

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

**LAW PRACTICE CONTINUITY COMMITTEE (LPCC)**

**TO: MEMBERS, SLRS LPCC**  
**SLRS EXECUTIVE COMMITTEE**

**FROM: ANTHONY R. PALERMO**

**DATE: November 5, 2009**

**ACTIVITIES UPDATE LPCC**

This Report of the SLRS Law Practice Continuity Committee follows up on prior Reports dated April 14, June 16 and August 25, 2009.

Your Chair is delighted to inform you that Susan Lindenauer of New York City has volunteered to serve as Vice Chair of the LPCC and her offer was quickly and enthusiastically accepted.

As previously mentioned, the Mission of the SLRS LPCC is similar to that initially assigned in April 2002 to the NYSBA's original Special Committee on Law Practice Continuity, which was created to address the practical, legal and ethical issues raised by the death, disability or disappearance of solo and small firm practitioners. That Committee was asked to prepare a *Guide* to assist solo and small firm practitioners in planning an orderly transition of their practice, as well as to recommend a mechanism whereby another attorney could be authorized to intervene and protect the interests of the clients of a deceased, disabled or absent solo and small firm practitioners who have not made adequate provision in advance for his or her inability to continue representing clients. The original NYSBA Committee also examined problems associated with the reconstruction of law practices in the aftermath of disasters, such as the World Trade Center tragedy, where more than 14,000 lawyers were either temporarily or permanently displaced, and other natural disasters resulting from such events as fire, flood, or hurricane.

The original Committee produced the following materials, as referenced in a report submitted to and approved by the NYSBA House of Delegates in support of a Resolution adopted June 25, 2005:

(1) A Guide: Planning Ahead: Establish an Advance Exit Plan to Protect Your Clients' Interest in the Event of Your Disability, Retirement or Death;

(2) Proposed Uniform Court Rules relating to the appointment of "caretaker attorneys" to assist clients and the courts in "unplanned" situations, set forth in a Guide for Caretaker Attorneys Appointed to Protect Clients' Interests in the Event of the Untimely Absence from Practice of a Sole Practitioner;

**[CAVEAT:** Although the proposed Uniform Caretaker Rule prepared by the LPCC and approved by the NYSBA House of Delegates on June 25, 2005 was submitted by the NYSBA to the Judicial Administrative Board of the State of New York, it has not yet been adopted by any Appellate Division in the State of New York]; and,

(3) A Guide for Caretaker Attorneys Appointed to Protect Clients' Interests in the Event of the Untimely Absence from Practice of a Sole Practitioner.

Similar to the Guide: Planning Ahead, the Caretaker Guide contains many useful items, including FAQs about Caretaker Attorneys, Checklist for closing another Attorneys Office, Checklist of concerns When Assuming Temporary Responsibilities of Another Attorney's Practice Whether Resulting from Disability or Suspension, sample forms, Checklist for the Executor of a Solo Practitioner, and other information relating to situations involving unplanned absence of an attorney.

The Mission of the SLRS LPCC is to support efforts to assist solo and small firm practitioners in planning for the orderly transition of their practice, as well as to identify ways and mechanisms whereby another qualified attorney can be authorized to intervene and protect the interests of the clients of a deceased, disabled or absent solo and small firm practitioners who have not made adequate provision in advance for his or her inability to continue representing clients.

### **FALL MEETING OF ELDER LAW AND SENIOR LAWYERS SECTIONS**

At the above Fall Meeting held at the Sagamore Resort in Bolton Landing, your Chair was privileged to present a program entitled: "Practice Management in A Crisis: What Happens to Client Matters When a Lawyer Unexpectedly dies, Becomes Disabled or is Unable to Practice Law". This and all other segments of the Fall Meeting were extremely well attended. For the information and benefit of those members of the SLRS LPCC who were not able to attend, the paper I prepared for the program, without any of the Exhibits and Attachments, is reprinted below.

### **CONTINUED COMMITTEE PARTICIPATION AND INVOLVEMENT IS URGED**

Again, I remind you that our Committee meets rarely in person. We urge you to support and participate in efforts of other NYSBA sections and local bar associations which come within the Mission of the LPCC.

