

3 Approaches to Planning for Death, Incapacity, or Unavailability

1. Do nothing and instead leave a mess for someone else;
2. Record important information and practice law in a well-organized manner so that Tenn. Sup. Ct. Rule 9, § 29 can be readily invoked when the time comes;
3. Plan ahead with detail.

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Under Tenn. Sup.Ct. Rule 9, § 29.9, "An attorney may designate another attorney..." to handle the continued operation, sale or closing of the law practice.



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§29.9 Advanced Designation of a Receiver or Successor Attorney.

An attorney may designate in advance another attorney by contract, appointment, or other arrangement to handle or assist in the continued operation, sale, or closing of the attorney's law practice in the event of such attorney's death, incapacity or unavailability.

In the event an attorney to whom this rule applies has made adequate provision for the protection of his or her clients, such provision shall govern to the extent consistent with this Rule unless the trial court or the Court determines, upon a showing of good cause, that the provisions for the appointment of a receiver attorney under this Rule should be invoked.

After a complaint for the appointment of a receiver attorney has been filed, the affected attorney or the guardian, conservator, or personal representative of the affected attorney may designate a successor attorney and the trial court shall respect such designation unless the trial court determines, upon a showing of good cause, that such designation should be set aside.

Tenn. S.Ct. Rule 9, § 29.9 (Aug. 30, 2013)

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Let's Get Started!

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PLAN FIRST!

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Begin with the End in Mind

1. Planned or unplanned *event*
2. Precrisis or crisis *scenario*
3. Sudden or prolonged winding-up *process*

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Three Theses about Planning

1. Almost too late: Diminishing value
2. Too late: Diminished value or liability
3. Someone wants your practice

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“Worries”

1. Your practice
2. Your financial well-being
3. Your loved ones

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Some Issues

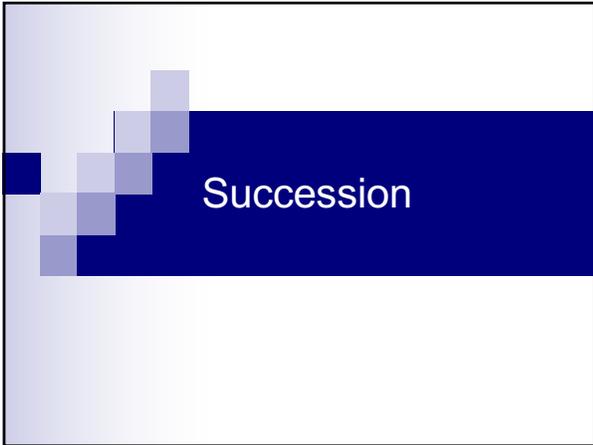
- Is Court supervision needed?
- Sell? Can you resume practice after temporary disability? Wind down or close?
- Insurance? IOLTA?
- Fees and accounts receivable?
- Payroll? Employees?

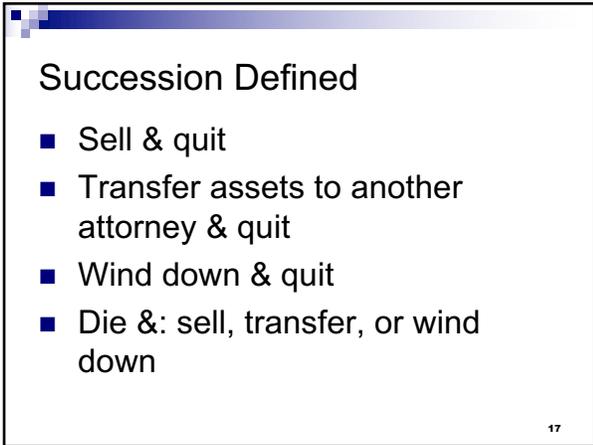
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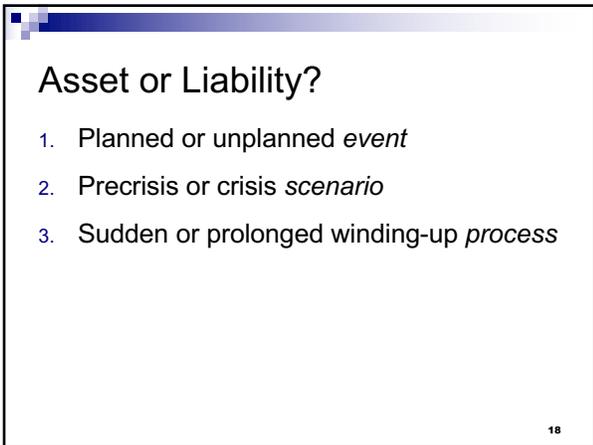
Some Issues

- Who must be notified?
- WIP: calendar, deadlines, statutes of limitations?
- What to do with original documents?
- Are you a fiduciary? Agent for s/p?
- What to do with your closed files?

