



Senior Lawyers Division PRMCLE Program Webinar October 23, 2020

12:00 PM – 1:00 PM

Welcome/Announcements and Introduction

Mike Rooney, Senior Lawyers Division Vice Chair

Program

Succession Planning Alternatives for Law Practices

Aaron E. Ruswick, JD LLM, Huck Bouma P.C.

Speaker's Bio – see attached

Program Summary

Succession planning alternatives for smaller law firms will be explored, including a review of sale, merger, buy-sell agreement, and doing nothing. The current rules and ethics regarding succession planning will also be discussed.

Link to Evaluation

Evaluation must be completed in order to receive CLE credit.

<https://www.surveymonkey.com/r/SeniorLawyers10232020>

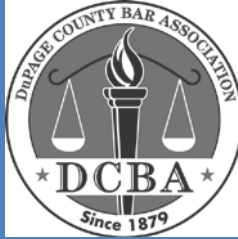
Upcoming Events:

November 19th – [Lawyers Lending a Hand Coat Drive](#) – Bar Center

December 10th – [Lawyers Lending a Hand Toy Drive](#) – Bar Center

Next Meeting:

November 30, 2020 – [Financial Planning for Retirement](#) – Kara Beth Vance, CFP® Timothy Financial Counsel, Inc.



COVID Relief Fund

The DCBA and the DuPage Bar Foundation have established an assistance fund for lawyers facing personal hardship due to the downturn in work caused by the COVID-19 pandemic. Please help us promote the availability of this fund, and, if you are in need, please submit a confidential application at www.dcba.org/reliefapply. Donations to the fund are also welcome at www.dcba.org/reliefdonate."

Earn CLE Online!

DCBA OnDemand CLE is Now Powered by IICLE The Illinois Institute for Continuing Legal Education (IICLE®) and the DuPage County Bar Association (DCBA) are excited to offer a new IICLE®Share collaboration to provide DCBA members a high quality and reliable online learning experience. Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) on the DCBA website under "Legal Community" → OnDemand CLE → Online CLE Catalog. You must be logged into your DCBA Membership Profile in order to view courses for free or at a reduced price.

View & Print CLE Certificates through the DCBA Website:

Manage Profile -> Professional Development (under content & features) and choose the icon to the left of each meeting to print your certificate directly or choose to have them emailed to you to save to your computer (you MUST be logged in to view this feature)

Aaron E. Ruswick is a Shareholder of Huck Bouma PC with a practice focusing on business services, mergers and acquisitions; and trusts and estates. Such matters include business planning; tax and transactional matters; private letter rulings with the IRS; estate and gift strategies/planning; business succession planning; business disputes; and general contractual matters.

Work History

Huck Bouma PC

Shareholder 2006-Present, Wheaton, IL

Corporate Practice Group

- Prepares shareholder, operating agreements, and partnership agreements for clients in order to provide succession planning, tax planning, restrictions on transfer, buyout provisions, restrictive covenants, and income allocations.
- Represents individuals and closely-held businesses in business planning and commercial transactional matters such as choice of entity analysis, negotiating and drafting commercial transactions, mergers, reorganizations, buying and selling, and other contractual matters.
- Drafts employee benefit plans including phantom stock plans, stock appreciation rights plans, restricted stock plans, and stock option plans.
- Built largest non-equity practice in the firm with creative marketing and cross selling techniques.

Estate Planning Practice Group

- Creates estate plans for high net worth individuals and families, with an emphasis on business owners, in order to transfer wealth down to lower generations.
- Prepares wills, revocable trusts, irrevocable trusts (including defective grantor trusts, irrevocable life insurance trusts, grantor retained annuity trusts, and other types of trusts)
- Prepares family settlement agreements and decanting of trusts for inventive solutions.
- Gift planning and creative allocation of generation skipping tax exemption.
- Retirement benefit planning to maximize the stretch and split with IRA's.
- Prepares and files 706 and 709 tax returns.



Contact

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Speaking Engagements

2020

- Wealth Counsel Illinois Forum Symposium – *Succession Planning Alternatives for Law Practices*
- Webinar on the *Families First Coronavirus Response Act*

2019

- Webinar on *Estate Planning Updates*
- Webinar on *Income Tax Updates*
- IL CPA Society, Fox Valley Chapter - *Primer on Leading Clients Through Private M&A Transactions*

Tax Associate, International Corporate Services

KPMG LLP, Chicago, IL

- Technical corporate tax planning for multinational corporations.

Education

L.L.M. in Taxation (Masters in Tax Law)

Northwestern University School of Law - Chicago, IL

Juris Doctor

Valparaiso School of Law - Valparaiso, IN

Bachelor of Science: Accounting

University of Illinois At Urbana-Champaign - Champaign, IL

University of Illinois Football (1996)

Accomplishments

- Illinois CPA Society 2018 Distinguished Service Award
- 2020 DuPage County Bar Association Directors Award

Affiliations

- President - Fox Valley Chapter of the Illinois CPA Society
- Treasurer - DuPage County Bar Association
- Illinois CPA Society
- Illinois State Bar Association
- DuPage County Bar Association

Certifications

- Licensed Illinois Real Estate Managing Broker

Speaking Engagements

2018

- Webinar on *Estate Planning Updates*
- Webinar on *Income Tax Updates*
- Fox Valley Estate Planning Council - *Updates in Tax Law after the Tax Cuts & Jobs Act*

2016

- WealthCounsel Symposium 2016, Washington, D.C. - *Succession Planning for the Small Law Firm/Sole Practitioner*
- WealthCounsel Illinois Forum Symposium – *Succession Planning for the Small Law Firm/Sole Practitioner*
- IL CPA Society, Fox Valley Chapter - *Advanced Estate Planning & Proposed Regulations under Section 2704*

2014

- IL CPA Society, Fox Valley Chapter - *Sale or Merger of a Law Firm or Accounting Practice*

SUCCESSION PLANNING ALTERNATIVES FOR LAW PRACTICES

...including current rules, ethics, and real alternatives.

**DCBA Senior Lawyers
Division**
October 23, 2020

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HUCK BOUMA^{PC}

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Overview

- I. What Happens upon Death or Disability of a Lawyer?
- II. Attorney Population and Rules Dealing with Succession/Sale
- III. Alternatives for Law Practice Transition
- IV. Determining the Value of a Law Practice
- V. Group Review of Practice Succession Alternatives
- VI. Conclusions & Questions

Part I

What Happens upon Death or
Disability of a Lawyer?

