Designing a Succession Plan for Your Law Firm

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Given the fact that the largest increase in lawyer population occurred in the 1970s, it is no surprise that the issue of developing a succession plan has been on every law firm's agenda for at least a decade. It is a far cry from acknowledging the issue exists to actually adopting a workable plan in your firm.

According to the 2013 *Altman Weil Law Firms in Transition Survey*, the two most prevalent "stumbling blocks" to effective succession planning in law firms are:

- Senior partners do not want to retire (cited by 77.6% of survey respondents); and

- Senior partners don't want to forfeit current compensation by transitioning client work (cited by 73.2% of respondents).

There are ways of accommodating the attorney who wants to continue to work and does not want to retire. And release of equity does not necessarily result in a forfeiture of compensation if the firm continues to feel the lawyer's contribution is worth the compensation paid.

While it may be covered to some extent in the second bullet point, the greatest impediment to a successful succession plan is getting a talented, popular attorney to give up control. The attorney has worked *hard* to get to his or her position – and when it seems the hard work has finally paid off, it is difficult to let go.

The only way of overcoming this obstacle is to implement a succession plan early in the law firm's existence so that attorney's expectations will be managed to accept that at a certain point in time, for the health of the law firm, one generation must release control as the next takes its place. While the natural inclination in any law firm is to avoid dealing with difficult issues, creating a succession plan when half the attorneys in the firm are within striking distance of retirement age must jump through many hoops to succeed. The longer the issue remains unaddressed, the harder it is to implement a plan.

THE REASONS FOR IMPLEMENTING A SUCCESSION PLAN

The pressures on a law firm to implement a cohesive succession plan come from many sources.

Security for Yourself, Your Partners and Employees

None of us know what the future holds. No matter how carefully we plan for succession, life will always throw a curve ball. But a framework not only provides the partner in question

with a outline of a game plan for the latter years of a career, it give upcoming attorneys an idea of what their future may be and a means to achieve it. Have a well-publicized succession plan is an imperative if a firm expects to keep its talent. Law firms without direction have lost generations of motivated attorneys who looked elsewhere because the path to promotion was not clear. Administrative staff is also acutely aware of gaps in a succession plan. Insecure staff is not efficient.

Client-Driven Concerns

Clients also are not blind to gaps in continuity in their attorney's firms. Clients want to stick with a law firm they know but uncertainty about the talents of attorneys they have not worked with can result in unnecessary law firm changes. Some clients have taken the initiative and ask their law firms to spell out the plans of succession. It pays to have a comprehensive response.

Clients can also play an important role in encouraging the development of talented attorneys by deferring to more experienced attorney's judgment when they seek to allow less experienced attorneys handle a particular issue or part of a matter (with supervision). This concept has been embraced by many federal and state courts who have adopted programs encouraging law firms to allow junior attorneys to argue or address certain portions of the proceedings.

Insurance Considerations

More and more insurers are looking at the business continuity, succession, and cyber response plans in underwriting coverage.

Ethical Obligations

Lawyers are living longer and – with age – comes cognitive decline.

Many treatises are devoted to the ethical issues posed by the graying of America's attorneys but that has not made addressing the problem of a partner with unacknowledged cognitive decline any easier. Navigating the supervision obligations contained in Rule 5.1 and the reporting obligations in Rule 8.3 is difficult. Virginia Ethics Opinion 1886, included at Appendix 1, provides a thoughtful analysis of the issues, including steps a law firm can take to accommodate an attorney with declined cognitive abilities while still protecting the clients and, through use of a hypothetical, outlines the firm's obligations under Rule 5.1 and 8.3.

SOLO/ SMALL FIRM RESOURCES

Small firms - particularly first-generation firms - are at risk of not surviving the retirement, disability or death of their founder or their senior partner. Generally, solos like going it alone and grooming a successor may not be palatable. Solo practitioners ordinarily have varied skills and require flexibility, but fewer young lawyers may be attracted to the solo life.

The options available to an attorney in a solo practice or small firm looking to reduce his or her practice have several options. Recruiting a successor is a difficult process requiring time, expense, and compatibility with both the attorney and the clients.

More often, solos and small firms look to associate with a larger firm where the attorney can stay on in some capacity while the transition takes place.

Most state and local bar associations have published handbooks that assist solo and small firms to wind down, close or sell solo practices and small firms. Annexed at Appendix 2 is a list of available bar association handbooks and other resources.

CREATING A SUCCESSION PLAN: WHAT WORKS AND WHAT DOESN'T

There is no one size fits all cookie cutter succession plan that will work every law firm. Each law firm needs to examine its culture, its assets, its demographics, its expectations, and its clients' intentions to determine what works – and what does not.

