
Succession Planning for Attorneys: A Systematic Approach to Ethical Case Transfers

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Topic Overview

- Model Rules of Professional Conduct
- Model Rules for Lawyer Disciplinary Enforcement



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THE TEN COMMANDMENTS OF SUCCESSION PLANNING



- How many of you...
 - Are solo practitioners?
 - Have 2-3 attorneys in office?
 - Advise business/farm clients to have some sort of succession plan in place?
 - Work with clients to update succession plans?
- Now how many can say you follow your own advice, and have a plan in place that would satisfy what you recommend to clients?



Mark 6:4

Jesus said to them, “A prophet is not without honor except in his hometown and among his own relatives and in his own household.”

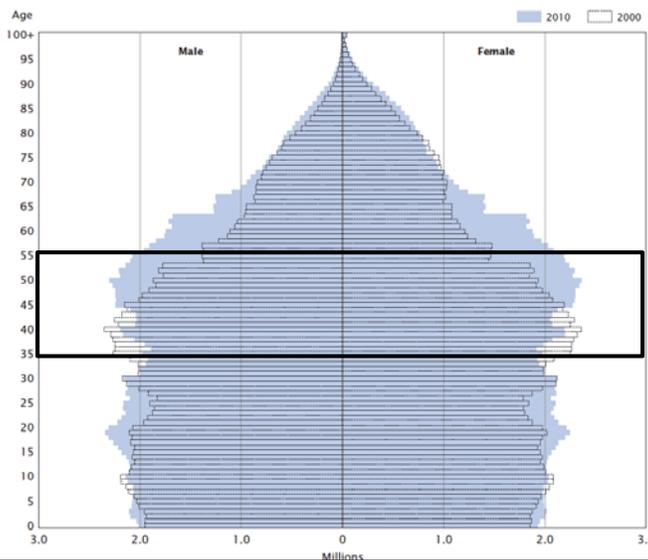


I.
RECOGNIZE THAT THY
MORTAL DAYS ARE
NUMBERED AND
FLEETING, AND THAT
MUCH IN THIS WORLD
DEPENDS UPON THEE.



Overall Population Age Distribution

Source: U.S. Bureau of the Census, Age and Sex Distribution 2010 Census







Fugit inreparabile tempus



Critical estate planning documents

- Guardian nomination for minor children
- Beneficiary designations
- Durable (springing?) powers of attorney
 - Business
 - Healthcare
- Advanced directive for health care
- Will
- Trust (?)
- Life insurance (?)



**II.
THOU SHALT BIND THE
DISCIPLINARY RULES OF
PROFESSIONAL CONDUCT
CONTINUALLY UPON THY
HEART AND TIE THEM
AROUND YOUR NECK.**



MRLDE 27 and 28

- Triggered by death, resignation, inactivity, disbarment, or suspension
- Requires notice to clients
- Allows others to file for “custodianship” of the practice



BUT...

What if your client had already consented to the assignment of the case to another attorney in the event of your death or disability?



Let's count 'em down,
but let's start at MRPC 1.16

“A lawyer shall not represent a client, or, where representation has commenced, shall withdraw... if the lawyer's physical, mental, or psychological condition materially impairs the lawyer's fitness to represent the client.”



And now, on with the countdown

1.1, 1.3:

Competent and diligent
representation

1.2: Scope and objectives of
representation



And now, on with the countdown

1.4: Communication - notice

- Possibility of a circumstance triggering the activation of a successor attorney or the transfer of a portion or all of the attorneys practice.
- Client's right to retain other counsel or take possession of their file.
- Identity of the successor or acquiring practice and their contact information.



And now, on with the countdown

1.4: Communication - notice

- The location of the client's file and when it will be available for retrieval, that a written receipt will be required, and that in the case of the sale or transfer of a practice, the selling lawyer is entitled to make and retain copies of the file at the selling lawyer's expense.



And now, on with the countdown

1.4: Communication - notice

- The intent of the transferring lawyer to handle funds on deposit in his or her IOLTA or other client trust account and any other client property by transferring them either to the acquiring lawyer, who will be responsible for such funds and property, or to the client, if the acquiring lawyer's representation is not accepted by the client.



