



# IN PRACTICE...with CNA®

A Practitioner's Perspective on Emerging Legal Trends | 2022 Issue 2

## Making Time to Retire: Best Practices for Succession Planning and A Smooth Transition

### Introduction

People often ask, "When is the right time to retire?" But like so many questions about important decisions, there is no "right" answer. To find a meaningful answer, the question should be reframed as, "When is the right time *for me* to retire?" And the only person who knows the right answer to that question is you. The key is to ask yourself that question now and then revisit it from time to time throughout your practice. The earlier you begin to think about it, with an eye toward retirement someday in the future, the more likely you are to be ready for a smooth transition out of practice whenever the time comes.

Lawyers tend to work longer than the general workforce. While some lawyers retire in their 50s, others continue into their 80s and even older. According to the recent ABA report, "Profile of the Legal Profession 2021," roughly 14% of lawyers are 65 or older, double the number of that age group in the general workforce (7%). The Covid-19 pandemic has caused about a third of lawyers over age 62 to reconsider their retirement plans; of that group, about half decided to accelerate retirement (47%) and the remainder (53%) decided to postpone it.

Retirement is not an event;  
it's a long-term process.

Whether you intend to retire soon or not retire at all, it will take time to prepare for a smooth exit from practice. Retirement is not an event; it's a long-term process. The date of your last official work day may be on the calendar, but reaching that day takes months and years of planning. You must ensure that your clients are prepared for your retirement and satisfied with your successor, that your successor is ready to step into your position, and that your practice, firm, and legacy are secure and protected when you leave. That preparation takes a lot of work, and it cannot be completed overnight.

Planning for retirement is not easy for a successful and busy lawyer. Except for the fortunate few who know exactly when they want to quit practice and what they want to do next, most lawyers grapple with competing demands and conflicting desires. In addition, their identity is often linked to their career, and concerns regarding fear of the unknown and financial uncertainty prevent them from retiring or even thinking about it. Similarly, lawyers avoid succession planning because they cannot imagine what they will do if they don't practice law, and they feel emotional ties that make it difficult to let go. Nonetheless, it's especially important for solo and small firm practitioners to do this planning. It allows you to ensure your ongoing reputation and legacy; to envision your retirement as feasible, desirable, and filled with exciting possibilities; and to enter retirement with a sense of contentment, confidence and pride.

### Consider These Key Points

For the solo practitioner or member of a smaller firm, as you begin to think about retirement, here are a few critical points to keep in mind:

#### Retire on your own terms.

At some point in the future, you'll stop practicing law. Ideally, you want to be the person who decides when that will happen rather than having clients, partners, or circumstances make the decision for you. This means being honest with yourself about how long you want to practice, what your body is telling you about your energy and interest, what your time records are showing you about your productivity and profitability, and other indications that retirement (perhaps following a phase-down period) might be a good idea. Whatever the timeline, it's better to retire by design, not by default.

#### Investigate possible succession strategies.

Preparing for retirement includes planning what will happen to your practice when you retire. This preparation involves exploring and determining your exit options (e.g., sale, merger, or transfer to partners, associates or third parties), as well as the financial implications. If you want the practice to continue, it will be imperative to find the right successors, groom them to take over, and transition your clients, cases and practice to them. Even if you decide to simply close your practice and walk away, your obligations to clients require planning.

#### Know your finances.

Before you make any decisions about retiring, get a clear view of your finances, now and in the future. As part of that process, assess the value of your practice and how you can maximize it for possible sale, merger or transfer. Determine how much continuing income you want or need from the practice when you retire and how you might achieve that. Most people never believe that they have sufficient financial security to retire. Whether their savings are modest or they're worth millions, the fear of not having enough to support yourself in retirement is extremely common. Speaking with a financial planner can help to allay those concerns.

Even if you decide to simply close your practice and walk away, your obligations to clients require planning.

#### Decide on your time frame.

Once you acknowledge you'd like to retire, how do you know when to do it? Examine various factors unique to your personal situation to help you decide whether the right time for you is next year, in five years, in ten years, or even further out. Below are questions to help you determine a timetable that makes the most sense for you.

