his article "Winding Down the Law Practice: Retirement as a Renewal Process," retirement needs to be seen as a journey instead of a destination. An attorney needs to learn new skills and competencies well before he or she begins the retirement experience.

Not to sound trite, but retirement isn't and doesn't have to be the end. It does not have to be avoided at all cost. If planned for properly, it's a new beginning, and should be approached as such. But to do it right, planning is required.

There are many methods to closing a practice. Winding down slowly until there is barely any work and no reason to keep coming to the office is one way to do it. That becomes easier when you're not a solo, and you can transition clients to other lawyers, and remain "of counsel" to the firm in order to enjoy some of the residual fruits of your labor. But if you're a solo, you will probably stop taking on new matters in less profitable and/or interesting practice areas. You will slowly contract the focus of your practice. It's hard to do this without clients guessing you're about to retire, in which case they may become insecure and seek other counsel. The reality is also that the overhead often quickly makes it impractical to continue the practice for only a subset of remaining clients and matters.

Another methodology is to bring aboard a younger attorney who wants to eventually take over the practice. Then work hard to transition the clients. Be sure to openly discuss the attorney's desire to run and own the practice some day, and do that from day one. I receive too many calls from attorneys who invest 7 or more years in this scenario, only to find out, on the eve of retirement, that the lawyer they hired never wanted to be more than a hired hand. Ouch. Assumptions can be very painful.



I am occasionally asked how one finds a young lawyer who wants to acquire the practice. And I am just as often asked by a young lawyer how to find an attorney who wants to sell his or her practice. I wish there were a web site just for this purpose, or a good old fashioned matchmaker, because advertising is expensive and somewhat hit or miss. Plus, one can't assume that only a local attorney would be interested, because I have found that a young attorney will relocate in order to find an established solo practice they can slowly take over. And that possibility only makes the cost of advertising that much more expensive. I have frequently recommended an ad in the PA Bar News, only because it's relatively inexpensive and state-wide. Enlisting the assistance of the Executive Directors of surrounding county bars may also work, as they often send out e-Newsletters which may be able to include your ad.

As long as the personal fit is good with one's clients, and the skills are equal, one can expect a successful transition given sufficient time and careful attention to transitioning strategies. The most frequent cause of failure is an emotional unwillingness to let go, and/or a fear of truly opening up ones clients to another attorney. On an intellectual level this may be what an attorney wants, but often on an emotional level his or her actions sabotage the intent.

And of course, the final strategy is sale of the practice. Not all practices have sufficient value for sale to recover sweat equity. After all, most law practices are highly personal in nature, and clients hire an individual attorney, not the firm in general. That being said, there are a number of areas of practice which can easily be sold because they have residual value, or what is known in other industries as good will. For example, a high volume personal injury practice which has a catchy 800 number, good ad positioning in various yellow pages, and a well-developed web site and mailing list, will continue to generate work even if the lawyers at the firm change. By the same token, a firm which has spent decades creating estate plans and writing Wills usually starts to capitalize on that return on investment about the time that the lawyer who did the work is about to retire. Sale is the best possible way to recover that sweat equity. On the other hand, a highly developed business transactional practice will likely lose most clients upon sale, and therefore has little if any value beyond that of furniture, equipment and fixtures.

Closing a practice calls for attention to lots of details, not least of which is the disposition of client files, proper closing of the IOLTA and other trust accounts, and so forth. I have checklists available from a variety of sources to assure a



comprehensive consideration of all tasks if and when you decide to close your practice.

It would be wonderful if we could know with certainty what the future holds for us. We could ensure our family members and employees were properly cared for, and spare them the tears and suffering so many others must endure. We could properly attend to our client's needs so they would not be harmed by our sudden passing or incapacity. We could make sure that a long illness or serious injury would not mean the end of our practice.

Of course, there is no certainty. But you can still assure the best possible outcome by taking a few steps now to get your practice affairs in order. The good news is that once you've located the right person(s) to serve as your Attorney in Fact, and your Personal Representative, have executed the proper paperwork and created the document which details the information they will require to execute those duties, it will take little effort annually to update it and keep it current. Then you will truly have figured out how to manage your practice whether you are dead or alive.

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