Succession Planning – Is It Mandatory for Lawyers in Pennsylvania?

HARRISBURG, PA | February 11, 2019

By Dion G. Rassias, Esq.

One of the most significant (and recurring) professional responsibility topics that remains unsettled is whether or not succession planning should be mandatory for lawyers. Smart thinking suggests that it should be; but so far, not only is succession planning not mandatory in Pennsylvania, it is not required by the majority of other states across the country. Thus, as smart, logical, and commonsensical as it seems, trends show that many lawyers have done no form of succession planning.

Is this because it is not a requirement? Probably not. In fact, it’s likely just one of those things that we, as busy lawyers, have a tendency to keep on the list, but never get around to checking off. Further,
succession planning is hard. It requires a lot of forethought and ultimately, a lawyer can spend a tremendous amount of time and energy coming up with a comprehensive succession plan which may well be flatly rejected by a client leading to a lot of potentially wasted energy and effort. Nevertheless, even though the client can always reject a lawyer’s statement or recommendation about succession planning, it is still worth the effort and peace of mind. In fact, taking the time to carefully explain a succession plan to a client can go a long way toward alleviating future problems and will very likely be to everyone’s enormous benefit.

It is no shock that every lawyer that has ever lived, has died (or will die). Hide if you’d like, but succession planning applies to every one of us. Succession planning is important whenever a lawyer is transferred to disability, inactive status, suspended, disbarred, disappears, or dies. The American Bar Association and the Pennsylvania Bar Association offer some starting points, including the impact upon the provisions of the Pennsylvania Rules of Professional Conduct, which require a lawyer to act with reasonable diligence and promptness in representing a client. (RPC 1.3). The Philadelphia Bar Association Professional Guidance Committee correctly noted that the Rules do not impose any direct mandate upon Pennsylvania lawyers to plan for the eventuality of death or disability; however, indirect responsibilities can be readily inferred, because notwithstanding the absence of an explicit directive in the Rules, its committee concluded “that the continuing nature of the ethical duties imposed by the Rules weighs heavily in favor of lawyers taking steps to anticipate the closure of their practices due to death or disability even if that closure is not imminent.” Opinion 2014-100 (Dec. 2015).

The ABA Guidance Summary offers the following recommendations for inclusion in a lawyer’s succession plan: written instructions about client information; information concerning contracts of disposed files of clients; information about payments of liabilities; access
instructions and passwords for computers and voicemails; and information about how any successor will be paid. Basically, the inquiry to be answered is even simpler: what happens when my clients can no longer contact me and need information pertaining to their cases?

Some states actually have strong directives and recommendations regarding some type of succession plan. In Virginia, comment (5) to Rule 1.3 of its Rules of Professional Conduct provides that “a lawyer should plan for client protection in the event of the lawyer’s death, disability, impairment, or incapacity. The plan should be in writing and should designate a responsible attorney capable of making, and who has agreed to make, arrangements for the protection of client interests in the event of the lawyer’s death, impairment, or incapacity.” In South Carolina, its Rule 1.19 states that lawyers “should prepare written, detailed succession plans specifying what steps must be taken in the event of their death or disability from practicing law...As part of any succession plan, a lawyer may arrange for one or more successor lawyers or law firms to assume responsibility for the interests of the lawyer’s clients in the event of death or disability from practicing law. Such designation may set out a fee sharing arrangement with the successor. Nothing in this Rule or the lawyer’s designation shall prevent the client from seeking and retaining a different lawyer or law firm than the successor. The lawyer to be designated must consent to the designation.” In Florida, its Rule 1-3.8 states that “whenever an attorney is suspended, disbarred, becomes a delinquent member, abandons a practice, disappears, dies, or suffers an involuntary leave of absence due to military service, catastrophic illness, or injury, and no partner, personal representative, or other responsible party capable of conducting the attorney’s affairs is known to exist, the appropriate Circuit Court, upon proper proof of the fact, may appoint an attorney or attorneys to inventory the files of the subject attorney and to take such action as seems indicated to protect the interests of clients of the subject attorney.”
Two states, Delaware and Indiana, actually ask lawyers to designate a successor lawyer when they fill out their annual registration forms. From our Board's perspective, this seemed to be a good starting point as we attempt to create the awareness that Pennsylvania lawyers should start thinking about succession planning. A question will appear on the upcoming 2019-2020 Pennsylvania Attorney Annual Fee Form requesting each lawyer to answer whether or not they have a succession plan and, if so, to provide the name of the designated successor. The Board hopes that this sparks each Pennsylvania attorney to begin seriously contemplating the need for succession planning. We encourage all Pennsylvania attorneys to give some thought to succession planning – it is the smart and right thing to do. In turn, it could make a world of difference to your clients and the people with whom you choose to practice law.