Succession Planning for Lawyers:
The Ten Commandments

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CONTENTS

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Dr. Shannon Ferrell grew up on a small wheat and cattle operation near Leedey, Oklahoma. He attended Oklahoma State University, where he obtained his Bachelor of Science degree with honors in Agribusiness and his Master of Science Degree in Agricultural Economics. He then attended Oklahoma City University where he obtained his J.D. *summa cum laude* and received a certificate in Business and Financial Services law and an endorsement in estate planning.

Professor Ferrell has been a practicing attorney for 16 years and focuses on agricultural law with a particular emphasis on energy, environmental, and estate planning issues. Since joining Oklahoma State University, he has provided over 450 seminars and workshops to a cumulative audience of over 27,000 while receiving the Distinguished Teaching and Distinguished Extension Awards from the Agricultural and Applied Economics Association and the Western Agricultural Economics Association, and the Excellence in Agricultural Law award from the American Agricultural Law Association. Professor Ferrell has authored a number of publications in the area of farm transition planning, including serving as lead author of the Farm Transition Workbook. He is also a member of the FamilyBusiness.ag peer group for farm business management and succession planning.

I. INTRODUCTION

A. Abstract

Attorneys are frequently among the loudest voices calling for farmers and ranchers to establish a clear plan for how their business and its asset base will be transferred to the next generation, as well as for them to have contingencies in place for the sudden loss of a principal due to death, disability, incapacity, or other cause. However, attorneys often fail to heed their own advice, and thus expose their clients, employees, and families to a number of potentially dire consequences. To avoid this, attorneys would be well-advised to consider how their practices and firms could be affected by their death or incapacity, review the relevant ethical rules, and craft a plan for how their client matters and practices should be managed in such an event. Perhaps even more importantly, though, attorneys should consider how they can create a true successor to their practice so they can realize the maximum value of their practice, both from a pecuniary and emotional perspective.

B. Preface

In the fourth chapter of Luke, Jesus returns to his hometown of Nazareth and goes to his synagogue to worship on the Sabbath. In verses 23 and 24 of the chapter, as the crowd wonders why He speaks as one with the authority of God, Jesus says to them "No doubt you will quote this proverb to Me, 'Physician, heal yourself! Whatever we heard was done at Capernaum, do here in your hometown as well.' And He said, 'Truly I say to you, no prophet is welcome in his hometown.'"

Many attorneys make a good portion of their living selling services centered on the creation of wills, trusts, and perhaps even more advanced tools designed to help their farm and ranch clients transfer their assets to the next generation. In a few cases, they may even succeed in getting those clients to craft a true business succession plan that allows for the smooth and gradual transition of business management and ownership over time. And yet, how many attorneys heed their own advice? How many among our profession have a clear plan in place for our own estate, much less a clear plan for what would happen to all of our clients' matters if we were to die unexpectedly (and as discussed in the next subsection, we should all expect to die – the timing of the matter is the only remaining "unexpected" element), or if we were to be incapacitated for an extended period of time? Would we welcome the advice of our colleagues as they tried to get us to heed our own advice? Or would we shun them as the prophet returning to their hometown? This article explores the rationale for a thorough succession plan for all attorneys, reviews some of the relevant ethical rules involved, and then walks through the steps of formulating and implementing a succession plan.

Before beginning that discussion, though, it is important to note that attorneys are not the only ones thinking about attorney succession. Noting the fact 16 percent of partners will retire in the next five years and 38 percent will retire in the next decade (Debra Cassens Weiss, "As Baby Boomer Partners Retire, Law Firms Face Increasing Costs and Client Issues, ABA Journal Online, August 30, 2016, http://www.abajournal.com/news/article/as_wave_of_baby_boomer_partners_retire_law_firms_face_increasing_costs_and/), an increasing number of states have implemented some form of "mandatory" attorney succession planning with at least a basic requirement of nominating a successor attorney to handle the attorney's matters in the event of his or her death or incapacity. (American Bar Association Mandatory Succession Rule Table, *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mandatory_successor_rule_chart.authcheckdam.pdf, updated June, 2015).

As a note to preface the article's discussion, numerous references will be made to the death or incapacity of the attorney. While the meaning of "death" is fairly self-evident, "incapacity" within the discussion is meant to refer to any physical, mental, or emotional condition, whether temporary or permanent, that renders the attorney either unable or unwilling to fulfill their obligations in representing a client.

II. THE TEN COMMANDMENTS OF LAWYER SUCCESSION

Since the succession plan of an attorney can be triggered by contingencies of literally life and death importance, perhaps it is fitting to pose the fundamental issues of succession planning for lawyers in terms of almost Biblical importance. Thus, this article presents the Ten Commandments of Lawyer Succession.

A. Recognize that thy mortal days are numbered and fleeting, and that much in this world depends upon thee.

Statistically speaking, 100% of people that have ever been born have died. Attorneys are frequently surprised they must expend so much effort convincing their estate planning clients of this fundamental truth. They constantly struggle to get their clients to confront the fact that they must view estate planning as a "when," and not an "if" matter. But they also struggle to convince their clients of the numerous other contingencies potentially threatening their family's well-being and economic security. What would happen

if they were physically or mentally incapacitated for an extended period of time? What would happen to their family, particularly if they were the sole wage-earner or if a significant proportion of the family's income depended on them? Who would handle all the tasks around the house or farm that they usually managed?

Lawyers, by the very nature of their profession, are frequently looked to by those in the direst of straits; those faced by the sudden death or incapacity of someone central to their lives. As a result, lawyers – perhaps only besides doctors – have the most cautionary tales of how fleeting life and health can be. And yet, how often are lawyers guilty of exactly the kind of inaction of which they are constantly accusing their clients?

From an ethical standpoint, the failure of the attorney to have a plan in place for managing their clients' matters should they die or become incapacitated poses grave concerns for the rights of those clients. Those matters are discussed in the immediately succeeding subsection and throughout the article.

Beyond the legal ethics rules, though, attorneys would do well to consider the implications on the people who *aren't* their clients as well. First and foremost, the attorney's families may depend in part or in full on the income of the attorney for their support. A sound succession plan can preserve as much monetary value from the attorney's practice as possible, but a failure to plan can deplete the practice's resources and potentially even reach into the pockets of the family itself.

The family may not be the only people economically dependent on the attorney, though. The administrative assistant, paralegal, runner, and early-career associate may also depend partially or entirely upon the attorney for their livelihood as well, and the death or incapacity of the attorney can mean a significant disruption to their professional lives and their ability to provide for their families as well.

At the risk of [perhaps further] inflating the egos of attorneys, it is entirely possible – and indeed, probable – that many people depend on the success of their practice and the ability of that practice to survive a significant disruption. For numerous ethical and even moral reasons, it is vital the responsible attorney create and implement a succession plan for their practice.

B. Thou shalt bind the Model Rules of Professional Conduct and Model Rules for Lawyer Disciplinary Enforcement continually upon thy heart and tie them around your neck.

Any time a lawyer becomes unable (for any reason) to manage the matters entrusted to them by their clients, and any time a matter is transferred from one attorney to another, a number of ethical rules may be triggered. While these rules will be discussed throughout this article, they are gathered together in this section to bring them top-of-mind as the remainder of the article discusses the succession planning process.

1. MRPC 1.1: Competence and MRPC 1.3: Diligence

A tenet of farm succession planning is "*rigor mortis* makes for inflexible farm mangers." By the same token, a dead or incapacitated attorney faces a significant probability that they will "neglect a legal matter entrusted to the lawyer" or "frequently fail to carry out completely the obligations that the lawyer owes to a client." Having a succession plan for one's practice is not simply a matter of prudence; it is a matter of ethics. In case it they are not already committed to the reader's memory, Model Rule of Professional Conduct 1.1 requires a lawyer to "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Model Rule of Professional Conduct 1.3 states "A lawyer shall act with reasonable diligence and promptness in representing a client."

To state the obvious, it is quite difficult to fulfill the obligations of MRPC 1.1 and 1.3 when one is disabled or deceased. As discussed above, the actuarial inevitability of one if not both of these conditions demands lawyers consider how to fulfill their ethical obligations if (or rather when) one of these conditions occur. Thus, MRPC 1.3, comment 5 directly addresses the issue of an attorney's death or disability:

> 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 lawyer 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.

To avoid a violation of MRPC 1.3, one must then consider how to proactively manage the handoff of matters in the event of an attorney's death or disability.

As mentioned in the preface, a number of states have enacted mandatory succession planning for attorneys. This movement has come, at least in part, through recognition of the dramatic aging of the legal profession and the fact that clients' interests can be severely prejudiced by the incapacity or death of the attorney.

