Succession Planning

One of the more time-consuming tasks our office handles is the conservatorship of client files we undertake pursuant to Maryland Rule 16-777. It is the only rule that specifically addresses the procedures to be followed when an attorney "dies, disappears, or has been disbarred, suspended, placed on inactive status or has abandoned the practice of law" and no responsible party "capable of handling the former attorney's affairs is known to exist." When those circumstances arise, we often petition a Circuit Court for an order appointing a conservator, frequently a member of Bar Counsel's staff, to inventory client files and to act to protect the clients' interests. Very often, it is only when a client or the client's new attorney alerts us to a serious problem they are experiencing, do we learn of the need for a conservatorship. By then, some clients' interests may have been jeopardized or prejudiced. As the ABA Standing Committee on Ethics and Professional Responsibility recognized in Formal Opinion 92-369 (with my additions):

> The death [or serious disability]of a sole practitioner could have serious effects on…clients…Important client matters, such as court dates, statutes of limitations, or document filings, could be neglected until the clients discovered that their lawyer has died [or become seriously disabled].

Although no Maryland Rule expressly requires that an attorney plan for her departure from practice, Comment 5 of Rule 1.3 of the Maryland Rules of Professional Conduct states:

> To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent attorney to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.

Further ethical endorsement for succession planning can be found in the ABA's Formal Opinion, referenced above. That Opinion states that a lawyer's plan, at a minimum, should include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention and who should notify the clients of their lawyer's death. Jill A. Snyder, in the October 2010 Bar Bulletin, points out that "a solo practitioner, practicing without a succession plan may be endangering her hard-earned reputation, placing her clients in jeopardy and subjecting herself or her estate to a malpractice claim in the future."

It should be abundantly clear that sole practitioners have an ethical responsibility to their clients to plan for the unexpected. We routinely advise our clients to have an

estate plan in place, yet many solos have no personal estate plan or a plan to ensure their clients are protected in case of the lawyer's death or disability. Only about eight states have rules that mandate action on the part of a sole practitioner to plan for "ultimate termination." It is beyond the scope of this article to discuss all that is necessary in a plan for succession but, at the very least, client confidentiality should be protected and the scope of any backup or substitute attorney's responsibilities and remuneration should be clearly defined. Access to the lawyer's trust account should be arranged and clients apprised of that arrangement and the lawyer's succession plan. If you do not have a succession plan, I recommend a review of a number of cogent articles about the subject available on line and Ms. Snyder's article is an excellent place to start. Your malpractice carrier may also be a helpful resource. Your carefully drafted succession plan will protect your clients, your estate and your reputation.