GETTING YOUR FIRM'S AFFAIRS IN ORDER

Succession Planning for Law Firms and Lawyers

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Martin Law Office LLC

Active Attorneys - by age

- Age 50-59 - 5,747
- Age 60-69 - 4,681
- Age 70-79 - 2,132
- Age 80-89 - 224
- Age 90+ - 16

By Type of Firm

- 5,620 are solo practitioners
- 4,845 are small firm attorneys
- 2,742 are medium firm attorneys
- 4,036 are large firm attorneys

Solos by the Number

- 1,547 of attorneys age 60-69 (37%)
- 933 of attorneys age 70-79 (49%)
- Also, 39% of solos do not have malpractice insurance

The ethics of it all

- Rule 1.1 - Duty of competent representation includes safeguarding clients' interests in the event of our death, disability, impairment, or incapacity. (ABA Formal Op. 92-369)
- Rule 1.3 - Duty of diligence
- Rule 1.15 - Safeguarding property of clients and third parties.
- Malpractice carrier may also require something

When would this even apply to me?

- Disability, incapacity, or impairment - temporary or permanent
- Death
- Vacation
- Disbarment or suspension
- Retirement

Issues from Temporary absence

1. Court dates
2. Client deadlines/ commitments
3. Incoming matters - pipeline
4. Keeping Clients
5. Keeping the business alive
6. Income
7. Trust Account
8. Employees
9. Office lease and expenses

Solutions when temporary

- Keep billing up to date
- File notes and info up to date
- Calendar management
- Reliable staff with knowledge of your systems and emergency contacts
- Cross-training - for multi-attorney firms

- Disability insurance
- Have a designated **Coverage Attorney** - could be a co-worker or for a solo it would be someone you have a specific agreement with
- Power of attorney - limited - for someone to access your finances - attorney for trust account
- Authorized signer on all accounts
- **Assisting Attorney** for solo

Issues from Permanent absence

1. Court dates
2. Client deadlines/ commitments
3. Getting value out of the firm
4. Trust account
6. Employees
7. Office lease and expenses
8. Avoiding litigation/bar complaints

Solutions when permanent

- Keep billing up to date
- File notes and info up to date
- Calendar management
- Reliable staff with knowledge of your systems and emergency contacts
- Cross-training - for multi-attorney firms

- Life insurance
- Buy-sell agreement
- Shareholder agreement
- In a small firm you should have a mechanism so that they have the ability to locate your passwords, your case info, client info, etc, as well as make sure multiple are able to sign on accounts

- Inventory Counsel
- Assisting Attorney

Coverage Attorney

- Hearings
- Client emergencies
- Staff emergencies
- Specific period of time or instance
- Limited in nature - no access to all files, all clients, finances, systems, etc.

Assisting Attorney

- Authority to run practice temporarily
- Authority to close your practice
- Likely has access to COLTAF account
- Formal documentation

Inventory Counsel

- Appointed by the Court on application of Office of Attorney Regulation
- Applicable when attorney has not done any succession planning
- Could be OARC staff attorney or volunteer attorney

- Attorney has:
  - Transferred to disability inactive status
  - Disappeared
  - Died
  - Suspended or disbarred
- No other responsible party capable of conducting the attorney’s affairs is known to exist

- C.R.C.P. 244.1 through 244.4 authorizes appointment of Inventory Counsel and defines the procedure for appointment
- C.R.C.P. 251.32(h) provides that Inventory Counsel is to review the attorney's client files and take steps necessary to protect the interests of the attorney and the clients.
- Disburse funds from COLTAF
- Computers, etc

Current Active Inventory Counsel Matters being handled by the Office of Attorney Regulation Counsel:

- Gerald R. Blixt – El Paso
- Weldon S. Caldbeck – Denver
- H. Christopher Clark - Boulder
- Thomas A. Clark – Douglas
- John DeBruyn – Denver
- Vincent Franco - Adams
- M. Jacqueline Gaithe – El Paso
- Michael L. Glaser - Denver
- Leta Holden - Denver
- Robert J. Hopp - Douglas
- Peter Larato – Jefferson
- Brett W. Martin - Jefferson
- Ralph (Rick) Martin – Boulder
- Rocco Santarelli III – Gunnison
- John C. Stewart - Denver
- Robert L. Terry – El Paso
- David K. Williams - Denver

HTTPS://COLORADOSUPREMECOURT.COM/COMPLAINTS/INVENTORY_COUNSEL.ASP

2020 Numbers

- $4,980.64 returned to clients from trust accounts
- $16,342.93 sent to Trust Account Foundation as unclaimed funds
- Filed 19 new petitions

Making your own plan

- Get yourself or your firm in Order
- Assisting Attorney for solos
- Get documents in place for solos and some small firms

Getting in order - Step 1

- Have a calendar system that is workable
  - Up to date
  - Accessible if you aren’t there
  - Staff in the know

Getting in order - Step 2

- Trust Account Management
  - Ledger with clear details on funds by client and matter
  - Can someone accurately return funds

Getting in order - Step 3

- Organized Client Files
  - Which files are open - file destruction
  - Are communications able to be located and reviewed
  - File contents
  - Can they tell what property you have of the client’s

Getting in order - Step 4

- Billing and Time entries
  - Are they current
  - Do you regularly invoice
  - Are your accounts reconciled

Getting in order - Step 5

- Access
  - Can they get access to your digital files, info, accounts, email, etc.
  - Is there a central location where you have stored all the key info to access

Getting in Order - Step 6

- Insurance
- Insurance
- Insurance

Getting in Order - Step 7

- Buy-sell agreement
- Shareholder agreement
- Other intra-firm agreements

Assisting Attorney

- If you want to designate who will be your Inventory Counsel
- If you want to avoid OARC being appointed
- Create a succession plan that includes an Assisting Attorney - can be simple or more complex

- Consider if you want the Assisting Attorney to:
  - Determine if you are disabled, impaired, or incapacitated
  - Represent you, your clients, or no one
    - Representing you and the clients can create conflicts if errors are found
  - Be paid for their work for your firm

The Documents

- Agreement to Close Practice
- Limited Power of Attorney
- HIPAA Release - limited
- Letter of Understanding - for 3rd party to provide POA to Assisting Attorney at certain time
- Authorized Signer paperwork

- Will or Trust provisions
- Updating your client Engagement Letter
- List of Contacts and Important Information
- Firm Procedure Manual

Help is available

- Fellow attorneys
- Office of Attorney Regulation
  - https://coloradosupremecourt.com/Current%20Lawyers/SuccessionPlanning.asp
  - PDF and Word

QUESTIONS?

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