Whether designating an attorney to serve as a successor the purpose of winding down matters or transitioning them to another attorney or finding a successor to carry on the practice in full, one should consider whether the designated successor will have the

skills to fulfill the obligations of competence in MRPC 1.1. This can be a difficult assessment for the "receiving" attorney unless they have a clear picture of the matter, which invokes the need for comprehensive records that can enable that attorney to get up to speed quickly (as discussed later in this article), but also invokes concerns of confidentiality under MRPC 1.6, discussed below.

2. Model Rule for Lawyer Disciplinary Enforcement 27(a)

Model Rule for Lawyer Disciplinary Enforcement 27(a) requires an attorney who has been rendered "inactive" (either by disciplinary action or by disability) to provide notice to:

> (1) all clients being represented in pending matters;
> (2) any co-counsel in pending matters; and
> (3) any opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the order of the court and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order. The notice to be given to the lawyer(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the place of residence of the client of the respondent.

Note that these requirements may impose an unexpected burden upon the attorney's staff or even family members if the attorney did not have a well-organized, up-to-date, and readily accessible client and matter record-keeping system. Further, how many attorneys have taken the time to inform their staff or family this duty could be triggered by their death or incapacity? Thus, all attorneys have an obligation to consider a contingency plan for death or incapacity, including the notification requirements under MRLDE 27. A better path than this notice requirement is discussed later in this article when succession planning is examined.

3. Model Rule for Lawyer Disciplinary Enforcement 28

The alternative to a failure to have a notification plan and succession strategy in place is for a client (or the disciplinary counsel in the jurisdiction) to petition the district court for an assumption of jurisdiction over the attorney's practice pursuant to Model Rule for Lawyer Disciplinary Enforcement 28, which states:

> If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 27, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

Essentially, this process leads to the appointment of a custodian who is charged with gaining access to the client files of the deceased or incapacitated attorney and winding those matters down.

This rule is designed as a stop-gap measure to make sure at least some mechanism is available to give another attorney the ability to avoid the prejudice of clients' rights, but it does not necessarily provide assurance of a smooth transition of the clients' matters to another attorney. As discussed later in this article, the ability of a successor attorney or a custodial attorney to handle the clients' matters depends largely on whether the deceased or incapacitated attorney left an orderly system in place that could easily be accessed by another, or if they created a nightmare of a scavenger hunt for whoever would bear the burden of coming after them.

4. Model Rule of Professional Conduct 1.2: Scope of Representation

Whether an attorney has designated a successor attorney as part of a plan before the need, or if a successor attorney has been appointed because of the original attorney's death or disability, the fact of the matter is a new attorney is representing the client. That new attorney has a different set of skills and competencies that may affect their ability to represent the client. A successor attorney designated simply to wind down or transition a matter to another attorney may seek to have minimal impact on the scope or objectives of the representation. However, in a scenario where the attorney is not merely transitioning matters but is rather undertaking representation in an on-going matter the attorney receiving matters may have to evaluate their approach to the matters and whether the scope or objectives must change. Model Rule of Professional Conduct 1.2 allows a lawyer to "limit the representation of the client if the limitation is reasonable under the circumstances and the client gives informed consent."

Connecting the considerations of MRPC 1.2 back to those referenced in the discussion of MRPC 1.1 and 1.3, an attorney should consider the skills, practice emphasis, and workload of a potential successor

attorney; these factors are discussed in greater detail below.

5. Model Rule of Professional Conduct 1.4: Communication

Some attorneys may be reluctant to even bring up the possibility of some future event triggering a need for another attorney to handle a client's matter, but prudence dictates such matters should be addressed in the client's engagement letter. Doing so within that letter already sets the stage and makes things far easier for the successor attorney (who, in the absence of such language in the engagement letter, would have to go back to each client to secure permission to handle each matter). The possibility of implementing a succession plan, or even sale of the practice also requires communication from the attorney to apprise the client of their rights pursuant to Model Rule of Professional Conduct 1.4. A scenario in which a successor attorney would trigger almost every subsection of MRPC 1.4. Thus, an attorney should attempt to proactively address many of the communications issues in the initial engagement letter or agreement. Such language should address the following:

- The possibility of a circumstance triggering the activation of a successor attorney or the transfer of a portion or all of the attorneys practice by a sale or other transition of the practice.
- The client's right to retain other counsel or take possession of their file.
- The identity of the successor or acquiring practice and their contact information.
- The location of the client's file and when it will be available for retrieval, that a written receipt will be required, and that in the case of the sale or transfer of a practice, the fact that the selling lawyer is entitled to make and retain copies of the file at the selling lawyer's expense.
- The intent of the transferring lawyer to handle funds on deposit in his or her IOLTA or other client trust account and any other client property by transferring them either to the successor lawyer, who will be responsible for such funds and property, or to the client, if the acquiring lawyer's representation is not accepted by the client.
- The fact that the successor lawyer may represent the client on the same basis as that between the transferring lawyer and the client or that the successor attorney may desire to alter the terms of the engagement in the future (see discussion of TDRPC 1.02 above).
- The right of the client to decline representation by a designated successor and choose their own lawyer; alternatively, the transferring lawyer's and acquiring lawyer's intent to presume the client's consent to the transfer of the client's file if the client does not take any action or does not otherwise object within a specified period of time upon receipt of the notice.

State Bar of Texas, "Best Practices When Selling a Practice" http://texaslawpracticemanagement.com/best-practices-selling-practice/

6. Model Rule of Professional Conduct 1.5: Fees

In a minimal succession attorney role (simply transferring matters or winding them down), there may not be any reason to modify a fee agreement with the client. If there will be any change in fees, Model Rule of Professional Conduct 1.5 requires such changes should be communicated immediately to the client to give the client all needed information in deciding whether to take their matter to another attorney or to allow the successor to continue in the handling of the matter.

If the attorney is considering the sale of the practice as a succession plan, care must be taken to avoid violations of MRPC 1.5's prohibition against referral fees. Some state bar associations have found "[t]he sale price for an individual client matter is effectively a referral fee earned for simply turning the matter over to another lawyer while retaining no responsibility for the matter." State Bar of Texas, "Best Practices When Selling a Practice," http://texaslawpracticemanagement.com/best-practices-selling-practice/. That said, division of a fee for the work performed by the attorneys before and after a transfer is perfectly acceptable so long as the client agrees to the division of work in writing. *See* MRPC 1.5, comment 7. In the event of a sale of the practice as a succession plan, refer to the discussion of MRPC 1.17 below.

7. Model Rule of Professional Conduct 1.6: Confidentiality of Information

Model Rule of Professional Conduct 1.5 requires prudence on both the part of the attorney transferring a matter and the attorney receiving it. To properly prepare any form of successor, an attorney must give the receiving attorney sufficient information about the case to allow both of them to gauge the receiving attorney's ability to competently and diligently handle the matter. However, providing any confidential information about the matter requires the consent of the client. As discussed above, this is ideally handled through consent language included in the client's engagement letter.

By the same token, a successor attorney or custodian must walk a fine line between effectively handling the matters charged to them and respecting the confidentiality of those matters. MRPC 1.6 requires a successor or custodian to only reveal that information

that is necessary to aid the client of the deceased or incapacitated attorney in either winding down the matter, closing the file, or securing another attorney.

8. Model Rules of Professional Conduct 1.7 through 1.10

Even though an attorney may designate a successor to handle matters in the event of their death of disability, the Model Rules applicable to conflicts of interest still apply. Indeed, multiple successors might be needed if there are one or more matters from which the primary successor is prohibited to handle as a result of conflicts of interest, whether those conflicts arise under Model Rule of Professional Conduct 1.7 (general rule), Model Rule of Professional Conduct 1.8(a) (acquisition of interest adverse to the client), Model Rule of Professional Conduct 1.9 (former clients), and Model Rule of Professional Conduct 1.10 (imputation of conflicts).

While these rules do not require the attorney receiving a matter have *no* conflicts with the deceased or incapacitated attorney, an important piece of the succession plan is to provide a means of aiding the receiving attorney in determining if any conflicts exist without disclosing any confidential information. This harkens back to the considerations invoked by MRPC 1.6 above.

9. Model Rule of Professional Conduct 1.15: Safekeeping of Property

Model Rule of Professional Conduct 1.15 functionally requires an attorney considering any form of successor to review the property kept on behalf of clients, and the ability of a successor to receive and safely keep that property. Are the proper accounts and facilities available to the receiving attorney? If the receiving attorney will be using the accounts and facilities of the transferring attorney, how will access be transferred, keeping in mind the transferring attorney may be unable to accomplish that transfer themselves?

As an additional consideration, if a court or bar association has appointed a successor attorney due to the death or incapacity of the original attorney, Model Rule of Lawyer Disciplinary Enforcement 27(D) may come into play:

> The respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

10. Model Rule of Professional Conduct 1.16: Declining or Terminating Representation

Arguably, this entire article represents a discussion about compliance with Model Rule of Professional Conduct 1.16, specifically subsection (a)(2): "A lawyer shall not represent a client, or, where representation has commenced, shall withdraw… if the lawyer's physical, mental, or psychological condition materially impairs the lawyer's ability to represent the client."

