

**THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
FORMAL OPINION INTERIM NO. 20-0002
SUCCESSION PLANNING**

ISSUE: What are a lawyer's ethical obligations to engage in succession planning?

DIGEST: The risk of prejudice to clients exists when their lawyer is unable to continue practicing law, either temporarily or permanently. This risk applies to all lawyers, including sole practitioners and lawyers from small firms, as well as lawyers practicing at larger firms. The duties of competence and diligence, among others, obligate lawyers to take reasonable steps to protect the clients' interests during the course of the representation. This includes taking affirmative steps to plan for an interruption or cessation of practice, voluntary, planned, or otherwise. Lawyers who have active caseloads have an ethical obligation to engage in an assessment of whether, based on firm size and nature of their practice, their professional responsibility obligations require a succession plan. Further, depending on that assessment, a lawyer may be required to engage in succession planning, since a lawyer is unable to anticipate an inability to practice law.

AUTHORITIES

INTERPRETED: Rules 1.1, 1.3, 1.4, 1.7, 1.9, 1.15, 1.16, 1.18, and 5.1 of the Rules of Professional Conduct of the State Bar of California.¹

Business and Professions Code sections 6068, subdivision (e)(1) and 6185.

INTRODUCTION

Many circumstances could render any lawyer unable to continue practicing law, either temporarily or permanently. When these events impact lawyers, client interests are at risk and should be protected.

There is a great risk of prejudice to clients when an unexpected event occurs that renders their lawyer unable to continue practicing law. This risk applies to all lawyers, including sole practitioners and lawyers from small firms, who often act as both lawyers and law firm

¹ Unless otherwise indicated, all references to "rules" in this opinion will be to the Rules of Professional Conduct of the State Bar of California.

managers, as well as lawyers of any age practicing at a law firm of any size, who could be impacted by an unexpected event rendering them unable to practice law.

While no single California rule explicitly requires that a lawyer adopt a succession plan, together the duties of competence, diligence, and communication impose a duty on lawyers to take reasonable steps to protect the clients' interests during the course of the representation, including in the event of a lawyer's sudden inability to continue to practice law. A failure to properly plan or prepare for both anticipated and unexpected departures from a lawyer's practice may expose clients to significant damage or prejudice.

Succession planning for law firms and lawyers encompasses a variety of issues. At its heart, assessing whether a lawyer needs a succession plan forces a lawyer to consider what will happen to their clients if the lawyer is unable to continue to practice law and develop a strategy for how such an event will be handled, and by whom, to protect client interests. In many instances, the results of this assessment will require a lawyer to engage in succession planning, which includes arranging in advance for how client matters will be timely handled in the lawyer's absence, how client files will be protected and returned to clients, and how funds and property belonging to clients will be returned to them, among other things.²

Succession plans are also good business strategy and provide a way to gradually transition client work and management roles over a period of time to preserve long-term client relationships. Succession planning also creates opportunities for emerging talent and an orderly transition of new leadership. However, law firms also need to consider succession planning as an important client protective measure and make reasonable efforts to ensure that the firm has policies and procedures in place designed to protect clients if a lawyer at the firm becomes unable to continue practicing law. This includes implementing measures necessary to comply with the duty to manage the law firm and supervise attorneys under rule 5.1. This rule is typically understood to be relevant for junior associates; however, the duty to supervise may also become necessary for any lawyer if there is a declining ability to competently represent their clients or to comply with their other ethical obligations. (Cal. Formal Ethics Opn. No. 2021-206.)

² Nationwide, there are many succession planning resources, including handbooks, guides, and ethics opinions, to assist lawyers in navigating how to think about and move forward with a succession plan. While mostly from other jurisdictions, these resources provide valuable information for all lawyers. "Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered" for guidance on proper professional conduct. See rule 1.0, Cmt. [4]. Any lawyer looking for guidance on this issue may wish to review the American Bar Association's website page on succession planning, which has a compilation of resources on this subject: https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning/ (as of Jan. 25, 2024).

STATEMENT OF FACTS

1. Lawyer A is a sole practitioner who has a general litigation practice consisting mostly of representing plaintiffs in personal injury matters. Lawyer A has been a sole practitioner for almost 30 years and shares office space with a group of other sole practitioners and small firms. Lawyer A has no dedicated support staff, instead sharing a group of rotating assistants and paralegals with other colleagues to assist with pleadings and court filings. Lawyer A handles the firm's management and operations exclusively; no one else has access to Lawyer A's calendar, emails, client files, law firm bank accounts, or financial information. Lawyer A seldom takes vacations, and when they do, Lawyer A simply puts an out-of-office message on their email and voicemail and serves a Notice of Unavailability on opposing counsel.

Recently, Lawyer A had some health complications and was hospitalized for over a month. Eventually, Lawyer A's suitemates learned of Lawyer A's condition and instructed some of the shared support staff to advise any of Lawyer A's clients who showed up at the office that Lawyer A was in the hospital. But no one had access to client lists, files, emails, voicemail messages, or any financial information, so the shared staff could not assist Lawyer A's clients any further. When Lawyer A returned to the office, some of the issues that emerged during their hospitalization included: missed court appearances and discovery deadlines, motion deadlines had passed, failure to finalize a settlement agreement for a client that rendered the offer withdrawn, failure to respond to client demands to receive much-needed settlement funds held in Lawyer A's IOLTA account, and failure to respond to client's request for a file transfer to new counsel.

2. Lawyer B is a sole practitioner who was asked by Lawyer C to be an assisting attorney³ as part of Lawyer C's succession plan. Lawyer B and Lawyer C are both sole practitioners who represent clients in the same general jurisdictions and practice trust and estates planning and litigation. Lawyer C has been practicing for about 20 years longer than Lawyer B, so Lawyer C may also be interested in retiring soon. Lawyer B wants to know what ethical obligations are implicated by agreeing to be an Assisting Attorney for Lawyer C.
3. Law Firm Manager is the managing partner of Law Firm, a large firm with ten offices throughout California. Law Firm Manager is reviewing Law Firm's policies and procedures with outside ethics counsel to determine how Law Firm could engage in succession planning. Law Firm Manager is particularly concerned with one of Law Firm's smaller offices, a 5-person satellite office out of which Lawyer D is based, although

³ An assisting attorney is a lawyer with whom another lawyer has made arrangements to close down their practice or to handle it in the event the other lawyer is unable to continue practicing law.

Lawyer D works primarily remotely. Lawyer D is 70 years old and is only one of two lawyers at the entire firm who practices in a particular specialized field; no other lawyer in Law Firm's 5-person satellite office practices in that specialized field.

DISCUSSION AND ANALYSIS

I. Ethical Duties Implicated for All Lawyers and Law Firms

A lawyer who does not properly plan or prepare for both anticipated and unexpected departures from the practice of law may expose clients to significant damage or prejudice. The duties of competence, diligence, and communication obligate lawyers to take reasonable steps to protect the clients' interests during the course of the representation. This would include taking affirmative steps to assess the need for a succession plan in the event of an interruption or cessation of practice, voluntary or otherwise, particularly for those practicing as sole practitioners or in a small firm setting.⁴ (See ABA Formal Opn. No. 92-369 (1992) p. 2 ["As a precaution to safeguard client interests, the sole practitioner should have a plan in place that will ensure insofar as is reasonably practicable that client matters will not be neglected in the event of the sole practitioner's death."].) Rule 5.1 requires law firm managers to make reasonable efforts to ensure the law firm has measures in place for all lawyers to comply with the rules.

A. Duty of Competence

Lawyers must provide legal services with "competence," which means that they must "apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service." (Rule 1.1(b).) "Attorney competence includes anticipating events or circumstances that may adversely affect client representation, including the gradual or sudden inability to provide competent legal services. By planning ahead for the orderly disposition of his or her law practice, an attorney can ensure that clients will continue to be represented without significant interruption in the event the attorney dies or becomes incapacitated." (Tuft et al, *Cal. Practice Guide: Professional Responsibility* (The Rutter Group 2019) Ch. 6-A Sources of Duty of Competence [citing ABA Model Rule 1.3, Cmt. [5]].)

⁴ Most professional liability carriers now require solo or small firm practitioners to make arrangements for an office closure in the event of a death or disability as a prerequisite to obtaining coverage. Also, the State Bar of California has "Senior Lawyer Resources" on its website, which includes a sample agreement to "Close Law Office in the Future" which may be instructive or useful for solo practitioners: https://www.calbar.ca.gov/Portals/0/documents/ethics/Surrogacy/AGREEMENT_TO_CLOSE_LAW_PRACTICE_IN_THE_FUTURE_REVISED_08-1-2011.pdf (as of Jan. 25, 2024).

B. Duty of Diligence

Rule 1.3(a) provides that a “lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.” “Reasonable diligence” means that “a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.” (Rule 1.3(b).) It is reasonable to conclude that “reasonable diligence,” as defined, includes making sure that client interests are protected in the event of a lawyer’s inability or unavailability to practice law, and failure to do so may be viewed as reckless or gross negligence.⁵ Important client matters, such as court dates, statutes of limitations, or document filings, would be neglected, and harm or prejudice to clients may result if the lawyer does not plan for these types of events.

C. Duty of Loyalty

The duty of loyalty requires that the lawyer act in the client’s interest and to “protect [the] client in every possible way.” (*Santa Clara County Counsel Attys. Assn v. Woodside* (1994) 7 Cal.4th 525, 548 [28 Cal.Rptr.2d 617].) The American Bar Association’s Standing Committee on Ethics and Professional Responsibility concluded that a lawyer should “have a plan in place which could protect clients’ interests in the event of the lawyer’s death,” based, in part, on a lawyer’s fiduciary duties to inform clients when closing a law practice or partnership dissolution. (See ABA Formal Opn. No. 92-369 (1992) pp. 2–3.)

D. Duty to Communicate

A lawyer’s duty to communicate with clients includes the duty to “keep the client reasonably informed about significant developments relating to the representation” and to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” (Rule 1.4(a)(3) and 1.4(b).) If a lawyer knows that they may be unable to practice law for an extended period of time, that is likely a significant development relating to the representation—the lawyer’s ability to represent the client goes to the heart of the attorney-client relationship. Thus, the lawyer would have a duty to communicate circumstances like imminent retirement or unavailability to practice law if material to the representation.

⁵ While the ABA Model Rules and several other jurisdictions, have a Comment [5] in their rule 1.3, which states the duty of diligence may require a lawyer to develop a succession plan, California does not. Cf. ABA Rule 1.3, Cmt. [5]. See also ABA State Mandatory Succession Rule Chart, available at: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer-succession-planning-rule-chart.pdf (as of Jan. 25, 2024). Other jurisdictions require a succession plan, but not as part of rule 1.3. See, e.g., Ariz. Supreme Ct. Rule 41, Cmt. [2]; Fla. Rules Regulating the Fla. Bar, rule 1-3.8(e); Iowa Supreme Ct. Rule 39.18(1); Me. Bar Rules, rule 1(g)(12); Mich. Rules Concerning the State Bar of Mich., rule 21.

