From Legal Practice to What’s Next: The Boomer-Lawyer’s Guide to a Smooth Transition
The IBF has **FOUR** programmatic components to further its mission:

- Access to Justice Grants
- Warren Lupel Lawyers Care Fund
- Post-Graduate Legal Fellowships
- Illinois JusticeCorps

**ILLINOIS BAR FOUNDATION’S MISSION**

Illinois Bar Foundation’s mission is to ensure meaningful access to the justice system, for those with limited means, and to assist lawyers who can no longer support themselves.

**ACCESS TO JUSTICE GRANTS**

This year, the IBF awarded 23 grants ranging from $5,000 to $15,000 to organizations across the state to provide legal aid, promote pro bono services, or provide legal information for those who can’t afford an attorney.

**WARREN LUPEL LAWYERS CARE FUND**

The IBF supported many attorneys and their families across Illinois to help them get back on their feet and maintain a modest standard of living. More than $90,000 went to support these attorneys and families.

**POST-GRADUATE LEGAL FELLOWSHIPS**

The IBF is excited to announce the 2015-2016 Fellowship participants! Calli Burnett is working at Loyola University Chicago’s Community Law Center, Bryan McIntyre is working at the University of Illinois’ Civil Litigation Legal Clinic, and Marishonta Wilkerson is working at Northern Illinois University’s Zeke Giorgi Law Clinic. Fellowships add more attorneys to the legal aid field and help recent law graduates hone the skills they need to practice law.

**JUSTICECORPS**

This innovative AmeriCorps program enlists student volunteers to serve as guides to make courts across Illinois more welcoming and less intimidating for people without lawyers. Illinois JusticeCorps recruits, trains, and provides the necessary support for college and law students to offer procedural and navigational assistance in courthouses statewide. This fiscal year, the program expanded from 3 to 9 courthouses in Illinois.

**SUPPORTED BY**

The IBF is supported by attorneys, law firms, and other businesses serving legal communities in Illinois. Thank you for your continued support of these very worthy causes.
WHERE THE FUNDS GO

45% First District Support
32% Second-Fifth District Support
23% Statewide Support

2015-2016 Grant Recipients

ADMINISTER JUSTICE
CABRINI GREEN LEGAL AID
CARPLS LEGAL AID
CENTER FOR DISABILITY AND ELDER LAW
CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION
CHICAGO LAW & EDUCATION FOUNDATION
CHICAGO VOLUNTEER LEGAL SERVICES
DOMESTIC VIOLENCE LEGAL CLINIC
FARMWORKERS & LANDSCAPER ADVOCACY PROJECT
ILLINOIS EQUAL JUSTICE FOUNDATION
ILLINOIS LEGAL AID ONLINE
LAND OF LINCOLN LEGAL ASSISTANCE FOUNDATION
LAWNDALE CHRISTIAN LEGAL CENTER
LAWYERS COMMITTEE FOR BETTER HOUSING
NATIONAL IMMIGRANT JUSTICE CENTER
NEIGHBORHOOD LAW OFFICE
PRAIRIE STATE LEGAL SERVICES
PRO BONO NETWORK
PUBLIC INTEREST LAW INITIATIVE
THE IMMIGRATION PROJECT
THE PARENT PLACE
THE CHICAGO LIGHTHOUSE
UPTOWN PEOPLES’ LAW CENTER
WHO WE ARE

CREATE IN 1983, THE FELLOWS PROGRAM CONSISTS OF A SPECIAL GROUP OF LAWYERS WHO HAVE COMMITTED, BY DIRECT PAYMENT OR PLEDGE OVER TEN YEARS, SUMS OF MONEY RANGING FROM $1,000 TO $25,000 TO HELP FUND THE FOUNDATION’S GRANTS PROGRAMS AND ASSIST LAWYERS IN NEED.

HOW IT WORKS

FELLOWS CAN MAKE MONTHLY, QUARTERLY, OR ANNUAL PAYMENTS TOWARD THEIR SELECTED PLEDGE VIA CHECK, CREDIT CARD, OR RECURRING AUTOMATIC PAYMENTS. ALL FELLOWS PAYMENTS ARE TAX DEDUCTIBLE TO THE EXTENT ALLOWED BY LAW.

WHAT WE DO

THROUGH THE GENEROUS SUPPORT OF OUR FELLOWS AND OTHER DONORS, THE ILLINOIS BAR FOUNDATION IS ABLE TO:

--Award Access to Justice Grants to organizations across the state to provide legal aid, promote pro bono services, or provide legal information for those who can’t afford an attorney

--Support lawyers and their families who have fallen on hard times through the Warren Lupel Lawyers Care Fund

--Fund Post-Graduate Legal Fellowships at three Illinois law schools’ legal aid clinics, giving recent law graduates the opportunity to hone skills they will use throughout their careers while adding more attorneys to the legal aid field

--Facilitate the Illinois JusticeCorps program, an innovative AmeriCorps program which enlists student volunteers to serve as guides to make courts across the state more welcoming and less intimidating for people without lawyers
The mission of the Illinois Bar Foundation is to ensure meaningful access to the justice system, and to assist lawyers and their families that have fallen upon hard times. This year, the Foundation will distribute more than $400,000 to programs that enhance our system of justice and as payments to lawyers or their survivors who have fallen on hard times due to age, illness or other tragedy.

Name ____________________________________________________________

Address __________________________________________________________

City _______________ Zip _______ Phone ________________ Email _________________

Date of Birth __________________________ Date of Admission to Illinois Bar _________________

Law School _________________________________________________________

I want to join The Fellows at the following level:

- Fellow $1,000 or $100 per year
- Silver Fellow $2,000 or $200 per year
- Gold Fellow $5,000 or $500 per year
- Diamond Fellow $10,000 or $1000 per year
- Pillar of Profession $15,000 or $1,500 per year
- Pillar of Foundation $25,000 or $2,500 per year

I want to increase my Fellows membership to:
(All previous Fellows pledge payments will be credited to the new level)

- Silver Fellow $2,000
- Gold Fellow $5,000
- Diamond Fellow $10,000
- Pillar of Profession $15,000
- Pillar of Foundation $25,000

**Pledges may be payable over ten years.

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- My check, made payable to the Illinois Bar Foundation, for $_______ is enclosed.

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- Please charge my card:
  
  *Your first installment will be charged immediately
  
  $______ monthly (on the 1st of every month)
  
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  $______ yearly (July 1st)

Complete this application and return it to: Illinois Bar Foundation
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Statements or expressions of opinion made by continuing legal education presenters are those of the presenters and not necessarily those of the Illinois State Bar Association or program coordinators. Likewise, materials are provided by the presenters and do not necessarily reflect the opinion of the Association. Legal opinions and analyses provided by presenters, during programs, or in materials are not reviewed by the Association, and are not a substitute for independent legal research.
Successful change requires careful planning … Will you be ready?

Sure, you love the profession and have built a successful practice….but now images of the golf course, your grandkids, the beach, and/or your spouse have you wondering if maybe it’s time to find life outside the office. Don’t miss this seminar that offers practical tips and advice for attorneys who are contemplating retirement or thinking about slowing down their practice. Attorneys attending this seminar will better understand:

- Which Illinois Supreme Court rules you need to consider before transitioning or selling your practice;
- How to create a successful exit or succession planning strategy;
- Why maintaining your malpractice insurance coverage during the transition is important; and
- The risks of disciplinary action when failing to address cognitive impairment issues.

Program Coordinator/Moderator:
Eugenia C. Hunter, Attorney at Law, Carbondale

11:55 a.m. – 12:00 p.m. Welcome

12:00 – 1:00 p.m. The Sale or Transitioning of a Law Practice*
This segment explains the mechanics of Rule 1.17 and how to follow it when transitioning your practice.
John H. Maville, Law Office of John H. Maville, Belvidere
John T. Phipps, John T. Phipps Law Offices, P.C., Champaign
1:00 – 2:30 p.m. Transition Strategies for Senior Attorneys*
This interactive panel presentation draws on the speakers’ personal experiences to discuss exit and succession strategies.

Michael G. Bergmann, Executive Director, Public Interest Law Initiative, Chicago
John M. Boreen, Retired Attorney, Rockford
John J. Horeled, Thinking About It Attorney, Crystal Lake
Don M. Mateer, Transitioning Attorney, Rockford (moderator)
Gary T. Rafool, Retired Attorney, East Peoria

2:30 – 2:45 p.m. Break (refreshments provided)
Sponsored by the Illinois Bar Foundation

2:45 – 3:15 p.m. Malpractice Insurance Considerations*
Learn why keeping your malpractice insurance coverage during various types of transitions is important with this informative session.

Kurt B. Bounds, ISBA Mutual Insurance Company, Chicago
Loren S. Golden, Attorney at Law, Elgin

3:15 – 4:45 p.m. Diminished Capacity and Forgetting Too Much: A Three-Pronged Perspective*
Don’t miss this in-depth look at the cognitively impaired attorney. Learn the difference between being a little absent-minded and exhibiting true cognitive impairment, while knowing which signs to watch out for when dealing with a lawyer who may be experiencing cognitive impairment. Additional topics include: which resources are available from state and local lawyer assistance programs; the risks of disciplinary action when failing to address cognitive impairment issues; and the malpractice risks for cognitively impaired lawyers who continue to practice.

John R. Cesario, Attorney Registration and Disciplinary Commission, Chicago
Tony Pacione, Illinois Lawyers’ Assistance Program, Chicago
Dr. Raj C. Shah, Rush Alzheimer’s Disease Center, Chicago
The Sale or Transitioning of a Law Practice

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This segment includes all materials received by the course book publication deadline. Please contact the speaker for any other materials used at the program.
From Legal Practice to What’s Next:
The Boomer-Lawyer’s Guide to a Smooth Transition

Presented by the ISBA Senior Lawyers Section
Co-sponsored by the ISBA Elder Law Section and the
ISBA Standing Committee on Delivery of Legal Services

Illinois State Bar Association
October 19, 2016
ISBA Regional Office
20 S. Clark Street, Suite 900
Chicago, Illinois
From Legal Practice to What's Next:
The Boomer-Lawyer's Guide to a Smooth Transition

Outline

Rule 1.17  Illinois Rules of Professional Conduct of 2010


Rule 1.15 (a) (8)  Illinois Rules of Professional Conduct of 2010

Checklist

Rule 776  Illinois Rules on Admission and Discipline of Attorneys

Power of Attorney

Olmstead & Associates
RULE 1.17: SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase, and the estate of a deceased lawyer or the guardian or authorized representative of a disabled lawyer may sell, a law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law in the geographic area in which the practice has been conducted;

(b) The entire practice is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.


Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.
[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state. Some states, like Illinois, are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, the Rule also permits the sale of the practice when the lawyer leaves the geographic area rather than the jurisdiction. In such cases, it is advisable for the parties' agreement to define the geographic area.


Sale of Entire Practice

[6] The Rule requires that the seller's entire practice be sold. The prohibition against sale of less than an entire practice protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.
Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller’s obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser’s obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client’s informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule includes the sale of a law practice of a deceased or disabled lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

RULE 1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.


Comment

[5] To prevent neglect of client matters in the event of a sole practitioner’s death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action. See Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases.

RULE 1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be deposited in one or more separate and identifiable interest- or dividend-bearing client trust accounts maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person. For the purposes of this Rule, a client trust account means an IOLTA account as defined in paragraph (i)(2) or a separate, interest-bearing non-IOLTA client trust account established to hold the funds of a client or third person as provided in paragraph (f). Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account. Other, tangible property shall be identified as such and appropriately safeguarded. Complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

Maintenance of complete records of client trust accounts shall require that a lawyer:

(b) make appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice
PLANNING FOR SALE OF PRACTICE

- Read Rule 1.17 and the Comment.

- Identify an attorney acquaintance or friend who will “cover” for you temporarily (this could be the same attorney who covers for you when you are on vacation or otherwise unavailable and, assuming a sale, it can be the attorney that you consider to be a candidate to purchase your practice). Talk to this attorney ahead of time and confirm his or her willingness to “cover” for you in the event of your death or disability. Agree on how the attorney will be compensated for work during transition. This attorney, if not the purchaser, can be invaluable in negotiating the sale.

- Identify the staff person or third party you will want to take charge of the office and make the necessary decisions in order to supervise the sale transition. Make sure this person has your password(s), and can write checks on your business and trust accounts, or arrange contingent or supplemental authority for an appropriate third party to handle your accounts.

- Identify potential “buyers”, and make a list of them. Office sharing partners are good candidates. Introduce yourself to the placement director at a nearby law school. Consider assistant state’s attorneys or assistant public defenders known to you, or young lawyers in other firms who may have an interest in going out on their own. Prepare a physical list of such lawyers. Be aware of possible conflicts. Consider identifying lawyers to whom the practice should not be sold.

- Decide whether your representative should be instructed to consider selling different parts of the practice (family law, real estate, wills and estate planning) to different offices or different lawyers. Be mindful of the requirement that the entire practice must be sold. (See Comment [6] to the Rule)

- Begin or continue putting meaningful follow up notes in all files (so that staff or new attorney will know what needs to be done next).

- Begin or continue using a good case management system (Amicus, Time Matters, Abacus) which will greatly facilitate the transition to a new lawyer. (Good organization can allow you to omit this step.)

- Consider incorporating client “consents” for another attorney to work on their files and review confidential information into your retainer agreements and your retention letters. It could be something as simple as:

  In the event attorney becomes disabled or dies unexpectedly, or retires, client consents to another lawyer, chosen by attorney or attorney’s legal representative, reviewing the file and handling the file until a successor attorney is chosen by client. For this limited purpose, client waives confidentiality and consents to the other lawyer’s access to client’s file.
Consider incorporating language into your retainer agreements and retention letters, authorizing the transfer of unearned retainers, trust account funds, etc. to another attorney. For example:

In addition, client consents to the transfer of any of client’s funds held by attorney to another lawyer, chosen by attorney or attorney’s legal representative, and the retention of those funds by the other lawyer until a successor attorney is chosen by client.

Prepare list of usual vendors; prepare, so that your staff can provide, a list of assets and liabilities, (including furniture and fixtures), and a balance sheet. Update periodically. Make sure your staff person knows where the information is.

Make an "estimate" of an appropriate purchase price as a guideline to family and staff. Update periodically.

Consider drafting a letter to local law firms advising them that the practice will be for sale, thereby creating a larger market. Identify in advance those lawyers likely to be interested, and even consider discussing fee arrangements (for the transition) with them ahead of time.

Decide whether professional liability "tail" policy should be purchased.

Determine whether existing professional liability policy provides "transition" coverage.

Prepare draft of letter to be sent to clients notifying clients of proposed transfer of file, their rights, deadline to object.

Decide how closed or inactive files will be handled, if buyer or buyers will not take.

Decide what should be done with original wills, if buyer or buyers will not take.

Decide what should be done with open files that buyer or buyers will not take. (Conflict of interest files.)

Consider organizing critical information into one source.

Plan, plan, plan!
Rule 776. Appointment of Receiver in Certain Cases

(a) Appointment of Receiver. Where it comes to the attention of the circuit court in any judicial circuit from any source that a lawyer in the circuit is unable properly to discharge his responsibilities to his clients due to disability, disappearance or death, and that no partner, associate, executor or other responsible party capable of conducting the lawyer’s affairs is known to exist, then, upon such showing, the presiding judge in the judicial circuit in which the lawyer maintained his practice, or the supreme court, may appoint an attorney from the same judicial circuit to serve as a receiver to perform certain duties hereafter enumerated. Notice of such appointment shall be made promptly to the Administrator of the Attorney Registration and Disciplinary Commission either at his Chicago or Springfield office, as appropriate. A copy of said notice shall be served on the affected attorney at his or her last known residence.

(b) Duties of the Receiver. As expeditiously as possible, the receiver shall take custody of and make an inventory of the lawyer’s files, notify the lawyer’s clients in all pending cases as to the lawyer’s disability, or inability to continue legal representation, and recommend prompt substitution of attorneys, take appropriate steps to sequester client funds of the lawyer, and to take whatever other action is indicated to protect the interests of the attorney, his clients, or other affected parties. A copy of the appointing order shall be served on the affected attorney at his or her last known residence address.

(1) The attorney appointed to serve as receiver shall be designated from among members of the bar from the same judicial circuit who are not representing any party who is adverse to any known client of the disabled, absent or deceased lawyer, and who have no adverse interest or relationship with that lawyer or his estate which would affect the receiver’s ability to perform the duties above enumerated.

(2) An attorney appointed as receiver may decline the appointment for personal or professional reasons. If no available members of the bar from the same judicial circuit can properly serve as receiver as a result of personal or professional obligations, the Administrator of the Attorney Registration and Disciplinary Commission shall be appointed to serve as receiver.

(3) Any objections by or on behalf of the disabled, absent, or deceased lawyer, or any other interested party to the appointment of or conduct by the receiver shall be raised and heard in the appointing court prior to or during the pendency of the receivership.

(c) Effect of Appointment of Receiver. Where appropriate, a receiver appointed by the court pursuant to this rule may apply to the court for a stay of any applicable statute of limitation, or limitation on time for appeal, or to vacate or obtain relief from any judgment, for a period not to exceed 60 days. An application to the court setting forth reasons for such application shall constitute a pleading sufficient to toll any limitations period. For good cause shown, such stay may be extended for an additional 30 days.

(d) Liability of Receiver. A receiver appointed pursuant to this rule shall:

(1) not be regarded as having an attorney-client relationship with the clients of the disabled, absent or deceased lawyer, except that the receiver shall be bound by the obligations of confidentiality imposed by the Rules of Professional Conduct with respect to information acquired as receiver;

(2) have no liability to the clients of the disabled, absent or deceased lawyer except for injury to such clients caused by intentional, willful or gross neglect of duties as receiver; and
(3) except as herein provided, be immune to separate suit brought by or on behalf of the
disabled, absent, or deceased lawyer.

(e) Compensation of the Receiver.

(1) The receiver shall normally serve without compensation.

(2) On application by the receiver, with notice to the Administrator of the Attorney
Registration and Disciplinary Commission, and upon showing by the receiver that the
nature of the receivership was extraordinary and that failure to award compensation
would work substantial hardship on the receiver, the court may award reasonable
compensation to the receiver to be paid out of the Disciplinary Fund, or any other fund
that may be designated by the supreme court. In such event, compensation shall be
awarded only to the extent that the efforts of the receiver have exceeded those normally
required in an amount to be determined by the court.

(f) Termination of Receivership. Upon completion of the receiver's duties as above enumerated, he shall file with the appointing court a final report with a copy thereof served upon the Administrator of the Attorney Registration and Disciplinary Commission.

Law Firm Succession Planning

Thinking About Getting Out of Your Firm?

Questions to think about

1. When do you want to retire and leave your firm? Or do you want to work forever?

2. What amount of cash or annual cash flow do you need when you exit?

3. Do you presently have a retirement plan and how much income do you project that it will provide at different exit times?

