LAW PRACTICE
SUCCESSION/EXIT PLANNING GUIDE

E. William Harvit, Esquire
1606 Ridgeview Road
Charleston, West Virginia 25314
bharvit@outlook.com
304.545.8199 (Mobile)

Anthony Mazelon, CWA
Vice President
Financial Advisor
The Mazelon Chambers Neff Group
200 Association Drive, Suite 100
Charleston, West Virginia 25311
AMazelon@RWBaird.com
304.340.3770 (Office)

E. William "Bill" Harvit is a graduate of West Virginia University, where he received a Bachelor of Science in Business Administration, and a Doctor of Jurisprudence. He has practiced law in Charleston, West Virginia since 1987, providing representation to individuals and businesses.

Anthony "Tony" Mazelon is a graduate of West Virginia University, where he received a Bachelor of Science degree in Industrial Engineering and a Master's in Business Administration. He is First Vice-President and a Chartered Wealth Advisor with RW Baird & Company, specializing in Comprehensive Wealth Management services and Customized Advice. He focuses on Business Succession, Retirement, Education and Trusts & Estate.

LAW PRACTICE SUCCESSION/EXIT PLANNING GUIDE

Table of Contents

			Page
	NOTE		3
I.	IMMEDIATE SHORT-TERM ACTIONS TO PROTECT YOUR CLIENTS, YOU, YOUR HEIRS & OTHERS		
	A.	Introduction	4
	B.	Preparing and Informing Your Successor Attorney	6
	C.	Preparing and Informing Your Clients	8
	D.	Notice to Liability Insurance Carrier and State Bar Association	9
	E.	File Retention and Disposal	10
	F.	Disposing of Client Funds or Property	11
	G.	Extended Reporting Endorsement ("Tail Coverage")	12
	H.	Provisions for Last Will and Testament	14
II.	LONG-TERM SUCCESSION/EXIT PLANNING TO CAPITALIZE ON VALUE AND PRESERVE WEALTH		
	A.	Introduction	16
	B.	Assembling a Team	16
	C.	Law Firm Valuation	17
	D.	Methods of Calculating Value	18
	E.	Finding a "Buyer" and Financing Options	19
III.	LAW PRACTICE SUCCESSION/EXIT PLANNING AGREEMENT (SAMPLE)		22

LAW PRACTICE SUCCESSION/EXIT PLANNING GUIDE
By E. William Harvit and Anthony Mazelon

NOTE

This Guide is primarily directed toward single practitioners and small law firms, those with five or fewer attorneys. Larger law firms add unique issues and challenges (*e.g.*, taking care of "Founders," retirement mandates or options, evaluating qualified retirement plans, etc.) which are beyond the scope of this Guide.

This Guide is divided into three parts: The first part pertains to immediate short-term actions that you may take to protect your clients, you, your heirs, and others. The second part pertains to long-term planning to preserve and perhaps enhance the value of your firm for management and financial transition. The third part provides a sample Law Practice Succession Planning Agreement which will provide some guidance in starting the process.

For attorneys who are considering or beginning the process of Law Practice Succession/Exit Planning ("SEP" or "plan"), we realize that no two law firms are exactly the same and that the circumstances surrounding your practice may require additional considerations and modifications to the sample Law Firm Succession Planning Agreement contained herein.

SEP is extremely important to your clients, you, your heirs, and others. It is a "process" and not an "event" which can take a considerable amount of time - especially long-term SEP. We hope this Guide provides enough information for you to begin this vital process.

I. IMMEDIATE SHORT-TERM ACTIONS TO PROTECT YOUR CLIENTS, YOU, YOUR HEIRS & OTHERS

A. Introduction

Because of aging lawyers[1] and jurisdictional trends, this topic is getting a lot of attention. The primary goal of SEP is to anticipate and plan for contingencies or "triggering events" which may occur. Triggering events include, but are not limited to, death, disability, both voluntary and involuntary leaves of absence, technological disruptions, retirement, bar delinquency or discipline and perhaps other unanticipated events unique to you or your practice.

The Model Rules of Professional Conduct,[2] which have been adopted in virtually all jurisdictions with some slight variations, recommend SEP. Specifically, Model Rule 1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." A Comment to this Rule further provides:

> [5] 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.

Model Rules of Professional Conduct, Rule 1.3, *Diligence* [Comment 5].

Additionally, some jurisdictions have issued rules for SEP. For example, the West Virginia rule[3] - which applies to firms of five (5) or fewer attorneys - requires, *inter alia*, a written succession plan that includes the designation of a successor lawyer[4] and "shall set out a feesharing

[1] The median age of lawyers is 46.5 years. American Bar Association, *Profile of the Legal Profession* (2022), https://www.abalegalprofile.com/demographics.php#anchor8.
American Bar Association, *National Lawyer Population Survey* (2014). *See also*, Lindsey, K., Mauck, N. and Olsen, B., *The Coming Wave of Business Succession and The Role of Stakeholder Synergy Theory* (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2925608
[2] Previously known as the Model Code of Professional Responsibility.
[3] West Virginia State Bar, Rule 14, *Succession Planning*.
[4] Also known as a "Triage Attorney," "Inventory Attorney," "Trustee Lawyer" or "Assisting Attorney."

arrangement." Further, the Rule states that the Bar "shall maintain a registry of successor designations and identify the existence of a member's succession plan as part of the Bar membership information." Additionally, if a court-appointed trustee is required because no successor is designated, then "the lawyer, or the lawyer's estate, shall be adjudged responsible for payment of the reasonable and necessary fees and costs of the trustee. . . ."

By taking the steps to develop a SEP, you will be complying with the Model Code of Conduct and jurisdictional rules. Further, you will be planning for triggering events while the operating conditions of your practice are relatively normal, and you have the time to think through the issues. The alternative – which is far less desirable – is to wait for a triggering event to occur when business decisions will need to be made - either by you or someone else - at a stressful and disruptive time, risking harm to your clients, you, your heirs, and others. Finally, by appointing a Successor Attorney, you will be protecting your spouse or other family members - especially non-lawyers - from having to navigate important and complex issues at such an emotional time.