It determining what works for your firm, goals must first be established. These may include, among other issues, motivating talented attorneys to stay with the firm, fairly compensating the attorneys involved, maintaining, and expanding excellent client service throughout the transition, developing needed capabilities in existing attorneys or attracting laterals to fill any gaps that can't be filled by existing firm attorneys. Other considerations which impact upon the discussion include the demographics of the firm as well as more mundane issues such as when lease terms expires. Stories about established law firms whose dissolution or acquisition was triggered by the end of a lease term and a lack of consensus on next steps are common.

Generally, the longer it takes a firm to address the issues, the less options exist. As a result, the ideal time to work out the future is at the time the firm starts – in the partnership agreement. In any event, succession plans cannot be implemented overnight – at least a five- year runway is needed if the transition is to be orderly. Waiting until the discussion becomes about someone – rather than the firm as a whole – makes the discussion much more difficult.

Even if the firm can't reach an agreement right away, there are steps that can be taken to give the firm flexibility as time goes on.

First, as early on in the existence of the firm as possible, procure robust life insurance and disability insurance policies for equity partners that run the expected work life expectancy of the attorney or for as long a term as is economically feasible. The younger the partner at the time the policies are acquired, the less the premium although (one hopes) the premiums will be paid over a longer period of time. Life insurance should be structured so that on a triggering event, an agreed portion goes to the attorney's estate to buy out the interest in the firm and a percentage to the firm to compensate for the loss of a key person. The future is unknowable and disability

payments approximating draw can save a law firm in the event of a key person's catastrophic illness.

Second, unfunded retirement obligations can strangle a law firm. From the very beginning of the firm, structure the best 401(k) or defined benefit plan the firm can afford. As the firm expands and profits increase, continue to assess whether the firm can support a richer plan for its partners while also providing options for its staff and attorneys. The goal is to provide a vehicle so that participating partners will be financially able to retire comfortably as the traditional retirement days approach. Nothing can complicate a succession plan more than the financial inability of a partner to retire.

Except, of course, a senior partner with an over-inflated opinion as to the value of his or her book of business or control over that business. Passing the baton to the next generation in a law firm is not a get rich quick proposition. Law firms that think transferring equity to those coming up in the ranks is the opportunity to fund retirement will end up losing their younger partners, most of whom have already developed relationships with institutional clients.

Compensation plans tied solely to origination – "eat what you kill" – also impede the transition of client responsibility. Compensation plans that reward activity good for the firm's health and well-being are more compatible with successful succession planning.

For many, law firm equity was always the brass ring – the end goal of an attorney's hard work. The thought of relinquishing equity can stall the implementation of any succession plan if it is sprung upon an attorney. Having firm guidelines as to when equity is expected to be relinquished gives everyone time to plan for this eventuality. While one can argue vehemently against strict retirement mandates, it is difficult to mount an argument against mandatory equity provided compensation remains in play for working attorneys required to give up equity.at a certain age or over a defined number of years.

Structuring the financial component of a succession plan requires consideration of the continued financial well-being of the firm. To ensure the continued viability of the law firm, any pay-outs to departing partners should be contingent upon the retiring partner's ability to actively support the transition of client responsibility to others within the firm and to continue to play a part in the retention of the clients even after transition. Relationships are built between clients and individual attorneys and even the best intended succession plan cannot guarantee the continuity of client loyalty. Unfortunately, the consequences of clients jumping ship needs to rest with the partner who is winding down rather than on the law firm which needs to continue to operate without the income stream afforded by the departing client. Post-equity surrender payments to a former partner should be keyed to the attorney's continued business efforts – whether it is servicing clients or continuing to support the transition of clients as requested by the law firm.

Client's wishes must also be considered in developing a successful succession plan. If a client does not like working with a chosen successor, the likelihood of the client remaining as the client's original firm contact moves towards retirement diminishes. No one is saying that clients get to choose successors – but the impact of the potential loss of a client should be

considered when successor considerations are made.

While the goal here is to develop a plan, flexibility is key. If the past two years have taught us anything, the ability to pivot when circumstances change is critical.

CORE ELEMENTS OF A SUCCESSION PLAN

Once you have reached the decision on how to structure your succession plan, there are still many steps that must be taken and a wealth of institutional knowledge that needs to be documented for the transmission to go smoothly.

To start, your plan needs to be reduced to writing either as a stand-alone document or part of your partnership agreement. As new attorneys are admitted to the partnership, signing onto the existing agreements should be part of every onboarding check list.

Information regarding the status of open matters should be continually updated by all attorneys in the firm. While retirement is a planned departure, everyday law firm's lose valued personnel. For the client's sake, every person should be required to document the current status of each matter at least quarterly. Institutionalizing where and how the files are maintained should be part of every firm's management policy – but it is extremely important as an attorney winds down his or her practice. The current move towards paperless law firms theoretically should make this process easier but consistency of how and where the files – *including emails* - are electronically stored must be rigorously enforced. Information on the maintenance of closed files must also be up to date so that the law firm can easily locate information a client may need from a closed matter and so that closed file retention policies can be implemented.