Husband

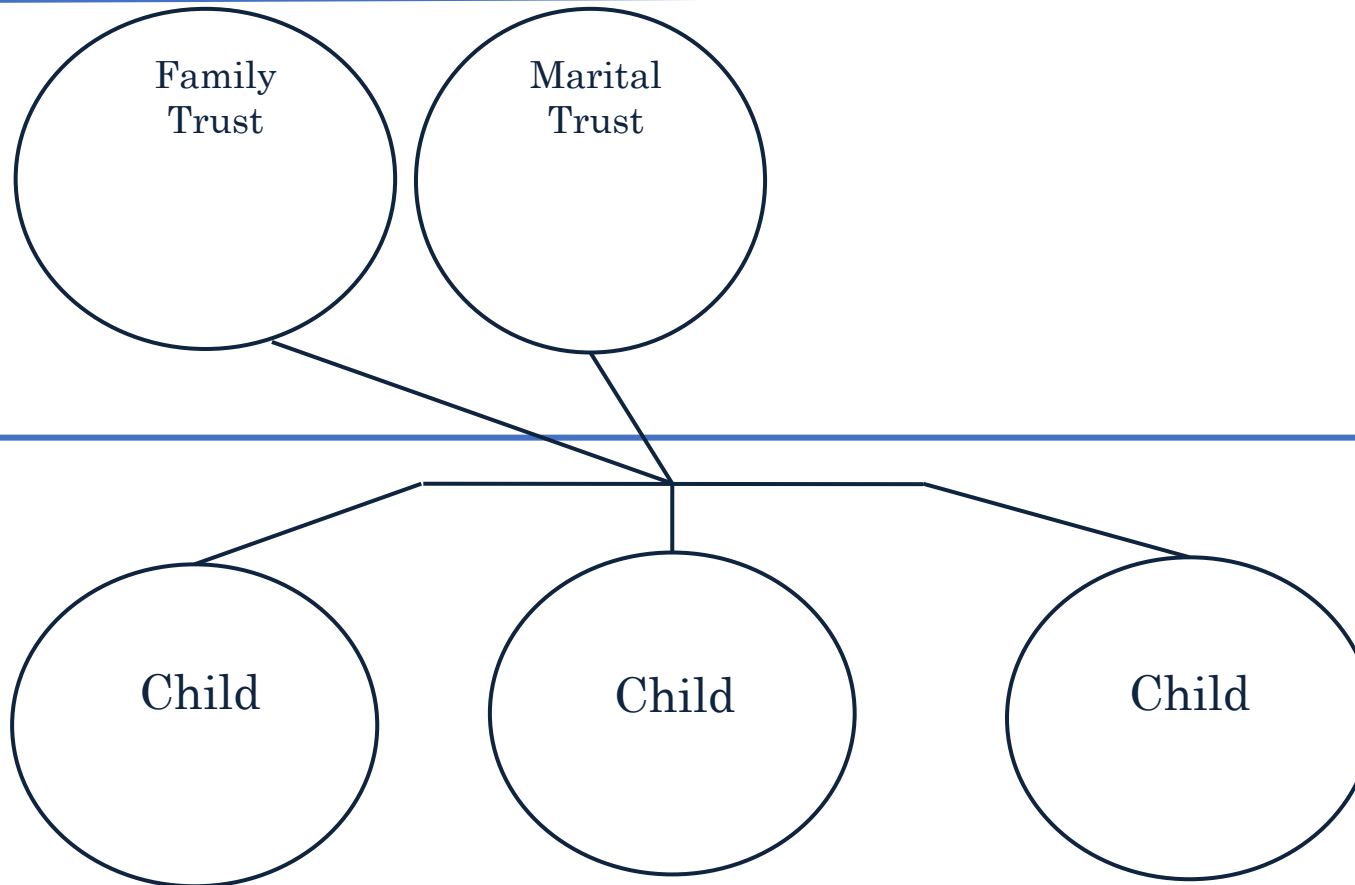
Joint

Wife

1. Cash
2. House
3. Law Practice
4. Investments
5. 401(k)/IRA
6. Life Insurance

Federal Exemption
 $\$11.58\text{M} \times 2 = \23.16M
Illinois Exemption
 $\$4\text{M} \times 2 = \8M

Husband dies



Wife dies

Real Life Disasters....

- Sole practitioner estate planning attorney dies in 2011 [Failed IL Supreme Court Rule 756(G)→ Practice Information was very disorganized]
- Sole practitioner with active litigation practice dies in 2014 [used IL Supreme Court Rule 776→Receiver Appointed]
- Sole practitioner (age 75) needed a succession plan in 2014 [failed Buy-Sell]
- Sole practitioner dies in 2017 with 300+ client original wills and trusts (from his practice and another deceased attorney's practice) [executor to consider 15 ILCS 305/5.15 to deposit wills and trusts]
- 8 attorney aging practice with no plan in 2013 [No Planning for Succession]

Part II

Attorney Population and Rules Dealing with Sale/Succession

Registered Active and Inactive Attorneys by IL County for 2017-2018

(source: IL ARDC)

<u>Principal Office</u>	<u>Number of Attorneys</u>	
	<u>2017</u>	<u>2018</u>
Adams.....	113	116
Alexander.....	6	6
Bond.....	12	13
Boone.....	49	47
Brown.....	10	10
Bureau.....	29	27
Calhoun.....	5	4
Carroll.....	11	12
Cass.....	9	7
Champaign.....	529	536
Christian.....	40	36
Clark.....	14	15
Clay.....	12	12
Clinton.....	26	27
Coles.....	80	81
Cook.....	45,292	45,834
Crawford.....	18	19
Cumberland.....	8	7
DeKalb.....	163	171
DeWitt.....	17	16
Douglas.....	20	19
DuPage.....	4,299	4,307
Edgar.....	19	21
Edwards.....	4	4
Effingham.....	57	56
Fayette.....	25	24
Ford.....	12	12
Franklin.....	52	50
Fulton.....	30	30
Gallatin.....	8	8
Greene.....	16	16
Grundy.....	72	72
Hamilton.....	10	11
Hancock.....	15	14

<u>Principal Office</u>	<u>Number of Attorneys</u>	
	<u>2017</u>	<u>2018</u>
Hardin.....	4	4
Henderson.....	8	8
Henry.....	51	50
Iroquois.....	20	21
Jackson.....	195	197
Jasper.....	9	9
Jefferson.....	117	118
Jersey.....	18	18
Jo Daviess.....	36	35
Johnson.....	11	11
Kane.....	1,144	1,140
Kankakee.....	114	118
Kendall.....	100	97
Knox.....	53	51
Lake.....	3,021	2,986
LaSalle.....	205	205
Lawrence.....	15	16
Lee.....	38	37
Livingston.....	43	45
Logan.....	24	23
Macon.....	223	222
Macoupin.....	38	37
Madison.....	750	748
Marion.....	40	43
Marshall.....	10	10
Mason.....	10	11
Massac.....	16	16
McDonough.....	45	43
McHenry.....	572	569
McLean.....	568	563
Menard.....	10	10
Mercer.....	6	6
Monroe.....	30	33
Montgomery.....	23	23

