

Judge Pat E. Morgenstern-Clarren

You have a solo chapter 13 practice and are interviewing a candidate for a secretarial position. After you explain your office setup, the candidate asks what she should do in an emergency if she can't reach you. You reply: "Don't worry, I'm always available by cell phone, even on vacation." Reassured, she accepts the job and starts right away.

The next day you have an attack of appendicitis. While you are being wheeled into the surgical suite for an emergency appendectomy, your biggest client calls the office to say that she has just been served with a complaint and motion for a temporary restraining order; the motion is set for hearing in 30 minutes. The last thing you remember before the anaesthetic takes hold is someone rushing into the operating room, calling "Wait! Wait! Her secretary is on the line and has to talk to her."

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If you are like most chapter 13 attorneys who appear in front of me, you are a professional in every sense of the word. You attend to your clients' legal needs, participate in community activities, and enjoy your family and friends. You would never abandon a client, leave your colleagues in the lurch, or cause unnecessary pain to the people you love. And yet, you may be running the risk of doing this every day without even knowing it. How? By failing to have a written plan for what will happen to your practice if you suddenly become disabled or die.

Few people like to think about death or disability. And when they do think about it, they tend to say: "I'm in great health" or, "my grandmother lived to 100." This head-in-the-sand approach ignores the everyday emergencies that can interfere with legal practice, as in the anecdote above, and also ignores the realities of life. If you are in a chapter 13 solo practice or practice with a few other attorneys in an informal association, this is a critical issue to think about *before* the need arises, for two reasons.

The first reason to think ahead is found in the ABA Model Rules of Professional Conduct, a version of which has been adopted in all but two states. Rule 1:3 Diligence states that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." Comment 5 to the rule points out that:

"[t]o 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."

The second reason to anticipate death or disability is so that you do not hurt the people you care about the most. Last year, in this division of the Northern District of Ohio alone, we had the painful experience of seeing at least three attorneys with solo practices die unexpectedly and at relatively young ages. We also witnessed several difficult situations, short of death, where solo lawyers suddenly could not maintain their practices. None had a written plan for how to handle the work in their absence. Their clients felt abandoned and their families most likely were left with a business mess at the very time that they felt least able to address it. You would not want this to happen to your clients or your family.

Still think this is not about you? Have you ever had a “lightning flu” where you suddenly could not remember your own name or lift your head off the pillow? Gone into labor prematurely and had an unexpected C-section? What if one of these temporary disabilities struck on the day you were going to file a major case, just as the statute of limitations expired?

What to do? It’s relatively simple. Sit down and identify one or two attorneys who have the legal skills and personalities to handle your clients’ cases, then talk to those individuals to see if they are willing to serve. After you reach agreement, put it in writing. Give a copy to your covering attorneys, a copy to your staff, and a copy to your family. Put a copy with your living will and your health care power of attorney. Then, go back to enjoying your practice, knowing that you have met your professional obligations, and have protected your family from at least one of the exigencies of life.