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## Utah State Bar Guidance for Attorneys facing catastrophic life events: Protecting yourself, your practice, and your reputation

Unfortunately, catastrophic events can befall even the most prepared lawyers. Such events, ranging from personal illnesses and major life disruptions to natural disasters and cyberattacks, affirm the importance of planning ahead to ensure your practice and clients are adequately protected.

In this guide, we outline some of the immediate things your firm should consider in planning for emergencies, including, 1) crafting a succession plan for your practice, 2) having a file retention and storage policy, 3) transferring client property in the event of a sudden emergency, 4) implementing general security practices that will ensure the transition is compliant with the Rules of Professional Conduct and current technological safeguards, and 5) additional business considerations, including selling your firm and abiding by appropriate advertising practices.

### I. Crafting a personal succession plan

Every lawyer should craft a personalized succession plan for the following three scenarios: 1) a sudden, unexpected short-term absence, 2) a long-term absence, and 3) an immediate and permanent absence. Each plan should be written with a general audience in mind so that the appropriate measures can be implemented by a firm, loved ones, and colleagues alike. Each succession plan should contain the following:

#### a) A **definition** section.

i) This section should define the proposed absence term.

ii) For example, a “Temporary Absence” is between 30-60 days; a “Permanent Absence” is one in which it is firmly determined that the lawyer will not be returning to the position; a “Long-Term Absence” is 90 days or more.

#### b) A **plan implementation** section.

i) This section outlines who is authorized to implement the Succession Plan in the event of a temporary or long-term absence, as well as whether a Board or firm meeting must be adjourned to carry out the stated mission.

ii) The plan implementation may be tailored to the size of the firm and organizational type (which may differ if the practice is a non-profit, for example). This may include the creation of a Transition Committee who works with the lawyer to cross train relevant staff or a replacement.

iii) It is also wise to have a comprehensive job description in place so the firm can advertise for a replacement.

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iv) Ensure you have a secure web-app that stores all relevant office passwords, contacts, bank account information, billing, and other login information.

c) A **timeline** section.

(i) This section should lay out the order of events, to the extent practicable, for the lawyer's winding up of firm business, which includes:

i) An accounting of all active clients and their respective files, accompanying IOLTA account information, status.

ii) An accounting of all clients for whom the client has done consistent or significant work.

iii) A list of attorneys in the lawyer's practice area for whom the lawyer recommends.

d) A **communications plan** section.

i) In this section, the firm or lawyer will develop a strategy for communicating relevant information to fellow firm members, nonlawyer staff, the public, and clients. The communication plan should identify key contacts for the announcement, which may also include banks, board members, and other organizational contacts.

ii) The plan should also contain a draft letter to clients informing them of the absence, including information about returned fees, the client file, and contact information of lawyers you may refer to the client. NOTE: the client retains the choice of whether to seek out the referral the lawyer has provided. A client's file cannot be transferred without the client's consent. See [UTAH R. PRO. CONDUCT 1.6](#), [ABA Formal Opinion 99-414](#).

## II. Maintaining client property

a) **Craft a file maintenance policy**

(i) File maintenance policies allocate how a practice stores, maintains, and otherwise provides for their clients' property. Having an internal policy is helpful in maintaining best practices for lawyers and nonlawyer staff, but also to put clients on notice. As such, having language in a retainer agreement about how the practice will manage client files – whether electronically on the cloud or via hard copy storage – is vital.

(ii) Outline how you will handle the return of client files upon the termination of representation and copies of files. See [UTAH R. PRO. CONDUCT 1.15](#), See [UTAH R. PRO. CONDUCT 1.16](#).

(iii) Please see [Utah State Bar Ethics Advisory Opinion Committee's Opinion 96-02](#) for additional information on what constitutes the client's file and [Utah State Bar](#)

[Ethics Advisory Committee Opinion 97-01](#) for what to do if you have a client's property but are unable to contact them.

**b) IOLTA account, see [Rule 14-1001](#).**

i) An essential aspect of safekeeping client property is ensuring that unearned funds are maintained separately from earned funds. This distinction ensures that client funds are adequately protected from a lawyer's creditors in the event assets are seized or the practice falls victim to a cyberattack. In 2020, Office of Professional Conduct reported nearly 7% of complaints stemming from lawyers' alleged misuse of client funds.<sup>1</sup> Ensuring you establish and maintain your IOLTA account properly is vital to an ethical practice and to winding up in the event of a major disruption.

(ii) For additional information, See [UTAH R. PRO. CONDUCT 1.15](#).

(iii) Contact bank/credit union for process on how to close IOLTA account, report to the Utah Bar Foundation within 30 days of any change in IOLTA status. see [Rule 14-1001\(k\)](#).

**III. Ensure your practice is compliant with technological standards, UTAH R. PRO. CONDUCT 1.1, [comment 8].**

a) Making sure your law practice is compliant with existing technology is not just a wise business decision – it's an ethical requirement. Lawyers who fail to invest in the minimal technological safeguards may be neglecting their duty of zealous advocacy (being able to use Webex for remote hearings for example) or safekeep client property (i.e. a properly secure database), which could render you the subject of a Bar complaint.

(i) Keep malware up to date.

(ii) Ensure you have passwords for bank accounts stored in a secure fashion, ie. Secure Safe, KeePass, LastPass, OneLogin, among others.

(iii) Ensure nonlawyer staff/office manager has record of this as well. See [UTAH R. PRO. CONDUCT 5.3](#).

(iv) Invest in an account management software such as the cloud for backup in case anything happens to your computer and hard drive.

**IV. Additional business considerations: selling your practice and advertising**

a) Law practices must abide by the state laws and regulations imposed on any other business entity. Balancing these responsibilities with an active law practice can be challenging, so having proper management software or staff tasked with keeping general governance documents up to date is imperative.

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<sup>1</sup> See OPC's Annual Report, p. 28, <https://www.opcutah.org/wp-content/uploads/2021/02/OPC-Annual-Report-2019-2020.pdf> last accessed: (September 28, 2021).

b) In 2020, the advertising rules within the Utah Rules of Professional Conduct were drastically updated, omitting Rules 7.2-7.5 in favor of a condensed Rule 7.1. Lawyers should ensure their advertising and communications are compliant with this updated rule.

(i) Update the secretary of state with any relevant changes to Bylaws, Board of Directors, other major changes.

(ii) Any major changes to firm including firm names? See [UTAH R. PRO. CONDUCT 7.1](#).

(iii) Selling your law firm practice? See [UTAH R. PRO. CONDUCT 1.17](#).