Beyond this over-arching consideration, though, there are a number of reasons why the attorney receiving a matter from another attorney may choose to (or be required to) decline accepting a matter from the transferring attorney. If such a determination is made before accepting the matter, the transferring attorney should seek another attorney to receive the matter. However, if the determination is made after the receiving attorney has begun representation, TDRPC 1.16(d) is triggered, requiring the attorney terminating the representation "take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned."

11. Model Rule of Professional Conduct 1.17: Sale of Law Practice

One of the more proactive ways to handle the succession of a legal practice is the sale of the practice to an attorney whose skills and interests are a match for the practice. The sale of a practice is permitted under the model rules, but many restrictions must be observed, as set forth in Model Rule of Professional Conduct 1.17. Since MRPC 1.17 and its comments provide an extensive list of considerations in the sale of a practice, the rule and its comments are provide in their entirety in Exhibit 1 to this article.

12. Model Rule of Professional Conduct 5.6: Restrictions on Right to Practice

Though likely inapplicable to a successor attorney simply seeking to wind down matters or transfer them to another attorney, Model Rule of Professional Conduct 5.6 does potentially impact a successor arrangement involving the transfer of an attorney's practice in its entirety. In some practice sales, for example, a "non-compete" provision may be made part of the terms, but such terms should be crafted with utmost care to avoid violation of MRPC which restricts lawyers from making agreements "that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement."

As discussed below, a true succession arrangement may obviate the need for any non-compete clause or other arrangement potentially violating MRPC 5.6 as the transferring lawyer remains affiliated in some regard with the receiving attorney in an of-counsel or advisory role. If, however, the attorney chooses to completely step away from the practice of law, extreme care is required such an arrangement is a requirement of the transfer of the practice.

13. Model Rule of Professional Conduct 7.3 and Civil Barratry Rules

Model Rule of Professional Conduct 7.3 states "A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain."

This rule, coupled with some state statutory rules (*See, e.g.* Texas Government Code §82.0651, providing that a client may bring an action to void a contract for legal services if those services were produced through a violation of TDRPC 7.03 [equivalent to MRPC 7.3] or other acts of barratry) requires extreme caution on the part of the successor attorney or custodian who seeks to engage the clients of the deceased or incapacitated attorney as their own clients. It also underscores the importance of attorneys securing consent from their clients to have their matters handled by a successor.

C. Thou shalt survey all that is around thee.

Succession planning for attorneys involves a significant amount of "physician, heal thyself," "take your own medicine," and "eat your own cooking" all within the unique context of the legal profession. Thus, much can be learned from the succession planning techniques espoused by lawyers to their farm and ranch clients.

What is the first thing an attorney would require while they were on-boarding a new succession planning client? They would likely tell them to conduct an exhaustive, 360-degree review of their operation: its resources, business plans, human resources, and stakeholders. Thus, the attorney tackling the task of succession planning would do well to follow the same path.

The first task for the lawyer trying to establish a succession plan is to examine the status quo of their practice. While more detail will be provided later with respect to records of past and current matters, it shall suffice for now to say that a first step within this first step is to compile a complete and detailed listing of the attorney's matters.

Beyond this and other record-keeping matters, though, an attorney would also do well to update the inventory of human resources: who is in your employ, what are their skill sets and areas of deepest knowledge, and how could they help a successor in the continued operation of the practice? Additionally, who are the stakeholders in the business – those who may have an economic interest in the business. Are there subsidiary or affiliated businesses potentially impacted by a disruption to the primary practice?

Farm and ranch clients coming to an attorney for succession planning advice likely would hear they need a comprehensive update of their core financial statements, including updated statements of cash flows, income statements, and balance sheets with both market value and tax basis values. The attorney would also be well-advised to update these important economic indicators of firm financial health. It is a best practice of the attorney to know the financial condition of the operation in any case, but it is particularly important in the context of succession planning. If the firm's revenues are cyclical for any reason, the succession plan should address how to handle periods of constrained cash flows or how to manage periods of increased revenues for when the lean times come. Further, if a particular matter has already depleted cash reserves, sources of additional liquidity should be identified to help make ends meet if necessary. Remember, whenever a succession plan is triggered, it will be anything other than business as usual for your firm, so be sure to provide means of handling that economic disruption.

Does the firm have a statement of core values, a mission statement, a vision statement, and a strategic plan? While at first blush, these may not appear to be core elements in establishing a succession plan, they are. As discussed later, finding the right successor can make all the difference in the success of succession. Finding the right successor means finding someone who has compatible core values and who can buy in to the mission and vision of the firm while contributing valuable skills that advance the firm's strategic plan. If you or your firm don't have these elements, take the time to build them. Not only will they bolster the strength of your succession plan; they will also help focus you and make you think about why you do what you do – for reasons other than "I've just always done it."

D. Be thou diligent to know the state of thy dockets, and look well to thy files.

Malpractice insurance providers may require attorneys to have a redundant docketing system and some form of file organization, but there is the possibility – however infinitesimal – that some attorneys only manage these systems to the absolute minimum specifications required for coverage. So in the interests of aiding clients and those who depend on the successful, smooth operation of legal practices, let the

discerning and diligent attorney consider their docketing and file-management systems this way: if a random, but reasonably intelligent person were plucked off the street and plopped down in his or her law office, would that person be able to figure out the relevant deadlines and find the relevant files? Further, let us add the caveat that this person should not have to engage in superhuman feats of deductive reasoning and forensic filing to do so, but rather could find things quickly and easily.

While setting up such a docketing and filing system may sound like a lot of non-billable time, it can pay multiple dividends in improved productivity for you and your staff. If you don't already have such a system in place, be sure to involve other members of your staff as you develop it and place all of your existing matters into it. This will enable you to both tap into their insights about each matter and to train them in the system so they can aid your successor should the successor need to take over the practice at any point. Further, this process adds the benefit of supplementing your comprehensive review of the practice, mentioned in the immediately-previous subsection.

A number of state bar associations have created guidelines to develop procedures that can not only help the efficiency of your current operations, but can also make for a smooth handoff of operations to a successor attorney:

- Keep a list of a of contact information for the people who should be notified in the event of your death or incapacity.
- Keep a list of contact information for all past and current client matters.
- Create a list of passwords for computer and network login, email accounts, bank accounts, credit cards and ATM cards that will need to be accessed. Give the list to a close family member, your personal representative, or the successor attorney for safe keeping (this will be discussed in more detail in the immediately succeeding subsection).
- Maintain written fee agreements for each client matter.
- Maintain a separate file for each client matter.
- Maintain a separate trust account and dedicated ledger for each client whose funds you hold.
- Keep your time and billing up-to-date.
- Keep a calendaring system with applicable deadlines.
- When you have a closed client matter, send a termination letter and include any original documents.

See State Bar of Texas, "How to Protect Your Clients and Firm in the Event of Death, Disability, Impairment, or Incapacity," https://www.texasbar.com/Content/NavigationMenu/ForLawyers/ResourceGuides1/ClosingaLawPractice/ProtectYourClients.htm .

E. Store up keys, passwords, account numbers and other access tools, not where rust and data degradation doth corrupt and hackers may break through and steal, but where successors may reach them readily.

When a farmer works on a succession plan for his or her operation, it has to include telling the successor where the keys to the feed truck can be found. With succession planning for attorneys, the equivalent starts with who has the keys to the front door of the office but goes well beyond that. Literally, who has those keys, the keys to the file cabinet, the key to the safe deposit box at the local bank, the combination to the firm safe… the list goes on and on.

Just as the docket and file system should enable the successor to quickly find each file and determine its status and relevant deadlines, we should also consider how the successor will gain access to any physical and digital resources he or she may need to manage matters.

An important first step in determining what access might be needed is to simply keep a list of all of the physical keys, combinations, account names, and passwords you use, day by day, for a week or two. The physical keys and combinations may well be easy, but the digital access may prove problematic. For example, you may have set a number of frequently-used websites such as Lexis or Westlaw to automatically log in with your ID and password pre-entered. Thus, in your journal, be sure to record any websites you frequently use, and find (or reset, if needed) your login credentials for recording in your list.

Financial accounts and the institutions where they reside are another important piece of the access puzzle. Wherever possible, be sure to tie those accounts to the docket and file system so funds, accounts, and their balances can be readily tied to the relevant matters. If you have already identified a successor, take them with you to the financial institutions keeping your accounts and take whatever measures are necessary to give them access to the appropriate accounts and deposit boxes. It may be necessary to only give them access to those items contingent upon your death or incapacity, and if that is the case, discuss with the institution what documentation the successor will have to provide in order to gain access.

Increasingly, we use applications such as Dashlane, Sticky Password, RoboForm, and others to record our passwords and in some cases, automatically enter them. These applications can be excellent tools, but you should also be sure to back them up and give a trusted party access to those backups. At the same time, we use apps to manage our passwords, we also use biometrics like fingerprint scans or phone passwords to protect them. Without access to a duplicate of the password application's data, the data is inaccessible if it only exists on a smartphone that cannot be opened.

