

East Valley Bar Association Presentation

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Materials Prepared by Melinda M. Sloma Esq. and Tara L. Boedigheimer, MBA

A. CLE Succession Planning Outline:

Whether you are a seasoned attorney with a significant client base and are looking to sell your business in the coming years, or you are a young attorney just getting started and the idea of someone else taking over your practice seems like a million years from now—the best succession planning begins as early as possible. And although no one likes to think about the unfortunate possibility of a serious illness, disability or even death—the reality is: It happens. The better prepared you are for either a planned or unplanned transition, the more successful and less stressful it will be for everyone involved. We will begin with the worst-case “emergency” scenario, and then move to ideas for a longer-term transition which would ideally involve a sale or partial-sale of your practice.

B. Solo/Small Business Succession Planning:

Solo Firms:

Solo firms are unique in that those left to carry on initially are the staff members. While another attorney outside the firm may be designated to handle cases, ultimately the support staff are the individuals who possess the critical information on the day-to-day operation and who have in-depth knowledge of the clients and cases.

Important considerations for Solos:

Do you have at least one key person who has the ability/authorization to at least handle the following in the event of your death/disability/incapacity:

- Make bank deposits
- Run Payroll
- Handle immediate billing/collection matters for the firm
- Contact your Professional Liability Carrier to Inform them of what has happened

Other considerations:

- Does this person have a copy of your will/estate plan including the individual who has

Power of Attorney for your affairs?

- Do they know whom to contact in the event something should happen to you?
- Do they know the attorney/firm assigned to handle cases in your absence?
- Do you have a bank account set up with an emergency fund to cover immediate expenses? Does the individual responsible for the above have access/authorization to these funds?
- Do you have a calendaring system whereby all staff members can access critical information easily and subsequently provide this information to the individual(s) responsible for covering case? Because Solo firms are so closely tied to the personal situation of the owner, keeping your personal finances in good standing, along with any tax filing deadlines, etc., will greatly aid those left to handle issues.

C. Small Firms:

Small firms will benefit from many of the previously mentioned items applicable to Solo Firms, however Small Firms have the benefit of at least one or more attorneys in the firm and are immediately available to assist in the event of an emergency. That said, there is no guarantee those remaining attorneys will be prepared and/or feel capable of handling all cases that may need immediate attention. You can minimize this by holding weekly meetings with all staff members and 'cross train' attorneys to handle a variety of cases, even if they are not the primary attorney on the case. Familiarity with each case by another attorney will go a long way in mitigating the gap—whether they take over the matter, or, another attorney does.

Other considerations:

- See above considerations for Solo Firms, but also:
- Have you discussed with your staff, and in particular, your other attorney/attorneys how things should be handled in the event of an emergency?
- Do your staff members know the status of all cases and whom to call and/or which attorney is assigned to each case if something were to happen to you?
- Do you have an on-going complete and thorough case list that is updated weekly and reviewed by the entire staff?
- Are calendaring/docketing items reviewed and assignments provided for associate/partner attorneys in the event someone is sick/unavailable
- Have you and your partner/associate attorneys discussed the financial status of the firm and how long operations could continue in the event of your death/incapacity vs. a serious illness or longer-term absence?

D. A Better Scenario----Selling your Business/Planned (non-emergency) Succession:

This is a much more pleasant idea/transition, however still tough to navigate and comes with additional challenges that the luxury of time can bring. Are you a Solo selling your business outright or are you adding a partner or another attorney to your firm with the idea they will take-over and eventually buy out all or part of the firm? Are you a Small Firm with several interested parties who currently work for you but maybe you feel only one of them has the

characteristics suitable to run a business? Regardless, some of the same considerations apply:

- Create a timeframe for the transition—a year? Five years? Six months? Only you will know the magic number. Keep in mind this will likely change as things progress.
- Will you stay on and gradually transition out of the firm? Keep working indefinitely on specific cases? Sell the whole thing and move to a tropical island? Knowing the level of involvement you want (or need) to maintain will impact how and when you make this transition significantly.
- Training/Mentoring/Evolving your Successor(s)—depending on the situation, this is critical.
Some firms could not survive without this step—others may have someone who wants to write you a check and run the firm ‘their way.’ The most successful transitions are typically slower and keep the primary attorney involved for a longer period of time, however, each case is obviously different.
- Assisting in client transition and business transition. Again, typically the involvement of the primary attorney is critical here. Even if the Successor Attorney has a large number of clients/cases he/she is bringing with them, transitioning the existing clients/staff/etc... will take a significant amount of time and energy to be successful.
- Plan for the unplanned. Things will go wrong and the plan will evolve and change. This is to be expected. Instead of seeing these things as an opportunity to re-examine/re-evaluate the process will be helpful as you make your way through the process.

And Finally... Enjoy the payoff of a successful plan! Being prepared and allowing time for a well thought-out and well executed transition will have many benefits for everyone. It can help insure better success for the buyer as well as the attorney transitioning out of the firm. It also provides a chance for the role(s) each party would like to assume in the transition and a successful personal, professional and financial outcome for everyone involved.

E. Relevant Ethical Rules:

Arizona Rule of Supreme Court 41(i) (updated on January 1, 2016) Re: Succession Planning

“The duties and obligations of members shall be ... (i) To protect current and former client interests by planning for the lawyer’s termination of or inability to continue a law practice, either temporarily or permanently.”

Comment (2) (amended in 2007 and 2016) requires that solos have a succession plan and are required “to protect, transfer and dispose of client files, property or other client-related materials.”

ER 1.17. Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has

- been sold, in the geographic area(s) in which the practice has been conducted;
- (b) The entire practice, or the entire area of 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.

F. Resources:

<http://www.azbar.org/professionaldevelopment/practice20/successionplanning/>

State Bar of Arizona, Lawyer Assistance Programs at 602.340.7332

****Disclaimer:** These materials are meant to provide a summary of the subject matter based on the authors' own experience and is not meant to be comprehensive on the issue of succession planning, or, the sale of a law practice**