

Hope for the best, plan for the worst

Sam Phillips

Last year, many Missouri lawyers – including solo practitioners and individuals practicing at small firms – became very sick or died.

Some had a succession plan in place, but too many did not make any arrangements for their practice.

“Me? That won’t be me.” Maybe not, but it’s never too early to have a plan in place.

The following two scenarios represent an unfortunate – but all too common – reality: The lawyers died while managing active practices. Catalina had a plan, while the other lawyer, Ryan, did not. Here’s what happened to their respective clients, cases, finances, and reputations.

Catalina

Catalina, 54, had a successful solo domestic practice. Catalina and her lawyer friend, Ashley, often discussed ideas for improving their practices, as well as balancing professional and family responsibilities. When Ashley suggested they appoint each other as successor trustees under Rule 5.26 – to take over in the event of their deaths – Catalina responded like most lawyers: “It’s too soon.”

Ashley persisted; Catalina soon not only designated Ashley on her annual enrollment statement, but also looked at planning guides on The Missouri Bar website. Catalina’s accessible records soon included regularly updated lists of clients and their cases. She had names, addresses, phone numbers, email addresses, and contact information for each client’s authorized contacts. Catalina and Ashley set up systems to track their case timelines, and they made notes explaining their various practice systems. They wrote instructions for where the other could find all client and case material, both electronically and physically. They created digital checklists – email account information, cloud-based billing and accounting systems, website domain, password manager, online banking, credit card accounts, and more.

Catalina and Ashley also separately created folders for tax records, payroll, employee benefit plans and insurance policies, post office box information, leases for equipment, and office space. Catalina’s operating and trust accounting records were kept separate, and she made notes to allow her prospective

trustee to easily locate all fee agreements; billing records; checks; deposit slips; transaction journals; client ledgers; reconciliations; expenses and invoices; and third-party payment records.

Last year, after a brief illness, Catalina died. Ashley preserved Catalina’s reputation for caring for her clients. Ashley made sure all clients got their files and helped find other lawyers to help. She easily received trust account authority to transfer unearned advance fees to clients. Ashley contacted the Office of Chief Disciplinary Counsel for assistance in winding down the practice and was provided resources to assist. Ashley also notified the Supreme Court of Missouri of Catalina’s death.

Catalina and Ashley planned for the worst. Last year, the worst happened, but Catalina’s clients and reputation survived.

Ryan

Ryan, 32, also became sick last year. He too had an active solo practice. He too had a friend who suggested naming each other as trustees. But Ryan’s friend didn’t persist, and Ryan never got around to it.

When Ryan became sick, his friend was too busy to help, and no lawyer stepped up to take over Ryan’s practice. Ryan’s clients didn’t know why they couldn’t reach him, and several clients eventually sent complaints to the ODCD.

After the ODCD determined no trustee was designated to wind down Ryan’s practice, that office contacted local lawyers, the local bar association, and the presiding judge seeking volunteers to serve as trustees. A decision also needed to be made in conjunction with Ryan’s estate whether compensation would be paid to the trustees. Once two lawyers agreed to serve, the presiding judge in Ryan’s circuit appointed the two “volunteers” to wind down the practice, pursuant to Rule 5.26.

Unfortunately, Ryan’s office and files were disorganized. For the last few years, Ryan did not have any support staff practice to assist with providing passwords and banking and filing system information to the trustees. By the time the two volunteers worked their way through Ryan’s files and systems, his former clients were frustrated and angry. Ryan had left his trust accounting records in disarray, and reconciliations could not be located. Ryan’s wife knew little about the practice; she did not have passwords or account numbers, she didn’t understand Ryan’s case filing system, and she believed the money in the trust

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account would become part of Ryan's estate.


The presiding judge accurately told the trustees that the OCDC would help them through the process. The OCDC guided the trustees through the process, and the Office of State Court Administrator provided a list of Ryan's pending cases. Some – but not all – of Ryan's current clients were located, and the appointed trustees returned those files. The trustees also located some former clients, and – for a while – were stuck holding those files, in the same way that Rules 4-1.15 and 4-1.22 would have required Ryan to maintain the files. Eventually, after multiple efforts, the trustees delivered the remaining files to the OCDC, where they will be stored for the remainder of the file retention period.

At the conclusion of winding down Ryan's practice, a final report was provided to the appointing court and the trustees were released.

Ryan did not make a succession plan, and it resulted in stress and chaos for his clients and surviving spouse. Before his illness, Ryan never had a disciplinary complaint. His peers respected him. This preventable situation tarnished his reputation.

Resources

Every lawyer, especially solo and small firm practitioners, should have a plan in place in case they become ill or die. The Missouri Bar offers several resources to help lawyers create

succession plans at MoBar.org/LPM. Lawyers can also refer to Supreme Court Rule 5.26, Rule 4-1.22, and Rule 4-1.15 for more information when developing a plan. 

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For more information about
The Missouri Bar's succession
planning resources, visit:

MoBar.org/LPM

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