

Procedures for Solo Practice When You're Incapacitated

As I go through the malpractice insurance process I am reminded of the value of proactive written policies for businesses (which is funny because I create proactive written policies for businesses in my work). However, I have no idea how to create a feasible plan for what happens if I am incapacitated or die. What happens to client matters? Who takes over? How do you select another attorney to say yes to helping if you're incapacitated? Who would say yes to such a huge ask?

How have you, fellow Solosezzers, handled this issue? (preferably would love to hear from solo practitioners who don't share an office with other attorneys, but work completely solo).

The part I have to work on more is in keeping a current list of ongoing matters. When things get busy, I get behind in keeping things updated. I didn't have a backup attorney for years until my insurance company started asking if I had one and now Hawaii's bar asks if we have one. I got lucky in that another solo with a very similar subject matter practice to mine asked if I would be her back up attorney and offered to be mine in exchange. From what I hear from my friends, that seems to be how several solos got back up attorneys. A couple solos tried succession planning by bringing an associate on board or by grooming someone to take over their practice but in those specific cases, it didn't work out as envisioned. It could work, though.

Naomi C. Fujimoto, Hawaii

When I was in my own practice, my malpractice carrier asked for a backup attorney. A colleague and I agreed to back each other up. Problem is that we did not meet just to keep each other informed. Have a what to do in an emergency somewhere where your backup csm get it.

Mitchell Goldstein, Virginia

The State Bar of Texas has a great start on that process:

**FIRM INFORMATION IN THE EVENT OF DEATH, DISABILITY,
IMPAIRMENT OR INCAPACITY OF ATTORNEY**

Successor Attorney

Scope of Responsibility

Duration and Triggering Event

Duties to be Performed

- * Review files for pending deadlines
- * Obtain extension on litigation matters
- * Contact all Clients about the situation
- * Inform the Court and others who need to know status of firm
- * Collect Fees owed to attorney – Insurance policies
- * Return trust account fees
- * Contact banks regarding situation
- * Contact business partners regarding ownership of office building

Power of Attorney

Notifying your Clients

(Suggests adding a provision into your Engagement Agreement)

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 of interest check if the review of the client confidential information is being conducted in order to return or transfer the file.
- * Barratry – If the successor attorney is contacting your clients and wishes to represent your clients, he/she should be aware of potential restrictions in the Disciplinary Rules with respect to barratry or solicitation.

Authorized signer on the Trust Account

Office Procedures

All billing/time keeper/credit card and bank reconciliation information are located on/at

All client files are on the

There is a list which contains passwords, important numbers, etc. contained on ____ drive on the server.

Walter D. James III, Texas

I am someone's back up, and she is mine. We also cover one another's offices during vacations. I was her work neighbor for years, so I got a pretty good look at her work style and vice versa. My spouse is not an attorney, but he knows which attorneys I trust to wind down my practice or cover in the event I am incapacitated. There are also lovely appearance attorneys who you should meet now in the event you ever need someone to cover for you. I had someone local cover my office when I was on maternity leave, which worked out great for both of us. Another attorney just gave me her cell number and said she's usually available day of in case I get stuck on BART or something.

Here's the kicker, which I heard from someone on SoloSez, you don't want the person who is going to be your backup to be a close friend. Why? They are probably going to be pretty upset that you died or got in a horrible accident. Expecting them to cover their office and yours while also grieving might be a bit much. Just something to keep in mind.

Corrine Bielejeski, California

Also, be clear with your own family and loved ones about your arrangement for shutting down your office in the event you die or become incapacitated so that they know who you have authorized to do what, and so that they know whether the person winding up your cases will pass any money to you or your estate from those cases (this was a HUGE issue in a case here in the category of no good deed goes unpunished for the people winding up a solo lawyer's office. The lawsuit went on for years and years).

Naomi C. Fujimoto

In Florida it is called an Inventory Attorney, and is required for all of us who practice law in the state, unless we are government lawyers.

Further information from the Florida bar:

<https://www.floridabar.org/member/inv-atty/>

Mine is one of my associates, but I can think of several colleagues I would ask if I were a true solo. I have agreed to do it for someone I know.

Maybe start with someone you know from law school who can practice in your state, but as you get more established in the community, you can ask a colleague.

Cynthia V. Hall, Florida