Also, some think that a SEP should only pertain to sole practitioners and that firms with more than one attorney do not need a SEP. However, this is incorrect. Even in a small firm[5] with several attorneys, a triggering event for one will adversely affect the others in terms of having to take over the duties and responsibilities of the affected attorney. In a small firm with multiple attorneys, a triggering event will likely cause some degree of disruption.

Finally, as you review this Guide, consider the expenses which may be required for your Successor Attorney to carry out his or her duties and responsibilities. For example, how long do you expect the process to take? Will staff be required, and if so, will there be funds available to

[5] Sixty percent (60%) have three or fewer attorneys. American Bar Association, Thompson Reuters Institute, *2022 State of US Small Law Firms*. https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/11/State-of-Small-Law-Firms-2022.pdf.

pay salaries and benefits, as well as the firm's other operating expenses? Will there be funds available for the process of returning client property and reviewing, retaining, or destroying closed files? Will you need to purchase an Extended Reporting Endorsement (i.e., "Tail Policy") and will funds be available to purchase this coverage?

The succession process can be quite time-consuming and costly and SERIOUS CONSIDERATION SHOULD BE GIVEN TO THE ESTABLISHMENT OF A FUND FOR THIS PROCESS. It is not likely that your Successor Attorney will utilize his or her staff and/or financial resources to complete the process without some mutually beneficial arrangement.

B. Preparing and Informing Your Successor Attorney

After appointing your Successor Attorney and Alternate Successor Attorney, you should provide to or make available important information that will be necessary for your successor to fulfill his or her duties and responsibilities. Specifically, your successor should be provided or know how to obtain the following:

- A current client list with contact information.
- A list of client money or property being held.
- The location of and access to all electronic and non-electronic client files, including closed files.
- The types of active cases and the fee agreements for each.
- A list of outstanding fees and client-related expenses.
- Location of and all relevant information for access to any funding source intended to be a "Succession Fund." (Bank Account, Life Insurance, etc.)
- The location of and access to all firm calendars and case-related software.
- Passwords for:

    - online banking or other financial accounts,
    - computer network and onsite/offsite backup equipment/files,
    - accounting software,
    - email accounts,
    - voice mail,
    - office Wi-Fi,
    - social media and other websites,
    - etc.
- Prior Client Trust Account audits.
- The location of bank or financial accounts and account numbers.
- Accountant's name and contact information.
- The name and contact information of your malpractice insurance company and agent as well as a copy of the Policy Declaration Sheet.
- Office lease or mortgage information, if applicable.
- Name, contact information and positions held for all firm employees.
- Location of and information about employee compensation agreements.
- Retirement plan information, plan documents, account location, third-party administrator, etc.
- The name and contact information of your technology person or firm.
- The location and access to any post office box or other mail service location.
- Location of and information about monthly service contracts
- The name and contact information of your personal representative.
- Any other information which is important for the firm's operation.

Finally, this information should be periodically reviewed so that your successor has the most current information.

C. Preparing and Informing Your Clients

1. New Clients

After appointment of a Successor Attorney, you should consider inserting the name and contact information of your successor in your client fee agreements. This not only instructs your clients on who to contact should you experience a contingency or an unexpected "triggering event," but it also advises them that you take their matter seriously enough to appoint someone to take responsibility for it in the event you are unable to do so.

Consider adding the following language – or similar language – to your Client Retainer, Contingent or other Fee Agreements.

In the event of Attorney's death or incapacity, Attorney has appointed _____, a duly licensed attorney in good standing with the State of _____and whose contact information is_____, as a Successor Attorney to protect Client's interest and to assist with Attorney's Law Practice. Client agrees that the Successor Attorney may review Client's file.

Or, if you prefer not giving the name and contact information of your Successor Attorney, then language similar to the following may suffice.

In the event of Attorney's death or incapacity, Attorney has appointed a duly licensed attorney in good standing with the State of _____, as a Successor Attorney to protect Client's interest and assist with Attorney's Law Practice. In such event, Client will be notified of the name and contact information of the Successor Attorney and how to proceed. Client agrees that the Successor Attorney may review Client's file as needed or required.

Or, more simply:

Client agrees that Attorney may appoint another Attorney ("Successor Attorney") to protect Client's rights in the event of Attorney's death or disability and Client agrees that such Successor Attorney may review Client's file as needed or required.

2. Active Clients

For active clients who have not otherwise given permission, your Successor Attorney will likely need to obtain the clients authorization to review and transfer the clients file during your firm's transition. A review of the applicable Rules of Professional Conduct and Legal Ethics opinions in your jurisdiction will be instructive in this regard.

Obtaining this permission could unreasonably delay the progression of active files. Consideration should be given to obtaining the clients permission before any contingency or "triggering event" which would require your Succession Attorney's involvement.

3. Inactive Clients and Closed Files

For inactive clients or for closed client files, your Successor Attorney will need to review the applicable Rules of Professional Conduct and Legal Ethics opinions in your jurisdiction regarding the return, retention, or destruction of file materials.

D. Notice to Liability Insurance Carrier and State Bar Association

After appointing a successor and executing the Law Firm Succession Planning Agreement, you should consider notifying your Professional Liability Insurance Carrier, as well as your state bar association. Below is an example for putting both on notice.

NOTICE OF APPOINTMENT OF SUCCESSOR ATTORNEY

Professional Liability Company
(address)

_____State Bar
(address)

Dear Sir or Madam:

In the event of my death or inability to practice law, I, _____, have appointed the following individuals as my successor for the purpose of protecting my clients.

Successor Attorney:
Name: _____

Address: _____
Telephone Number: _____

Alternate Successor Attorney:
Name: _____
Address: _____
Telephone Number: _____

_____ _____
Attorney **Date**

_____
State Bar Number

_____ _____
Successor Attorney **Date**

_____
State Bar Number

_____ _____
Alternate Successor Attorney **Date**

_____
State Bar Number

E. File Retention and Disposal

If your closed files are not completely in a digital format, reviewing and maintaining or destroying those files after a "triggering event" could become quite time-consuming and costly. Therefore, you should develop a process now to periodically review closed files so that you make the required and necessary decisions regarding their retention, return or destruction and are not leaving this cumbersome responsibility to your Successor Attorney. Undoubtedly, it will take your Successor Attorney much longer to review your closed files than it will take you since you are more likely to be familiar with the client, the type of case, and the issues involved.

