

NEW YORK STATE BAR ASSOCIATION (NYSBA)
SENIOR LAWYERS SECTION (SLRS)

LAW PRACTICE CONTINUITY COMMITTEE (LPCC)

REPORT FOR AUGUST 11, 2009 MEETING

TO: SLRS EXECUTIVE COMMITTEE

MEMBERS, SLRS LPCC

FROM: ANTHONY R. PALERMO

Background Information

As of June 1, 2009, the former NYSBA Law Practice Continuity Committee (NYSBA LPCC) was discharged and its mission was assigned to a new LPCC Subcommittee within the NYSBA's Law Practice Management Committee (NYSBA LPM), Chaired by Gary Muenneke (gmunneke@law.pace.edu). All former members of the NYSBA (LPCC) agreed to serve on the new Subcommittee, but as of this writing, the new Subcommittee does not have a Chair. Prior to the reallocation of the work of the NYSBA LPCC, the NYSBA Senior Lawyers Section (SLRS) established its own Law Practice Continuity Committee to pursue objectives similar to those of the former NYSBA LPCC and now those of the new Subcommittee within LPM. The SLRS LPCC wishes to coordinate its activities and efforts with those of the new LPCC Subcommittee within the NYSBA LPM, which has scheduled an 2009-2010 organizational meeting in New York City on September 1, 2009.

A major work-product of the former Special Committee, prepared over a five-year period and published in 2005, was a volume entitled: "Planning Ahead: Establish an Advance Exit Plan to Protect Your Clients' Interests in the Event of Your Disability, Retirement or Death". This Planning Ahead Guide, which contains a broad range of check lists and forms to be used in preparing for and implementing various phases or transitions in the practice of law, should be updated from time to time. The Guide continues to be available as a professional courtesy to all lawyers, members and non-members of the NYSBA, at www.nysba.org/planningahead. The Guide may also be located at the NYSBA website under "Sections/Committees", and then clicking on Senior Lawyers Section or in the Solo or General Practice Section. Hard copies continue to be available at minimal cost of \$12.00 to NYSBA members and \$18.00 to non-members. Call the NYSBA at 800-487-5618 and reference Product Number 4170 when ordering.

Another major product of the former NYSBA LPCC was the drafting of proposed Uniform Court Rules outlining procedures for "Caretaker Attorneys" to address situations involving lawyer absence or unavailability in unplanned situations or where there has been no or inadequate advance planning for transition or succession. The proposed Uniform Court Rules were approved by the NYSBA House of Delegates in June 2005, with some minor changes, and were referred to the Administrative Board for consideration. We are informed that no action has been taken to adopt the proposed Uniform Court Rules by the Board or any Appellate Division, although the subject continues to be evaluated by each Judicial Department.

Immediate Past NYSBA President Bernice Lieber and current NYSBA President Michael Getnick have been and continue to be actively engaged in efforts with the Administrative Board concerning these matters and we are advised that the subject scheduled to be considered at an Administrative Board Meeting in August 2009.

In August, 2007, the Senior Lawyers Division (SLD) of American Bar Association (ABA), with the co-sponsorship of the NYSBA and the Monroe County Bar Association (MCBA) succeeded in gaining

approval of Recommendation # 105 which established an ABA policy urging Courts and Bar Associations to develop, adopt, promote and implement programs and procedures to encourage lawyers to plan for law practice contingencies by voluntarily designating in advance another lawyer who would be willing and able to assume the lawyer's practice or assist in the transfer of client matters, papers and electronic files in the event mental or physical disability, death, disappearance or suspensions or other inability to practice law. (See Reference materials cited below for exact content of the adopted resolution and the Report submitted in support.

Recently, the Board of Trustees of the MCBA approved a pilot project which will establish a Confidential Law Practice Registry which will enable lawyers, members and non-members to designate in advance, at any age, the name of a lawyer who has agreed to assist clients in the transfer of legal files and matters if and when the client's lawyer becomes unable to practice law for whatever reason. Details as to the implementation of the MCBA Law Practice Registry program are expected to be published in the near future. They will most likely be available at the MCBA web site, www.mcba.org, or by contacting Mary Corbitt, MCBA Executive Director at mcorbitt@mcba.org.

Law Practice Continuity Committee Membership Involvement Needed

We continue to invite and welcome participation from any member of the NYSBA SLRS LPCC as we plan ahead. The LPCC will conduct its affairs, primarily, by using electronic means of communication. We will meet in person only locally and informally, other than at section-wide activities, such as the NYSBA Annual Meeting in NYC, or at the upcoming Fall Meeting in conjunction with the NYSBA Elder Law Section at the Sagamore Hotel on Lake George. The LPCC encourages and supports local bar association activities within the broad "Mission" encompassed within the Committee's charge, and urges all its more than eighty members to join forces with other interested lawyers at the local bar level.

Please send me your suggestions for Committee projects, publications and activities. Also, please volunteer to identify and develop specific programs which address the purposes of the NYSBA SLRS LPCC.

August 7, 2009

Respectfully submitted,

Anthony R. Palermo, Chair,
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SELECT REFERENCE MATERIALS

FOR INFORMATION RELATING TO "PLANNING FOR LAWYER RETIREMENT, DEATH OR DISABILITY", GO TO THE ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, WHICH MAY BE FOUND AT: <http://www.abanet.org/cpr/clientprof/client.html#Retirement>.

