

Law Firm Succession Planning

by Practical Law

Maintained • USA (National/Federal)

A Practice Note discussing the importance of succession planning for law firms. This Note addresses the ethical issues related to succession planning, the benefits of succession planning, and key elements of an effective succession plan for a partner or other senior attorney who becomes ill, disabled, retires, or dies.

Ethical Issues Related to Succession Planning

Benefits of Succession Planning

Risks of Not Having a Succession Plan

Start Succession Planning Early

Considerations Before Preparing a Succession Plan

Succession Plan Elements

Identify Successor Attorneys

Hiring Internal Versus External Candidates

Transitioning in a Successor Attorney

Review and Update the Succession Plan

Succession planning is an ongoing process in which an organization identifies and develops talented employees to take on future leadership roles within the organization. Law firms often fail to prepare and implement a succession plan for firm leadership, partners, and other senior attorneys with disastrous results, including client and revenue loss.

This Note discusses the ethical issues related to succession planning, the benefits of law firm succession planning, and key elements of an effective succession plan for a partner or other senior attorney who becomes ill, disabled, retires, or dies ("the affected attorney"). For related discussions about CEO succession planning and succession planning for corporate law departments, see [Practice Notes, CEO Succession Planning: Principles and Considerations](#) and [Law Department Succession Planning](#).

This Note assumes that the law firm employs:

- An administrative staff to handle the clerical and financial tasks related to servicing the firm's clients, including:
 - maintaining an organized, updated record-keeping system for open and closed client matters;
 - billing and collecting fees; and

- paying the business expenses associated with the affected attorney's practice.
- One or more qualified attorneys to succeed the affected attorney.

This Note does not address important additional issues for sole practitioners to consider when preparing a succession plan, including:

- Providing access to and closing a client trust account, interest on lawyers trust or IOLTA account, or other business account. For more information on the rules and regulations governing client trust accounts, IOLTAs, and handling client funds, see [Practice Note, Client Trust Accounts, IOLTAs, and Handling Client Funds](#).
- Winding down the financial affairs of the affected attorney's practice.
- Appraising the value of and selling the affected attorney's practice.

This Note refers to the American Bar Association's Model Rules of Professional Conduct (ABA Model Rules), which do not set a national ethics standard but rather provide the basic framework for the standards of professional conduct applied across the country. Because the ABA Model Rules can be modified at the state level, attorneys should refer and adhere to their state's version of the ABA Model Rules when considering whether to establish a succession plan.

Ethical Issues Related to Succession Planning

Under the ABA Model Rules, there is no specific requirement that an attorney establish a succession plan to ensure that clients are not adversely affected by the attorney's illness, disability, death, or retirement. However, an attorney may infer from reading together ABA Model Rules 1.1 and 1.3 that an attorney should make the necessary arrangements for client files and matters to be maintained if the attorney experiences an adverse event that renders the attorney unable to service clients and protect their interests ([ABA Model Rules 1.1](#) and [1.3](#)).

ABA Model Rule 1.1 provides that an attorney must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

ABA Model Rule 1.3 provides that an attorney must act with reasonable diligence and promptness in representing a client. Comment 5 to ABA Model Rule 1.3 is more explicit about succession planning for sole practitioners and provides that 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 attorney's death or disability.
- Determine whether there is a need for immediate protective action.

([Comment 5 to ABA Model Rule 1.3](#).)

Although Comment 5 to ABA Model Rule 1.3 is directed to sole practitioners, all attorneys should consider what may happen to their practices if they were to suddenly become ill, disabled, or die and plan accordingly to protect themselves and their:

- Estates.
- Families.
- Law firms.
- Clients' interests.

Some states, like Maine and South Carolina, have mandatory rules requiring the designation of a successor in the case of an attorney's disability or death (see [ME Bar Rules 1\(g\)\(12\) and 32](#) and [Rule 1.19 of the SC Rules of Professional Conduct](#)). Other states like Idaho encourage attorneys to appoint a successor in the comments to their local ethics rules (see [Comment 5 to Rule 1.3 of the IA Rules of Professional Conduct](#)).