The challenges of accessing password records underscores a fundamental principle of access, whether physical or digital: you must ensure a successor will be able to gain access to the keys, passwords, and accounts through some means that is not dependent on you being there, whether that access is through a third party or some mutually-accessible means. Access, access, access is the key, as well as access to the keys…

F. Gather thee consent from thy clients for a successor attorney.

While much has been made in the discussion to this point about the ethical implications of having a robust succession plan, we would be remiss if we did not discuss the ethical implications of actually having a succession plan. First and perhaps foremost, you will need to secure the consent of your clients to transfer their files to a successor should such a measure become necessary. Since doing so will necessarily involve the disclosure of confidential information, such a disclosure would be a violation of MRPC 1.6 without the consent of the client.

Perhaps the easiest way to secure this consent before it is needed (and remember, if and when it is needed, you will be unable to secure it yourself) is to include a provision in your retainer and fee agreements securing the client's permission to transfer their files, associated accounts, and funds to a successor attorney in the event of your death or incapacity. You may also want to define "incapacity" to include situations in which you are unable to effectively represent them, even if such situations do not involve a legal or medical determination of incapacity.

G. At a minimum, thou shalt have a successor attorney.

At this point you may be thinking to yourself "I've read all this discussion of 'successor attorneys' but they've never told us what the heck that is." Thus, let us turn to the concept of the successor attorney.

First, it is worth noting that just as an administrator is chosen as the personal representative for an intestate estate, so to a successor attorney – or more appropriately, a "custodian" – can be selected to administer the matters of a deceased or incapacitated attorney.

Model Rule of Lawyer Disciplinary Enforcement 23 is meant to provide a safeguard against the languishing of client's interests caused by a death or incapacity of an attorney that is not communicated to clients, the courts, or other parties. MRLDE 23 allows for an attorney to be moved to disability inactive status if the attorney is "judicially declared incompetent or is involuntarily committed on the grounds of incompetence or disability." Model Rule of Lawyer Disciplinary Enforcement 27 requires notice of such action be given to "all clients being represented in pending matters," and Model Rule of Lawyer Disciplinary Enforcement 28 states

> If a respondent [the deceased or disabled attorney] has been transferred to disability inactive status, or has disappeared or died… and there is evidence that he or she has not complied with Rule 27 and no partner, executor, or other responsible party capable of condudcting the respondent's affairs is known to exist, the presiding judge in the judicial district in in which the respondent maintained a practice, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

These procedures should be regarded as a backup, though, and should not be the primary line of defense for one's clients. Rather, attorneys should take a proactive approach in crafting a succession plan and a successor attorney. The immediately following subsection discusses the difference between a successor attorney and a "true successor" to the practice, but for now, let the discussion turn to the minimum requirements for a successor whose sole job is to manage the transfer of matters and wind down a practice.

Just as intestate succession procedures will pick "someone" to handle the administration of the estate, the MRLDE procedures will pick "some attorney" to handle your client's matters. By proactively choosing an attorney yourself, you can select someone who has a skill set better suited to your practice and client base.

If you practice as part of a firm, you have an unfair advantage when it comes to selecting a successor attorney, since you may very well be surrounded by people who could take on the duties of a successor attorney with significantly greater ease than anyone else.

If you practice as part of a firm, your partners can serve as the first line of defense should you become unable to practice, as they are [or should be] familiar with your firm's resources and procedures, and should have ready access to your files.

However, even with all these advantages, a partner may still struggle to keep both their and your plates spinning in the air if they are unfamiliar with your cases. One practice to address this is to conduct regular firm meetings (on a weekly basis) where attorneys update each other on their matters. Not only does this help with firm management and getting different perspectives on cases; it also helps partners assume each other's duties should the need arise.

More is required than just regular meetings, though. If talking about one's farm was all that was

needed for one farmer to take the reins of another's operation, anyone at the coffee shop would be able to jump in. A successor farmer needs to know what the farm's resources are, where they are, and how to access them – where are the keys to the feed truck, anyway? By the same token, good office procedures and record-keeping practices can help anyone who needs to handle your matters.

If you do not practice as part of a firm, you will likely face a bit more work in your search for a successor. Visit with a number of attorneys in your area to gauge their willingness to serve as your successor and to gauge how their skills could apply to your practice. By the way, "in the area" means geographically as well as from a subject matter perspective. Since handling your matters while you are incapacitated or winding down the practice if you should pass away will involve a significant time commitment, someone in the nearby area may face fewer inconveniences than someone more removed. Although a great deal of practice management can be handled remotely via electronic means, there are a number of tasks that will have to be handled in person.

Besides geographic proximity and skills, another thing to consider is the age and health of your successor. From an actuarial standpoint, an experienced but slightly younger and healthy attorney represents the lowest probability that *they* will be incapacitated when you need them because *you* are incapacitated.

Once you have identified a potential successor, you will need to do the lawyerly thing and draft a succession agreement. First, the agreement should spell out the scope of the successor's responsibility. As stated in the State Bar of Texas guide:

> The need to establish the scope of the successor attorney's duties and obligation to you and/or your clients from the outset is critical. Because conflicts may arise if the successor attorney is expected to represent both your interests and those of your clients, be sure to clearly identify who the successor attorney will represent. If the successor attorney represents you, he or she may be prohibited from representing your clients on certain matters. If the successor attorney represents your client's interests, he may be required to disclose to the client if you have made any errors on their case.

See State Bar of Texas, "How to Protect Your Clients and Firm in the Event of Death, Disability, Impairment, or Incapacity," https://www.texasbar.com/Content/NavigationMenu/ForLawyers/ResourceGuides1/ClosingaLawPractice/ProtectYourClients.htm .

Another important piece of the succession agreement is what triggers the event and how long the agreement should remain in effect after the trigger. In this article, the term "incapacity" has been used, but who determines if that state exists? Is it to be determined only by a medical diagnosis? Can it be designated to exist by your spouse or adult children? At the far end of the spectrum, could the successor attorney declare it to exist on the occurrence of certain events (notification by a client, observed absence from work for an extended period of time, failure to reply to communication, etc.)? With respect to the duration of the agreement, it may be preferable to define the term by milestone event (for example, when all matters have been concluded or transferred to another attorney) rather than by a defined period, since the wind-down process may take longer than expected.

The successor attorney agreement should also include a clear listing of the duties the successor is to perform. This can include the following:

- Reviewing files for pending deadlines
- Obtain extensions in litigation matters
- Contact your clients about returning/transferring files
- Wind up financial affairs
- Inform the court and others who need to know of the closure of your practice
- Collect fees owed to the disabled or deceased attorney
- Return unearned fees

State Bar of Texas, *id.*

As mentioned in subsection II.E., carrying out these tasks may require access to your financial accounts. Some banks may require a power of attorney be executed giving the successor attorney the legal power to handle your accounts. If so, you will likely want to make such a power a springing one, and again care must be taken to define the triggering event for both the successor attorney agreement and the springing of the power of attorney. The successor, a close family member, or your personal representative should also be granted access to your trust account so client funds may be dispersed.

As we discuss triggering events, it is also important for you to give clear instructions to an employee, spouse, or other party that they should provide notice to the successor when a triggering event has occurred. Be sure to provide the contact information for the successor attorney to that party. Additionally, make sure a member of your office staff has instructions to send notice to your clients that the successor attorney will be handling their matters.

H. And yet shew I unto you a still more excellent way: have a true successor.

The MRLDE procedure is a stop-gap. A successor attorney is a chosen lifeguard for your clients. But ideally, would it not be preferable to find a true successor to the practice, not just a selected custodian? What if someone could be found not only to continue

your practice, but to provide you and your family the maximum value for the practice and give you the opportunity to pass on your experience? That is what your agricultural clients so often seek; is it something you want to seek for yourself?

One perhaps obvious yet often-overlooked consideration in succession planning for attorneys is the fact that one can stop practicing before one dies or is incapacitated. An attorney can step away from his or her practice to enjoy other pursuits entirely, or can scale back to an of-counsel role to reduce workload or pursue only matters they enjoy most. While care should be taken in simply immediately and completely "shutting down" (see the following section), there are many options along the continuum of successors and the speed at which matters are turned over to them.

Again, if you practice as part of a firm, a lot of the succession work may have been done for you in the form of the partnership agreement. That agreement coupled with firm procedures might provide for a number of scenarios including how your clients' matters will be handled in the event of your death or incapacity. In the event of your death, it may provide for how your estate will be compensated for the value of your partnership interest. That said, though, do not assume these matters are covered – review the relevant agreements and procedures to make sure they are. If they are not, it is time to visit with your partners to see that they are.