4. To whom do you want to transfer your interest?

5. Based upon future cash flow do you know how much the firm is worth today?

6. Do you know how to best maximize the income stream generated by the firm—in the years ahead while you are still with the firm and after you leave the firm?

7. Have you been able to institutionalize the firm—or is it uniquely you?

8. Is the firm even marketable?

9. Do you have a succession/exit plan?

10. Do you have a plan for your firm if the unexpected happens to you? Have you taken steps to protect your family’s wealth?

To exit their practices successfully law firms owners need:

• A road map—exit planning is a process that helps owners decide where they want to go as well as how to get there.

• Experienced guides—Owners must assemble a team of trained and experienced advisors to guide them through choices and decisions as they work toward their exit goals.

• Implementation—Success depends upon a disciplined timetable keyed to the firm owner’s exit plan.

How We Can Help

To help you create your Exit Plan we coordinate your advisors and implement your plan on your timetable.

Deliverables Include:

• Financial and non-financial firm review & Exit Plan Project Plan

• Development of an owner centered Exit Plan

• Exit Plan Implementation

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John:

Here are a couple articles in a reprint format that might look nicer if you want to use them.

Here is a link to the blog.


http://blog.olmsteadassoc.com/services/blog/6a00d83519624753ef00d8354ec51c69e2/search?filter.q=succes.sion

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By John T. Phipps

GENERAL CONSIDERATIONS

1. Retirement can be planned and orderly. Planning for sudden death or disability is an exercise in contingency planning. There are many contingencies involved in planning the transfer of a law practice and each lawyer’s practice creates its own unique planning problems. Retirement involves the same type of planning but allows more time and options rather than forced decisions created by a sudden disastrous traumatic event. There are no definitive answers but better planning and organization will ease the transition, protect the clients, reduce costs and create maximum return for the practice. This article outlines the issues to consider for both retirement planning and sudden post disaster transition. The timetables are based upon sudden events but sales associated with retirement planning involve the same issues and the timetable can be adjusted for the circumstances.

- Illinois Rules of Professional Conduct Rule 1.17 transfer rules. Since 2005 Solo practices can be sold in Illinois under the Illinois Rules of Professional Conduct Rule 1.17. Under the current rules, which went into effect January 1, 2010 the transfer requirements have been eased to allow for a quicker more orderly transfer. The current Rule gives a lawyer more flexibility to determine how to dispose of the practice, because the amended Rule removed the time lines for transfer actions. As a result proper planning can shorten the time needed to accomplish some critical tasks in order to more readily protect clients and provide the opportunity to minimize the post transition event expenses, maximize fee and overhead cost recovery, and a bring a greater price for the practice. Notice of the sale must be given regarding the sale. Included in the notice must be a statement that the client’s consent will be presumed if the client takes no action or does not object within 90 days of receipt of the notice. However the client can give immediate consent to the transfer or provide instructions about how to handle the client’s file. As soon as the client’s consent or instructions are received appropriate actions can be completed. A sample notice and consent is included in the appendix.

- Transition Time Reality. In planning for a transition it is important to recognize that it will take time and effort to transfer a full time law practice to another lawyer or a law firm which also has a significant work load. The process will not happen overnight and allowance must be made for this reality. At the same time, care must be taken to be able to promptly respond to the needs of the firm clients.
- **Keep the office open.** No matter what happens it is critical that the office be open for at least a short time to cover the transition and meet the client’s immediate needs. It is important to identify who will open and manage the office in the event of an emergency especially if the lawyer is unavailable. Clients have needs that must be served in a reasonable manner. Clients are distressed to lose their lawyer. When the phone rings someone needs to answer the client’s questions and respond to critical needs and deadlines.

- **Staff.** What you do and how you do it also depends on whether or not you have an office staff. A well trained staff is important in dealing with the issues created by a sudden emergency.

- **No Staff.** If you do not have a staff to assist, the contingency planning is even more critical because there is no staff to act for you or to follow up on what needs to be done if an unexpected problem occurs. Pre-arranging for a lawyer to cover and manage your cases during the transition becomes especially important. Also, it is important to have someone monitor the phone, mail and email. Good organization, written emergency checklists and plans are essential to provide guidance to whoever covers the office. Case management systems are critical to protect clients, preserve value and avoid problems. Such systems can prevent delay and maximize the practice value.

- **With Staff.** If you have a staff you can work out transition plans using your trained staff to manage the office, ease the transition and protect your clients. Retaining staff is a critical factor in being able to bill for and collect for ongoing work and unbilled fees as well as make a prompt and cost effective transfer. It is important to recognize that it takes time to transfer a thriving practice especially when the acquiring lawyer or law firm already has a good practice. Having your staff available is essential to protect clients, identify deadlines and triage the work so that the most important work is done on a timely basis. In fact in many law practices the retention of knowledgeable long term assistants and paralegals who can help manage the caseload adds value to the practice. As with the no staff situation, written emergency checklists and plans are important.

- **Prospective Buyers** - What is going on economically in the area and what the climate is like for developing profitable legal work from your practice will greatly affect the sale potential. If possible identify potential buyers and make a contingency continuation or sale agreement with that lawyer or firm. If locating prospective buyer is not possible, at least try to arrange for a lawyer or firm to manage the files and cover the practice during the emergency transition. For example in a disability situation in Champaign County, a lawyer with a juvenile court contract became suddenly disabled so with Court approval a number of lawyers who worked in the juvenile Court area volunteered and took over his cases while he was disabled. There are many different ways to do this so look at your practice and determine a solution that works for you and your practice and then work out contingency plans with potential buyers or transitional lawyers. Even an informal agreement with another lawyer supported by a written continuation plan or checklists can be effective and protect you and your clients.
- **Practice Information** – The buyer will need to review the firm’s practice information to determine value and whether or not to buy the practice. This information must be handled on a confidential basis. A form of confidentiality agreement is included in the appendix.

- **Simplify Plan** - Simple works. The contingency plan should have enough detail to be informative and the office should be organized sufficiently for the plan to work. The plan must be easy to understand and flexible enough to work in a highly stressful, short notice situation. That is why checklists are helpful. Most important is to put in place corporate resolutions, powers of attorney and written authorizations to permit prompt action to protect both the practice and the clients when the lawyer is unavailable. The goal is to reduce the transition workload as much as possible.

- **Passwords** – Make sure someone has access to all your passwords. Your plan will not work if your representative cannot access your office files, emails, data stored in the cloud and backups.

- **Authorizations.** Critical to effective disaster planning is to make sure that the person who will step in for the transition has legal authority to cover and act on behalf of the practice and the lawyer. See the new Illinois Digital Assets Act for guidance on digital asset authorizations.

- **Powers of Attorney.** Authorizing a named licensed attorney to specifically cover the practice and bank signature authorizations which become effective upon the occurrence of a disabling or other event should be in place to enable the attorney to cover the practice. Sample language for a Power of Attorney is:

  This power of attorney shall become effective on the earlier of (a) receipt of written certification from my physician, Dr. ____________ or the then primary licensed physician then attending me that I have become incapacitated to such an extent that I am unable to transact ordinary business prudently, (b) the date on which I am adjudicated legally disabled, and (c) or upon receipt of my written statement that I am unable to act or that I authorize this power of attorney to be immediately in effect. Any person dealing with my agent may rely without liability on a photocopy of such written certification. In such event my agent, who is a licensed Illinois attorney, subject to the requirements of the Illinois Code of Professional Responsibility manage my cases and my client matters, shall have all of the powers and authority to act for me in all matters involving my law practice, including, but not limited to, the authority to execute checks, manage and transfer bank accounts, trust accounts and take all necessary or appropriate actions in order to transact any and all of the business of my law practice.

- **Corporation or LLC.** If the practice is a corporation or LLC a contingency plan resolution, similar to the ones in the Appendix can be adopted. This will enable the designated lawyers to continue to operate the office without interruption even when the lawyer dies.
- **Will.** The lawyer should also include a provision in his or her will authorizing a lawyer to be hired and to act for the estate in dealing with the practice. A sample will provision regarding the operation and disposition of the practice is included in the Appendix.

2. **Case management systems.** Case management systems are critical to facilitate a quick and successful transition. These systems provide a computer list of all your cases, current appointments, To Do List with time lines, all deadlines, the people involved and how to contact them. A good case management system can also contain a synopsis of the case and progress notes for immediate reference. Using case management systems can assure timely action in the event of a sudden death or disability as well as add significant value to the practice because of the ease of access to case information. *Amicus, Time Matters, Abacus* and *Case Master* are the most popular computerized case management programs. If you don’t have one, pick one and start using it. Case management programs become more valuable and useful as you use them and add information. Most case management programs also have highly sophisticated features that are useful. But the basic features included in the limited editions of these case management programs are enough to provide the necessary information to allow other lawyers and staff members to timely respond to practice needs in the event of a sudden death or disability. You do not have to use all of a program’s features to benefit from the power of a case management program. Even a system developed using Outlook or a similar program can add significant value. Some case management programs can be expensive so a cost benefit analysis is important in determining what works for a practice. In the retirement situation additional transition information and planning data and case management notes can be added to each case to further enhance the practice value. The notes and task lists features can also be refined to add even more value to the practice because they ease the transitions by giving details regarding what has been and should be done with the case.

3. **Checklist for Executor or Representative.** At a minimum, you should have a checklist of items to do in the event of disability or death and have the office organized so your files can be handled expeditiously and your clients protected. The same lists apply to retirement but the time frame expands to fit the situation. The following list can be adapted to your needs.

A. **What to do immediately**

*Note:* It is not disrespectful to start the practice coverage and transition work immediately. It may be difficult to work in such a stressful time but a delay of a few days, or in some cases even hours, can create significant problems and result in lost fees, lost practice value and problems for clients.

1. Check calendars, docket and To do@ lists to determine urgent items needing to be done. Immediately, contact all clients, opposing parties, Judges and others involved with the urgent items. Case management systems maintain client lists and file information so address and email information should be immediately available for giving notices and updates.

2. Take steps to file deadline items prior to the statute of limitations date and
appearance date or get extensions, etc.

3. Get continuances and arrange for an attorney to cover cases needing urgent action so clients are not prejudiced and the client’s case can progress on a timely basis. The staff can work with clients on this. Most clients will be understanding and helpful, as well as appreciative of the effort.

Remember that time and money spent the first few days as well as the first month to ensure a prompt, orderly transition usually results in a quicker practice transfer, a better collection rate on earned and billed fees, higher value received for the practice, lower expenses, happier clients and fewer problems in the sale or transfer of the practice.

B. First week

1. Notify all remaining clients and other involved parties of the lawyer’s death or disability. See Rule 1.17 regarding notices to client’s and client consents. These notices should be sent as soon as possible to start the clock running. To the extent possible, obtain clients written consents to have a covering attorney work on the file, review confidential matters and cover short term items. If a buyer has been identified, this is a good time to get clients to waive notice under Rule 1.17 and sign a written consent to immediately transfer the file to the purchasing firm or authorize the covering lawyer to act on the file. Such consents expedite the transfer and significantly reduce both the time and work needed to transfer the practice. In fact with written consents client files can be immediately transferred while waiting for the time to run on matters with non-responsive clients. Also, with the client’s consent, retainer adjustments and payment for current fees and costs can also be arranged in connection with the transfer.

2. Triage work and files to establish a timetable for both client and office administration work including, type of work, the attention needed, and the amount of work involved. It is also important to identify who will do the work and the matter’s priority. Do not forget to include prompt and timely billing as an important part of the triage. The following timetable fits most situations.

   a. Immediate
   b. First week
   c. First two weeks
   d. First month
   e. First three months (first quarter)
   f. End of six months
   g. End of first year

As part of the triage process also identify files to be closed along with any remaining work that needs to be completed in order to close the file and the priority for closing the file. If there is unbilled work needed to get paid, these files get priority to help the cash flow.
3. Billing and collection is important because the more bills that can be completed and/or collected during the first two weeks the better. Collection problems will increase exponentially as time passes and the clients are then relying on another lawyer. These problems can be minimized by fee and collection arrangements with both the covering lawyers and lawyers buying the practice. Client’s want to be served and normally will continue to pay and stay with the new firm if they see their case is being worked on and the work will be quality work done in a timely manner by the new lawyer or law firm.

4. Make staff arrangements to cover the time the office is expected to be open or until a transfer is completed. Normally you will need to ensure health insurance coverage and income for the staff for a sufficient time so the staff will stay until the practice can be transferred or the office closed. In most cases the retention of an experienced staff makes a difference in how well the transition is completed and the value received. Good long term staff members have relationships with clients, know how to do what is needed and when to do it so offering incentives for them to continue is appropriate.

Under Rule 1.17 if a client’s consent is not obtained there is a not less than 90 days notice requirement so this notice period needs to be considered in how long to keep the office open. Clients will then have to be notified about how they can contact the practice representatives if the office is to be closed within the 90 day period.

5. The cost of overhead is a part of the fee calculation. Consequently, it is important to make arrangements for allocation of office expenses and the attorney fees with the person or firm taking over the file or files and doing the work after the event. Stop or at least minimize as many ongoing overhead expenses as possible, especially LexisNexis, Westlaw, library subscriptions and other recurring costs that are no longer necessary and can be terminated. For example if the office has multiple phone lines, these can usually be reduced to one or two lines. Minimizing overhead is critical to a profitable and successful transition.

6. Arrange for all tax payments and tax return filings to be done on a timely basis or get appropriate extensions.

7. Consideration should also be given to have the Buyer fund some of the overhead expense especially part of the payroll costs, when the transition lawyer or law firm will be is keeping all or a portion of the fees being generated by the transition work or if that lawyer will retain some of the staff and assets after the transfer.

C. First two weeks

- All required Rule 1.17 90 day client notices and other notices need to be sent promptly, but to the extent possible should be sent by at least by the end of first two weeks.
- Begin arrangements to close or transfer office.
- Cover all necessary work.
- Follow up on undone items.
- Work on bills and collecting fees.
- Complete arrangement regarding leases, etc.
- Arrange for storage of office and closed files. Consider file destruction possibilities.
- Cancel all remaining unneeded subscriptions and expenses.
- Arrange for tail and transition malpractice insurance for the office staff and estate.
- Adjust other insurance coverage to meet the new circumstances.
- Send all rebills that are in process.
- Consider what to do with websites and lawyer listings such as Martindale-Hubble, West, LinkedIn, Facebook or other lists. *Note:* These listings may be valuable assets for the purchaser and part of the value calculation. They can also be a good way to provide updated contact or other information about the transition, the new lawyer or firm and other important information for clients during the transition. Effective use of the website can be a great client retention tool as well as a source of new business.
- Complete substitution of attorney of record, registered agent and other items where a new attorney of record is necessary.

**D. End of first month**

- Make final decisions regarding sale, transfer or closing the office.
- Make final decisions regarding the transfer of remaining files and any remaining notice requirements.
- Complete arrangements regarding the closing or transfer of the office.
- Triage accounts receivable for collection efforts and write off doubtful collections.
- Make sure all unbilled work on each file has either been billed or fee sharing and collection arrangements have been completed with the lawyer taking over the file.
- Make sure all follow up bills have been sent and all other bills have been sent and put in the rebilling cycle or process. Billing and rebilling tend to get low priority with all the client work involved but must not be overlooked because the collected fees are assets and can help fund the transition and pay current bills.

**E. End of first quarter**

- Office transition work should normally be completed and the office should be basically closed or transferred to the buyer. However, there may be reasons to keep the actual office or a substitute office open longer.
- Make sure all tax filings and payments are done timely.
- Complete collection of fees if possible.
- Arrange for and schedule completion of all tax returns.
- Wrap up all items remaining regarding Rule 1.17 Notices and arrange for necessary court orders regarding transfers for clients that cannot be given notice or who have not provided direction or objected to the transfer.
- Arrange for mail forwarding. Retaining or transferring a long time post office box may be appropriate to ensure the purchasing lawyer or firm and/or the lawyer or his or her estate receive ongoing correspondence and transfer value.
- Final closing on the sale must, under Rule 1.17, be after the expiration date for the last 90-day notice that has been given. However, if it appears that all clients have consented the sale could close earlier. Also, there does not appear to be any limitation on the ability to close the sale as the transition progresses for those parts of the practice where consents have been obtained during the interim period between the retirement, death or disability of the lawyer and the final closing. With the signed consents it is possible to transfer those client files as soon as client consent is obtained. Quickly processing and transferring files will reduce the transition workload because the office no longer has to deal with those files or matters.

F. End of six months

- Make appropriate tax filings
- Make final collection efforts and normally write off all but those files that do not have specific payment agreements because of the cost of collection.
- Complete all unfinished file transfers.
- Complete all file storage matters relating to the practice information and client files. Make contact arrangements for clients to be able to access older closed files. Make sure original documents, especially wills, deeds and other important documents have been returned to clients.

G. End of first year

- Final tax filings should be completed or scheduled.
- Everything should be completed except payment of client fees that have been agreed to be paid in installments over an extended time.

H. Unique items, other activities and deadlines. In every office there are unique items. These need to be identified as soon as possible and dealt with. They can be things such as sports ticket seating plans, travel accident insurance, airline and hotel points, airline tickets, guaranteed or prepaid hotel reservations and prepaid CLE courses or other prepaid services or contracts. Many of these may have significant value or in the case of such things as guaranteed room reservations can create unnecessary expenses if not timely cancelled. Preplanning and checking accounting records and calendars will ensure that such items are not overlooked. For example, in my office I have files in my case management program for each reward or prepaid program with the account number, contact information, and details. We show all guaranteed
hotel reservations in the calendar on the appropriate date and the hotel file so we have an easy way to verify what reservations are guaranteed so they can be cancelled.

**VALUATION**

4. **Valuation of Practice.** The value of a law practice is based upon a prediction of the future based on facts presently in hand. There is no “right” way to value a practice because each practice is unique and each buyer is unique.

- What the selling lawyer wants to obtain is an acceptable return on the practice and its tangible assets including work in progress and stream of future business.

- The buyer wants value for the investment.

- Work-in-progress - evaluate the amount of the expected fees for finishing the current client work will generate. In most offices the value of the amount of work still to be completed on its case files is of significant value because of the amount of fees the current work will generate until the file is closed.

- Practice Information – The buyer will need time to evaluate the firm’s practice information and financial data. In an emergency transfer situation having good computer records for three to five years supported by tax returns readily available is important.

- Overhead relates to profitability. Controlling overhead expenses during the transition is a significant issue. Shifting overhead costs to a buyer is of great value to the selling practice because of the amount of money that can be saved. Overhead shifting or allocation should be done when the overhead relates to the fees being produced by the work being transferred which is generating or should generate fees for the buyer. *Overhead allocation is a frequently overlooked issue.* Depending on the file, when the buyer is benefiting from the seller’s overhead’s contribution to the fees, this portion of the overhead expense should be allocated to and paid by the Buyer.