As several states that have not already done so are considering making succession planning a requirement for attorneys, attorneys should consult their local ethics rules to ensure that they are in compliance with their state's succession planning requirements.

Benefits of Succession Planning

One of the most important benefits of succession planning for a law firm is that firm management has immediate access to a vetted, approved list of successor attorneys if a partner or other senior attorney with important client relationships and firm responsibilities suddenly becomes ill, disabled, retires, or dies. This advance planning enables one or more new attorneys to quickly assume the affected attorney's client matters and other law firm responsibilities with minimal disruption to the firm's business and its clients.

Succession planning also places a law firm in a better position to:

- Transition leadership positions in an orderly manner.
- Prepare partners and other senior attorneys for their eventual retirement. Law firms' partnership agreements, buy-sell agreements, and other documents also govern how the firm handles a partner's retirement or withdrawal.
- Respond to a crisis or other catastrophic event resulting in the sudden death of or serious injury to one or more key attorneys.
- Reassure clients that the firm is safeguarding their interests.
- Anticipate future hiring needs, including whether the firm should fill a vacancy internally or externally (see [Hiring Internal Versus External Candidates](#)).

- Decide which attorney to promote to partner.

Knowing that a law firm maintains and periodically updates a succession plan may:

- Create performance incentives for attorneys to work harder for promotion to partner.
- Encourage top performers to remain with the firm rather than leaving to advance their careers at other law firms.
- Assist the firm in maintaining existing client relationships and building new ones.

Risks of Not Having a Succession Plan

The risks of not having a law firm succession plan include:

- Business disruption after a key attorney suddenly becomes ill, disabled, dies, or retires.
- Client defections.
- Attorney defections and structural firm changes caused by younger attorneys unwilling to finance departing partner buyouts from future earnings.
- Revenue loss.
- Potential malpractice claims.

The facts underlying the case of *Clinger v. Tilley* illustrate how a law firm's failure to have a succession plan may result in a potential malpractice claim by a client (423 Pa. Super. 121 (1993)). In *Clinger*, the plaintiff's original attorney filed a negligence action but failed to prosecute the case (*Clinger*, 423 Pa. Super. at 123). As a result, the lower court published notice of its intent to terminate the case due to inactivity in a local legal newspaper that the plaintiff's original attorney apparently did not see (*Clinger*, 423 Pa. Super. at 124). The lower court then dismissed the case (*Clinger*, 423 Pa. Super. at 124).

Plaintiff's original attorney died a year after the dismissal without having taken any action on the matter (*Clinger*, 423 Pa. Super. at 123). However, the plaintiff's law firm did not assign the case to a new attorney until a year after the original attorney died. The newly appointed attorney then learned from opposing counsel that the case had been terminated.

Although plaintiff's new counsel filed a petition to reinstate the case shortly after learning about the dismissal which had happened more than two years ago, the lower court dismissed that petition (*Clinger*, 423 Pa. Super. at 123).

On appeal, the appellate court affirmed the dismissal because:

- Publication of the lower court's notice of intent to terminate the case was proper notice.
- The petition to reinstate the case was not timely filed.

- The death of plaintiff's original attorney did not excuse the delay.

(*Clinger*, 423 Pa. Super. at 127.)

If the law firm in *Clinger* had a succession plan in place when the plaintiff's original attorney died, presumably the firm would then assign a new attorney to the deceased attorney's open matters to determine which matters required immediate attention. That did not happen and the client unfortunately suffered injury as a result.

Start Succession Planning Early

Because law firm vacancies can occur suddenly and for a variety of reasons, law firms should prioritize early succession planning to minimize the potential business disruption caused by the loss of a key partner's or other senior attorney's services due to:

- Voluntary departure after finding a new job. For more information on the ethical obligations of a lawyer leaving a law firm to join another law firm, see [Ethical Issues when Switching Law Firms Checklist](#).
- Retirement.
- Illness, injury, disability, death, or other emergency. For best practices law firms should consider when preparing for and responding to the impact of an emergency on firm operations, see [Law Firm Emergency Preparedness and Response Checklist](#).
- Competing family or other personal issues.
- A layoff.
- A firing.
- A promotion.
- A relocation.
- Firm structural or management changes.