Because by their nature use of law firm operating and escrow accounts should be controlled, knowledge as to the proper use of the accounts too often rests solely with senior attorneys. Detailed summaries of law firm accounts, client ledgers, billing systems, accounts receivable practices, accounts payable policies should be documented to protect against planned and unplanned departures.

Detailed information should be kept and saved in a single location on the firm's computer system as to office and equipment leases; health, life, and disability insurance policies; business office, cyber and professional liability policies, payroll, and other taxes; key vendors and office personnel.

Similarly, the law firm should have in place a means of re-setting (or, if not possible, storing) log-in and password information for office computers, mobile devises, voicemail, cloud storage, billing systems, calendar and docketing systems, court filing websites, email, banking, and other websites related to the law firm's business.

Detailed contact information for all firm clients should also be readily accessible to facilitate a smooth transition.

Finally, the law firm should develop a procedure manual that governs all aspects of administrative and professional functions performed by key personnel. There will always be a loss of institutional knowledge but developing a manual will minimize any disruption. It is human nature to resist reducing one's role to paper. A good way to begin is to ask *all* managing partners, practice group leaders, firm administrators, and CFOs to begin a journal starting at the first of the year that records their tasks weekly for a year (with periodic check-ins to ensure compliance). In this fashion no one person will feel their position is being singled out and yet the firm will be able to document important tasks (medical insurance renewals), as well as those of lesser importance but not without adverse impact (recognizing Administrative Professionals Day).

A detailed checklist of practical issues that should be considered in transition plans may be found at Appendix 3.

CONCLUSION

Approaching the topic of law firm succession is difficult. Addressing the topic while the theoretical issue is at least 10 years away keeps the discussion generic rather than focusing on any given individual or situation. But the goal should be to create the framework for a succession plan as soon as possible. Time is on your side. Insurance products that protect the firm and the partners – both life and disability - are more available and reasonably priced when the applicant is younger. Firm contributions to retirement plans need time to make a difference. The conversation is never easy – but it is necessary.

Appendix 1

LEO 1886 - DUTY OF PARTNERS AND SUPERVISORY LAWYERS IN A LAW FIRM WHEN ANOTHER LAWYER IN THE FIRM SUFFERS FROM SIGNIFICANT IMPAIRMENT

Approved by the Supreme Court of Virginia December 15, 2016

Introduction

In this advisory opinion, the Committee analyzes the ethical duties of partners and supervisory lawyers in a law firm to take remedial measures when they reasonably believe another lawyer in the firm may be suffering from a significant impairment that poses a risk to clients or the general public.[1] The applicable Rule of Conduct is Rule 5.1[2] which requires partners or other lawyers in

[1] This opinion seeks to address only the ethical obligations of lawyers in a law firm when faced with an impaired lawyer working in the firm. There may also be legal obligations to address in dealing with an impaired lawyer under the Americans with Disability Act, the Family Emergency Medical Leave Act and the Health Insurance Portability and Accountability Act, for example. These issues are beyond the purview of this committee and outside the scope of this opinion.

[2] Rule 5.1 Responsibilities of Partners and Supervisory Lawyers

> (a) A partner in a law firm, or a lawyer who individually or together with other lawyers possesses managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
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> (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
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> (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
>
> > (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
> >
> > (2) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over

the firm with managerial authority to make reasonable efforts to ensure that all lawyers in the firm conform to the Virginia Rules of Professional Conduct.[3] Lawyers in a firm may have an obligation under Rule 8.3 to report an impaired lawyer to the Virginia State Bar if the impaired lawyer has engaged in misconduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law. However, this opinion addresses the obligations of partners and supervisory attorneys to take precautionary measures *before* a lawyer's impairment has resulted in serious misconduct or a material risk to clients or the public. This opinion relies upon ABA Committee on Ethics and Professional Responsibility, Formal Opinion 03-429 (2003) [hereinafter ABA Formal Op. 03-429] for its approach to the issues raised by the mental impairment of a lawyer in a firm.

Scope of the Lawyer Impairment Problem

Studies report that lawyers experience depression, alcohol, and other substance abuse at a rate much higher than other populations and 2 to 3 times the general population.[4] The incidence of alcohol abuse is higher among lawyers aged 30 or less.[5] Besides the potential lawyer impairment caused by substance abuse, the aging of the legal profession presents an increased incidence of cognitive impairment among lawyers. As of 2016, Virginia State Bar membership records revealed that of the 23,849 active members located in the Commonwealth, 8,366 or 35% are ages 55 or older. Fifteen percent of these attorneys or 3,584 members are 65 or over. These numbers reflect that Virginia's lawyers, like lawyers nationally, are moving into an older demographic profile, and they continue to practice as they age. Moreover, in the years ahead, the number of lawyers that will continue to practice law beyond the traditional retirement age will increase dramatically.[6] The substantial percentage of aging lawyers presents both opportunities and challenges for the state bars, and the scope and nature of the challenges and the best way to manage the challenges have been examined by bars around the country.