- The value obtained and how a sale or transfer works is different for each lawyer and each practice. This uncertainty and the fact each transfer has its own considerations makes it difficult to value a practice. As a result the determination of the practice’s value is usually a combination of several different valuation methods.

- Time is a critical factor for both the lawyer and client. The more time that passes after a sudden transition event, the less the practice is worth. Also, the amount of immediate demands for service and case review process can create a cost/benefit problem for a purchasing lawyer or firm. If the immediate demands of dealing with the practice are time consuming and burdensome for a busy lawyer the likelihood is that a potential buyer will walk away. It then comes down to what a willing buyer is willing to pay in a distress situation. The reason good
organization and a good staff can be of great value is because the burden of the extra transition work can be greatly reduced and does not fall totally on the purchasing lawyer and his or her staff. In most cases the Seller’s staff can complete much of the transition work in order to ease the burden on the purchasing lawyer or law firm as well as generate considerable fees. This is why overhead allocation is important and these costs should be part of the fees generated by the purchaser. Good staff adds value.

5. **Timing. Complete the transfer as soon as possible.** One must get the lawyer who is going to buy the practice or the office assets involved as soon as possible. Clients will see this and the prompt attention to their matters will help both the retention of clients and the collection of fees. Getting clients to quickly waive notice and approve the immediate transfer of the file is an important part of the transfer process because it reduces delays and protects the client. The transfer rules facilitate the prompt transfer of files with the client’s consent.

6. **Allocation of transition expenses and fees.** Questions as to the amount that can be charged for fees and how to allocate the fees and expenses after death or disability are important issues. Office expenses mount as time passes. The monthly overhead can be expensive even for solo firms. There are problems recouping the office expense during the period after death or disability, so time is of the essence. There is an immediate need to either close the office as soon as possible or preferably get another lawyer to take over all or part of the office expense as part of the transition process.

In many transfers, especially emergency transfers created by sudden death or disability the parties fail to allocate the case related expenses and overhead. A reasonable allocation of the office expense that is part of the work on the file in the file transfer process is a factor to consider. In most cases the office staff and associates will contribute valuable work to the file as part of the transfer and this cost should be factored in as a benefit for the firm taking over the practice and paid for as part of the sale. Value billing can be factored in the division of fees on the file transfer. Remember, the graph of gratitude and appreciation of the value of all the work done falls dramatically as time passes so time is of the essence in collecting fees. Each case is unique and the case=s value must be individually determined in most cases. A good example of this type of consideration is the difference in value of similar personal injury cases between one that has just been accepted and one that is ready for trial.

7. **List of Items that can be identified, valued and transferred:**

   a. Cash - sometimes seed money or transition funds will need to be advanced to ensure the success of the transfer.

   b. Furniture.

   c. Fixtures.

   d. Equipment - computers, photocopy machines, printers, fax machine, etc. including
lease values.

e. Office Supplies.

f. Law Library - With Westlaw, Lexis, IICLE Smart Books, etc. most of our law libraries of books are now of little value. Subscriptions at discounted rates can usually be transferred and have value. Otherwise terminate the service and seek refunds.

g. Real Estate or Leasehold interest - Where the office is located may have location value and favorable leases also can improve the price.

h. Advertising in place - Finish contract and renewal. Websites have value. What is the identity value of prior advertising and listings that can be transferred or assumed?

i. Telephone numbers - especially if identifiable, well known for a long time or part of an advertising plan or directory.

j. Proprietary computer software - The case management systems, case systems, computer files of office and practice forms such as Hot Docs, which provide the ability to produce work quickly, are of great value particularly to newer lawyers. Adaptations of other software also have value and this need to be factored in. In many offices the firms form and brief files are worth a lot considering the costs of commercial form books and the adaptations required to use them in the local practice area. These proprietary items can be leveraged for profit, especially such items as a good Hot Docs or an office forms library, because they are fill in blank forms systems that have value especially for first time users. Also, the value of having a file in electronic form has great value because this will ease the transition and reduce the purchasers= work because of the ready access to case file data and the reduced need to consult the paper file for current case information.

k. Fees and billing information.

l. Accounts receivable - factor costs of collection. This is a benefit to the estate if the collection of accounts receivable can be transferred because it saves collection costs as well as enhances recovery of fees for both the buyer and seller. Clients tend to pay the replacement lawyer first and outstanding bills can be included in the process.

m. Costs advanced and work in progress which is significantly completed or entirely completed but not yet billed as a receivable.

n. Trust accounts - need to be dealt with correctly and correctly accounted to the client involved.

o. Insurance policies may be transferred to the buyer or canceled for a refund.

8. **Good will of the practice** - is the going concern value of the practice and the prospect of
future business. Typically it includes the following:

a. Staff. The trained and experienced in place staff especially those who know the clients and can produce billable work are great value as part of the practice and for retention of clients.

b. Cash flow generated by the annual fee billings and collections in relation to the nature and type of work involved. Normally, a three to five year average will be used to even out the process and determine the average fee collection per year.

c. Use of tangible office assets such as computers and forms and legal systems in place and how the use of these assets can be leveraged for profit. Also the replacement cost savings may be a factor because of the time and expense that will be saved by not having to recreate office systems and computer data.

d. Prospective work and current client files in progress. In many offices the files in progress will be enough to generate substantial fees without any new business. The expected fees for completing the work in progress can justify a significant business generation credit or fee. Ongoing high fee generating clients add value. The amount of cash flow that can be generated by the firm’s clients and current work in progress is another important aspect of this valuation factor. The amount of advance fee deposits or “evergreen” fee deposit agreements may also make the practice more attractive because they avoid collection problems.

e. Office organization and productivity. This is very subjective but some offices are more efficient and effective and are able to generate significant fees because of the productivity. What you are selling is really an intangible so the extent such office productivity can be transferred will add significant value. Staff is an important part of the productivity. The more the practice can be transferred on a “turnkey” basis the better the value especially those practices with a good cash flow and highly productive staff. In addition the more productive the purchasing lawyer is the better the value because she or he will be able to generate more fees from the purchase.

f. Closed files for reference and repeat business - wills, real estate, corporate files, etc.

g. How much work and time is needed to complete the transition. Here again, a well organized office with a good case management system and experienced staff in place should bring a premium by facilitating a prompt transfer. The more the transfer can be a turnkey operation and quickly generate cash flow for the buyer, the higher the value. Even when there is not a lot to sell in many offices there is work to be finished. As a result in such cases a fee allocation agreement can be negotiated to finish the work so those fees are not lost.

h. The value of the name and the expectation of continued client business. This is the intangible value that is hard to define but to the extent it can be transferred it adds significant value to the practice.

i. Location and Phone Number. Clients get used to going to the longtime office location
so staying in the same location with the same phone number may be an additional value.

9. **Valuation Problems.** Determining value depends on the practice=s profitability. A buyer will want to look at all of the financial information. Profit and loss statements, balance sheets, work-in-progress, aged accounts receivable statements, tax returns and supporting documents are the starting points in determining value. The basic ways to determine value are: the book value method, fair market value, and income or cash flow method. Sometimes with other types of professional practices, accountants use a ratio of one and a half times annual income. They do not have a rule of thumb for law practices because, at this point in Illinois, we still don=t have an experience record to look at for guidance. Medical practices, for example, are valued between 0.4 to 1.0 x annual gross receipts but law offices are so unique that there is no one size fits all formula because in most practices the clients and work are so different. The more fees the practice is expected to generate for the buyer the greater the value.

- The value will also depend on how much repeat business is expected, the nature of the practice, the number of clients, number of files, the transferability of client relationships and the fees that can be expected to be earned from the work transferred, as well as the fees that will be received for completing the current work-in-progress. If there is a lot of repeat business expected, the estimated return will be higher so the value increases. The problem is that the practice of law is changing. Clients are having problems paying for legal services and are going pro se more often and competitors such as www.legalzoom.com are providing challenges. These trends also affect value.

- If you do not have a good estimate for repeat business, another approach is the excess earnings approach. This method computes the additional earnings a buyer can expect to generate from the practice above the normal return expected for a new lawyer starting practice or an established firm adding the business from the purchased practice. For example, can the purchaser expect to gross two to four times more fees from buying a practice rather than starting a practice from scratch? This is particularly important in smaller counties with few lawyers because purchasing a book of business from an existing practice can make the difference between a young lawyer making a reasonable living and starving.

- Excess earnings tries to get the investment return value of the practice as opposed to the fair market value and usually involves comparing five years income statements and figuring out how much extra income the practice will generate for the buyer to determine the worth of the practice. It is doubtful that such a method is used very often because of the personal nature of most small practices. It does however; give some indication as to how a buyer may view the practice because the purchaser must make a cost/benefit analysis as to the amount paid for the practice. **Note:** Do not forget to include the value of direct lawyer benefits from such expenses as medical insurance coverage, pension plans, leased vehicles, car insurance, travel costs and other personal “business” costs that the office pays for the lawyer as part of the actual earnings. One important value of a solo practice is the ability to have the office pay for certain types of expenses and save taxes. The value of “benefits” to the lawyer need to be factored in when determining value because such benefits are real income items and many benefit items can
be transferred to a buyer.

- Goodwill is the differential advantage for the practice. It is the ability to do better than the competition by reason of skill, reputation, location, or special talent or other qualifications. This is really a problem because many solo practitioners have a personal following and it is hard to determine a goodwill value for this type of personal practice and how much of that will transfer. This problem is illustrated by the fact that the value of an established phone number in a small or medium size county can be worth a lot while a phone number in a larger city may have no special value at all.

- Tentative future cash flow approach - Cash is king so how much cash flow will this practice generate for the Buyer. How much work is there to complete and how much new work will the practice generate. Value is then based upon the estimated cash flow and what it is worth to the buyer to generate the extra cash flow. This is analogous to the business generation credit many larger firms use to allocate the value of the business generation for the firm.

There does not seem to be any consistency, but all considering all three methods provide some help in making a valuation decision. All three should be considered in arriving at the value of the practice. Value is essentially a compromise so the different approaches offer guidance in arriving at a value decision.

- Solo and small firm law practices in different states are offered for sale at various prices on the internet. Some of them have very low and some very high sale price numbers. It’s hard to determine what is the pricing method used and how the very high numbers are determined. Reviewing what is available on the internet may offer some guidance in arriving at a value for an Illinois solo practice.

- Professional appraisals - These can be important but can be expensive. The problem with appraisals is they tend to rely on the practice numbers and may not include important intangible considerations. Qualified experts who actually look at all aspects of the practice in arriving at the value may be helpful but tend to be expensive. However, in many areas getting full value is not possible because the market is limited and the delay created by the time necessary to develop a full appraisal can significantly diminish value.

- Basically it all comes down to what a willing buyer will pay a willing seller to get the specific intact practice based upon the kind and amount of estimated benefit the buyer expects to obtain. One deceased solo practitioner had a practice with a staff of six generated a large gross per year. Two or three lawyers could have bought his practice together and made each six figure incomes per year because of the staff and systems in place and the limited number of lawyers in the area. Because at that time a sale was prohibited, no value was obtained and the clients were not served by the process. Under current rules such a well organized office would minimize the transition expenses and get maximum value on the fees for the files being transferred because it would be a virtual turnkey practice. What is necessary to maximize value and reduce transfer costs includes planning and organization. In the end, however, finding a buyer who is both willing and can pay full value is the most difficult part of the sale. The better the organization of
the office and the planning, the quicker a purchaser can start earning fees from the practice. Immediate generation of fees is the key to a good sale price for the practice.

- The market for practice sales is continuing to be challenged because of the large education debt load that many new lawyers have. They cannot afford to buy a practice at a reasonable price. This is shifting the sales of law practices to existing firms who are better able to pay for the value of the practice. Depending on the circumstances creative financing arrangements may still work for new lawyers but many young lawyers can’t handle the extra cash demand.

- Finally how is the purchase price being paid. Cash sales are becoming rare for many reasons especially economic. Paying a percentage down for the tangible assets with a fixed amount or percentage payment as fees are collected seems to be becoming the norm especially in smaller counties. Down payments especially for the tangible assets also seems to be the norm as well. The payment plan can also affect the price because of the practical limits on what the purchaser can afford can limit the purchase price on the other side. Payments generated as the practice develops can increase the price especially in the second or later years as the practice becomes more established with the new lawyer.

**ETHICAL ISSUES ON THE SALE**

1. **Protect Clients.** The most obvious problem is that you are required to protect your clients’ interest and confidences. There are multiple ways that the lawyer’s estate can deal with protecting clients. Good planning will protect the clients and especially when it is done in a way that the clients understand and appreciate. Rule 1.17 provides that client consent must be given before client specific information can be disclosed to a purchasing attorney so it is important to get such consent as soon as possible. In fact, getting such consent in the engagement agreement is becoming more common. Clients appreciate the care you have given to protect their interests.

2. **Conflicts.** Any substitute, transition, or purchasing attorney needs to make sure that there are no conflicts with working with or purchasing the existing clients’ files. If a conflict may exist then the parties must take whatever action that necessary to avoid the conflict. Case management systems can be checked to quickly identify such potential conflict problems and these files can then be segregated and dealt with separately.

3. **Confidentiality.** Client confidences are important and care needs to be taken to ensure that clients give timely permission to allow other lawyers to access to the client’s files. These issues are very difficult but the rules deal in terms of minimum time periods for giving notices to clients before consent is presumed. In most cases waiting that long will be detrimental to the client. Active contact with the client can make it possible to immediately obtain the necessary permissions and waivers to permit another lawyer to review the confidential file and take any appropriate action. There is a requirement to mail a notice but no requirement for you to wait for the client to respond. Planning will make it possible to be proactive in contacting the clients and
getting the necessary consents to permit the covering or transfer lawyer to work on the clients' cases in a timely manner. Most clients will welcome and appreciate the proactive approach. As indicated above the client’s consent for a covering or substitute lawyer can be part of the engagement agreement.

4. **Client communications and confidentiality.** What is the status of the contact between the lawyer and clients, both active and inactive? Confidentially extends to the lawyer’s staff who can assist with the transfer by dealing with the clients. In many cases a client’s consent to access and/or transfer a file and waiver of notice can be obtained quickly, as well as consent to have the covering lawyer or transfer lawyer service the file. A good staff knows the clients and can be a valuable asset in arranging needed consents and a prompt transfer of the files or transfer of the practice. A good staff can also create enhanced goodwill with the clients if they are hired to continue even on an interim basis.

5. **Preemptive Client consent in Fee Agreements.** Consider incorporating clients' consents into your retainer agreements and retention letters to permit another attorney to work on their files and review confidential information in the event of your unavailability, illness, death or disability. It could be as simple as:

   **Unavailability of Attorney/Client=s Consent to Temporary Substitute Attorney/Limited Confidentiality Waiver.** In the event attorney is unavailable or becomes ill, disabled or dies unexpectedly, client consents to another lawyer, chosen by attorney or attorney=s legal representative, appearing for the attorney and to the extent necessary reviewing the file and handling the file until attorney becomes available or a successor attorney is either approved by or chosen by client. For this limited purpose, client waives confidentiality and consents to the other lawyer=s appearance and access to clients= file for the purpose of taking appropriate action to protect clients= interests and reviewing and receiving the file as a possible successor attorney. To the extent possible, attorney will discuss with client the need for the other attorney and identify the other attorney, prior to having the substitute attorney temporarily act for or appear for the primary attorney and the client or reviewing the file.

6. **Limited Liability.** One of the major practice rule changes is the limited liability rule. Supreme Court Rule 722 gives Illinois lawyers the ability to have a limited liability practice and increases the ability to do some planning, especially for disability situations. This will enable solo practitioners to merge with another limited liability practice or partner with a limited liability practice so that if the lawyer wants to retire, he or she can do so without the potential partnership liability problems. Such entities can limit the overall personal liability on the transition to the malpractice insurance coverage. Partnership liability has been one of the disadvantages of such transfer arrangements in the past, because all partners share liability for creating a partnership debts and liabilities. Now these limited liability entities are becoming a preferred method of transfer between a lawyer seeking to retire and a buyer because they can be used to facilitate a transitional working relationship between the parties prior to the actual
- While it doesn’t solve the problem of the true solo who suddenly becomes disabled or dies, because of the limitations on liability provisions of Supreme Court Rule 722, limited liability entities provide good planning alternatives, especially where there is enough time before retirement, death or total disability to make the necessary arrangements. Likewise, if the lawyer has a professional corporation or limited liability company he or she may perform a practice merger. There may be some adverse tax consequences, but these limited liability mergers offer transfer possibilities that should be considered especially with estates or sudden disability.

7. **Fee Splitting and Overhead Payments.** A problem in wrapping up a practice is the value of systems and having people in place to carry on the business. Previously, in some cases, the offices closed very rapidly, the files were distributed and no real thought was given to selling the systems or the ability for the office to continue to serve clients and generate income during the interim before the practice was transferred, distributed or closed. Client’s cases need to be served by the staff and a lawyer. A lawyer using the office staff and overhead during a transition needs to pay for that overhead. Otherwise, it becomes a cost to the disabled or deceased lawyer’s estate. Overhead expense should be paid for by the lawyer who is actually benefitting from the use of the overhead. If a lawyer is using the transferring lawyers overhead to generate fees, these fees should be used to pay the associated overhead.

- In cases where there is ongoing overhead and services are actually being performed by the office staff for clients, transfer provisions need to provide that the new lawyer or transferee pay for or reimburse the estate for its share of the overhead and the cost of the work performed. Payment of or reimbursement for expenses and use of overhead is not fee splitting. It is part of the cost of generating the fee and is nothing different than the overhead that existed as part of producing the work before the death or disability. The lawyer obtaining the practice, or even just the file, should pay those expenses during the transition that are part of the overhead used in doing the work in order to protect clients or generate fees after the death or disability of the lawyer.

8. **Receiverships.** Under the Supreme Court Rules, there can be a lawyer appointed to act as a receiver. This is not a good way to deal with a practice, because a receivership is slow and cumbersome and the receiver is normally not paid. A receiver should be avoided if at all possible because a receivership is the last resort and is normally used only when a law practice is in a hopeless mess.

9. **Existing client-attorney of record issues.** A quick check should be made to see that a substitution of attorney is made very quickly in each litigated case in order to protect clients and avoid a default order. The same applies to corporation registered agent designation. The transfer rules presume consent if no objection is made or client action taken 90 days after notice to the client but a lot of solo practitioners’ files require immediate contact with the client so that work can continue to be done immediately. This is important and most of the time the lawyer’s staff who are familiar with the clients can deal with these issues. Again, this should be part of a new
or transfer lawyers overhead that the estate should recover or have the new lawyer pay because beneficial work for the client is normally being done in addition to or as part of the transfer.

10. **Client files/Client=s consent.** The client files follow the client. Determining immediately with who gets the file and what is done, requires contacting the client. In most solo practices a lawyer deals with a limited number of active clients and if he or she has worked out some arrangement on what to do, a client can approve the plan very quickly and the law office can continue running in ways that are beneficial to the clients, the lawyer=s estate and the new lawyer.