Please send me a simple reply to acknowledge receipt of this report and your desire to continue your membership on this Committee.

Happy Thanksgiving!

November 4, 2009

Respectfully submitted,

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**FALL MEETING 2009**  
**NYSBA ELDER LAW AND SENIOR**  
**LAWYERS SECTION**  
**OCTOBER 30, 2009**

*ANTHONY R. PALERMO*

**PRACTICE MANAGEMENT IN CRISIS:**  
**What Happens to Client Matters When a Lawyer Unexpectedly Dies,**  
**Becomes Disabled or is Unable to Practice Law**

**I**

**INTRODUCTORY OVERVIEW**

This program provides an excellent opportunity to consider matters which should be of great personal and professional interests to members of the elder law and senior lawyers sections, as well as lawyers in general. These two sections include members who should demonstrate great sensitivity to and knowledge of the problems, issues, and concerns which exist when a lawyer is no longer able to practice law as a result of numerous potential contingencies. Members of these two sections attending this session should relate well to the matters we are about to discuss.

While this topic is of one of greatest interest to present and future solo and small-firm practitioners, and their respective clients, it is also of great importance to the legal profession in general because it has impact upon the public image of lawyers.

We strongly recommend that all lawyers think about and plan ahead for a broad range of potential contingencies, both planned and unplanned situations, such as, physical, medical, mental disability or incapacity, death, retirement, disciplinary suspension or even disbarment. In the course of these remarks and in the accompanying materials, we hope to provide you with some guidance and practical action which lawyers can take in advance of contingencies to protect their clients, themselves, their families, the legal profession, and the community in general.

Consider first: what happens when you or an attorney you may know or work with is unable to continue his or her practice of law because of any one of a broad range of possible temporary or permanent contingencies?

In the event of one or more of the above contingencies, you are confronted with multiple issues and concerns, both ethical and practical, which must be promptly identified and addressed.

The obvious observation in such situations is that it's always better to have an advance plan than to start from scratch once you are confronted with an emergency or a crisis.

If there has been advance planning, locate it, evaluate its efficacy and implement it. Needless to say, it is essential that you inform key contacts in your professional and personal life, in advance of any contingency, that you have such a plan and where it is located. The more thorough and specific the planning process, the greater the chances are that your efforts will be successful. Once your advance plan is located, you or your surrogate or representative should proceed to implement it to the extent feasible.

But, what happens in situations where you, or any lawyer, have no advance planning? Examples include when a lawyer: (1) is involved in an accident which causes personal injuries which temporarily or permanently disable him or her from practicing law; or, (2) has a medial or mental condition which disables the lawyer from practicing law; or, (3) experiences a work-place disaster, such as fire, flood, building explosion or other event which deprives the lawyer of access to the law office and its facilities?

## **II.**

### **NYSBA LAW PRACTICE CONTINUITY ACTIVITIES**

The NYSBA has been a leader in addressing areas of professionalism and law practice continuity and has produced excellent resource materials. Of particular interest to the topic of this program is the Guide: "Planning Ahead: Establish an Advance Exit Plan to Protect Your Clients' Interests in the Event of Your Disability, Retirement or Death", with voluminous Appendices attached. This Guide was prepared by the NYSBA Special Committee on Law Practice Continuity and may be downloaded, free of charge, from the NYSBA website, [www.nysba.org/planningahead](http://www.nysba.org/planningahead). The Guide: Planning Ahead contains numerous checklists, sample letters, a sample will provision, answers to FAQs, and other useful information designed to assist New York attorneys in advance exit planning. This book was originally produced and made available nationally in hard copy, at a minimal cost, which included a CD with forms in PDF and MS Word format. The original version is still available as a free download on line, but the bound version is currently unavailable until updates are completed to take into account changes required when the New York Rules of Professional Conduct became effective on April 1, 2009. To order a hard copy of the revised Guide when available, call the NYSBA at (800) 487-5618 (or, if in Albany, call 463-3724).