<u>Principal Office</u>	<u>Number of Attorneys</u>	
	<u>2017</u>	<u>2018</u>
Morgan.....	41	41
Moultrie.....	11	11
Ogle.....	49	50
Peoria.....	756	741
Perry.....	23	24
Piatt.....	20	21
Pike.....	11	10
Pope.....	5	3
Pulaski.....	4	4
Putnam.....	10	10
Randolph.....	26	27
Richland.....	22	22
Rock Island.....	335	328
Saline.....	33	37
Sangamon.....	1,146	1,137
Schuyler.....	8	9
Scott.....	6	7
Shelby.....	16	15
St. Clair.....	701	701
Stark.....	7	6
Stephenson.....	51	52
Tazewell.....	107	108
Union.....	27	28
Vermilion.....	102	101
Wabash.....	15	16
Warren.....	19	22
Washington.....	21	23
Wayne.....	11	11
White.....	12	12
Whiteside.....	78	76
Will.....	957	964
Williamson.....	135	133
Winnebago.....	735	740
Woodford.....	26	26

Grand Total..... 64,175..... 64,679

2017-2018 Active Status Lawyers and Currently Practicing Law

(source: IL ARDC)

Practice Setting	Number Responding		Practice Size % of Total	
	2017	2018	2017	2018
Private Practice	49,444	49,970	68.6%	68.5%
Corporate In-house	10,080	10,423	14.0%	14.3%
Government/Judge	8,209	8,321	11.4%	11.4%
Other	2,297	2,233	3.2%	3.1%
Not-for-profit	1,428	1,544	2.0%	2.1%
Academia	604	461	0.8%	0.6%
Total	72,062	72,952		

2017-2018 Active Status Lawyers, Currently Practicing Law, and in Private Practice

(source: IL ARDC)

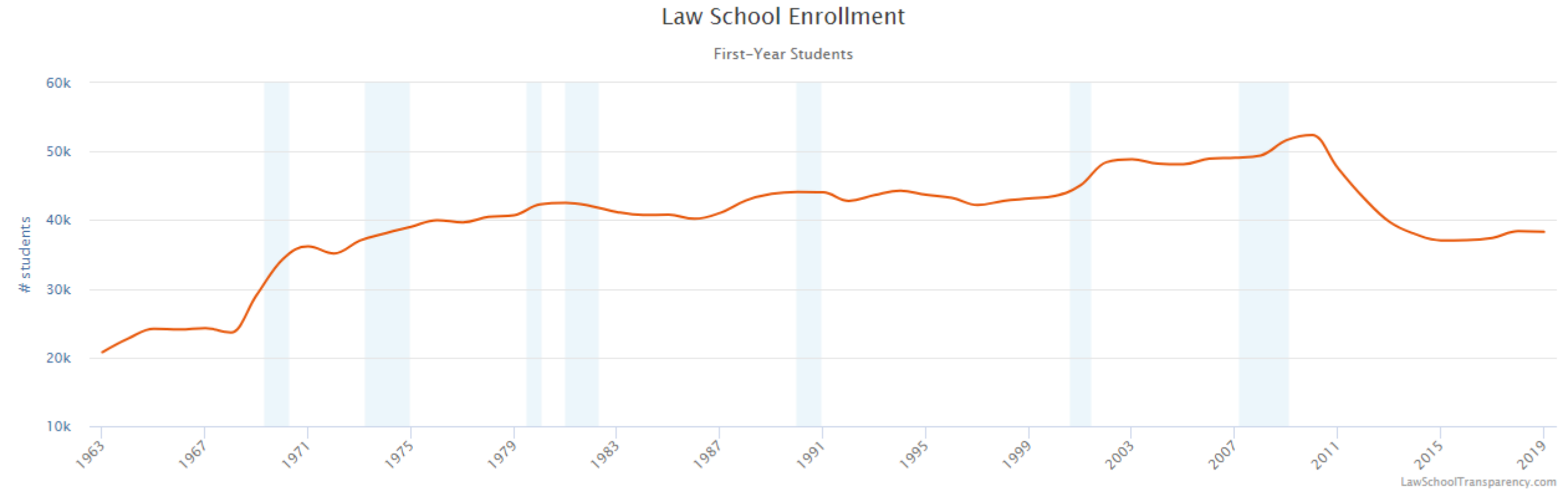
Practice Size of Lawyers in Private Practice	Number Responding in Practice Category		% Succession Planning Responses By Practice Size					
			Yes		No		Not Sure	
	2017	2018	2017	2018	2017	2018	2017	2018
Solo Firm	13,798	13,699	2,369 17.2%	2,425 17.7%	10,587 76.7%	10,431 76.1%	842 6.1%	843 6.2%
Firm of 2-10 Attys.	13,282	13,224	3,372 25.4%	3,497 26.4%	4,926 37.1%	4,921 37.2%	4,984 37.5%	4,806 36.4%
Firm of 11- 25 Attys.	4,854	4,817	1,535 31.6%	1,521 31.5%	850 17.5%	851 17.7%	2,469 50.9%	2,445 50.8%
Firm of 26-100 Attys.	5,150	5,605	1,867 36.2%	2,212 39.5%	770 15%	806 14.4%	2,513 48.8%	2,587 46.1%
Firm of 100 + Attys.	12,360	12,625	7,101 57.5%	7,475 59.2%	963 7.7%	999 7.9%	4,296 34.8%	4,151 32.9%
Total	49,444	49,970	16,244 32.9%	17,130 34.3%	18,096 36.6%	18,008 36.0%	15,104 30.5%	14,832 29.7%

Aging Attorney Demographics

According to the American Bar Association: “The legal profession is aging at a dramatic pace with implications for access to legal services now and in the future. In areas where senior lawyers predominate, new disciplinary and client protection concerns may emerge.”