For the same reasons, the duty to communicate is also implicated when a lawyer unexpectedly becomes temporarily or permanently unable to practice law. Ideally, either another lawyer at the law firm or an assisting attorney should communicate with clients about the impact this event will have on their matter and how things can and should be handled going forward.⁶

E. Duty to Avoid Reasonably Foreseeable Prejudice when Terminating a Representation

Rule 1.16(d) requires a lawyer to take “reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel” in the event the lawyer terminates a client representation. This rule highlights the very real concern about avoiding prejudice to a client when a lawyer abruptly ends a representation, which may result in insufficient time for the client to find replacement counsel and missed deadlines, among other issues. While a lawyer’s death or incapacity does not typically involve a scenario in which the lawyer anticipates terminating the client representation, knowing that such an event may be reasonably foreseeable in certain circumstances may require the lawyer to take reasonable steps to prevent this type of prejudice, such as developing a succession plan. Arranging for an assisting attorney or another designated lawyer at the law firm to step in and aid the lawyer’s clients helps to safeguard client interests.

F. Safekeeping Funds and Property of Clients

Lawyers have a duty to safeguard client funds and property under rule 1.15. If a lawyer is unable to continue practicing law permanently or for an extended period of time, a client may be unable to retrieve funds and property without significant delay and as they are entitled to under rule 1.15. Such a delay is likely to prejudice the client’s ability to access funds or property, or find new counsel who will take on the client’s matter.

II. Analysis of Factual Scenarios

A. Scenario 1: Failure to Plan Results in Ethical Breaches

In Scenario 1, Lawyer A did not have a plan in place to protect clients in the event circumstances rendered Lawyer A unable to practice law. (“As a precaution to safeguard client interests, the sole practitioner should have a plan in place that will ensure insofar as is reasonably practicable that client matters will not be neglected in the event of the sole

⁶ In communicating with clients about circumstances that may give rise to a lawyer’s inability to practice law, one should maintain the privacy and other legal rights of the lawyer unless that lawyer authorizes their private information to be shared.” COPRAC Formal Opn. No. 2021-206, p. 12, also citing to rule 1.4(d) [“A lawyer’s obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.”].

practitioner's death." (ABA Formal Opn. No. 92-369 (1992).) As a result, Lawyer A's health complications caused them to breach certain duties to clients and prejudice their clients' interests, including rules 1.1 [competence], 1.3 [diligence], 1.4 [communication], and 1.16 [withdrawal].

Lawyer A typically handled being out of the office by setting up an out-of-office message on their email and voicemail and serving a Notice of Unavailability on opposing counsel. However, Lawyer A's typical practice did not account for unexpected absences, like Lawyer A's recent medical event. As a result, no clients or opposing counsel were notified of Lawyer A's condition or whereabouts, deadlines were missed, and client obligations were ignored, violations of Lawyer A's duty of competence and communication obligations to their clients.

Here, based on the firm size, nature of the practice, and preexisting health issues, Lawyer A should have determined that there was a need for a succession plan and arranged for another lawyer or trusted individual to have access to Lawyer A's calendar, emails, client files, and banking or financial information in the event of an emergency. Alternatively, Lawyer A could have prepared a list of important passwords and access codes to be shared by a close family member with someone only in the event of an emergency.⁷

There are many approaches to succession planning that could help protect the clients' interests in the event Lawyer A was unable to practice law temporarily or permanently. Here, Lawyer A had no plan in place for this type of event, which exposed clients to considerable risk of harm.

B. Scenario 2: Ethical Duties Implicated for Assisting Lawyers

In Scenario 2, Lawyer B was asked to take on the role of an assisting attorney as part of Lawyer C's succession plan and wants to understand what ethical duties are implicated.⁸

⁷ The referenced options available to Lawyer A involve possible access to or sharing of confidential or other sensitive information. When considering these options, Lawyer A should take reasonable steps to protect such information consistent with Lawyer A's duties and responsibilities. Compare Bus & Prof. Code, § 6068, subd. (e) (duty to maintain confidences) with § 6068, subd. (m) (duty to keep clients reasonably informed of significant developments).

⁸ If Lawyer C does not arrange for an assisting attorney to take control of Lawyer C's law practice, under Business and Professions Code section 6185, the California Superior Court is authorized to appoint an attorney as a practice administrator "to take control of the practice of a deceased or disabled licensee of the State Bar" and to wind it up. This process involves considerably greater burdens to clients (who are waiting to get funds, files, and new representation, and whose legal matters may have been put on hold), the court system, and the personal estate of the deceased or disabled lawyer who may be responsible for paying for the appointment and court intervention. See Bus. & Prof. Code, §§ 6180 et seq. and §§ 6190 et seq.

1. The Existence of an Attorney-Client Relationship Between Lawyer B and Lawyer C's Clients

Assuming Lawyer B agreed to be Lawyer C's assisting attorney, one foundational question for Lawyer B is whether, if Lawyer C was suddenly unable to continue practicing law, Lawyer B would automatically have an attorney-client relationship with all of Lawyer C's clients. The answer is not necessarily.

In most cases, the role of the assisting attorney (sometimes called successor attorney⁹) is simply to step in and respond, administratively, to the unexpected event. Depending on the unexpected event, Lawyer B may need to access Lawyer C's calendar; review upcoming deadlines; communicate with clients, the court, and opposing counsel about Lawyer C; obtain any necessary extensions; and evaluate the short-term and long-term implications for clients and client matters. In the event of a death or permanent incapacity, Lawyer B's actions are usually dictated by whether Lawyer B has been asked to close Lawyer C's practice or if there is an agreement that Lawyer B will continue to operate the law firm and service Lawyer C's clients subject to each client's consent.¹⁰ Some issues for Lawyer C and Lawyer B to consider when developing the succession plan include:

- (1) How and when will the succession plan be implemented?
- (2) What are Lawyer C and Lawyer B's responsibilities, and what if Lawyer C is unavailable or deceased when the succession plan must be implemented?
- (3) What advisors, support, or other resources will Lawyer B need, and are those resources in place?

Under most circumstances, there should be a written fee agreement between Lawyer B and Lawyer C's clients if Lawyer B will represent these clients going forward. (See Cal. Bus. & Prof. Code, §§ 6147 & 6148.) However, there may be circumstances in which the attorney-client relationship can be implied from the conduct of the parties. (See *Lister v. State Bar* (1990) 51 Cal.3d 1117 [275 Cal.Rptr. 802]; *Davis v. State Bar* (1983) 33 Cal.3d 231 [188 Cal.Rptr. 441]; *Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441 [98 Cal.Rptr.2d 193].) Whether an attorney-client relationship would form between Lawyer B and Lawyer C's clients would depend in large part on what arrangements were made between Lawyer B, Lawyer C, and

⁹ An attorney who intends to include reference to their law practice in their estate plan, should consult the Probate Code regarding the appointment of a practice administrator. See Prob. Code, §§ 2468, 9764, & 17200, subd. (b)(22) & (23); Bus. & Prof. Code, § 6185. For further discussion of the role of an assisting attorney, see, e.g., Phila. Bar Assoc. Prof. Guidance Committee Opn. No. 2014-100, § III.

¹⁰ If Lawyer C's succession plan involved an agreement between Lawyer B and Lawyer C regarding the sale of the law practice upon Lawyer C's death, then Lawyer B must also comply with rule 1.17 (sale of a law practice). If no such agreement is in place, it is customary to make plans to compensate an assisting attorney and related administrative support team members, since there can be considerable work and expenses involved in closing a law office.

Lawyer C's clients in advance on this issue, what each client's understanding of Lawyer B's role is, and if any client would choose to have Lawyer B represent them going forward, among other factors. (See Tuft et al, *Cal. Practice Guide: Professional Responsibility* (The Rutter Group 2019) Ch. 3-B Formation of Relationship, § 3:43, for discussion of factors used to determine attorney-client relationship generally.)

Here, we do not opine on all the factors that may be used to determine whether an implied attorney-client relationship may be formed between Lawyer B and Lawyer C's clients under certain circumstances. However, clear communication with Lawyer C's clients about exactly what role Lawyer B will be undertaking—whether purely administrative or as counsel on a temporary or permanent basis—is essential to avoid creating an implied attorney-client relationship where none is intended. Clear communication about Lawyer B's role is also critical for helping clients understand the scope of their relationship with Lawyer B during this time to assist clients in making informed decisions about their future representation.

2. Duty of Competence

Before considering whether Lawyer B could permanently take on the representation of any of Lawyer C's clients, Lawyer B would need to have the necessary competence to handle the representation. (Rule 1.1.) Specifically, Lawyer B would need to have the skill, support, time, and resources necessary to handle each matter. (*Ibid.*)

Here, because Lawyer B and Lawyer C both represent clients in the same general jurisdictions and practice trust and estates planning and litigation, Lawyer B is a good match to assist Lawyer C under these circumstances because Lawyer B will likely have the requisite competence to take on the representations. If not, Lawyer B can either acquire sufficient knowledge before performance is required, refer the matter to a competent lawyer (rule 1.1(c)), or continue to assist in the termination of the representation on behalf of Lawyer C. However, in an emergency, Lawyer B is permitted to "give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required" as long as it is limited to what is "reasonably necessary in the circumstances." (Rule 1.1(d).)

3. Conflicts of Interest and Confidentiality

Before assuming the representation of any of Lawyer C's clients on a temporary or permanent basis, Lawyer B must also analyze whether any potential representations would implicate conflicts with respect to any of Lawyer B's current, former, or prospective clients. (Rules 1.7, 1.9, and 1.18.) If it was anticipated that Lawyer B would take over Lawyer C's practice, it might be reasonable to try to clear conflicts in advance of any event that would necessitate Lawyer C being unable to practice law. Otherwise, as part of Lawyer C's succession plan, Lawyer C could

maintain a list of active clients with contact information and provide Lawyer B with information on how to access this list and any related conflicts database if it becomes necessary to do so.¹¹

Even if Lawyer B's role as assisting attorney is limited to administratively helping close Lawyer C's office, Lawyer B will nonetheless be interacting with Lawyer C's clients and may need to obtain information related to those clients and the clients' matters as part of this process. In doing so, Lawyer B should be mindful of the duties of confidentiality to Lawyer C's clients, and how acquiring information that is protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter may also give rise to conflicts of interest for Lawyer B.

4. Duty to Communicate

If Lawyer C is unable to continue practicing law permanently or for an extended period of time, that information is likely a "significant development relating to the representation" of which Lawyer C's clients must be kept "reasonably informed." (Rule 1.4(a)(3).) While this rule implicates Lawyer C's duties to clients, Lawyer B, as the assisting attorney, has agreed to assist Lawyer C in fulfilling obligations to clients in the event that Lawyer C is unable to do so.

To facilitate Lawyer B's role, Lawyer C's succession plan should include specific details on how to contact clients and access current deadlines, calendars, law firm bank accounts, client trust accounts, financial records (including trust account written ledgers and account journals), and client files and property. Any other information that Lawyer C can provide to Lawyer B about the law firm and how it is organized will likely further assist Lawyer B in protecting the clients' interests.

5. Other Duties

The duty to safeguard client funds and property under rule 1.15 and the duty to avoid reasonably foreseeable prejudice when terminating a representation under rule 1.16(d) are also duties that belong to Lawyer C. Still, Lawyer B will be instrumental in assisting with fulfilling these obligations. Again, providing Lawyer B with proper access to banking and financial information, client contact information, and client files will be essential to fulfilling these obligations.

¹¹ There are likely to be confidentiality and other privacy concerns with providing Lawyer B access to this information in the present. However, Lawyer C should inform Lawyer B where information related to Lawyer C's succession plan, practice information, login information and access codes, etc. can be found (i.e., in an envelope or file with Lawyer B's name on it in the possession of an office administrator or spouse) if an unexpected event were to occur.