11. **Overhead Cost Problems.** In some of the transitions that I have seen, a major problem has occurred because the estate of the deceased lawyer and the potential transfer lawyer do not spend enough time at the beginning to resolve the ethical issues about fees, costs and expenses allocations. If they quickly work out those kinds of issues as to who will pay for each expense and how much additional reimbursement the deceased lawyer=s estate will get for transition overhead expenses, both can profit from the transition. Pre-event planning helps but, post-event agreements defining each party=s responsibilities and overhead obligations are critical. As part of the planning process consideration should be given to having enough life insurance and overhead disability insurance to cover in full at least three months of overhead for the operation of the office during the transition. Cash flow problems are normal and if cash is a problem the insurance proceeds gives the buyer a better negotiation position because such cash can reduce the distress situation created by deficit operations.

12. **Trust Accounts, unearned fees, etc.** Problems can occur with unearned fees, trust funds, and other held assets that belong to clients. Look for whatever harm is foreseeable in each file and promptly take care of dealing with that file to avoid problems and protect the client. Many clients will be cooperative in making arrangements with regard to unearned fees and trust account balances. A problem solving approach works and enhances value for the client and the lawyer because the clients do not have to worry about what happened to their funds.

13. **Staff Knowledge.** One of the biggest assets of a lawyer who has an office staff is the staff=s knowledge about the client files and matters. Staff members are subject to the same ethical rules that governed the lawyer with respect to confidential information. The staff can or should be able to produce quality legal work, review files for triage actions, return confidential information to clients, screen for conflicts and get necessary consents.

14. **Mandatory File Review.** All active files must be looked at and reviewed as soon as possible to avoid the inadvertent missing of deadlines, statute of limitations or other concerns that might be considered. Such review will protect against the inadvertent failure to act, and help to avoid the unintended breach of client confidences. Depending on the case, a review could cause a breach of confidences but the damages to clients regarding possible breaches of confidence may be less than if the file is not promptly reviewed and a problem avoided. It is a judgment call. Case management systems are the best protection against overlooking items and deadlines as well as confidences being breached by disclosure to an opposing party. Client lists
in case management systems can be used to check for conflicts with a potential successor lawyer to avoid improper disclosure. Good case management lists and experienced staff who are familiar with the clients and cases can shorten the review and triage process. Triage to determine the urgency of cases and staging the review process is necessary to give priority to the most pressing and profitable matters. Depending on the type of practice, the case review process can be very time consuming and burdensome. Better organization and good case management systems will ease the process.

15. **Foreseeable Prejudice to Client Must be Avoided.** It is important to make sure that no foreseeable prejudice to the client is allowed to occur.

16. **Buyer Competency.** A significant problem that the lawyer or estate faces is the competency of the buyer. While the seller or seller’s estate is not a guarantor, there is an ethical requirement that the seller or seller’s estate make a reasonable investigation of the purchaser’s competence and honesty.

17. **Client Expectations/Misrepresentation Claims.** Care must be taken to ensure that there is no misrepresentation or unreasonable client expectations issues. A lot of solo lawyers carry too much information in their head and this can be a problem with clients and buyers because of a client’s claims that the lawyer said he or she would do something or guaranteed a certain result. This can be troublesome so the better the files can be documented; the less chance there is for post event problems when the lawyer is not available to respond. In taking over a file it is important that either the transferring lawyer or the purchaser or preferably both quickly determine what the client wants and whether or not client expectation issues exist. Simply asking the necessary information about the client’s expectations and what the client understood the lawyer was doing can quickly indicate whether or not that such issues need to be dealt with. Remember clients who want or expect certain results have a tendency to ascribe miraculous powers to the disabled or dead lawyer and such expectations tend to increase the more time passes if not confronted promptly.

18. **Malpractice Tail Insurance.** Malpractice insurance is one problem to be considered. The best thing to do is to cover all of the buying and selling lawyers with a tail insurance which, while expensive, can allow the estate to be closed or the retired lawyer to have peace of mind.

19. **Covenants not to Compete.** In Illinois covenants not to compete are not allowed. Rule 1.17 covers lawyers who cease to engage in the private practice of law in all or part of Illinois due to seven enumerated events. There is no time limit so the contract involving retirement of a lawyer needs to deal with these issues in retirement situations.

20. **Original Documents.** Care must be taken to protect clients’ original documents such as wills, deeds, contracts, etc. The better practice is to not keep a client’s wills and other original documents. Originals should be copied and the originals should then be returned to the client.

21. **Payment.** How is the sale to be paid for? This will largely depend on the buyer’s
resources and ability to pay. Normally, the more cash that can be received in the beginning, the better the transition. A large debt service obligation can kill a lot of installment transactions and there is always the potential problem of timely payments. The payment structure must comply with the Illinois Code of Professional Responsibility.

**PLANNING ITEMS**

One of the most important things to do is to have basic estate and practice information readily available to your family and executor if you die or become disabled. These include the following:

A. Funeral instructions

B. People and organizations to contact. This is important because most lawyers have many contacts in case management systems, computerized address books or contacts software so it is important to prioritize whom to call first.

1. Personal
2. Advisors
3. Business
4. Professional organizations
5. Clients
6. Others

C. List of Advisors

D. Location of wills and important documents.

E. Life insurance, disability insurance, other policies.

F. Directions and a checklist for taking immediate action to protect clients and the practice.

G. List of potential people that would be involved in selling and buying the practice and statement of what arrangements have been agreed to or should be considered.

H. Office and personal financial information and at least five years of tax returns should be immediately available

I. A time line list of items to be taken care of and what and when each item should be done.

J. File destruction plan. In most offices a number closed files can be destroyed rather than stored. In our offices we make sure all original documents are returned prior to closing in
order to minimize the potential destruction of original documents.

22. **Contingency Operations Notebook.** It is a good idea to have a contingent operation or emergency notebook which includes information about the lawyer’s various insurance policies and investments, a list of clients and written instructions on what to do in certain emergency situations along with checklists and sample letters, notices and forms and location of passwords. In addition notes, observations and suggestions can be included. Even handwritten instructions or checklists will work. Most solo practitioners are not that organized, but at least having all these items together in a notebook, or a designated file drawer or safe can be a major help. A plan needs to be as effective and complete as appropriate. You don’t get extra credit for making it look pretty but the better and more complete the information the more workable the plan.

23. **Simple works.** Most solo practitioners won’t do nor do they have the time or inclination to do extensive disaster planning because their current workload and the work already piled up doesn’t allow time to do so. Most lawyers don’t take the time to either plan or organize their personal matters. In my office I have my tax returns and the files for all my investments in one file drawer in the safe. The insurance and bank accounts are in another file drawer in the safe. All of the financial information, billing time slips and case management information are on my computers with weekly backup in the office, at home and our full computer system is backed up with Carbonite on the cloud. My accountant has a monthly backup of the financial information. I have a good staff. All of the client information, appointment schedules, To Do Lists and deadlines are entered in our Amicus Case Management System. The information is all there and readily accessible so that it can be reviewed and dealt with in a timely manner. It may not be perfect but the clients are protected. Anyone using a post disaster checklist can promptly locate all of the information they need to protect my clients and take effective action on behalf of my clients. What we do is simple but the information and documents are there and can be accessed so that timely action can be taken. I hope to have time to do better. But what I have is available for timely use and will work.

**MAJOR ISSUES TO CONSIDER**

1. What work and filings are due with all of the cases

2. Immediately review all new files opened in the thirty days before the death or disability because of the enhanced possibility that all items have not been properly docketed and the file opening procedures may not have been completed.

3. Client and file index

4. Cash flow, expenses and staff requirements

5. Your trust accounts
6. What to do with pending files

7. Billing for unbilled work and the collection of accounts receivable

8. What to do with the old files. Current destruction of closed unnecessary files will save time and money for storage costs. A current destruction plan can save a lot of trouble and expense because it informs the staff and buyer as to what files can be immediately destroyed and guidance as to how long to store the remaining files.

9. Tail insurance

10. Prior Partnerships - The problem is that in two partner firms upon the death or disability of one partner, the surviving lawyer immediately becomes a solo practitioner. If there is no new partnership, the surviving partner will then have to sell her or his own practice under Rule 1.17 if she or he wants to retire, becomes disabled or dies. In these situations check for any partnership agreement for the prior firm. If there is no written agreement then the partnership was legally dissolved and partnership statutes and all of the above considerations apply in winding up the partnership. If there was a partnership agreement then that agreement will govern the partnership matters and affect how the surviving practice is sold under Rule 1.17.

RESOURCES

While there are a number of published articles, the two book resources I know that are available are Selling Your Law Practice: The Profitable Exit Strategy. Including the Fundamentals of Closing a Law Practice by Edward Poll and The Lawyer’s Guide to Succession Planning: A Project Management Approach for Successful Law Firm Transitions and Exits by John W. Olmstead.

Selling Your Law Practice: The Profitable Exit Strategy. Including the Fundamentals of Closing a Law Practice by Edward Poll is published by LawBiz Management Company (a division of Edward Poll & Associates, Inc.), 421 Howland Canal, Venice, California 90291. $489.00. www.lawbiz.com It is comprehensive and contains sample agreements, checklists, financial worksheets and other necessary forms that cover all aspects of a practice sale. It is a quick start comprehensive plan with a CD of all forms. Using Ed Poll=s plan should save a large amount of time and provide additional value on the sale well beyond the price of the book itself. Some sale offers may include an hour consultation with the author.

CONCLUSION

There is no right answer for every situation. Each practice is different and each one needs to be dealt with based upon what is required for that practice. After more than ten years, we still don’t have a lot of experience selling solo practices in Illinois and the market is changing because of the economy and new lawyer education debt. It is clear that case management systems will help in the transition and maximize value. Good planning and practice organization protects clients and saves money, time and effort. Hopefully, because of the Illinois Supreme Court’s 2010 change of the rules to make the sale of a solo practice easier, solo practitioners can get the valve for their practices that they have spent a lifetime building as well as provide for an orderly transition of their offices so that their clients are protected and will continue to be well served. The rule provides the opportunity for a successful transfer but good planning is important to get the best return. It does not have to be fancy but it needs to be informative. To paraphrase General George S. Patton, a good plan well executed now, is much better than a perfect plan that is never quite finished.

About the Author:

John T. Phipps is engaged in the general practice of law in Champaign, IL as John T. Phipps Law Offices, P.C. His primary emphasis is in the areas of family law, general civil litigation, real estate, probate and business law. He is a past chair of the ISBA General Practice, Solo and Small Firm Section Council, Co-Editor of the Section’s newsletter (17 years), and member of the ISBA Assembly. He was also the Chair of the ISBA Practice Transfer Committee and the Electronic Research Committee which lead to the adoption of FastCase as a member benefit for the ISBA. He is a Laureate of the ISBA Academy of Illinois Lawyers. He also has served as Chair the ISBA Senior Lawyers Section Council and is co-editor of the Section’s newsletter and is on the ISBA Amicus Committee.

Revised 9/20/2016
CONFIDENTIALITY AGREEMENT AS TO THE PRACTICE INFORMATION OF ________________

This agreement is entered into this _____ day of _____, 20___, between, ________________, as prospective Seller (referred to as “Seller”) and ________________, as prospective Buyer (referred to as “Buyer”),

WHEREAS:

A. Buyer is a lawyer [law firm with lawyers] licensed to practice law in Illinois and is engaged in the practice of law.

B. The Buyer has expressed an interest in purchasing the law practice of Seller following evaluation of Seller’s practice information.

C. The Buyer has requested disclosure of the Seller’s confidential practice information including financial statements, accounting records, tax returns, client lists and identities and the policies and legal services breakdown, percentage of margins and profits and other business and financial matters related to Seller’s practice and case management data.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. The Seller agrees to provide such practice information as may be appropriate for Buyer to evaluate the Seller’s practice to the Buyer on the condition that all such practice information shall be maintained as confidential by the Buyer. It is agreed and understood that confidential client file information shall only be disclosed in accordance with the Illinois Rules of Professional Responsibility.

2. Buyer, on behalf of itself and its duly authorized agents, agrees that all practice and client file information provided to Buyer will be kept confidential and shall not, without prior written consent of Seller, be published, disclosed or otherwise made accessible by Buyer or its authorized Agents, in any manner whatsoever and shall be used by prospective Buyer and its Agents who are also bound by the Confidentiality provisions of this agreement, only in connection with the evaluation for the possible practice sale. It is agreed that in the event Buyer determines Buyer has a potential conflict of interest, with any of Seller’s clients the Buyer will immediately notify Seller and none of such clients’ information will be given to the Buyer.

3. Each party agrees that without the prior written consent of the other party, they will not disclose to any person or entity (other than the a person expressly authorized hereunder) that Buyer is currently reviewing the practice information, that discussions or negotiations are taking place concerning the practice sale or any of the terms, conditions or other facts with respect to the possible practice sale.

4. All practice information and all copies thereof, by Buyer except for the analyses or other documents prepared by Buyer or its agents, will be returned to Seller immediately upon Seller’s request without retaining any copies thereof. That portion of the information which consists of Buyers analyses, compilations and other documents prepared by Buyer or its agents may be held by Buyer and shall be kept confidential and subject to the terms of this Agreement, or destroyed at the request of the Seller. Such destruction will be confirmed in writing to Seller, except for one copy for Buyer’s record purposes only.

5. This Agreement shall not apply to such portions of the practice information that is generally available to the public, other than as a result of a disclosure by prospective Buyer, or available on a non-confidential basis from other sources, or which was known to Buyer on a non-confidential basis prior to
disclosure by Seller.

6. If any provision of this agreement is invalid, illegal or unenforceable, the balance of this Agreement shall remain in full force and effect, and if any provisions is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances.

7. This agreement is non exclusive and Seller is free to negotiate as to the sale of Seller’s practice with other prospective Buyers.

AGREED AND ACCEPTED:

Seller: ____________________________________
(Print name)
By: _______________________________________
(Title)

Buyer: ____________________________________
(Print name)
By: _______________________________________
(Title)

Its: _______________________________________
(Title)
SOLE SHAREHOLDER CONTINGENCY PLAN
CORPORATE RESOLUTION

I, the undersigned, being the sole Shareholder of ___________________________, an Illinois Professional Corporation, pursuant to 805 ILCS 5/7.10, hereby take and approve the following action:

CONTINGENCY PLAN RESOLUTION TO APPOINT SUCCESSOR DIRECTOR
IN THE EVENT OF THE DEATH OR DISABILITY OF CURRENT DIRECTOR.

1. In the event of the death of ____________, the Sole Director of this Professional Corporation, ____________, a licensed Illinois attorney, is hereby appointed as the sole Director of ____________ effective immediately upon the death of ____________. In such capacity, s/he shall have all of the powers and authority of the Professional Corporation, _________ to act as sole successor Director of ____________, including but not limited to the authority to execute checks, manage and transfer bank accounts, trust accounts and transact any and all of the business of the corporation including but not limited to accessing and dealing with all digital accounts and assets. As such, sole Director s/he is authorized and directed to take all actions as may be necessary or appropriate to protect the rights and interests of the clients of ____________. If there is a conflict of interest with regard to any specific client or clients= due to his/her involvement with the law firm, ____________, or for any of other reason, ____________ is authorized and directed to appoint an appropriate substitute attorney or law firm subject to and in accordance with the Illinois Rules of Professional Responsibility for each such client in order to protect the rights and interests of all such clients pending the client selecting a successor attorney or law firm.

2. In the event that ____________, the sole Director of this corporation, becomes disabled or is unable by reason of health to carry on the business of the corporation, ____________ is hereby appointed as the sole successor Director. This appointment shall become effective on the earlier of (a) receipt by ____________ of written certification from ____________= physician, Dr. ____________ of ____________, Illinois or the then primary licensed physician then attending ____________ that ____________ has become incapacitated to such an extent that he/she is unable to transact ordinary business prudently and (b) the date on which he/she is adjudicated legally disabled (c) or upon receipt of ____________= s written statement that he/she is unable to act and therefore ____________ is appointed as sole Director of _____________. Any person dealing with ____________ as sole Director may rely without liability on a photocopy of such written certification and a photocopy of this resolution to verify his/her position and authority. In such event ____________ as successor Director of ____________, s/he shall have all of the powers and authority of the Professional Corporation to act as sole Director of ____________, including but not limited to the authority to execute checks, manage and transfer bank accounts, trust accounts and transact any and all of the business of the corporation including but not limited to accessing and dealing with all digital accounts and assets. As such sole Director s/he is authorized and directed to take all actions as may be necessary or appropriate as protect the rights and interests of the clients of _____________. If there is a conflict of interest in regard to any specific clients or clients= due to his/her involvement with ____________, or any of other reason, ____________ is authorized and is directed to appoint an appropriate substitute attorney or law firm subject to and in accordance with the Illinois Rules of Professional Responsibility for each such client in order to protect the rights and interests of all such clients pending the client selecting a successor attorney or law firm.

Approved by:

Dated: ________ __, 20__ __________________________________________
____________________, Sole Shareholder
SOLE DIRECTOR CONTINGENCY PLAN
CORPORATE RESOLUTION

I, the undersigned, being the sole Director of ____________, an Illinois Professional corporation, pursuant to 805 ILCS 5/8.45 hereby take and approve the following action:

CONTINGENCY PLAN RESOLUTION TO APPOINT SUCCESSOR PRESIDENT, SECRETARY/TREASURER IN THE EVENT OF THE DEATH OR DISABILITY OF CURRENT PRESIDENT/SECRETARY/TREASURER.

1. In the event of the death of ____________, the President, Secretary/Treasurer of this Professional Corporation, ____________, a licensed Illinois attorney, is hereby appointed as the President and Secretary/Treasurer of ____________ effective immediately upon the death of ____________. In such capacities, s/he shall have all of the powers and authority of the Professional Corporation, ____________ to act as PRESIDENT/SECRETARY/TREASURER of ____________, including but not limited to the authority to execute checks, manage and transfer bank accounts, trust accounts and transact any and all of the business of the corporation including but not limited to accessing and dealing with all digital accounts and assets. As such officers, s/he is authorized and directed to take all actions as protect the rights and interests of the clients of ____________. If there is a conflict of interest with regard to any specific client or clients due to his/her involvement with the law firm, ____________, or for any other reason, ____________ is authorized and directed to appoint an appropriate substitute attorney or law firm subject to and in accordance with the Illinois Rules of Professional Responsibility for each such client in order to protect the rights and interests of all such clients pending the client selecting a successor attorney or law firm.