- What is your age? How is your health? Are you experiencing any physical, emotional, or other problems that might suggest it's time to cut back at work or to retire?
- How much longer do you want to practice and why?
- At what age will you be able to afford to retire? Are you guessing, or have you performed a financial analysis?
- How secure is your practice and, if it's very secure, how much longer will it remain secure? How strong is the marketplace for the type of work you do?
- Can you rely on your clients to keep sending you work, or will it be necessary to generate new client business? Do you think any of your key clients may retire soon? If they do, how will their move affect your business?
- How has the pandemic changed your practice? How has it affected the demand for your services?
- How comfortable are you with the technology required for law practice? How do you feel about learning and adapting to the ongoing changes in legal technology?
- If you're at a firm, have you received any signals suggesting you're not sufficiently productive and profitable?
- Before you retire, how long will it take to find and groom successors and transition your clients and ongoing matters to those successors? How easy will it be to find qualified successors you trust and whom you believe your clients will trust?
- What will happen to your practice and employees when you retire?
- If you want to sell your practice, how easy will it be to find a buyer? How long will it take?

If you haven't considered these questions before, some of them may elicit answers that surprise or even disturb you. It may be helpful to talk with someone about these questions. In addition to your spouse, a close friend, counselor, trusted advisor, or retirement coach can help you understand your answers and what they mean for your future plans. That process will put you in a stronger position to determine the most suitable time frame for your retirement and the best way to structure your succession plan.

### Make a Plan

Once you have a time frame for retiring, start to craft a succession plan.

#### Start planning sooner than later.

The sooner you start to plan, the more likely you'll be able to transition your practice successfully and realize the future you desire. As a lawyer, you probably want to know and control as much as you can about future possibilities before you commit to a significant change. This last year has been a stark reminder of our limitations in predicting the future or trying to control the world around us. Yet while there's much you can't know or control about the future, a flexible, well-thought-out succession plan increases the chances that you can control the direction your future will take, even in the face of unexpected and undesirable occurrences.

#### Keep your ethical obligations in mind.

Having a formal succession plan is not required in every jurisdiction so you need to know the requirements in the jurisdiction in which you practice.<sup>1</sup> While a succession plan may not be required, it represents a sound practice, especially for sole practitioners.<sup>2</sup> Comment [5] to Rule 1.3 of the ABA Model Rule of Professional Conduct suggests that "[t]o 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."<sup>3</sup> In addition to protecting the interests of clients, having a plan protects family members, office staff, and others who will otherwise have to address the closure of your practice.

The sooner you start to plan, the more likely you'll be able to transition your practice successfully and realize the future you desire.

### Create a law firm transition checklist.<sup>4</sup>

Having a checklist of items to address will help you transition your practice to a successor. That checklist should include providing information that will be important for your successor to have.

- Critical information for this checklist includes:
  - All of your clients, their contact information, case details, and other pertinent information, including the type of case, status, type of fee agreement, the current status of the fees, which files include documents, where the files are located, and how they can be accessed.
  - All your passwords and logins for electronic devices and online accounts (including social media), and any two-factor or multi-factor authentication that you have enabled.
  - All your law firm's financial information, including but not limited to, business and IOLTA accounts and credit cards.
  - All of your business records including, but not limited to the following: all leases and contracts for your office space, office equipment and utilities, office services and vendors, software providers, malpractice and business insurance information, and staff names and contact information. Be sure to indicate those individuals who are most knowledgeable about the practice, as well as who is authorized to access encrypted or password protected files.
- Additional items for your transition checklist might include the following:<sup>5</sup>
  - Select and designate a successor lawyer who will be authorized to take over your legal practice or close, sell, or transfer the practice in the event that you become incapacitated. Create a detailed, written agreement defining the relationship and duties of this lawyer, including any authorization for the lawyer to contact clients for instructions on transferring client files.
  - Ensure your IOLTA account is accessible and complies with your jurisdiction's rules on this issue. Consider executing bank forms to authorize another signatory who is permitted to access the account.
  - Ensure that your estate planning documents are up-to-date. Update your will and General Durable Power of Attorney (GPOA) to include information about your law firm's succession plan. Draft instructions for your family and/or estate executor about the successor attorney's duties.

<sup>1</sup> See [ABA State Mandatory Succession Rule Chart](#) and [ABA State-by-State Caretaker Rules When Lawyer Disappears, Dies or is Declared Incompetent](#).

<sup>2</sup> See Page 52 of CNA's "Lawyers' Toolkit 4.0: A Guide to Managing the Attorney-Client Relationship" for sample engagement agreement term for preemptive client consent for sole practitioners in relation to a practitioner's disability, disappearance or death.

<sup>3</sup> See ABA Model Rule of Professional Conduct 1.3 (2021) and also Rule 28 of the ABA Model Rules for Lawyer Disciplinary Enforcement.

<sup>4</sup> [State-by-State succession planning guidelines, templates and checklists](#).

<sup>5</sup> For more information on retiring from practice, see CNA Professional Counsel Article, "Retiring from Practice: Understanding Your Options" and "Expecting the Unexpected: Succession Planning for Lawyers."

