

ATTORNEY SUCCESS(ION) PLANNING DOCUMENT

Supreme Court Rule 1.3 states: "A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment [5] to Rule 1.3 states that "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."

The following sample plan is a suggestion only and each sole practitioner, if using this sample plan, should tailor it to fit his or her unique circumstances. This document is not meant to offer legal advice.

RULE 1.3 Plan

This plan is established pursuant to Rule 1.3, comment(5) of the Illinois Rules of Professional Conduct of 2010.

To prevent neglect of client matters and in recognition of a lawyer's fundamental duty to protect a client's interest, the following plan for the unexpected is adopted:

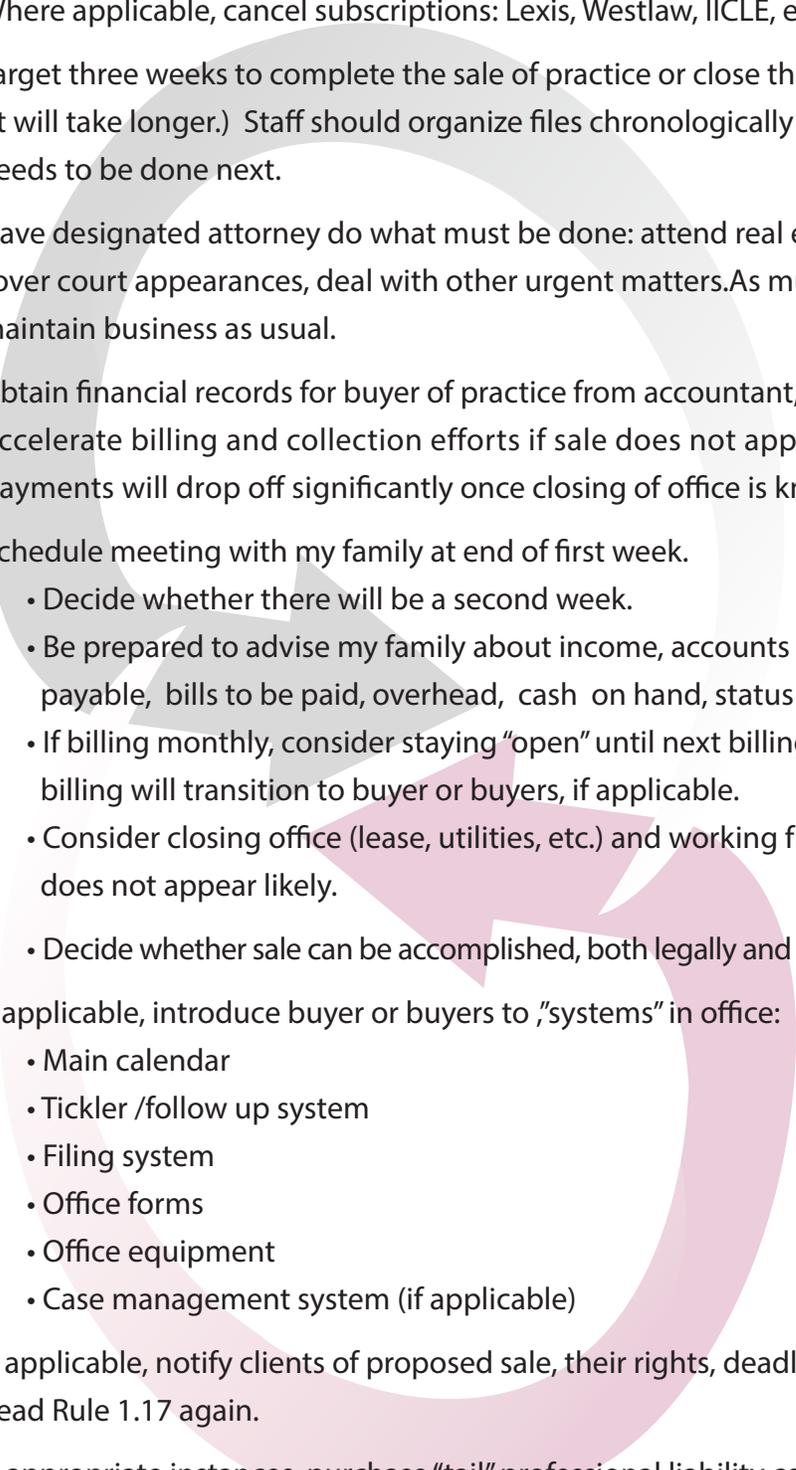
- A.** I have designated another attorney to manage and close or sell my practice in the event of my death, temporary or permanent disability, or impairment or incapacity. That attorney is _____ and that attorney may be contacted at _____.
- B.** My Attorney Registration and Disciplinary Commission Registration Number is _____.
- C.** I have a life insurance policy which will provide cash for the expense of operating my office until the practice is sold or closed. It is policy # _____ with _____ and has a face value of \$ _____.
The proceeds of the policy should be used to pay for the ordinary operational expenses of my office such as rent, employee salaries, utilities, insurance, etc.

