



## Law Office Estate Planning

We try to conduct our practices in accordance with the ethical rules while we are alive and in good health. But did you know that we have ethical obligations toward our clients even after we are subpoenaed to The Big Courthouse in the Sky? Or are disabled and/or incompetent to handle our affairs and those of our clients? This isn't so much of a concern for those of us who practice with partners and associates—but what of the sole practitioner?

We looked at this subject many years ago.<sup>1</sup> With the increasing number of “solos” in the profession today, maybe it's time for an update.

Let's look at the rules. The parts of Arizona's Rules of Professional Conduct<sup>2</sup> that apply here are ER 1.1 (Competence), 1.3 (Diligence) and 1.15 (Safekeeping Property). Ethics opinions from both the American Bar Association<sup>3</sup> and Arizona's Committee on the Rules of Professional Conduct<sup>4</sup> explain the duties we have when alive and suggest that we make provisions for taking care of our clients' matters and their property when we aren't. The drafters of Model Rule 1.3 (Diligence) even went so far as to state in Comment [5] that the duty of diligence may require us to prepare a plan that designates another competent lawyer to take over to prevent neglect of client matters in the event of our death or disability.

When the Arizona Supreme Court adopted Model Rule ER 1.3, however, it left out Comment [5] but included everything else. While not attaching too much significance to this, the prudent sole practitioner will still take steps to ensure that her clients' matters and property (files, trust account balances and the like) will not be compromised in the event of some personal calamity preventing the lawyer from continuing the representation. At a minimum, such steps would include a plan that designates another lawyer who would have authority to inspect the lawyer's files to determine which might need immediate attention, and provision for notification to the lawyer's clients of her death or disability.

It's true that a secretary can do much of this initially, but eventually a licensed lawyer will have to make final decisions on these matters, and it's important that you pick one whom you know and trust.

There are reported cases finding lawyers in violation of the ethical rules when they neglected client matters by reason of ill health, attempted retirement or personal problems.<sup>5</sup> With a rare bit of gallows humor on this point, the ABA opinion notes that disciplinary sanctions would probably not have too much of a deterrent effect on a deceased lawyer. But it is probably just plain good lawyering to:

- Keep a client list, including addresses, so others can find it
- Have a central calendar with all important dates, especially statute of limitation issues and for which client
- Keep your time and billing records up to date
- Familiarize the lawyer you've appointed to take over with your office layout, where things are located, and the passwords you use to get into your computer and personal information sites, like your online banking for your trust and operating accounts
- Have your arrangement with the lawyer reduced to a writing. A durable power of attorney may accomplish some of this, but remember: Death terminates an agency relationship, so you may want to instruct your personal representa-

tive by will to continue your arrangement with the chosen lawyer. A word here about your operating and trust accounts: The sole practitioner might consider having the lawyer who is designated to take over the files become an additional, alternative signatory on his operating and trust accounts now rather than after his death, when a personal representative's permission may be needed.<sup>6</sup> This process can take time, and it might be better to make these arrangements now to avoid unnecessary complications later.

We are fortunate in Arizona to have a State Bar Law Office Management Assistance Program (LOMAP) that provides, free of charge, a “Closing Office Checklist/Timeline” with all of the forms you will need, including samples of letters to be written to clients, courts and others, along with the relevant Arizona ethics opinions bearing on deceased or disabled lawyers and the issues involving trust accounts, client files and other client property. A package containing these materials is available by calling Susan J. Kayler, Practice Management Manager, at 602-340-7313, or email at [susan.kayler@staff.azbar.org](mailto:susan.kayler@staff.azbar.org). 

Ethics Opinions and the Rules of Professional Conduct are available at [www.azbar.org/Ethics](http://www.azbar.org/Ethics)



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### endnotes

1. *Ethical Obligations Continue After Death of Lawyer*, ARIZ. ATT'Y (Jan. 2000), at 24.
2. Rule 42, ARIZ.R.S.CT.
3. ABA Formal Op. 92-369 (Disposition of Deceased Sole Practitioners' Client Files and Property) (Dec. 7, 1992).
4. Arizona Ethics Op. 04-05 (Deceased and Disabled Lawyers; Client Property; Trust Accounts) (Nov. 2004).
5. See *In re Jamieson*, 658 P.2d 1244 (Wash.1983) (neglect due to ill health and attempted retirement); *In re Whitlock*, 441 A.2d 989 (D.C. App. 1982) (neglect due to poor health, marital difficulties and heavy caseload); and *Committee on Legal Ethics of West Virginia State Bar v. Smith*, 194 S.E.2d 665 (W. Va. 1973) (neglect due to illness and personal problems).
6. Scottsdale ethics lawyer Lynda Shely reminded me that this is an example of why it is so important that you pick someone you know and trust to take over your practice when the time comes. If such a person is not available, keep your operating and trust accounts to yourself.