



Lawyer Succession Planning Now Mandatory

There's a new Arizona Supreme Court rule that now requires us to have plans in place for what happens to our clients' cases, files and property (like money held in our trust accounts) in case we die or are no longer able to represent them. Rule 41(i),¹ which became effective on January 1, 2016, states in pertinent part: "The duties and obligations of members shall be ... (i) To protect current and former client interests by planning for the lawyer's termination of or inability to continue a law practice, either temporarily or permanently."

The Comment explaining the new rule states clearly that solo practitioners should have a "succession plan" and that they should arrange for "one or more responsible transition counsel" agreeable to assuming the solo's duties to current and former clients "to protect, transfer and dispose of client files, property or other client-related materials."²

The new rule is obviously intended to protect the clients of solo practitioners as well as lawyers who may practice as a group but who are in reality operating as solos, with their own files, trust accounts, and the like, and who may not have a partner who is there to take over representation of their cases when necessary. We looked at this subject several times in the past³ when the common wisdom was that, although there were no specific rules requiring it, the spirit of ERs 1.1 (Competence), 1.3 (Diligence) and 1.15 (Safekeeping Property)⁴ suggested that it was a good idea to make some sort of provision for having a trusted colleague take over your practice when you, because of death or disability, were unable to competently and diligently represent your clients.⁵


In Arizona, there didn't seem to be an urgency to the situation, underscored by the fact that although the ABA Model Rule 1.3 (on which Arizona's ER 1.3 is based) included a Comment [5] that states that a death or disability plan for solos was probably required by the rule, Arizona's Comments to ER 1.3 did not. The Arizona rule still doesn't include a Comment [5] but, with the addition of its new Rule 41(i), the Supreme Court has put to rest any misunderstandings we might have had.

The basic tasks that must be accomplished in a lawyer's succession plan are designation of:

1. another lawyer who would have authority to review client files and make determinations as to which needed immediate attention, including referral to other counsel, and
2. someone to notify the lawyer's clients of the lawyer's death or disability.

So where can solos and others who want to comply with the new rule go for help and to find sample forms? Your

first stop should be the State Bar website: www.azbar.org/professionaldevelopment/practice20/successionplanning/. There you'll find a downloadable *Succession Planning Handbook*, as well as an assortment of forms for such matters as appointing successor counsel, notices to clients and provisions to be considered for your last will and testament. The Handbook also has checklists, answers to frequently asked questions, and links to other sites such as the *Client Trust Accounting for Arizona Attorneys* manual, which may be helpful in your planning.

We hope new Rule 41(i) will make us take seriously tasks that we knew were important but that we were all convinced would seldom if ever be necessary. Like it or not, the obligations of competence, diligence and safekeeping clients' property are now considered to outlive the lawyer who initially undertakes them. 

Obligations of competence, diligence and safekeeping clients' property are now considered to outlive the lawyer.

Ethics Opinions and the Rules of Professional Conduct are available at www.azbar.org/Ethics



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endnotes

1. Rule 41, ARIZ.R.S.CT., is the rule that requires us to support the constitution and laws of the United States and to maintain inviolate the confidences of our clients, among other obligations.
2. Comment [2], Rule 41.
3. *Law Office Estate Planning*, ARIZ. ATT'Y (Jan. 2013) at 8; *Ethical Obligations Continue After Death of Lawyer*, ARIZ. ATT'Y (Jan. 2000) at 24.
4. Rule 42, ARIZ.R.S.CT.
5. ABA Formal Op. 92-369 (Disposition of Deceased Sole Practitioners' Client Files and Property) (Dec. 7, 1992); Ariz. Ethics Op. 04-05 (Deceased and Disabled Lawyers; Client Property; Trust Accounts) (Nov. 2004).