For example see the following ABA and Other National Information:

- Chart – State by State Caretaker Rules When Lawyer Disappears, Dies, or Is Declared Incompetent - <http://www.abanet.org/cpr/clientpro/caretaker.pdf>
- How to Sell and/or Close a Law Firm: Workout with the Experts (Online audio course) - <http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=CET08HTSI>
- Being Prepared: A Lawyer's Guide for Dealing with Disability or Unexpected Events - <http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5150423>
- ABA Formal Ethics Opinion 92-369 - Disposition of Deceased Sole Practitioners' Client Files and Property - <http://www.abanet.org/cpr/clientpro/92-369.pdf>
- ABA Formal Opinion 03-429 - Obligation with Respect to Mentally Impaired Lawyer in the Firm - <http://www.abanet.org/cpr/clientpro/03-429.pdf>
- ABA Formal Opinion 03-431 - Lawyer's Duty to Report Another Lawyer Who may Suffer from Disability or Impairment - <http://www.abanet.org/cpr/clientpro/03-431.pdf>
- ABA Model Rules of Professional Conduct Client-Lawyer Relationship Rule 1.3 Diligence - Comment - http://www.abanet.org/cpr/mrpc/rule_1_3.html
- Your ABA – Eye on Ethics “Breaking up is Hard to Do” (March, 2008) - <http://www.abanet.org/media/youraba/200803/article11.html>
- Your ABA - Eye on Ethics “When Lawyer Becomes Mentally Impaired” (June 06) - <http://www.abanet.org/media/youraba/200606/article01.html> (See related Letter to the Editor re: June 06 column) - <http://www.abanet.org/media/youraba/200607/article02.html>
- Your ABA- Eye on Ethics “When a Lawyer Dies” (March 06) - <http://www.abanet.org/media/youraba/200603/article01.html>
- ABA Policy on Advance Designation of Caretaker or Surrogate Lawyer - <http://www.abanet.org/leadership/2007/annual/docs/hundredfive.doc>
- ABA Model Rules for Lawyer Disciplinary Enforcement, Rule 28 - <http://www.abanet.org/cpr/disenf/rule28.html>
(Appointment of Counsel to Protect Clients' Interests When Respondent Is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies)
- GP-Solo Magazine “What Happens When a Lawyer Dies?” - <http://www.abanet.org/genpractice/magazine/1998/spring-bos/masaleris.html>
- ABA Commission on Second Season of Service - <http://www.abanet.org/secondseason/>
- NOBC-APRL Joint Committee on Aging Lawyers - Final Report - <http://www.aprl.net/pdf/NOBC-APRL.pdf>

State Information

- Alabama State Bar “Things to Consider Before Closing Your Solo Practice” - <http://www.alabar.org/lomap/articles/closing.pdf>
- State Bar of Arizona Ethics Opinion 04-05 - <http://www.myazbar.org/Ethics/opinionview.cfm?id=514>
- Carolina State Bar, Lawyers in Transition - http://www.scbabar.org/member_resources/practice_management_pmap/winding_down/lawyers_in_transition/
- Rules Regulating the Florida Bar Rule 1-3.8, Right to Inventory - <http://www.floridabar.org/divexe/rttfb.nsf/FV/4A31D2835FF12AD685256EA7005B3860>
- The Florida Bar Journal, “*Big Shoes to Fill: The Job of the Inventory Attorney*” - <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/8c9f13012b96736985256aa900624829/f9cc3ca89cec141785256b4b0055165f?OpenDocument>
- Indiana Rules for Admission to the Bar and the Discipline of Attorneys Rule 23, Section 27, “Attorney Surrogates” - <http://www.in.gov/judiciary/orders/rule-amendments/2007/admission-discipline-091007.pdf>
- Res Gestae (Indiana State Bar Association), “The Graying of the Legal Profession” - http://www.abanet.org/cpr/clientpro/res_gestae.pdf
- Maine Board of Overseers of the Bar Handbook for a Receiver of the Law Practice of a Disabled or Missing or Deceased (“DMD”) Maine Attorney - <http://www.mebareoverseers.org/Home/Maine%20DMD%20Receiver%20Handbook%20Edition%202.pdf>
- Missouri Bar, Planning Ahead: A Guide to Protect Your Client's and Your Survivor's Interests in the Event of Your Disability or Death - <http://www.mobar.org/3f8a2f55-4407-44a2-ba10-39396c2d790c.aspx>
- State Bar of New Mexico, “Closing a Law Office: New Mexico Guide for a Third Party Closer” - http://www.nmbar.org/Content/NavigationMenu/Attorney_Services_Practice_Resources/Law_Office_Management1/NM_Guide_to_Closing_a_Law_Office/NMguideclosinglawoffice.pdf
- Oregon State Bar Bulletin, “*Plan Ahead*” - <https://www.osbar.org/publications/bulletin/05jul/practice.html>
- Ethics Department of the Virginia State Bar, “Planning Ahead: Protecting Your Client’s Interest in the Event of Your Disability or Death” - <http://www.vsb.org/publications/brochure/planning.html>