

# Protecting Lawyers' and Clients' Interests in the Event of the Lawyers' Disability, Death, or Other Disaster

by Frank Overton Brown Jr.



The Conservatory at the Lewis Ginter Botanical Garden.

On behalf of the Senior Lawyers Conference of the Virginia State Bar, I want to thank the lawyers who have “gotten their affairs in order” and who have developed plans to protect their and their clients’ interests in the event of the lawyer’s disability, death, or other disaster. In the vernacular, such planning is sometimes variously referred to, in whole or in part, as contingency planning, succession planning, emergency planning, backup attorney planning, disaster planning, or client protection planning.

I also express appreciation to all of the volunteers of the Virginia State Bar and to the State Bar staff who provide programs, education, and support to the members of the VSB, all contributing to the successful self-regulating nature of the legal profession in Virginia.

For more than 15 years, I have had the honor and the pleasure to present to lawyers throughout the Commonwealth of Virginia an Ethics CLE Program entitled, *Protecting Lawyers’ and Clients’ Interests in the Event of the Lawyers’ Disability, Death, or Other Disaster*. This program is presented as a one hour, one and one-half hour, or two-hour program, with full ethics credit. To date, this CLE has been presented in Abingdon, Alexandria, Arlington, Big Stone Gap, Boydton, Covington, Charlottesville, Danville, Fairfax, Farmville, Fredericksburg, Gloucester, Hanover County, Harrisonburg, Henrico, Irvington, Keysville, Leesburg, Luray, Manassas, Mclean, Melfa, Norfolk, Richmond, Roanoke, Salem, Smyth County, Stratford Hall, Virginia Beach, Warsaw, Williamsburg, and Winchester. It has also been presented as part of the Supreme Court of Virginia and Conference of Local and Specialty Bar Association’s Solo and Small-Firm Practitioner Conferences. This CLE program presents ethical background, practical advice,

forms, and checklists for use by lawyers in developing their own contingency plans.

In presenting the CLE across our great commonwealth, and in getting to know members of the bar and the judiciary throughout Virginia, I have learned that among the important common threads which make up the strength of the practice of law in Virginia are professionalism, ethical behavior, civility, respect, collegiality, humility, and gratitude. Whether you are in Big Stone Gap, or in Melfa, or in Boydton, or in Winchester, lawyers really care about each other, and lawyers really care about their clients.

Every day there are new and different challenges which lawyers face that require new and different protective actions. But, as a result of heightened awareness about the actions which lawyers need to take to protect lawyers' and clients' interests in the event of disability, death, or other disaster, and as a result of lawyers making their plans and keeping them up-to-date, the overall number of receivership actions brought by the Virginia State Bar and the dollar amount of bar funds spent each fiscal year for receiverships have shown a consistent downward trend.

In the preamble to the Principles of Professionalism endorsed by the Supreme Court of Virginia, we are reminded that "In their very first professional act, all Virginia lawyers pledge to demean themselves professionally and courteously," and I believe that the vast majority of lawyers demonstrate adherence to that pledge every day.

According to the *Preamble: A Lawyer's Responsibilities to the Virginia State Bar Professional Guidelines*, "Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and legal profession, and to exemplify the legal profession's ideal of public service." Ethical behavior and professionalism are demonstrated daily by Virginia lawyers in their relations with other lawyers, the judiciary, and the public.

Someone once observed that the coin in which we as professionals are really paid

is in the respect of those whom we respect — respect for the bench, respect for the bar, and respect for those whom we serve. This model of civility and mutual respect, when combined with professionalism and ethical behavior, augmented by collegiality, humility and gratitude (humility and gratitude being natural companions to each other) provides the strength and concern among members of the bar. Like in serving as a "backup attorney," or helping our colleagues, or making the appropriate referrals to Virginia Lawyers Helping Lawyers, if necessary, those things enable us to be mutually supportive of other members of the bar as they do planning to protect their own and their clients' interests.

If an attorney dies or becomes disabled without a contingency plan in place, the Virginia State Bar may be required to petition the Circuit Court to appoint a receiver to take control of and inventory the practice, and to take the necessary statutory actions to protect the clients' interests. If an attorney has a contingency plan in place, such action by the VSB and the concomitant costs to the VSB can be avoided.

If your local bar association is interested in having *Protecting Lawyers' and Clients' Interests in the Event of the Lawyers' Disability, Death or Other Disaster* presented at no charge, please call SLC Liaison Stephanie Blanton at (804) 775-0576, or Frank O. Brown Jr. at (804) 673-7545.

Thank you again, and keep up the good work on behalf of yourself, your clients, and the legal profession.



**Frank Overton Brown Jr.** is in private practice in the Richmond metropolitan area and concentrates his practice in the areas of wills, trusts, estate planning, estate and trust administration, and related tax matters. He is a member and past chair of the Virginia State Bar Senior Lawyers Conference and has served on the Virginia State Bar Council. He is a fellow of the Virginia Law Foundation and of the American College of Trust and Estate Counsel. He is a recipient of the Virginia State Bar Tradition of Excellence Award. He is co-founder of the University of Richmond Annual Estate Planning Seminar, which will be held for the 45th time on May 11, 2017.