2. In the event that ____________, the President, Secretary/Treasurer of this corporation, becomes disabled or is unable by reason of health to carry on the business of the corporation, ____________ is hereby appointed as the President, Secretary/Treasurer . This appointment shall become effective on the earlier of (a) receipt by ____________ of written certification from ____________ =s physician, Dr. ____________ or Dr. ____________ of ____________ Clinic, ____________, Illinois or the then primary licensed physician then attending ____________ that ____________ has become incapacitated to such an extent that he is unable to transact ordinary business (b) the date on which he is adjudicated legally disabled (c) or upon receipt of ____________ =s written statement that he is unable to act he therefore ____________ is appointed as the President, Secretary/Treasurer of ____________. Any person dealing with ____________ as sole President, Secretary/Treasurer may rely without liability on a photocopy of such written certification and a photocopy of this resolution to verify his/her position and authority. In such event ____________ as the President, Secretary/Treasurer of ____________. S/he shall have all of the powers and authority of the Professional corporation to act as the President, Secretary/Treasurer of ____________, including but not limited to the authority to execute checks, manage and transfer bank accounts, trust accounts and transact any and all of the business of the corporation including but not limited to accessing and dealing with all digital accounts and assets. As such the President, Secretary/Treasurer s/he is authorized and directed to take all actions as may be necessary or appropriate as protect the rights and interests of the clients ____________. If there is a conflict of interest in regard to any specific clients or clients= due to his/her involvement with ____________, or any of other reason, ____________ authorized and is directed to appoint an appropriate substitute attorney or law firm subject to and in accordance with the Illinois Rules of Professional Responsibility for each such client in order to protect the rights and interests of all such clients pending the client selecting a successor attorney or law firm.

Dated: _______ __, 20__

________________________________________

______________, Sole Director
APPROVAL OF SOLE SHAREHOLDER

I, the undersigned, being the sole Shareholder of ____________, do hereby approve consent to and ratify the above actions by the sole Director of ____________, without formal meeting, pursuant to the Professional Corporation laws of Illinois.

Approved by:

Dated: ______ __, 20__

______________________________

___________, Sole Shareholder
CERTIFICATE OF PRESIDENT AND SECRETARY-TREASURER REGARDING CONTINGENCY PLAN RESOLUTIONS

on oath states:

1. That he is a licensed Illinois Attorney and is the President and Secretary-Treasurer of ____________ and is the keeper of the books and records of the corporation. That according to the books and records of the corporation, ____________ is the Sole Shareholder of all of the outstanding shares of the corporation as of _____, 20___, and s/he has continued to be and is Sole Shareholder of this corporation as of the date of this Certificate.

2. ____________ is the sole Director pursuant to the current Sole Shareholder's action taken _____, 20__, appointing ____________ as Sole Director and the action of the Sole Director.

3. ____________ pursuant to a sole Directors action taken dated _____, 20__, is the President and Secretary-Treasurer of ____________. _____, 20___ are the latest actions taken with regard to the election of directors and officers and ____________. The actions taken sole director and officers is currently occupying and performing the duties of the offices to which he was elected and he shall serve until replaced.

3. On _____, 20__, the Sole Shareholder, ____________, adopted the attached Corporate Resolution regarding Contingency Plan Resolution to Appoint Successor Director in the Event of the Death Or Disability of Current Director.

4. On _____, 20__, the Sole Director, ____________, adopted the attached Corporate Resolution regarding Contingency Plan Resolution To Appoint Successor President, Secretary/Treasurer in the Event of the Death or Disability Of Current President/Secretary/Treasurer.

5. True and correct copies of the relevant corporate minutes are attached hereto.

DATED: ____________, 20__

___________________________
President and Secretary-Treasurer of ____________

ATTESTED TO:

___________________________
Secretary-Treasurer
of ____________

SUBSCRIBED AND SWORN to me this _____ day of _____, 20__.

___________________________
NOTARY PUBLIC
NOTICE OF SALE AND TRANSFER
OF THE LAW PRACTICE OF ______________________

Pursuant to Rule 1.17 of Illinois Code of Professional Responsibility this Notice is to advise you that the law practice of ______________________ is being sold and all of its files are being transferred to ________________________.

This Notice is to advise you that:
1. You have a right to retain other counsel or take possession of your file.
2. Your consent to the transfer of your file will be presumed if you do not take any action or do not otherwise object to the transfer of your file within 90 days of receipt of this notice.
3. The fees charged you shall not be increased by reason of the sale.

Date: __________________    ____________________Law Office
By: __________________________
Title: __________________________

CONSENT TO TRANSFER OF FILE

I/we hereby consent to the transfer of my/our file or files to ________________________ and grant them permission to have access to all of my/our confidential information.

Date: __________________    __________________________
CLIENT

FILE DIRECTION – IF DO NOT CONSENT

I/we do not consent to the Transfer of File.

_____ Transfer the file to ________________________.
_____ Return the file to me/us.

Date: __________________    __________________________
CLIENT
PROVISION TO INCLUDE IN ATTORNEY’S WILL
REGARDING DISPOSITION OF LAW PRACTICE

ARTICLE __

I currently practice law as a sole practitioner. In order to provide a smooth transition for my clients and to assist my family, I give the following additional powers and instructions to my Executor and any attorney(s) representing my Executor to be exercisable without Court order.

If my practice can be sold to a competent lawyer, I authorize my Executor to make such sale for such price and upon such terms as my Executor may negotiate subject, however, to compliance with the Illinois Code of Professional Responsibility and other applicable provisions of law. If such sale is possible, I believe that it will provide maximum benefits for my clients as well as my employees and family. [It is my preference that the practice be sold to _________________________________[name], if satisfactory terms can be reached with respect to such a sale.

Regardless of the method of disposing of my practice, in addition to the other powers granted in this will and by law, I hereby grant my Executor full power and authority without court order to take any and all actions necessary or appropriate to operate and close my law practice and dispose of its assets. In doing so and without limiting the foregoing, my Executor and the attorneys engaged by her or him to assist in closing my practice are hereby authorized and granted the power to do each of the following:

(a) Engage one or more attorneys to wind up my law practice, make arrangements to complete work on active files and to allocate compensation for past and future services.

(b) Continue employment of staff members to assist in closing my practice and arrange for their payment, and to offer key staff members such incentives as they deem appropriate to continue in such employment for as long as my Executor deems it appropriate.

(c) Enter my office, utilize my equipment and supplies as helpful in transferring or closing my practice and, take possession and control of all assets of my law practice including client files and records and any all digital accounts, assets and passwords.

(d) Take all actions that are necessary or appropriate to protect clients and operate the office in an appropriate manner in order to sell or close the practice. The operation of the practice shall comply with all the requirements of the Illinois Code of Professional Responsibility.

(e) In performing the foregoing, my Executor is to preserve client confidences and secrets and the attorney-client privilege and to make disclosure only to the extent necessary for such purposes and to protects clients against conflict of interest issues and unauthorized access to client’s files. For example: Client files are to be reviewed only by employees of the firm, to whom attorney-client privilege attaches (e.g., my secretary, my paralegal, my associates (if any), or attorneys retained by my Executor to assist her or him in closing the practice). It is for this reason that I have authorized my Executor to retain the services of these personnel, and to give them sufficient incentives to remain in the employ of the firm through its wind-up. My Executor and the attorneys engaged by her or him for my estate are authorized to and may rely, without independent investigation, on employees of my firm to (i) supply data and information concerning the operation of my practice and client files; (ii) supply data concerning the outstanding fees owed by my clients at the time of my death, and the unused retainers paid by clients for which services have not yet been rendered; (iii) to communicate with clients concerning the disposition of their files; and (iv) to review clients’ files in response to any inquiries that arise in the course of my estate administration.

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(f) To do any and all other acts necessary to complete the sale or closing of my law practice.

(g) All actions taken pursuant to this Article ___ shall at all times comply with the requirements of the Illinois Code of Professional Responsibility.
Transition Strategies for Senior Attorneys

- **Michael G. Bergmann**, Executive Director, Public Interest Law Initiative, Chicago  
  mbergmann@pili.org

- **John M. Boreen**, Retired Attorney, Rockford  
  jmblmb@comcast.net

- **John J. Horeled**, Thinking About It Attorney, Crystal Lake  
  jhoreled@att.net

- **Don M. Mateer**, Transitioning Attorney, Rockford (moderator)  
  mateerdon@gmail.com

- **Gary T. Rafoul**, Retired Attorney, East Peoria  
  g.rafool@comcast.net

This segment includes all materials received by the course book publication deadline.  
Please contact the speaker for any other materials used at the program.
Frequently Asked Questions about Pro Bono:

Q: What about malpractice insurance?
A: Most legal aid organizations in Illinois have a malpractice policy that covers pro bono volunteers. You should always confirm this with the organization before agreeing to handle a matter.

Q: Do I need experience in the substantive area of law in which I wish to volunteer?
A: In most cases, no. Legal aid organizations have trainings and materials to assist you in handling a matter in a new area, along with the free resources available through www.IllinoisProBono.org.

Q: What if I don’t have office space?
A: Many legal aid organizations can provide you with office space at which you can schedule appointments to meet with your client. They may also have work space available for you if you need a computer, internet access or photocopies. You should confirm the availability of these resources with the organization.

Q: What if I need help along the way?
A: The legal aid organization will have staff attorneys that can provide you with guidance and direction in your pro bono matter. You should not hesitate to contact them if you run into issues or need additional assistance. PILI can also assist you in identifying possible organizations and pro bono opportunities that may be of interest to you.

Q: Are there non-litigation pro bono opportunities available?
A: Yes, many opportunities exist for pro bono attorneys to do transactional work. Ask your legal aid organization for specific opportunities.

Statewide Pro Bono Resources
Visit www.IllinoisProBono.org for statewide pro bono opportunities and resources. Users can access free online training materials and resources to assist you with your pro bono matter. Users can also search available pro bono opportunities based on a variety of factors, including location, type of opportunity, area of law, skills and time availability.

www.IllinoisProBono.org

Pro Bono Opportunities in Northern, Central and Southern Illinois
Land of Lincoln Legal Assistance Foundation, Inc. is an Illinois nonprofit that provides free civil legal services to low-income persons and senior citizens in 65 counties in central and southern Illinois.

www.lolaf.org

Prairie State Legal Services, Inc. is a nonprofit that offers free legal services for low-income persons and those age 60 and over who have serious civil legal problems and need legal help to solve them. Prairie State has 12 office locations serving 36 counties in northern Illinois.

www.pslegal.org

About PILI
PILI, the Public Interest Law Initiative, cultivates a lifelong commitment to public interest law and pro bono service within the Illinois legal community to expand the availability of legal services for people, families and communities in need.

www.pili.org

Pro Bono Opportunities and Resources in Illinois
for
Retired and Inactive Attorneys
Out of State Licensed Attorneys
House Counsel Status Attorneys
Government Attorneys
Paralegals

“Pro bono service is not only personally rewarding, it is an important component of professionalism. By engaging in pro bono service, the attorney helps close the justice gap that affects our most vulnerable neighbors. On behalf of the Illinois Supreme Court, I encourage all eligible attorneys to participate in pro bono efforts, either directly or by supporting legal aid agencies.”

- Illinois Supreme Court
Chief Justice Rita B. Garman

Produced by the
Public Interest Law Initiative (PILI)
What is Pro Bono?

Pro bono publico is a Latin term meaning “for the public good.” While there are various definitions throughout the country of what constitutes pro bono, the Illinois Supreme Court has adopted Rule 756[1], which defines pro bono as:
- legal services without charge or expectation of a fee to persons of limited means;
- legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;
- legal services to charitable, religious, civic or community organizations in furtherance of their organizational purpose; or
- training intended to benefit legal aid organizations or lawyers who provide pro bono services.

Why do Pro Bono?

Members of the legal profession are uniquely positioned to make a difference for low-income and underrepresented individuals and families with legal needs at a time when the need has never been greater. The number of people living in or near poverty in Illinois— one third of the population of the state, or over 4 million people— has been rising steadily, while funding for legal aid programs continues to shrink. Pro bono attorneys can help meet the growing demand for legal services, making equal access to justice not just a dream, but a reality for people and families in need.

Pro Bono for Retired, Inactive and Out of State Licensed Attorneys in Illinois

Recent amendments to Illinois Supreme Court Rule 756 aim to increase the number of attorneys who can provide critical pro bono legal services by allowing attorneys who are retired, inactive and licensed out of state to do pro bono in Illinois.

Pro Bono for House Counsel

Attorneys with limited admission status under Rule 756 are authorized to provide pro bono legal services in Illinois without any additional registration or other pro bono-specific requirements.

Pro Bono for Government Attorneys

While government attorneys may have restrictions limiting their ability to do pro bono work, pro bono can still be an active part of their practice. In fact, pro bono opportunities exist that are especially well-suited for government attorneys, including ones that take place outside of regular business hours and do not involve the provision of direct legal services. Those interested in doing pro bono work should consult with their ethics office to confirm what limitations exist on their ability to do legal work outside of their employment.

Pro Bono for Paralegals

Paralegals can and do play a critical role in providing pro bono service. From conducting intakes and legal research, to assisting staff and pro bono attorneys with representation, volunteer paralegals are an integral part of legal aid organizations' ability to provide free legal services to those in need.

Pro Bono for out of State Licensed Attorneys

Any attorney doing pro bono under this rule must notify the ARDC within 30 days of ending participation in the pro bono program.

A sponsoring entity is defined by the rule as “a not-for-profit legal services organization, governmental entity, law school clinical program or a bar association providing pro bono services.” To qualify as a sponsoring entity, an organization needs to: [1] submit an application to the ARDC describing the pro bono program in which attorneys covered under Rule 756 may participate; [2] verify that they will provide appropriate training and support to pro bono attorneys, as well as malpractice insurance; and [3] notify the ARDC if the organization ceases to qualify under this rule. Sponsoring entities are also responsible for notifying the ARDC when any attorney's participation in their program ends.
Initial Considerations for Pro Bono Attorneys

Before committing to handle a pro bono case, an individual attorney should (1) understand the pro bono program’s expectations and (2) receive any needed training and support. Attorneys should also ask the following questions of the program staff:

1. **Does the Program Thoroughly Screen Clients?**
   Before referring a case to a pro bono attorney, the program should, at a minimum, complete a comprehensive screening of clients. The program should provide a volunteer lawyer with a thorough statement of the facts of the case and an assessment of its nature at the time of referral.

2. **Does the Program’s Intake System Ensure That I Will Receive a Meritorious Case or Project?**
   By providing thorough intake and screening procedures, a program can provide you with assurance that you are receiving a meritorious case involving an eligible (financially and otherwise) pro bono client.

3. **Will the Program Assign Me with a Case Which Matches My Expertise, Interests, and Timing Restraints?**
   By providing thorough intake and screening procedures, a program can provide you with assurance that the case is within the parameters of the type of work for which you volunteered.

4. **What Types of Training and Support Does the Program Offer to Its Volunteers?**
   The program should offer a variety of support mechanisms and training to its pro bono attorneys. Programs may offer all or some of the following support to its volunteers:
   - Legal Support: substantive law and procedural training; legal manuals (containing compiled legal research); form pleadings; and mentors (program staff or more experienced volunteer lawyers).
   - Time Management Support: co-counseling arrangements; program staff attorneys to cover in emergencies; and agreement to take the case back if it becomes too onerous for a volunteer.
   - Training Specific to the Agency and its Clientele: handbooks with program policies and staff contact information; information concerning clientele of the agency; and client sensitivity training.
• Malpractice Insurance & Administrative/Logistical Assistance: malpractice insurance; office space for client interviewing and meetings; and administrative assistant legal support (through volunteer paralegals, law students)

5. FOR WHICH EXPENSES, IF ANY, WILL I BE RESPONSIBLE?
Some pro bono programs require that the clients pay for out-of-pocket expenses such as court costs, filing fees, etc. Others maintain a fund to cover the same, while others allow the volunteer to pay these expenses.

6. WILL I BE COVERED BY THE PROGRAM’S MALPRACTICE INSURANCE?
Most pro bono programs in Illinois have malpractice insurance available for volunteers.

7. WHAT IS MY RELATIONSHIP WITH MY PRO BONO CLIENT AND THE PRO BONO PROGRAM?
A pro bono program should clearly communicate the nature of the relationship it is establishing between the program, a client, and a volunteer, and should delineate each party’s rights and responsibilities through a written retainer agreement. A volunteer lawyer should discuss with the pro bono client the extent of the representation the volunteer agrees to undertake on the client’s behalf. A retainer agreement should clearly reflect the agreement reached by a volunteer and a client.

8. OFTEN CLIENTS MAY HAVE MORE THAN ONE LEGAL PROBLEM. HOW CAN I ENSURE THAT THE CLIENT UNDERSTANDS THAT I AM AGREEING TO PROVIDE REPRESENTATION ONLY IN A SPECIFIC MATTER?
A retainer agreement should clearly state that the pro bono attorney is providing representation only in the matter referred. A program should assure volunteers that they are not expected to provide representation in other matters, and instruct them to refer clients back to the program if the need arises. In those cases where a volunteer is willing to assist the client in additional legal matters, programs can provide technical assistance and advice as needed to the volunteer.

9. ONCE I ACCEPT A CASE, WILL THE PROGRAM KEEP IN TOUCH WITH ME?
A pro bono program should maintain regular communications with its program volunteers through periodic follow-ups via fax, telephone or email as part of the program’s comprehensive tracking system. A tracking system provides a mechanism for determining that volunteers are progressing on cases the program has placed with them and that the program is providing effective and high quality legal services to the client.

10. ONCE I ACCEPT A CASE, WHAT ARE MY RESPONSIBILITIES TO THE PRO BONO PROGRAM?
Generally pro bono programs ask that the pro bono attorneys keep the program apprised of the status of the case on a regular basis (for example, every 60 to 90 days); seek support and mentoring when needed; advise the program of any problems or issues that arise; advise the program when the case is closed, the disposition thereof, and the numbers of hours you spent on the case; and complete any evaluation forms.
11. WHAT IF THE CASE BECOMES TOO MUCH FOR ME TO HANDLE?
Many pro bono programs can facilitate co-counseling arrangements with program staff attorneys or with other pro bono attorneys. Programs also may offer training opportunities and/or experienced mentors who can assist you with the case. In some instances, the program may agree to take the case back if it becomes too onerous for a volunteer.

12. WHERE CAN I FIND PRO BONO OPPORTUNITIES AND RESOURCES?
IllinoisLegalAid.org is a statewide website that provides free legal information and forms on Illinois law. IllinoisLegalAid.org also offers free training and practice support for volunteer attorneys, as well as a search tool for finding specific pro bono opportunities.
Transition Strategies for Senior Attorneys

October 19, 2016

PANEL PRESENTATION

John Boreen, Ltd.
5933 Creekside Lane
Rockford, IL 61114
CHECKLIST FOR SOLO PRACTITIONER
BEFORE UNFORSEEN DISABILITY OR DEATH

In order to prevent the neglect of client matters (in the event of the unforeseen disability, incapacity, or death of a solo practitioner), it is advisable to: include a paragraph in retainer agreements (see sample below) designate and have a written agreement with another lawyer. The agreement would cover the duties of the assisting attorney to review client files, notify clients of the attorney's status, determine what action is needed, and discuss compensation of the assisting attorney.