C. Scenario 3: Law Firm's Duty to Plan

In Scenario 3, Law Firm Manager must “make reasonable efforts” to ensure that Law Firm has implemented “measures giving reasonable assurance” that all lawyers in Law Firm comply with the rules and the State Bar Act. (Rule 5.1(a).) Rule 5.1(a) “requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed” for the firm’s lawyers to comply with the Rules of Professional Conduct and the State Bar Act. (Rule 5.1, Cmt. [1].)

Here, Law Firm Manager’s review of Law Firm’s policies and procedures to determine whether they adequately protect the clients’ interests in the event any lawyer at the firm becomes unable to continue practicing law is an important step to comply with rule 5.1.

The scenario involving Lawyer D presents some heightened risks for Law Firm and its clients given that Lawyer D is isolated both geographically and in terms of Lawyer D’s practice area. Lawyer D is also a 70-year-old, which places Lawyer D at a higher risk for developing health-related complications. It is not known whether the other lawyer who practices in the same field as Lawyer D regularly coordinates and connects with Lawyer D on client matters or if anyone else at Law Firm does, or can, supervise Lawyer D’s work. Regular supervision of Law Firm’s lawyers to assess compliance with duties of competence and diligence, regardless of the lawyer’s age, is also an important aspect of rule 5.1

Some of the issues that a managing partner should consider and analyze with respect to Lawyer D, as well as all of its lawyers, are:

- (1) If necessary, could someone else at Law Firm handle the clients and matters that the lawyer is handling?
- (2) Could Law Firm access the entirety of that lawyer’s client files and other needed data?
- (3) How would Law Firm communicate unexpected events and Law Firm’s plan for handling client matters to clients as soon as possible?
- (4) What is a reasonable approach to supervising the work of Lawyer D or other lawyers at Law Firm who are similarly situated?

If Law Firm does not have a plan for addressing such circumstances, Law Firm Manager should consider whether one is ethically required to protect client interests. Whether Law Firm has implemented policies giving reasonable assurance that Law Firm has complied with the rules protecting clients in these instances in accordance with rule 5.1 will likely be a fact-intensive inquiry.

CONCLUSION

Succession planning is an important consideration to ensure that lawyers fulfill their ethical obligations when they are unable to continue practicing law, either temporarily or permanently. Succession planning may mitigate or avoid the risk of harm or prejudice to clients that may otherwise occur when a lawyer is unable to practice law.

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any licensee of the State Bar.

TOTAL = 13 S = 1
SM = 6
O = 6

**Draft Opinion 22-0002 – Succession Planning
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Position	Comment	COPRAC Response
1	Anthes, Louis (18667663)	N	SM	<p>" Lawyers who have active caseloads have an ethical obligation to engage in an assessment of whether, based on firm size and nature of their practice, their professional responsibility obligations require a succession plan." This specific language in the opinion digest is vague and offers no standard to measure what constitutes an ethical "assessment". Moreover, this language in the opinion digest ("assessment of whether, based on firm size and nature of their practice") contradicts earlier language in the opinion digest ("risk applies to all lawyers, including sole practitioners and lawyers from small firms, as well as lawyers practicing at larger firms"). The problem of imposing this ethical obligation upon all lawyers is that it imposes costs on lawyers, regardless of their income status or the size of their practice. As such, this ethical obligation imposes a kind of regressive "tax" on lawyers regardless of their own class status within the profession.</p> <p>While well-intended, perhaps, this rule reproduces the illusion of all lawyers occupying the same class status across the profession and further burdens lawyers whose income and practice</p>	

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				size does not impose serious risks to clients if their lawyer is unable to practice law.	
2	Huber,, Jennifer (18627684)	N	S		
3	Le, Helen (18639981)	N	O	Misdirected complaint/not applicable	
4	Schneidereit, Adele (18616245)	N	O		
5	Tabash, Edward (18697129)	N	O	If a lawyer, particularly a sole practitioner, has a varied caseload, it may be hard to find other attorneys who will pre commit to taking over each such case if the the sole practitioner becomes disabled. Some cases may be very difficult and not attractive to another lawyer to step and take over. Depending on the case, and the problems with it, there could no longer be sufficient client resources to pay for further counsel or too many lawyers may already be in line for a piece of a contingency, lawyers who are no longer on the case but have earned their quantum meruit share. Thus, as a practical matter, succession planning that would in advance secure a definite lawyer to take over each specific case that a sole practitioner may have, could very easily not be	

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				<p>something that can be achieved.</p> <p>Let's not make this a hard and fast rule that will force lawyers with no disabilities or infirmities to leave the practice of law, because they could not secure a specific successor attorney for each matter that is currently being handled by the still-capable practitioner.</p> <p>This rule would also impose the onerous burden on lawyers to not take new cases unless a succession plan, an attorney to take the case over in the event of incapacity, could be put in place, regardless of how unappealing the case might be by the time the initial attorney is no longer capable of practicing.</p> <p>What if we think we have a succession plan in hand for each matter that we are handling only to discover, at the time we become incapacitated, that the attorney who initially agreed to be the successor, now wants to not take over because problems...with the case have emerged in between the time that attorney agreed to be the successor and the time the initial lawyer became unable to continue representation?</p>	

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				This should not be something that the Bar forcibly imposes on lawyers.	
6	Tabash, Edward (1869713)	N	O	As a follow up to the comments I just submitted, if a succession plan must be in place for each case that a lawyer handles, what if, when the first succession attorney takes over a case from a now incapacitated lawyer, the attorney who took the case over can't find what is now a required successor to take over the case if the attorney, who took over the case from the now incapacitated lawyer, also becomes incapacitated later on. This could set in motion an endless chain reaction in which each attorney who takes the case over from a now incapacitated lawyer must find someone who agrees to take over the matter if the one who just took it over becomes incapacitated at some point.	
7	Wright, Steve (18618800)	N	SM	What you really need to fix is the "complaint to hearing" process. See 19 O 16538. The 19 is the year this was started....I am being stone walled on what should be a slam dunk. In the while, the attorney is still out there screwing the public.	

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SM = 6
O = 6

**Draft Opinion 22-0002 – Succession Planning
Synopsis of Public Comments**

No.	Commenter/Signatory	Comment on Behalf of Group?	Position	Comment	COPRAC Response
8	Corlett (18893036)	N	O	Unless guidance and resources are available for acceptable succession planning, the rule is too vague. Is there an age or event after which a lawyer should actively put in place a succession plan? What is an acceptable succession plan? What should be done if no alternative attorneys/ representation for the client are available for a succession plan? The need for successive attorney representation can occur due to unexpected events to any attorney of any age or health condition. I am not aware of another profession that requires the practitioner to have in place a succession plan.	
9	Concoran (18907252)	N	O	A lawyer should not be responsible for planning of a contingency regarding an inability to practice law. A client would be "prejudiced" regardless if an attorney made any sort of plan or not as any new attorney would not be familiar with a case. Further an attorney would not have any way of knowing if a client would approve of such contingent attorney and seeking such would impose undue tasking and undue confusion on the public. Any such occurrence should be handled on a case by case basis without any overhead imposed on attorneys to	

TOTAL = 13 S = 1
 SM = 6
 O = 6

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				have to make unreasonable plans if such should occur.	
10	Zabat-Fran/OCBA (18910644)	Y	SM	We are writing on behalf of the Orange County Bar Association (“OCBA”) regarding the above referenced proposed ethics opinion on succession planning. Founded over 100 years ago, the OCBA has over 7,000 members, making it one of the largest voluntary bar associations in California. The OCBA Board of Directors, made up of practitioners from large and small firms, with varied civil and criminal practices, of different ethnic backgrounds and political leanings, has approved these comments. We appreciate the efforts of the Committee to provide guidance on succession planning. However, we have some concerns with various parts of the discussion of the proposed opinion, as discussed below. Do Lawyers Have an Ethical Duty to Have a Succession Plan? Our initial critical question is: does a lawyer have an ethical duty to have a succession plan? It is unclear from the opinion. Unlike other states that require lawyers to have a succession plan such as Florida, Iowa, Maine and Michigan , California does not. Separately, on a page of the State	

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				<p>Bar’s website under a section titled “Transfer of estate planning documents,” there is a statement that “California lawyers are encouraged to have a succession plan in place for the cessation of their law practice.” [emphasis added]. In the Digest and on pages 4 through 6, the opinion groups several duties together to suggest that a lawyer has a duty to have a succession plan by stating that a lawyer who does not may expose ... clients to significant damage or prejudice. The opinion suggests that the duties of competence, diligence, communication and loyalty and duties to safeguard client funds and property and avoid reasonably foreseeable prejudice when terminating a representation obligate a lawyer to take affirmative steps to plan for the interruption or cessation of practice. While we generally agree that the duties of competence and loyalty may obligate certain lawyers to have a succession plan, we do not fully agree that the duty of diligence and other mentioned duties impose such a responsibility. As noted in footnote 5 of the opinion, while some states provide a comment to those states’ duty of diligence rule stating a lawyer may be required to develop a succession plan,</p>	

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				<p>California does not. The Digest also states that lawyers with active caseloads have an ethical obligation to engage in an assessment of whether their professional responsibility obligations require a succession plan and, depending on such assessment, may be required to engage in succession planning. We recommend that, instead of stringing concepts together to suggest that a lawyer may have a duty to have a succession plan, the opinion be clear on if a plan is required or not. If a plan is required, then every lawyer has a statutory plan, as discussed in the next section below. The opinion suggests that law firm managers have a duty to ensure that lawyers have a succession plan under Rule 5.1. This seems to be a stretch when it is unclear if lawyers have a duty to have a succession plan.</p> <p>Statutory Succession Plans If a lawyer has a duty to have a succession plan, then every... .. lawyer has statutory plans (1) if a lawyer dies, resigns, becomes an inactive licensee of the bar or is suspended pursuant to Business and Professions Code Sections 6180 et seq. and (2) if a lawyer becomes incapable of devoting time and attention to such lawyer’s law practice</p>	

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				<p>pursuant to Business and Professions Code Sections 6190 et seq. These code sections provide that the State Bar or others can petition the court granting the State Bar jurisdiction over a lawyer's law practice and appoint an attorney to manage the practice. There is no reason to think these processes would be a greater burden on clients or a lawyer's estate. Rather, they might provide greater protection because of the court oversight. What Constitutes a Succession Plan? If a lawyer has a duty to plan, are the statutory succession plans sufficient? Is a written plan required, or would giving someone necessary passwords be sufficient? Malpractice insurance carriers often require lawyers to list the name of a lawyer who will handle their practice for them in the event of death or disability. Does submitting the name of a succeeding lawyer to a carrier constitute a sufficient plan? We recommend that the opinion clearly state what constitutes a plan. Probate Code Sections The Probate Code allows the conservator of a disabled lawyer's estate or the personal representative of a deceased lawyer's estate to file a petition to appoint the lawyer named in such lawyer's will to be a practice</p>	