While the firm model can facilitate succession, the firm may not have depth in your particular area of expertise. If part of the reason you joined a firm or others joined you was to "horizontally integrate" and broaden the services provided rather than provide additional depth in one subject area, there may not be a clear successor to your practice. If that is the case, it may be time to identify an associate at your firm or find a new hire to take over your practice – whether that is as a result of your death or incapacity, or as a result of your planned retirement. Starting the process early gives you time to show your associate the ropes and to develop the relationship between him or her and your clients so those clients can develop rapport with them and ensure the continuity of those critical business relationships.

If one chooses to step back or completely away from the practice in a timeframe that is not conducive to the development of an associate, law firm consultant David French presents a number of other partnership and merger options that can fulfill the needs of succession planning in his article "Succession Planning: Preparing Your Law Firm's Future:" (Arizona Attorney, October, 2016, available at http://www.azattorneymag-digital.com/azattorneymag/201610/?pg=1#pg1).

- Bring on a new experienced partner. Select someone whom you feel you could immediately entrust your practice to, which will allow you to slow down. This lets you maintain some control while helping your clients adapt to this new partner.
- Merge with another similarly sized firm. With two strong balance sheets, you will be in a better position to begin a transition, whether now or in the future. This should be discussed from the outset, even if the plan is not to be implemented for a number of years.
- Join a larger firm. If slowing down is your desire and bringing in an associate or partner sounds like a lot of work, sometimes identifying a seasoned group to take care of your clients is your best option.
- Consider selling your practice. It should be noted that valuations of law firms rely heavily on the personal goodwill the selling attorney has maintained with clients. It is important to note that an outright sale in which the selling attorney simply walks away from the practice and clients will not usually work. Also, traditional financing is hard to come by in a law firm sale, so while our company has identified a few sources that will look to provide capital in these transactions, an earn-out of some sort will normally be the best approach.

Having a true successor rather than someone who will simply serve as a "custodian" to your matters provides the best potential for your clients to receive continuous, high-quality legal services and to preserve the value of your practice. However, selecting a succession arrangement is a very involved process that will take some time – perhaps years – to implement.

I. Thou shalt preserve a meaningful role for thyself.

Bill was the senior operator of a large and successful farming operation and recognized the need for a succession plan. He did everything a good succession planning attorney would advise: did a 360 degree review of his operation, discussed options with all of the farm's stakeholders, engaged a team of attorneys and tax professionals to help with the development of the transition tools, and implemented the plan wherein he turned the management of the operation over to his children. All Bill had to do was sit back on the porch, drink lemonade, and watch the farm prosper.

In the first year following the implementation of his plan, Bill wore out three transmissions in his John Deere Gator. Why? He was a farmer, and farmers farm. But there was no farming left for him to do – he had delegated all of his tasks to his children. Not knowing what else to do, he simply drove the fencerows of the farm spraying weeds from his Gator. After that, the family figured out that Bill needed a more meaningful

role on the operation, and re-engaged him to handle some of the production operations, as well as making him "chairman of the board" to help with strategic decision-making and to provide his experience as they weighed management choices.

The moral of Bill's story is that being a farmer is very much at the core of most farmer's identities. There is at most a blurry line between the land and themselves, if there is a line at all. Many attorneys are the same way. Lawyer jokes notwithstanding, the practice of law and the pursuit of justice is a noble profession, and many of us tie our very identity very closely to that profession. If we were not lawyers, and did not spend our days lawyering, we wouldn't know what to do with ourselves, and perhaps more worryingly, wouldn't know who we are.

As attorneys, it is important for us to recognize the importance of what we do, but it is also important for us to recognize that we have an identity separate from our profession. We can make vital contributions to our families and our communities regardless of whether "attorney at law" appears on our business card. Further, if we have any degree of excellence in our profession, we also owe it to the generations that follow us to impart what we know on the lawyers that will follow us. At some time, it may be important for us to take a step back from the profession (we dare not say "retire") to create room for those new professionals to step forward.

Having said this, however, it would be foolish to assume "step back" means to completely "step away." To do so, especially abruptly, can have devastating consequences on the emotional health of an attorney (to say nothing of the sanity of their families who are then suddenly burdened with an aimless attorney around the house).

Let us learn from the story of Bill and the Gator and recognize that even if the attorney does recognize a need to step back from the practice of law, perhaps a number of small steps are best. Moving to an of-counsel or advisory role still gives the attorney the opportunity to "keep the sword sharp" and impart their experience to other practitioners. Pursing more pro bono work or using one's legal and business experience to help in charitable and community groups can also help give attorneys meaningful work while still giving them flexibility and time with their families that might not have been possible in full-time practice. The primary consideration is to make sure that the attorney does not swing completely from one end of the spectrum ("you can have this practice when you pry it from my cold, dead fingers") completely to the other without finding meaningful ways to channel their personal and professional energies.

J. Where there is no counsel, the people fall; but in the multitude of counselors, there is safety.

Corollary: Thou shalt have trusted advisors who shall speak unto thee the truth, and shall not speak unto thee the leavings of the bull.

Lawyers need friends; not just friends to provide emotional support, but friends we trust enough to be honest with us and hold us accountable. As Proverbs 27:6 reminds us, "Wounds from a friend can be trusted, but an enemy multiplies kisses." We need friends who will remind us that we have an obligation to take care of ourselves. While we may never capture the mythical unicorn of "work-life balance," we need friends to remind us that life might not be best measured in billable hours, that we need to sleep, that we need to exercise, that we need to eat well, and that we need to spend time with both the people who give us a reason to go to work as well as the people with whom we work. The friends who remind us of these things must also be empowered to remind us that we swore an oath before God to discharge our duties to our clients to the best of our abilities, and that oath also requires us to take measures to protect our clients in the event we *can't* discharge those duties. They must remind us that we owe a duty not only to our clients, but to our employees and to our families to take care of them, even if we cannot take care of ourselves. Thus, reader, find a friend who will speak these things to you in both truth and grace and who will hold you accountable to develop and implement a true succession plan.

As you go about crafting and implementing your succession plan, also remember the adage "he who represents himself has a fool for a client." Obviously, your professional experience and skills position you well to do much of the work of succession planning yourself, but don't rely solely upon yourself. As attorneys, much of the value in our problem-solving skills comes from the fact we are not directly involved in the problem, but can examine all its facets from an objective point of view. When you are involved in your own succession planning process, you are looking at the problem from the inside-out. Engage trusted friends and colleagues with relevant experience to examine the problem with you and to offer their perspectives.

Any good succession team should include:

- An attorney (and in this case, that means an attorney in addition to you) to craft the transactional tools and other documentation needed to accomplish both the gradual transition of your practice and the contingency plans if sudden illness or death occur.
- An accountant / tax professional to guide you through the potential economic and tax implications of your succession strategies.

- An investment advisor to help you plan for your income needs if you choose to scale back your practice and to examine tools to provide income to your family when you die or become incapacitated.
- A human resources advisor to help you determine the skills needed in the transition of your practice.

III. CONCLUSION

At the end of the day, selecting a true successor is a function of a number of interests, and reflects the same questions we would ask our clients to confront as we are advising them in their succession planning. How does one balance the desire to pass along a valuable asset to someone else while also harvesting some of the value created for oneself? How do we ensure that our successor has the same values I do and carries them out in the operation of the business? If part of my livelihood depends on the continued success of the business, how can I give my successor the experience they need when no one knows my business like me (and no one could *possibly* run it *better* than I could)? How do I know when it is time to take a step back and let someone else have the reins? At least one of the reasons our clients are not falling over themselves to engage in succession planning is because it involves confronting these difficult questions, and that takes courage. We must have the same courage for the sake of our own legacy.

Epilogue: Helping someone with the Loss of a Loved One

In the agricultural practice of a small town, our clients and colleagues are frequently more than just that - they are our friends, fellow members of our church, parents of our children's schoolmates, members of the same local cooperative, and so on. When one of those clients or colleagues is lost, what helps?

In many small towns, the good intentions of many caring neighbors sometimes turns the home of the bereaved into something of a bed and breakfast. Guests at mealtimes must be fed (and try to time your visit to avoid mealtimes), and out-of-town family members need a place to stay. Consider providing food (that is not a casserole – the author assures you that within hours there will be more casseroles at the home than can possibly be consumed within a human lifetime) that is easily frozen or refrigerated and conveniently reheated. Sandwich ingredients and other convenience foods may also be appreciated. Since refrigerated storage may be used up quickly, providing ice and the loan of an ice chest or portable refrigerator may be valuable. Disposable plates, cups, utensils, and napkins ease the burden of dishes for the family. Gift cards for local restaurants, particularly those that deliver, can be a good idea, as the family may simply want to get out of the house for a while. Don't be afraid to offer some comfort foods and indulgent snacks. The family may choose to eat a few feelings in the form of potato chips or share a fond memory over some ice cream; they can walk off the calories at a later date.

If you are close to the family, offering a guest room for overnight visitors can help ease the crowding, burden, and expense of such visitors.