Before destroying any closed files, you should review the legal ethics opinions in your jurisdiction.[6] It can be quite time-consuming to determine which files must be maintained and for how long, as well as notifying those clients whose files are to be destroyed, if necessary.

[6] *See e.g.*, West Virginia Ethics Opinion: *Retention and Destruction of Closed Client Files*, L.E.I. 2002-01, https://storage.googleapis.com/msgsndr/Rgd68xOkcVdteTsBkf6O/media/66a7ea7e8f665549c65ace54.pdf.

Additionally, for the files that must be maintained, how, where, and for how long will they need to be kept? If not presently in a digital format, may they be converted[7] and what will be the cost of converting them?

Further, if you have a potential malpractice claim or claims, then those files should be retained. Otherwise, destroying the file may prejudice your insurance carrier in its defense of the claim and could lead to a denial of coverage. Is your Successor Attorney going to know which of these files to maintain?

The time and expenses associated with handling closed files should not be left to your Successor Attorney or your heirs, and should, therefore, be addressed now and in your SEP.

F. Disposing of Client Funds or Property

In the course of operating your firm, do you hold property or funds for clients? If you are unable to practice law or die, will your Successor Attorney know to whom the property or funds should be distributed? It is very important that you provide your Successor Attorney with this information or the ability to find and access the information.

Also, if you are holding funds for clients that you are unable to locate or are holding funds for potential clients or others whom you cannot identify, then you should resolve these issues now and develop a process for handling them in the future. Some jurisdictions provide rules for handling these funds.[8] While the expenses associated with the return of client property or funds is not usually very high, it can, nevertheless, be quite time-consuming to meet the "due diligence" requirement set forth in some of these rules.

---

[7] *See e.g.,* West Virginia Ethics Opinion: *Use of Electronic Media for File Storage*, L.E.O. 2012-01, https://storage.googleapis.com/msgsndr/Rgd68xOkcVdteTsBkf6O/media/66a7ea7e3c9fe0750345e815.pdf.

[8] *See* e.g., West Virginia State Bar, Rule 10.09, *Disposition of IOLTA Funds Whose Owners Cannot Be Located or Cannot Be Identified* (June 13, 2014).

Addressing these issues now and putting in place a process to handle them in the future is clearly in the best interest of your clients, as well as your Successor Attorney.

G. Extended Reporting Endorsement ("Tail Coverage")

You have maintained professional liability insurance while practicing in order to protect you and your family in the event of professional negligence. However, most policies for malpractice coverage are "claims made" (not "occurrence" policies). This means that coverage only exists if a claim arises and is reported to the insurance carrier during the term of the policy. An extended Reporting Endorsement ("ERE"), often referred to as "tail coverage," simply extends the period in which a claim may be reported even though the policy period has expired.

If you die or are unable to continue the practice of law, you may want or need an ERE to extend coverage beyond your current policy term in order to protect you, your estate and/or your heirs. When considering professional liability, serious consideration should be given to the following questions:

1. Do you need an ERE?

Generally, the answer is "yes." Depending on the type of cases handled in your practice, professional negligence may arise many years after you have closed the file or after your policy period has expired. For example, defects in title searches may not show up for years. Also, if you represented infants, issues could arise many years later after your client obtains majority age. Further, if you represented clients in estate planning matters, issues may not come up until years later when your client dies.

While some policies will provide ERE's at no cost (usually for solo practitioners), most professional malpractice policies will provide neither a defense nor coverage if the claim is

reported outside of the policy term, unless an ERE is purchased within the time period required in the policy.

2. How much coverage is needed or available?

While you may want to increase your liability limits for an ERE after becoming disabled or you may want to instruct your Successor Attorney or Personal Representative to do so after your death, you will most likely not be allowed to do so. In many policies, the amount of coverage for an ERE is limited to the coverage limits of your last policy. Remember, ERE's simply "extend" coverage; they do not provide new coverage. Therefore, when you are evaluating your professional liability needs, you should check the specific language of your policy and consider the limits of liability in the event that an ERE is ultimately needed.

3. For how long will the coverage be needed?

Many insurance companies offer different durations of coverage for an ERE. For example, some may offer a one (1) year ERE, a three (3) year ERE or an option for an ERE of unlimited duration. The type of and number of active and inactive cases handled in your particular practice should provide some guidance for deciding on the duration of an ERE. Also, the cost of such coverage generally increases as the duration of coverage increases, with coverage for unlimited duration being the costliest.

4. Who will make sure the coverage is purchased in the requisite period of time?

Most professional liability policies set forth the time period in which any ERE must be purchased. The time period for acquiring these endorsements can be quite limited (usually within 30 days) with some policies even requiring purchase on the day the policy is cancelled, terminated, or expires. Will your Successor Attorney have this information?

5. Where will the funds come from to purchase the ERE?

The cost of an ERE is primarily dependent upon the amount of liability coverage and the duration of such coverage. Coverage for unlimited duration can be quite costly and a plan should be in place to provide the funds to purchase the same, if needed.

If you become incapacitated or die, only a knowledgeable and informed Successor Attorney is going to know whether or not you need an ERE, the amount of coverage needed, the duration of coverage needed, and the time period for purchasing the same. Without an ERE you, your estate and heirs may be facing a liability claim. Not only could you, your estate and heirs be personally liable for such a claim, but you would be required to pay the costs of defense, which could be quite costly, even if you, or your estate, ultimately prevail.

H. Provision for Last Will and Testament

After appointing a Successor Attorney and executing a Law Firm Succession Planning Agreement, you should consider adding a provision to your Last Will and Testament for purposes of defining and/or delineating the duties and responsibilities between your Personal Representative and your Succession Attorney. An example of such language is set forth below. Your specific situation may require modified or entirely different language and, if necessary, you should consult with your estate planning expert.

APPOINTMENT OF PERSONAL REPRESENTATIVES

1. Incorporation of Law Firm Succession Planning Agreement

Because my law practice and my clients are very important to me, I have entered into a Law Firm Succession Planning Agreement ("Agreement") dated _____, which is attached hereto, wherein I appointed a Successor Attorney for the purpose of, among other things, protecting my clients. It is my intention, for purposes of administrating my estate, that this Agreement survive my death and be incorporated and made a part of this Last Will and Testament.

