

Spring Cleaning for Lawyers: Protect Your Clients Through Planning

Spring is a great time to refocus on protecting clients' interests, including through succession planning and client file lifecycle management.

BY BRENT J. HOEFT

The changing seasons can remind lawyers to undertake a spring cleaning for their law practices. This can be an ideal time to refocus on protecting clients' interests in two crucial areas: succession planning and client file lifecycle management.

Lawyer Succession Planning

Succession planning is crucial for all lawyers, regardless of whether they are solo practitioners or work with firms. The goal is to prepare for the future and ensure that the individual lawyer's clients and law practice are taken care of when the lawyer retires or an emergency occurs.

The first step is to understand what succession planning entails and recognize its importance. It is not merely about choosing a successor but also about the seamless transition of responsibilities, securing client rights, ensuring continuity for clients, and fulfilling financial and legal obligations.

Most often when lawyers hear or read the term "succession planning," they think about a law firm giving ownership to new partners, a retiring solo practitioner transferring clients or the practice to another attorney, or the sale or merger of a law practice. This part of succession planning is important to ensure a smooth transition for retiring attorneys and longevity of a law firm, but it is not the only aspect of succession that lawyers must consider.

Succession planning needs to be done not only for when things go as expected but also to prepare for an unexpected death, illness, disability, or other event that results in the attorney's unavailability. All attorneys in private practice should plan for unexpected events to ensure that clients' interests are protected and that the law practice remains viable. Failing to

plan can be a source of great stress to clients, family members, heirs, and employees.

Solo attorneys should give particular attention to planning for unexpected events so that clients know who to call about their matter if their attorney suddenly becomes unavailable. The Wisconsin ethics rules suggest that diligent representation of clients includes this type of planning. Specifically, SCR 20:1.3 Diligence, ABA Comment [5] states that "to prevent neglect of client matters in the event of a sole practitioner's death or disability, *the duty of diligence may require that each sole practitioner prepare a plan*, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action."¹ (Emphasis added.)



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Steps in the Succession Planning Process

Step One: Identify and Register a Successor Attorney. The first step in this planning process is choosing a successor attorney, referred to in some resources as the “outsider attorney” and here as the “backup attorney,”² to temporarily come into the planning attorney’s practice to oversee the management of client matters and protection of client interests for however much time is necessary. The planning attorney should ask the backup attorney whether they agree to undertake the responsibilities of being a successor. Once the backup attorney has agreed to take on such responsibilities, then the planning attorney should register the backup attorney as a successor attorney within the planning attorney’s member profile with the State Bar of Wisconsin. By registering with the State Bar, should the need arise clients, judges, opposing

counsel, and other relevant parties can contact the State Bar to access the name of the registered successor attorney. Information and instructions on how to register a successor can be found on the Succession Resources page of the State Bar’s website.³

Step Two: Add Relevant Provisions to Estate Planning and Power of Attorney Documents. Next, the planning attorney should make sure that the proper provisions are included in the attorney’s estate plan and power of attorney documents to provide the successor attorney with the power and authority to act in coordination with the personal attorney-in-fact or personal representative of the estate. A great resource to assist with this planning is *After All, You Are Only Human: The Solo Practitioner’s Handbook for Disability and Death*, which provides guidance, provisions, and forms.⁴ In addition to the proper forms and authority, the planning attorney must also ensure that the successor attorney has the necessary information and access to computers, accounts, and client files so that the successor attorney can assess the practice, set priorities, and notify clients, courts, and other individuals and entities.

As with any plan, a succession plan should not be static. Regular reviews and updates are essential to accommodate changes within the lawyer’s practice and personal life. Preparing potential successor attorneys ensures readiness and a smooth transition for all involved. By proactively selecting and registering a successor attorney, you are taking important steps to secure the future of your practice. You will have peace of mind knowing that your clients will be in good hands, your colleagues supported, and your family protected in the event of unforeseen circumstances.

Client File Lifecycle Management

Another important practice management activity for lawyers is to organize client files. Having a client file policy promotes efficiency and accessibility and

reduces security risks through the proper management, retention, and disposal of electronic files and storage devices.

Much too often, law firms opt to keep everything rather than deal with what can seem like a daunting task of figuring out which client files to keep and for how long. Proper retention of client files is important both as a duty to clients and for the lawyer to be able to defend against any potential malpractice claims.

However, improper retention, storage, and disposal of confidential information can result in a security incident. Improperly disposing of confidential information can expose the information to bad actors, and unnecessarily retaining and storing electronic data creates greater risk of exposure if the lawyer’s or firm’s computer system is hacked. Having a written policy addressing client file lifecycle management can reduce these risks.

So, what should be considered in connection with your client file lifecycle management?

Step One: Develop a File Retention Policy. Some areas to address in such a policy are the following:

- How will original documents be returned to the client?
- Will any physical copies be retained, and if yes, for how long?
- If physical copies will be converted into electronic copies, how long before the physical copies are destroyed?
- How long will the firm retain electronic copies of client files?
- How can clients obtain copies of their files?