### **Historic Background Information**

In April 2002, a Special Committee on Law Practice Continuity ("LPCC" or "Committee") was created to address the practical, legal and ethical issues raised by the death, disability or disappearance of solo and small firm practitioners. The Committee was asked to prepare a *Guide* to assist solo and small firm practitioners in planning an orderly transition of their practice, as well as to recommend a mechanism whereby another attorney could be authorized to intervene and protect the interests of the clients of a deceased, disabled or absent solo and small firm practitioners who have not made adequate provision in advance for his or her inability to continue representing clients. The Committee also examined problems associated

with the reconstruction of law practices in the aftermath of disasters, such as the World Trade Center tragedy, where more than 14,000 lawyers were either temporarily or permanently displaced, and other natural disasters resulting from such events as fire, flood, or hurricane.

The Committee produced the following materials, as referenced in a report submitted to and approved by the NYSBA House of Delegates in support of a Resolution adopted June 25, 2005:

(1) A Guide: Planning Ahead: Establish an Advance Exit Plan to Protect Your Clients' Interest in the Event of Your Disability, Retirement or Death, described above;

(2) Proposed Uniform Court Rules relating to the appointment of "caretaker attorneys" to assist clients and the courts in "unplanned" situations, which are designated Appendix "A" in the Guide for Caretaker Attorneys Appointed to Protect Clients' Interests in the Event of the Untimely Absence from Practice of a Sole Practitioner, which is attached for ease of access and reference as Exhibit 1

[**CAVEAT:** The proposed Uniform Caretaker Rule was prepared by the LPCC and approved by the NYSBA House of Delegates on June 25, 2005. Although the proposed Rule has been submitted by the NYSBA to the Judicial Administrative Board of the State of New York, it has not yet been adopted by any Appellate Division in the State of New York]; and,

(3) A Guide for Caretaker Attorneys Appointed to Protect Clients' Interests in the Event of the Untimely Absence from Practice of a Sole Practitioner, , which is attached to these Remarks as Exhibit 1.

Similar to the Guide: Planning Ahead, the Caretaker Guide contains many useful items, including FAQs about Caretaker Attorneys, Checklist for closing another Attorneys Office, Checklist of concerns When Assuming Temporary Responsibilities of Another Attorney's Practice Whether Resulting from Disability or Suspension, sample forms, Checklist for the Executor of a Solo Practitioner, and other information relating to situations involving unplanned absence of an attorney.

### **III.**

#### **NEED FOR A UNIFORM "CARETAKER RULES"**

The LPCC articulated its rationale for the proposed Caretaker Rule in its Report to the NYSBA House of Delegates in 2005 as follows:

"In 2001, the NYSBA Committee on Attorney Professionalism identified the need for a uniform process, following a study of the consequences of attorneys' failure to plan for the management or dissolution of their law practices upon disability or death. That Committee concluded that there was a dearth of appropriate policies or rules in New York State to address the problem identified.

The Committee learned that an *ad hoc* approach had developed in areas of the state, whereby a volunteer attorney would be contacted, often by a local Bar Association executive or staff member, to assist with the management of a practice for an attorney who, for one reason or another, was unable to continue practicing. These volunteer attorneys, in many of these situations, devote numerous hours of work sorting through reams of paperwork, analyzing case files, addressing court calendars, etc., often without compensation and with uncertain standing for professional liability issues. In many parts of the State, there is no organized response to the problem at all.

In view of this situation, the LPCC set about the task of drafting a proposed uniform Court rule, to establish a process whereby a court may appoint a caretaker attorney to assist in the temporary management, permanent closure or sale of a law practice on behalf of an attorney who is unable to continue to practice law, either temporarily or permanently. The primary role of the caretaker attorney is to protect the clients of the attorney who has become incapacitated and, to the extent not incompatible with that obligation, to protect the interests of the disabled or deceased lawyer. The proposed uniform court rule was intended to address several situations in which lawyers leave the practice of law suddenly and without adequate advance planning. However, the Committee anticipated that even in situations of advance authorization, a Caretaker Attorney designated by a solo practitioner may prefer to obtain prior court appointment.

Each Appellate Division has one or more rules providing for the appointment of a receiver to inventory the files of a disbarred, resigned or suspended attorney, as well as an attorney who has become incapacitated, mentally or physically, and is otherwise unable to continue practicing law. Presently, such appointments, which are relatively rare, occur following a request from a disciplinary or grievance committee, acting upon numerous client complaints. It was clear to the LPCC that there is a greater need for the appointment of “caretaker” attorneys, including in situations where the incapacitated lawyer has not been the subject of any complaint or disciplinary proceeding.