- Source: https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/agingofthebar/

Declining Number of Law Students



source: Law School Transparency

I. Attorney Population and Rules Dealing with Succession

IL Supreme Court Rule 756(g): Practice Related Information

Each attorney shall provide the following practice related information:

- (1) An address, email address, and telephone number designated by the attorney as the attorney's listings on the master roll;
- (2) The attorney's residential address, which shall be deemed to be the address required by paragraph (g)(1) above if the attorney has not provided such an address;
- (3) The name of all other states of the United States in which the lawyer is licensed to practice law; and
- (4) For attorneys on active status and engaged in the practice of law, the type of entity at which the attorney practices law, the number of attorneys in that organization, the lawyer's position within the entity, the lawyer's managerial responsibilities within the entity, the principal areas of law in which the attorney practices, whether the entity has an ethics or compliance officer or general counsel, **and whether that organization has established a written succession plan.**

Illinois Supreme Court Rule 756(g) re Succession Plan:

- Active status attorneys must disclose whether their entity has a written succession plan
- “Written succession plan” is a plan for how the firm will function in the event of death, disability, or other inability to practice
- In 2018, **less than 18% of the 13,699** solo practitioners in the state reported that they have a written succession plan

IL RPC Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

(Comment 5) 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. See Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases.

Illinois Supreme Court Rule 776

Language of Rule 776(a)

“Appointment of Receiver. Where it comes to the attention of the circuit court in any judicial circuit from any source that a lawyer in the circuit is unable properly to discharge his or her responsibilities to his or her clients due to disability, disappearance or death, and that no partner, associate, executor or other responsible party capable of conducting the lawyer’s affairs is known to exist, then, upon such showing, the presiding judge in the judicial circuit in which the lawyer maintained his or her practice, or the Supreme Court, may appoint an attorney from the same judicial circuit to serve as a receiver to perform certain duties hereafter enumerated. Notice of such appointment shall be made promptly to the Administrator of the Attorney Registration and Disciplinary Commission either at his Chicago or Springfield office, as appropriate.”

Illinois Supreme Court Rule 776

Overview of Rule 776

- Last resort measure and should be avoided through succession planning
 - Only applies when an attorney has no succession plan or someone (*i.e. executor*) is unable to handle files as a result of death, disability, abandonment, or otherwise
 - Under Rule 776, in above situation, a court may step in to address the situation and appoint an attorney to serve
- Commentary by the ARDC suggests that anyone who has an executor (or other responsible party) to handle a deceased or lawyer's practice will not need a receiver.

Illinois Supreme Court Rule 776

Rule 776(b) - Duties of the Receiver:

- Taking custody of and taking inventory of the attorney's files
- Notifying clients of the situation
- Recommending a substitution of attorney
- Taking steps to sequester client funds
- Taking any other action to protect clients' interests
- Prepare Final Report advising court of the actions taken and seek an order of discharge pursuant to Rule 776(f).
- The Report may consist of:
 - Actions of the Receiver (inventory, letters sent to all known clients, efforts to return files and recommending that the clients seek other counsel.
 - Actions taken with respect to trust accounts.
 - The Receiver should also ask for permission to destroy unclaimed files and records after a set period.

Illinois Supreme Court Rule 776

Why is a Succession Plan more favorable than using Rule 776?

1. Clients' interest are handled most efficiently by an attorney chosen by their previous attorney
2. The original attorney's practice can be transitioned in such a way as to not lose the value of the practice on account of an untimely death
3. Avoids having a Receiver appointed that has not voluntarily agreed to serve in such a capacity
4. It could be an ethical violation to not act with reasonable diligence and promptness in representation (Illinois Supreme Court Rule 1.3 comment 5)

Propose Rule 781

Overview of Illinois Supreme Court Proposed Rule 781

What: Rule 781 would require all active Illinois lawyers in private practice to name a designated representative.

Why: The designated representative would provide short-term assistance and protection to clients in the event of death, disability, disappearance, or abandonment by their attorney.

When: Lawyers would name their designated representative with their ARDC registration (or certify that they have made a designation elsewhere – succession plan, will, trust, partnership, etc.).

Propose Rule 781

Overview of Illinois Supreme Court Proposed Rule 781 continued

Who: A designated representative can be any of the following:

- Illinois attorney in good standing;
- Illinois law firm; or
- An established state, county, or municipal bar association that includes active Illinois attorneys.

Scope: The representative is authorized, but not required to, act in a fiduciary capacity.

Propose Rule 781

Actions to be taken by a Designated Attorney under Proposed Rule 781(e):

- Discuss with the attorney's office personnel, family members, or other attorney representatives to obtain information as may be necessary to accomplish the purposes of this Rule;
- Take reasonable steps to secure the lawyer's files, office, client property, and accounts;
- Review the lawyer's files, calendar, and records to identify litigation or time sensitive matters;
- Notify clients of attorney's death or disability, including making arrangements for the return of client files or obtaining substitute counsel;
- Notify courts and other tribunals in which client matters are pending, and seek stays of proceedings as may be warranted to preserve client rights or interests.

Propose Rule 781

Actions to be taken by a Designated Attorney under Proposed Rule 781(e) continued:

- Serve as successor signatory for any client trust or operating accounts maintained by the lawyer;
- If necessary, utilize the attorney's operating accounts to manage the office, including retention of staff or others pending sale or closure;
- If necessary, audit and distribute client funds held in trust;
- If necessary to carry out any of the authorized activities hereunder, a designated representative may seek an order from the chief judge of the judicial circuit in which the attorney practiced confirming the death, disability, disappearance, or practice abandonment of the attorney;

Propose Rule 781

Actions to be taken by a Designated Attorney under Proposed Rule 781(e) continued:

- If necessary, seek the appointment of a receiver under Rule 776;
- Consult with the attorney's office personnel, family members, or other representatives (such as a guardian or executor) as may be appropriate to wind down, sell, or close the attorney's practice;

Source: https://cdn.ymaws.com/www.dcba.org/resource/resmgr/professional_responsibility/4.16.18_ProfessionalResponsi.pdf

Propose Rule 781

Designated Attorney Acting in a Limited Role. Under Proposed Rule 781(f) a Designated Representative shall:

- 1) not be regarded as having an attorney-client relationship with the clients of the disabled, absent or deceased attorney;
- (2) have no liability to the clients of the disabled, absent, or deceased attorney except for injury to such clients caused by intentional, willful or gross neglect in the performance of the authorized activities under this Rule;
- (3) except as herein provided, be immune to separate suit brought by or on behalf of the disabled, absent, or deceased attorney;
- (4) not be required to file an appearance in any pending matter before a tribunal in order to provide notice to the court or opposing counsel of an attorney's death, disability, disappearance, or abandonment of practice.

Propose Rule 781

Rationale for Proposed Rule 781:

- Proposed Rule 781 would prevent the undesirable scenario where a sole practitioner dies or becomes disabled and has no succession plan in place
- In this scenario, someone must be responsible for assisting the clients to prevent prejudice, but who?
 - Executor of the attorney's estate?
 - Close relative?
 - Court?
 - ARDC?

