



SURVIVAL 101: LAW PRACTICE EMERGENCY PLANNING FOR DISABILITY OR DEATH



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1. Biography of Ellen Freedman, CLM
2. PowerPoint presentation

Note: For your convenience, and to save trees, all of the material included in this table of contents may be downloaded directly to your computer from Hightail at <https://tinyurl.com/PBA-Survival3>

HOW TO DOWNLOAD THE SEMINAR MATERIALS:

Note that you do NOT have to register or open an account to download. If you are prompted to do so, close your browser, and reopen and try again.

1) Enter the URL in your browser. You will go to the download page on Hightail. You will see the image of the handout Cover Page on the left. Directly above that area on the far right, you will see 5 Options in Circles. 2) Click the 4th button with the down-facing arrow for **Download All**. 3) The document will appear to open on the screen. Put your cursor anywhere to once again Select the Download Option on the right. 4) Windows Explorer will open your dialog box. Navigate to the exact folder in which you want to save the document, and then select **SAVE**.]

3. Article entitled "*Planning for Succession at Your Firm*"
4. Article entitled "*When Partners and Colleagues Let You Down: It Can Happen to You!*"
5. Article entitled "*What I Wish My Husband Had Told Me: Closing a Spouse's Practice*"
6. Article entitled "*Indispensable People: Joys and Risks*"
7. Article entitled "*Disaster Prevention and Recovery Planning: Understand and Address Your Risks Today*"
8. Article entitled "*Be Prepared for the Worst*"

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ELLEN FREEDMAN, CLM



Ellen serves as the Law Practice Management Coordinator for the Pennsylvania Bar Association. In that capacity she assists PBA's members with management issues and decisions on the business side of their practice, including areas like technology, financial management and profitability, human resources, marketing, risk management, setting up a practice and so forth. PBA members are encouraged to contact Ellen through the 800 "Hot Line" at PBA headquarters, (800-932-0311 x2228) or through email (lawpractice@pabar.org).

Ellen is founder and President of Freedman Consulting, which assists PA law firms with a full range of issues and projects on the business side of the practice. More information about Ellen and her law practice management services may be

obtained at <http://www.FreedmanLPM.com>. Ellen also publishes the Law Practice Management blog at www.PA-LawPracticeManagement.com.

Ellen holds the designation of Certified Legal Manager through the Association of Legal Administrators (ALA), the credentialing body for the CLM degree. Of the 11,000+ members of the ALA, approximately 260 are certified legal managers. Ellen was one of the first 20 in the nation to have achieved this designation. She holds a Certification in Computer Programming from Maxwell Institute, and a Certification in Web Site Design and a B.A. from Temple University.

Ellen was inducted as a Fellow of the College of Law Practice Management in October, 2020. Membership in the College is by invitation only. Eligible nominees include those who have made significant contributions to the field of law practice management for over ten years. Since its establishment over twenty years ago, nearly 300 practitioners from 5 different countries have become Fellows of the College.

Ellen managed inside law firms for twenty years. Most of that time was spent in a mid-size (35+ attorney) firm environment. She launched her consulting practice in 1998, and joined the Pennsylvania Bar Association in 1999.

Ellen is an associate member of the American Bar Association, and its Law Practice Management and General Practice & Small Firm sections. She was a member of the Association of Legal Administrators for over 20 years, and founded the Independence Chapter. She is a frequent author and speaker on law firm management issues on a national level.

Survival 101: Law Practice Emergency Planning for Disability or Death

Ellen Freedman, CLM
Law Practice Management Coordinator
Pennsylvania Bar Association



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PBA's Law Practice Management Services Ellen Freedman, CLM



assistance for PBA members in:

- ◆ Human Resources
- ◆ Technology
- ◆ Financial Mgt / Profitability
- ◆ Equipment buying
- ◆ Strategic planning
- ◆ Marketing
- ◆ Start-up / Closing / Sale
- ◆ Risk management
- ◆ and much more

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Disaster Planning Steps

1. Identify the emergency
2. What needs to be done?
3. Who will do it?



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Step One:

- Death
- Sudden disability
- Impairment
- Serious illness

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Ethical Responsibilities

RPC 1.3

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment (5) – To 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 . . .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.

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Ethical Responsibilities

RPC 8.3(a)

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

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Ethical Responsibilities

The Board has the authority under **Pa.R.D.E.301(d)** to petition the Supreme Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness.

See also Pa.R.D.E. 301(e) (relating to disability inactive status).

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Step Two:

What needs to be done?

For personal disasters which cannot be prevented, determine what you – or someone at the firm – needs to do to deliver legal services to your clients, and run, or perhaps sell or close your practice.

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Insurance Coverage

- Identify risks and determine if current coverage is adequate
 - ❖ Business interruption
 - ❖ Buy / Sell
 - ❖ Disability
 - ❖ Life
 - ❖ Theft / fraud / cybersecurity
 - ❖ Professional liability

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Client Communications

- Retain client confidence
- Inform clients regarding the status of your emergency and how it will be handled
- Make sure all deadlines are clearly recorded, double check with clients in emergency

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Partners

- Succession planning is essential
 - Clients
 - Referral Sources
 - Entrée into "circles" of influence

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Concern of D-Board

Succession planning responses from active PA attorneys:

Response	Total	%
I have a successor attorney. My successor is an individual.	3,714	5.76 %
I have a successor attorney. My successor is a law firm.	14,422	22.36 %
I do not have a successor because I do not have PA clients.	29,155	45.21 %
I do not have a successor and I do have PA clients.	17,200	26.67 %
TOTAL	64,491	100.00 %

Disciplinary Board gathering information on succession planning.
Answer and designation of successor likely will become mandatory.