TOTAL = 13 S = 1
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				<p>administrator who can seek to take control over the disabled lawyer's practice or deceased lawyer's practice. Also, if a lawyer transferred his or her economic interest to the trustee... .. of the lawyer's trust, the trustee may file a petition to appoint a practice administrator who can seek to take control over the disabled or deceased lawyer's practice. If a lawyer nominates another lawyer to be the practice administrator in such lawyer's will or trust, would that constitute a sufficient plan? Cite Only to California Resources We recommend that the resources mentioned in footnote 2 be limited to California resources because some of the nationwide resources outside of California are not relevant. For example, one resource mentions that Arizona Rule of Superior Court 41, Comment [2] includes a mandatory requirement that lawyers plan for the transfer and disposition of client files, property or other client-related materials if a lawyer becomes unable or unwilling to discharge their duties to current and former clients. As another example, a resource mentions that Maine Bar Rule 1(g)(12) provides that the Maine Board of Overseers shall maintain current information relating</p>	

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				<p>to all lawyers including the name of an active status attorney who has consented to serve as a proxy on behalf of the attorney. Definition of “Temporarily” What is the meaning of the word “temporarily” as used to advance the proposition that a succession plan is required when a lawyer is “temporarily” unable to practice law within the (1) Digest, (2) Instruction, (3) paragraph ID, (4) paragraph IIA and (5) Conclusion? It would seem impractical for a succession plan to have to be implemented each time a lawyer will be temporarily out of the office due to a vacation, cold or otherwise. We recommend that the word “temporarily” as used in these... .. five sentences be defined to provide clear guidance. Attorney-Client Relationship All succession plans that provide for the transfer of a lawyer’s clients to a practice administrator or other designated person raise concerns regarding confidential client information, work product and attorney-client privilege issues. We recommend that these issues and the duty of competency of the successor lawyer, as mentioned in Scenario 2 of the opinion, be addressed in a separate</p>	

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				opinion to provide clear guidance to a successor lawyer. Delete Reference to Non-Relevant Concepts We recommend deleting the first two sentences of the third full paragraph on page 2 of the opinion that state a succession plan is a good business strategy, which creates opportunities for emerging talent and the orderly transition of new leadership. These sentences do not seem relevant to whether a lawyer has an ethical duty to have a succession plan. Thank you for the opportunity to comment on this opinion.	
11	Gliaudys (18923079)	N	SM	The proposed ethical mandate for a law firm to have a succession document should be flexible in application depending on the nature of the law practice and the size of the firm. A small - sole practitioner firm - might need to inform the client of the risk of the practitioner's incapacity to continue representation in the matter should there be some basis for the risk such as a health condition, age, or fiscal instability of the firm but otherwise there is no need to make it mandatory under any other circumstances since there is little chance of interruption in the services to be rendered. For large size firms such as those with 50 or	

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				more lawyers, the continued representation is assured with little risk in as much as other lawyers within the firm can take over the case should the principal attorney is unable to continue and accordingly, again, a voluntary advisement might be given to the client of such a contingency but there is no reason to make it mandatory as an ethical obligation. Accordingly, the opinion should stress a voluntary approach to this rather than mandate a blanket obligation.	
12	LACBA PREC – Joyce (18941121)	Y	SM	<p>This comment is written on behalf of the Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association (the “Committee”), with respect to Proposed Opinion Interim No. 20-0002. We appreciate that COPRAC has given the Committee another opportunity to contribute to the public comment on this important opinion.</p> <p>We agree that a lawyer must consider how clients will be serviced in case the lawyer has an expected or unexpected absence. However, we are concerned this opinion blurs the line of what must be done to comply with ethical rules as opposed to suggested best practices. For example, Discussion, Section I. on page 4, states that to comply with</p>	

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				<p>ethical obligations, a lawyer must take affirmative steps to assess the need for a succession plan. In the next sentence, COPRAC cites to the Rutter Guide that the lawyer should have a plan in place. Similarly, Paragraph C. of Section I on page 5, citing to the ABA, states that a lawyer should have a succession plan in place. The Committee suggests that the opinion more clearly delineate between what is required and what is recommended.</p> <p>The opinion states that to comply with the ethical rules, a lawyer must engage in an assessment of whether the lawyer needs a succession plan (see Introduction, second full paragraph on page 2; Discussion, Section I on page 4). However, the opinion does not offer guidance on how to undertake that assessment. In the discussion of Scenario 1 in Paragraph A. of Section II in the second full paragraph on page 7, the opinion suggests that the lawyer should have assessed the need for a succession plan based on firm size, nature of the practice, and preexisting health issues. Are there other factors a lawyer should or must consider? The Committee suggests the opinion provide guidance to lawyers on assessing the need for a succession</p>	

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**Draft Opinion 22-0002 – Succession Planning
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				<p>plan.</p> <p>We have the following additional comments:</p> <p>The opinion references rule 1.16(d) (in Discussion Section I., Paragraph E., page 6). We suggest including mention of rule 1.16(a)(3) and (b)(8), which address terminations based on a lawyer's mental or physical condition. Proposed PREC Comment on Proposed Interim Opinion No. 20-0002 Page 2 June 3, 2024</p> <p>The opinion mentions the duty to safeguard client funds under Section I., Paragraph F., page 6. A lawyer is responsible for the trust account and should consider carefully who is given access to the trust account. See, <i>e.g.</i>, the first bullet point on page 14 of the Handbook on Client Trust Accounting for California Attorneys (https://www.calbar.ca.gov/Portals/0/documents/ethics/Publications/Portals0documentsethicsPublicationsCTA-Handbook.pdf).</p> <p>There are competing concerns between the lawyer controlling the trust account and providing a way for another person to access that account in case of the lawyer's unavailability, and the Committee suggests COPRAC at least highlight that here.</p>	

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				<p>In Paragraph C. of Section II on page 11, there is a numbered list of issues the managing partner should consider, presumably for succession planning. The number 4 issue is to consider the reasonable approach for supervising the lawyer's work. Although that question might be important for determining whether that lawyer is acting in accordance with ethical requirements, it is unclear how that question would factor into the succession planning. The last paragraph on this page 11 also speaks in terms of a Law Firm's compliance with the rules. However, the rules impose obligations on lawyers, not law firms, and the Committee suggests maintaining this distinction.</p> <p>We commend COPRAC for its continuing efforts. Thank you for the opportunity to submit these comments. We hope that additional consideration will be given to the matters we have raised.</p>	
13	CLA Ethics Committee (Spencer)	Y	SM	On behalf of the California Lawyers Association Ethics Committee, we appreciate the opportunity to comment on COPRAC's Formal Opinion Interim No. 20-0002 (Succession Planning). Our Committee commented on a prior version of Interim Opinion	

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				<p>No. 20-0002 in a September 8, 2023 letter. We appreciate COPRAC’s revisions to the Opinion on this important subject. Planning for the ethical issues that might arise from a lawyer’s failure to plan for the time when he or she is no longer practicing law is important to protect clients’ interests. Please consider the following comments as suggestions for improving the Opinion. 1. Points applicable to the Opinion generally The Opinion identifies some of the ethical issues when a lawyer is unable to practice law, whether on a temporary or permanent basis, but still has an active caseload. However, the Opinion understates the breadth of a lawyer’s ethical duties to clients in anticipating those situations. The lawyer owes several ethical duties to his or her clients, including duties of competence, diligence and communication, that are implicated when a lawyer does not have a succession plan in place for when the lawyer is unable to practice. This Opinion has considerable significance for the many California lawyers who are solo practitioners and it should more strongly stress the relevance and importance of those duties. 2. Comments about the Digest</p>	

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				<p>Lawyers who have active caseloads have an ethical obligation to engage in succession planning since it is virtually impossible to time an “inability to practice law” to coincide with the conclusion of the lawyer’s last case. Since this is an ethics opinion, we suggest leading with this sentence: “Existing California ethical rules, including those rules pertaining to the duties of competence, diligence and communication, obligate lawyers to take reasonable steps to protect their client’s interests in anticipation of the time when that lawyer is unable to perform the duties competently.” For the sentence starting with, “Lawyers who have active caseloads have an ethical obligation,” we suggest deleting the clause “based on firm size and nature of their practice,” since the duty to evaluate the need for a succession plan is not based on firm size or practice area. 3. Comments about the Introduction We would suggest the first sentence be rephrased to reflect the common occurrence: “There comes a time for every lawyer when it is time to cease practicing law.” The introduction assumes that the lawyer’s inability to practice law is a result of a sudden event, such as a stroke or an</p>	

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				<p>unexpected illness. But more frequently, as the lawyer population continues to age, the lawyer’s skills gradually decline due to chronic illnesses until the clients suffer. The “great risk of prejudice” needs to be explained at the outset of this Opinion. We suggest expressly stating: “The client’s best position is not fully and fairly presented because of the lawyer’s partial or complete lack of competence.” The last paragraph, which leads with the statement “[s]uccession plans are also good business strategy” seems out of place for an ethics opinion. That statement may be true as a practice management issue, but that comment detracts from an ethics opinion with such a strong focus on client protection. We appreciate this Opinion’s emphasis on the managing partner’s duties under Rule 5.1 to ensure that all lawyers working in a law firm are fulfilling their ethical duties. 4. Comments about the Ethical duties implicated by the hypotheticals The three hypotheticals provide a good framework for the ethical issues that arise when succession planning is ignored. We agree that the duty of <i>competence</i> (Rule 1.1) is the starting point on why</p>	

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**Draft Opinion 22-0002 – Succession Planning
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				<p>lawyers should engage in concrete succession planning. Rule 1.1 requires that lawyers perform legal services competently. If a lawyer practices without a succession plan and then either gradually or suddenly cannot perform competent legal services, then Rule 1.1 is implicated. Competence requires that the lawyer has the “mental, emotional and physical ability reasonably necessary for the performance of such services.” (Rule 1.1(b)). We appreciate the restructuring of this Opinion to emphasize the duty of competence as it is implicated when a lawyer fails to engage in succession planning. For the discussion on the duty of <i>diligence</i>, the Opinion correctly connects that duty to the obligation to make sure that client interests are protected in the event the lawyer becomes unavailable. Footnote 5 refers to ABA Model Rule 1.3, Comment [5], which states that diligence may require the development of a succession plan.¹ Because of Comment [5]’s emphasis on the neglect of a client matter that might result from the death or disability of a sole practitioner, and we suggest that the actual language of the Comment be included in footnote 5 of the Opinion.</p>	

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				<p>For your convenience, we have included the Comment’s language in the footnote below. We agree that the duty of <i>loyalty</i> is implicated when the lawyer puts his or her interest ahead of the clients by concealing health issues or plans to “slow down” while cases are pending. We would suggest citing to Rule 1.7(b), which requires a client’s informed written consent “if there is a significant risk the lawyer’s representation of the client will be materially limited by the....lawyer’s own interests.” Concealment of a health condition that limits the quality of representation places the lawyer’s private medical interests ahead of the client’s interests. ABA Formal Opinion 92-369 illustrates the duty of loyalty is implicated when there is a failure to communicate the lawyer is retiring or a law firm is dissolving. This Opinion is supportive of the concept that the duty of loyalty is implicated when the lawyer does not plan for someone else to handle the law practice when there is a break in the law practice. We suggest explaining that the duty of loyalty requires that appropriate planning be made to ensure the clients’ interests are placed ahead of the lawyer’s personal interests that may overwhelm</p>	

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				<p>the lawyer’s decision making ability in the event of a serious illness. We agree that the duty to <i>communicate</i> is implicated if the lawyer is unable to practice law, whether this break from practicing law is temporary or permanent. (Rule 1.4). In particular, we agree with the second paragraph of section D, which emphasizes the importance of advance planning by the lawyer to address an unexpected inability to practice, i.e., the need to designate another attorney or staff member to communicate with the lawyer’s clients on how their matters should be handled going forward. For the duty to <i>avoid reasonably foreseeable prejudice</i> when terminating representation under Rule 1.16(d), we would suggest rephrasing the existing language in Section E which states, “While a lawyer’s death or incapacity does not typically involve a scenario 1 Comment 5 to ABA Model Rule 1.3 provides: “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, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client</p>	