> the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

[3] The Committee is mindful that this opinion only addresses the duties of partners and supervisory lawyers pursuant to Rule 5.1 and does not consider a lawyer's ethical duties, if any, when dealing with a solo practitioner who suffers from a significant impairment.

[4] Patrick R. Krill, JD, LLM, Ryan Johnson, MA, and Linda Albert, MSSW, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. Addiction Medicine, Issue 2 (March/April 2016). See also ABA Formal Op. 03-429 (2003) (citing George Edward Bailly, Impairment, the Profession, and Your Law Partner, 11 No.1 Prof. Law. 2 (1999)).

[5] *Id*. The Hazelton Betty Ford Foundation survey reported that one in five lawyers (20%) suffers from alcoholism and approximately 30% of the lawyer population suffer from depression.

[6] Report, National Organization of Bar Counsel, Association of Professional Responsibility Lawyers Joint Committee on Aging Lawyers (May 2007) at 3.

Question Presented

What are the ethical obligations of a partner or supervisory lawyer who reasonably believes another lawyer in the firm may be suffering from a significant impairment that poses a risk to clients or the general public?

Hypotheticals

James practices in a mid-sized law firm in a large metropolitan area. One day, a junior associate informs James that Bill, a senior associate, has a serious cocaine and alcohol problem. The information is credible, detailed, and alarming; it also points to the potential for trust fund violations or other misconduct associated with substance use. James has also received calls from several clients complaining that Bill has missed appointments, appeared in court late, disheveled and smelling like alcohol, and has failed to return phone calls. Another client complains that Bill missed a filing deadline and placed the client in default. James has observed that Bill has problems remembering instructions, has difficulty completing familiar tasks, is challenged in problem solving at meetings, and experiences changes in mood and personality. When James confronts Bill about these issues, Bill denies having any substance abuse problems, attributes his work performance to stress caused by marital discord, and promises to improve.

George is a sixty-year-old partner in a small, two lawyer firm. He has been honored many times for his lifelong dedication to family law and his expertise in domestic violence protective order cases. He has suffered a number of medical issues in the past several years and has been advised by his doctor to slow down, but George loves the pressure and excitement of being in the courtroom regularly. Recently, Rachelle, his long-time law partner, has noticed some lapses of memory and confusion that are not at all typical for George. He has started to forget her name, calling her Mary (his ex-wife's name), and mixing up details of the many cases he is currently handling. Rachelle is on very friendly terms with the J&DR court clerk, and has heard that George's behavior in court is increasingly erratic and sometimes just plain odd. Rachelle sees some other signs of what she thinks might be dementia in George, but hesitates to "diagnose" him and ruin his reputation as an extraordinarily dedicated attorney. Maybe he will decide to retire before things get any worse, she hopes.

Analysis

The Rules of Professional Conduct do not explicitly require lawyers to deal with an impaired lawyer in the law firm. However, Rule 5.1(a) requires that a firm have in place measures or procedures to ensure that *all* lawyers, not just impaired ones, comply with the Rules of Professional Conduct. The measures required depend on the firm's size, structure, and nature of its practice. Cmt. [3], Rule 5.1. It follows, therefore, that Rule 5.1 requires that the partner or supervisory lawyer make reasonable efforts to ensure that an impaired lawyer in the firm or under their supervisory authority does not violate the Rules of Professional Conduct. In addition

to the requirement that the firm establish appropriate preventive policies and procedures, Rule 5.1(b) requires a lawyer having direct supervisory authority over another lawyer to make reasonable efforts to ensure that the supervised lawyer conforms to the Rules of Professional Conduct. When a partner or supervising lawyer knows or reasonably believes that a lawyer under their direction and control is impaired, Rule 5.1(b) requires that they take reasonable steps to prevent the impaired lawyer from violating the Rules of Professional Conduct.

Impaired lawyers have the same ethical obligations as any other lawyer. Like all lawyers, an impaired lawyer owes a duty to represent a client competently and with diligence and to communicate with the client. A lawyer's impairment does not excuse the lawyer from compliance with the Rules of Professional Conduct. The lawyer's impairment may very well be the reason for the lawyer's failure to act competently or with diligence, or to communicate with the client. However, the lawyer's impairment is neither a defense to, nor an excuse for, those ethical breaches.[7]

A lawyer whose physical or mental health "materially impairs" his capacity to represent clients has a duty to refrain or withdraw from representation. Rule 1.16(a)(2).[8] Unfortunately, the impaired lawyer may not be cognizant of the scope and nature of the impairment, and does not recognize the need to withdraw from the representation.

