

**AMERICAN BAR ASSOCIATION
SENIOR LAWYERS DIVISION**

RECOMMENDATION

RESOLVED, that the American Bar Association urges state, local and territorial jurisdictions, that do not now have programs in place, to address the issue of the death or disability of lawyers and to develop and implement through court rule or other appropriate means effective procedures for the protection of clients' interests and property and the ethical closure or disposition of the practices. 1
2
3
4
5

FURTHER RESOLVED, that, without attempting to be exhaustive, the following features are recommended for such programs: 6
7

(1) Plans should adhere to the recommendations and precepts of Rule 28 of the ABA Model Rules for Lawyer Disciplinary Enforcement, which outlines procedures for the inventory of files and the protection of confidentiality. 8
9
10

(2) If a practice is to be sold, plans should incorporate the principles of Rule 1.17 of the ABA Model Rules of Professional Conduct ("Sale of Law Practice"), which in the Comment states that it applies to the sale of a law practice by a representative, as well as other applicable provisions of the Model Rules. 11
12
13
14

(3) Plans should consider and be guided by the principles stated in Formal Opinion 92-369 of the ABA Standing Committee on Ethics and Professional Responsibility with respect to the disposition of client files and property. 15
16
17

(4) Plans should be jurisdiction-wide but should recognize differences among types of practices and practice settings--rural and urban--and allow flexibility of arrangements appropriate to those differences such as providing, when necessary, that practicing attorneys periodically designate a survivor signatory/trustee; or appoint fiduciaries to close or dispose of practices under jurisdictional supervision. 18
19
20
21
22

(5) Plans should provide for expense reimbursement for trustees and fiduciaries closing practices, and consideration should be given to the provision of compensation for services. 23
24

REPORT

Lawyers die as all humans do. But when a lawyer dies without plans in place for the continuance, transfer or closure of his or her practice (files, financial and fiduciary accounts, practice business records, etc.) chaos frequently results with serious harm coming to clients and family left bereft and law practices left unattended.

While a number of states have implemented measures dealing with client and practice management issues and actions to be taken when a lawyer dies, the American Bar Association at present has no specific policy addressing this subject aside from ABA Model Rule 1.17, Sale of a Law Practice, which 15 states have adopted either wholly or partially, and ABA Model Rule for Lawyer Disciplinary Enforcement 28, which provides for the appointment of counsel to protect client interests in death, disability, disbarment and disappearance cases.

Sound practice management dictates that a lawyer should plan before death for a survivor trustee attorney to take over his or her practice, attend to clients' affairs and files and to wind up the deceased attorney's practice if the law practice is left without direction.

A recent survey of the practices in effect in all 50 states and a number of counties, cities and territories addresses the current posture of this serious problem. Many states have no procedures in place, and many which do, would perhaps be better served by revising them using some of the best ideas suggested by the survey responses.

Ideals are not enough; guides to action must be forthcoming if post-death practice management is to be effective. Pre-planning for an attorney's death is necessary and should be mandated as is the proper management of attorney trust accounts, etc.

Resources of funds, people and time, pre-planning guides for every attorney, the real differences among rural and urban practices and other considerations are issues best handled on a state and local basis. For example, it may be appropriate to provide that attorneys name a trustee in a document on file with an appropriate authority where that will ameliorate the problems of a law practice left adrift, the time lost finding and appointing an attorney to inventory the deceased lawyer's accounts and the burden on the one named to undertake that role belatedly.

The underlying purpose of the instant recommendation is to insure the prompt and ethical closure of a law practice, when necessary, while protecting primarily the clients' interests and at the same time concluding a deceased attorney's affairs while protecting his or her survivors as well.

The organized Bar should be urged to promulgate suitable requirements to accomplish these ends in their respective jurisdictions.

CONCLUSION

The American Bar Association Model Rules of Conduct emphasize the fiduciary nature of the attorney's obligations of competence and diligence.

Pre-mortem planning for the eventuality of a lawyer's death and what should be done when the death of an attorney occurs without plans in place to protect the client's, the attorney's and his family's interests are but an extension of the duties of an attorney to act with competence and diligence.

All states and territories without effective plans and programs in place for what should be done when a lawyer dies should be urged to address these issues and put suitable plans and programs in place in their respective jurisdictions to solve this most serious problem.

Respectfully submitted,



JOHN H. PICKERING

Chair, Senior Lawyers Division

Dated: May 21, 1997