Mandatory Successor Rule (by state)

AL	No	HI	Not Reported	MA	No	NM	No	SD	Not Reported
AK	Not Reported	ID	No	MI	No	NY	Not Reported	TN	No
AZ	Not Reported	IL	No	MN	No	NC	No	TX	No
AR	Not Reported	IN	No	MS	Not Reported	ND	Not Reported	UT	Not Reported
CA	No	IA	Not Reported	MO	No	OH	Not Reported	VT	No
CO	No	KS	No	MT	No	OK	No	VA	No
CT	Not Reported	KY	No	NE	Not Reported	OR	No	WA	Not Reported
DE	No	LA	No	NV	Not Reported	PA	No	WV	No
FL	Yes	ME	Yes	NH	No	RI	No	WI	No
GA	No	MD	No	NJ	Not Reported	SC	Yes	WY	Not Reported

as of June 2015 source: American Bar Association

Re Original Wills and Trusts:

Illinois Compiled Statutes – 15 ILCS 305/5.15


- Deposit of Original Wills with the Secretary of State Index Department
- Each person's (or client's) documents cost \$15 to deposit
- Must complete a diligent search for each client
 - This includes sending letters to the last known address and checking the white pages and calling all last known numbers
- Keep a list of all the steps you take to contact the client as you will need all the information for the *Deposit of Wills and Certification of Diligent Search Form*

Deposit of Wills and Certification of Diligent Search Form

- One form must be filled out for each client, unless they have a joint Will or Trust
- All known information must be filled out
- Wills, Trusts, Codicils & Amendments are all accepted
- **POAs are not accepted**
- Each form must be signed by Depositor

Print Reset

State of Illinois
Deposit of Wills and Certification of Diligent Search
 15 ILCS 305/5.15


 Secretary of State Index Department
 111 E. Monroe
 Springfield, IL 62766
 217-782-7017
www.sgsboardofillinois.com

(Please type or print.)

<p>* TESTATOR:</p> <p>Doe, John, A. <small>* Last Name, First Name, Middle Initial</small></p> <p>123 Main Street <small>* Last Known Address</small></p> <p>Anytown, IL 12345 <small>* City, State, ZIP</small></p> <p>_____ <small>Alternate Name(s)</small></p> <p>_____ <small>Alternate Name(s)</small></p> <p>_____ <small>Birthdate</small></p> <p>_____ <small>Social Security Number (last four digits)</small></p>	<p>* DEPOSITOR:</p> <p>Ruswick, Aaron <small>* Last Name, First Name</small></p> <p>Huck Bouma <small>Company or Firm (if applicable)</small></p> <p>1755 S. Naperville Road <small>* Address</small></p> <p>Wheaton, IL 60189 <small>* City, State, ZIP</small></p> <p>630-221-1755 <small>* Telephone Number</small></p>
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OFFICE USE ONLY * DATE OF DEPOSIT:

* FEE PAID:

*** DESCRIPTION OF DOCUMENT(S) DEPOSITED:**

Last Will and Testament

Trust

*Number of Pages 22 *Date of Execution (if known) 04/12/1988

*** CERTIFICATION OF DILIGENT SEARCH:** (Provide details of the steps taken for diligent search.)

We sent a letter to the last known address on 11/26/2019 letting client know of documents held, but did not receive a response. We found a phone number on White Pages, 123-456-7890, but did not receive an answer via phone.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on the information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

* Signature of Depositor

* Date

*Required by Law

Printed by authority of the State of Illinois. December 2009 — 25 — I 225

About the Process with the ILSOS:

- Must make an appointment, ILSOS only accepts 50 at a time so may take multiple trips
- The process is slow; ILSOS checks over every document with the Diligent Search Form
- **Depositor must stand and watch ILSOS** seal every document in a folder
- If the lawyer (the Depositor) is sending a representative in their place to the ILSOS, the Depositor must include a letter explaining who is being sent as agent

Rule 1.17: Sale of a Law Practice

A lawyer or a law firm may sell or purchase, and the estate of a deceased lawyer or the guardian or authorized representative of a disabled lawyer may sell, a law practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in the private practice of law in the geographic area in which the practice has been conducted;
- (b) The entire 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

II. Rule 1.17: Sale of a Law Practice

15 Comments

[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 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 be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchasers.
 - Should not be an issue if sold to a larger firm with multiple practice areas
- Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation.
 - 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.
 - Define the geographic area
 - May limit within counties of a larger state (like Illinois)

Sale of Entire Practice

[6]

- The Rule requires that the **seller's entire practice be sold**.
 - Protects all clients
 - The purchasers are required to undertake all client matters in the practice, 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 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.
- Providing the purchaser access to client-specific information relating to the representation and to the 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*.

Client May Terminate Representation

[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.

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 are subject to the ethical standards applicable to involving another lawyer in the representation of a client.
 - Seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice;
 - Purchaser's obligation to undertake the representation competently (see Rule 1.1);
 - 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
 - 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 includes the sale of a law practice of a deceased or disabled lawyer.
 - 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.
 - Other Assets (Office Furnishings, Books, Automobiles, etc.)

[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.

Changes to Rule 1.17

Overview

- Rule 1.17 has recently undergone some minimal changes.
- Comment 7: Client Confidences, Consent and Notice.
 - This relates to what is considered confidential during a negotiation of a practice sale.
- The information that can be discussed is covered by Rule 1.6(b)(7).
- **If the information the attorney wishes to disclose is outside of Rule 1.6(b)(7), the attorney must obtain consent.**

New: Rule 1.17 Comment 7

[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 ~~client-specific information relating to the representation beyond that allowed by Rule 1.6(b)(7), and to~~ such as the client's file, 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.