As the ABA's Standing Committee on Ethics and Professionalism observed in ABA Formal Op. 03-429:

> The firm's paramount obligation is to take steps to protect the interests of its clients. The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer's impairment. Other steps

[7] ABA Formal Op. 03-429 (2003) (A lawyer's impairment does not excuse failure to meet a lawyer's duty to a client.). *See also Columbus Bar Ass'n v. Korda*, 760 N.E.2d 824 (Ohio 2002) (impaired lawyer who filed a brief on behalf of her clients but failed to take any further actions in the case suspended for failing to act diligently); *Attorney Grievance Comm'n v. Wallace*, 793 A.2d 535 (Md. 2001) (lawyer who claimed to be undergoing personal and psychological problems was disbarred for being negligent in his representation in six cases); *In re Sheridan*, 813 A.2d 449 (N.H. 2002) (impaired lawyer who failed to successfully file the articles of incorporation for his client and did not notify the client of his failure suspended for failing to communicate with his client); *In re Francis*, 4 P.3d 579 (Kan. 2000) (depressed lawyer failed to respond to client's request for information, misrepresented the status of the client's case to her, and failed to communicate the problems he was experiencing in providing representation); and *State v. Southern*, 15 P.3d 1 (Okla. 2000) (lawyer with B-12 deficiency publicly censured after failing to respond to requests for information from client and bar association).

[8] *See, e.g., In re Taylor*, 959 P.2d 901 (Kan. 1998) (alcoholic lawyer failed to withdraw from representation although he had failed to appear in court on behalf of his clients or otherwise provide competent counsel); *see also State v. Southern*, 15 P.3d. at 8.

> may include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients.

The law firm may be able to work around or accommodate some impairment situations. For example, the firm might be able to reduce the impaired lawyer's workload, require supervision or monitoring, or remove the lawyer from time-sensitive projects. The impaired lawyer may not be capable of handling a jury trial but could serve in a supporting role performing research and drafting documents. Depending on the nature, severity, and permanence (or likelihood of periodic recurrence) of the lawyer's impairment, the firm may have an obligation to supervise the work performed by the impaired lawyer or may have a duty to prevent the lawyer from rendering legal services to clients of the firm, until the lawyer has recovered from the impairment. The impaired lawyer's role might be restricted solely to giving advice to and drafting legal documents only for other lawyers in the firm who in turn can evaluate whether the impaired lawyer's work product can be used in furtherance of a client's interests.

In order to protect its clients, the firm should have an enforceable policy that would require, and a partner or supervising lawyer should insist, that the impaired lawyer seek appropriate assistance, counseling, therapy, or treatment as a condition of continued employment with the firm. For example, the firm could recommend, encourage, or direct that the impaired lawyer contact Lawyers Helping Lawyers[9] for an evaluation and assessment of his or her condition and referral to appropriate medical or mental health care professionals for treatment and therapy.

Alternatively, making a confidential report to Lawyers Helping Lawyers may be an appropriate step for the firm. The firm or its managing lawyers might instead find it necessary or appropriate to consult with a professional medical or health care provider for advice on how to deal with and manage an impaired lawyer, including considering options for an "intervention" or other means of encouraging the lawyer to seek treatment or therapy.

In the first hypothetical, it is clear that James, as a managing partner in a law firm, and any other lawyer that has supervisory authority over the impaired lawyer, are required by Rule 5.1 to

[9] Lawyers Helping Lawyers ("LHL") is an independent, non-disciplinary and non-profit organization that has been assisting legal professionals and their families since 1985 deal with depression, addiction, and cognitive impairment. LHL can assist law firms dealing with an impaired lawyer through a confidential environment by planning and implementing intervention, providing a free clinical evaluation, referral to appropriate medical and mental health care providers, peer support and group counseling, establishing contracts to monitor and report recovery and rehabilitation and assist and identify financial resources for treatment. LHL is not affiliated with the Virginia State Bar and does not share information with anyone except and unless the participating lawyer expressly consents in writing to share information with third parties.

promptly make reasonable efforts to ensure that the impaired senior associate does not engage in any further conduct that breaches ethical duties owed to his clients. While the senior associate's past conduct might be considered violations of the Rules of Professional Conduct, only violations that raise a substantial question as to the violator's honesty, trustworthiness, or fitness as a lawyer must be reported. Rule 8.3(a). If James and any other supervising attorney have taken appropriate action to prevent the senior associate from engaging in further conduct that may violate the Rules of Professional Conduct, and the senior associate is in recovery from his impairment, i.e., the condition that caused the violations has ended, there is nothing to report to the bar. If, for example, the firm is able to eliminate the risk of future violations of the duties of competence and diligence under the Rules of Professional Conduct through close supervision of the lawyer's work, it would not be required to report the impaired lawyer's violation. On the other hand, if the past conduct of the impaired lawyer involves dishonesty, i.e., embezzlement of client funds, or stealing firm funds or assets, James and any other lawyer in the firm that knows of such misconduct must report it to the bar under Rule 8.3(a). This would be required even if the violating lawyer was participating with Lawyers Helping Lawyers and in recovery.[10]

The reporting duty under Rule 8.3(a), however, does not diminish the importance of making a confidential report to a lawyer assistance program such as Lawyers Helping Lawyers. Both reports fulfill important objectives. The report to the lawyer disciplinary agency is necessary to address the misconduct and protect the public. The report to the lawyer assistance program is necessary to address the underlying illness that may have caused the misconduct. In the end, both reports protect and serve the public interest.

