



# Planning Ahead

## A Lesson from Humpty Dumpty

By Diane Ebersole

*Humpty Dumpty sat on a wall,  
Humpty Dumpty had a great fall.  
All the king's horses and all the king's men  
Couldn't put Humpty together again.*

What happens when an attorney unexpectedly becomes unable to practice? A sudden illness or tragic accident may make it impossible for you to practice for a relatively short period or, in the worst-case scenario, result in a permanent disability or death. What if, like Humpty Dumpty, the best resources cannot restore you to a state of wellness that allows you to quickly return to your practice? What happens to your clients and the matters that brought them to your practice? What about the resources you are holding in trust? What happens to your employees? What about the financial and emotional interests of your family?

This issue is especially important for solo practice attorneys, but there are also implications for attorneys who are part of other legal practice entities. The question is really about succession planning and who needs it.

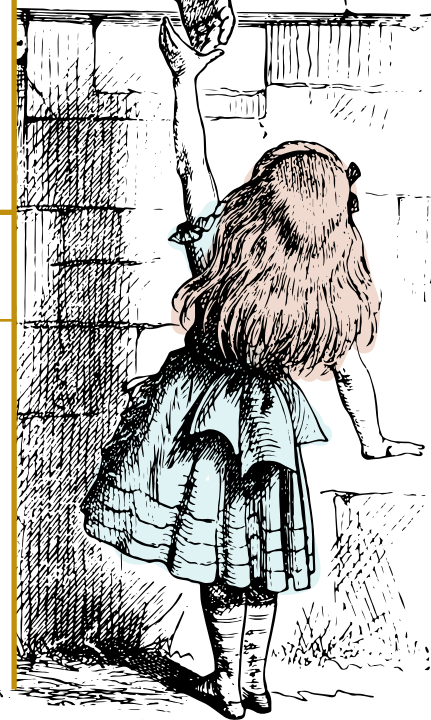
Seems like a pretty simple question, similar to questions involving insurance. Some insurance, such as auto insurance, is required by law. Other coverage, such as life insurance or renter's insurance, is optional. Whether required by statute or simply needed as a matter of common sense, insurance is important, and all of us must think carefully before foregoing it. Insurance can help those touched by unexpected events to recover fully or partially and continue with life activities.

Similarly, a succession plan can assist in the recovery of a practice when an attorney has been subjected to an

unexpected and perhaps catastrophic injury or sudden death. An appropriate plan can provide for the preservation of a practice in the event of a temporary disability and closure of the practice in the event of death. A well thought-out plan will also provide protection for your clients—an ethical responsibility of lawyers. Additionally, careful planning will help your firm and your family cope with tragedy in a sensible and ethical manner.

Attorneys continually urge clients to plan their estates. They must also think about what might happen to their own practices and clients upon sudden death or disability. The issue assumes particular importance for a solo practitioner who has no backup attorney, but is important for *all* attorneys because of the special relationship with and duties owed to their clients.

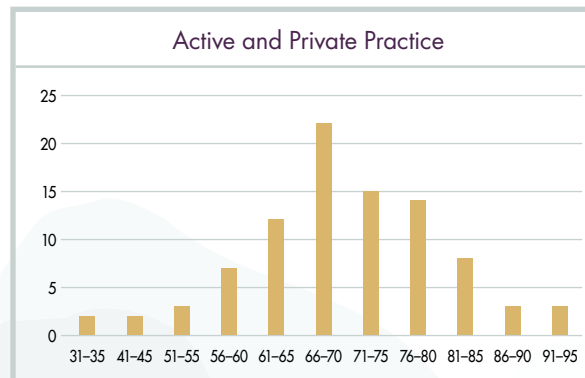
Michigan has no specific requirements for succession planning. Some states require an active practitioner to identify a lawyer who will act as an inventory or assisting attorney in winding down the practice of a disabled or deceased attorney. Currently in Michigan, the only provision in the court rules that deals with the death or disability of an attorney is MCR 9.119(G). It states that if an attorney dies or becomes otherwise incapacitated, the



grievance administrator may ask the chief judge in the judicial circuit where the attorney maintains an office to appoint a receiver to step in.

Additionally, many commercial malpractice carriers now require the lawyers they insure to make arrangements for office closure in the event of death or disability, including identifying on the insurance or renewal application the attorney authorized to step in. This person, sometimes referred to as an assisting attorney, must be aware of his or her duties and be capable of performing them in the event of your death or disability. A written agreement is certainly necessary.

The State Bar of Michigan is usually notified of the death of an attorney, and the information is entered into its database. From January 2014 to June 2015, the status of 299 members was changed to deceased in the SBM database. The youngest attorney whose death was reported was 33 and the oldest was 101. Of the 299 members whose death was reported, 182 were listed as active versus retired or emeritus in the State Bar's database, and 91 of the active members were in private practice, as represented in the chart below. These statistics demonstrate that tragedy and death strike attorneys across the age spectrum.



The SBM does not collect data regarding the temporary inability to practice. However, all of us likely know attorneys who have been sidelined by an unexpected illness or accident. A softball injury, a surgical complication, or the illness of a family member are just a few examples of events that could unexpectedly derail your practice.

So what happens if you don't have a succession plan in place when a tragedy occurs? Do any of your staff members have access to your files, calendar, docket, passwords, bank accounts, trust accounts, and payroll processes? If not, how will the firm's business continue? If you don't have staff, have you organized all your information and provided access to your spouse, child, or other family member? Is any one of these family members an attorney licensed in Michigan? If a catastrophe occurs, do you want a family member saddled with the added burden of running your practice? Do you have an attorney friend

## Quick Succession Tips

- (1) Complete your succession plan, in writing, and share it with your family.
- (2) In the SBM Practice Management Resource Center's *Planning Ahead* handbook, complete the Law Office List of Contacts form, including the password section (see <http://www.michbar.org/file/pmrc/articles/listcontacts.docx>).
- (3) Develop and follow a document retention policy and include it in your retainer agreement.
- (4) Include in your retainer agreement a paragraph about your succession plan.
- (5) Implement a complete succession plan to provide a measure of business continuity in the event of a tragedy.
- (6) Keep your trust account reconciled and in balance at all times.

who is willing and has the time to step into your practice with no prior arrangements in place? These are the routes typically followed by the solo practitioner or the family in a crisis when no advance plan has been established. These are not particularly good options.

The SBM Practice Management Resource Center has created *Planning Ahead: Protecting Your Clients' Interests in the Event of Your Disability or Death*, a handbook with forms available at <http://www.michbar.org/pmrc/planingahead>. The handbook may be downloaded as a PDF and individual forms are downloadable as Word documents, allowing you to customize the documents to fit your needs. The handbook does not establish, report, or create the standard of care for attorneys and is not a complete analysis of the topic. Rather, it is intended to provide guidelines and materials to help you create a plan for your firm. The forms and ideas in the handbook are presented to assist you in developing your own plan to protect your clients in case of your disability or death.

And what about old Humpty Dumpty? If he had placed a safety net below the wall before he climbed up, his chances of reassembly would have been far greater! ■



*Diane Ebersole is a practice management advisor for the State Bar of Michigan. She is a frequent speaker, presenting topics encompassing office management technology and best practices, mobile practice tools, and integrated practice management applications. She strives to empower attorneys and their staff with the technology tools and training to maximize the efficiency of their law firms while developing sound legal business practices.*