- Determine and select the best option for closing or transferring your practice. Depending upon your circumstances, you may wish to close the practice entirely, create a partnership with another solo practitioner or small firm, develop an “of counsel” arrangement, or sell your practice. If you decide that the best option is to sell your practice, consider your obligations under Rule 1.17 of the ABA Model Rules of Professional Conduct, or your jurisdiction’s variation of that Rule.<sup>6</sup> According to the ABA Formal Ethics Opinion 468, you can perform transitioning activities, such as conflicts of interest checks, that are “reasonably necessary to accomplish the orderly transition of active client matters.” You must also stop accepting new matters. How long you are able to remain involved in the practice will “depend on the circumstances, including the rules and rulings of courts or other tribunals in pending matters.”<sup>7</sup>
- Permit clients to have sufficient notice and time for your retirement transition. You will wish to provide your clients with as much time as possible to adapt to the new succession arrangement you propose, or if they prefer, to seek alternative representation. By putting a succession plan in place and discussing it with them well in advance, clients will not be surprised and will have time to decide what is best in their situation. Further, if selling your practice, ABA Model Rule of Professional Conduct 1.17(c) requires the seller to provide written notice to each client about the proposed sale; the client’s right to retain other counsel or to retrieve the file; and that the client’s consent will be presumed if the client takes no action within ninety days.<sup>8</sup> Failure to comply with this notification can result in disciplinary sanctions against the seller.<sup>9</sup>
- Consider “tail” coverage. Many retiring attorneys incorrectly believe that since they are no longer practicing, there is no need for continuing professional liability coverage. “Tail” coverage provides coverage for claims made after retirement for covered acts/omissions that occurred while you were still in active practice. In addition, attorneys should provide the date of their retirement to the insurer and be sure not to provide legal services after the established and confirmed retirement date.

### Conclusion

The process of retiring can be overwhelming if the timeline for planning is short. Giving yourself a long runway for exploring options, making well-reasoned decisions, and executing a carefully crafted plan, can eliminate the stress, uncertainty and emotional turmoil. Whether considering the right time to retire, the best disposition for your practice, or complying with your ethical obligations, the key is to start early.

### This article was authored for the benefit of CNA by:

#### Ida O. Abbott

Ida O. Abbott is a member of the California Bar, consultant, author, and speaker who specializes in lawyers’ career development, advises law firms about retirement processes, and works with senior lawyers as a retirement mentor and coach. She is a fellow of both the American Bar Foundation and the College of Law Practice Management. Her most recent book is Retirement by Design, named by the Wall Street Journal as one of the 6 best books of 2020 on aging and retirement.<sup>10</sup>

<sup>6</sup> See ABA Model Rule 1.17 (2021).

<sup>7</sup> See ABA Formal Ethics Op. 468 (2014). For other state opinions, see also, N.Y. State Ethics Op. 961 (2013); Mass. Ethics Op. 2014-4 (2014); N.C. Ethics Op. 98-6 (1998); N.Y. State Ethics Op. 1133 (2017); Fla. Ethics Op. 03-1 (2004); Ill. Ethics Op. 07-02 (2007); Me. Ethics Op. 210 (2014); Conn. Informal Ethics Op. 15-08 (2015); N.D. Ethics Op. 15-08 (2015).

<sup>8</sup> ABA Model Rule 1.17(c) (2021).

<sup>9</sup> See, *In re Pinck*, 94 A.3d 905 (N.J. 2014) (lawyer failed to provide advance written notice to client of sale of law practice); *In re McCray*, 825 N.W.2d 468 (N.D. 2012) (lawyer failed to notify clients of sale by certified mail as required by North Dakota rule); and *In re Cutchin*, 771 S.E.2d 845 (S.C. 2015) (lawyer attempted to sell practice without satisfying rule’s notice requirements).

<sup>10</sup> Tracy L. Kepler, Risk Control Consulting Director for CNA’s Lawyers’ Professional Liability Program contributed to this article. In her role at CNA, Ms. Kepler designs and develops content and distribution of risk control initiatives relevant to the practice of law. Prior to joining CNA, Tracy previously served as the Director of the American Bar Association’s Center for Professional Responsibility (CPR) and has more than 20+ years of experience in attorney regulation through her positions as an Associate Solicitor for the U.S. Patent & Trademark Office and as Senior Litigation Counsel for the Illinois Attorney Registration and Disciplinary Commission.

For more information, please call us at 866-262-0540 or email us at [lawyersrisk@cna.com](mailto:lawyersrisk@cna.com)