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				<p>of the lawyer's death or disability, and determine whether there is a need for immediate protective action.” in which the lawyer anticipates terminating the representation,” to affirmatively state: “A lawyer’s death or incapacity will effectively terminate the attorney-client relationship and a lawyer should plan for that event.” IIA. Scenario 1. At the end of the first sentence of paragraph #1, we appreciate the express citation to the ethical rules breached by the lawyer abandoning the clients because of the lawyer’s hospitalization. This would include Rules 1.1, 1.3, 1.4 and 1.16. The second paragraph, which refers to the Lawyer A’s practice of setting up an out-of office message on the lawyer’s email and voicemail and serving a Notice of Unavailability to opposing counsel, should also expressly cite to Rule 1.1 and Rule 1.4, since in Scenario #1, deadlines were missed and the clients were not informed of these significant developments. We also note that the final clause of the last sentence of the second paragraph (“violation of Lawyer A’s duty of competence ...”) lacks a verb. We are unsure whether COPRAC intended to draw a conclusion, i.e., that the listed deficits in the preceding</p>	

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				<p>clauses constituted violations of both the duties of competence and communications. If that is the case, it should probably be a separate sentence. The third paragraph should affirmatively state that Lawyer A breached Lawyer A’s ethical obligations to his or her clients by failing to appreciate the need for a succession plan and identify an “assisting lawyer” to step in when Lawyer A was unable to provide competent legal services. This includes providing access to passwords and access codes to enable the clients’ interests to be protected. The last sentence starts with the phrase, “[a]lternatively, Lawyer A could have prepared a list of important passwords and access codes with <i>someone</i> only in the event of an emergency.” (Emphasis added.). Given the concerns regarding confidentiality expressed in the following footnote (note 7), we recommend that you substitute “another lawyer” for “someone.”</p> <p>Scenario 2: Ethical Duties Implicated for Assisting Lawyers. This hypothetical focuses on Lawyer B’s duties to Lawyer C’s clients in the event of an “unexpected event,” which causes Lawyer C to be unable to practice law. The Opinion distinguishes between the</p>	

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				Assisting Lawyer, who is simply stepping in on an administrative level and the successor lawyer, who ultimately takes over the handling of Lawyer C's existing case load. In agreeing to assist Lawyer C, Lawyer B will need to assess whether he or she has the capacity to undertake these responsibilities given existing and future workload. Excessive work demands are not a defense to a Rule 1.1 violation. Depending on his or her workload when assistance is required, the lawyer may not have the bandwidth to handle on an emergency basis Lawyer C's law practice. The addition of the second paragraph, starting with the sentence "[i]n most cases," contains a good discussion regarding the ethical obligations Lawyer B has in assisting with Lawyer C's law practice. However, we suggest reworking the existing subsection 1 (The Existence of an Attorney-Client Relationship between Lawyer B and Lawyer C's clients) to explain that Lawyer C's duty to preserve the client confidences may be implicated unless there has been consent by the clients to disclose confidences to the assisting lawyer. Lawyer B may be handicapped in providing the assistance expected by	

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				<p>Lawyer C if he or she cannot freely communicate with Lawyer C's clients without fear that confidential information of Lawyer C's clients may not be protected without clear parameters defining the scope of the assisting lawyer's responsibilities. The first paragraph discussing whether there is an automatic attorney-client relationship with Lawyer B is confusing. In the second paragraph, we do not believe the beginning sentence ("In most cases, the role of an assisting attorney (sometimes called Successor Attorney or Practice Administrator) is simply to step in and respond, administratively, to an unexpected event") is necessarily true, particularly when Lawyer C has active litigation cases. Under certain circumstances, Lawyer B may be required to make special appearances in court and/or arrange for continuances of hearings to protect Lawyer C's clients' rights. We suggest that the Opinion include the following sentence: "Before undertaking an attorney-client relationship with any of Lawyer C's clients, Lawyer B must undertake a conflict check and comply with Rules 1.7, 1.9 and 1.18." The Opinion's emphasis on the importance of</p>	

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				<p>communicating with Lawyer C’s clients is important regardless of whether Lawyer C’s “unavailability” is temporary or permanent. Scenario 3: Law firm’s duty to plan We suggest emphasizing the ethical responsibilities of the law firm’s managing partner to “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm comply with these rules and the State Bar Act.” (Rule 5.1(a)).</p> <p>Comment [1] to Rule 5.1 requires that the law firm establish “internal policies and procedures” to make sure that the lawyers in the firm comply with their ethical responsibilities. A senior lawyer who is practicing “alone” in a remote office presents a potential risk to the lawyer’s clients that his or her competency skills will erode without having colleagues available to assist in representing clients. The Opinion should make it clear that the Managing Partner cannot ignore his or her ethical responsibilities to establish policies and procedures to ensure that all of the firm’s lawyers, including Lawyer D, comply with their ethical duties, including the duty of competency. The Managing Partner has an ethical duty to affirmatively act to ensure that</p>	

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				<p>Lawyer D is currently practicing competently, that there is a concrete succession plan which may involve training another member of the firm in the discrete practice area and certainly ensuring that the clients are informed of significant developments, including the team that is supporting Lawyer D’s practice. (Rules 5.1, 1.1, 1.3, 1.4). Based on the hypothetical, since none of the other lawyers in the satellite office practice in the same specialized field as Lawyer D, the firm clients that are receiving these specialized legal services from Lawyer D are at risk if there is either a decline in Lawyer D’s competence or an abrupt break in his or her ability to practice. In the 5th paragraph on page 11, starting with the phrase, “[i]f Law Firm does not have a plan for addressing such circumstances,” we suggest affirmatively stating that the Law Firm Manager “shall” make “reasonable efforts” to ensure that the lawyers comply with the ethical rules. Comment 1 to Rule 5.1 clarifies that this obligation is not optional but is mandatory. “Paragraph (a) <i>requires</i> lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and</p>	

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				<p>procedures designed, for example, to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.” (Comment 1, Rule 5.1) (Emphasis added.) The law firm’s measures to satisfy its obligations under Rule 5.1(a) depend on the firm’s structure and nature of the practice. (Comment 2, Rule 5.1).</p> <p>Conclusion We consider succession planning to be an ethical duty of California lawyers. We suggest that the second sentence of the concluding paragraph be revised as follows: “Succession planning may mitigate or avoid the risk of harm or prejudice to clients that may otherwise occur when a lawyer is unable to practice law is ethically required to protect the clients’ interests.”</p>	

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	Louis Anthes
City	Long Beach
State	California
Email address	louanthes@hotmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>" Lawyers who have active caseloads have an ethical obligation to engage in an assessment of whether, based on firm size and nature of their practice, their professional responsibility obligations require a succession plan."</p> <p>This specific language in the opinion digest is vague and offers no standard to measure what constitutes an ethical "assessment". Moreover, this language in the opinion digest ("assessment of whether, based on firm size and nature of their practice") contradicts earlier language in the opinion digest ("risk applies to all lawyers, including sole practitioners and lawyers from small firms, as well as lawyers practicing at larger firms").</p> <p>The problem of imposing this ethical obligation upon all lawyers is that it imposes costs on lawyers, regardless of their income status or the size of their practice. As such, this ethical obligation imposes a kind of regressive "tax" on lawyers regardless of their own class status within the profession.</p>

While well-intended, perhaps, this rule reproduces the illusion of all lawyers occupying the same class status across the profession and further burdens lawyers whose income and practice size does not impose serious risks to clients if their lawyer is unable to practice law.

June 7, 2024

Committee on Professional Responsibility and Conduct (COPRAC)
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Formal Opinion Interim No. 20-0002 (Succession Planning)

Dear COPRAC members:

On behalf of the California Lawyers Association Ethics Committee, we appreciate the opportunity to comment on COPRAC's Formal Opinion Interim No. 20-0002 (Succession Planning).

Our Committee commented on a prior version of Interim Opinion No. 20-0002 in a September 8, 2023 letter. We appreciate COPRAC's revisions to the Opinion on this important subject. Planning for the ethical issues that might arise from a lawyer's failure to plan for the time when he or she is no longer practicing law is important to protect clients' interests. Please consider the following comments as suggestions for improving the Opinion.

1. Points applicable to the Opinion generally

The Opinion identifies some of the ethical issues when a lawyer is unable to practice law, whether on a temporary or permanent basis, but still has an active caseload. However, the Opinion understates the breadth of a lawyer's ethical duties to clients in anticipating those situations. The lawyer owes several ethical duties to his or her clients, including duties of competence, diligence and communication, that are implicated when a lawyer does not have a succession plan in place for when the lawyer is unable to practice. This Opinion has considerable significance for the many California lawyers who are solo practitioners and it should more strongly stress the relevance and importance of those duties.

2. Comments about the Digest

Lawyers who have active caseloads have an ethical obligation to engage in succession planning since it is virtually impossible to time an "inability to practice law" to coincide

with the conclusion of the lawyer's last case. Since this is an ethics opinion, we suggest leading with this sentence: "Existing California ethical rules, including those rules pertaining to the duties of competence, diligence and communication, obligate lawyers to take reasonable steps to protect their client's interests in anticipation of the time when that lawyer is unable to perform the duties competently." For the sentence starting with, "Lawyers who have active caseloads have an ethical obligation," we suggest deleting the clause "based on firm size and nature of their practice," since the duty to evaluate the need for a succession plan is not based on firm size or practice area.

3. Comments about the Introduction

We would suggest the first sentence be rephrased to reflect the common occurrence: "There comes a time for every lawyer when it is time to cease practicing law." The introduction assumes that the lawyer's inability to practice law is a result of a sudden event, such as a stroke or an unexpected illness. But more frequently, as the lawyer population continues to age, the lawyer's skills gradually decline due to chronic illnesses until the clients suffer. The "great risk of prejudice" needs to be explained at the outset of this Opinion. We suggest expressly stating: "The client's best position is not fully and fairly presented because of the lawyer's partial or complete lack of competence."

The last paragraph, which leads with the statement "[s]uccession plans are also good business strategy" seems out of place for an ethics opinion. That statement may be true as a practice management issue, but that comment detracts from an ethics opinion with such a strong focus on client protection. We appreciate this Opinion's emphasis on the managing partner's duties under Rule 5.1 to ensure that all lawyers working in a law firm are fulfilling their ethical duties.

4. Comments about the Ethical duties implicated by the hypotheticals

The three hypotheticals provide a good framework for the ethical issues that arise when succession planning is ignored.

We agree that the duty of *competence* (Rule 1.1) is the starting point on why lawyers should engage in concrete succession planning. Rule 1.1 requires that lawyers perform legal services competently. If a lawyer practices without a succession plan and then either gradually or suddenly cannot perform competent legal services, then Rule 1.1 is implicated. Competence requires that the lawyer has the "mental, emotional and physical ability reasonably necessary for the performance of such services." (Rule 1.1(b)). We appreciate the restructuring of this Opinion to emphasize the duty of competence as it is implicated when a lawyer fails to engage in succession planning.