SAMPLE RETAINER AGREEMENT PARAGRAPH

The client agrees that Attorney ____ may enter into a written agreement with an assisting attorney to assist Attorney _____ law practice in the event of his/her disability, incapacity, or death. The client agrees that the assisting attorney shall be allowed to review the client’s file and take the necessary steps to protect the client’s rights until a successor attorney is chosen by the client.

CHECKLIST OF ITEMS FOR OFFICE PROCEDURE MANUAL

The office procedure manual of the solo practitioner may include the following procedures in the event of the disability or death of the attorney:

- Who would operate the practice if attorney is away for extended time or close the practice if they attorney will not return
- How to access the calendar system with deadlines and follow-ups
- How to access the client list (with names, addresses, phone numbers); and location of client files
- How to access and locate closed files; and the office retention procedure for closing files
- If office has original wills – where kept and procedure to follow in returning wills if attorney will not return to practice
- Document how to access time/billing records; and procedure for client billing
- Where client ledgers are kept and how to access
- Document bank accounts; trust accounts and location of account records
- Have sample letters to be sent to clients, opposing counsel, courts in event of attorney’s disability, impairment, or death.
- If office has a safe – what records are kept; the location and combination for the safe.

**CHECKLIST FOR CLOSING LAW OFFICE**

The ARDC has a checklist and helpful publication with forms (available on-line), *The Basic Steps to Ethically Close a Law Practice.*"
RULE 1.5: FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:
(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.


Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer’s customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what
extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Comments [3B] through [3D] to Rule 1.15 and Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client’s interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client’s ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of
a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of postjudgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

**Division of Fee**

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, or referral of a matter where appropriate, and often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or, where the primary service performed by one lawyer is the referral of the client to another lawyer, if each lawyer assumes financial responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint financial responsibility for the representation entails financial responsibility for the representation as if the lawyers were associated in a general partnership. See *In re Storment*, 203 Ill. 2d 378 (2002). A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm, or payments made pursuant to a separation or retirement agreement.

**Disputes over Fees**

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by law or rule, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer’s fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The
lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

PLANNING FOR RETIREMENT
(SOURCE MATERIAL)


Encore.org—helps individuals find second acts with social impact

Lifeplanningnetwork.org—group of professionals and organizations helping people navigate the second act of life

Lifereimagined.aarp.org—offers free tutorials on topics including setting goals and career planning

Livingto100.com—life expectancy calculator incorporating health, family history, socioeconomic status

Wsj.com—(search for “encore reports”) – articles on retirement, second careers, personal finance

John Boreen, Ltd.
5933 Creekside Lane
Rockford, IL 61114
Transition Strategies for Senior Attorneys

By: John J. Horeled, Crystal Lake

About four (4) to five (5) years before a projected retirement date, an attorney needs to review his or her assets and streams of income. How much do you need and what do you have? Also, working longer puts the amount needed to retire to a lower number because the years in retirement are reduced.

I view the transition out of a law practice as having possibly three (3) paths. The first path is the continuation of the business at a high level and then selling. The second path is limiting your practice to those areas or clients that you enjoy the most, reducing overhead and operating at a slower pace. The third path is to simply wind the practice down over a period of time and closing the doors. (There is one more method, which I don’t recommend. It is called “dying at your desk.”)

Continuation of a business is difficult because you will need to constantly replace client and referral sources because of death and retirement.

Some of my colleagues, like myself, have the majority of their practice in real estate and estate planning. They keep one of the practices and leave the other one, and of course reduce their overhead.

Winding down a practice may be difficult in determining the length of time that it will take.

Miscellaneous points:
Savings Gap
Business Valuation
Seller Financing/SBA Loans
By John J. Hornied, Crystal Lake

This is the first in a series of articles on retirement planning for lawyers. It is a generally held view that there is insufficient savings for retirement by the baby boom generation. What I find with my own clients is either the denial that a problem exists or an unreasonable fear that enough is not being saved. The second emotion seems to be driven by marketing by mutual fund companies that are hammering on the concept that people need to save more and more. The purpose of this article is to help you establish a comfort level as to where your savings should be.

I will provide some rules of thumb that will hopefully be useful as a quick check. As in many rules of thumb, they are not complicated, and, at the same time should not be viewed as comprehensive. They are a starting point and not the entire solution. The examples I use can be easily extended for comparisons at different levels of income.

The assumption for this article is a married couple age 56 that may be 10 years to retirement. At age 66, the couple will be able to receive full social security benefits. It is also assumed that the attorney is self-employed and that the spouse may not be working full-time. The income level of the couple is $100,000.

An often-quoted goal is to replace at least 75 percent of income in retirement. When you look at their current expenses, you will note that the attorney is paying both sides of the social security tax and lets hope that they are saving 12 percent of their income. If that is the case, the couple is now living on about 73.4 percent of current income. So, the goal of 75 percent is not unreasonable, because they are probably spending less than 75 percent of their income at this time.

There will be issues that will impact this percentage. First, will they have a mortgage in retirement? If so, they will have a tax deduction, but more money will be taken out of their accounts to service the mortgage. A higher stream of income will be necessary and maybe the deduction is not that big a deal. Payoff the mortgage, before retirement!

Second, many lawyers are charitable, but you may consider reducing your money contributions and increasing your donated time.

Third, the early stages of retirement are more expensive than later in life.

There is more travel and activity in general. Also, a review of all expenses is necessary. Health care expenses will be up, expenses related to children will be down and certain life style changes, such as eating out less often, will impact the retirement expenses. Are they willing to move to a less expensive location?

Fourth, there will be inflation, and while the amount is unknown, it should be factored. I would suggest running an alternative savings scenario with 100 percent income replacement as an inflation hedge.

Fifth, do they plan on leaving a financial legacy or to spend down their assets? This decision will cause the largest variance.

Now, before we get into the math, a discussion on the Rule of 72 is appropriate. This rule states that 72 divided by your rate of return is the time period that your assets double in value. For example, an 8 percent return doubles your current assets in nine years. My illustrations will use a return of 7.2 percent, because I feel this is a reasonable return and also it doubles the value of current investments in 10 years.

The next step is to determine an income stream. The social security administration has been great at providing annual information on benefits. A couple with one working at or near the maximum contribution level may receive $2,000 per month, with the other, who may have had an interruption in employment, receiving at least one-half (1/2) of the larger check for an additional $1,000 per month for a total of $3,000 per month. This is an estimate that requires homework on your part, but for the next step I am using $3,000 per month.

Assuming that this is the only pension payment, there is a shortfall of $3,250 per month for an annual income of $75,000 per year, and a $5,333 per month shortfall for an annual income of $100,000 per year.

What total investment asset value outside of their residence do they need to accumulate to satisfy these monthly payments?

For an income of $75,000 per year with an investment return of 7.2 percent, they need assets equal to $412,777, if they plan to spend down over 20 years. If they desire to leave a financial legacy, a 4 percent withdrawal rate has a good chance of maintaining their principal, and would require assets of $975,000.

For an income of $100,000, the respective asset values are $677,335 and $1,600,000.

In their analysis, they have decided that they want to fund for a $75,000 retirement income, a spend-down of maybe one-half (1/2) of assets and still have one-half (1/2) of assets as a legacy. Then a target could be total investment assets of $700,000. Also, their safety net is a mortgage free residence.

If they invest $1,000 a month for 10 years with a return of 7.2 percent, they will accumulate about $175,000. With the same return, their current assets will double in 10 years. So, to make up the difference, they currently need investment assets of $262,500. If they have less than this amount, they obviously need to increase their monthly investment. You can easily project from the examples I have used in this article and the attached exhibit.

Further articles in this series will discuss asset allocation and life cycle funds, the sale of your practice and how to maximize its value and whatever other topics you may express to this section council.

<table>
<thead>
<tr>
<th>Assets</th>
<th>Rate of Return</th>
<th>Investment</th>
<th>Value</th>
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<tbody>
<tr>
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<td>7.2%</td>
<td>10 yr.</td>
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<td>$1,000</td>
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<td>$322,532</td>
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<table>
<thead>
<tr>
<th>Asset Value</th>
<th>Rate of Return</th>
<th>Long-term payment on 20 yr. Payout</th>
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<tr>
<td>$100,000</td>
<td>7.2%</td>
<td>$787.35 per mo.</td>
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For Example: $3,250 per mo. / $787.35 per mo. = 4.12777

$4.12777 x $100,000 = $412,777

There is one caution. You should save as much as you reasonably can. Some savers are behind schedule and the minimum amounts listed in this article are targets for them.
From Owner to Partner to Retired to “Of Counsel”
As the sole owner of a law firm, it became necessary to plan on my retirement at an early date. The planning involved having in place at the time of my retirement associate attorneys who would be in a position to take over the firm. When it came time to retire I had two of the four associates in that position. They were very interested in taking over the firm and continuing its practice with the smoothest transition possible. Thus began the negotiations toward that end.

The first step was to create a partnership between myself and the two associates. The second step was to build into that partnership the means for my retirement. The law practice was an insurance defense practice with hourly billings. In order to successfully complete the process many factors had to be considered as part of the Partnership Agreement. The third step was to create an “Of Counsel” Agreement as part of the package.

The following factors that were considered and made part of the Partnership Agreement. The date after which I could retire and exercise the retirement provisions in the Partnership Agreement. The funding of the retirement portion of the agreement by the associates became the capital contribution of their becoming partners. Consideration was given to prepaid expenses, assets, goodwill, prior
and future billings, contingent fees, advanced costs, medical malpractice insurance, and accounting records. This was a very detailed process stating everything with great specificity. I suggest hiring an attorney who has familiarity in this area to help you through the process.

The next consideration in the retirement portion of the partnership agreement was the schedule of payments right down to the day and the exact amounts that were due. The method of payment of billings, future fees etc., were also spelled out clearly to leave no doubts as to when the payments were due and how they would be determined.

Provisions were included for the change of firm name when it became a partnership and for the website, domain name and emails of the attorneys. Also a provision was included concerning the notification to all vendors and the future liability on all contracts that were in existence at the time of the change to a partnership. An arbitration agreement was also included for any disputes that may arise over any of the provisions of the partnership agreement. Thankfully, I can say that no disputes arose over any of the provisions. The reason there were no disputes is because all the provisions were negotiated and clearly written in the documents. I cannot stress how important this is to a smooth transition.
The final part of the transition was the “Of Counsel” agreement. It was referenced in the Partnership Agreement and was included by incorporation. Thus, when I exercised my right to retire as provided in the Partnership Agreement, I became “of counsel” under the Of Counsel Agreement. The firm requested that I become of counsel to the firm and I accepted. That document, a letter from the firm from which I retired, provided for the ability of the firm to list me as of counsel on letterhead, on the website, in promotional materials etc.

There was provision for the firm’s duties to me. Basically this involved secretarial services, use of a computer that could be accessed remotely and other basic office services. There was provision for compensation that would be paid to me for certain specific services that I would be rendering. Malpractice insurance was a consideration. Also provision was made for my renewing or not renewing the contract as well as the firm not renewing the contract.

As with the Partnership Agreement that included the retirement provisions, the Of Counsel Agreement also provided for arbitration if there were any disputes. The form of arbitration that was chosen was as follows:

“Any dispute between us arising out of this agreement shall be settled by arbitration in the city of Rockford, State of Illinois. Each party to the dispute shall select an arbitrator and the two arbitrators so named shall select an independent third arbitrator. The written decisions of
any two arbitrators shall be binding on each party. The cost of the arbitrator shall be paid by the party who hired them. The cost of the third arbitrator shall be shared equally by both parties. If the arbitrators are not selected within 90 days from a request for arbitration, either party may request the matter be submitted to the American Arbitration Association.”

This arbitration provision is absolutely necessary. As a practicing attorney I represented an attorney after a breakup of a firm. Unfortunately, the partnership agreement lent itself to opposing opinions as to the meaning of some significant aspects of what to do upon the retirement and or leaving of one of the partners. I say unfortunately because my legal services bill was being paid out of pocket by the attorney who I was representing. This was an expense that would have been substantially less had there been a valid arbitration agreement within the partnership documents. If you pay no heed to anything else in this paper, pay heed to this. I can assure you, you do not want any disagreements going to court. Not all partners get along as well as mine do and did. Prepare for the worst even though you cannot imagine it ever happening. You will be glad you did.

One other piece of advice. Begin the process well before the time you wish to make the transition. If you are the sole owner of a firm as I was, there are many time consuming tasks that need to be accomplished before meaningful negotiations can take place. You may think your assets are way more valuable than they are. I brought in a used
furniture store owner to appraise all the furniture, computers, copiers, printers, desks, file cabinets, etc. I was shocked at how little value all this stuff had. The library was basically obsolete with research being online. Needless to say, it was a painful process but needed to be done and done early to have time to adjust my expectations. Another reason to start the negotiations early is the process needed to value the firm itself (goodwill). Time is needed to reach a value that pleases everyone. This part cannot be rushed. As in any complicated transaction, there are tax consequences for both sides and differing ideas on value. With time, the give and take, back and forth, will result in a mutually agreeable resolution. Without time, one side or the other may not be happy and feel that they were forced into accepting an agreement that did not suit them.

To sum up my advice. Allow plenty of time to work out a deal. Have patience. Remember, people and relationships are more important than a few extra dollars. And finally, even though you don’t think you need it, protect each other with a written arbitration agreement.
I. BACKGROUND

After serving as a Captain in the Strategic Air Command (SAC), I started my law practice in Peoria in the mid 1960s as a sole general practice by just basically “hanging out my shingle.” At that time, I had no thoughts whatsoever of an exit strategy or retirement, because I felt those were older lawyers’ problems; not a younger lawyer’s concern.

As my practice became more established, I found that my office and personal expenses and bills were being paid with even some money left for savings, travel and charitable donations.

Also, I started thinking about my then young daughter’s college funds and her eventual marriage. In addition, I began to realize that I was not that battery bunny who will keep going forever. Therefore, after a few more years of thought, I brought in an associate just out of law school, who I trained in my method of practicing law and in the management of my office. He, in turn, trained my three legal assistants and me in the use of technology, fast case type research, as well as better marketing through more diverse advertising.

When I saw that this arrangement was working to both of our financial and personal satisfaction, I incorporated my practice as a Professional Corporation. I then gave my associate 5% of the stock; retaining 95% for myself.

With continued growth in our practice, I approached my young associate (minority shareholder) about having our practice professionally evaluated by an independent
CPA firm in the Peoria Area, who would be separate and not affiliated with either of our personal CPAs.

Once we received this evaluation, my associate and I started discussions about a shareholder agreement. To his surprise, I offered him 45% of my 95% stock ownership so that we would share equally in our base salaries, benefits and any quarterly bonuses the PC might declare.

I told him that my purpose in doing this was to guarantee the continuation of our practice with the type of services we offered our clients. And, obviously, to offer me a dignified means of exiting the practice after an agreeable number of years with a fair buyout plan.

Upon our initial informal agreement to these thoughts, we retained a transactional type law firm in Peoria to prepare a formal written agreement, some of which is highlighted below.

II. SHAREHOLDER AGREEMENT

A. One of the purposes of this Agreement was to provide for the redemption of our stock by the PC in the event of one of our death, disability, retirement or the disassociation from each other and/or the PC.

1. Redemption of shares and deferred compensation with equal amounts attributed to each, plus interest over an agreed period of time;
   (a). Deferred compensation requires tax withholdings and a W-2 by the PC;
   (b). Stock redemption generates tax on the interest being paid to the retiring shareholder;

2. A graduated value was used over an eight (for example) year period.

3. When triggered, both the deferred compensation and the stock redemption were evidenced by promissory note(s), security agreement(s) and UCC filings with the Secretary of State.
B. Some other purposes of the Agreement were to provide:

1. Equal compensation, benefits and quarterly bonuses.

2. Life insurance – I carried and personally paid for a larger policy on my equal shareholder’s life than he carried and personally paid for on my life.

3. Pension (PC’s SIMPLE Plan), parking, malpractice insurance coverage and mileage reimbursements.

4. Vacation, personal and professional time off, sick and bereavement days.

5. Corporate management and decisions.

6. Default by the PC in payments of deferred compensation or stock redemption.

7. Consulting agreement.
   (a). Compensation at an agreed percentage of hourly rate at retirement in addition to the payments for stock redemption and deferred compensation;
   (b). Acting as an independent contractor.

C. A no compete agreement could be made a part of the Agreement or be a separate document.

1. Used a five year term in our no compete, which was a part of the Agreement.

2. Restricted only to the Peoria Division of the Federal Central District of Illinois, which includes Peoria, Bloomington, Galesburg and Rock Island.

III. CONCLUSION
A. After operating pursuant to this Agreement for several years, and before my Retirement in early 2015, the PC hired a third attorney as an associate.

B. Upon my retirement, the PC could, at its sole discretion, supplement the Agreement to issue more shares to this associate as it deems appropriate as long as it does not infringe upon its stock redemption and deferred compensation terms with me.

C. Since my retirement from the PC, I am happy to announce that it is still operating without me as Rafool, Bourne & Shelby, PC in Peoria, and that it is in compliance with our Agreement.
Malpractice Insurance Considerations

- Kurt B. Bounds, ISBA Mutual Insurance Company, Chicago
  kurt.bounds@isbamutual.com
- Loren S. Golden, Attorney at Law, Elgin

This segment includes all materials received by the course book publication deadline. Please contact the speaker for any other materials used at the program.
Diminished Capacity and Forgetting Too Much: A Three-Pronged Perspective

- **John R. Cesario**, Attorney Registration and Disciplinary Commission, Chicago
  jcesario@iardc.org

- **Tony Pacione**, Illinois Lawyers’ Assistance Program, Chicago
  tacione@illinoislap.org

- **Dr. Raj C. Shah**, Rush Alzheimer’s Disease Center, Chicago
  raj_C.shah@rush.edu
RULE 1.3: DILIGENCE
A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment 5 to Rule 1.3
[5] To prevent neglect of client matters in the event of a sole practitioner’s death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action. See Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases.

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY
(a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client’s interests.

Commission 108 regarding Permanent Retirement Status

RULE 108 Determination to Defer Further Proceedings

Deferral. With the agreement of the Administrator and the attorney, the Inquiry Board (a) may determine to defer further proceedings pending the attorney's compliance with conditions imposed by the Board for supervision of the attorney for a specified period of time not to exceed one year unless extended by the Inquiry Board prior to the conclusion of the specified period. Proceedings may not be deferred under the provisions of this Rule if: (1) the conduct under investigation involves misappropriation of funds or property of a client or a third party;

(2) the conduct under investigation involves a criminal act that reflects adversely on the attorney’s honesty;
(3) the conduct under investigation resulted in or is likely to result in actual prejudice (loss of money, legal rights or valuable property rights) to a client or other person, unless restitution is made a condition of deferral; or

(4) the attorney has previously been disciplined or placed on supervision as provided in this Rule.

