



Transition and Succession Planning for Lawyers

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To be honest, the only thing keeping you alive is the thought of who will take over your law firm.



**JILL'S RETIREMENT PARTY
AND SUCCESSION PLANNING
KICKOFF MEETING**

DON'T YOU
THINK WE'RE
CUTTING IT KIND
OF CLOSE?



What is a Succession Plan?

- Unexpected Exit or Absence From Practice
 - A basic plan provides instructions designating another competent lawyer to temporarily assume responsibilities in your practice, notify clients, address pending deadlines, if you become disabled or die.
- Planned Exit
 - Planning to transition into retirement.

ILRPC 1.3 Diligence, Comment [5]

[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.

Risks & Consequences of Failure to Plan

- Loss of the value of your practice – your practice has value
 - For many lawyers, their practice is their most valuable asset
- Loss of income
- Loss of valued employees
- Risk of Chaos
- Adverse outcomes for clients
- Potential ARDC / Malpractice Complaints

Succession Planning Statistics

- Overwhelming majority of solo practitioners do not have a plan
- ARDC 2016 Report:
 - 77% of solos did not have a written succession plan
 - 7% said didn't know if they have a plan
- Estimated 26% of firms have written succession plans
- More than 50% of the legal workforce 55+ (Legal Management Magazine)

Ask Yourself a Tough Question: What if you Didn't Make it In Tomorrow?

- Consider implications of short-term disability.
 - What would happen if you couldn't work for:
 - 1 month
 - 3 months
 - 6 months
 - Would your firm survive? Would you get paid? How about your staff?
 - Client retained?
 - Deadlines missed?
- Consider implications of death or permanent disability.
- Do you have disability insurance? Far too many lawyers do not.

Goals of Lawyers Planning Exist / Transition

1. Benefit from the value of your practice
2. Caring for clients
3. Finding a home for staff
4. Facilitate a transition out on your terms
 - May want to continue working, just fewer hours
 - May want reduced management / business ownership hassle and to be able to “just practice law”
 - May want clean break from the practice

Exit Strategies for Solo Practitioners

1. Merely winding up practice and closing
2. Outright Sale of Practice
3. Hiring an Associate to take over practice and eventually buy out the solo
4. Of Counsel relationship with an existing firm

Rural / Downstate Challenge: Fewer New Attorneys

Number of Illinois Counties	102
Counties with more than 5 new attorneys*	26
Counties with 5 or fewer attorneys*	76
Counties with 0 new attorneys*	39

***Attorneys admitted in the last four years.**

The Disappearing Rural Lawyer, Part II, Supreme Court Commission on Professionalism, available at:
<https://www.2civility.org/the-disappearing-rural-lawyer-part-ii/>

Succession Planning Implications of Fewer New Attorneys

- Limited Supply of Buyers - Fewer options for finding lawyers to buy or take over a practice
 - Of those few newer attorneys, fewer still will have assets to buy a practice
 - Perhaps forming Of Counsel relationships is more appealing
- More opportunities for young lawyers who do come downstate to be part of a succession or transition plan

Exit Strategy 1: Closing shop without a plan

- Unfortunately, this is the **most common result** for most solos.
- Often takes place at unexpected time, most lawyers don't confront reality. Failing to plan --> Planning to fail.
- Many of us assume we will practice for the rest of their life
- Loss of value / revenue
- Clients are on their own – loss of potential value to retiring lawyer
- Loyal team members left unemployed.

Exit Strategy 2. Outright Sale of Practice

- Can be difficult to value – but there are a variety of methods
 - Institutional Clients vs. Consumer facing practices
 - Criminal, Personal Injury, Family, etc.
- Reality: Practice is only worth what someone will pay for it
- Without a deliberate plan, expect pennies on the dollar if a practice is sold when a lawyer abruptly becomes disabled or dies
- Few available buyers
- Must address concerns regarding transitioning clients / client retention

Exit Strategy 2. Outright Sale of Practice (cont.)

- Factors to Increase Value:
 - Well maintained books showing strong revenue / profit figures
 - Institutional clients / stable clients
 - Well trained staff
 - Strong lead generation assets, digital assets, referral sources
 - A plan to maximize client retention
 - Great Systems: People buy systems and processes
 - Would your business run without you
 - Intake forms, checklists, automated forms
 - Great book: John Fisher's Power of a System – Firm Wiki

Exit Strategy 3: Hiring Associate to Take Over

Pros:

1. Some ability to select successor
2. Can train and mentor to meet quality standards, to protect clients, assure shared values
3. Opportunities for clients to get to know Associate, potential for higher client retention
4. Can build time for Associate to bond with staff
5. Ability to negotiate flexibility on retirement timeline
 - Ex: at some point transition from owner to income Partner with a fee split.