Lawyers may be incapacitated temporarily or permanently, physically or mentally, in circumstances in which their inability to continue practicing is not anticipated or planned for. Lawyers practicing in partnerships or professional corporations generally, although not always, have built-in protections for their clients, who are represented by the law firm and not by the individual lawyer. In those cases, it is the law firm's responsibility to make sure that

the clients' interests are fully protected. However, sole practitioners may or may not have done adequate advance planning for their unforeseen incapacity. And, even when a sole practitioner has made adequate advance plans, it may be advisable for the lawyer who is assuming responsibility for the practice of another attorney to be formally appointed by a court as a “caretaker” attorney, pursuant to this proposed rule.

Each Appellate Division has its own rules dealing with lawyer incapacity or inability to practice. The proposed uniform “caretaker” rule incorporates provisions common to the existing court rules and is an effort to ensure that the same remedies are available in all four departments, to assist lawyers, clients, disciplinary and grievance committees and, where appropriate, bar association law practice continuity committees. The proposed uniform court rule is an amalgam of our present court rules and the most successful approaches used in other jurisdictions.

The one category in which appointment of a caretaker attorney is appropriate involves lawyers who are disbarred, resigned or suspended and who have not complied with the Appellate Division's disciplinary order and rules governing the conduct of such lawyers—for example, by not notifying clients of their inability to continue practicing and not returning files to the clients or new counsel, as required. It is not unusual for lawyers facing serious discipline to disregard their obligations to clients and courts. In such situations, the Appellate Divisions sometimes appoint receivers, either a member of the appropriate disciplinary committee or a lawyer in private practice. Receivers are rarely compensated for their work, which is typically done on a voluntary basis. The proposed rule incorporates existing court rules and expands upon the current practice. The rule provides that the Appellate Divisions may appoint a caretaker attorney, direct that compensation be paid, either from the disciplined lawyer's practice or from other available sources, and direct the caretaker to undertake specific tasks and responsibilities, as directed by the appointing court, for the protection of clients. The appointment of such outside caretaker attorneys will relieve the disciplinary committees of the burden of inventorying and reviewing client files and will also protect clients from the disclosure of their confidential information (and possible waiver of attorney-client privilege), which can occur when a public agency reviews private client files and documents.

The second category involves lawyers who have not yet been disciplined, but who are under investigation by a grievance

committee. A common problem is lawyers who abandon their practices, either physically or constructively as a result of disability. In such case, the disciplinary committee may receive a flood of client complaints citing a lawyer's disappearance, incapacity or other unavailability. The appointment of a caretaker attorney in such cases will effectively protect the clients and enable the disciplinary committee to continue and complete its investigation. A caretaker attorney will attend to the clients' immediate interests -- e.g., by making sure that all clients are notified, that bank accounts and funds are protected, that court dates are not missed or, if already missed, that courts are promptly notified, and, where appropriate, that the attorney's support staff are compensated for their ongoing work and assistance with client matters.

The third category involves lawyers with no disciplinary problems or pending complaints. Lawyers may suffer unforeseen, incapacitating health problems or sudden accidents which render them temporarily or permanently unable to return to their offices or handle client matters. Such attorneys may even have provided for a colleague to step in to handle their law practice in the event of their disability or incapacity. Even in such situations, it is preferable for the caretaker attorney to act with the imprimatur and under the supervision of an appointing court. Just as the Appellate Division rules permit the Supreme Courts to determine the division of fees between a substituted lawyer and a lawyer who has been disbarred or suspended, so it is appropriate to permit the Supreme Courts to appoint caretaker attorneys in situations which do not involve allegations of professional misconduct by the temporarily incapacitated, disabled or deceased lawyer.

Finally, the proposed uniform rule incorporates what has been the practice in some departments of relying on bar association members to act, in a voluntary capacity, as caretaker lawyers or receivers for the practices of lawyers who become incapacitated, temporarily or permanently. The rule will protect lawyers appointed as caretakers from unwarranted complaints about the proper handling of their responsibilities and will ensure that client confidences are appropriately protected.