**Conditions.** Such conditions shall take into consideration the nature and circumstances (b) of the conduct under investigation by the board and the history, character and condition of the attorney. The conditions may include, but are not limited, to the following: (1) periodic reports to the Administrator;

(2) supervision of the attorney's practice or accounting procedures;

(3) satisfactory completion of a course of study;

(4) successful completion of the Multistate Professional Responsibility Examination;

(5) compliance with the provisions of the Rules of Professional Conduct;

(6) restitution;

(7) psychological counseling or treatment; and

(8) abstinence from alcohol or drugs.

**Affidavit.** Prior to the Inquiry Board entering its determination to defer further (c) proceedings, the attorney shall execute an affidavit setting forth the following: (1) the nature of the conduct under investigation by the Inquiry Board as admitted by the attorney;

(2) the conditions to be imposed by the Inquiry Board for supervision of the attorney;

(3) that the attorney does not object to the conditions to be imposed;

(4) that the attorney understands that should he fail to comply with the conditions imposed by the Inquiry Board a formal complaint may be voted and filed with the Hearing Board;

(5) that the admissions by the attorney with respect to his or her conduct may be introduced as evidence in any further proceedings before the Hearing or Review Board; and

(6) that the attorney joins in the Inquiry Board's determination freely and voluntarily, and understands the nature and consequences of the Board's action.

**Supervision.** The Administrator shall be responsible for the supervision of the (d) conditions imposed by the Inquiry Board. Where appropriate, he may recommend to the Board modifications of the conditions and shall report to the Board the attorney's failure to comply with the conditions or to cooperate with the Administrator. Upon a showing of the attorney's failure to comply with conditions, the Board may request that any deferred matters be returned to its agenda for future consideration.

**Compliance.** Upon the attorney's successful compliance with the conditions imposed by (e) the Inquiry Board, the Board shall dismiss or close the investigations pending before it at the time it determined to defer further consideration.

**Permanent Retirement Status option as set forth in Rule 756. Registration and Fees**

(a) **Annual Registration Required.** . . .

(8) **Permanent Retirement Status.** An attorney may file a petition with the court requesting that he or she be placed on permanent retirement status. All of the provisions of
retirement status enumerated in Rule 756(a)(6) shall apply, except that an attorney who is
granted permanent retirement status may not thereafter change his or her registration designation
to active or inactive status, petition for reinstatement pursuant to Rule 767, or provide pro bono services as otherwise allowed under paragraph (k) of this rule.

(A) The petition for permanent retirement status must be accompanied by a consent from the Administrator, consenting to permanent retirement status. The Administrator may consent if no prohibitions listed in subparagraph (a)(8)(B) of this rule exist. If the petition is not accompanied by a consent from the Administrator, it shall be denied.

(B) An attorney shall not be permitted to assume permanent retirement status if:

1. there is a pending investigation or proceeding against the attorney in which clear and convincing evidence has or would establish that:
   a. the attorney converted funds or misappropriated funds or property of a client or third party in violation of a rule of the Illinois Rules of Professional Conduct;
   b. the attorney engaged in criminal conduct that reflects adversely on the attorney’s honesty in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct; or
   c. the attorney’s conduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution has been made; or

2. the attorney retains an active license to practice law in any jurisdictions other than the State of Illinois.

(C) If permanent retirement status is granted, any pending disciplinary investigation of the attorney shall be closed and any proceeding against the attorney shall be dismissed. The Administrator may resume such investigations pursuant to Commission Rule 54 and may initiate additional investigations and proceedings of the attorney as circumstances warrant. The permanently retired attorney shall notify other jurisdictions in which he or she is licensed to practice law of his or her permanent retirement in Illinois. The permanently retired attorney may not reactivate a license to practice law or obtain a license to practice law in any other jurisdiction.

Additional Resource

Assessment of Older Adults with Diminished Capacity-
A Handbook for Lawyers, by the American Bar Association Commission on Law and Aging
Illinois Lawyers’ Assistance Program

www.illinoislap.org
gethelp@illinoislap.org  800.LAP.1233

Tony Pacione, MSW, MAEd
Clinical Director

LAP Mission

- Protect clients from impaired lawyers and judges

- Assist lawyers, judges, and law students get treatment for alcohol / drug disorders, depression, stress, and MH disorders

- Educate the legal community about these issues
How Does LAP Work?

- Confidential
- No fee
- Under the Auspices of the Supreme Court
- Supporting lawyers for Over 30 years
- Trained clinical staff & volunteers

Aging quickly...

Source: US Census Bureau
Elder Attorney Clients

- Multiple issues
- Reluctant to seek help and retire
- Higher suicide risk
- Greater physical impairment
- Increased depression and anxiety

Elder Attorney Clients

- Most solo practitioners, small firms
- No succession plan
- Most often referred by colleagues or family
- Financial pressures
- Memory vs. judgment, executive functions
Case Study: Getting to “YES”

- 74 y/o solo, referred by colleagues
- Planning to work another 3 years
- Some financial concerns
- Neuro-psych testing: mild cognitive deficit
- Forgetting and recent poor judgment
- Meeting with spouse, children, attorney
- Motivate and develop succession plan
FORGETTING TOO MUCH

Raj C. Shah, MD
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Rush Alzheimer’s Disease Center
Rush University Medical Center
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From Legal Practice to What’s Next:
The Boomer-Lawyer’s Guide to a Smooth Transition
ISBA Senior Lawyers Section
Wednesday, October 19, 2016

Objectives

- Explain the stages in the cognitive spectrum
- Understand the barriers associated with effective diagnosis and treatment of Alzheimer’s disease and dementia
- Identify the key component of a comprehensive memory evaluation.
- Describe the current treatment pyramid for individuals with memory concerns and their families.
The Problem of Memory Loss

Dementia is part of the Cognitive Spectrum

“Normal” Cognition

Mild Cognitive Impairment

Dementia

“Normal” Cognition with Aging

Reading

Vocabulary

Long-term factual memory

Immediate memory span

Sustained attention

Serial learning

Delayed recall

Motor speed

Visuomotor skills

Least Change

Most Change

Subjective complaint of memory difficulty
Objective memory impairment
Normal other cognitive function
No functional loss
No dementia


Chronic memory loss
The development of multiple cognitive deficits
The cognitive deficits cause significant impairment in social or occupational functioning and represent a significant decline from a previous level of functioning
The deficits do not occur exclusively during the course of a delirium
The disturbance is not better accounted for by another disorder

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition. Copyright 1994 American Psychiatric Association
Loss of Activities of Daily Living

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<tr>
<th>Activities of Daily Living</th>
<th>Mild</th>
<th>Moderate</th>
<th>Severe</th>
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<td>Keep Appointments</td>
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<tr>
<td>Use the Telephone</td>
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<td>15</td>
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<td>Obtain Meal/Snack</td>
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<td>25</td>
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<td>Travel Alone</td>
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<td>Use Home Appliances</td>
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<td>Find Belongings</td>
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<td>Select Clothes</td>
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<td>Maintain Hobby</td>
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<td>Clear Table</td>
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<td>Eat</td>
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Progressive Loss of Function


What are the types of dementia?

- Alzheimer's Disease
- Lewy Body Dementia
- Frontotemporal Dementia
- Vascular Dementia
In Illinois, 11.4 percent of those aged 60 and over – and 20 percent of those aged 85 and over – report that they are experiencing confusion or memory loss that is happening more often or is getting worse.

Nearly 80 percent of them have not talked to a health care professional about it.

For those with worsening memory problems, four in ten say it has interfered with household activities and/or work or social activities.
How Do We Evaluate Memory Loss?

- Does this individual have a chronic cognition problem?
  - No
  - Yes

"Normal" Cognition vs. Acute Conditions

- Does this individual have a dementia?
  - No
  - Yes

- Does this individual have AD?
  - No
  - Yes

MCI

Other Dementias

AD

How We Treat Memory Loss

- Individual with Memory Loss
- Caregiver
- Health Services
- Social & Community Services
- Legal Services
References

Forgetfulness: Knowing When To Ask For Help

Maria has been a teacher for 35 years. Teaching fills her life and gives her a sense of accomplishment, but recently she has begun to forget details and has become more and more disorganized. At first, she laughed it off, but her memory problems have worsened. Her family and friends have been sympathetic but are not sure what to do. Parents and school administrators are worried about Maria’s performance in the classroom. The principal has suggested she see a doctor. Maria is angry with herself and frustrated, and she wonders whether these problems are signs of Alzheimer’s disease or just forgetfulness that comes with getting older.

Many people worry about becoming forgetful. They think forgetfulness is the first sign of Alzheimer’s disease. Over the past few years, scientists have learned a lot about memory and why some kinds of memory problems are serious but others are not.

Age-Related Changes In Memory

Forgetfulness can be a normal part of aging. As people get older, changes occur in all parts of the body, including the brain. As a result, some people may notice that it takes longer to learn new things, they don’t remember information as well as they did, or they lose things like their glasses. These usually are signs of mild forgetfulness, not serious memory problems.

Some older adults also find that they don’t do as well as younger people on complex memory or learning tests. Scientists have found, though, that given enough time, healthy older people can do as well as younger people do on these tests. In fact, as they age, healthy adults usually improve in areas of mental ability such as vocabulary.

Other Causes Of Memory Loss

Some memory problems are related to health issues that may be treatable. For example, medication side effects, vitamin B₁₂ deficiency, chronic alcoholism, tumors or infections in the brain, or blood clots in the brain can cause
memory loss or possibly dementia (see more on dementia, below). Some thyroid, kidney, or liver disorders also can lead to memory loss. A doctor should treat serious medical conditions like these as soon as possible.

Emotional problems, such as stress, anxiety, or depression, can make a person more forgetful and can be mistaken for dementia. For instance, someone who has recently retired or who is coping with the death of a spouse, relative, or friend may feel sad, lonely, worried, or bored. Trying to deal with these life changes leaves some people confused or forgetful.

The confusion and forgetfulness caused by emotions usually are temporary and go away when the feelings fade. The emotional problems can be eased by supportive friends and family, but if these feelings last for a long time, it is important to get help from a doctor or counselor. Treatment may include counseling, medication, or both.

More Serious Memory Problems

For some older people, memory problems are a sign of a serious problem, such as mild cognitive impairment or dementia. People who are worried about memory problems should see a doctor. The doctor might conduct or order a thorough physical and mental health evaluation to reach a diagnosis. Often, these evaluations are conducted by a neurologist, a physician who specializes in problems related to the brain and central nervous system.

A complete medical exam for memory loss should review the person’s medical history, including the use of prescription and over-the-counter medicines, diet, past medical problems, and general health. A correct diagnosis depends on accurate details, so in addition to talking with the patient, the doctor might ask a family member, caregiver, or close friend for information.

Blood and urine tests can help the doctor find the cause of the memory problems or dementia. The doctor also might do tests for memory loss and test the person’s problem-solving and language abilities. A computed tomography (CT) or magnetic resonance imaging (MRI) brain scan may help rule out some causes of the memory problems.

Amnestic Mild Cognitive Impairment (MCI). Some people with memory problems have a condition called amnestic mild cognitive impairment, or amnestic MCI. People with this condition have more memory problems than normal for people their age, but their symptoms are not as severe as those of Alzheimer’s
disease, and they are able to carry out their normal daily activities.

Signs of MCI include misplacing things often, forgetting to go to important events and appointments, and having trouble coming up with desired words. Family and friends may notice memory lapses, and the person with MCI may worry about losing his or her memory. These worries may prompt the person to see a doctor for diagnosis.

Researchers have found that more people with MCI than those without it go on to develop Alzheimer’s within a certain timeframe. However, not everyone who has MCI develops Alzheimer’s disease. Studies are underway to learn why some people with MCI progress to Alzheimer’s and others do not.

There currently is no standard treatment for MCI. Typically, the doctor will regularly monitor and test a person diagnosed with MCI to detect any changes in memory and thinking skills over time. There are no medications approved for use for MCI.

**Dementia.** Dementia is the loss of thinking, memory, and reasoning skills to such an extent that it seriously affects a person’s ability to carry out daily activities. Dementia is not a disease itself but a group of symptoms caused by certain diseases or conditions such as Alzheimer’s.

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**Keeping Your Memory Sharp**

People with some forgetfulness can use a variety of techniques that may help them stay healthy and maintain their memory and mental skills. Here are some tips that can help:

- **Plan tasks, make “to do” lists, and use memory aids like notes and calendars.** Some people find they remember things better if they mentally connect them to other meaningful things, such as a familiar name, song, book, or TV show.
- **Develop interests or hobbies and stay involved in activities that can help both the mind and body.**
- **Engage in physical activity and exercise.** Several studies have associated exercise (such as walking) with better brain function, although more research is needed to say for sure whether exercise can help to maintain brain function or prevent or delay symptoms of Alzheimer’s.
- **Limit alcohol use.** Although some studies suggest that moderate alcohol use has health benefits, heavy or binge drinking over time can cause memory loss and permanent brain damage.
- **Find activities, such as exercise or a hobby, to relieve feelings of stress, anxiety, or depression.** If these feelings last for a long time, talk with your doctor.
People with dementia lose their mental abilities at different rates.

Symptoms may include:

- Being unable to remember things
- Asking the same question or repeating the same story over and over
- Becoming lost in familiar places
- Being unable to follow directions
- Getting disoriented about time, people, and places
- Neglecting personal safety, hygiene, and nutrition

Two of the most common forms of dementia in older people are Alzheimer’s disease and vascular dementia. These types of dementia cannot be cured at present.

In Alzheimer’s disease, changes to nerve cells in certain parts of the brain result in the death of a large number of cells. Symptoms of Alzheimer’s begin slowly and worsen steadily as damage to nerve cells spreads throughout the brain. As time goes by, forgetfulness gives way to serious problems with thinking, judgment, recognizing family and friends, and the ability to perform daily activities like driving a car or handling money. Eventually, the person needs total care.

In vascular dementia, a series of strokes or changes in the brain’s blood supply leads to the death of brain tissue. Symptoms of vascular dementia can vary but usually begin suddenly, depending on where in the brain the strokes occurred and how severe they were. The person’s memory, language, reasoning, and coordination may be affected. Mood and personality changes are common as well.

It’s not possible to reverse damage already caused by a stroke, so it’s very important to get medical care right away if someone has signs of a stroke. It’s also important to take steps to prevent further strokes, which worsen vascular dementia symptoms. Some people have both Alzheimer’s and vascular dementia.

Treatment For Dementia

A person with dementia should be under a doctor’s care. The doctor might be a neurologist, family doctor, internist, geriatrician, or psychiatrist. He or she can treat the patient’s physical and behavioral problems (such as aggression, agitation, or wandering) and answer the many questions that the person or family may have.

People with dementia caused by Alzheimer’s disease may be treated with medications. Four medications are approved by the U.S. Food and Drug Administration to treat Alzheimer’s. Donepezil (Aricept®), rivastigmine (Exelon®), and galantamine (Razadyne®)
are used to treat mild to moderate Alzheimer’s (donepezil has been approved to treat severe Alzheimer’s as well). Memantine (Namenda®) is used to treat moderate to severe Alzheimer’s. These drugs may help maintain thinking, memory, and speaking skills, and may lessen certain behavioral problems for a few months to a few years in some people. However, they don’t stop Alzheimer’s disease from progressing. Studies are underway to investigate medications to slow cognitive decline and to prevent the development of Alzheimer’s.

People with vascular dementia should take steps to prevent further strokes. These steps include controlling high blood pressure, monitoring and treating high blood cholesterol and diabetes, and not smoking. Studies are underway to develop medicines to reduce the severity of memory and thinking problems that come with vascular dementia. Other studies are looking at the effects of drugs to relieve certain symptoms of this type of dementia.

Family members and friends can help people in the early stages of dementia to continue their daily routines, physical activities, and social contacts. People with dementia should be kept up to date about the details of their lives, such as the time of day, where they live, and what is happening at home or in the world. Memory aids may help. Some families find that a big calendar, a list of daily plans, notes about simple safety measures, and written directions describing how to use common household items are useful aids.

What You Can Do

If you’re concerned that you or someone you know has a serious memory problem, talk with your doctor. He or she may be able to diagnose the problem or refer you to a specialist in neurology or geriatric psychiatry. Healthcare professionals who specialize in Alzheimer’s can recommend ways to manage the problem or suggest treatment or services that might help. More information is available from the organizations listed below.

People with Alzheimer’s disease, MCI, or a family history of Alzheimer’s and healthy people with no memory problems and no family history of Alzheimer’s may be able to take part in clinical trials. Participating in clinical trials is an effective way to help in the fight against Alzheimer’s. To find out more about clinical trials, call the Alzheimer’s Disease Education and Referral (ADEAR) Center toll-free at 1-800-438-4380 or visit the ADEAR Center website at
For More Information

Here are some helpful resources:

**Alzheimer’s Disease Education and Referral (ADEAR) Center**
P.O. Box 8250
Silver Spring, MD 20907-8250
1-800-438-4380 (toll-free)
www.nia.nih.gov/alzheimers

The National Institute on Aging’s ADEAR Center offers information and publications in English and Spanish for families, caregivers, and professionals on diagnosis, treatment, patient care, caregiver needs, long-term care, education and training, and research related to Alzheimer’s disease.

**Alzheimer’s Association**
225 North Michigan Avenue, Floor 17
Chicago, IL 60601-7633
1-800-272-3900 (toll-free)
1-866-403-3073 (TDD/toll-free)
www.alz.org

**Eldercare Locator**
1-800-677-1116 (toll-free)
www.eldercare.gov

**National Library of Medicine MedlinePlus**
www.medlineplus.gov

For more information on health and aging, contact:

**National Institute on Aging Information Center**
P.O. Box 8057
Gaithersburg, MD 20898-8057
1-800-222-2225 (toll-free)
1-800-222-4225 (TTY/toll-free)
www.nia.nih.gov
www.nia.nih.gov/espanol

To sign up for regular email alerts about new publications and other information from the NIA, go to www.nia.nih.gov/health.

Visit www.nihseniorhealth.gov, a senior-friendly website from the National Institute on Aging and the National Library of Medicine. This website has health and wellness information for older adults. Special features make it simple to use. For example, you can click on a button to make the type larger.
Cognitive Impairment and Lawyers and Judges Who Retire At Their Desks
Jayne Reardon

My Dad is 93 years old. He retired from his career as a general surgeon over 25 years ago. He had no cognitive impairment. During his early years of retirement, he reviewed surgical cases for a malpractice insurer and mentored other surgeons. All through his life, he has continued to read constantly, travel, and play bridge and golf. He became a happy newly-wed at the age of 91.

My Dad comes to mind as I reflect on recent reports about the aging of the legal profession. Many articles have been written about lawyers and judges who work right up until the end of their lives. My Dad definitely was bored in retirement–especially in his late 60s and 70s. In retrospect, should he have continued working for another decade or two?