Your skills and connections as an attorney can help you move quickly to establish means of raising support for a family that may need help with the expenses attendant to a funeral and/or final medical expenses. Most local banks will work to set up temporary funds that can be used as holding accounts for donations until the appropriate arrangements can be made to transfer the funds to the family – and your legal skills can help in those arrangements.

With support coming in, a multitude of thank you notes are needed. Gifts of thank you notes and postage can help with this.

Visitation can be welcomed, but timing can be crucial. If the client is a close personal friend, do not hesitate to offer your support. Do not mention any of the legal mechanics unless there are items that simply must be attended to immediately; simply let the bereaved know that you are ready to assist them when they are ready. Keep your visit brief to express your support; longer visits may be more appropriate a scheduled viewing or visitation at the funeral home or church; of course, if the family requests you stay longer, don't feel like you must cut the visit short.

The family may have a number of visitors prior to the funeral, but unsurprisingly there may be few after the funeral. The funeral marks the beginning of the long and potentially very lonely "long haul" of dealing with grief, and a visit a few days *after* the funeral can do a great deal to help the family remember there are those that are there for that long haul. If the only relationship with the family is that of client alone, simply let the family know of your support and that you are available whenever they feel ready.

Human empathy compels many of us to form some sort of connection with the bereaved, and sometimes the words "I know how you feel" slip out. In the early days following a loss, no one wants to hear that. Whether true or not, their loss feels very uniquely and intimately theirs. If indeed you have experienced a similar loss, the time to access that shared experience is later, and with the introduction "I know I can't know exactly how you felt, but when something similar happened to me, I felt…" Well-meaning assurances that "he's in a better place" or "this will work out for the good" can trivialize the loss; consider instead simply saying "our hearts are heavy for you" to express your compassion and offer your thoughts and prayers.

EXHIBIT 1: MODEL RULE OF PROFESSIONAL CONDUCT 1.17 WITH COMMENTS

Source: American Bar Association, Center for Professional Responsibility
Available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_17_sale_of_law_practice/

Client-Lawyer Relationship

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

COMMENTS

Client-Lawyer Relationship

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to

another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographical area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17(a).

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. See Rule 1.6(b)(7). Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. (A procedure by which such an order can be obtained needs to be established in jurisdictions in which it presently does not exist).

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the

definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

EXHIBIT 2: HOW TO PROTECT YOUR CLIENTS AND FIRM IN THE EVENT OF DEATH, DISABILITY, IMPAIRMENT, OR INCAPACITY

Souce: State Bar of Texas,
https://www.texasbar.com/AM/Template.cfm?Section=Closing_a_Law_Practice&Template=/CM/HTMLDisplay.cfm&ContentID=31886

This information is designed to help you protect your clients' interests in the event you are suddenly rendered unable to practice law. With some advanced planning, you can ensure a smoother transition for your clients and allay potential ethical pitfalls.

SUCCESSOR ATTORNEY

If you suddenly become unable to practice law, someone will need to review your case files to ascertain if there are pending or upcoming filing dates, contact clients to return or transfer files, handle the firm's financial affairs, and deal with other issues that may need immediate attention. Due to the content contained in the files, and the need to be able to spot legal issues, the best person to do this is presumably an attorney, or "successor attorney."

By determining in advance who will serve as your successor attorney, you offer better protection for your clients and a faster transition out of law practice. Once you have found a suitable attorney who agrees to wind down your practice, it is important to discuss what duties the successor attorney will need to perform, the scope of their responsibility, what event will trigger the successor attorney's service, and the systems you employ in your firm to make the job easier to accomplish. Be sure to reduce your agreement to writing so the successor attorney will have the legal authority to perform the duties you have both discussed.

1. Scope of Responsibility
The need to establish the scope of the successor attorney's duties and obligation to you and/or your clients from the outset is critical. Because conflicts may arise if the successor attorney is expected to represent both your interests and those of your clients, be sure to clearly identify who the successor attorney will represent. If the successor attorney represents you, he or she may be prohibited from representing your clients on certain matters. If the successor attorney represents your client's interests, he may be required to disclose to the client if you have made any errors on their case.

2. Duration and Triggering Event
You will also want to establish what event will trigger the successor attorney to enter your practice and start winding down your business and who will determine that this event has occurred. Will it be a doctor, your spouse, the good faith belief of the successor attorney? How long will the task of wrapping up the practice take?

3. Duties to Be Performed
Include in your written agreement a signed consent authorizing the successor attorney to perform certain tasks, for example:

- Review your files for pending deadlines
- Obtain extensions in litigation matters
- Contact your clients about returning/transferring files
- Wind up financial affairs
- Inform the court and others who need to know of the closure of your practice
- Collect fees owed to the disabled or deceased attorney
- Return unearned fees

4. Power of Attorney
If you want the successor attorney to handle your firm's financial affairs, access to your bank accounts will be required. While a written agreement may be sufficient, some banks require that the successor attorney have a Power

of Attorney. Check with your bank to see what documents they will require in order to honor your wishes with respect to the closure of your firm. Again, you'll need to think through what sort of Power of Attorney you want to grant the successor attorney and how and when the Power of Attorney will be triggered. Will the successor attorney's Power of Attorney be triggered by a specific event, who will determine that the triggering event has occurred, what specific powers will be granted, and what will determine the duration?

5. Notifying Your Client
You will need to notify your clients that you have arranged for a successor attorney to wind down your practice. Since the successor attorney will have access to your client's confidential information, you need to obtain your client's consent. The easiest way to notify your clients and obtain their consent is to put a provision in your retainer and fee agreements.

6. Ethical Issues
- **Confidentiality:** The client must give consent to have his confidential information shared with successor attorney.
- **Conflicts:** The successor attorney will need to conduct a conflict check if the review of client confidential information is being conducted in order to return or transfer the file.
- **Barratry:** If the successor attorney is contacting your clients or wishes to represent your clients, he or she should be aware of potential restrictions in the Disciplinary Rules with respect to barratry or solicitation:
- Notification of Attorney's Cessation of Practice. See Texas Disciplinary Rule 13.01

AUTHORIZED SIGNER ON THE TRUST ACCOUNT

In order to return funds to clients and remit payment for work performed, someone will need to have access to your trust account. If you do not make arrangements, your clients may not receive their funds until a court orders access to the trust account. You may grant this authority to your successor attorney, a close family member, or your personal representative.

OFFICE PROCEDURES

Maintaining good office procedures will aid your successor attorney and provide increased protection for your clients.

1. Contact List
Keep a list of a of contact information for the people who should be notified in the event of your death or incapacity.

2. Passwords and Account Numbers
Create a list of passwords for computer and network login, email accounts, bank accounts, credit cards and ATM cards that will need to be accessed. Give the list to a close family member, your personal representative, or the successor attorney for safe keeping.

3. Fee Agreements
Maintain written fee agreements for each client matter.

4. Separate Files
Maintain a separate file for each client matter.

5. Trust Account
Maintain a separate trust account and dedicated ledger for each client whose funds you hold.

6. Keep Time and Billing Up-to-date
7. Docket Control
Keep a calendaring system with applicable deadlines.

8. Termination Letter
When you have closed a client matter, send a termination letter and include any original documents.

Exhibit 3: Assumption of Practice: A Custodian's Guide

Source: State Bar of Texas
https://www.texasbar.com/AM/Template.cfm?Section=Closing_a_Law_Practice&Template=/CM/HTMLDisplay.cfm&ContentID=31886

INTRODUCTION

There are a variety of reasons why an assumption of a lawyer's practice may be necessary. In an ideal world, every attorney would take appropriate steps to plan for the eventual closure of his or her practice. However, often times the assumption of a lawyer's practice is required because the lawyer has been suspended or disbarred, is suffering from a disability, has passed away, or has simply abandoned the practice. In these situations, the State Bar relies on attorneys from around the state to volunteer to serve as "custodian" of these practices for the purpose of examining client matters, notifying clients, contacting courts, and returning client papers and files. This handbook is a tool for those volunteers. It offers insight and guidance regarding the process of assuming an attorney's practice, forms that may be useful in facilitating the process, and contact information of those who can provide assistance.

INITIATING THE PROCESS

A client, the Office of the Chief Disciplinary Counsel of the State Bar of Texas, or any other interested person may file a petition initiating custodianship proceedings ("assumption of jurisdiction") designating the volunteer as custodian. The current possessor of the attorney files will be ordered to show cause as to why the Court should not assume jurisdiction of the attorney's practice, which he or she may waive. The custodian will receive a copy of the assumption order and may proceed with custodial duties detailed below. The custodian will then prepare a report for the Court describing services rendered and the status of all client files, and seek an orderdissolving the custodianship.