Exit Strategy 3: Hiring Associate to Take Over (cont.)

Cons:

1. Limited talent pool – available lawyers may have limited \$\$ resources
2. Eggs in one basket problem
 1. Might not be a fit – it is very hard to judge “hustle” when hiring
 2. Might not be able to generate business
 3. May want a job, not to own a firm
 4. Risk of spouse being relocated
 5. In small counties, they may become a judge / state’s attorney
3. If it doesn’t work out, you have to start over
4. May need to hire multiple associates to hedge bets (is this financially justifiable?)
5. Timelines may not be aligned
6. Seems like this often doesn’t work out – it is far easier to think of local examples where this has failed than succeeded

Exit Strategy 4. “Of Counsel” Arrangements

- “Of Counsel” can mean many different things
- Common arrangement – joining a firm, bringing in your staff, bringing over your files
- Perhaps paid a fee split or treated as an income partner
- Paid a fixed amount or percentage of receivables on files that remain, often for a fixed period of time

Exit Strategy 4. “Of Counsel” Arrangements - Pros

- More options for existing firms to associate with
- Much more stability than relying on single lawyer – avoids the eggs in one basket problem
- Opportunity to find a home for loyal staff / team members
- Opportunity to have firm retain physical files
- Transition time to facilitate client retention
- Mentoring opportunities
- Ability to leverage other lawyers
- Flexibility

Exit Strategy 4. “Of Counsel” Arrangements

Cons

- “Old Dog, New Tricks” problems – learning new software, systems
- Transitioning from “lone wolf” to part of a team can be difficult
- Potentially less control over staffing, marketing, technology, systems
- If it isn’t a fit, multiple moves can erode some client relationships, it is important to pick the right firm and make only one move
- Need to plan for different timelines. Plan for plans to change.

Exit Strategy 4. “Of Counsel” Arrangements

Considerations for the Associating Firm

- Discuss revenue issues – better to have clear understanding and expectation than to make assumptions
- Staff / culture fit
- Billing practices in alignment? Can they be aligned?
- Common understanding on timelines, plans if plans change
- Advisable to put plan in writing

Advice for Younger Lawyers

Considering Buying or Buying Into a Practice

- Be careful who you associate with, learn as much as you can about their business, their reputation in the local bar, ethics.
- Best to associate with lawyers who excel at the practice of law and at the business of law.
- If you plan to buy a practice, you probably shouldn't represent yourself
- ISBA has many helpful resources on buying into or buying a practice
- Clinton Attorney Bryce Lynch has been down this path and would be happy to talk to anyone considering this path: 935-2183

Advice for Younger Lawyers

Retirement planning and disability planning

- Start Retirement Planning Early
 - Pay Yourself First (great short read: “The Richest Man in Babylon”)
 - What you save and invest is what you’ve paid yourself, not what your take home pay
- How Much Do I Need to Retire?
 - One answer: Assuming a safe 4% safe withdrawal rate, you need to save 25x your annual spending to retire. (See “the Shocking Simple Math Behind Early Retirement” – Mr. Money Mustache). (Ex: If you live on \$80K, save \$2M)
- **Strongly consider** disability insurance.

Possible Worst Case – Court Appointed Receiver

- Supreme Court Rule 776, Appointment of Receiver in Certain Cases
 - Circuit Court Can Appoint a Receiver
- Receiver's role is only to look out for clients
 - Not sell your practice
 - Not preserve value of your practice
 - Not recover your costs and final bills
 - Not help your estate, pay you or your family (recover costs / send final bills)
 - Not to protect your employees
- Transition will not be smooth. Receiver will likely step into chaos rather than an organized, thoughtful plan.

How to Make a Succession Plan

Start with key elements from the rule: **(1) designate attorney, (2) notify clients, (3) determine need for immediate protective action.**

[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.**

ILRPC 1.3 Diligence, Comment [5]



"Well, it's not the worst I've seen."

How to Make a Succession Plan

- Designate a Lawyer

- Is one lawyer enough? If they have a busy practice, can they really assume yours?
- Who should you designate?
 - Who do you trust?
 - Familiarity with your practice area?
 - Do they carry malpractice insurance?
 - Someone who can understand your systems?
 - Work well with your staff / family?

Designated Attorney Tasks

- Review client files to determine where protective action necessary to avoid missing important deadlines, hearings, etc.
- Notify each client of the attorney's death or disability
- Handle any final billing
- Supervise trust accounting if necessary, make trust account disbursements as appropriate
- Arrange for file storage
- Handle payroll

Designated Attorney Compensation

- How will the designated attorney be compensated for their time?
- Is there an expectation that part of the compensation is that a designated attorney would take over files if lawyer isn't able to return
- What about an arrangement where lawyers will cover for each other, with no charge? Is this realistic if it becomes a massive burden?
- An hourly rate?
- Example: PI practice, where 1/3 referral fees are customary, perhaps Designated Attorney asked to handle files going forward, pay 1/3 to prior attorney or their estate.
- Whatever the arrangement, it's best to plan for it in advance.

