



DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

Succession Planning:

Do Not Sabotage Your Law Career by Not Preparing for the Future!

As John Doe checked into the hotel where the Solo and Small Firms' conference was taking place, the hotel clerk inquired, "Do you intend to use your senior discounts today?" Momentarily, John was startled and refused to acknowledge the question. In fact, John thought to himself, "Should I sue the hotel for having their employees even ask such a question?" Within a minute, John quickly decided against a suit and instead, his next reaction was to look to his left, then to his right and finally turn-around to see if others were in line. Realizing that he was the only individual in line, John sharply replied to the hotel clerk, "No"!

Once John entered his hotel room, still agitated, he sat on the bed and looked carefully into the mirror. John could easily understand that he might look middle age at the very least — but senior?! Of course, we all change, but suddenly and without warning, John's denial melted. John accepted that he had become one of them — a senior. In fact as he looked at his reflection in the mirror, John wondered, "When did I become my father?"

And so, it comes to some of us in a variety of ways, for each of us at different times, our senior years. Generally, denial is commonplace. Most of us feel it; but we do not want to accept it. Plus, as Americans, we are living longer, healthier lives and many of us are choosing to work well past the traditional age of retirement.

Moreover, for many, the economy is dictating when, if ever, we will retire.

Lawyers are no exception. Some stay on for purely financial reasons, but a growing number of lawyers continue to work because it is their lifeline and their identity. For them, being forced to give up their practices because of senior years would be equivalent to giving up their lives. This is a multi-dimensional topic with many steps to be taken and pitfalls to avoid.

To Practice Law Is a Privilege Not a Right

Most lawyers want to live long, live well, and even continue to work at their profession. But, lawyers must realize that practicing law is a privilege, not a right. To retain that privilege, lawyers, especially those entrepreneurs who practice solo, have the responsibility to plan to protect clients' interests in the event of their death, disability, impairment, or incapacity. This is a difficult topic to approach, particularly if the older person does not see the need to plan.

Clifton Barnes, in his article, "Time to Go: Helping Lawyers Retire with Dignity," writes, "An experienced, well-regarded attorney has given his heart and soul to the profession and his clients — and served them well. He's not yet ready to retire. But, due to aging, his hearing is going, his memory is spotty, and he's no longer serving his clients well." Is that

a fictional tale? A rare occurrence? No, not at all. Quoting John T. Berry, who is Legal Division Director at The Florida Bar and chairs a committee studying the issue of aging lawyers. Mr. Berry explains further that "Bar counsel in every state I've talked to have at least one, and usually many more, such stories about a very experienced attorney with a great reputation who has been put in a situation where they have harmed the public." He elaborates: "You certainly have to look at it on a case-by-case basis. There are some lawyers very active at 75 and practicing better than those in their 40s. But, then again, there are some in their 50s who are burned out."

In researching this topic, one law student (who prefers not to be named) still wishes more information were available when the sole-practitioner for whom she worked became chronically ill at age 70 and subsequently died at age 72. The law student stated that "the lawyer was healthy all of his life and thought that he would practice until he was 90." The law student added that she found the courage to tell the attorney to stop trying cases and even to stop driving to the office, but so many other problems might have been avoided had detailed planning been done ahead of time. In fact, the law student emphasized that the entire experience drastically changed the lives of the parties involved both prior to and after the attorney's death.

Of course, we do not live in a perfect world and there are many lawyers who do not plan ahead and for some it is too late to do so. In many instances, the lawyer continues to attract clients, but is unable to keep up with the pace of his or her practice. Moreover, whether because of illness or senility, the lawyer may forget to appear in court, miss meetings, and fail to respond to pleadings, letters, emails, or voicemails. When and if death occurs, the lawyer may leave behind stacks of files and boxes without any semblance of organization or information as to where files may be found.

Therefore, realistically, the most important gift we can give ourselves relative to retirement is the gift of “being prepared.” Unfortunately, while natural aging dictates that at some point the deterioration of mind and body may require a lawyer to call it quits, a lawyer may also become chronically ill or disabled. Often, this happens before he or she is otherwise ready — financially or mentally — to stop practicing. Subsequently, a peer or friend may be left with closing a law practice due to an untimely health problem or unplanned retirement. Or worse, disciplinary counsel may have no alternative but to file Court papers for a conservator to be appointed to protect the clients when a lawyer dies or is incapacitated.

Plan to Say Goodbye While You Are Able

Unfortunately, anxiety, fear, and avoidance are among the primary reasons that many attorneys fail to plan for retirement. Fortunately, however, for the astute attorney there is ample information and support available for you to take time now and prepare for the future while you are able.

DE-LAP offers transition networking in the way of peer support through mentors and committee volunteers, transitional (change) counseling and coaching, as well as (a limited amount of) informational checklists and sample forms, articles, links and other resources.


Remember John? As soon as he returned from the conference, succession

planning and implementation was on his mind. Although John was not ready to retire, he put into motion plans that would not only protect his clients, but would allow him to eventually say goodbye to the practice of law with dignity.

Other strategies John decided on:

- He went on the DE-LAP website, as well as the ABA and Malpractice Insurance websites, to obtain check-lists and other forms to have a succession plan ready should he become mentally and/or physically unable to practice law.
- He would meet with a financial planner to form realistic expectations about income, expenses, and lifestyles.
- He would build up his social network prior to retiring (e.g. by joining an organization or group of people with similar interests or even mentor younger attorneys).
- He would develop a repertoire of ways to spend his time (hobbies, interests, accomplishments, etc.) if and when he does retire.

For more information concerning this topic and/or other matters dealing with quality of life and quality of profession, call us. DE-LAP is here to provide you, the lawyers in Delaware, and the profession in general, with support and education. We encourage you to use DE-LAP’s confidential, free services: call (302) 777-0124, or email cwaldhauser@de-lap.org. Go to www.de-lap.org and “click” on Law Office Management/Transition to find generic forms, articles, and links to help you prepare for the future.

Do not procrastinate! New classes forming for Procrastination Prevention. Call or email Carol P. Waldhauser for more information. 

Carol P. Waldhauser is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at cwaldhauser@de-lap.org.

Getting help does not sabotage your career... but *not* getting help can.

The Delaware Lawyers Assistance Program (DE-LAP) was created to confidentially help Judges and Lawyers with substance abuse/dependence and/or mental and physical health problems.

Carol P. Waldhauser
Executive Director

Direct: (302) 777-0124
Toll-Free: 1-877-24DE-LAP
Emergency Toll-Free Hotline:
1-877-652-2267

e-mail: cwaldhauser@de-lap.org
website: www.de-lap.org