2. Appointment of Personal Representatives

I appoint my spouse, _____, ("PR1") and my Successor Attorney, _____, ("PR2") as Personal Representatives of my Estate.

If PR1 predeceases me or is unwilling or unable to serve as a Personal Representatives, then I appoint, _____, as a Successor PR1.

If PR2 predeceases me or is unwilling or unable to serve as a Personal Representative, then I appoint, _____, my Alternate Successor Attorney, as set forth in the above-referenced Agreement, as PR2.

3. Powers Conferred

I confer upon PR1 the powers of a Personal Representative contained in the Code of the State of _____ as in effect on the date of execution of this Last Will and Testament.

I confer upon PR2 those powers set forth in the above-referenced Agreement.

4. Bonding

No PR1 appointed hereunder shall be required to post any bond or other security for the faithful performance of his or her duties.

Bonding of PR2 shall be governed by the above-referenced Agreement.

5. Liability

No Personal Representative hereunder shall be liable or responsible for the neglect or default of any other Personal Representative or for the neglect or default of any agent selected or appointed with reasonable care.

6. Resignation

Any PR1 who shall qualify and act as such Personal Representative hereunder shall have the right to resign as such at any time without giving the cause thereof, subject only to his or her duty to account.

Any resignation of PR2 shall be governed by the above-referenced Agreement.

7. Compensation

PR1 shall be entitled to reasonable compensation for services rendered.

Compensation for PR2 shall be governed by the above-referenced Agreement.

II. LONG-TERM SUCCESSION/EXIT PLANNING TO CAPITALIZE ON VALUE AND PRESERVE WEALTH

A. Introduction

Long-Term SEP is a multiphase, multiyear process which principally involves management, then financial succession. Whether by sale, merger, acquisition, etc., this process preserves - and in some cases can even enhance - the value of your firm for your benefit and/or that of your heirs. After all, your firm may be one of your most valuable assets. However, the secret to this process is to allow enough time for an orderly transition.

The Law Firm Business Model is relatively good for producing income, especially when compared to other business models.[9] However, this business model is not so good for passing on wealth, especially when there is no long-term SEP to do so.

As an attorney, you spend countless years building a client base, building a network of referrals through co-counsel and other relationships, and developing a reputation of honesty and hard work. By failing to plan, you are at risk of discarding all of your efforts rather than capitalizing on them.

Regardless of whether your firm will be sold, merged, acquired, etc., you are likely to face many issues in developing and utilizing a SEP. As a result, long-term SEP requires a "team approach."

B. Assembling a Team

When assembling a team for either you or your firm, it is important to have expertise in the following areas: law firm valuation, financial planning, estate planning, tax planning and insurance

[9] The average profit margin is about 21.2%. *See* Business Reference Guide, *Law Firms*, SIC 8111-03 (28th ed. 2018).

(including risk management). It is also very important to determine if each team member has the knowledge and experience of working with law firms.

A long-term plan should be focused on and include: determining valuation; enhancing value and preserving wealth; developing a personal needs assessment; evaluating management succession; exploring financing options; planning for taxes; establishing a time frame; and other areas which may be unique to your situation.

All of these topics are equally important. The level of success in achieving your objectives is driven directly by the amount of time given to developing and implementing the plan. The amount of time estimated to completely transition management, clients, referral networks and ultimately ownership can, depending on the number of variables, be quite lengthy.

C. Law Firm Valuation

The long-term portion of your plan must start with a current valuation of the firm. The value of your firm will drive virtually all decisions regarding retirement, estate and tax planning, equity offerings, the structure of the deal, and financing options.

Who can determine the value of your law firm? A number of professionals including, but not limited to, Certified Public Accountants, Appraisal Firms, Exit Planning Professionals and Law Firm Management Consultants.

After you have chosen who will provide the valuation, you will need to assemble as much information about your firm as possible. It is important to establish transparency and to preemptively answer as many questions as possible. It is customary to provide at least five (5) years of financial reports, tax returns, compensation arrangements for employees and equity partners, and employee demographics, as well as any short and/or long-term liabilities.

As part of this process, you should capture and document any intellectual property related to your operations or electronic systems. Additionally, your business plan, marketing plan and the firm succession plan should be updated and available, as well.

Law firms with certain characteristics are more valuable than others. For example, firms that produce recurring revenue are more desirable than those that produce transactional revenue. Further, firms which are profitable and are in ideal geographical locations may be more desirable, as well as those with a multi-generational history and well-established goodwill.

Preserving the wealth of the firm lies within the transferability of clients[10] and the established goodwill. It is important that all parties, including clients and case-referring and case-sharing co-counsel, are fully informed about future expectations. Greater transparency will likely lead to more relationships being retained.

There are essentially two types of goodwill generated by attorneys - personal and practice. Clients often express that they "hire the lawyer – not the firm." Therefore, it should be a goal during the transition period to elevate the attorney's personal goodwill to the firm's goodwill. Some in the industry refer to this as "institutionalizing" the firm and this process alone will require a considerable amount of time.

D. Methods for Calculating Value

When calculating the value of a law firm, multiple approaches are often used because no two law practices are alike, and many variables must be considered. The valuation calculation can be very simple or very complex. Derived values may differ based on the method or approach used.

[10] *See generally*, Model Rules of Professional Conduct, Rule 1.17, *Sale of Law Practice*; Rule 1.4, *Communication;* Rule 1.6, *Confidentiality of Information;* and Rule 1.7, *Conflict of Interest; Current Clients*. Other Rules may apply as well.

However, the following are definitions of standard valuation approaches which are widely accepted in the industry.

- Asset Based Valuation: The value of the firm is determined by adding the assets and then subtracting the liabilities, thereby leaving the net value of the firm. This approach can be further segmented into book value, replacement cost, appraised value and liquidation value. Because this method does not take into consideration the earnings and cash flow of the practice, it is not the most popular method used to determine value.

- Multiple of Annual Gross Revenue or "Rule of Thumb:" This approach determines the value of the "income stream." A multiplication factor is applied to the annual gross revenue; generally, an average of the past five (5) years. Based on prior reported transactions, this multiplication factor is generally up to three (3) times annual gross revenue, depending on a number of factors considered.

