

Attorneys Urged to Have Contingency Plan

Do you know what happens to a solo practitioner's clients when the lawyer dies unexpectedly or is rendered incapable of continuing his or her practice without planning for such a contingency?

Who covers the cases, insures that necessary filings are made in time and protects clients' interests?

No one.

When tragedy strikes an attorney, often there is no safety net in place to protect clients' interests. Once the Virginia State Bar learns that an attorney has died or been disabled, the bar can petition a circuit court to appoint a receiver to inventory the attorney's practice, distribute client funds and take other necessary action under Virginia Code § 54.1-3900.01. Unfortunately, the bar may not learn of an attorney's death or disability until it is too late to protect clients' interests. In the meantime, statutes of limitation can expire and filing deadlines pass. In fact, these unfortunate events could be the first notice that the Virginia State Bar has of an attorney's death or disability.

Once another attorney is appointed to be a receiver, the work begins. The practice must be inventoried. Files must be reviewed to insure that time deadlines are met, and clients notified of the need to seek new counsel. Client funds in trust accounts must be distributed to the proper owners. After clients have been paid, the attorney appointed to serve as receiver petitions the circuit court for payment of fees incurred in winding up the practice. If there are insufficient funds to pay the award, then the Virginia State Bar must cover the shortfall, and the bar has a claim against the subject attorney or his/her estate for the amount paid. The amounts the bar pays receivers are significant. This year \$175,000 is budgeted for receivership expenses and fees. This sum is funded entirely from membership dues, and the budgeted amount may not be enough.

Over the past several years, the number of receiverships has grown significantly. The Standing Committee on Lawyer Discipline (COLD) believes that if more attorneys were made aware of the dangers of practicing without some plan in place for the continuation or wind-down of their practices, the number of receiverships would be drastically reduced. The Senior Lawyers Section, the General Practice Section, and the Conference of Local Bars plan to launch an informational campaign on this topic in the near future.

On behalf of the Standing Committee on Lawyer Discipline, I urge you to implement a contingency plan for your practice. We owe it to those whom we serve to insure that neither our actions, nor our failure to act, jeopardize their interests.

John C. Johnson
Chair, Standing Committee on Lawyer Discipline