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Succession: How

1. Update your business plan
2. Get your books and records in order
3. Identify key metrics
4. Decide what you are selling & not selling
5. Look for a buyer (hire a broker)
6. Obtain a valuation (hire an appraiser)
7. Execute the paperwork (hire a lawyer)

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Issues

- TRCP 1.17: Sale of Law Practice
- Notice to clients
- Legal structure
- Financing the purchase
- Are you staying or going?
- Covenant not to compete

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“Death Drill”

Asset or Liability?

1. Planned or unplanned *event*
2. Precrisis or crisis *scenario*
3. Sudden or prolonged winding-up *process*

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What is needed, immediately?

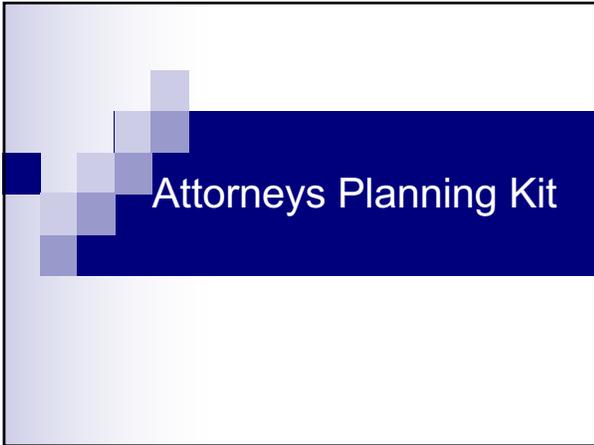
- Personal care
- Financial care
- Legal care

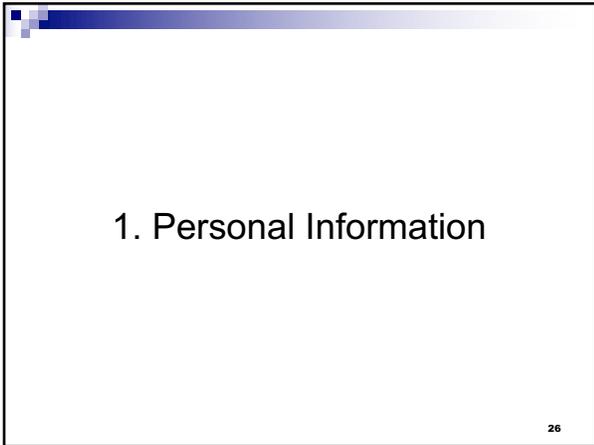
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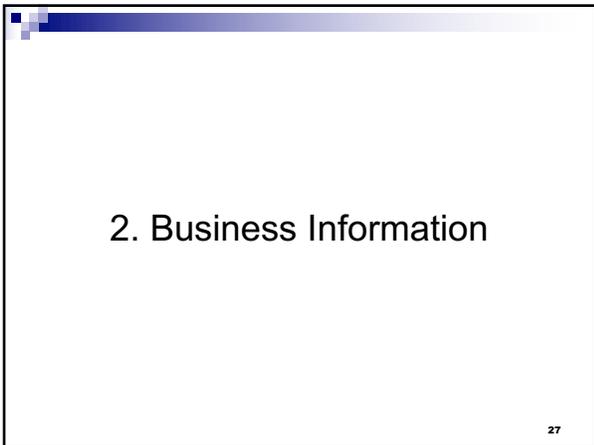
Issues

- Income stream / the money
- Decision making
- The practice
- The clients

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3. Designate Assisting Attorney

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4. Attorneys' Agreement

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5. Ten Essential Documents

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6. Office Procedure Manual

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7. Agreement re File Retention

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8. Agreement re Succession

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9. Nominate Successor Fiduciary

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10. Nominate Attorney as PR

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Cashing Out

Begin with the end in mind: value

- Maximize the value of your practice to a prospective buyer: what should you do?
- SWOT analysis
- What do your numbers tell you?
- Professional advice (business coach?)
- Specialize: what are you best at?
- Who wants to buy your practice?

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Hypothetical

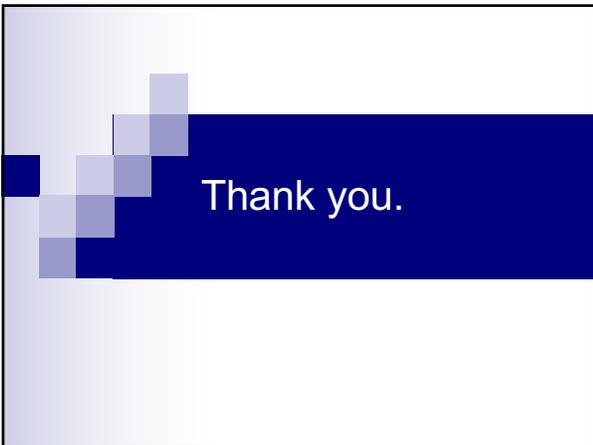
An aging lawyer is struggling to take care of client matters. Even with the assistance of his secretary, who has been there for over 10 years and is very sharp, he misses things.

Courts have to call and inquire where he is on hearing dates, there have been several close calls of dismissal, sanctions, and the like. Some clients in the community still come to him due to his reputation.

When a couple of bar members mention his retirement, he laughs and says he plans to work until he dies.

What should happen?

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Thank you.