GUIDELINES TO MANAGING CUSTODIAL DUTIES

This is intended as guidance only. Each situation will be unique, and the action required will vary accordingly.
The cessation of a law practice is governed by Texas Rules of Disciplinary Procedure Section 13 (also available here), which sets forth the requirements applicable to assuming jurisdiction of a lawyer's a practice. This handbook aims to provide guidance supplemental to those requirements. Please note that these guidelines are not comprehensive and are intended only to provide a general roadmap for navigating the assumption of a practice. Every case will be different and the action required to successfully assume a practice will vary accordingly.
Successor Attorney? Determine if attorney had an arrangement with another attorney (sometimes called a successor or assuming attorney) who previously agreed to assume practice of deceased or disabled attorney. Check with staff, close friends, and relatives.
Ask local bar association(s) to send e-mail alerts to members and place a public notice in bar publications announcing death or disability of attorney. The notices should ask for information as to any successor attorney(s) with client matters with the deceased or disabled attorney.

Getting in. Obtain a set of keys, access codes, and/or passwords to the premises and to interior locked file cabinets, safes, and offices. Ask staff and the landlord for help. Change locks, codes, and passwords to protect the office files and assets.

Utilize attorney's staff. To the extent possible, utilize attorney's staff to assist in the closure of the practice. Inquire as to client and contact lists, office procedure manual, locating files, accessing information (e.g., keys, passwords), calendars, and other matters pertaining to the practice.

Track and document all action taken. From the moment you begin sorting through the attorney's files, prepare and maintain an inventory of client files, the status of those files, and actions you have taken and that need to be taken on each file. This information will be included into the Custodian's report to the Court.

Deadlines and other urgent matters. First, determine which files are active and identify any deadlines or other urgent matters that require immediate attention, such as cases with a statute of limitations running, scheduled court appearances, or cases with discovery or filing deadlines. Check with staff. Review all office calendars, both physical and electronic. Ask the local court administrator to run a search to determine if the lawyer is attorney of record on any open matters.

Contact the client regarding urgent matters and ask for permission to reset. Encourage the clients to hire new counsel as soon as possible. Confirm extensions and resets in writing. Ensure these scheduling arrangements do not pose a conflict of interest for you or your clients. If a conflict exists, contact another attorney about handling these matters.

Notify courts agencies, opposing counsel, and other appropriate entities of the assumption and, with client consent, seek extensions of time or continuances, and/or reset scheduled settings. File notices, motions, and pleadings on behalf of clients who cannot be contacted prior to immediately required action.

Contact clients. Notify clients of attorney's death, disability, incapacity, or other inability to act. When possible, client communications should be in writing. If you are unable to reach a client, consider publishing notice of the assumption in a local publication.

Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney. Send clients who have closed files a letter informing them of the assumption and giving them the opportunity to collect their file or authorize destruction of their file.

If the client wants to pick up his or her file, obtain a written request and make appropriate arrangements. It is advisable to designate a single pick-up location for all client files. The file must be returned even if client has an outstanding balance. The file can be returned by certified mail with written consent from the client. Be sure to get proof of delivery.

If the client wishes for the file to be sent to new counsel, have the client sign transfer authorization for the original file to be released to the new attorney. If the case is pending in court, ensure that a Substitution of Attorney is filed.

If the client prefers that the file be destroyed, obtain written authorization.
Ensure that a phone number is available for the clients to either speak with someone about their file or so that the client can leave a message.

Client files. Consider the following guidelines in organizing and disposing of all client files in the attorney's possession:

- **Locate and inventory all files**, including all physical and electronic materials corresponding to each. Note that closed files may be kept in more than one location. Physical files may be stores in places such as public warehouses, the attorney's home, or even with a client. Electronic files may be stored on servers, hard drives, laptops, home computers, and/or removable media such as thumb drives or disks. Be sure to add copies of all digital files to the physical files. Ask staff, relatives, and close friends about off-site locations, passwords, and keys.
- **Update all files** with any new mail, stray documents, or any action pertaining to urgent matters.
- **Return files to clients** promptly upon client request. Coordinate a time and location in which client may pick up his or her file. Ask for identification. Absent written consent, file materials should not be released to anyone but client. Have client sign an acknowledgement of receipt. Again, if the client has provided written authorization of certified mail delivery, be sure to get proof of delivery.
- **Transfer files to third party** promptly upon client request. Ensure you have obtained a transfer authorization signed by the client. Obtain an acknowledgment of receipt from third-party recipient.
- **Destroy client files** only if authorized. Authorization may be obtained through written client authorization, court order obtained through a motionfor authorization to destroy files, or as authorized under a file-retention provision in the fee agreement. The file should then be completely destroyed. The safest way to destroy closed files is to shred them or have them shredded by a company that provides professional shredding services. A list of client files destroyed with dates of destruction will be included in the Custodian's report submitted at the conclusion of the proceeding.
- **Properly store closed files** of clients who cannot be reached and that may not be destroyed. Texas Disciplinary Rule of Professional Conduct 1.14(a) (available here) provides, in part, that "Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation." Make information available regarding where these files will be stored and whom clients should contact in order to retrieve a closed file. Notify the Bar of where closed files will be stored and the name, address, and phone number of the contact person for retrieving the files.
- **Original documents** that a client might need to establish substantial personal or property rights—such as wills, signed contracts, stock certificates, promissory notes, property deeds, trust instruments—or other original documents like birth and marriage certificates and passports, must be returned to the client, safeguarded by the lawyer, or disposed of by court order.

  Special attention should be paid to closed files that contain documents pertaining to a minor (such as

custody and support judgments and adoption records), corporate books or records, intellectual property files, or any other file in which it appears the client's or attorney's interest may be ongoing.

Financial affairs. Identify and contact a family member, business associate, or close friend of the attorney to encourage them to initiate a probate proceeding or obtain a guardianship to handle the attorney's financial affairs.

Office matters.

- **Review all unopened mail**, especially certified mail, and place in corresponding client files. Look for information on pending client matters, bills that have to be paid, tax returns that have to be filed, income that may come in, etc.
- **Contact the landlord** or other leasing entity and, if necessary, arrange for the assignment of the lease to the custodian, the termination of the lease, or the subletting of the lease to another party.
- **Notify post office** of assumption, as well as building management and some nearby offices. Post office forwarding will prevent mail from being delivered and left at an empty office. Request building management and nearby office to collect mail, express deliveries and anything else that might be important.
- **Tend to voicemail and email.** If you can obtain passwords, clear all voicemails that may contain client or other important communications. If passwords are not available, disconnect all voicemails and consider using a simple answering machine instead. Arrange for automatic forwarding of all emails to a mailbox of the responsible person. It is also possible to reject or answer all emails with a notice instructing the sender whom to contact.

Track hours and expenses. Keep a record of all time spent in the performance of custodial duties and associated expenses, including receipts. This will be useful in preparing your Court report and may be applied toward pro bono credit.

Report to the Court. Prepare and submit a report to the Court describing all custodial services rendered in the assumption of the practice and requesting dissolution of the custodianship. Consider including exhibits that detail disposition of client files and expenses incurred in the course of performing all custodial duties. Submit a proposed order dissolving the custodianship.

OTHER CUSTODIANSHIP ISSUES

Representation. The custodian does ***not*** assume representation of the client upon appointment as custodian. The custodian must inform the client accordingly and advise the client to retain new counsel. The custodian may not transfer the file without written consent. If the attorney was a partner at a law firm, another lawyer(s) within the firm does not automatically assume the attorney's practice. The client must be informed of the closure and retained independently. The custodian may represent the client, but representation must be established by a new, separate agreement between the custodian and the client. Check your client list for possible client conflicts before undergoing representation or reviewing confidential information of the client.

Confidentiality. The custodian is bound by Texas Disciplinary Rules of Professional Conduct 1.05 (also available here) in performing all duties pertaining to the assumption of practice. The custodian must maintain the confidences and secrets of a client and protect the attorney-client privilege as if the custodian represented the clients of the attorney.

Liability. The custodian will not be liable to attorney or attorney's estate for any act or failure to act in the performance of his/her duties as custodian, except for intentional misconduct or gross negligence. The custodian will not process, pay, or in any other way be responsible for payment of attorney's personal bills.
Questions? For questions or information pertaining to custodial proceedings or duties, please contact **James Ehler** at (210) 208-6600, or **Timothy Baldwin** at (713) 758-8200.

Exhibit 4: Transition Planning Inventory

Adapted from
"Items to Consider for a Will or Trust" by Bruce Moates
"The Family Love Letter" by AXA Equitable Financial Advisors
"Estate Planning Inventory" by Mike Hardin

My Family Members

For each person, include the contact information for the person, any special needs the person may have, if you are a guardian for the person, and whether they are the beneficiary of any trusts or other instruments.

- ☐ Spouse
- ☐ Child (children) (include spouses)
- ☐ Grandchildren (include spouses)
- ☐ Parent
- ☐ Pets

My Emergency Contacts

For each person you would want contacted, include name, mobile phone number, home phone number, address, and relationship. Also consider entering each person in your mobile phone with a listing of ICE ("In Case of Emergency) 1, ICE 2, ICE 3, etc.

