

NYSBA Planning Ahead Guide

How to Establish an Advance Exit Plan to Protect Your Clients' Interests in the Event of Your Disability, Retirement or Death

Law Practice Management Committee

Subcommittee on Law Practice Continuity

Second Edition



Copyright © 2015-2016

New York State Bar Association

Product Number: 41700

Table of Contents

	<u>Page</u>
Introduction	1
<i>The Planning Ahead Guide: How to Establish an Advance Exit Plan to Protect Your Clients' Interests in the Event of Your Disability, Retirement or Death</i>	3
<u>Appendices Sample Checklists and Forms</u>	
1. What If? Answers to Frequently Asked Questions.....	11
2A. Checklist for Lawyers Planning to Protect Clients' Interests in the Event of the Lawyer's Disability, Impairment, Incapacity or Death	16
2B. Checklist for Closing Your Own Office	18
2C. Checklist for Closing Another Attorney's Office.....	20
2D. Checklist of Concerns When Assuming Temporary Responsibility for Another Attorney's Practice (Disability or Suspension)	24
2E. Checklist of Concerns When Assuming the Responsibility for Another Attorney's Practice (Purchase or Acquisition)	27
2F. Checklist for the Fiduciary of a Solo Practitioner	30
2G. Checklist for Lawyers' Business Disaster Planning and Recovery	32
3. Agreement to Close Law Practice in the Future	38
4. Authorization and Consent to Close Law Office.....	45
5. Limited Power of Attorney to Manage Law Practice at a Future Date	47
6. PCS and PLLCS: Appointing the Appropriate Agent to Manage a Solo Law Practice in the Event of Death, Disability, Incapacity or Other Inability to Practice Law	51
7A. Letter from Planning Attorney Advising That Lawyer Is Closing Law Office	55
7B. Letter from Closing or Assisting Attorney Advising That Lawyer Is Unable to Continue Law Practice.....	56
7C. Letter from Firm Offering to Continue Representation.....	57
7D. Authorization for Transfer of Client File.....	58
7E. Request for File.....	58

7F.	Acknowledgment of Receipt of File	58
8.	Law Firm Master List of Contacts and Important Information	59
9.	Special Provisions for Attorney’s Will: Instructions Regarding My Law Practice	66
10.	Transfer of a Law Practice	69
11.	Valuing a Law Practice	75
12.	Sample Asset Purchase Agreement	79
13.	Confidentiality and Non-Disclosure Agreement	94
14.	Interruption of a Practice Due to a Lawyer’s Substance Abuse or Mental Health Issue	97
15.	“Impaired Attorneys: The Firm as Employer,” an article by Paula A. Barran	99
16.	New York Human Rights Law	112
17.	FAQs re Document Destruction and Preservation	113
18.	Selected Excerpts from the CPLR and Judiciary Law	116
19.	Selected Appellate Division Rules	121
20.	Rules of Professional Conduct	122
21.	Selected Ethics Opinions	124
22.	“Ten Things Not to Do When You Retire,” an article by David Kee	130
23.	HIPAA Form	132
24.	ABA FAQs on Extended Reporting Period Coverage	132

Introduction

by Sarah Diane McShea

The original *Planning Ahead Guide* was published a decade ago and quickly became one of the NYSBA's most popular publications. Recently a subcommittee of the Law Practice Management Committee updated the *Guide*, replacing citations to the old ethics rules with current references to the Rules of Professional Conduct and revising the model forms to reflect, among other things, changes in the law and some of the newer technologies used by many practicing lawyers. The result, we hope, is as "user friendly" as the original *Planning Ahead Guide*. The *Guide* includes free downloadable forms in Word and Wordperfect and links to many of the cited references. The *Guide* will remain a work in process, as we welcome suggestions and feedback from lawyers in New York and other jurisdictions as they work with this publication.

The original *Planning Ahead Guide* was written by the NYSBA's Committee on Law Practice Continuity, chaired by David R. Pfalzgraf, Esq., a leader in the profession and the inspiring helmsman of the Law Practice Continuity Committee's work in assuring that lawyers prepare for the future and ensuring that there are safety nets for their clients and families when they have not done so.

The *Planning Ahead Guide* was the Law Practice Continuity Committee's first significant achievement. Its second significant achievement was its proposal of the Uniform Caretaker Rule to provide the necessary authorization and guidance for the appointment of caretaker lawyers to serve in emergency situations when disaster befalls a fellow member of the Bar. Although the proposed Uniform Caretaker Rule has not yet been adopted by the Appellate Division, it has nonetheless served to alert the courts and the legal profession to the need for guidance and court involvement in many situations when lawyers have not taken sufficient steps to plan for the future. Copies of the proposed model rule and the Committee's supporting memoranda are available at www.nysba.org/ProfessionalConduct.

Special thanks go to the members of the Law Practice Management Committee's Subcommittee on Law Practice Continuity for their commitment and insights in updating the *Planning Ahead Guide*: Marion Hancock Fish, Patricia Spataro, Henry E. Kruman, Robert L. Ostertag, Anthony R. Palermo, Marian C. Rice, John R. McCarron, Anthony Q. Fletcher and Joseph F. Saeli, as well as William H. Roth, who assisted the Subcommittee in revising the updated *Guide*. Particular thanks go to the hardworking dedicated staff at the NYSBA, especially Katherine Suchocki, Jessica Patterson and Simone Smith, without whom we could not have completed this task.

We would remiss if we did not thank the leadership of the NYSBA for encouraging and consistently supporting the work of the Committee on Law Practice Continuity and the Law Practice Management Committee over the past twelve years. The original members of the Committee on Law Practice Continuity, which was responsible for the original *Planning Ahead Guide* and many continuing legal education programs around the State, included David R. Pfalzgraf (Committee Chair); James M. Altman (the original thinker behind the project), Francis X. Carroll (who has helped many lawyers in New York cope with personal and professional disasters), Anthony E. Davis, James F. Dwyer, Jeffrey M. Fetter, Susan F. Gibraltar, S. Jeanne Hall (one of the chief authors of the original *Guide* and a leading light in the profession), Paul M. Hassett, Douglas C. Johnston, Kim

Steven Juhase, Anne B. Keenan (to whom the original Guide was dedicated), Steven C. Krane, Anne Maltz, Sarah Diane McShea, Mark S. Ochs, Robert L. Ostertag, Timothy J. O’Sullivan, Anthony R. Palermo, Michael Philip, Jr., the Honorable Eugene F. Pigott (then a justice of the Appellate Division, Fourth Department, and a consistent source of wisdom and practical guidance), Barbara F. Smith (one of the best draftsmen and most thoughtful Committee members participating in the project) and Leroy Wilson, Jr. Special thanks and gratitude must go to former NYSBA staff member Terry Brooks, whose fortitude and dedication insured the publication and excellence of the original *Planning Ahead Guide*.

And, finally, we dedicate this current edition to Gary Munneke, the former Chair of the Law Practice Management Committee, whose outstanding work and astonishing level of commitment was appreciated by all involved in this update project. I sincerely apologize to those who contributed but who inadvertently are not included here. The fault is mine and later editions will correct this unintentional oversight.

Sarah D. McShea

Chair, Subcommittee on Law Practice Continuity