And now, on with the countdown

1.4: Communication - notice

- Whether the acquiring lawyer intends to represent the client on the same basis as that between the transferring lawyer and the client or the acquiring lawyer intends to alter the terms of the engagement in the future (see TDRPC 1.02 above).
- The transferring lawyer's and acquiring lawyer's intent to presume the client's consent to the transfer of the client's file if the client does not take any action or does not otherwise object within a specified time of receipt of the notice.



And now, on with the countdown

1.5: Fees

- Any change in fees should be communicated to the client
- Selling individual matters (rather than the practice) looks a lot like a referral fee without any continuing responsibility for the case, and that's bad



And now, on with the countdown

1.6: Confidentiality

- Underscores need for language in engagement letter; else, have to go back to clients for consent
- Poses challenges for current attorney and successor (especially as successor transfers matters)



And now, on with the countdown

1.7 - 1.10: Conflicts

- Try to avoid 'em. If you can't avoid 'em, handle 'em ethically
- Bear in mind the potential conflicts when selecting a successor



And now, on with the countdown

1.15: Safekeeping of property

- How will your successor gain access to property in your possession?
- Does your successor have the means of effectively safekeeping the property?
- How can clients receive it back?



And now, on with the countdown

5.6: Restrictions on right to practice

- Careful, careful
- Obviate the need with a true succession plan



And now, on with the countdown

7.3: Barratry



**III.
THOU SHALT SURVEY ALL
THAT IS AROUND THEE.**



• B

• A



**IV.
BE THOU DILIGENT TO
KNOW THE STATE OF THY
DOCKETS, AND LOOK
WELL TO THY FILES.**





**V.
STORE UP KEYS, PASSWORDS,
ACCOUNT NUMBERS AND OTHER
ACCESS TOOLS, NOT WHERE RUST
AND DATA DEGRADATION DO TH
CORRUPT AND HACKERS MAY
BREAK THROUGH AND STEAL,
BUT WHERE SUCCESSORS MAY
REACH THEM READILY.**





**VI.
GATHER THEE CONSENT
FROM THY CLIENTS FOR A
SUCCESSOR ATTORNEY.**



**VII.
AT A MINIMUM,
THOU SHALT HAVE A
SUCCESSOR ATTORNEY**



The "hit by a _____" plan



Successor attorney agreement and tasks

- Reviewing files for pending deadlines
- Obtain extensions in litigation matters
- Contact clients about returning/transferring files
- Wind up financial affairs
- Inform the court and others who need to know of the closure of your practice
- Collect fees owed to the original attorney
- Return unearned fees