If, on the other hand, the impaired lawyer's condition raises a substantial question about his ability to comply with the Rules of Professional Conduct, James and any lawyer with supervisory authority must make reasonable efforts to ensure that the clients' interests are protected. This could require removal of the senior associate from their cases, or restricting his role and placing him under close supervision.

Further, if reasonable measures or precautions have been taken by James and any other lawyers in the firm to ensure that the impaired lawyer complies with the Rules of Professional Conduct, neither the partners or supervisory lawyers in the firm are ethically responsible for the impaired lawyer's professional misconduct, unless they knew of the conduct at a time when its consequences could have been avoided or mitigated and failed to take reasonable remedial action. Rule 5.1(c).

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[10] N. C. State Bar Ethics Op. 2013-8 (2014), Inquiry No. 3 (If an impaired lawyer has committed misconduct that a lawyer must report under Rule 8.3(a), a lawyer may not fulfill that reporting duty by reporting the impaired lawyer to a lawyers' assistance program, but not the Attorney Grievance Committee of the State Bar).

In the second hypothetical, it is not clear that George has committed any violation of the Rules of Professional Conduct. Obviously, George's impairment, unaccompanied by any professional misconduct, does not require any report to the bar under Rule 8.3(a). Yet his mental condition, as observed by his partner, Rachelle, would require that Rachelle make reasonable efforts to ensure that George does not violate his ethical obligations to his clients or violate any Rules of Professional Conduct. This would include, as an initial step, Rachelle or someone else having a confidential and candid conversation with George about his condition and persuading him to seek evaluation and treatment.

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Appendix 2

State Guides and Handbooks

State Bar of Arizona: "Succession Planning: Preparing for the Unthinkable," (State Bar of Arizona Succession Planning Task Force, 2018), handbook, checklists, and forms
https://www.azbar.org/for-lawyers/practice-tools-management/succession-planning/

California State Bar, webpage, "Attorney Surrogacy," with downloadable forms, "Sample Agreement to Close Law Practice in Future" and "Guidelines for Closing or Selling Law Practice," 2002
http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Senior-Lawyers-Resources/Attorney-Surrogacy

Colorado Supreme Court, Office of Attorney Regulation Counsel, "Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death," 2019, handbook and forms
http://www.coloradosupremecourt.com/PDF/Regulation/Closing_Practice.PDF

Connecticut Bar Association, "The Path Out: Succession Planning and Leaving the Practice of Law," handbook and forms contained in materials for 2019 CLE course
https://www.ctbar.org/docs/default-source/education/materials/2019-2020-materials/edu191204-the-path-out-final-materials.pdf

Idaho State Bar, webpage with link to "Planning Ahead, A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death," handbook and forms, 2016
https://isb.idaho.gov/member-services/programs-resources/succession-planning/

Illinois: "The Basic Steps to Ethically Closing a Law Practice" (Mary F. Andreoni, Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, 2017), handbook with forms
https://www.iardc.org/Closing_a_Law_Practice.pdf

Iowa Judicial Branch, webpage, "Succession Planning by Iowa Attorneys," extensive information and materials, including "Succession Planning Handbook for Iowa Lawyers," 2011
https://www.iowacourts.gov/opr/attorneys/attorney-practice/practice-information/retirement/

Maine Board of Bar Overseers, "Maine Handbook for Withdrawal from the Practice of Law" 2009, with forms
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State Bar of Michigan, "Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death," handbook and forms, (Practice Management Resource Center, 2014), available at https://www.michbar.org/file/pmrc/articles/planningahead.pdf . Michigan also has numerous resources, including checklists and forms
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https://www.msbar.org/media/3227/lawyers-in-transition-protecting-the-present-and-planning-for-the-future-written-materials.pdf

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https://mobar.org/site/Lawyer_Resources/Practice-Management/Wind_Down_a_Practice/site/content/Lawyer-Resources/Law_Practice_Management/Wind_Down_a_Practice.aspx?hkey=1aa046f3-5cce-4d75-a95b-2f894b0328be

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https://www.nvbar.org/for-lawyers/publications/books-manuals-and-references/succession-planning-nevada/

State Bar of New Mexico, webpage with link to "Succession Planning Handbook for New Mexico Lawyers" (2014), handbook and forms
https://www.nmbar.org/nmstatebar/Membership/Commissions/Supreme_Court_Lawyer_s_Succession_and_Transition_Committee/Nmstatebar/For_Members/Supreme_Court_Lawyer_s_Succession_and_Transition_Committee.aspx?hkey=b7e01916-3eea-4191-80e9-5607074f3eb5.