- Comparable Transactions: This method uses information obtained from firms who have completed transactions in the same market area and which are similar in size and the type of law practiced. Because these are private transactions, this information is generally not accessible. However, if available, it can be quite helpful in comparing values of firms in the same market.

- Discounted Cash Flow: This approach is considered to be a superior method of valuation because it is based on the projected future financial performance of the firm. This method estimates the firm's future cash flows and the expected rate of return a buyer would reasonably expect to receive on the investment.

The cost of an informal valuation can be minimal. However, for a comprehensive valuation - one that can be defended in a potential transaction - the cost can begin at several thousand dollars and increase depending on several variables, which the allotted space does not allow for discussion. Once the firm's value has been established, it should be periodically updated.

Regardless of the method used to calculate the firm's value, the actual value is what you will accept or what a buyer is willing to pay.

E. Finding a "Buyer" and Financing Options

When it comes to identifying a successor or a potential buyer there are generally four (4) options to consider: attorneys inside the firm, laterals or attorneys outside the firm, a merger, or a

direct sale.[11] Each should be considered and analyzed in order to determine the best option for meeting the long-term goals and objectives of the attorneys and the firm.

Depending on the option chosen for succession, financing the transaction may be the next important step. The most common options utilized are seller-based financing, buy-in/buy-out arrangements, institutional financing, or the use of "key person" life and/or disability insurance policies.

Of all the available financing options, seller-based financing can be the most flexible, creative, and potentially the highest value-yielding solution. This option allows for the cash flow of the firm to pay out over time. A key point for this option is that the seller remains active in the firm which may reduce the overall risk of the deal. Also, with this option, clients are transitioned more smoothly, the value of any intellectual property can be captured, and the trust of the clients is preserved.

Buy-in/buy-out is a very traditional way of compensating a retiring partner. Generally, other lawyers are given the opportunity to buy equity in the firm. The funds used for purchase are then directed to the retiring attorney. One consideration when using this method is the financial capacity of the attorney(s) buying in, especially when considering a younger attorney's financial status. While bank financing may be an option for this method, it is important to create financial projections representing the loan terms and conditions to ensure the cash flow of the firm will be able to meet the long-term obligation.

Finally, insurance, in the form of "key person" policies, have been used extensively for decades to compensate partners or the firm in the event of a partner's death or disability. After determining

[11] Model Rules of Professional Conduct, Rule 1.17, *Sale of Law Practice*, sets forth specific conditions for the sale of a law practice or an area of a law practice and it should be consulted early and often in the process.

or updating the value of the firm, these policies should be reviewed to make sure the payouts reflect the actual value of the firm.

III.

LAW PRACTICE SUCCESSION PLANNING

AGREEMENT
(SAMPLE)

E. William Harvit, Esquire
1606 Ridgeview Road
Charleston, West Virginia 25314
bharvit@outlook.com
304.545.8199 (Mobile)

Anthony Mazelon, CWA
Vice President
Financial Advisor
The Mazelon Chambers Neff Group
200 Association Drive, Suite 100
Charleston, West Virginia 25311
AMazelon@RWBaird.com
304.340.3770 (Office)

(SAMPLE)

LAW FIRM SUCCESSION/EXIT PLANNING AGREEMENT

(Solo Practitioner)

Table of Contents

		Page
Recitals		25
1.	Purpose	
2.	Law Practice	
3.	Amendment and Revocation	26
4.	Appointment of Successor Attorney	
4.1	Attorney's Ability to Practice Law	
4.2	Attorney's Death or Inability to Practice Law	
a.	Appointment of Successor Attorney	
b.	Appointment of Alternate Successor Attorney	
c.	Appointment of Substitute Successor Attorney	
d.	Consent to Serve	
e.	Authorized Acts	
f.	Bond	27
g.	Resignation	
h.	Compensation of Successor Attorney	
5.	Administration During Temporary Disability or Incapacity	
5.1	Temporary Disability or Incapacity or Attorney	
5.2	Re-Examination of Temporary Disability	
6.	Administration Upon Attorney's Death, Permanent Disability, or Incapacity	28
6.1	Succession Plan Funding	
6.2	Law Practice Personnel	
7.	Powers of Successor Attorney with Regard to Attorney's Law Practice	
7.1	Access to Attorney's Law Practice	29

7.2 Financial Transactions
7.3 Access to Clients and Client Files
7.4 Purchasing Extended Reporting Endorsement
7.5 Purchase, Sell or Closure of Attorney's Law Practice 30
a. Purchase of Law Practice
b. Sale of Law Practice
c. Closure of Law Practice
7.6 Compromise and Settle
7.7 Sell, Exchange, Assign, Transfer or Convey Law Practice Property 31
7.8 Collect and Receive Sums Owed or Return Sums Held
7.9 Lease or Sublease Law Office Property
7.10 Repair or Replace
7.11 Employ Professionals
7.12 Operate Law Practice
8. Attorney Client Privilege 32
9. Indemnification
10. Termination
11. Arbitration
12. Administrative Provisions
12.1 Headings for Reference Only
12.2 Severability
12.3 Situs 33
Signature Page
Attestation Page 34

(SAMPLE)

LAW FIRM SUCCESSION PLANNING AGREEMENT

(Solo Practitioner)

THIS LAW FIRM SUCCESSION PLANNING AGREEMENT (hereinafter referred to as "Agreement"), made and executed this _____ day of _____, 20__, at _____ o'clock ____.m. by and between _____, residing at _____,_____, _____County, _____, as the ATTORNEY, _____, residing at _____, _____, _____ County, _____, as the SUCCESSOR ATTORNEY, and _____, residing at _____, _____, _____ County, _____, as the ALTERNATE SUCCESSOR ATTORNEY.

WHEREAS:

A. Attorney engages in the practice of law as a solo practitioner at (address), (county), (state) (hereinafter referred to as "Law Practice");

B. Attorney desires to enter into this Agreement upon the conditions and for the Purpose set forth herein;

C. NOW, THEREFORE, IT IS AGREED by and between the parties that ATTORNEY'S Law Practice shall be managed, transitioned, sold and/or closed in accordance with the following terms and conditions.

