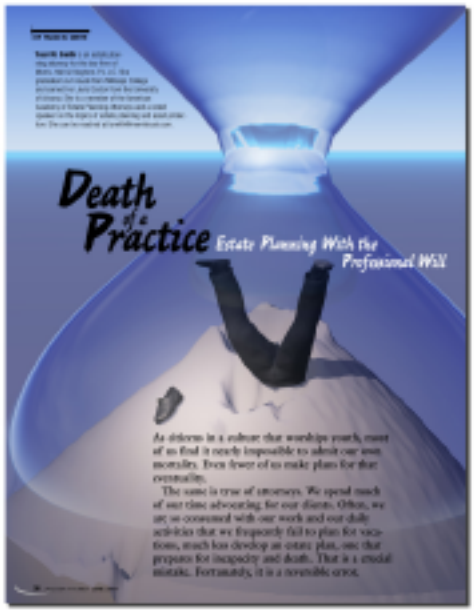
SOUNDOFF

REST IN PEACE

Thank you for the article titled "Death of a Practice: Estate Planning With the Professional Will" (June 2007). I learned about an entirely new area of attorney responsibility that, frankly, had never occurred to me.

The article asserts that lawyers must always protect their clients' interests, and that our "death does not relieve [us] of responsibility in this area."

What? I thought that, for all of its drawbacks, death was at least the end of our earthly responsibilities. Not so. In fact, the article discusses at length the need for contingency planning "to address problems encountered by a disabled *or deceased* attorney."



What kind of problems will I encounter after my death? I won't be representing clients any more, because, as the article notes, any representation "would necessarily be terminated" by my demise. But, I wouldn't be off the hook: My "fiduciary obligations of loyalty and confidentiality continue beyond" my death. I kept reading, and found that the author really does mean to impose "ongoing obligations" on dead lawyers. Elsewhere in the article, she says that a "lawyer has an ongoing obligation to minimize harm to his or her prior clients after withdrawal or termination of the matter"—all in the context of what to do with a *deceased* lawyers' files.

Well, I thought, who cares if I have "ongoing obligations" after my death—what can happen to me then? A malpractice action against my estate, for my post-mortem failings?

This interesting legal question is not answered, although there is a great deal of discussion of the potential liability of a deceased lawyer (not his or her estate), *e.g.*, "the potential liability for any attorney who fails to develop a proper estate plan." The author argues that failing to have a proper plan in the event of my death could "bring about those dreaded words that no attorney wants to hear—sanctions and malpractice."

"*Sanctions* and malpractice"? Maybe a legal action against my estate, but post-mortem *sanctions*? Yes, indeed. In fact, not only are post-mortem sanctions possible, but the author believes that they would be quite beneficial: "Sanctioning lawyers who inadequately prepare to protect their clients' interests in the event of incapacity *or death* would dissuade other attorneys from committing similar offenses and help to restore public confidence in the bar."

Before reading this article, I never would have imagined that even after I die, I still have "ongoing obligations" that will be enforced by sanctions and malpractice actions. I now know better. Thank you.

— George King

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KEEP THE BRANCHES INDEPENDENT

I am an advisory board member of the William H. Rehnquist Center for the Constitutional Structures of Government, at the UA law school. One of the essential values it seeks to promote is judicial independence. I also was in an audience of the American Academy of Appellate Lawyers in the fall of 2005, in Washington, DC, when Justice Sandra Day O'Connor debuted her judicial independence speech, which has blossomed into the O'Connor campaign for fair and independent courts. So I have done a lot of thinking about the topic of judicial independence. That thinking has included the point in Gary Howard's forceful letter to ARIZONA ATTORNEY (Soundoff, June 2007). And lots of people haven't been thinking about that other side of the coin.

But, to borrow Mr. Howard's phrase, here's the problem. Right now, in my humble opinion, the pendulum has swung uncomfortably far to the side of incitement to retaliation against judges because of disagreement with their decisions. I urge readers to review Justice O'Connor's comments at http://appellateacademy.org/events/oconnor_remarks_110705.pdf. Readers should note not only her remarks about other countries, but remember what she describes has happened recently here in the United States. Her comments address what I believe most thoughtful people would agree are inappropriate—sometimes criminal—actions and exhortations, from the murderer in the street to comments in the halls of Congress.

So—what is the answer? My exposure to presentations from respected people who are trying to impart the meaning of judicial independence to the general public teaches me that the larger problem now is the popular sentiment that judges *shouldn't* be independent, and *shouldn't* disagree with the other branches of government, to *any* significant degree.

I agree with Mr. Howard's premise: An independent judiciary should confine itself to its proper role. But right now, I believe that the enemies of judicial independence are misusing that proposition in an attempt to debilitate judicial independence. Just now there is need for clear communication and education about what judicial independence is and why it is critical to a free society.

— Michael J. Meehan
Tucson