- D.** My retainer agreements state that I have arranged for another attorney to manage or close my practice in the event I am unavailable or in the event of my death, temporary or permanent disability, or impairment or incapacity. The designated attorney is authorized to review client files, notify each client of my unavailability, death or disability, and determine whether there is a need for immediate protective action. The designated attorney shall be compensated as follows: _____
_____.
- E.** I employ an office manager who is familiar with my office procedures and who has a great deal of knowledge about the operation of my office. My office manager is _____
_____. My office manager works from home most of the time.
Telephone number is _____.
E-mail address is _____.
- F.** My accountant is _____ Telephone number is _____.
E-mail address is _____.
- G.** My premises liability insurance, worker's compensation insurance, notary bonds, etc. are all handled by _____. Telephone number is _____.
E-mail address is _____. *[List Separately As Indicated.]*
- H.** My time keeping and billing system uses QuickBooks [or as applicable] and is maintained by _____. If applicable, I have a case management program, titled _____, *(add relevant detail)*.
- I.** We maintain a "main" or central calendar located on my assistant's desk that contains every appointment and every court date, and every event that impacts the operation of the office (vacations, doctor and dentist appointments, etc.) If it is not on the main calendar, it is not scheduled. *[Or as applicable.]*
- J.** The files in my office have been opened numerically, with the oldest files having the lowest numbers and the next number sequentially being assigned to a new file. My assistant has a cross reference whereby open files are listed alphabetically by the client's last name as well as by file number. Open files are stored in filing cabinets located primarily in the legal assistant's or officer manger's offices. Closed files are stored in a store room in the basement of the building. The key to the store room is located in a drawer in the credenza in my office. Original client estate planning documents are stored in a filing cabinet located.
[Or as applicable.]
- K.** Our policy is to destroy clients' files after ten years (with appropriate exceptions).
[Or as applicable.]

- L.** My tickler or follow up system is a variation of the traditional “dual” calendaring system. No file can be put away without a date being entered on the file. I enter that file number on that date in a calendar I maintain. My assistant then enters the same file number on a calendar maintained by her. Ordinarily, files are not filed unless a follow up is calendared and a memo placed in the file regarding the next action that should be taken and noting any deadlines. *[Or as applicable.]*
- M.** Both my office manager and my assistant maintain a complete and current list of active clients, including their names, addresses, phone numbers and e-mail addresses. *[Or as applicable.]*
- N.** I have three business accounts. The first account, my trust account, is maintained by my office manager and all client funds, including unearned retainers, are deposited in that account. Pursuant to authority in our retainer agreements, earned fees and expenses may be paid out of that account. The second account is _____ identified as my “expense” account and that account is also maintained by my office manager and is used to pay usual bills such as utilities, payroll, taxes, etc. That account is funded by what is called my “attorney” account where all earned client fees are deposited, and from which fees or costs are sometimes advanced. I maintain the “attorney” account. The account number for my trust account is _____. The account number for my expense account is _____. And, the account number for my attorney account is _____. All of these accounts are established at _____ Bank in _____.
[Or as applicable]
- O.** My trust account and expense account ledgers are in the possession of my office manager. He/She maintains these accounts, balancing them monthly with the bank statements. He/She is an authorized signer on these accounts. _____, _____
_____ is also an authorized signer on these accounts. *[Or as applicable.]*
- P.** With regard to original documents of clients, it is our policy to keep as few as possible, to keep them separate in the client file, and to return the originals to the client as soon as possible and no later than the closing of the file. At the request of clients, we have kept some estate planning originals and all of those are located in one filing cabinet where they are stored alphabetically. *[Or as applicable.]*
- Q.** There are three separate, active computers in my office. My assistant’s computer contains most client documents and office forms. It is also home to almost all business e-mail correspondence. My office manager’s computer contains trust account records, and income and expense records, including the QuickBooks software. My computer contains mostly personal information but is also used by me to perform legal research and to receive a variety of “updates”. Computer passwords are in the possession of my assistant and my office manager,

both of whom have the password for my computer. [If applicable,] I have a network in my office and the name of the administrator is _____ and the administrator can be contacted at _____.

