

Solo Succession Question

This is a complete hypothetical, but if a sole practitioner with a deadline - driven practice was incapacitated in, for example, a car accident, and this attorney had no back-up provisions in place for his legal matters/clients, what are the possible consequences? Sued by clients, reprimanded by disciplinary counsel, etc.?

I knew of one here in Virginia. Show causes in court were only the beginning. He died before the bar got involved. I would imagine that you could lose your license and be sued for malpractice.

Mitchell P. Goldstein, Virginia

It depends how quickly the solo gets back on his or her feet or gets coverage. Missing a hearing because of an accident wouldn't be actionable. Not getting coverage for your office while you are laid up with broken bones and failing to inform your clients would be actionable.

Check with your state, but in CA, they don't let non-attorney spouses or friends run the firm in the absence of another attorney, so you have to get another attorney on board to cover you ASAP. Many insurance companies request the information of your back up person when you are applying for malpractice coverage as a solo.

I forgot who mentioned it, but someone on the list suggested getting coverage by someone other than your BFF, because if something were to happen to you, they might be too distraught or distracted to cover their practice and yours.

My hubby knows the names (and faces) of the colleagues I feel most comfortable with. I also have a special appearance attorney who covered my office while I was on maternity leave, so she already has a feel for my practice, should something come up.

Corrine Bielejeski, California

The bar association here did a CLE About what to do If You get Hit by a Beer Truck

I can tell you what happened when I went down in 2011. I had a major heart attack. I ended up in drug induced coma. I came out of it just in time for the start of the 2011 NFL season. Though I didn't get out of the hospital till October.

What saved me was I'm a nut about returning phone calls and emails. When I didn't respond for several days. A Sezzler who I was working with at the time called my cell. When my now wife answer and she give the other lawyer the skinny, The sezzler sent lawyers and guns though no money to notify the various court that I was in the hospital. It help my clerk was around and could fill the covering lawyer as to what was on my docket.

I was extremely lucky. I'm sure your malpractice carrier asks if you have one but you need to have a plan what to do in case something bad happens.

After all with apologies to Bob Dylan

Mama, take this license off of me

I can't use it anymore.

It's gettin' dark, too dark to see

John Davidson, Pennsylvania

I'm just reading GP Solo July/August 2012 [yes, 2012 - it just bubbled up out of an old pile of magazines], and it had several excellent articles with checklists on creating emergency plans, backups (of your practice, of attorneys, of everything) and it's worth looking up, especially if you don't already have plans for temporary or long-term or final exits.

Miriam N. Jacobson, Pennsylvania

It has been my experience that professional liability insurers want to know who your back up is.

David Masters, Colorado

One would think they would. Mine always asks if I have a backup lawyer (I do), but never who the backup is.

James S. Tyre, California

Mine wants the name of the backup lawyer.

Shell Bleiweiss, Illinois

Thanks for flagging, Miriam. I may have it in my piles, but now I'll seek the articles out!

Shireen K. Gandhi

http://www.americanbar.org/publications/gp_solo/2012/july_august/how_my_emergency_plan_saved_my_practice.html

jennifer rose, Mexico

David M.: I was not asked about backup when I signed for part-time malpractice last summer, but typically was asked before that. Still, you could put any attorney down, without any plan or even that attorney knowing. I know because I was informed later from an attorney-friend that he listed me when he signed about a year earlier. It sounds as if the typical plan is to scramble around to make sure clients are covered, courts are notified...

Julie S. Mills, Ohio

This year, for the first time, my re-registration form for my law license had a question as to whether I had a succession plan in place for an emergency. This is in Illinois.

BTW, the IL ARDC has the power to appoint a receiver to wind up a solo's practice if he or she is stricken without a plan in place.

Very truly yours,

Timothy A. Gutknecht, Illinois

Any of those consequences are possible, but rather unlikely. Unless the lawyer made false representations, client should have actual knowledge lawyer is working alone. Any agreement between lawyer and client is a personal service contract; we all remember the limitations on those from first year contracts don't we? If you were scheduled to have your gall bladder removed and the night before surgery your surgeon got hit by a bus, do you really think a lawsuit against the surgeon is going to get you anywhere? Not really a malpractice issue or an ethics violations, but anyone can make that pitch anyway. If there is any liability at all, it would likely fall under a negligence action. Would a reasonable attorney have conducted his business in that manner? Probably a lot of evidence on both sides of that issue.

Duke Drouillard, Nebraska

Whenever I have been solo (off and on over the last fifteen years), they always ask and require that I provide contact information.

David Masters
