

The Death of a Lawyer

Prevent one tragedy from leading to others

BY MITCHELL K. KARPF

A number of months ago, I received a telephone call informing me of the unfortunate and unexpected death of a well-known family law practitioner. I was reminded that the lawyer (a sole practitioner) had designated me as his "Inventory Attorney." This lawyer was only fifty-nine years old and was in good health. Not only did his office staff have to deal with their own grief, but they had to deal with panicking clients as well.

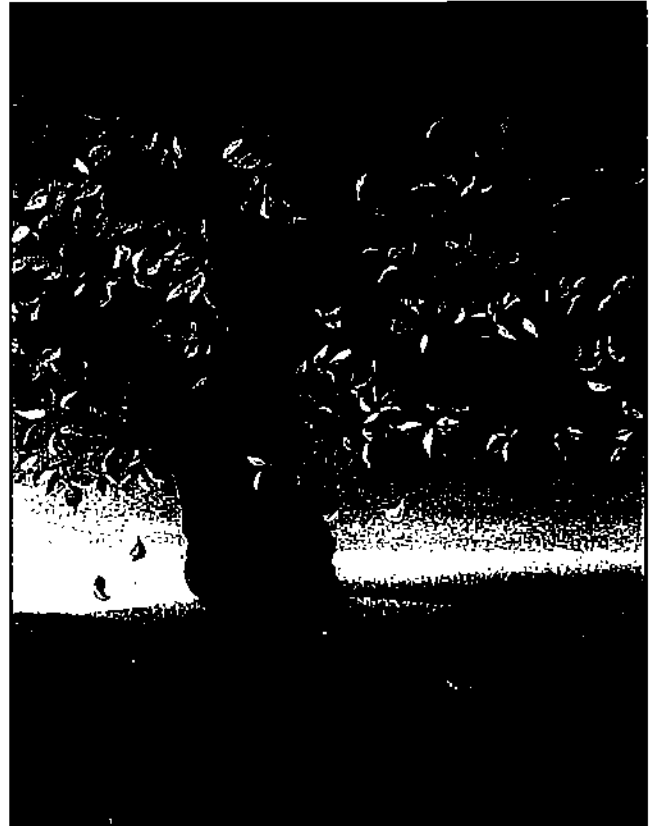
I recalled the conversation I had had a few years earlier with this lawyer when he asked me if I would serve as inventory attorney in the event of his death as required by a new Florida rule. Naturally, I agreed. Yet, I had no idea what a tremendous commitment I had made.

As lawyers, we are always trying to protect our clients. Part of this obligation is to protect the client upon the lawyer's death, to ensure that clients will not be neglected. This is most critical to sole practitioners.

In 1992, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 92-369, *Disposition of Deceased Sole Practitioners' Client Files and Property*. It provides:

The death of a sole practitioner could have serious effects on the sole practitioner's clients.... Important client matters, such as court dates, statutes of limitations, or document filings, could be neglected until the clients discover that their lawyer has died. As a precaution to safeguard client interests, the sole practitioner should have a plan in place that will ensure insofar as is reasonably practicable that client matters will not be neglected in the event of the sole practitioner's death.

The opinion relied, in part, on ABA Model Rules of Professional Conduct 1.1 (competence) and 1.3 (diligence). The opinion stated, "although representation should terminate when the attorney is no longer able to adequately represent the client, the lawyer's fiduciary obligations of loyalty and confidentiality continue beyond the termination of the agency relationship." It noted that since lawyers have a fiduciary duty to inform their clients in the event of a breakup of a partnership, a sole practitioner has a similar responsibility to ensure that the attorney's clients are informed in the



event of the sole practitioner's death. To accomplish this requires a plan:

Because a deceased lawyer cannot very well inform anyone of his or her death, preparation of a future plan is the reasonable means to preserve these obligations. Thus, the lawyer ought to have a plan in place, which would protect the clients' interests in the event of the lawyer's death. ABA Formal Opinion 92-369 (1992).

According to this opinion, a lawyer who dies without a plan for the maintenance of client files is guilty of neglect. It suggests that the lawyer, even though deceased, should be sanctioned in hopes that this would dissuade future acts by other lawyers and would help to restore public confidence in the bar.