The question I hear most often is how long client files should be retained. The answer is – it depends. There is not one specific number of years. Wisconsin Formal Ethics Opinion EF-17-01 advises that client files should be retained for at least six years.⁷ But the opinion goes on to clarify that this six-year recommendation is “a floor, not a ceiling” and that certain circumstances of some clients and certain files, “such as files involving claims of minor children, estate

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planning, and certain tax matters,” may require that files be kept for longer than six years. Lawyers and law firms must determine if the six-year minimum is sufficient for their practice.

Step Two: Give Clients Notice of File Retention Policy. The file is the client’s property so notice of how that property is handled is required.⁵ The best time to do this is at the beginning of representation, by including a provision within the representation agreement or providing a separate file retention policy notice document along with the representation agreement.⁶ Another good time to remind clients of this policy is when closing a matter. Include with the closing letter a reminder of the firm’s file retention policy and clear instructions on how to obtain a copy of the file and original documents.

Retention and Destruction – A Matter of Security

One major concern about a firm indefinitely retaining electronic copies of client files is the increased security risk this creates. For instance, if a ransomware attack occurs, would every file of every client the firm has ever represented be at risk? If so, steps should be taken to reduce the amount of information that is at risk.

Those in charge of providing data security must always walk a fine line between accessibility and security. Access and security are inversely related. So, the more access granted, the less secure that data becomes. The less information that is accessible and exposed over the

internet, the smaller the attack surface. Reducing the number of accessible electronic files minimizes the risk of exposure. If a firm keeps all electronic files of every client ever represented equally accessible, that firm is unnecessarily increasing its risk of exposure in the event of a security breach. Therefore, lawyers should take steps to routinely assess electronic files to determine the point in the file lifecycle at which each file belongs and assign the corresponding access authorizations to those files.

I recommend categorizing electronic files by each file’s position in the file retention lifecycle. Ongoing and open client matters require the most access. Closed files that are within the retention period should be accessible but do not need to be as available as open client files. I recommend that closed files be stored off network and that they be backed up in more than one location using more than one storage media. For example, there could be a copy of those closed files on a detached external storage device off site in a secure location and another copy could be backed up to the cloud. Once these closed files age out beyond the firm’s file retention period, then the files should be deleted from the backups. Additionally, each of these categories of the file lifecycle should also have limitations on who in the law firm has access authorization. Not everyone in the firm needs access to all files during the file lifecycle. Determining who needs to have access to files and at which

stage of the file lifecycle is an important access control that also minimizes risk of exposure. To effectively manage this file lifecycle and authorizations, I recommend revisiting these files at least annually to reallocate them. That reminder does not have to be in the spring; pick the time of year that is best for your practice to devote time to this task.

Finally, when the time comes to get rid of electronic devices that could potentially contain client information, dispose of the devices securely. Hard drives of old computers, mobile devices, and any external storage devices should be securely erased with software⁸ before they are sold or donated, or if being thrown away or recycled, taking the additional step of physically destroying the drive before doing so.⁹ Do not overlook other office hardware such as copiers and fax machines; these devices usually have limited memory but nonetheless could contain client information.

Conclusion

These important practice management tasks are not “set it and forget it;” they should be revisited on a regular basis. The tasks take some initial effort, but the peace of mind, increased security, and operational efficiency they bring will make the effort worthwhile. Take this opportunity to safeguard your practice’s future so you can rest easier knowing that you have taken important steps to protect your clients and law practice should the unexpected occur. **WL**

ENDNOTES

¹SCR 2:1.3 Diligence.

²“Outsider” is the terminology used for the successor attorney in the resource *After All, You Are Only Human: The Solo Practitioner’s Handbook for Disability and Death*. This article uses “backup attorney.”

³State Bar of Wis., *Succession Resources*, <https://www.wisbar.org/formembers/practicemanagement/pages/succession-resources.aspx> (last visited April 12, 2024).

⁴See *After All, You Are Only Human: The Solo Practitioner’s Handbook for Disability and Death* (link at *Succession Resources*, *supra* note 3).

⁵See SCR 20:1.16(d); Wis. Ethics Op. EF-16-03 (link at State Bar of Wis., *Formal and Informal Ethics Opinions*, <https://www.wisbar.org/formembers/ethics/Pages/Formal-Opinions.aspx>).

⁶See Aviva Meridian Kaiser, *Recipe for Effective Engagement Agreements*, Wis. Law. (Dec. 2019), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=92&Issue=11&ArticleID=27361>.

⁷Wis. Ethics Op. EF-17-01 (link at State Bar of Wis., *Formal and Informal Ethics Opinions*, <https://www.wisbar.org/formembers/ethics/Pages/Formal-Opinions.aspx>); see also Thomas J. Watson, *Storage: What to Do With All Those Closed Files*, Wis. Law. (March 2019), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=92&Issue=3&ArticleID=26895#CommentDisplay>.

⁸Laws. Mut. Liab. Ins. Co. of N.C., *Office Equipment Disposal Policy* (Nov. 2016), https://nmcdn.io/e186d21f8c7946a19faed23c3da2f0da/556712d9bf0f4cb2a916cc810687d52b/files/risk-management-resources/practice-guides/Equipment_Disposal.pdf.

⁹*Id.* **WL**