Operation of Law Practice in the Event of Death or Disability

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AARP estimates 60% of Americans have no estate plan or Will. Myriad issues exist when a solo attorney dies or becomes incapacitated. Our ethical obligations towards our clients continue. Given the unique nature of our practices our executor, trustee or attorney-in-fact cannot simply exercise their fiduciary duties over our practices like other business assets. A non-attorney cannot examine our client's confidential information and thus cannot manage our practices even to wind them up. Further, our client's matters must be handled by counsel knowledgeable about the subject matter and with appropriate skills and experience. This should not be left to chance and is akin to the responsibilities parents have to name guardians for minor children.

Further, as attorneys age they should expect their clients to inquire about succession planning and to consider succession issues when deciding who will represent them. Solo attorneys should explore associations with larger firms as part of their retirement goals to benefit themselves, their client and their employees. While this planning may take years to put into practice, solo attorneys regardless of their age can and should take immediate steps to address the management of their law practice if they become ill or die.

Attorneys without partners need to take four (4) steps to address their law practice in the event of their death or incapacity.

1. Identify a Steward and Successor Steward of their Practice. This is another attorney that is identified in advance who can service the needs of the practice. Give thought to other attorneys in your field you respect. Communication needs to had about their desire and ability to serve in this capacity and the expectations of the role. The appointment should be revisited at least every three (3) years.

2. Name a Steward of their Practice is their Will. Consideration should be given to who to name, how they will be compensated, the goals of the stewardship (manage the files, sell the practice, etc.). Some sample language:

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I I nominate my trusted colleague JOHN DOE, ESQ., as the steward of my law practice. If JOHN DOE, ESQ. fails to qualify or ceases to serve in this role, I nominate my trusted colleague JANE SMITH, ESQ., to act in his place and stead. My steward is directed to wind up my law practice to benefit my estate. My steward will be compensated at my steward's then customary hourly rates.

3. Name a Steward of their Practice is their Power of Attorney. It may be appropriate for this role to be "springing" so it comes into being after a doctor who has examined the attorney identifies in writing that the

attorney is no longer capable due to physical or mental illness to operate the law practice. Consideration should be given to who to name, how they will be compensated, the goals of the stewardship (manage the files, sell the practice, etc.). Some sample language:

My attorney-in-fact shall retain my trusted colleague JOHN DOE, ESQ., as the steward of my law practice. If JOHN DOE, ESQ. fails to qualify or ceases to serve in this role, I nominate my trusted colleague JANE SMITH, ESQ., to act in his place and stead. If my disability is short term my steward will continue my law practice during my period of disability. If my disability is long term my steward will wind up my law practice in a manner to maximize its value. My steward will be compensated at my steward's then customary hourly rates.

4. Identify the Steward of their Practice to their Insurance Carrier. Many carriers require a successor to the practice to be identified where there is no partnership.