For the discussion on the duty of *diligence*, the Opinion correctly connects that duty to the obligation to make sure that client interests are protected in the event the lawyer becomes unavailable. Footnote 5 refers to ABA Model Rule 1.3, Comment [5], which states that diligence may require the development of a succession plan.¹ Because of Comment [5]’s emphasis on the neglect of a client matter that might result from the death or disability of a sole practitioner, and we suggest that the actual language of the Comment be included in footnote 5 of the Opinion. For your convenience, we have included the Comment’s language in the footnote below.

We agree that the duty of *loyalty* is implicated when the lawyer puts his or her interest ahead of the clients by concealing health issues or plans to “slow down” while cases are pending. We would suggest citing to Rule 1.7(b), which requires a client’s informed written consent “if there is a significant risk the lawyer’s representation of the client will be materially limited by the....lawyer’s own interests.” Concealment of a health condition that limits the quality of representation places the lawyer’s private medical interests ahead of the client’s interests. ABA Formal Opinion 92-369 illustrates the duty of loyalty is implicated when there is a failure to communicate the lawyer is retiring or a law firm is dissolving. This Opinion is supportive of the concept that the duty of loyalty is implicated when the lawyer does not plan for someone else to handle the law practice when there is a break in the law practice. We suggest explaining that the duty of loyalty requires that appropriate planning be made to ensure the clients’ interests are placed ahead of the lawyer’s personal interests that may overwhelm the lawyer’s decision-making ability in the event of a serious illness.

We agree that the duty to *communicate* is implicated if the lawyer is unable to practice law, whether this break from practicing law is temporary or permanent. (Rule 1.4). In particular, we agree with the second paragraph of section D, which emphasizes the importance of advance planning by the lawyer to address an unexpected inability to practice, i.e., the need to designate another attorney or staff member to communicate with the lawyer’s clients on how their matters should be handled going forward.

For the duty to *avoid reasonably foreseeable prejudice* when terminating representation under Rule 1.16(d), we would suggest rephrasing the existing language in Section E which states, “While a lawyer’s death or incapacity does not typically involve a scenario

¹ Comment 5 to ABA Model Rule 1.3 provides: “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, in conformity with applicable rules, 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.”

in which the lawyer anticipates terminating the representation,” to affirmatively state: “A lawyer’s death or incapacity will effectively terminate the attorney-client relationship and a lawyer should plan for that event.”

IIA. Scenario 1.

At the end of the first sentence of paragraph #1, we appreciate the express citation to the ethical rules breached by the lawyer abandoning the clients because of the lawyer’s hospitalization. This would include Rules 1.1, 1.3, 1.4 and 1.16.

The second paragraph, which refers to the Lawyer A’s practice of setting up an out-of-office message on the lawyer’s email and voicemail and serving a Notice of Unavailability to opposing counsel, should also expressly cite to Rule 1.1 and Rule 1.4, since in Scenario #1, deadlines were missed and the clients were not informed of these significant developments. We also note that the final clause of the last sentence of the second paragraph (“violation of Lawyer A’s duty of competence ...”) lacks a verb. We are unsure whether COPRAC intended to draw a conclusion, i.e., that the listed deficits in the preceding clauses constituted violations of both the duties of competence and communications. If that is the case, it should probably be a separate sentence.

The third paragraph should affirmatively state that Lawyer A breached Lawyer A’s ethical obligations to his or her clients by failing to appreciate the need for a succession plan and identify an “assisting lawyer” to step in when Lawyer A was unable to provide competent legal services. This includes providing access to passwords and access codes to enable the clients’ interests to be protected. The last sentence starts with the phrase, “[a]lternatively, Lawyer A could have prepared a list of important passwords and access codes with *someone* only in the event of an emergency.” (Emphasis added.). Given the concerns regarding confidentiality expressed in the following footnote (note 7), we recommend that you substitute “another lawyer” for “someone.”

Scenario 2: Ethical Duties Implicated for Assisting Lawyers.

This hypothetical focuses on Lawyer B’s duties to Lawyer C’s clients in the event of an “unexpected event,” which causes Lawyer C to be unable to practice law. The Opinion distinguishes between the Assisting Lawyer, who is simply stepping in on an administrative level and the successor lawyer, who ultimately takes over the handling of Lawyer C’s existing case load. In agreeing to assist Lawyer C, Lawyer B will need to assess whether he or she has the capacity to undertake these responsibilities given existing and future workload. Excessive work demands are not a defense to a Rule 1.1 violation. Depending on his or her workload when assistance is required, the lawyer may not have the bandwidth to handle on an emergency basis Lawyer C’s law practice.

The addition of the second paragraph, starting with the sentence “[i]n most cases,” contains a good discussion regarding the ethical obligations Lawyer B has in assisting with Lawyer C’s law practice. However, we suggest reworking the existing subsection 1 (The Existence of an Attorney-Client Relationship between Lawyer B and Lawyer C’s clients) to explain that Lawyer C’s duty to preserve the client confidences may be implicated unless there has been consent by the clients to disclose confidences to the assisting lawyer. Lawyer B may be handicapped in providing the assistance expected by Lawyer C if he or she cannot freely communicate with Lawyer C’s clients without fear that confidential information of Lawyer C’s clients may not be protected without clear parameters defining the scope of the assisting lawyer’s responsibilities. The first paragraph discussing whether there is an automatic attorney-client relationship with Lawyer B is confusing.

In the second paragraph, we do not believe the beginning sentence (“In most cases, the role of an assisting attorney (sometimes called Successor Attorney or Practice Administrator) is simply to step in and respond, administratively, to an unexpected event”) is necessarily true, particularly when Lawyer C has active litigation cases. Under certain circumstances, Lawyer B may be required to make special appearances in court and/or arrange for continuances of hearings to protect Lawyer C’s clients’ rights. We suggest that the Opinion include the following sentence: “Before undertaking an attorney-client relationship with any of Lawyer C’s clients, Lawyer B must undertake a conflict check and comply with Rules 1.7, 1.9 and 1.18.”

The Opinion’s emphasis on the importance of communicating with Lawyer C’s clients is important regardless of whether Lawyer C’s “unavailability” is temporary or permanent.

Scenario 3: Law firm’s duty to plan

We suggest emphasizing the ethical responsibilities of the law firm’s managing partner to “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm comply with these rules and the State Bar Act.” (Rule 5.1(a)). Comment [1] to Rule 5.1 requires that the law firm establish “internal policies and procedures” to make sure that the lawyers in the firm comply with their ethical responsibilities. A senior lawyer who is practicing “alone” in a remote office presents a potential risk to the lawyer’s clients that his or her competency skills will erode without having colleagues available to assist in representing clients.

The Opinion should make it clear that the Managing Partner cannot ignore his or her ethical responsibilities to establish policies and procedures to ensure that all of the firm’s lawyers, including Lawyer D, comply with their ethical duties, including the duty of competency. The Managing Partner has an ethical duty to affirmatively act to ensure that Lawyer D is currently practicing competently, that there is a concrete succession

plan which may involve training another member of the firm in the discrete practice area and certainly ensuring that the clients are informed of significant developments, including the team that is supporting Lawyer D's practice. (Rules 5.1, 1.1, 1.3, 1.4). Based on the hypothetical, since none of the other lawyers in the satellite office practice in the same specialized field as Lawyer D, the firm clients that are receiving these specialized legal services from Lawyer D are at risk if there is either a decline in Lawyer D's competence or an abrupt break in his or her ability to practice.

In the 5th paragraph on page 11, starting with the phrase, "[i]f Law Firm does not have a plan for addressing such circumstances," we suggest affirmatively stating that the Law Firm Manager "shall" make "reasonable efforts" to ensure that the lawyers comply with the ethical rules. Comment 1 to Rule 5.1 clarifies that this obligation is not optional but is mandatory. "Paragraph (a) *requires* lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed, for example, to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised." (Comment 1, Rule 5.1) (Emphasis added.) The law firm's measures to satisfy its obligations under Rule 5.1(a) depend on the firm's structure and nature of the practice. (Comment 2, Rule 5.1).

Conclusion

We consider succession planning to be an ethical duty of California lawyers. We suggest that the second sentence of the concluding paragraph be revised as follows: "~~Succession planning may mitigate or avoid the risk of harm or prejudice to clients that may otherwise occur when a lawyer is unable to practice law~~ is ethically required to protect the clients' interests."

Sincerely,



Suzanne Burke Spencer, Chair
California Lawyers Association Ethics
Committee

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	Jeffrey Corcoran
City	Hemet
State	California
Email address	JeffreyC92021@yahoo.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>A lawyer should not be responsible for planning of a contingency regarding an inability to practice law. A client would be "prejudiced" regardless if an attorney made any sort of plan or not as any new attorney would not be familiar with a case. Further an attorney would not have any way of knowing if a client would approve of such contingent attorney and seeking such would impose undue tasking and undue confusion on the public. Any such occurrence should be handled on a case by case basis without any overhead imposed on attorneys to have to make unreasonable plans if such should occur.</p>

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	Deborah G. Corlett
City	Santa Rosa
State	California
Email address	dcorlett@obrienlaw.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>Unless guidance and resources are available for acceptable succession planning, the rule is too vague. Is there an age or event after which a lawyer should actively put in place a succession plan? What is an acceptable succession plan? What should be done if no alternative attorneys/ representation for the client are available for a succession plan? The need for successive attorney representation can occur due to unexpected events to any attorney of any age or health condition.</p> <p>I am not aware of another profession that requires the practitioner to have in place a succession plan.</p>

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	George J. Gliaudys
City	West Covina
State	California
Email address	maplgrv24@yahoo.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>The proposed ethical mandate for a law firm to have a succession document should be flexible in application depending on the nature of the law practice and the size of the firm. A small - sole practitioner firm - might need to inform the client of the risk of the practitioner's incapacity to continue representation in the matter should there be some basis for the risk such as a health condition, age, or fiscal instability of the firm but otherwise there is no need to make it mandatory under any other circumstances since there is little chance of interruption in the services to be rendered. For large size firms such as those with 50 or more lawyers, the continued representation is assured with little risk inasmuch as other lawyers within the firm can take over the case should the principal attorney is unable to continue and accordingly, again, a voluntary advisement might be given to the client of such a contingency but there is no reason to make it mandatory as an ethical obligation. Accordingly, the opinion should stress a voluntary approach to this rather than mandate a blanket obligation.</p>

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	Jonathan Huber
City	Elk Grove
State	California
Email address	jhuber@huberfox.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	Yes
Professional Affiliation	Professional Responsibility & Ethics Committee (PREC)
Name	Erin Joyce
City	PASADENA
State	California
Email address	erin@erinjoycelaw.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	Please see the attached letter dated June 3, 2024, which has been approved by the President of the Los Angeles County Bar Association. Thank you.
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	2024-06-06_Final_PREC_Comment_On_Proposed_Interim_Opinion_No._20-0002.pdf (407 KB)



LOS ANGELES COUNTY BAR ASSOCIATION

444 South Flower Street, Suite 2500 | Los Angeles, CA 90071

Telephone: 213.627.2727 | www.lacba.org

June 3, 2024

Proposed PREC Comment On Proposed Interim Opinion No. 20-0002

Dear COPRAC:

This comment is written on behalf of the Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association (the “Committee”), with respect to Proposed Opinion Interim No. 20-0002.

We appreciate that COPRAC has given the Committee another opportunity to contribute to the public comment on this important opinion.

