

THE DE-LAP ZONE:

Take The Time To Reflect & Prepare Now

By: Carol P. Waldhauser

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

And so it comes to all 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 don't 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. Needless to say, this is a multi dimensional topic with many steps to be taken and pitfalls to avoid. As lawyers, however, we must remember that practicing law is a privilege not a right.

To Practice Law Is A Privilege Not a Right...

Bottom-line, 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 he/she have harmed the public." He elaborates: "You certainly have to look at it on a case-by-case basis, he adds. "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 seventy and subsequently died at age seventy-two. The law student stated that "the lawyer was healthy all of his life and thought that he would practice until he was 90. Ironically, 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 changed drastically 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/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 e-mails and/or voice-mails. Then 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 Good-Bye While You Are Able...

Unfortunately, anxiety 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.

In fact, recently The Office of Disciplinary Counsel and The Delaware Lawyers Assistance Program (DE-LAP) through The DSBA held a seminar on: Closing and Retiring From A Law Practice. More specifically, on December 16, 2015. From that seminar a guides and checklists, specific to the Delaware Bar and Rules of Professional Conduct were available. Also, basic generic forms were discussed and made available through the DE-LAP either in hard-copy or on the website (go to www.de-lap.org and click on Law Office Management “Transition”) such as:

- Checklist for Lawyers Planning to Protect Clients Interest in the Event of the Lawyers Death, Disability, Impairment or Incapacity;

- Checklist for Closing Another Attorney’s Office

- Checklist for Closing Your Own Office

- Sample Forms

- Articles, Rules Formal Opinions, links and other resources.

Remember John? As soon as he returned from the conference, 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 good-bye to the practice of law with dignity. Other strategies John decided on:

He would start some volunteer work with pro-bono.

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.) as, if and when he does retire.

The issues discussed in this seminar were so important, that DE-LAP is instituting a Lunch and Learn Workshop once per month and an on-going support group to design a blueprint for retirement from the law. For more information, I encourage you to use DE-LAP's confidential, free services. Call (302) 777-0124 or email cwaldhauser@de-lap.org. Remember, DE-LAP is here to provide you, the lawyers in Delaware, and the profession in general, with whatever support and education we can. AND WATCH FOR NOTICES STARTING IN FEBRUARY 2016 FOR OUR LUNCH AND LEARN RETIREMENT PROGRAM.