New: Rule 1.6(b)(7)

- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
- **(7) to detect and resolve conflicts of interest if the revealed information would not prejudice the client.**

New: Detection of Conflicts of Interest

Rule 1.6 Comment 13

[13]

- Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, **such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7].**
- Under these circumstances, lawyers and law firms are **permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred.** Even limited information should be disclosed only to the extent reasonably necessary.
- Moreover, the disclosure of any information is prohibited if it would prejudice the client (e.g., disclosure would compromise the attorney-client privilege; the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge).
- Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

Detection of Conflicts of Interest

Rule 1.6 Comment 14

[14]

- Paragraph (b)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(7).
- Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

Part III
Alternatives for Law Practice
Transition

III. Alternatives for Law Practice Transition

- Rule 1.17 Sale (may be to a Designated Representative or otherwise)
- Stock/Equity Sale or Gift
- Merger with another Firm
- Build a Succession Plan
- Do Nothing
 - Let family/executor deal with office, clients, files, original docs, etc.
 - Allow receiver to be appointed under Rule 776 (ARDC or otherwise)

	1.17 Sale	Stock Sale/Gift	Merger	Succession Plan	Do Nothing
1. Total Consideration					
2. Ease to Accomplish					
3. Client Transition					
4. Staff Transition					
5. File Retention					
6. Flexibility of Retirement (part-time/half-time/retire)					
Totals					

Rate 1-5 (5 being the best from the Transitioning Lawyer’s Prospective)

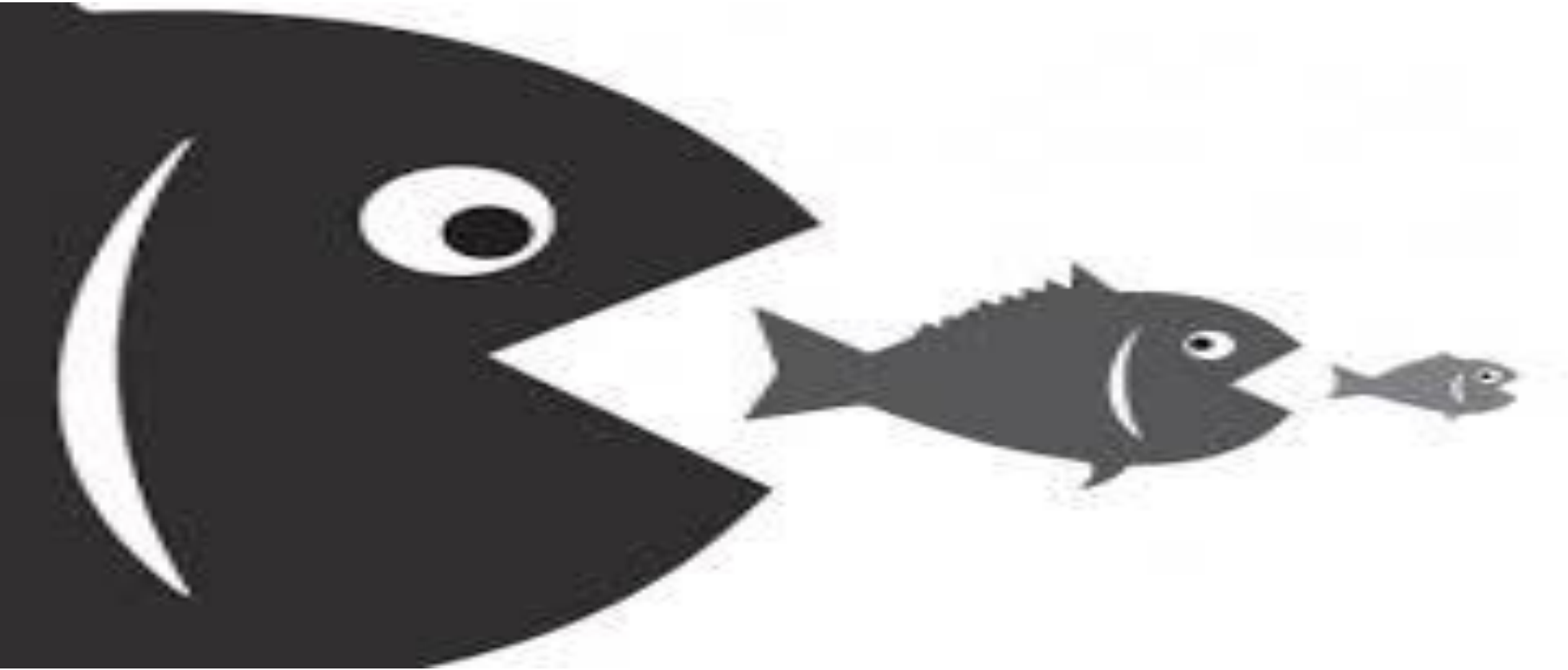
III. Alternatives for Law Practice Transition – Sale under Rule 1.17

- Terms:
 - Timing
 - Purchase Price
 - Payment Terms (Down Payment; Payments over Time)
 - Tax Implications (Predominantly Capital Gain to Seller)
- Follow procedures of Rule 1.17
 - Seller ceases to engage in the private practice of law in the geographic area
 - The entire practice is sold
 - 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) client's consent 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.

III. Alternatives for Law Practice Transition – Stock/Equity Sale or Gift

- Stock/Equity Sale or Gift
 - Profession Corporations, LLC's and Partnerships
 - Terms:
 - Timing
 - Internal Allocations of Profits
 - Purchase Price
 - Payment Terms (Down Payment; Payments over Time)
 - Tax Implications (Predominantly Capital Gain to Seller)
 - W2 Compensation Agreement During Transition/Health Insurance

III. Alternatives for Law Practice Transition – Merger



III. Alternatives for Law Practice Transition – Merger

- 2 or more firms combine into a single business entity
- May also be considered “Joining” another firm (similar to a lateral hire)
- Reasons to Merge
 - Efficiencies
 - HR, Accounting, Office Manager, Firm Management
 - Improve costs of subscriptions, technology, associate time
 - Improve expertise in areas of practice
 - Improve opportunities to cross sell legal services
 - Capitalize on your strengths
 - May make it easier to ease into retirement
 - File management
- More challenging with the size of the practice to merge
 - Consider staff
- Consider Geography

III. Alternatives for Law Practice Transition – Merger

Terms Include:

- Timing
- Nondisclosure Agreement
- Conflicts Check
- Firm Governance
- Firm Name
- Who Takes over Files at the Larger Firm?
- Purchase Price
- Payment Terms (Down Payment; Payments over Time)
- Internal Allocations of Profits
- Tax Implications (Predominantly Capital Gain to Seller)
- W2 Compensation Agreement During Transition/Health Insurance

III. Alternatives for Law Practice Transition – Succession Plan

- **Step 1:** Find the right **Who** (employee, Designated Representative, or otherwise) to work with.
- **Step 2:** Negotiate the transaction/plan
 - Compensation Agreements
 - Buy-Sell Agreement
- **Step 3:** Execute the plan

III. Alternatives for Law Practice Transition – Succession Plan

Step 1: Find the Right Who.

