

*Disciplinary Safety Systems*

**Advance Designation  
of Custodian Attorney**

Dean A. Schaffer  
Succession Planning Program Administrator  
State Bar of Texas

# Cessation of Practice Issues

Situations in which the lawyer has died or is otherwise “absent”

Most difficult scenarios:

- \* Sudden cessations
- \* “Prospective” cessations

**Start emergency management before adverse event**



*Before*



*After*

*During*

# Mitigation Phase



- △ Self-care
- △ Combat isolation
- △ Address echoes of lawyer wellness issues

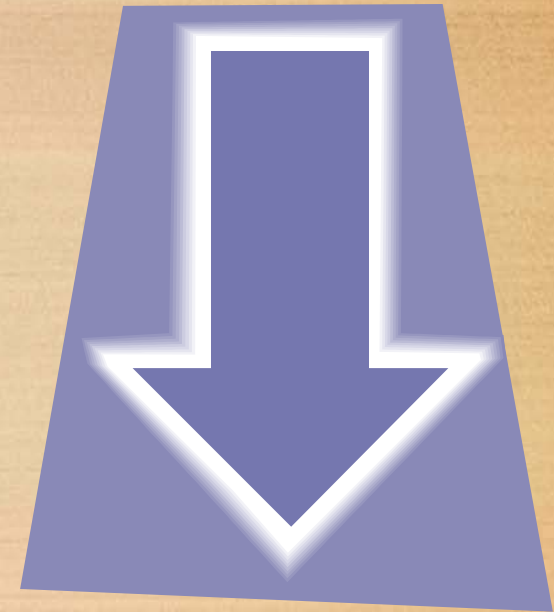
▶ TLAP ◀



# Loss of Function Hierarchy

- Community
- Spiritual life
- Recreation and avocation
- Friends
- Peers
- Family
- Work\*\*

**\*\*A Medical Emergency**



# Mitigation Phase



## *Proactive Discipline*

- △ Self-assessment
- △ Succession planning
- △ Advance designation of custodian attorney



# Preparation Phase



Planning

Peer engagement

Readiness before an “Event”

# Preparation Phase



*Upon cessation, what would be needed ...*

Access to files ?

Notice to clients ?

Client direction on where to send the file ?

Return of client property ... IOLTA issues ?





# Response Phase

**A difficult place to start**

Markers for or against, application for or ending,  
court-ordered custodianship

△ △ △ △ △ △ △



# Active matters pending ... ?





**No lawyer handling with client consent ... ?**



# Response Phase



## TEXAS RULES OF DISCIPLINARY PROCEDURE

### PART XIII. CESSATION OF PRACTICE

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**13.02. Assumption of Jurisdiction:** A client of the attorney, Chief Disciplinary Counsel, or any other interested person may petition ...

A. That an attorney ... has died, disappeared, resigned, become inactive, been disbarred or suspended, or become physically, mentally or emotionally disabled and cannot provide legal services necessary to protect the interests of clients.

B. That cause exists to believe that ... no other attorney licensed to practice law in Texas has, with the consent of the client, agreed to assume responsibility.

C. That there is cause to believe that ... interested persons or entities will be prejudiced ....

**13.03. Hearing and Order on Application to Assume Jurisdiction:** The court ... may issue an order to show cause ... why the court should not assume jurisdiction of the attorney's law practice. If the court finds that one or more of the events stated in Rule 13.02 has occurred and that the supervision of the court is required, the court shall assume jurisdiction and appoint one or more attorneys licensed to practice law in Texas to take such action as set out in the written order of the court ...

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The custodian shall observe the attorney-client relationship and privilege as if the custodians were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this part. Except for intentional misconduct or gross negligence, no person acting under this part may incur any liability by reason of the institution or maintenance of a proceeding under this Part XIII. No bond or other security is required.



# Response Phase



## *Practical objectives:*

1. Access to files
2. Notice to clients
3. Client direction on where the client wants the file to go
4. Return of client property ... IOLTA issues



## Recovery Phase

Lawyer Referral Service

Client Security Fund

**Last step: Always ask what did we learn?**





# Mitigation Phase



- For client protection and emergency management, designate in advance your custodian attorney(s)
- A custodian attorney serves in a limited role to wind down the lawyer's law practice in the event of need



State Bar of Texas Online System  
for Advance Designation of Custodian Attorney  
[www.texasbar.com/succession](http://www.texasbar.com/succession)





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