**VIII.
AND YET SHEW I UNTO
YOU A STILL MORE
EXCELLENT WAY: HAVE A
TRUE SUCCESSOR.**



G1	30%
G2	12%
G3	3%
G4	



No estate plan

Insufficient capitalization

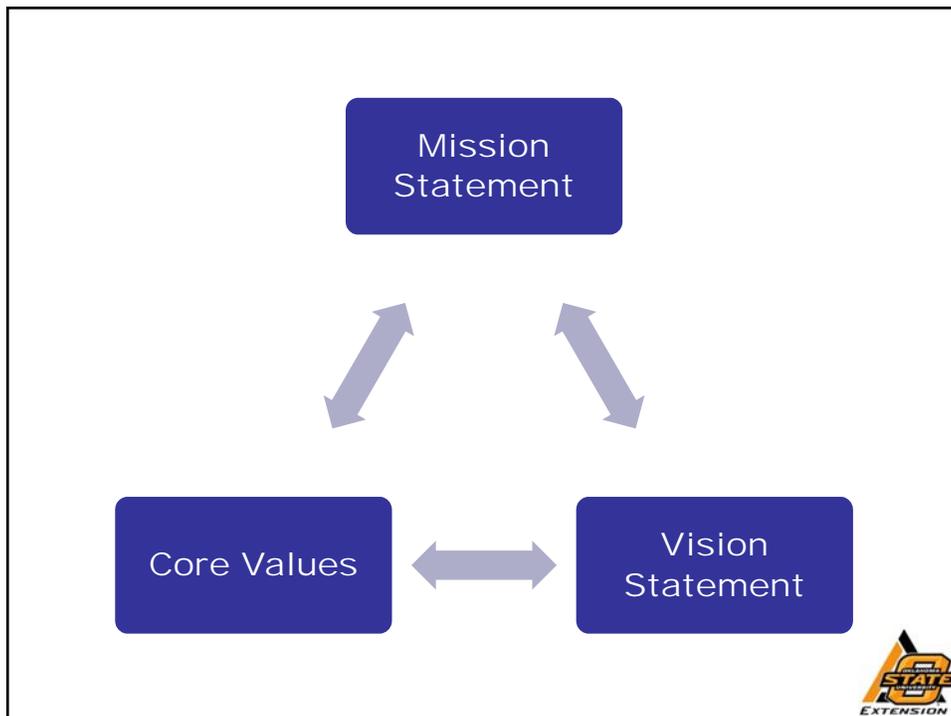
Failure to prepare next generation

Source: Spafford, 2006



Potential successors

- The associate



Potential successors

- The associate
- The firm
- Bring on a new experienced (perhaps slightly younger) partner
- Merge with another firm
- Join a firm
- Sell the firm



**IX.
THOU SHALT PRESERVE A
MEANINGFUL ROLE FOR
THYSELF.**



The Ballad of Bill and the Gator



X.
WHERE THERE IS NO COUNSEL,
THE PEOPLE FALL;
BUT IN THE MULTITUDE OF
COUNSELORS, THERE IS SAFETY.



Leonid and lawyers



VLADISLAV ROGOZOV



Don't go it alone



**COROLLARY:
THOU SHALT HAVE TRUSTED
ADVISORS WHO SHALL SPEAK
UNTO THEE THE TRUTH,
AND SHALL NOT SPEAK UNTO
THEE
THE LEAVINGS
OF THE BULL.**

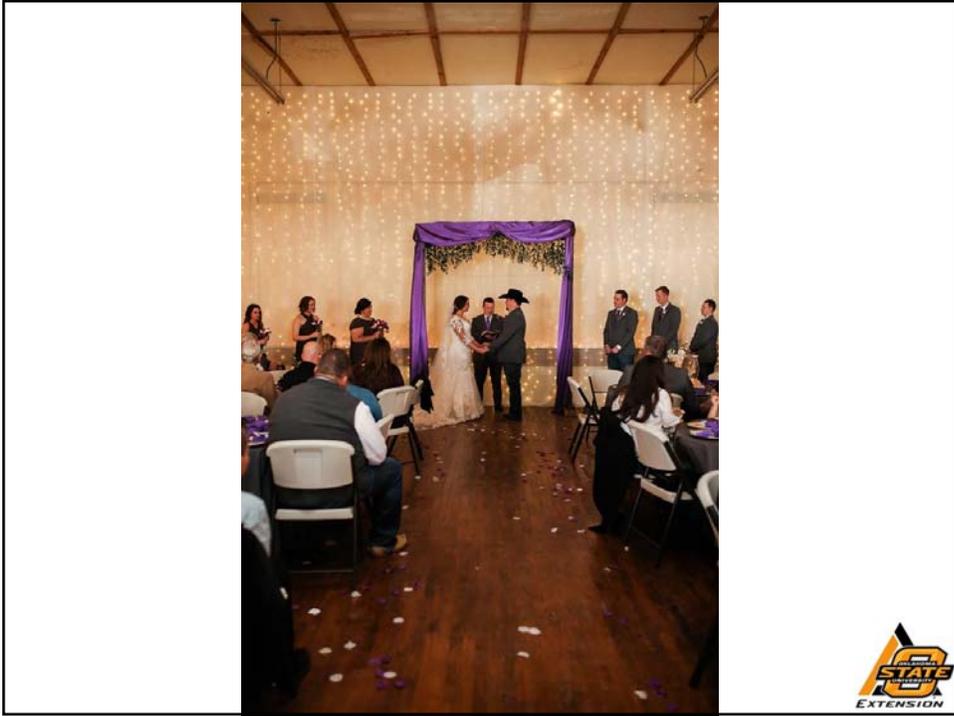




Don't go it alone, and don't stop









THANKS!

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