Our Aging Lawyers and Judges

Unlike the physical component of being a surgeon, lawyers and judges have cerebral jobs. They can continue to work despite the physical ailments of advancing age. And many are choosing to do so.
The American Bar Association reported that in 1980, a quarter of the lawyers were age 55 or older, whereas by 2005, over one-third were age 55 or older. And increasingly, judges are staying on the bench into extreme old age. About 12 percent of the nation’s 1,200 sitting federal district and circuit judges are 80 years or older, according to a 2010 survey conducted by ProPublica. The same article reports that the number of octogenarians and nonagenarians on the federal bench had doubled in the prior 20 years and eleven federal judges over the age of 90 were hearing cases. Judge Wesley Brown, appointed by President John F. Kennedy, heard cases up until just before his death, at age 104.

The demographics of the federal bench have no counterpart in the state courts. In state courts, judges mostly occupy their office for a term of fixed years and generally have mandatory retirement ages. About 33 states and the District of Columbia have a mandatory retirement age and most set it between 70 and 75 years of age. In 2009, the Illinois Supreme Court struck down the Illinois statute providing for a mandatory retirement age of 75 as unconstitutional.

Like the rest of the population, judges and lawyers are at risk for memory loss and cognitive impairments as they age. The symptoms of Alzheimer’s, an irreversible brain disorder that slowly destroys memory and thinking skills, usually appear in the mid-60s. According to the Alzheimer’s Association, about 13 percent of Americans over 65 have Alzheimer’s and nearly half of those 85 and older develop it or suffer from dementia. However, there is evidence that high-functioning professionals, such as lawyers, often mask a decline in professional competence longer than other professionals.

**Ethical Implications of Cognitive Impairment**

A lawyer who is cognitively impaired has an ethical duty to decline or withdraw from representing a client. Rule of Professional Conduct 1.16(a)(2) states that a lawyer shall not represent a client if “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.”

The problem is, the lawyer may not be aware of declining cognitive function in real time. In all the years I worked at the Attorney Registration and Disciplinary Commission, I never heard of a lawyer being prosecuted under this section. I checked with a former colleague at the ARDC who also never heard of a lawyer being prosecuted for failure to withdraw from representation due to mental condition.

A more likely scenario involving an attorney who may have cognitive deficits is
things may start slipping through the cracks, resulting in violations of other ethical rules. For example, disciplinary counsel may receive complaints about a lawyer missing deadlines or failing to return telephone calls, perhaps in violation of the Rules of Professional Conduct involving diligence (1.3) or communication with a client (1.4).

Rather than react after ethical issues occur, are there intervention or remediation techniques a lawyer or her colleague can employ proactively? A draft ethics opinion in Virginia (drawing on ABA Formal Opinion 43-029) states that a supervising attorney who reasonably believes her subordinate attorney is impaired has an obligation to take action before material harm is caused to a client or third person. The opinion grounds this obligation on the duty of a supervising attorney under Rule 5.1(b) (to “make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct”). The duty is prospective, and applies even if no violations have occurred. Trouble is, the problem will likely be noticed by peers of the impaired attorney. Or the subordinate attorney may notice impairments in the boss.

I could not find any judicial counterpart to these rules. With the intent to foster judicial independence, federal judges have an appointment for life. Article III of the Constitution allows federal judges to remain in office “during good behavior.” Back when the Constitution was ratified in 1789, the average American lived to be about 40. The framers didn’t worry about senile judges. Alexander Hamilton is quoted as having said, “A superannuated bench is an imaginary danger.” Not so much.

Cognitive Impairment is not a Simple Concept; All Intelligence is Not the Same

There is no doubt that the ability to think and reason independent of prior knowledge—or fluid intelligence—diminishes as we age. Beginning in our 20s, we can begin to experience a decline in the fluid aspects of our cognitive functioning, such as mental processing speed, working memory, attention span, and abstract problem-solving skills.

However, the ability to draw on and apply accumulated experience and knowledge—or crystallized intelligence—generally plateaus sometime in our 60s and falling thereafter. In other words, we gain wisdom with age. But the older we get, the slower we become in our ability to operate effectively outside the milieu of what we already know.

Over the first many decades of this century, lawyers and judges have been able to
work quite intelligently throughout their careers. Crystallized intelligence was their stock in trade. They were able to expertly understand and apply legal principles and precedent to nuanced situations.

However, the exponential changes of the current time period are unique. Experts agree that changes in our society are coming about more fast and furious than ever before. According to Edward Walters, who teaches a class on the Law of Robots at Georgetown Law, we are living in the third major revolution (past the industrial revolution, past the information revolution)—the robotics revolution. This revolution is the first time intelligence software is taking on physical hardware.

I wonder whether the rapid changes of this robotics revolution increase the importance of fluid intelligence in our lawyers and judges. To properly serve their clients and solve citizens’ disputes, lawyers and judges need to do more than recall the substantive knowledge learned in law school and applied through years of practice. They also need to understand new technology, how it works, what happens when it doesn’t. Relying on crystallized intelligence does not help us competently understand the benefits and risks of relevant technology that is changing month by month, if not week over week. With people living longer due to medical advances and healthier life choices, should there be some type of competency testing to ensure that lawyers and judges have the fluid intelligence to competently serve?

I don’t know the answer to this question, but would love to hear your thoughts in the comments section. I’m assuming (hoping) that I have my Dad’s longevity genes. So figuring this out matters.

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I currently serve as the Executive Director of the Illinois Supreme Court Commission on Professionalism and Chair of the ABA Standing Commission on Professionalism.

As an advocate for professionalism, I oversee programs and initiatives that work to increase the civility of attorneys and judges while promoting increased service to the public. I also write and speak on topics related to the changing practice of law that embrace inclusiveness and innovation to ensure that the profession remains relevant and impactful in the future.

Previous posts include:
New Law Firm Business Models Incorporate Project Management

ABA Commission’s Future of Legal Services Report: A Clarion Call for Action

Law School Orientation: A Win-Win For The Profession

Bar Association Leaders Wanted: Bring Us Into The Future

For more information about 2Civility blogs and news, visit our Illinois Supreme Court Commission on Professionalism website and subscribe to our LinkedIn page.

Written by Jayne Reardon

Very interesting article Jayne. However, why is the importance of "crystallized knowledge" any less or more important today than a decade or a century ago? A good lawyer must always continue to keep up to date on changes in the law, technology and society in general. After all, lawyers have successfully adapted to sea changes for hundreds of years. I agree wholeheartedly that crystallized knowledge is invaluable and not to the exclusion of keeping up to date with change. Great article!

Like

Comment

7 likes 1 comment

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Jaye Reardon

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John C Abell

The Tesla of Bikes Got a Brilliant Idea

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When You Should Go Behind Your Boss’s Back
Michael G. Bergmann has served as PILI’s Executive Director since 2010. He originally joined PILI in 2006 as Pro Bono Initiative Director and more recently served as Director of Programs. Prior to joining PILI, Michael served as the Guardian Ad Litem Program Director for Chicago Volunteer Legal Services.

Michael is a frequent speaker on issues relating to legal aid, pro bono and public interest law at the state and national level. He is an Adjunct Professor at the DePaul University College of Law, where he also serves on the Advisory Board for the Center for Public Interest Law. He also serves on the Advisory Board of the Chicago Lawyer Chapter of the American Constitution Society and the National Association for Law Placement’s PSJD Advisory Group. He also served on the Cook County Elder Justice Center Task Force for the Elder Law and Miscellaneous Remedies Division for the Circuit Court of Cook County. Michael also serves as a Commissioner on the City of Evanston’s Human Relations Commission.

An active member of the American Bar Association, Michael is currently serving in the ABA’s House of Delegates. He previously served as Chair of the ABA’s Judicial Division during the 2015-16 bar year; only the third non-judge to hold that post. He is also a past chair of both the ABA Young Lawyers Division and of the Lawyers Conference of the Judicial Division. Michael is also a member of the Illinois State Bar Association where he serves on and is a past chair of the Standing Committee on the Delivery of Legal Services, and serves on the Bench & Bar Section Council and the ISBA Assembly. Frequently recognized for his contributions to the bar and the public, Michael was most recently named one of “40 Under 40 Illinois Attorneys to Watch” in 2013 by the Law Bulletin Publishing Company.

Michael attended The Catholic University of America in Washington, D.C., where he earned his Bachelor of Arts in Politics. He received his Juris Doctor from DePaul University College of Law. Prior to and during law school, Michael was a consultant with PricewaterhouseCoopers LLP.
John M. Boreen graduated from The John Marshall Law School. He was admitted to practice in Illinois and the Federal Court in 1975, as well as the U.S. Court of Appeals in 1981. Mr. Boreen has been a solo practitioner for over 25 years concentrating in PI and workers’ compensation. For the last eight years, he has served as a court appointed Guardian Ad Litem, Emergency Arbitrator, and Mediator. Mr. Boreen is a member of the Illinois State Bar Association and Winnebago County Bar Association. He is an author and lecturer for the Illinois Institute for Continuing Education, and a volunteer for the American Red Cross.
John R. Cesario is Senior Counsel for the Administrator of the Attorney Registration and Disciplinary Commission, and he is responsible for representing the Administrator in proceedings in which the ARDC is appointed Receiver pursuant to Supreme Court Rule 776. Mr. Cesario also assists private attorneys who act as receiver by court order. Mr. Cesario has investigated thousands of charges of lawyer misconduct over the course of his career as attorney in the Intake Group, and he has represented the Administrator as receiver in several receiverships. Mr. Cesario has also written articles that have appeared in the *Illinois Bar Journal*. Mr. Cesario obtained an undergraduate degree from the *University of Illinois at Urbana-Champaign*, and he received his law degree from *Tulane University* in New Orleans, Louisiana. Before becoming Counsel for the Administrator, Mr. Cesario had worked as a Special Public Defender in Jefferson County, and as an Assistant State’s Attorney in Kane County. Mr. Cesario lives in Aurora, Illinois with his wife and two children.
John J. Horeled is a general practitioner with over forty years of experience. A large portion of his practice involves estate planning, real estate, and elder law issues.

He is a past chair of the ISBA General Practice Section Council, the Elder Law Section Council, the Business Advice and Financial Planning Section Council, the Senior Lawyers Section Council, and the Bar Services and Activities Committee. He was recently a member of the Task Force on the Impact of Law School Debt on the Delivery of Legal Services and the Task Force on the Impact of Law School Curriculum and Debt. He is currently a member of the Task Force on the Future Delivery of Legal Services.

Mr. Horeled is a former director of the Hebron State Bank and Illinois Guardianship Association and is a past president of St. Mary’s Episcopal Church, the Notre Dame Club of McHenry County, the UMCA of McHenry County, the Crystal Lake Kiwanis, and the McHenry County Community Foundation (founding President).

Mr. Horeled has an undergraduate degree from the University of Notre Dame, where he was president of the Economics Honor Society, and a Juris Doctor from Valparaiso University School of Law. He values his role as an independent advisory.
Eugenia C. Hunter earned a B.A. from Southern Illinois University in 1963. In 1963-4, she studied Interdisciplinary Social Science at San Francisco State College, then returned to SIU for a M.S. (Economics) in 1970 and a J.D. in 1976. In 1977, she was admitted to practice in the Illinois Supreme Court and the U.S. District Court for the Southern District of Illinois, and she served as Assistant State's Attorney in Jackson County. She was admitted to practice before the United States Court for the Seventh Circuit in 1986, and to the Supreme Court of the United States in 2011.

Ms. Hunter has been in private practice since 1977. Today, she concentrates on adoption, bankruptcy, corporate law, elder law, estate planning, expungements, guardianships, probate and real estate and is frequently appointed a guardian ad litem for children and disabled adults. Ms. Hunter was first qualified to represent children in 2006 and maintains this qualification. She is a member of the Illinois State Bar Association, and has served on numerous standing and special committees, taskforces and section councils. She is also a member of the Jackson County Bar Association and the Bankruptcy Association of Southern Illinois and she currently serves on the ISBA Elder Law and Senior Lawyer Section Councils.

In 2011, she received both a Land of Lincoln Joseph R. Bartylak Pro Bono Award and a Certificate of Appreciation from the Legal Services Corporation for an extraordinary commitment to providing equal access to justice.
**Don M. Mateer** received his undergraduate degree from the University of Michigan and his law degree from the University of Illinois. He is licensed to practice law in the State of Illinois, the U.S. District Federal Court, the U.S. Court of Appeals, 7th Circuit, and the U.S. Supreme Court. Mr. Mateer tried jury cases in both state and federal courts for over 40 years. Mr. Mateer, in addition to his trial work, was an active arbitrator and mediator. He has been honored by his peers in several ways, having been elected a Fellow in the American College of Trial Lawyers, named a Leading Lawyer in Illinois, named a Super Lawyer in Illinois and is AV peer review rated. Mr. Mateer is presently “Of Counsel” to the firm of Mateer Goff & Associates in Rockford, Illinois.
John H. Maville is a sole practitioner in Belvidere, Illinois. He is a former member of the ISBA General Practice, Solo, and Small Firm Section Council, serving as chair of the Section Council from 1998 to 1999. He is currently a member of the Senior Lawyer Section Council and is co-editor of the Section’s newsletter. Mr. Maville was a member of the ISBA Special Committee on Implementation of Transfer of Law Practice. He was also on the faculty of the Illinois Professional Responsibility Institute, established by the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois. A 1967 graduate of the University of Illinois College of Law, Mr. Maville was State’s Attorney for Boone County, Illinois from 1968 to 1980, is a past chair of the Northern Illinois Law Enforcement Commission, is a former instructor in the Police Science program at Rock Valley College (Rockford, IL), and is a past president of the Boone County Bar Association. In 2004, the Illinois State Bar Association awarded him its “Tradition in Excellence Award.” Mr. Maville is presently engaged in the general practice of law with two associates.
Tony Pacione, MSW, MAEd, is currently the Clinical Director for the Illinois Lawyers’ Assistance Program, providing behavioral health and addiction services to attorneys, judges, and law students. Tony possesses a wealth of experience as a clinician and program director in the addiction and behavioral health field since 1982. He has successfully integrated evidence-based treatments such as mindfulness-stress reduction training and cognitive behavioral therapy with interventional approaches in the legal profession.

Tony received an ABA appointment to the Advisory Commission on Lawyer Assistance Programs in 2014, and was appointed by the AIOC/Illinois Supreme Court as a Judicial Faculty member for the New Judge Seminar in 2015. He has published articles on addictions for academic and trade association journals. He has provided training on addiction treatment, and stress management to health care, attorneys, and other professionals at such venues as the Illinois Psychological Association, DePaul University, the American Bar Association, the Chicago Bar Association, and the Northwestern University School of Law.

Tony is a Licensed Clinical Social Worker in Illinois and a Certified Supervisor Addiction Counselor. He holds a Master of Social Work and a Master of Arts in Education degrees from Washington University in St. Louis.
John T. Phipps earned his B.A. at DePauw University in Greencastle, Indiana and his J.D. at the University of Illinois, Urbana-Champaign, Illinois. He is a solo practitioner in Champaign, Illinois where he is engaged in general practice of law with emphasis on civil litigation, particularly family law, general civil and commercial litigation, real estate, criminal law, and probate. Mr. Phipps has authored and co-authored over 100 articles or chapters in ISBA and IICLE practice handbooks and American Bar Association and the Illinois State Bar Newsletters. He is a frequent lecturer at ISBA, IICLE and ABA continuing legal education courses.

Mr. Phipps has received several honors and recognitions throughout his legal career, including: Laurate of the Illinois State Bar Association Academy of Lawyers class of 2007. IICLE’s Addis E. Hull Award for Career Long Excellence in Continuing Education 1999; Illinois State Bar Association Austin Fleming Award in 2006 as editor of the ISBA General Practice Section newsletter, ISBA Board of Governors Award in 2003; and ISBA General Practice, Solo and Small Firm Section Council Tradition of Excellence Award in 2013. He has also been named a Leading Lawyer of Illinois and Illinois Super Lawyer every year since 2006.
Gary T. Rafool earned his B.S. Bradley University and his J.D. Stetson University School of Law. He founded Rafool, Bourne & Shelby, P.C. in Peoria, Illinois in 1965 after serving as a Captain in the U.S. Air Force Strategic Air Command (SAC). His practice developed from a very general practice before concentrating in all aspects of bankruptcy law and litigation where he primarily represented debtors in Chapters 11, 7, and 13 proceedings. He also served as a Panel Chapter 7 Trustee, appointed by the U.S. Justice Department, from 1995 until his retirement from active practice on January 1, 2015.

In addition to practicing law for 50 years in Peoria, Mr. Rafool was active in the Peoria Bar Association and served as Chair of its Public Relations Committee for a number of years in the 1970s and 1980s. For the past 26 years, he has been active in the Illinois State Bar Association, where he has served as Chairs of the Business Advice and Financial Planning Section Council, the Commercial Banking and Bankruptcy Section Council, and the Senior Lawyers’ Section Council, as well as presently writing book review for each of the Senior Lawyers’ Newsletters. He was a member for six years of the Continuing Legal Education Committee, and a current member of the Bar Services Committee, the Alternative Dispute Resolution Section Council, and the Senior Lawyer’s Section Council.

Mr. Rafool is an avid sailor and has been an active member of the Illinois Valley Yacht Club since 1973. Additionally, he presently serves on his church, homeowners, and Peoria Art Guild Boards. He is a past member of the YMCA Board, the High School Outreach Drug Program Board, Big Brothers/Big Sisters Board, and the first Chair of the Peoria Police Community Relations Committee. He is an active member of the Rotary Club of East Peoria.
Dr. Raj C. Shah, MD, is an Associate Professor in Family Medicine and the Rush Alzheimer’s Disease Center at Rush University Medical Center in Chicago, Illinois. He obtained his MD degree at the University of Illinois at Chicago College of Medicine. After completing a family practice residency at West Suburban Hospital and Medical Center in Oak Park, Illinois, he received further training in geriatrics at Rush University. He is board certified in family medicine with a certificate of added qualification in geriatrics.

From 2002 to 2014, Dr. Shah was the medical director of the Rush Memory Clinic where he oversaw a multi-disciplinary team that evaluates and treats individuals with memory loss. Dr. Shah’s academic career interest is the design and conduct of community-based clinical trials for the prevention and treatment of age-related conditions including, but not limited to, memory loss. He is a principal investigator for clinical trials in Alzheimer's disease and other common age-related conditions. Dr. Shah’s research manuscripts focus on non-neurological, modifiable factors associated with disability-free longevity with aging and with novel clinical trial design and implementation. Dr. Shah oversees community engagement efforts of the Rush Alzheimer’s Disease Center, especially in communities under-represented in aging research. He also mentors students interested in health equity research at the high school, college, graduate, and post-graduate levels and is the Co-Director of the Center for Community Health Equity, a collaboration led by DePaul University and Rush University.
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