The rule envisions the creation of bar association law practice continuity committees throughout the state. Those committees will be able to assist in several ways. They may learn of a lawyer's incapacity, in many cases, sooner than clients or the courts, and will be able to apply for the appointment of a caretaker expeditiously to protect the interests of the lawyer's clients. We

envision training lawyers to become caretakers and anticipate that the New York State and local Bar Associations will develop an experienced pool of lawyers, from which the courts may appoint individuals to act in specific cases. This will not limit the courts' ability to appoint caretakers, but will provide a resource as, in some parts of the State, it has often been difficult to find volunteer attorneys to serve in this capacity.

Nothing in the proposed rule will restrict the Appellate Divisions from making any appointment for the protection of clients or limit the ability of the disciplinary committees to investigate and pursue allegations of professional misconduct by any attorney within their jurisdiction. The purpose of the proposed uniform rule is client protection".

#### **IV.**

#### **SELECT ISSUES OF CONCERN IN CARETAKER SITUATIONS**

The LPCC considered a number of professional practice-related issues which pertain not only to the temporarily or permanently-absent attorney, but also to the caretaker attorney who assumes certain responsibilities and liabilities in the discharge of the caretaker attorney's duties. Some areas of concern are addressed in the LPCC Report and/or *Caretaker Guide*, including the following:

1. Malpractice and professional insurance issues;
2. Ethical issues, such as conflicts of interests and confidentiality questions;
3. Trust account access and distribution matters;
4. Expenses of the Absent Attorney's Firm;
5. File disposition and storage issues;
6. Protecting the interests of the absent attorney and his/her estate; and
7. Disaster Planning.

#### **Malpractice and Professional Insurance Issues**

With respect to malpractice issues, the Report of the LPCC to the House of Delegates states:

The "Committee considered the question of how best to protect the interests of clients, as well as the interests of those lawyers willing to serve as appointed caretaker attorneys. There are at least two distinct problems. The first is that the original lawyer may have committed malpractice, which is discovered by the caretaker in the course of his or her work. Typically, such malpractice will be covered by the original lawyer's policy, assuming there was coverage. The second problem is the risk to clients that the caretaker attorney will be negligent in the handling of the clients' matters. Such negligence might or might not be covered by the original

attorney's legal malpractice policy. The Committee was concerned that clients not be exposed to greater potential harm as a result of the appointment of a caretaker attorney, which is intended to protect their interests, first and foremost. In the Committee's view, the optimal solution is to require that any attorney appointed as a caretaker have malpractice insurance, even a limited policy. In situations where the caretaker attorney is a retired attorney (or someone who would not normally have current malpractice insurance coverage), we would recommend that this Association explore the feasibility of establishing a low-cost group insurance policy, to cover appointed caretaker attorneys who have no malpractice insurance. This would be similar to the group policies available to cover otherwise uninsured attorney volunteers for pro bono legal work. The alternative – not requiring malpractice insurance for caretaker attorneys – would leave the clients at risk and without remedy in the event that the appointed caretaker was negligent in handling his or her responsibilities".

## **V.**

### **DISASTER PLANNING**

What happens to your law practice in the event of flooding, earthquakes, hurricanes, fire other natural disasters, explosions, or any accident or incident which substantially prevents you and your office staff from gaining functional access to your office? Do you have plans on how you will protect the interests of your clients and yourself? If not, you should consider what you would do if you were confronted with disaster. In retrospect, you would probably agree that it is better to plan ahead than to react in haste, quite likely without the benefit of files, telephone and other technology.

For guidance in developing a disaster plan, see the Checklist for Lawyers' Business Disaster Planning and Recovery, which is designated Appendix V in the July 29, 2005 version of the Guide for Caretaker Attorneys Appointed to Protect Clients' Interests in the Event of the Untimely Absence from Practice of a Sole Practitioner, which is attached to these Remarks as Exhibit 1.