We agree that a lawyer must consider how clients will be serviced in case the lawyer has an expected or unexpected absence. However, we are concerned this opinion blurs the line of what must be done to comply with ethical rules as opposed to suggested best practices. For example, Discussion, Section I. on page 4, states that to comply with ethical obligations, a lawyer must take affirmative steps to assess the need for a succession plan. In the next sentence, COPRAC cites to the Rutter Guide that the lawyer should have a plan in place. Similarly, Paragraph C. of Section I on page 5, citing to the ABA, states that a lawyer should have a succession plan in place. The Committee suggests that the opinion more clearly delineate between what is required and what is recommended.

The opinion states that to comply with the ethical rules, a lawyer must engage in an assessment of whether the lawyer needs a succession plan (see Introduction, second full paragraph on page 2; Discussion, Section I on page 4). However, the opinion does not offer guidance on how to undertake that assessment. In the discussion of Scenario 1 in Paragraph A. of Section II in the second full paragraph on page 7, the opinion suggests that the lawyer should have assessed the need for a succession plan based on firm size, nature of the practice, and preexisting health issues. Are there other factors a lawyer should or must consider? The Committee suggests the opinion provide guidance to lawyers on assessing the need for a succession plan.

We have the following additional comments:

The opinion references rule 1.16(d) (in Discussion Section I., Paragraph E., page 6). We suggest including mention of rule 1.16(a)(3) and (b)(8), which address terminations based on a lawyer's mental or physical condition.

The opinion mentions the duty to safeguard client funds under Section I., Paragraph F., page 6. A lawyer is responsible for the trust account and should consider carefully who is given access to the trust account. See, *e.g.*, the first bullet point on page 14 of the Handbook on Client Trust Accounting for California Attorneys

(<https://www.calbar.ca.gov/Portals/0/documents/ethics/Publications/Portals0documentsethicsPublicationsCTA-Handbook.pdf>).

There are competing concerns between the lawyer controlling the trust account and providing a way for another person to access that account in case of the lawyer's unavailability, and the Committee suggests COPRAC at least highlight that here.

In Paragraph C. of Section II on page 11, there is a numbered list of issues the managing partner should consider, presumably for succession planning. The number 4 issue is to consider the reasonable approach for supervising the lawyer's work. Although that question might be important for determining whether that lawyer is acting in accordance with ethical requirements, it is unclear how that question would factor into the succession planning. The last paragraph on this page 11 also speaks in terms of a Law Firm's compliance with the rules. However, the rules impose obligations on lawyers, not law firms, and the Committee suggests maintaining this distinction.

We commend COPRAC for its continuing efforts. Thank you for the opportunity to submit these comments. We hope that additional consideration will be given to the matters we have raised.

Very truly yours,

Professional Responsibility & Ethics Committee (PREC)

A handwritten signature in blue ink, appearing to read 'Erin Joyce', with a stylized flourish at the end.

Erin Joyce, 2023-24 President

RC:EJ:dv

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	HELEN LE prose
City	Pleasant Hill
State	California
Email address	tuyetngatuyetle@outlook.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>What is the law allow from director State Bar California to all attorney (1-100) Violate from my civil right to my human right before State COURT /FEDERAL COURT NORTHERN DISTRICT CALIFORNIA and SUPREME COURT OF CALIFORNIA ?</p> <p>My civil right and my human right were Violate It stay at CAMERA FEDERAL BUILDING date 11/2/2023 and date 11/29/2023 at 450 GOLDEN GATE Floor 19 and room ceremonial San Francisco CA 94102 (It was report Before FBI the same date date 11/2/2023 . BUT Date 11/29/2023 I was expel direct OUT OF FEDERAL BUILDING by MARSHAL supervisor US NORTHERN DISTRICT CALIFORNIA , so that I none chance report into FBI again)</p> <p>I will be attach some document from State BAR CALIFORNIA sent to me " ONLY " and I am not state BAR court help me by director none allow although I was sent complaint too much time . BUT my mail certified sent into State bar Court of CALIFORNIA , I am not FEED BACK from STATE BAR court</p> <p>i petition to attach CONGRESS OF US grant BUILD BACK BETTER for me . BUT now all my</p>

damage and suffer to be not BUILD BACK
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death in pain , It is not funeral COMPLIMENT
and It was wrong death in pain by AMERICAN
COP . ALSO my old brother were wrong death in
pain by CONGRESS OF US build up and the
base that is BY too much ATTORNEY (1-100)
and director state bar CALIFORNIA , all unite
Violate my civil right and my human right at
CALIFORNIA build up more injury /damage for
me
It is rule open all COURT at CALIFORNIA what
for ? JUDGE and CLERK appear what for
when...

... all my right were block by attorney (1-1000 at
US NORTHERN DISTRICT COURT OF
CALIFORNIA and DIRECTOR STATE BAR OF
CALIFORNIA

Why did expel me out of the room hearing about
CONSTITUTION OF THE RIGHT before
TEACHER DEAN SUPREME COURT ?

ORDER

MANDATE MOTION STATE BAR OF
CALIFORNIA COMPENSATION all my suffer
and total loss EMERGENCY

REASON

1/ DISCRIMINATE /MISCONDUCT by all
attorney (1-100) in NORTHERN DISTRICT
CALIFORNIA and EASTERN DISTRICT and
director STATE BAR OF CALIFORNIA when all
to be not my attorney

2/ MANDATE at COURT APPEALS NINTH
CIRCUIT SENT to me

QUESTION

Why did I am not BUILD BACK BETTER when
all my total loss and my suffer were erase more
by attorney and director Violate before FEDERAL
COURT and STATE BAR COURT, SUPREME

COURT CALIFORNIA when I was CONGRESS
OF US grant BUILD BACK BETTER for me ?
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CONGRESS OF US sent into CALIFORNIA and
grant BUILD BACK BETTER me , but I am not
BUILD BACK BETTER opposite block all my
right before all Court when I am citizen/human/
prose why ?
what is the law at CALIFORNIA and USA allow
Block my mouth /my face before prosecutor
,teacher DEAN and constitution of the right ?
Now all my damage and suffer to be not BUILD
BACK BETTER as : funeral for the first my son
was wrongfully death in pain , It is not funeral
COMPLIMENT when money from CONGRESS
OF US grant for me was ...

...Director state BAR and attorney (1-100)
Northern District CALIFORNIA unite violate

ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

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(248 KB)



The State Bar
of California

OFFICE OF CHIEF TRIAL COUNSEL

180 Howard Street, San Francisco, CA 94105

415-538-2193

Jason.Kwan@calbar.ca.gov

November 16, 2023

Delivered by Email

Helen Le
300 Longbrook Way 215
Pleasant Hill, CA 94523
lele12331@yahoo.com

RE: Case Number: 23-O-22649
Respondent: Ismail J. Ramsey

Dear Helen Le:

The State Bar's Office of Chief Trial Counsel has reviewed your complaint against Ismail J. Ramsey to determine whether there are sufficient grounds to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You filed a complaint against Mr. Ramsey, the U.S. Attorney for the Northern District of California. You allege Mr. Ramsey violated your human rights, closed or dismissed all of your cases, violated your right to trial, and violated your right to appeal. You allege you were denied access to the federal courthouse.

You explain that you were the plaintiff/appellant/petitioner in your cases regarding the deaths of your son, older brother, and parents. You state you are deaf and blind, but it is not clear whether those disabilities are related to your complaints. You also claim you were denied a default judgment on July 27, 2023.

You cite the following United States District Court, Northern District of California case numbers: 3:22-cv-08872, 4:22-cv-04375, and 4:21-cv-00566. You also cite the following Ninth Circuit Court of Appeal case numbers: 23-15295, 23-15485, and 21-15533. In your complaints, you filed against the United States Postal Office, the President of the United States, and the Director Administrative U.S. Court, claiming they are all responsible for the deaths of your family members.

According to the court's dockets, your cases were dismissed because: 1) the court deemed them frivolous, 2) the court found that your filings had numerous and various deficiencies, and 3) the entities you filed your complaints against have qualified immunity. Mr. Ramsey was not listed as an attorney-of-record in any of your cases.

You request the State Bar Court to open a hearing room to allow you appear before a judge to hear your complaints. You give no further explanation as to how Mr. Ramsey is related to any of your cases or related to the deaths of your family members.

Based on our evaluation of the information provided, we are closing your complaint. In order to investigate allegations of attorney misconduct, the State Bar needs specific facts which, if proved, would establish a violation of the attorney's ethical duties. Conclusions based on speculation and not supported by facts are insufficient to warrant investigation. We have determined that your complaint does not present sufficient facts to support an investigation of Mr. Ramsey.

The Office of Chief Trial Counsel ("OCTC") cannot act as your attorney or otherwise help you in legal matters connected with your complaint. For example, OCTC cannot give you legal advice or perform legal service for you (such as pursuing damages or other legal action against the attorney(s) involved in your complaint). You may have legal remedies available to you, but OCTC cannot advise you on your rights in a given situation or what you should do. The State Bar is not a court that can provide civil remedies to you.

As a result, you may wish to consult with an attorney to determine what options may be available to you. Our closing of your complaint is not a determination of the validity of any legal dispute you may have, but only that the allegations you have made do not support a finding that Mr. Ramsey violated the State Bar Act or the Rules of Professional Conduct.

For these reasons, the State Bar is closing this matter.

If you have new facts and circumstances that you believe may change our determination to close your complaint, you may submit a written statement with the new information to the Intake Unit for review. If you have any questions about this process, you (or your authorized designee) may call Trial Counsel Jason J. Kwan at 415-538-2193, or send the additional information by mail, or by email to Jason.Kwan@calbar.ca.gov. If you leave a voice message, be sure to clearly identify the lawyer complained of, the case number assigned, and your

telephone number including the area code. We should return your call within two business days.

If you have presented all of the information that you wish to have considered, and you disagree with the decision to close your complaint, you may request that the State Bar's Complaint Review Unit review your complaint. The Complaint Review Unit will recommend that your complaint be reopened if it determines that further investigation is warranted. To request review by the Complaint Review Unit, you must submit your request in writing, either:

- 1) Via email: Within 90 days of the date of this letter, by email to: CRU@calbar.ca.gov; or
- 2) Via United States Mail: Post-marked within 90 days of the date of this letter, by United States Mail to:

The State Bar of California
Complaint Review Unit
Office of General Counsel
180 Howard Street
San Francisco, CA 94105-1617

If you decide to send new information or documents to this office, the 90-day period will continue to run during the time that this office considers the new material. You may wish to consult with legal counsel for advice regarding any other available remedies. You may contact your local or county bar association to obtain the names of attorneys to assist you in this matter.

The State Bar cannot give you legal advice. If you wish to consult an attorney about any other remedies available to you, a certified lawyer referral service can provide the names of attorneys who may be able to assist you. In order to find a certified lawyer referral service, you may call our automated Lawyer Referral Services Directory at 1-866-442-2529 (toll free in California) or 415-538-2250 (from outside California) or access the State Bar's website at www.calbar.ca.gov and look for information on lawyer referral services.

We would appreciate if you would complete a short, anonymous survey about your experience with filing your complaint. While your responses to the survey will not change the outcome of the complaint you filed against the attorney, the State Bar will use your answers to help

Helen Le
November 16, 2023
Page 4

improve the services we provide to the public. The survey can be found at
<https://www.calbar.org/octc/intake>.

Thank you for bringing your concerns to the attention of the State Bar.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jason J. Kwan', with a horizontal line extending from the top of the signature.