1. Purpose

This Agreement is intended to protect ATTORNEY and ATTORNEY'S clients, Personal Representative and/or heirs in the event ATTORNEY is unable to continue the practice of law as a result of death, disability, involuntary leaves of absence, bar delinquency or discipline, or for any other incapacity which would prohibit ATTORNEY from continuing the practice of law at the Law Practice.

2. Law Practice

Upon ATTORNEY'S inability to continue the practice of law at the Law Practice, ATTORNEY delivers to SUCCESSOR ATTORNEY, the Law Practice subject to the Purpose and terms and conditions of this Agreement.

The Law Practice shall include all client files, computer equipment and any other assets utilized in the operation of the Law Firm, except those assets owned separately from the Law Practice and/or not needed for the operation of the Law Practice, which are listed on Exhibit A, and attached hereto (e.g., personal items, real property owned by Attorney in which the Law Practice operates, etc.).

3. Amendment and Revocation

During ATTORNEY'S life, ATTORNEY reserves the right, from time to time, by written instrument delivered to SUCCESSOR ATTORNEY, to amend or revoke this Agreement, in whole or in part.

4. Appointment of Successor Attorney

The following provisions apply to the appointment of a SUCCESSOR ATTORNEY under this Agreement:

4.1. Attorney's Ability to Practice Law

As long as ATTORNEY is physically, mentally, and legally able to practice law, ATTORNEY shall be the sole attorney, owner, manager and beneficiary of the Law Practice. Nothing in this Agreement shall alter the ownership, management and/or operation of ATTORNEY's Law Practice as it exists prior to the execution of this Agreement.

4.2. Attorney's Death or Inability to Practice Law

a. Appointment of Successor Attorney

Upon ATTORNEY'S death, disability (as defined in Section _____of this Agreement) or inability to practice law for any reason, _____, who is a licensed attorney in good standing in the State of _____ and who resides at _____, shall serve as SUCCESSOR ATTORNEY hereunder.

b. Appointment of Alternate Successor Attorney

If _____ is unable or unwilling to serve as SUCCESSOR ATTORNEY, for any reason whatsoever, then _____, who is a licensed attorney in good standing in the State of _____ and who resides at _____, shall serve as ALTERNATE SUCCESSOR ATTORNEY hereunder.

c. Appointment of Substitute Successor Attorney

If neither of the foregoing individuals is able or willing to serve as SUCCESSOR ATTORNEY, for any reason whatsoever, then the last-serving SUCCESSOR ATTORNEY shall have the right to choose a SUBSTITUTE SUCCESSOR ATTORNEY to serve hereunder. Any SUBSTITUTE SUCCESSOR ATTORNEY must be a licensed in good standing in the State of _____.

d. Consent to Serve

Both SUCCESSOR ATTORNEY and ALTERNATE SUCCESSOR ATTORNEY consent to this appointment, as referenced by their respective signatures affixed to this Agreement.

e. Authorized Acts

Any SUCCESSOR ATTORNEY, ALTERNATE SUCCESSOR ATTORNEY or SUBSTITUTE SUCCESSOR ATTORNEY is authorized to act on behalf of ATTORNEY pursuant to this Agreement. Any reference in this Agreement to SUCCESSOR ATTORNEY shall also apply to

the ALTERNATE SUCCESSOR ATTORNEY and any SUBSTITUTE SUCCESSOR ATTORNEY.

f. Bond

No bond or other security shall be required of any SUCCESSOR ATTORNEY in any jurisdiction. Any SUCCESSOR ATTORNEY shall have the same powers, authorities and discretions as though originally named as the SUCCESSOR ATTORNEY. **[Note: Your situation may require a bond or other security and, if so, this language should be modified.]**

g. Resignation

Any SUCCESSOR ATTORNEY may resign by giving written notice specifying the resignation's effective date to ATTORNEY or ATTORNEY's PERSONAL REPRESENTATIVE.

h. Compensation of Successor Attorney

Any SUCCESSOR ATTORNEY is entitled to reasonable compensation for services rendered. SUCCESSOR ATTORNEY agrees to keep accurate time and expense records and periodically submit them to ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE.

ATTORNEY agrees that SUCCESSOR ATTORNEY shall be compensated by ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE for services rendered and/or costs incurred in accord and in complying with the Purpose and terms and conditions of this Agreement.

5. Administration During Temporary Disability or Incapacity

The following provisions apply during the lifetime of ATTORNEY.

5.1. Temporary Disability or Incapacity of Attorney

If at any time or times ATTORNEY is under a mental and/or physical disability and, in the opinion of ATTORNEY'S attending physician and a least one board certified physician who is a specialist in the area of medicine concentrated on the treatment of such incapacity, ATTORNEY is unable to properly manage ATTORNEY'S Law Practice, then the SUCCESSOR ATTORNEY shall be appointed pursuant to the terms of the "Successor Attorney Appointments" Section herein. No licensed physician who executes a medical opinion of incapacity, whether temporary or permanent in nature, shall be subject to liability because of such execution.

5.2. Re-Examination of Temporary Disability

Six (6) months **[NOTE: The period chosen should be applicable to your particular situation.]** from the determination that ATTORNEY is incapacitated, SUCCESSOR ATTORNEY shall again obtain the opinion of ATTORNEY'S attending physician and at least one (1) board certified physician who is a specialist in the area of medicine concentrated on the treatment of such incapacity, as to whether ATTORNEY is still incapacitated.

If, at the six (6) month review, the above-mentioned physicians determine that ATTORNEY is no longer incapacitated, then ATTORNEY shall be reinstated immediately, as long as ATTORNEY is otherwise in compliance with the licensing rules and regulations for the practice of law.

If, at any time prior to the six (6) month review, the above-mentioned physicians determine that ATTORNEY is not incapacitated, then ATTORNEY shall be reinstated immediately, as long as ATTORNEY is otherwise in compliance with the licensing rules and regulations for the practice of law.

If, at the six (6) month review, the above-mentioned physicians determine that ATTORNEY is still incapacitated, then SUCCESSOR ATTORNEY shall continue to serve.

A review of ATTORNEY'S capacity shall be granted at any time upon ATTORNEY'S written request.