## VI.

### **PALERMO TIPS FOR ADVANCE PLANNING**

#### **PREPARE A PERSONAL RETIREMENT ANALYSIS (“PRA”) & AN ADVANCE EXIT PLAN (“AEP”)**

Preparing for any planned or unplanned absence from the practice of law, including partial or full-time retirement, is a many-faceted, long-term undertaking, which should be started very early in one’s professional life. Advance planning and the formulation of your own personalized comprehensive plan for future action, combined with frequent updating, is required if you want to achieve a successful outcome. This planning activity deserves top priority on your “To Do” list. Timely implementation of specific steps identified in your plan will determine whether you will achieve your desired personal, professional and financial objectives.

One of the major goals of this program is to get you to focus your attention on the need for both advance preparation of your law practice transition and succession plan. Most decisions regarding retirement from the practice of law, (either full or part-time, whether planned or unplanned, voluntary or involuntary), raise significant personal and professional issues. These decisions affect not only you as an individual practicing lawyer, but will also have substantial impact upon your clients, and well as your family, and your professional colleagues. Preparing for both planned and unplanned absence from the practice of law deserves your thoughtful immediate attention and continual periodic review. You can ill afford the risks of waiting until illness, accident, disability, death or unanticipated retirement prevent you from adequately accomplishing necessary planning and implementation steps. Action should be taken when you are in control of your own destiny. Every lawyer needs to take time, NOW, for early, thoughtful, deliberate advance planning, long before an urgent need for action arises, (whether scheduled or unscheduled).

You will need to address and resolve many important issues as you perform your Personal Retirement Analysis (“PRA”) and create your individual Advance Exit Plan (“AEP”).

With respect to any Advance Exit Plan, you must address critical ethical issues of professional responsibility, including preservation of client confidences and papers, and avoiding conflicts of interest. Consideration of such issues will affect the transfer of your interest in your law practice to a transition or successor attorney or firm.

Why should you have an AEP? First and foremost, it is to protect your clients’ interests. In addition, you may want to preserve your own economic interest in your law practice. Indeed, proper advance planning may provide you with an opportunity to enhance the economic value of your law practice in the event of sale, merger or retirement. Decisions about these and other aspects of your exit from the practice of law can not and should not be made casually, impulsively or when your capacity to act rationally and responsibly may be severely limited because of physical or mental disability or unforeseen events and/or conditions.

Creation of your Advance Exit Plan requires careful, detailed consideration of all your personal and professional circumstances. Your individual AEP should be established early in your career and ought to be revised as often as significant changes occur in your professional and personal life. There is no “cookie-cutter” Advance Exit Plan which fits everyone’s needs. Each plan is personal and unique and must take into account a wide range of individual desires and objectives. Creation of an appropriate AEP takes substantial time and serious thought and effort because you must conduct an accurate, detailed subjective and objective analysis of your

personal and professional objectives and your financial resources and assets. Planning for a successful retirement requires continual candid self-evaluation, updating, and full and frank discussions with those affected by such important decisions, including your spouse, members of your family, professional law partners, colleagues, associates, and key office personnel. You may also want to consult one or more of your trusted friends and/or advisers.

What happens when you are unable, unavailable, or no longer interested in continuing the practice of law, including situations of planned and unplanned retirement”? Only you know the answer. You are in the best position to take action in advance to protect your clients and your interests. But, that is also a question which bar associations and leaders should be asking their members and helping them to develop and implement plans for successful law practice transition and succession. More educational programs and materials, such as the one today, are needed to assist lawyers in preparing for the orderly transfer of clients matters and files.

If you perform an honest Personal Retirement Analysis and create a sound Advance Exit Plan, when the time arrives for temporary or permanent absence from the practice of law (part-time or full-time, your clients will be protected and you will be ready in the event planned or unplanned contingencies prevent or significantly impair your ability to practice. Preparing for the possibility of involuntary, unplanned, or unexpected absence from the practice of law is at least as important as preparing for a planned absence. We need to recognize that events of unanticipated accident, physical or mental disability, incapacity, and early death can and do happen to everyone--- including practicing young lawyers.

In view of what is at risk, for clients and lawyers alike, it seems appropriate for the reasonably prudent lawyer to take the initiative, while he or she is mentally and physically able, to take the initiative to avoid potentially adverse consequences.

