

# PLANNING FOR YOUR RETIREMENT, DEATH OR DISABILITY



By Jordan Galve, JD

Ordinarily when we as lawyers prepare for retirement, we make meticulous plans regarding how best to wind down our practices and transfer our existing matters so that our clients have as seamless a transition as possible. However, when it comes to more unforeseen events like death and disability, few of us have comprehensive contingency plans.

But we should. Both the rules of professional responsibility and our fiduciary responsibilities require us to ensure clients' interests are protected even in these types of unanticipated situations. And the client should never be disadvantaged by a lawyer's failure to plan for such common life events. Although we rarely can predict the time and place of our own professional incapacity, we can and should anticipate that incapacity can occur at any time.

The need for such plans is even more acute for those of us who

practice in small and solo firms, where the failure to plan can be extremely detrimental to our clients and those left behind to pick up the pieces. Clients can be left without an attorney in pending litigation or business negotiations, with looming (or worse, unknown) deadlines. The client may have already paid a retainer and have no funds to hire a replacement lawyer, or may be up against an impossibly short limitations period. Our docketing and computer systems may be set up to be inaccessible to anyone other than us. In such cases, our family and friends may be left not only to grieve, but also to try to sort out the mess of legal matters, client needs, case files, financial problems and impending deadlines we've left behind—often with no idea what to do. And, in a worst case scenario, the failure to plan could expose an attorney or his or her estate to an ethics complaint or a malpractice claim. In contrast, with a good plan in place, clients can be notified, deadlines met, funds and property belonging

to clients returned promptly, client files protected, and office bookkeeping records adequately maintained.

Your plan should be in writing, and should always provide for the designation of a backup attorney. The backup attorney, upon your retirement or incapacity, would primarily be responsible for notifying your clients, reviewing your client files, and either taking over the cases or transferring them to other attorneys. One way to designate a backup attorney is to execute a contract with detailed provisions, including a limited power of attorney or an authorization and consent form to close or manage a law practice. If you are operating as a professional corporation, resolutions may be required authorizing you, as sole shareholder and director, to appoint another lawyer to manage or close your practice. For smaller firms, engagement letters should include notice of use of a designated backup attorney as well as a requirement that the client consent to this

contingency in advance.

After you have designated a backup attorney, it is important to discuss your contingency plan with trusted family members and friends, as well as your designated backup attorney and your key office staff. You should also prepare detailed written instructions for use by these people in the event of unanticipated events affecting your practice. These written instructions should contain general information about your plans, as well as certain authorizations such as those needed to: (1) release your medical records if required to determine your incapacity; (2) provide all relevant people with notice of closure of your law practice (such as clients, the court, opposing counsel); (3) allow your backup attorney to contact your clients, take over their cases, and/or transfer their files; (4) obtain extensions of time in pending matters; and (5) close your law practice.

If you are a lawyer in a medium or large sized law firm, planning for retirement, death, or disability is likely simpler, but a detailed plan should still be in place. Written procedures should be implemented detailing what actions are needed in the event of any lawyer's incapacity for any reason, including notification of clients, the court, and opposing counsel, as well as ensuring that all of the impending deadlines on that lawyer's calendar are being handled by other lawyers in the firm. Special consideration should be made with respect to the incapacity of any attorney who is a managing partner, or who controls a significant portion of the firm's business.

Finally, to learn more about planning for your retirement, death, or disability, contact your local or state bar association and ask about any available resources.



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- As we all know, cybersecurity is a topic of great concern today. One easy change that you can make to help guard against risks is to ensure that you have complex passwords that are changed frequently. Also, have a different password for each program.