Any costs associated with the examination or re-examination of ATTORNEY shall be paid by ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE and shall not be the responsibility of SUCCESSOR ATTORNEY.

6. Administration Upon Attorney's Death, Permanent Disability, or Incapacity

If ATTORNEY dies or is under a mental and/or physical disability which prohibits ATTORNEY from properly practicing law and operating the Law Practice for more than _____months (___), then SUCCESSOR ATTORNEY shall assess, in accord with the Purpose of this Agreement and in consultation with ATTORNEY'S PERSONAL REPRESENTATIVE, whether the Law Practice should be sold, merged, or dissolved and closed.

6.1. Succession Plan Funding

[NOTE: Serious consideration should be given to the length of time that will be needed to transition, sell, or close ATTORNEY'S Law Practice, the expenses associated therewith and from what sources (life insurance, a "sinking fund," disability insurance, etc.) such expenses shall be paid. The type of practice, the number of employees and other operating costs, the type and number of active and inactive files, and many other factors will determine the amount of time required for succession - which can take months to years to complete - and provide some guidance on the amount of funding needed.]

6.2 Law Practice Personnel

If ATTORNEY dies or becomes permanently disabled and incapable of practicing law, as set forth herein, then SUCCESSOR ATTORNEY, in consultation with ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE, shall be authorized to utilize any or all of ATTORNEY'S law practice personnel for such period of time as is necessary to carry out the Purpose of this Agreement. The salaries and benefits of such personnel are to be paid by ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE.

7. Powers of Successor Attorney with Regard to Attorney's Law Practice

The SUCCESSOR ATTORNEY has the continuing, absolute, and discretionary power to comply with all terms and conditions of this Agreement, as freely as ATTORNEY if handling ATTORNEY'S own law practice affairs. Such power may be exercised independently and without the prior or subsequent approval of any court or judicial authority, and no person dealing with the

SUCCESSOR ATTORNEY shall be required to inquire into the propriety of any of the SUCCESSOR ATTORNEY'S actions. Without in any way limiting the generality of the foregoing, the SUCCESSOR ATTORNEY is hereby granted the following specific powers and authority in addition to and not in substitution of those powers conferred upon Trustees by the laws of the State of _____.

7.1. Access to Attorney's law Practice

SUCCESSOR ATTORNEY shall have access to both real and personal property utilized in any manner whatsoever by ATTORNEY in the operation of the Law Practice including, but not limited to, access to the premises in which the law practice operates; accesses to all bank accounts of the law practice, including its Client Trust Account; access to ATTORNEY'S mail, records, electronic equipment and any other property, items or things utilized by ATTORNEY in the operation of the law practice.

7.2. Financial Transactions

With respect to any and all bank or other financial accounts used by ATTORNEY in the operation of the Law Practice, SUCCESSOR ATTORNEY is authorized to open new accounts or close existing accounts; deposit to or withdraw from such accounts; execute and deliver any instruments, checks or other negotiable instruments on such accounts; as freely as ATTORNEY if handling ATTORNEY's own financial affairs.

With regard to ATTORNEY'S Client Trust and/or Escrow Accounts, SUCCESSOR ATTORNEY is authorized to conduct or have conducted an audit of each such account to determine whether adequate funds exist for those clients, or third parties entitled to such funds and to seek expert ethics, financial or other advice if necessary.

7.3. Access to Clients and Client Files

SUCCESSOR ATTORNEY shall have access to and may review, duplicate and/or take possession of, in whole or in part, all active and inactive client files, records and/or documents and is authorized to contact any or all clients, potential clients, former clients or others who have contacted ATTORNEY or the law practice for legal advice or assistance, for any legal, ethical, financial and/or other purpose related to legal services provided or to be provided by ATTORNEY or the law practice. Further, SUCCESSOR ATTORNEY shall properly maintain, preserve, dispose of or otherwise handle all inactive or closed client files in accord with all applicable statutes, regulations and legal ethics opinions.

7.4. Purchasing Extended Reporting Endorsement ("Tail Coverage")

ATTORNEY maintains professional liability insurance with _____ bearing policy number _____. ATTORNEY'S professional liability insurance policy allows for the purchase of an Extended Reporting Endorsement ("ERE"). Because the time period for purchasing an ERE can be quite limited, SUCCESSOR ATTORNEY shall consult with ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE as soon as reasonably practicable after ATTORNEY'S death or permanent disability regarding the need for and

economic feasibility of purchasing such coverage, including the amount and duration of such coverage.

[NOTE: Most policies for malpractice coverage are "claims made," meaning that coverage only exists if a claim arose or is reported to the insurance carrier during the term of the policy. Therefore, you may want or need an ERE to extend coverage beyond your policy term. The time period for acquiring these endorsements is often quite limited (usually about 30 days) with some policies requiring purchase on the day the policy is cancelled.]

7.5. Purchase, Sell or Closure of Attorney's Law Practice

SUCCESSOR ATTORNEY is authorized, in consultation with ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE, to purchase, sell or close ATTORNEY'S law practice.

a. Purchase of Law Practice

SUCCESSOR ATTORNEY shall have the first option to purchase ATTORNEY'S law practice pursuant to the terms and conditions specified by ATTORNEY or ATTORNEY's PERSONAL REPRESENTATIVE and in accordance with the applicable Rules of Professional Conduct including, but not limited to, obtaining each client's consent, and confirming no conflicts of interest.

[NOTE: In the alternative, any prior agreed-upon terms and conditions of the sale of the law practice from ATTORNEY to SUCCESSOR ATTORNEY may be memorialized here. For example, a time limit for exercising the "option" should be considered as well as the method utilized to determine a cost-effective value of the law practice, if not previously established.]

b. Sale of Law Practice

If SUCCESSOR ATTORNEY declines the option to purchase ATTORNEY'S Law Practice, then SUCCESSOR ATTORNEY shall make all reasonable efforts, while working with ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE to sell ATTORNEY's law practice. The net proceeds from the sale of the law practice shall be provided to ATTORNEY or ATTORNEY's PERSONAL REPRESENTATIVE.

c. Closure of Law Practice

If SUCCESSOR ATTORNEY declines the option to purchase the Law Practice and is unable to sell the Law Practice within a reasonable amount of time (considering ongoing revenue and expenses), then SUCCESSOR ATTORNEY shall, in consultation with ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE, take all appropriate steps to close ATTORNEY'S Law Practice in accord with all applicable state and federal rules, regulations and/or statutes governing the same.