Formalizing Arrangement with Designated Attorney

- Letter / Memorandum of Understanding
- POA? (Sample on ISBA succession planning website)
- Written Agreement? (Sample on ISBA succession planning website)
- Corporate resolution? (Sample on ISBA succession planning website)
- Provisions in your estate plan authorizing executor to hire designated attorney to wind down practice. (Sample on ISBA succession planning website)

Who handles the day-to-day?

- In some situations you may have a trusted staff member / office manager to handle the day-to-day aspects of your business
- In others, perhaps a family member
- Designated Attorney may not have the free time in addition to their practice to handle all matters in your office, so it is advisable to have realistic discussions about who could assist, and to include these plans in your agreement with the designated attorney

What does designated attorney need to know?

- How does your calendaring system operate?
- How to retrieve a list of active client files, with contact information for clients.
- How do you organize your open files.
- How do you retain your closed files.
- Do you keep original client documents, Wills, etc.?
 - What to do with old Wills?
- Computer and practice management software passwords

What does designated attorney need to know? (continued)

- Banking information for operating and trust accounts, authorized signers.
 - Consider Limited POA authorizing designated attorney to handle financial needs. (See Sample POA in Materials)
- How do you handle time, billing, etc., unbilled time, receivables
- Who is your accountant, bookkeeper?
- How to find vendor information, insurance information etc.

What does designated attorney need to know? (continued)

- How to handle payroll
- How long to retain staff, any separation payments
- Should the office stay open? How long?
- Who to transition different types of matters to (preferred attys for different types of cases?)
- Wishes regarding purchasing tail coverage
- Should they attempt to sell your practice?

Consider updating retainer to include client consent to your succession plan

ISBA Suggested Prose:

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.

www.isba.org/committees/successionandtransitionplanning

Consider adding a suggested calendar

Week 1: Notify courts and clients. File review to identify all pressing deadlines. Address immediate problems.

Week 2: Continue file review. Begin transitioning clients if it is obvious I'm not returning to practice. Address payroll and billing. Notify Landlord. Have staff contact clients regarding original Wills and other original client documents.

Week 3: Continue transitioning clients. Notify vendors. Send offer letters on accounts receivable.

Week 4: Close office. Transition remaining clients. Have staff make arrangements for closed files and follow up on A/R letters.

See ISBA Example: "Emergency Checklist for Deceased or Disabled Attorney's Executor or Representative", avail at: www.isba.org/committees/successionandtransitionplanning

Consider “Contingency” plan in addition to a “Succession” plan.

- While much of our discussion has involved death or a situation where the attorney would not return, it would also be wise to plan for a short-term disability.
- Consider what your plan would look like if you anticipate returning or hope to return after:
 - 1 Month
 - 3 Months
 - 6 Months
- Consider providing for both situations in your written plan and discuss both situations with your designated attorney(s)

Contingency planning vs. succession planning

- File management vs. transitioning files
- Client retention vs. finding new homes
 - Perhaps transition a subset of clients with high needs, pending deadlines, and work to retain higher value cases and institutional clients
- Maintaining staff, strategies for covering payroll
- Should the office stay open, reduce hours.
- Consider “of counsel” arrangements to have other lawyers handle day-to-day aspects of your practice

Resources: ISBA Succession Planning Webpage:

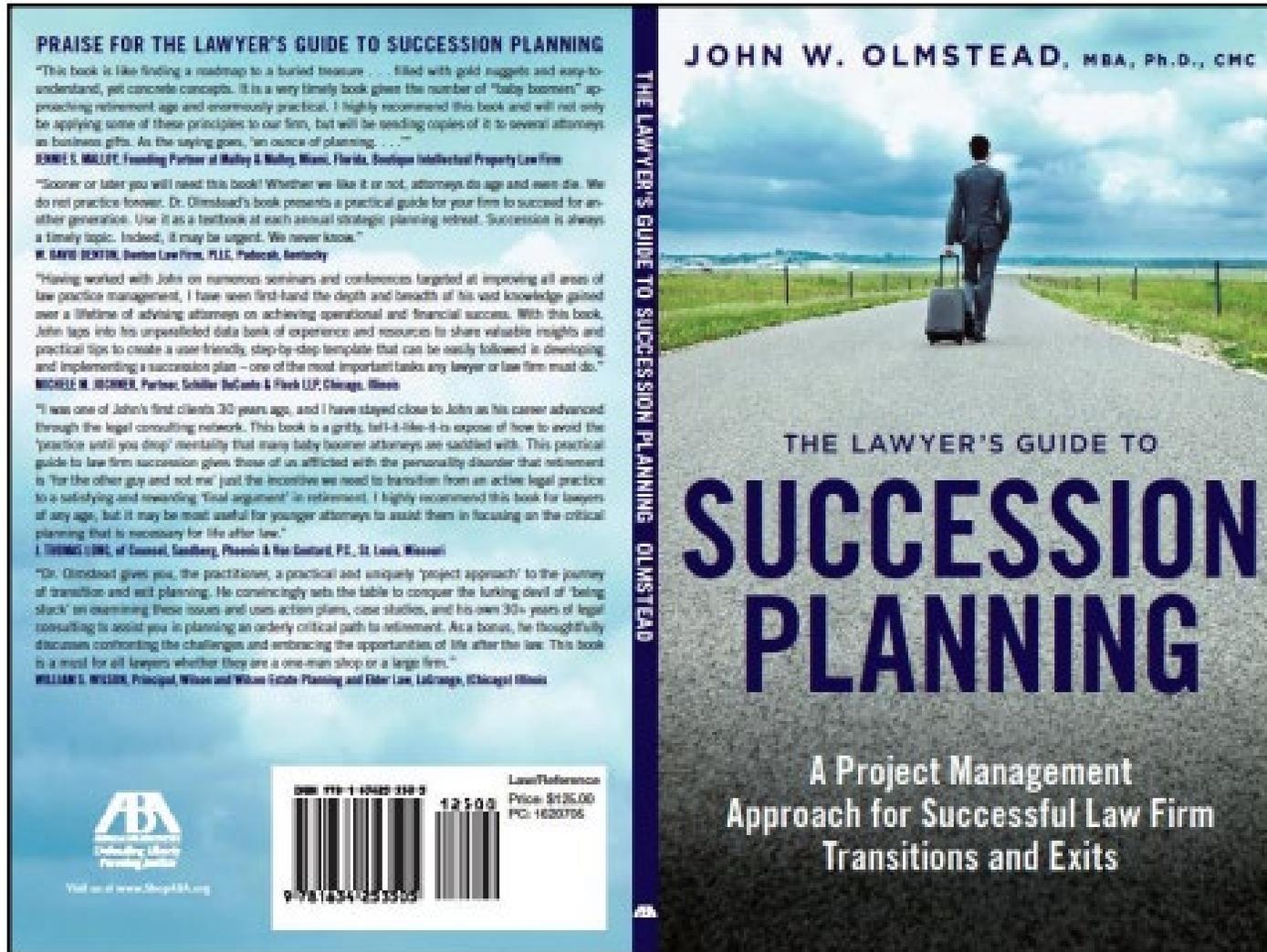
Sample Documents

- [Sample Succession Plan](#) 
 - [Sample Rule 1.3 Succession Planning Checklist](#) 
 - [Sample Attorney Will Provision for Disposition of Law Practice](#) 
 - [Preemptive Client Consent in Fee Agreements](#) 
 - [Sample Powers of Attorney Provision](#) 
 - [Sample Emergency Checklist for Deceased or Disabled Attorney's Executor or Representative](#) 
 - [Sample Sole Shareholder Corporate Resolution Contingency Plan](#) 
 - [Sample Sole Director Corporate Resolution Contingency Plan](#) 
 - [Sample Confidentiality Agreement re: Practice Information](#) 
 - [Sample Certificate of President and Secretary-Treasurer for Contingency Plan Resolution](#) 
 - [Sample Petition for Letters Testamentary \(involving the disposition of a law practice\)](#) 
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- www.isba.org/committees/successionandtransitionplanning

Resources: ISBA Free On-Demand CLE

Course ▲	MCLE	PMCLE
A Step by Step Guide to Developing a Succession Plan for Your Practice	1.00	⊕ 1.00
Law Practice Succession, Transition, and Exit Strategies	0.75	⊕ 0.75
Succession and Transition Planning	1.50	⊕ 1.50
Succession Planning, Part 1: How to Get Started and Contingency Planning	1.00	⊕ 1.00
Succession Planning, Part 2: Transitioning Your Practice and Your Clients	1.00	⊕ 1.00
Valuation and Succession Planning for Intellectual Property: Estate Planning Issues	1.00	

Resources: Olmstead on Succession Planning



ABA Publication on Succession Planning available through ABA or on Amazon.

Note: The author, John Olmstead, gave an on-demand ISBA Webinar: "Law Practice Succession, Transition, and Exit Strategies"



Thank you!

Materials at:

**[www.brelaw.com/
succession](http://www.brelaw.com/succession)**