Numerous states have addressed the issue with respect to planning for a lawyer's death. In Florida, Rule 1-3.8 of the Rules Regulating The Florida Bar provides in pertinent part:

(e) *Designation of Inventory Attorney*. Each member of the bar who practices law in Florida shall designate another member of The Florida Bar who has agreed to serve as inventory attorney under this Rule. When the services of an inventory attorney become necessary, an authorized

representative of The Florida Bar shall contact the designated member and determine the member's current willingness to serve. The designated member shall not be under any obligation to serve as inventory attorney.

Arizona State Bar Opinion 04-05, April 2005, provides that consistent with an obligation to safeguard client property including "client funds," it is prudent for a lawyer to develop a plan to ensure that the client's funds held in the lawyer's trust account are properly administered and distributed in the event of the lawyer's death. It provided three required steps in complying with ethical responsibilities:

1. The lawyer should come up with a legally effective, fair, and expeditious mechanism to ensure that clients receive trust account funds to which they are entitled. This is accomplished through an agreement with a lawyer who is willing to assume the responsibilities of administering the trust account. Do not leave it for the court to deal with;
2. The lawyer should anticipate both death and disability by providing in a will for the handling of a trust account upon the lawyer's death and the granting of a power of attorney to another lawyer in anticipation of a possible disability;
3. The lawyer's plans for handling client trust account funds should be made in connection with a much broader plan for the disposition of the lawyer's practice in the event of his or her death. It suggests that arrangements be made with another lawyer to notify clients of the death and also to review the lawyer's files for the purpose of determining whether immediate action is required to protect the client's legal interest.

Kentucky Bar Association Ethics Opinion KBA E-405 (June 1998) provides:

To fulfill his or her obligation to protect client files and property, a sole practitioner should prepare a future plan providing for the maintenance and protection of client interests in the event of the lawyer's death. Such a plan should, at a minimum, 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 would notify the clients of their lawyer's death.

Wisconsin issued Ethics Opinion E-87-9, which details an associate's responsibilities in the event of the death of a deceased solo practitioner. It suggests that immediately following the solo practitioner's death, the associate should take such action as may be necessary for the sole purpose of protecting client's rights, files, and property. Thereafter, the associate should communicate with the deceased attorney's surviving spouse, personal representative, and/or probate judge regarding the associate's services, both short-term and in closing the law practice. The committee concurred that:

[T]he responsibilities of a lawyer involved in winding up another's law practice normally are limited to the following:

1. Notifying past and present clients about the termination of the practice and [sic] telling them how they can obtain their files;
2. Examining files and financial records to render an accounting of monies owing to the lawyer whose practice is being terminated, or to the lawyer's estate;
3. Retaining copies of files involving potential grievance, malpractice, or fee-dispute exposures;
4. Cooperating in representation relating to the proceedings under (3) above;
5. Providing emergency legal services to avoid prejudice to immediate client rights;
6. Cooperating in substitution of counsel; and
7. Storing or destroying files no longer needed and not requested by clients, all in strict accordance with court authorization in client's rights.

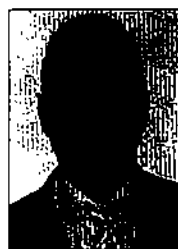
In devising a plan, leave nothing to chance. Schedule an in-depth meeting with the designated attorney to ensure that he or she understands what will be required. Discuss whether this attorney will be expected to pursue accounts receivable so that sufficient funds are available to pay ongoing expenses of the firm. Make sure the plan is available to those who need it, including possible successor attorneys, spouses, and associates.

Make sure that the lawyer understands the tremendous commitment of time and effort required of a designated attorney. These duties must be carried out no matter what is happening within the lawyer's own life, practice, and caseload.

The Florida Bar has a "Pre-need Inventory Attorney Agreement Consent to Close Office." (See page 42.) It sets forth the authority of the designated attorney and is to be executed by both subject attorney and designee.

The Florida Bar also has an "Order Appointing Inventory Attorney." (See page 44.) Any designated attorney should obtain such an order and provide a full accounting to the court as well as to the state bar until the law practice has been closed. Although generally encouraged, court oversight may not be required, as each state's requirements differ. Contact the appropriate state bar for guidance, input, and additional suggestions or pointers.

Most of us do not think about protecting our clients in the event of our unexpected or untimely death. Yet, having handled a deceased solo practitioner's practice, I now realize more than ever how important it is to have a detailed plan in place. Not only is it essential to protecting your clients, but it is equally important to assisting and protecting loyal employees and your family. The time to implement your plan is now. **FA**



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