### **ESTABLISHING YOUR PERSONAL RETIREMENT ANALYSIS (PRA) and YOUR ADVANCE EXIT PLAN (AEP)**

Steps to take in formulating your individual Personal Retirement Analysis and Advance Exit Plan include the following:

1. Candidly and concisely identify and write down both your personal and professional goals and objectives;
2. Candidly identify and evaluate your individual psychological makeup, resources, talents and circumstances, including health, finances, responsibilities and obligations, age and stage in life, professional skills and competence, and physical, medical and mental condition in light of individual personal and professional goals and objectives;
3. Candidly identify and evaluate your areas of practice and setting (whether private, public or corporate) and your particular capabilities and requirements, such as support staff and backup mechanisms, which are needed to provide competent quality legal services and to accomplish your professional goals;
4. Candidly evaluate the time, effort, resources and commitment you need to satisfy both your personal and professional goals in light of your available time, energy and resources;
5. Regularly revisit and re-evaluate your Personal Retirement Analysis and your Advance Exit Plan as your personal circumstances and professional practice change, and be flexible and

willing to modify your PRA and AEP when the situation demonstrates the need and desirability of doing so;

6. Prepare and maintain detailed written client information, instructions to key office personnel and necessary client authorizations to foster a smooth transition, sale, merger or closing of your law practice;

7. Explore and establish advance written arrangements with your partners, associates or other successor attorneys to manage, transfer, windup or close of your law practice;

8. Maintain and update client files and relevant checklists.

### **"Of counsel" Relationships Provide Excellent Opportunities for Advanced Voluntary Transition and Exit Planning**

An "Of Counsel" relationship can be useful to lawyers at all ages and stages of their career for many purposes, such as starting up a practice, or during a mid-life career change, but especially when transitioning, retiring or disposing of a law practice. An "Of Counsel" relationship can be especially useful to solo and small-firm practitioners who are planning ahead to protect their clients' interests in the event of either planned or unplanned absence as well as in law practice transition or succession situations.

Sample forms of "Of Counsel" agreement may be found in Appendixes "A" to "F" of The Of Counsel Agreement, Third Edition, 2005, by Harold G. Wren and Beverly J. Glascock, and Appendix "C" to Law Partnership: Its Rights and Responsibilities, by George H. Cain, 1996, both of which books are available for purchase through the Senior Lawyers Division of the American Bar Association. You may call the ABA Service Center at 1-800-285-2221 for further information and ordering.

As you plan ahead for eventual full or part-time transition from the practice of law, consider reading "50 Things To Do with the Rest of Your Life" (2003), by Robert Pearce Wilkins. This book is available for purchase at: [www.50thingstodo.com](http://www.50thingstodo.com) or at: [www.amazon.com](http://www.amazon.com).

## **VII.**

### **CURRENT STATE OF LAW PRACTICE CONTINUITY ACTIVITY**

While no action has yet been taken by New York State Courts to adopt the proposed Uniform Caretaker Rule, the NYSBA continues to support and encourage implementation of those proposals and the objectives envisioned by "Caretaker" procedures.

The mission of the NYSBA LPCC has been assigned to the NYSBA Law Practice Management Committee where it will be addressed under the leadership of a new Sub-Committee, composed of many members of the former LPCC. The new Senior Lawyers Section also has a Law Practice Continuity Committee which seeks to coordinate its efforts with the LPM LPCC Sub-Committee and comparable professional activities at the local bar level.

See Exhibit 2 for web site references of select national, state and local bar associations and information relating to lawyer transition and succession.

See Exhibit 3 for an article describing a new Law Practice Registry project of the Monroe County Bar Association which is designed to encourage and promote advance designation of another lawyer who is able and willing to assist clients in transition when their attorney is absent or unavailable in unplanned situations.

### **CONCLUSION**

**THE ISSUES INVOLVED IN THIS TOPIC ARE IMPORTANT TO LAWYERS AND THE LEGAL PROFESSION. THEY MUST BE ADDRESSED BY THE NYSBA, LOCAL BARS AND THE COURTS. TRUSTS & ESTATES, ELDER LAW AND SENIOR LAWYER SECTIONS SHARE COMMON INTEREST IN AND CONCERN ABOUT THESE MATTERS AND ALL SHOULD BE ACTIVELY ENGAGED IN PURSUIT OF SOLUTIONS TO THE PROBLEMS PRESENTED.**

**October 12, 2009**

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