7.6. Compromise and Settle

SUCCESSOR ATTORNEY shall have the authority to compromise, settle or adjust any claim or demand by or against ATTORNEY, in relation to ATTORNEY'S Law Practice, and may agree to

any rescission or modification of any contract or agreement, including extending the time of payment of any obligation held by ATTORNEY.

7.7. Sell, Exchange, Assign, Transfer or Convey Law Practice Property

SUCCESSOR ATTORNEY shall have the authority to sell, exchange, assign, transfer and convey any property, real or personal, utilized by ATTORNEY for the practice of law, at public or private sale, at such time and price and upon such terms and conditions (including credit) as the SUCCESSOR ATTORNEY may determine.

7.8. Collect and Receive Sums Owed or Return Sums Held

SUCCESSOR ATTORNEY shall have the authority to collect and receive any and all sums, and any and all property of whatsoever kind and nature, due and owing or belonging to ATTORNEY, in relation to the Law Practice, and to execute all agreements, releases and discharges in connection therewith. Further, if necessary, SUCCESSOR ATTORNEY shall (a) provide an accounting and/or statement for legal services based upon ATTORNEY'S records; (b) return unused client funds or client property, and (c) provide any net funds received on behalf of ATTORNEY to ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE.

7.9. Lease or Sublease Law Office Property

SUCCESSOR ATTORNEY is authorized to lease or sublease, if applicable, any real property used by ATTORNEY for the practice of law for such term or terms and upon such conditions and rents and in such manner as SUCCESSOR ATTORNEY may deem advisable (with or without privilege of purchase), and any lease or sublease so made shall be valid and binding for the full term thereof.

7.10. Repair and Replace

SUCCESSOR ATTORNEY is authorized to make repairs, replacements and improvements to any such real property utilized in ATTORNEY'S Law Practice, to insure against fire and other risk as SUCCESSOR ATTORNEY deems necessary.

7.11. Employ Professionals and Other Practitioners

SUCCESSOR ATTORNEY is authorized to engage and employ the services of counsel, accountants, tax advisors, custodians, and agents, and to incur such other expenses and charges as in the SUCCESSOR ATTORNEY's discretion may be deemed necessary to carry out the Purpose of this Agreement, including the engagement of other practitioners with expertise in areas of the law in which ATTORNEY practiced, if necessary.

7.12. Operate Law Practice

SUCCESSOR ATTORNEY is authorized to continue the operation of ATTORNEY'S Law Practice, including the use of staff, for such period of time as SUCCESSOR ATTORNEY may deem advisable to carry out the Purpose of this Agreement. The cost and expenses of running ATTORNEY'S Law Practice until the Law Practice is sold or closed shall be paid by ATTORNEY or ATTORNEY'S PERSONAL REPRESENTATIVE.

8. Attorney Client Privilege

SUCCESSOR ATTORNEY agrees to preserve the confidences, propriety information and all other confidential information of ATTORNEY's current and former clients and shall only disclose information reasonably necessary to comply with the Purpose of this Agreement.

9. Indemnification

ATTORNEY and/or ATTORNEY'S PERSONAL REPRESENTATIVE shall indemnify SUCCESSOR ATTORNEY against any claims, loss or damage arising out of any act, error or omission of ATTORNEY made prior to ATTORNEY'S death, disability, or inability to practice law and before SUCCESSOR ATTORNEY assumed control of ATTORNEY'S Law Practice in accord with the terms, conditions and Purpose of this Agreement. This indemnification provision does not extend to any acts, errors or omissions which may be committed by SUCCESSOR ATTORNEY after assuming the representation of ATTORNEY'S clients, if any.

10. Termination

This Agreement shall terminate upon: (1) delivery of a written notice of termination by ATTORNEY to SUCCESSOR ATTORNEY during any time that ATTORNEY is not under disability, impairment, or incapacity, as set forth herein; (2) delivery of a written notice of termination by ATTORNEY'S PERSONAL REPRESENTATIVE only upon the showing of "good cause;" or (3) delivery of a written notice of termination by SUCCESSOR ATTORNEY to ATTORNEY, subject to any ethical obligation to continue or complete any matter undertaken by SUCCESSOR ATTORNEY pursuant to and in accord with the Purpose of this Agreement.

11. Arbitration

The parties agree that any dispute which arises with regard to this Agreement, and cannot be resolved between the parties, shall be decided by arbitration in accord with the laws of the State of _____.

[NOTE: Mediation can be used rather than arbitration. Regardless, litigation should be avoided if possible due to the time and expense involved.]

12. Administrative Provisions

The following administrative provisions apply in the construction and interpretation of this Agreement.

12.1. Headings for Reference Only

The headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

12.2. Severability

In the event that any provision of this Agreement is found to be unenforceable, the remaining provisions shall continue to be in full force and effect.

12.3. Situs

This Agreement shall be governed by and interpreted in accordance with the laws of the State of _____.

IN WITNESS WHEREOF, we have hereunto set our hands and seals to this, LAW FIRM SUCCESSION PLANNING AGREEMENT.

_____ _____

_____, ATTORNEY DATE

_____ _____

_____, SUCCESSOR ATTORNEY DATE

_____ _____

_____, ALTERNATE SUCCESSOR ATTORNEY DATE

(REMAINING PAGE INTEENTIONALLY LEFT BLANK)

STATE OF _____,

COUNTY OF _____, To-Wit:

Acknowledged and subscribed before me by:

The ATTORNEY, _____, who

□ is personally known to me OR

□ has produced _____as identification,

The SUCCESSOR ATTORNEY, _____, who

□ is personally known to me OR

□ has produced _____as identification, and

The ALTERNATE SUCCESSOR ATTORNEY, _____, who

□ is personally known to me OR

□ has produced _____as identification.

Subscribed by me in the presence of the ATTORNEY and SUCCESSOR ATTORNEY on this day of _____, 20__.

[Official Seal]

_____
Signature of NOTARY PUBLIC

_____
Name of NOTARY Typed, Printed or Stamped

Commission expires _____