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Make Agreements and Obligations Clear Beforehand

- Written agreement regarding
 - Buy-out upon death
 - Buy-out upon expulsion
 - Identifying / Handling impairment
 - Long-term disability obligations
- How the practice will be valued
- Have agreement signed by spouses

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Create a Road Map of Your Essential Practice Details !



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What steps must be taken?

Firm Business



- Notify employees
- Grief counseling
- Buyout payments to estate and other insurance matters
- Assist in arrangements
- Change bank accounts, letterhead, web site, and so forth

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Client Business

- Notification to clients
- What files are retained?
- Determine status of files
 - Impending Deadlines
 - Involved Parties
 - Billing & A/R & Trust
- Notifications to court and others involved
- Reassign workload

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Step Three:

Determine in advance
WHO does WHAT?

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Keep ego / fear under control


- Pick the best person for each task
- Consider whether there are "gaps" to fill
- You can't plan for succession if you are too afraid of losing clients to allow your successors to get close
- Every day is potentially the last day you may practice

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- Selected staff can churn out form letters for clients, opposing counsel and other parties
- Selected attorney must “soothe and schmooze” to retain distraught clients
- Selected attorney must review file for status; file praecipes to change appearance on cases
- Firm bookkeeper does accounting
- Designated spokesperson must deal with media and news releases

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Solos: Arrange for an Emergency Back-Up (Surrogate) in Advance !!



- Someone who can pick up the ball and run with it
- Someone who can keep your practice running
- Someone who can sell your practice or close your practice

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- For Solos:**
- Designated back-up must step in or Conservator will be appointed
 - Keep the business operating
 - Pay bills
 - Pay employees
 - Invoice clients
 - Hold onto clients

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Solo Checklist

- Durable General Power of Attorney
 - Bank accounts
 - Safe deposit box
 - Tax returns
- Specimen Signature Designation for Qualified Retirement Plan
- Make your wishes clear in advance



Alive but unable to run the practice.

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Codify how to run your practice


- Filing system
- Calendar/conflict system
- Rental information
- Payroll information
- Business debt obligations
- Office safe combination/location of safe deposit box key/ *computer password*

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- Document management on computer
- Claims pending against you or firm
- Designated lawyer if attorney in fact is not one
- Client list
- Retirement plan
- Accountant




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- Details of insurance carrier and coverages
- Location of computer back-up and instructions, including password
- Important ID numbers
- Health insurance for you and employees

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Get out of debt!



Don't return from a disability only to find you need bankruptcy counsel.

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Estate Considerations



- You need a Will and beneficiary designations
- Personal representative needs same information as Attorney in Fact
- Your personal representative has a lot of work to do
- Consider appointing attorney as Co-Executor, together with family member

If the unthinkable happens . . .

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We've got you covered!

The resource (Surrogacy Toolkit) for emergency planning for death or disability can be accessed here: <https://tinyurl.com/PBA-2SurrogacyToolkit> . You will note that the document names are self-explanatory as to contents. The second file is the Table of Contents, so that you can decide what you want to look at first. It is suggested that you look at everything in order, especially the Introduction and Table of Contents.

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Ellen, There was a solo attorney in this County that unexpectedly passed away leaving an enormously large number of wills and estates behind. The decedent's daughter engaged an attorney to handle the estate, but no conservator. The estate attorney farmed out all of the existing (pending) estates, and the family has attempted to contact hundreds, if not thousands of clients at their last known address (some dating to the 1970s). Some of the Will clients responded and they've personally released 277 Wills to clients who picked them up at the office. They've returned by certified mail some Wills. And yet, there remain hundreds (perhaps more than a thousand) Wills for which there has been no positive response from the mailings. I've been asked if I want to take responsibility for the remaining Wills. I'm inclined to say no, but I feel badly for the family. What an amazingly screwed up situation! Any advice, whatsoever?

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Unfortunately, even death does not release the practitioner from his professional responsibilities regarding safekeeping client property. The estate remains vulnerable for his failures in this regard. The attorney handling the estate may need to find an adequate storage unit with security, create a detailed inventory, and store the files at the expense of the estate, and provide public notice of contact information. He should also make sure the bar association is notified of who to contact in the future, since people who may come looking for a Will 10 years from now, and having not seen the notice, will likely contact the bar association for guidance.

Obviously, it would be better if a practicing attorney would take responsibility, and if it means that the estate has to pay some reasonable storage fee, well . . .

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Opinion 2021-300

Retaining Original Wills

Opinion 2007-100

Client Files – Rights of Access, Possession and Copying, Along with Retention Considerations

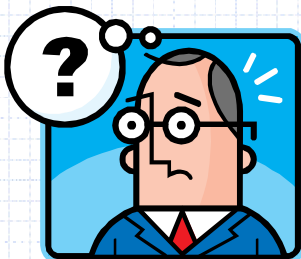
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Summary

- Get organized!
- Create an Agreement in advance
- Execute a Power of Attorney
- Designate a Signator for Pension Plans
- Sign a Will so the practice can continue
- Avoid a Conservator
- Maintain ability to sell the practice

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Questions



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Connect with me !

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