New York State Bar Association, "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," handbook and forms (Second Edition, 2005-16)
https://nysba.org/app/uploads/2020/01/NYSBA-Planning-Ahead-Guide-Second-Edition2.pdf

New Hampshire Bar Association, handbook is available to bar association members only https://www.nhbar.org/succession-planning-guide/

Oklahoma Bar Association, "Planning Ahead Guide: Attorney Transition Planning in the Event of Death or Incapacity," handbook and forms, 2014
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https://www.osbplf.org/assets/Planning%20Ahead%20August%202015.pdf

State Bar of Texas: webpage, "Closing a Law Practice" with links to several handbooks, including "How to Protect Your Clients and Your Firm in the Event of Your Death, Disability, Impairment, or Incapacity"
https://www.texasbar.com/AM/Template.cfm?Section=Closing_a_Law_Practice&Template=/CM/HTMLDisplay.cfm&ContentID=31886

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https://www.vsb.org/site/publications/planning-ahead

Washington State Bar Association, "The Law Firm Guide to Disaster Planning and Recovery" Washington State Bar Association, 2020, handbook https://www.wsba.org/for-legal-professionals/member-support/practice-management/guides/disaster-planning

West Virginia Disciplinary Board, "Establishing a Succession Plan: A Guide to Protecting your Clients' Interests in the Event of Your Disability, Retirement, or Death," (2003), handbook and forms
https://wvbar.org/sucession-plan/

State Bar of Wisconsin: "After All, You Are Only Human: The Solo Practitioner's Handbook for Disability and Death," (The Solo and Small Firm-General Practice Section of the State Bar of Wisconsin, 2013), handbook and forms
https://www.wisbar.org/forPublic/HelpforLegalProfessionals/Documents/After%20All%2C%20You%20Are%20Only%20Human%20Version%20131028.pdf

Wyoming State Bar, webpage, "Planning Ahead: Succession Planning Guide," with links to handbook (no date) and forms
https://www.wyomingbar.org/for-lawyers/lawyer-resources/succession-planning/

Other states listing articles, but not handbooks:

Delaware: no handbook, webpage located on Delaware Lawyer Assistance Program site, "Law Office Management," with links to articles on succession planning
http://www.de-lap.org/law-office.htm

Georgia: no handbook; webpage (on lawyer assistance program site), "Aging Lawyers/Lawyers in Transition," with links to articles,

https://www.gabar.org/wellness/mental/aging_lawyers.cfm

Hawaii State Bar Association: no handbook; webpage, "Transitioning Lawyers Committee," with many links to articles concerning succession planning https://hsba.org/HSBA/For_Lawyers/Transitioning_Lawyers/HSBA/For_Lawyers/Transitioning_Lawyers.aspx?hkey=89d05682-0fe3-49dd-86e1-3b2498c9d4d9

Indiana: no handbook; webpage, with link to article "An Ethical Exit from the Practice of Law," by Donald R. Lundberg and Caitlin S. Schroeder, *Res Gestae*, November 2017 https://cdn.ymaws.com/www.inbar.org/resource/resmgr/res_gestae/ethics-curbstone/61resgestae36.pdf

Kentucky Bar Association: no handbook; online materials for 2015 CLE[M1], "Succession Planning for Solo and Small Firms" https://cdn.ymaws.com/www.kybar.org/resource/resmgr/2015_Convention/Succession_Planning.pdf

Louisiana State Bar Association: no handbook; webpage with one-page guide, "Practice Aid Guide, Closing Your Practice" (no date) https://www.lsba.org/PracticeAidGuide/PAG11.aspx

Nebraska State Bar Association: no handbook; online materials for 2019 CLE, "Starting a Practice and Succession Planning for Attorneys" https://cdn.ymaws.com/www.nebar.com/resource/resmgr/practice_tools/nsba_library/2019/9-20-19_StartingPractice_Com.pdf

New Jersey State Bar Association, no handbook, webpage "Lawyers Helping Lawyers," with links to helpful articles and resources, along with a download link for the Oregon 2015 "Planning Ahead" guide https://tcms.njsba.com/PersonifyEbusiness/Default.aspx?TabID=9925

North Carolina Bar Association, no handbook, webpage "Succession Planning," (no date) with links to helpful articles https://www.ncbar.org/wp-content/uploads/2021/09/Retire_Reset_Reinvent_PlanningfortheNextStageofYourLawPractice_092721.pdf

South Carolina Bar, no handbook, webpage, "Succession Planning," (no date) with links to helpful forms and articles https://www.scbar.org/lawyers/managing-your-law-practice/your-career-changes/closing-practice/succession-planning/

Vermont Bar Association, webpage, "Succession Planning," with links to checklists and information sheets, available at https://www.vtbar.org/practice-resources/

Appendix 3

SUCCESSION PLANNING CHECKLIST

This checklist is provided as a guide to various succession planning scenarios and is not intended to be all inclusive. Various states have specific guidelines and court rules that must be followed and attorneys should consult and be familiar with the requirements of the different jurisdictions.