- Linked In
- Engage a Recruiter?
- Bar Associations
- WealthCounsel
- Social Circles
- Advertise in Bar Journals (Anonymous or Otherwise)
- Hire with succession as a Goal
 - Lateral Attorney
 - Associate/Law Clerk
- Consider
 - Competence (Rule 1.17)
 - Ability to grow, expand files and relationships
 - Getting along with others

III. Alternatives for Law Practice Transition – Succession Plan

Step 2: Negotiate the transaction/plan

- Work with the attorney for 1-3 years+ to confirm it's the right fit
- Deals take a long time to negotiate/finalize
- Transition over 3-5yr+
- Compensation Agreement with Employee
- Employment Agreement with yourself
- Buy Sell Agreement between you and Employee
 - Buyout upon death, disability, and **retirement (succession)**
- Recap the Firm into Voting and Nonvoting shares
 - 5% Voting (you keep all voting)
 - 95% Nonvoting (you keep all nonvoting initially)
- Review Income Tax Effects
- Review Cap Gain v. Ordinary Income
- FICA Taxes (possible savings on deferred income)

III. Alternatives for Law Practice Transition – Succession Plan

Step 3: Execute the plan

- Need to transition the client relationship
- Need to transition the referral source relationship
 - **Don't be a hoarder**
 - Avoid your own ego
 - Jr. attorney must be in the room during a meeting **initiated by the client**

III. Alternatives for Law Practice Transition – Firm Buy Sell Agreement

Goals of a Buy Sell Agreement for a Law Firm:

- Restrict the sale or transfer of an ownership interest to an unwanted third party.
- Enable a smooth transition in the ownership and control of a firm.
- Provide a method of funding the buy-out of a withdrawing or deceased owner's interest and establishing the terms for payment of the purchase price.
- Avoid disputes among owners.
 - Add firm governance provisions (**voting**; approval process; authority of managing partner; setting compensation; hiring; etc.)
- Enable the estate of a deceased owner to obtain a favorable price for what could have been an unmarketable asset.
- Establish the value for federal estate tax purposes.
- Enable the remaining owners to be certain of the terms under which a departing owner's interest will be purchased.

III. Alternatives for Law Practice Transition – Firm Buy Sell Agreement

Goals of a Buy Sell Agreement for a Law Firm (Cont'd):

- Avoid the moral dilemma that could arise in negotiating price and terms with the spouse and children of a deceased or incapacitated owner.
- Ensure the efforts of active owners/employees do not inure to the benefit of an inactive owner or owners and that an inactive owner will be unable to interfere with the entity's management.
- Decrease the chance of disputes when an owner wishes to withdraw from the firm, whether to enter into competition or otherwise.
- What notice is to be given to the firm by a withdrawing owner.
- The timing and method of notification of clients.
- The retention and/or transfer of client files.
- How Conflicts of Interest are dealt with.

III. Alternatives for Law Practice Transition – Firm Buy Sell Agreement

- Trigger Events for a sale
 - Attempted sale to a third party (via right of first refusal)
 - **Death**
 - **Disability**
 - **Retirement**
 - Voluntary termination of employment
 - Involuntary termination of employment
 - Bankruptcy or insolvency of an owner

III. Alternatives for Law Practice Transition – Firm Buy Sell Agreement

- Determining the Purchase Price
 - Fixed Price Method
 - Revenue Approach
 - Book Value
 - Adjusted Book Value: Adjusted for one or more of the following factors:
 - Assets not appearing on the balance sheet, such as goodwill.
 - Accrued income or expenses not reflected on the balance sheet of cash method taxpayer.
 - Contingent liabilities.
 - Appraised value of certain assets such as real estate and expensive equipment.
 - Market value of securities traded on an exchange.
 - Loss in value due to deceased owner's services to the business.
 - Insurance proceeds.
 - Appraisal
 - Capitalization of Earnings
 - Estate Tax Value
 - Other Methods

III. Alternatives for Law Practice Transition – Firm Buy Sell Agreement

- Redemption v. Cross Purchase
 - Tax Basis; Obligations
 - Payment Terms
 - Lump Sum
 - Finance with Note (20% down; remainder over 5 years with interest at prime plus one)
 - Secured by?
 - Life Insurance
- Other Terms
 - Use of Name after retirement
 - Dispute Resolution
 - Disability Insurance
 - Sinking Fund if Redemption Agreement
 - Include a Form Note

III. Alternatives for Law Practice Transition – Firm Buy Sell Agreement

- **(Example from prior slide)** Estate Planning Practice with Average Gross Revenues of \$800,000 and profit of \$300,000
- Sole Practitioner will phase out over a 3-5 year period and an additional associate will be hired for \$100,000 total comp, taxes, and benefits.
- Recap Firm into voting and nonvoting shares and sell 20% per year for 5 years based upon \$600,000 value
- Seller Financed with Note with Interests at 5%
- Equity Payment: \$ 600,000
- Interest: \$ 75,000
- Profit Payment over 5 years:
 - YR1: 80% of \$200,000 = \$160,000
 - YR2: 60% of \$200,000 = \$120,000
 - YR3: 40% of \$200,000 = \$ 80,000
 - YR4: 20% of \$200,000 = \$ 40,000
- Total Return of Profit = \$ 400,000
- Total Payments to Seller: \$1,075,000
- Also consider: Cost to recapitalize the firm: \$25,000

Part IV

Determining the Value of a Law Practice

IV. Determining the Value of a Law Practice

- What is a Law Practice Worth?
 - A Law Practice is worth the *Fair Market Value*: The probable price at which buyer will buy from a willing seller when:
 - (1) both are **unrelated**,
 - (2) **know** the relevant facts,
 - (3) neither is under any **compulsion** to buy or sell, and
 - (4) **all rights** and benefit inherent in (or attributable to) the item must have been **included** in the transfer.

IV. Determining the Value of a Law Practice

The current value of a law practice is not easy to gauge. A valuation prepared by a CPA may be worthless for determining/predicting value.

- **Common Approaches to Value**
 - Income Approach
 - **Earnings (or EBITDA) Multiple**
 - **Revenue Multiple** (we will come back to this later)
 - Asset Approach
 - Book Value
 - Liquidation Value
 - Goodwill

Some attorneys/sellers have an inflated idea of the value of their practice.