Early succession planning also allows time to train talented attorneys so that they:

- Develop the skills and experience they need to move up the ladder within the law firm and assume greater responsibilities.
- Can build relationships with the firm's legacy clients.
- Can benefit from a partner's or senior attorney's mentorship and institutional knowledge about firm clients, their matters, and preferences (see [Transitioning in a Successor Attorney](#)).

For information on associate training, see [Article, Aligning Associate Training With Client Needs](#).

Considerations Before Preparing a Succession Plan

Before preparing a succession plan, law firms and individual attorneys should consider:

- Short-term and long-term business needs. For example, a law firm should consider using the succession planning process to support its diversity, equity, and inclusion initiatives (see [Practice Note, Increasing Law Firm Diversity and Standard Document, Law Firm Diversity Statement](#)).
- Firm demographics, including the ages of their attorneys and whether any partners or other senior attorneys are likely to leave the firm within the next one to five years.
- How much detail to include in a succession plan (see [Succession Plan Elements](#)).
- Who should implement the succession plan (see [Identify Successor Attorneys](#)).
- How much time it may take to implement the succession plan. For example, a succession plan for the firm's chairman or other senior administrator may take several years to implement.
- Whether and how to involve clients in preparing and implementing a succession plan. Some law firms discuss succession planning in their retainer agreements and engagement letters. This approach provides clients with an early opportunity to object to a proposed successor attorney and to provide additional input to the firm's succession plan. For key issues counsel should consider when drafting an engagement letter, see [Engagement \(Retainer\) Letter: Practical Considerations Checklist](#).
- Whether to hire a law firm management consultant to assist with the succession planning process. An outside consultant can:
 - help take some of the uncomfortable emotional issues out of the succession planning process; and
 - provide objective advice when drafting and evaluating the succession plan.

Succession Plan Elements

Key elements of a succession plan include:

- Compiling a list of qualified candidates to succeed an affected attorney (see [Identify Successor Attorneys](#)).
- Preparing detailed written instructions to the successor attorney and other administrative staff concerning:
 - how and where important client information is stored; and

- how to implement the succession plan according to the affected attorney's wishes and client preferences.
- Ideally, discussing the succession plan with the individuals responsible for implementing the plan well in advance of any adverse event that may cause the affected attorney's absence from the firm.
- Preparing and maintaining current lists of:
 - all of the affected attorney's clients and their contact information;
 - open and closed matters for all of the affected attorney's clients; and
 - computer, voicemail, and other key passwords to gain access to email, voice messages, and other protected information that may not be readily available if the affected attorney suddenly becomes ill, disabled, or dies.
- Knowing the status and location of files and records relating to the affected attorney's client matters. If any files are kept in a locked file cabinet, the plan should indicate where the keys are located.
- Transitioning in a successor attorney (see [Transitioning in a Successor Attorney](#)).

Identify Successor Attorneys

A partner's or senior attorney's goal in creating a succession plan, despite the discomfort and difficulty of planning for one's own replacement, should be to leave the law firm and its clients better prepared to address future business and legal challenges in that attorney's absence. Accordingly, as part of succession planning, attorneys with a substantial book of business and important firm responsibilities should compile and present a list of proposed successor attorneys to firm management for their consideration and approval.

A pre-approved successor list ensures a smooth transition if an affected attorney suddenly departs from the firm or is otherwise unable to practice law. Before preparing a successor list, an attorney should:

- Define the criteria for one or more successor attorneys.
- Identify and vet potential internal candidates, including running a conflicts check for each candidate. For information on common types of outside counsel conflicts of interest, see [Practice Note, Outside Counsel Conflicts of Interest](#).
- Weigh those candidates' strengths and weaknesses.
- Rank the candidates.
- Prepare a short list of the top successor candidates.

- Consider discussing the attorneys on the short list with clients to obtain their approval and provide them with an opportunity to raise any questions or concerns they may have.
- Consider the possibility of needing to hire an external candidate to become the successor attorney if no attorneys currently employed by the firm have the required background or practice area expertise to succeed the affected attorney (see [Hiring Internal Versus External Candidates](#)).

