



Succession Planning for Solos: Peace of Mind for Your Family; Opportunity for Your Practice

By: Stephen T. O'Neill, Esq.



As a sole practitioner, and a 64 year old one at that, I often get the question from clients, “what happens to our estate plan and file if you’re no longer around?” I am proud to tell them that I have a documented succession plan in the event of my death or incapacity. (What I haven’t yet told them is that having a succession plan also makes it easier for me to sell my practice should I choose to do so.) I have shared my plan with my trustees, my accountant and my personal attorney, each of whom would play a role in transitioning my practice and clients. Two years ago I began to study the subject, leading to co-presenting a program at the Rhode Island Bar 2008 annual meeting on “*Succession Planning for Solos: Death, Disability or (You Should Live so Long) Retirement*”¹.

Under my plan, as required by the Code of Professional Responsibility, each client would be given the opportunity to transfer his/her file to an attorney of choice. However, my representatives would contemporaneously attempt to sell my practice to one or more estate planning practitioners. My plan sets forth a specific, extensive list of potential purchasers. At its top are attorneys or firms who most nearly share my ideals and resources. If a purchaser was found, each client would be encouraged though not required to transfer their file to the purchasing firm. In the event that a sale of the entire practice could not be arranged, then transfer of client files to a successor firm or firms would nonetheless be arranged, subject to the contrary expressed wishes of any particular client. Also, in the Section entitled Professional Practice under the Trustee Powers Article of my Living Trust, I have designated my personal attorney, and a first and second alternate attorney, as Special Trustee for purpose of managing this practice transition, working under the supervision of my Trustees. My plan provides clients with a succession process as effective and satisfying as they could experience with any larger firm. And my plan will literally be of great value to my spouse and descendants. Furthermore, by teaching others what I have learned in the process, not only do I have the satisfaction of giving back to my brothers and sisters in the bar, but I have created new marketing opportunities and heightened awareness among my solo lawyer

colleagues as to my skills as an estate planner and a succession planner. Moreover, I see potential for applying and marketing this knowledge to solos in other professions including CPAs and Financial Advisors.

Some specific issues to be aware of in undertaking succession planning:

- ABA Formal Opinion 92-369 says “the sole practitioner should have a [succession] plan in place.”
- Only since 1990 has the ABA had a Model Rule (Rule 1.17) permitting solos to sell their practice. The Rule as amended allows sale of all or a specific portion of the practice. As of 2005, all but six states had adopted some version of the Rule.
- Estate planning practices are often saleable at a premium compared with other types of solo practices. Oversimplifying, buyout might be over 5 years using 1-2 times revenues as a base price, adjustable in each installment year based on “purchased client” revenues.
- Early efforts such as organization of files, disposing of closed and dormant files, writing a procedural manual, and affording ready access to key financial and password data, will enhance value and simplify the disposition process for your heirs and representatives. And don’t overlook your state’s ethics rule on required bookkeeping procedures.

Valuable Additional Resources: In February 2008, the ABA’s General Practice, Solo and Small Firms Division and its Senior Lawyers Division co-published “The Lawyer’s Guide to Buying, Selling and Closing a Law Practice. And in 2005 Ed Poll, Esq. published “Selling Your Law Practice: The Profitable Exit Strategy.”

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¹ The materials, including *Economic and Tax Aspects of the Sale of a Law Practice* by Peri Ann Aptaker CPA, Esq., of Providence, RI (content beyond the scope of this Article), are available in the WealthCounsel Knowledge Base.