Maintain a thorough and up-to-date Office Procedure Manual that includes information documenting where information is filed or stored electronically, and how to access the information, including but not limited to the following subjects:

CLIENT DATA AND PRACTICE MANAGEMENT INFORMATION

- Client List
  - Names, addresses, phone numbers, email addresses
  - Authorized client contacts
  - How the open/active files are organized
  - Location of closed files
- Conflict checks: adverse/allied parties
- Retainer/Engagement Agreements for every Matter
- Billing statements to Clients and full Client Accounting ledger history
- Calendar and Task list for every Matter (manual and/or electronic)
- Summary of each Matter
- Original Client documents' location, retention, and destruction policies

COMPUTERS AND OTHER MEDIA

Access to computer and other digital information is a critical and significantly growing percentage of a firm's assets.

- Create a list of all digital "assets" used by employees and family members.
    - Email accounts
    - Cloud based Practice Management, Billing and Accounting systems
    - Social Media Accounts
    - Website Domain
    - Password Manager programs/websites
    - Online Banking website
    - Payroll website
    - Credit Card websites
    - Credit Card Merchant
    - Court websites
    - Bar Association websites
    - Legal Research websites
    - Backup sites

- Record access required for sites and programs
    - Log-in IDs
    - Usernames
    - Passwords
    - Security Questions
    - Master Keys for Password Managers (e.g., Roboform, LastPass, etc.)

ADMINSTRATIVE FILES AND RECORDS

- Tax identification, FEIN, State Account Number(s)

- Federal and State Tax Returns and supporting documents
    - 941 (Fed. W/H, FICA, Medicare)
    - State and Federal Unemployment
    - State Income Tax
    - Local Income Tax

- Employer/Employee Benefits Plans
    - Simple IRA, 401(k), Profit Sharing, SEP, QNEC
    - Insurance - Health, Life, Disability Insurance, Dental, Vision
    - HSA, FSA o PTO, Sick

- Corporate Filing Status
- Partnership/Operating Agreement
- Location of office keys
- Administrative access to voicemail
- Post Office box location

- Bank Account information
  - Bank name, address, and contact
  - All Operating and Trust account information
  - Authorized signers for all accounts
  - Credit card merchant information
  - Safe Deposit Box information

- Schedule of Assets
  - Schedule of Assets
  - Furniture inventory
  - Computers and Equipment inventory
  - Backup Equipment and access
  - Automobiles
  - Buildings
  - Safe or lock box combination

- Insurance policies
  - Professional Liability (confirm if Tail Insurance is included)
  - Property (liability, wind, fire, flood, etc.)
  - Auto
  - Key Man
  - Business Interruption
  - Loss of valuable documents
  - Workers' Compensation
  - Tail Insurance coverage

- Vendor agreements and liabilities
  - Rental/Lease Agreements
  - Line of Credit/Loans
  - Equipment (Computers, copiers, printers, telephone, high speed internet, cell

phones, etc.)
    - Document/File storage/destruction services
    - Advertising Contracts

- Payroll information
    - Employee personal information
    - Employment history
    - Salary/Compensation and history for every employee
    - Retirement plan information
- Designate another Attorney to close the practice in the event of death, disability, impairment, or incapacity and have a written agreement outlining their responsibilities.
    - Should this Attorney also act as your personal attorney?
    - Signed consent authorizing the Attorney to contact clients for instructions to transfer files, authorization to obtain extensions of time, etc.
    - Bank authorization to sign on operating or escrow accounts, taking into consideration that Attorney's access to your accounts, especially the escrow account. Decide when access is granted (*e.g.*, all times, specific times, or the happening of a specific event).
    - Inform staff and spouse of the agreement and the Assisting Attorney's contact information.
    - Update any retainer agreements/engagement letters to identify the Assisting Attorney.

PRESERVATION OF ATTORNEY ESCROW/TRUST ACCOUNT RECORDS

- Detailed records of all deposits and withdrawals from all Attorney's escrow accounts with detailed descriptions of deposit date, payee, and explanation; deposit slip details.

- Detailed bank reconciliation report itemizing all cleared and outstanding transactions for each month; bank statements; cancelled checks; bank notices; check and deposit images provided by the bank.

- A report with all Client/Matter balances for every escrow account with the total balancing to each respective bank reconciliation report.

- Detailed ledger for every Client's activity involving the escrow account, including a running balance; the totals of the escrow ledgers must balance to the reconciled balance for that escrow account

- Retainer Agreement/ Engagement Letter for every Client.

- Invoices to Clients, including all transactions in the escrow account for that period.
- Invoices and statements received from others and paid out of the Trust Account.
- Documentation demonstrating compliance with local ethics rules on escrow accounts.