- **Examples:**
 1. Litigator selling a phone number
 2. Estate planner, real estate or corporate attorney desiring an annuity for 5+++ years
 - **Practice Tip for Seller: Know your Buyer**
 - **Practice Tip for Buyer: Know your Seller**

IV. Determining the Value of a Law Practice

Common Components of a Law Practice Purchase Price using the Earnings Multiple or Revenue Multiple

1. **Down Payment** (applied against Purchase Price)
2. **Equity Payment** (Purchase Price)
3. **W2 Payment for services** performed (if “Seller” is practice law)
 - Tough for a Buyer to be comfortable with a set Purchase Price
 - Sets the stage for an **Earnout** based on revenues or profits (to hedge the Buyer’s risk)
 - Arguments may occur with an Earnout based on *Profit* (who controls profit?)
 - Reduce the arguments with an Earnout based upon **Revenues**
 - Revenue Factor may be .4 * Revenues to 1.0* Revenues+
 - Seller Goal re Value: Maximize the Earnout \$

IV. Determining the Value of a Law Practice - Examples

Deceased attorney's estate planning/general practice could not be sold by Estate (under Rule 1.17)

- Practice Annual Revenues: \$200k-\$300k
- Very **unorganized files**; Value lost because of no planning
- Disaster for executor of borderline insolvent estate
- 1500++ hours spent in administration
- Many original wills and other documents
- Estate opened from 2011 until 2017
- Complete A&R Trust could not be located by surviving spouse
- Value = <\$0

IV. Determining the Value of a Law Practice - Examples

Unsuccessful Example using Rule 1.17 as a bailout

Deceased litigator's estate selling a general litigation and collection practice
(**under Rule 1.17**)

- Practice Annual Revenues \$150k
- Very **unorganized files**; Value lost because of no planning
- Disaster for executor for insolvent estate
- Value = <\$0

IV. Determining the Value of a Law Practice

Successful Examples using Rule 1.17

Deceased litigator's estate selling a workers comp practice (**under Rule 1.17**)

- Practice Annual Revenues \$300,000 - \$400,000
- **Moderately unorganized files;**
- Hearings the day after death needed attention
- Very minimal planning
 - Letter left with 2 attorneys to contact to “take over” the practice
- Disaster for executor
 - Very little accounting
 - Avoided a complete disaster with fast practice transition action plan
 - Daughter was the perfect executor
- Value = 20% equity payment for 2 years on existing files transitioned;
- Buyer acted as receiver of the old practice under Rule 776 saving the estate \$
 - First Time the IL ARDC attorney had heard of this approach

IV. Determining the Value of a Law Practice

Successful Example using Rule 1.17

Divorce practice sells to small firm (**under Rule 1.17**)

- Sole Practitioner left for Denver and sold practice
- Practice Annual Revenues \$200,000 - \$300,000
- Organized files
- Buyer and Seller worked together well
- Buyer was personally introduced to the clients

Value = 33% of collections on close to 50 files transferred
(transaction included a \$50,000 down payment)

IV. Determining the Value of a Law Practice

Practices Merged (Alternative to using Rule 1.17)

Sole Practitioner estate planning/general practice merged into larger firm (**outside of Rule 1.17**)

- Practice Annual Revenues: \$200,000 - \$300,000
- **Organized Files**; Earn-out negotiated; See later slide
- Value = .25 x Revenues for 4 years
- Work Credit of 37.5% for billed time (including the earnout)
- Revenue opportunities expanded after merger
- More practice areas at larger firm

Sole Practitioner estate planning practice merged into larger firm (**outside of Rule 1.17**)

- Practice Annual Revenues: \$100,000 - \$200,000
- **Organized Files**; Earn-out negotiated with equity payment of 20% of revenues for 3 years
- Revenue opportunities expanded after merger
 - More practice areas at larger firm

IV. Determining the Value of a Law Practice

Practices Sold or Merged (Alternatives to using Rule 1.17)

Sole practitioner negotiating a deal at IL Symposium on 2-7-2020 during sponsor break and cocktail hour

- Details to be determined

IV. Determining the Value of a Law Practice

Practices Sold or Merged (Alternatives to using Rule 1.17)

Sole practitioner estate planning & corporate law firm merges with larger firm

- Value = .25 x Revenues for 4 years
- Work Credit of 37.5% for billed time (including the earnout %)
- Revenue opportunities expanded after merger
- More practice areas at larger firm

Litigator (sole owner; 24 attorneys) with workers comp practice sells ownership to 2 key employees (outside of Rule 1.17)

- Practice Annual Revenues: \$7,000,000+
- **Organized Files**; Buy-Sell negotiated after **issuance** of ownership;
- Planning with the right **Who**

IV. Determining the Value of a Law Practice

- **A Suggested Approach:** Use **Revenue Approach** and ask for a higher multiple with more valuable assets (name, goodwill, phone #, website, etc.).
 - As an example, a CPA practice may sell for up to 1.25 x's Gross Revenues (use a higher multiple if files have more opportunity for growth)
 - More Recurring Revenue than a Law Practice
 - A Law practice may sell for .4-1.0 x's Gross Revenue (use a higher multiple if files have more opportunity for growth)

IV. Determining the Value of a Law Practice

Building a Buy-Sell Agreement (Succession Plan) and Transition over Time

2 Attorney estate planning practice transitions to key employee (outside of Rule 1.17)

- Practice Annual Revenues: \$700,000 - \$800,000
- **Organized Files;**
- negotiated (See next slide for deal terms)
- Buy-Sell (with Structured buyout) negotiated after **issuance** of ownership to key employee;
- Planning with the right **Who**
- Value can approach \$1M with $1.25 \times \text{Revenues}$ formula

IV. Determining the Value of a Law Practice

- **(Example from prior slide)** Estate Planning Practice with Average Gross Revenues of \$800,000 and profit of \$300,000
- Sole Practitioner will phase out over a 3-5 year period and an additional associate will be hired for \$100,000 total comp, taxes, and benefits.
- Recap Firm and sell 20% per year for 5 years based upon \$600,000 value
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 - YR3: 40% of \$200,000 = \$ 80,000
 - YR4: 20% of \$200,000 = \$ 40,000
 - Total Return of Profit = \$ 400,000
 - Total Payments to Seller: **\$1,075,000**
- Also consider: Cost to recapitalize the firm: \$25,000

Part V

Group Review of Practice Succession
Alternatives

	1.17 Sale	Stock Sale/Gift	Merger	Succession	Do Nothing
1. Total Consideration					
2. Ease to Accomplish					
3. Client Transition					
4. Staff Transition					
5. File Retention					
6. Flexibility of Retirement (part-time/half- time/retire)					
Totals					

Rate 1-5 (5 being the best from the Transitioning Lawyer's Prospective)

	1.17 Sale	Stock Sale/Gift	Merger	Succession	Do Nothing
1. Total Consideration	2	3	3	5	1
2. Ease to Accomplish	3	3	3	1	5
3. Client Transition	3	4	3	5	1
4. Staff Transition	4	4	4	5	1
5. File Retention	4	4	3	5	1
6. Flexibility of Retirement (part-time/half-time/retire)	3	3	4	5	5
Totals	19	20	21	26	9

Rate 1-5 (5 is best from Transitioning Sole Practitioner's Perspective)

Part VI

Conclusion and Questions

HUCK BOUMA PC

Practice Areas:

- Corporate
- Estate Planning
- Real Estate
- Banking
- Litigation



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