- R.** My assistant maintains our conflict checking system on her computer.
- S.** The Circuit in which I ordinarily practice mandates e-filing of all court documents. The name of my E-Filing Service Provider (EFSP) is _____. Telephone is _____.
- T.** In the event of an unplanned emergency, where I am unable to act, the following is a checklist. I direct my designated attorney and my staff to follow:
- (1) Always protect the client.**
 - (2)** Provide reciprocal notice: family to staff; staff to family.
 - (3)** Open the office as usual or stay open. This is critical.
 - (4)** Decide how staff will respond to telephone calls initially:
Attorney _____ is [ill or deceased]. Although this is a sad time, we want to assure you that your matter will be attended to and that your position in the matter will not be compromised.
(Be specific where possible, for example: *Attorney Jones will be attending your real estate closing/will be covering the next court appearance/will be reviewing your file and will contact you in the near future.*)
 - (5)** Review attorney's calendar chronologically, beginning with the current date and working out as time permits. Notify courts, clients regarding immediate hearings or appointments. Use a "script" somewhat similar to the above.
 - (6)** Begin reviewing ticklers/follow ups. Begin notifying other attorneys, judges, clients using similar "script". Staff should complete and place memos in files as they complete notices or re-schedule matters. Modify script as likelihood of sale or closing of practice develops.
 - (7)** If the attorney will not be back, identify and contact potential buyers. I recommend the following individuals as potential buyers of my practice:
_____.
 - (8)** Target one week to identify buyer or buyers of practice. Time is critical. The more time that passes, the lower the value of the practice. Be certain that potential buyer does a conflicts check.
 - (9)** Utilize an appropriate confidentiality agreement with any potential buyers.
 - (10)** Notify ARDC of status change.

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- (11) Identify files where I am named as registered agent (or similar) and arrange for a new agent (or similar).
- (12) Where applicable, cancel subscriptions: Lexis, Westlaw, IICLE, etc.
- (13) Target three weeks to complete the sale of practice or close the office. (It will take longer.) Staff should organize files chronologically based on what needs to be done next.
- (14) Have designated attorney do what must be done: attend real estate closings, cover court appearances, deal with other urgent matters. As much as possible, maintain business as usual.
- (15) Obtain financial records for buyer of practice from accountant, if applicable. Accelerate billing and collection efforts if sale does not appear feasible; payments will drop off significantly once closing of office is known.
- (16) Schedule meeting with my family at end of first week.
- Decide whether there will be a second week.
 - Be prepared to advise my family about income, accounts receivable, accounts payable, bills to be paid, overhead, cash on hand, status of possible sale.
 - If billing monthly, consider staying “open” until next billing cycle. Decide how billing will transition to buyer or buyers, if applicable.
 - Consider closing office (lease, utilities, etc.) and working from home if sale does not appear likely.
 - Decide whether sale can be accomplished, both legally and as a practical matter.
- (17) If applicable, introduce buyer or buyers to “systems” in office:
- Main calendar
 - Tickler /follow up system
 - Filing system
 - Office forms
 - Office equipment
 - Case management system (if applicable)
- (18) If applicable, notify clients of proposed sale, their rights, deadline to object. Read Rule 1.17 again.
- (19) In appropriate instances, purchase “tail” professional liability coverage. Schedule tax filings, assign responsibility.
- (20) Decide how long billing for fees will continue, if buyer or buyers will not handle; decide how it will be done (P.O. Box? Whether and when balance will be turned over to collection agency?).

(21) Create a calendar:

- ▶ **Week 1:** Notify courts, clients; handle immediate problems; identify probable buyer or buyers; begin reviewing all active files for “action” items;
- ▶ **Week 2:** Continue notifying courts, clients; continue review of all files; make sure payroll and other filing deadlines are observed and necessary reports filed; complete negotiations with the buyer or buyers, if applicable; send required notice to clients; prepare and file appropriate petition with court requesting entry of Order authorizing transfer of file to buyer or buyers when client cannot be given notice.
- ▶ **Week 3:** Continue notifying courts, clients; complete review of all “active” files for “action” items; do drafts of bills on existing files so that fees earned to date of death or disability can be determined and credited or billed; review all active files for inadvertent missing of deadlines, statutes of limitation, or other concerns. If applicable, transition to buyer or buyers.
- ▶ **Week 4:** Complete work necessary to complete sale of practice to buyer or buyers (if applicable) or close office; notify landlord (if applicable), utility companies, lessors of office equipment, and appropriate others of termination of practice.

(22) If sale, decide how matters that require action within the 90-day waiting period will be handled.

(23) If no sale, return all original client documents or property to clients.

(24) If no sale, decide who will retain indefinitely the records of all client names and last known contact information and deliver the information to that individual.

(25) If no sale, decide who will retain all financial records, trust account records and other property of clients or third parties relating to your practice for the recommended seven years after the representation is completed, and deliver the information to that individual.

(26) If no sale, arrange for storage of files not destroyed or transferred to new lawyer.

[Or as applicable.]

U. Identify other issues unique to the circumstances of the lawyer whose practice is being sold or closed and deal with those appropriately. (If a corporation or LLC, complete appropriate resolutions or other action.)

V. The first rule and the last rule is: Protect the client.