

Protecting Your Clients by Succession Planning

by John J. Brandt

No attorney likes to imagine his or her disability or death, but the solo practitioner who has not planned leaves a legacy of confusion. What will happen to your clients?

Frequently, the Virginia State Bar files for the appointment of a receiver to attend to the client's affairs—resulting in delay for the client and expense for the lawyer's estate.

The bar has published *Planning Ahead: Protecting Your Client's Interests in the Event of Your Disability or Death*, by Leslie A.T. Haley of the ethics counsel's office. This pamphlet reminds all of us—particularly the solo practitioner—to arrange now for events that we cannot predict or control.

Have you disclosed your computer's password to your secretary or your spouse? Should you become disabled, access to clients' files will depend on hiring a computer expert to retrieve important information, unless you have given your password to another.

Proper planning should flow from each lawyer's inherent desire to protect his or her client. But if it takes a financial incentive to encourage Virginia lawyers, consider that the bar budgets approximately two hundred thousand dollars annually of your bar dues to cover the expenses of formal receiverships filed under §54.1-3900.01 *Va. Code* (1950), as amended. Many of these funds wind up the practices of Virginia lawyers who have misappropriated client funds or engaged in other acts of malfeasance that require the bar to step in and administer their trust accounts. Because these lawyers had not made arrangements with another attorney to assist in the continuation of their clients' representations, or to assist in finding other attorneys to assure their representations, it costs you and me precious funds. In addition, the costs incurred by a receivership can be assessed against the estate of the deceased or disabled attorney under the foregoing provision:

[D. Any attorney so appointed shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees for services rendered and to a recovery of necessary costs incurred. If there are not sufficient nontrust funds to pay the award, then the shortfall shall be paid by the Virginia State Bar, to the extent that the State Bar has funds available **and the State Bar shall have a claim against the subject attorney or his estate for the amount paid.**] (Emphasis added.)



Therefore, the spouse who remains and the children are deprived of the lawyer's estate because money has gone to pay receivership expenses.

Please go to the state bar Web site at www.vsb.org and click on "Conferences" and select the Senior Lawyer Conference's publications, including Leslie Haley's excellent pamphlet on succession planning. Then review a sample agreement, a special power of attorney and an executor provision for the lawyer's will. These documents are all available for free and should be utilized by all solo practitioners.

If you are interested and willing to plan for the future, the chances are excellent that another attorney will work with you to prepare respective attorney agreements regarding each other's law practice. Thus, you have solved two problems: yours and your attorney friends'. ☺

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