The successor list should include high potential junior partners and other senior attorneys with diverse backgrounds and proven track records. To identify internal candidates, the law firm may gauge a potential successor attorney's interest during that attorney's annual performance review.

Hiring Internal Versus External Candidates

When preparing a succession plan, a law firm should first consider attorneys already employed by the firm to succeed partners and other senior attorneys. There are many advantages to filling vacancies internally, including:

- Lower cost because the firm is not required to pay for the services of outside employment search consultants.
- Less time needed to transition an internal candidate into a new role in the law firm than train an external candidate.
- The internal candidate presumably has:
 - a better understanding of the firm's business;
 - a successful track record advising the firm's clients;
 - established credibility within the law firm;
 - relationships with key firm employees and clients; and
 - adapted to the firm's culture.
- Increased employee morale.

Outside candidates have their own advantages, including:

- Fresh ideas.
- New, different, or complementary skills and experiences.
- A larger candidate pool from which to choose the best candidate.

- During times of law firm transition, there is no expectation of business as usual.

Even if a law firm is committed to replacing an affected attorney with an internal successor, filling a vacancy with a lateral attorney may be unavoidable if:

- There is no attorney at the firm with the required background and practice expertise to replace the affected attorney.
- No firm attorney wants the position.

Transitioning in a Successor Attorney

A successor attorney may transition in over a period of months, years, or suddenly, depending on why and under what circumstances the affected attorney is departing or has departed from the firm. Ideally, an attorney has sufficient time before that attorney's departure to:

- Impart institutional knowledge to one or more successor attorneys. This process is eased if a law firm uses technology to record the history, status, and outcome of all client matters on an ongoing basis.
- Groom a successor in a manner that is consistent with clients' expectations and the firm's strategic vision.
- Actively mentor a successor, including allowing the successor to shadow the attorney as that attorney continues to perform daily responsibilities to ease the transition at the appropriate time.
- Create opportunities for a successor to develop relationships with firm management, other partners and senior attorneys, and key clients.

However, if the affected attorney suddenly becomes ill, disabled, or dies, the successor attorney must take immediate action and enlist the firm's other attorneys and administrative staff to:

- Notify the affected attorney's clients and obtain their consent to transition their matters over to the successor attorney or to a new attorney outside of the law firm if the client does not consent to being represented by the successor attorney.
- Send a disengagement letter to any clients that choose to hire a new attorney not affiliated with the law firm. For sample disengagement letters for litigation and non-litigation matters, see [Standard Documents, Disengagement Letter: \(Litigation Matter\)](#) and [Disengagement Letter: \(Non-Litigation Matter\)](#).
- Return any original files or client property to clients declining representation from the successor attorney that have not yet engaged a new attorney.
- Notify the firm's insurance company, as applicable.
- Open, review, respond to, process, docket, and file the affected attorney's mail and email.

- Redirect to the successor attorney all telephone calls and email sent to the affected attorney.
- Review the affected attorney's calendar and open files to determine whether any client matters require immediate action, including:
 - responding to deadlines;
 - contacting opposing counsel, courts, and administrative agencies to obtain extensions of time, if needed; and
 - contacting all other persons and entities that may be affected by the attorney's departure from the firm.
- Determine the status of the affected attorney's time entry, billing, and collections to ensure that the firm does not lose any fees associated with the affected attorney's work that has been completed or was in process but not yet billed to or collected from clients.
- Review the firm's trust account to determine whether any client funds need to be disbursed.
- Close any client matters that had not yet been closed by the affected attorney and destroy or send relevant records to storage according to the firm's document retention policy. For a sample document retention policy, see [Standard Document, Document Retention Policy](#).
- Determine whether to terminate the services of any outside vendors.
- Cancel the affected attorney's firm-paid subscription and membership fees.
- Return the affected attorney's personal property to that attorney's family or other authorized persons.

Review and Update the Succession Plan

Law firm succession planning is an ongoing process and can take years to implement. Once a law firm develops a succession plan, it should periodically review and update the plan to reflect changes in the firm's:

- Business strategy.
- Management.
- Roster of partners and attorneys.
- Client base.