My Important Numbers

Include numbers for yourself and your spouse

- ☐ Social Security number
- ☐ Drivers license number
- ☐ Passport number
- ☐ Medicare number
- ☐ Employer identification numbers (EINs) for any business entities owned
- ☐ Any other identifying numbers

My goals and objectives

- ☐ What standard of living do I want to provide for my surviving spouse?
- ☐ What type of gifts do I want to make to my family members?
- ☐ What type of gift do I want to make to charities, churches, and other community organizations?
- ☐ Is it important that my farming operation stay in one piece?
- ☐ Is it important that the farming operation be continued by a family member?
- ☐ What are my goals for the future of the farm operation?
- ☐ If some of my goals come into conflict, what values should guide the decision as to how to proceed?

My financial status

- ☐ Current balance sheet
- ☐ Current income statement
- ☐ Current cash flow statement
- ☐ Whole farm plan
- ☐ Operating budget for farm
- ☐ Personal monthly budget

My advisors

Include contact information for each

- ☐ Financial planner / investment advisor
- ☐ Stock broker
- ☐ Retirement plan administrator
- ☐ IRA administrator
- ☐ Estate planning attorney
- ☐ Business attorney
- ☐ CPA / accountant
- ☐ Former employers
- ☐ Mortgage holder
- ☐ Lenders
- ☐ Banker
- ☐ Primary care physician
- ☐ Specialist physician
- ☐ Farm consultants
- ☐ Others

My Assets

- Real property
  - ☐ Surface and mineral deeds for all real property
  - ☐ Abstracts for any property interests
  - ☐ Surface and mineral leases for all real property
  - ☐ Any additional agreements for land use
    - Wind energy leases/easements
    - Mineral leases
    - Hunting leases
    - Easements/right of way agreements
  - ☐ Property that is leased by you
    - Copy of lease agreement
    - Contact information for lessor
- Financial assets
  Include account number, contact information for holding institution, beneficiary designations (such as payable on death provisions), whether account is jointly held (and if so, with whom) and amounts
  - ☐ Savings accounts
  - ☐ Checking accounts
  - ☐ Money market accounts
  - ☐ Certificates of deposit
  - ☐ Custodial accounts
  - ☐ Savings bonds
  - ☐ Social Security updated statement (call 800-722-1213)
  - ☐ IRA documentation:
    - Traditional IRAs
    - Rollover IRAs
    - Spousal IRAs
    - Roth IRAs
    - SEP IRAs
    - SIMPLE IRAs
    - Beneficiary IRAs
  - ☐ Qualified retirement plans
    - 401(K) or 403(B) plans
    - Profit sharing plans
    - ESOP plans
    - Pension plans
    - Other qualified plans
  - ☐ Section 529 Education Plans

[Financial assets, continued]

- ☐ Stock options / stock purchase plans
- ☐ Mutual funds
- ☐ Annuities
- ☐ Brokerage accounts
- ☐ Individual stocks
- ☐ Bonds
- ☐ Deferred compensation from employer
- ☐ Military retirement benefits
- ☐ Military survivor benefits
- ☐ Installment sale contracts owed to me
- ☐ Debts owed to me
- ☐ Legal judgments / settlements owed to me
- ☐ Other items
  - Frequent flyer miles
  - Retailer reward accounts

- Business interests
  - ☐ Partnership agreement / by laws / operating agreement for entity
  - ☐ Stock or ownership certificates
  - ☐ Copy of any buy/sell or ownership agreements for interest
- Personal property and non-financial assets
  - ☐ Automobiles (along with copy of title)
  - ☐ Farm equipment (serial numbers and other descriptive information)
  - ☐ Farm inventories
    Include descriptions, values, and location where kept
    - Livestock
    - Crops
    - Supply inventories (feed, seed, chemicals, other inputs)
    - Pre-purchased inputs, if not yet delivered (include vendor conact)
  - ☐ Recreational vehicles (titles or serial numbers and descriptive information
    - Boats
    - Motorcycles
    - ATVs
    - Utility vehicles
  - ☐ Aircraft (along with copy of title)
  - ☐ Household goods
    - Jewelry
    - China / silverware
    - Picture albums
    - Antiques
    - Collections (coins, stamps, other items)
    - Books
    - Art
    - Electronics
    - Furnishings
    - Kitchen goods
    - Firearms
    - Sporting / hobby equipment
    - Clothing / furs

My Liabilities

- Debts
  For each debt, list amount owed, contact information for creditor, any insurance tied to the debt, copy of the loan agreement, and any other information or documentation available.
  - ☐ Mortgage
  - ☐ Automobile
  - ☐ Equipment
  - ☐ Revolving credit for business (i.e. operating line of credit)
  - ☐ Mortgage-backed line of credit (i.e. home equity loan)
  - ☐ Credit card
  - ☐ Store credit
  - ☐ Personal guaranties for loans
  - ☐ Co-signed loans
- Recurring payments
  Include contact information for service providers
  - ☐ Vehicle / equipment leases
    - Include copy of lease agreement
  - ☐ Utilities
    - Electric
    - Gas
    - Water
    - Garbage/recycling
    - Telephone (landline and mobile)
    - Television (satellite / cable)
    - Internet
  - ☐ Subscription services (magazines, news & information services)

My Insurance Policies

For each insurance type, include a copy of the policy, the policy number, contact information for the carrier, the owner and beneficiary of the policy, the face value of the policy, any cash value, any loans against the policy, and the premium schedule for the policy.

- ☐ Life insurance
- ☐ Disability insurance
- ☐ Long term care insurance
- ☐ Health insurance
- ☐ Specific ailment insurance (such as cancer policies)
- ☐ Vision care plans
- ☐ Dental care plans
- ☐ Medicare insurance
- ☐ Prescription drug plans
- ☐ Medigap insurance
- ☐ Other insurance policies

My Important Documents

For each, include information about where the original document is located, and the date the document was executed. You may also want to indicate if such a document has *not* been executed.

- ☐ Will
- ☐ Living trust
- ☐ Advance directive for healthcare
- ☐ Living will (may be part of advance directive for healthcare)
- ☐ Organ donation documents (may be part of advance directive for healthcare)
- ☐ Medical power of attorney (may be part of advance directive for healthcare)
- ☐ General power of attorney
- ☐ Limited power of attorney
- ☐ Life insurance trust
- ☐ Charitable trust
- ☐ Minor trust
- ☐ Section 529 education plan
- ☐ Custodial account
- ☐ Guardianship papers
- ☐ Family partnership documents
- ☐ Partnership, corporation, or LLC documents
- ☐ Real property deeds
- ☐ Marriage license
- ☐ Domestic partner agreement
- ☐ Cohabitation agreement
- ☐ Pre-nuptial agreement
- ☐ Post-nuptial agreement
- ☐ Divorce or separation agreement
- ☐ Child support agreement
- ☐ Birth certificates
- ☐ Adoption papers
- ☐ Automobile title
- ☐ Boat/airplane title
- ☐ Citizenship papers
- ☐ Burial or pre-need agreement
- ☐ Life insurance beneficiary form
- ☐ Military discharge papers
- ☐ Employment or contractor contract

My Digital Estate

For each item, include the applicable user ID, password, and any other information needed for access

- ☐ Email accounts
- ☐ Facebook
- ☐ Twitter
- ☐ YouTube
- ☐ Instagram
- ☐ Other social media site or service
- ☐ Financial software or service (Quickbooks, Rocket Matter, Mint, etc.)
- ☐ Cloud storage (Evernote, Dropbox, iCloud, etc.)

My funeral arrangements

- ☐ Desired speakers
- ☐ Desired officiant
- ☐ Desired program / order of worship
- ☐ Specific people to be notified of your death and/or funeral
- ☐ Specific people you wish not to attend your service
- ☐ Particular songs, readings, or other elements of your service
- ☐ Specifications for burial or cremation
- ☐ Location of burial plot
- ☐ Who is to receive possession of cremated remains
- ☐ Desired wording of obituary

Implementing My Plans

In the event of my death or disability…

- ☐ Do I have financial resources available for my spouse and children so they can meet their living expenses while the estate is being settled?
- ☐ Does my operation have the financial strength (both in terms of solvency and liquidity) to meet my objectives?
- ☐ Have I trained two or more people to manage the day-to-day operations of my farm, if they needed to do so *today*?
  - Have I walked them through the day-to-day operations?
  - Do the people who will be handling my affairs have access to the suppliers, vendors, and professionals they will need to keep the operation going for as long as needed?
  - Do they know where the land, livestock, supplies, equipment are located?
  - Have I spelled out what actions can be taken without any permissions? What actions require consulting with a professional (such as an attorney or accountant)? What actions require approval of the court?
  - Do they understand not only *how* the operation runs, but *why* certain decisions are made?