Jason J. Kwan
Trial Counsel

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	Yes
Professional Affiliation	Orange County Bar Association
Name	Christina Zabat-Fran
City	Newport Beach
State	California
Email address	jmazo@ocbar.org
From the choices below, we ask that you indicate your position. (This is a required field.)	Support if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>May 29, 2024</p> <p>California State Bar Committee on Professional Responsibility and Conduct</p> <p>Re: COPRAC Proposed Opinion Interim No. 20-0002 (Succession Planning)</p> <p>Dear Sir/Madam:</p> <p>We are writing on behalf of the Orange County Bar Association ("OCBA") regarding the above-referenced proposed ethics opinion on succession planning. Founded over 100 years ago, the OCBA has over 7,000 members, making it one of the largest voluntary bar associations in California. The OCBA Board of Directors, made up of practitioners from large and small firms, with varied civil and criminal practices, of different ethnic backgrounds and political leanings, has approved these comments. We appreciate the efforts of the Committee to provide guidance on succession planning. However, we have some concerns with various parts of the discussion of the proposed opinion,</p>

as discussed below.

Do Lawyers Have an Ethical Duty to Have a Succession Plan?

Our initial critical question is: does a lawyer have an ethical duty to have a succession plan? It is unclear from the opinion. Unlike other states that require lawyers to have a succession plan such as Florida, Iowa, Maine and Michigan, California does not. Separately, on a page of the State Bar's website under a section titled "Transfer of estate planning documents," there is a statement that "California lawyers are encouraged to have a succession plan in place for the cessation of their law practice." [emphasis added].

In the Digest and on pages 4 through 6, the opinion groups several duties together to suggest that a lawyer has a duty to have a succession plan by stating that a lawyer who does not may expose ...

...clients to significant damage or prejudice. The opinion suggests that the duties of competence, diligence, communication and loyalty and duties to safeguard client funds and property and avoid reasonably foreseeable prejudice when terminating a representation obligate a lawyer to take affirmative steps to plan for the interruption or cessation of practice.

While we generally agree that the duties of competence and loyalty may obligate certain lawyers to have a succession plan, we do not fully agree that the duty of diligence and other mentioned duties impose such a responsibility. As noted in footnote 5 of the opinion, while some states provide a comment to those states' duty of diligence rule stating a lawyer may be required to develop a succession plan, California does not. The Digest also states that lawyers with active

caseloads have an ethical obligation to engage in an assessment of whether their professional responsibility obligations require a succession plan and, depending on such assessment, may be required to engage in succession planning. We recommend that, instead of stringing concepts together to suggest that a lawyer may have a duty to have a succession plan, the opinion be clear on if a plan is required or not. If a plan is required, then every lawyer has a statutory plan, as discussed in the next section below.

The opinion suggests that law firm managers have a duty to ensure that lawyers have a succession plan under Rule 5.1. This seems to be a stretch when it is unclear if lawyers have a duty to have a succession plan.

Statutory Succession Plans

If a lawyer has a duty to have a succession plan, then every...

... lawyer has statutory plans (1) if a lawyer dies, resigns, becomes an inactive licensee of the bar or is suspended pursuant to Business and Professions Code Sections 6180 et seq. and (2) if a lawyer becomes incapable of devoting time and attention to such lawyer's law practice pursuant to Business and Professions Code Sections 6190 et seq. These code sections provide that the State Bar or others can petition the court granting the State Bar jurisdiction over a lawyer's law practice and appoint an attorney to manage the practice. There is no reason to think these processes would be a greater burden on clients or a lawyer's estate. Rather, they might provide greater protection because of the court oversight.

What Constitutes a Succession Plan?

If a lawyer has a duty to plan, are the statutory succession plans sufficient? Is a written plan required, or would giving someone necessary passwords be sufficient? Malpractice insurance carriers often require lawyers to list the name of a lawyer who will handle their practice for them in the event of death or disability. Does submitting the name of a succeeding lawyer to a carrier constitute a sufficient plan? We recommend that the opinion clearly state what constitutes a plan.

Probate Code Sections

The Probate Code allows the conservator of a disabled lawyer's estate or the personal representative of a deceased lawyer's estate to file a petition to appoint the lawyer named in such lawyer's will to be a practice administrator who can seek to take control over the disabled lawyer's practice or deceased lawyer's practice. Also, if a lawyer transferred his or her economic interest to the trustee...

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Cite Only to California Resources

We recommend that the resources mentioned in footnote 2 be limited to California resources because some of the nationwide resources outside of California are not relevant. For example, one resource mentions that Arizona Rule of Superior Court 41, Comment [2] includes a mandatory requirement that lawyers plan for the transfer and disposition of client files, property or other client-related materials if a lawyer becomes unable or unwilling to discharge

their duties to current and former clients. As another example, a resource mentions that Maine Bar Rule 1(g)(12) provides that the Maine Board of Overseers shall maintain current information relating to all lawyers including the name of an active status attorney who has consented to serve as a proxy on behalf of the attorney.

Definition of “Temporarily”

What is the meaning of the word “temporarily” as used to advance the proposition that a succession plan is required when a lawyer is “temporarily” unable to practice law within the (1) Digest, (2) Instruction, (3) paragraph ID, (4) paragraph IIA and (5) Conclusion? It would

seem impractical for a succession plan to have to be implemented each time a lawyer will be temporarily out of the office due to a vacation, cold or otherwise. We recommend that the word “temporarily” as used in these...

... five sentences be defined to provide clear guidance.

Attorney-Client Relationship

All succession plans that provide for the transfer of a lawyer’s clients to a practice administrator or other designated person raise concerns regarding confidential client information, work product and attorney-client privilege issues. We recommend that these issues and the duty of competency of the successor lawyer, as mentioned in Scenario 2 of the opinion, be addressed in a separate opinion to provide clear guidance to a successor lawyer.

Delete Reference to Non-Relevant Concepts

We recommend deleting the first two sentences of the third full paragraph on page 2 of the opinion that state a succession plan is a good

business strategy, which creates opportunities for emerging talent and the orderly transition of new leadership. These sentences do not seem relevant to whether a lawyer has an ethical duty to have a succession plan.

Thank you for the opportunity to comment on this opinion.

ORANGE COUNTY BAR ASSOCIATION

Christina M. Zabat-Fran

2024 President

ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[COPRAC_No._20-0002.1.pdf \(2.28 MB\)](#)



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BAR ASSOCIATION**

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May 29, 2024

California State Bar Committee on Professional Responsibility and Conduct

Re: COPRAC Proposed Opinion Interim No. 20-0002 (Succession Planning)

Dear Sir/Madam:

We are writing on behalf of the Orange County Bar Association (“OCBA”) regarding the above-referenced proposed ethics opinion on succession planning. Founded over 100 years ago, the OCBA has over 7,000 members, making it one of the largest voluntary bar associations in California. The OCBA Board of Directors, made up of practitioners from large and small firms, with varied civil and criminal practices, of different ethnic backgrounds and political leanings, has approved these comments.

We appreciate the efforts of the Committee to provide guidance on succession planning. However, we have some concerns with various parts of the discussion of the proposed opinion, as discussed below.

Do Lawyers Have an Ethical Duty to Have a Succession Plan?

Our initial critical question is: does a lawyer have an ethical duty to have a succession plan? It is unclear from the opinion. Unlike other states that require lawyers to have a succession plan such as Florida, Iowa, Maine and Michigan¹, California does not. Separately, on a page of the State Bar’s website under a section titled “Transfer of estate planning documents,” there is a statement that “California lawyers are **encouraged** to have a succession plan in place for the cessation of their law practice.”² [emphasis added].

¹ Footnote 2 of the opinion cites a link that includes an October 2019 resource titled “American Bar Association Center for Responsibility Standing Committee on Public Protection in the Provision of Legal Services (PPPLS) Lawyer Succession Plans,” which lists Florida, Iowa, Maine and Michigan as states that mandate lawyers to have succession plans. We have not independently verified whether the information is accurate.

² The State Bar of California, *Successor Lawyer Duties When a Lawyer Dies* <https://www.calbar.ca.gov/Attorneys/Compliance-Records/Opening-and-Managing-Law-Office/Successor-Lawyer-Duties-When-a-Lawyer-Dies#:~:text=California%20lawyers%20are%20encouraged%20to,have%20been%20reported%20to%20us>

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³ Bus. & Prof. Code § 6180.5.

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⁴ Prob. Code § 2468 and Bus. & Prof. Code § 6185.

⁵ Prob. Code § 9764 and Bus. & Prof. Code § 6185(a)(c) and (f).

⁶ Prob. Code §§ 17200(22) or (23), respectively.

⁷ https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer-succession-planning-rule-chart.pdf

⁸ *Ibid.*

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Thank you for the opportunity to comment on this opinion.

ORANGE COUNTY BAR ASSOCIATION

A handwritten signature in cursive script, reading "Christina Zabat-Fran".

Christina M. Zabat-Fran
2024 President

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	Adele Schneidereit
City	Atascadero
State	California
Email address	adele@amslawoffices.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	Edward Tabash
City	Los Angeles
State	California
Email address	ETABASH@aol.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>If a lawyer, particularly a sole practitioner, has a varied caseload, it may be hard to find other attorneys who will pre commit to taking over each such case if the the sole practitioner becomes disabled. Some cases may be very difficult and not attractive to another lawyer to step and take over. Depending on the case, and the problems with it, there could no longer be sufficient client resources to pay for further counsel or too many lawyers may already be in line for a piece of a contingency, lawyers who are no longer on the case but have earned their quantum meruit share.</p> <p>Thus, as a practical matter, succession planning that would in advance secure a definite lawyer to take over each specific case that a sole practitioner may have, could very easily not be something that can be achieved.</p> <p>Let's not make this a hard and fast rule that will force lawyers with no disabilities or infirmities to leave the practice of law, because they could not secure a specific successor attorney for each matter that is currently being handled by the still-</p>

capable practitioner.

This rule would also impose the onerous burden on lawyers to not take new cases unless a succession plan, an attorney to take the case over in the event of incapacity, could be put in place, regardless of how unappealing the case might be by the time the initial attorney is no longer capable of practicing.

What if we think we have a succession plan in hand for each matter that we are handling only to discover, at the time we become incapacitated, that the attorney who initially agreed to be the successor, now wants to not take over because problems...

... with the case have emerged in between the time that attorney agreed to be the successor and the time the initial lawyer became unable to continue representation?

This should not be something that the Bar forcibly imposes on lawyers.

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	Edward Tabash
City	Los Angeles
State	California
Email address	ETABASH@aol.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	As a follow up to the comments I just submitted, if a succession plan must be in place for each case that a lawyer handles, what if, when the first succession attorney takes over a case from a now incapacitated lawyer, the attorney who took the case over can't find what is now a required successor to take over the case if the attorney, who took over the case from the now incapacitated lawyer, also becomes incapacitated later on. This could set in motion an endless chain reaction in which each attorney who takes the case over from a now incapacitated lawyer must find someone who agrees to take over the matter if the one who just took it over becomes incapacitated at some point.

Public Comment - Proposed Opinion 20-0002

Commenting on behalf of an organization	No
Name	Steve M. Wright
City	Citrus Heights
State	California
Email address	SWright200@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	What you really need to fix is the "complaint to hearing" process. See 19 O 16538. The 19 is the year this was started....I am being stone walled on what should be a slam dunk. In the while, the attorney is still out there screwing the public.