

Disciplinary Safety Systems

**Advance Designation of Custodian
&
Succession Planning**

**Dean A. Schaffer
State Bar of Texas**

Enforcement

Classic Lawyer Discipline (Processing Grievances)

+

Disability Suspension (TRDP Part 12)

Interim Suspension (TRDP Part 14)

+

Grievance Referral Program (GRP)

Administrative Services

Ethics Helpline

+

Law Practice Management

Client-Attorney Assistance Program (CAAP)

Lawyer Referral and Information Service (LRIS)

+

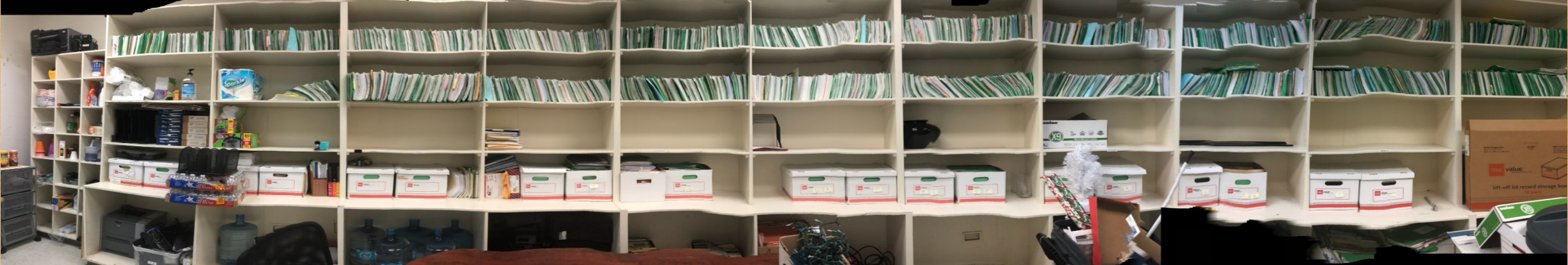
Client Security Fund (CSF)

Something new

CDC Regionals experienced increase in demand to respond to situations in which lawyers were deceased or otherwise “absent” from law practice

Cessation of Practice Issues > Emergency Preparedness

Cessations issues ...



Why the calls? Why so many?



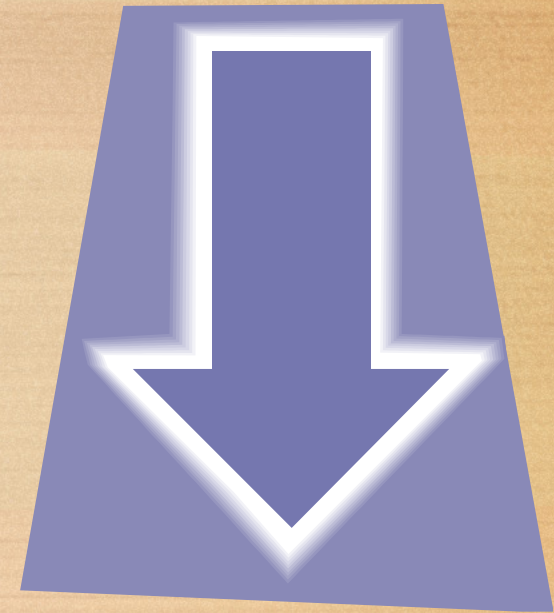
“Cessations Docket” Pilot Program

- Calls centralized to one lawyer in CDC Special Projects
- Patterns and stats
- Most difficult scenarios:
 - *Sudden Cessations*
 - *“Prospective” Cessations*

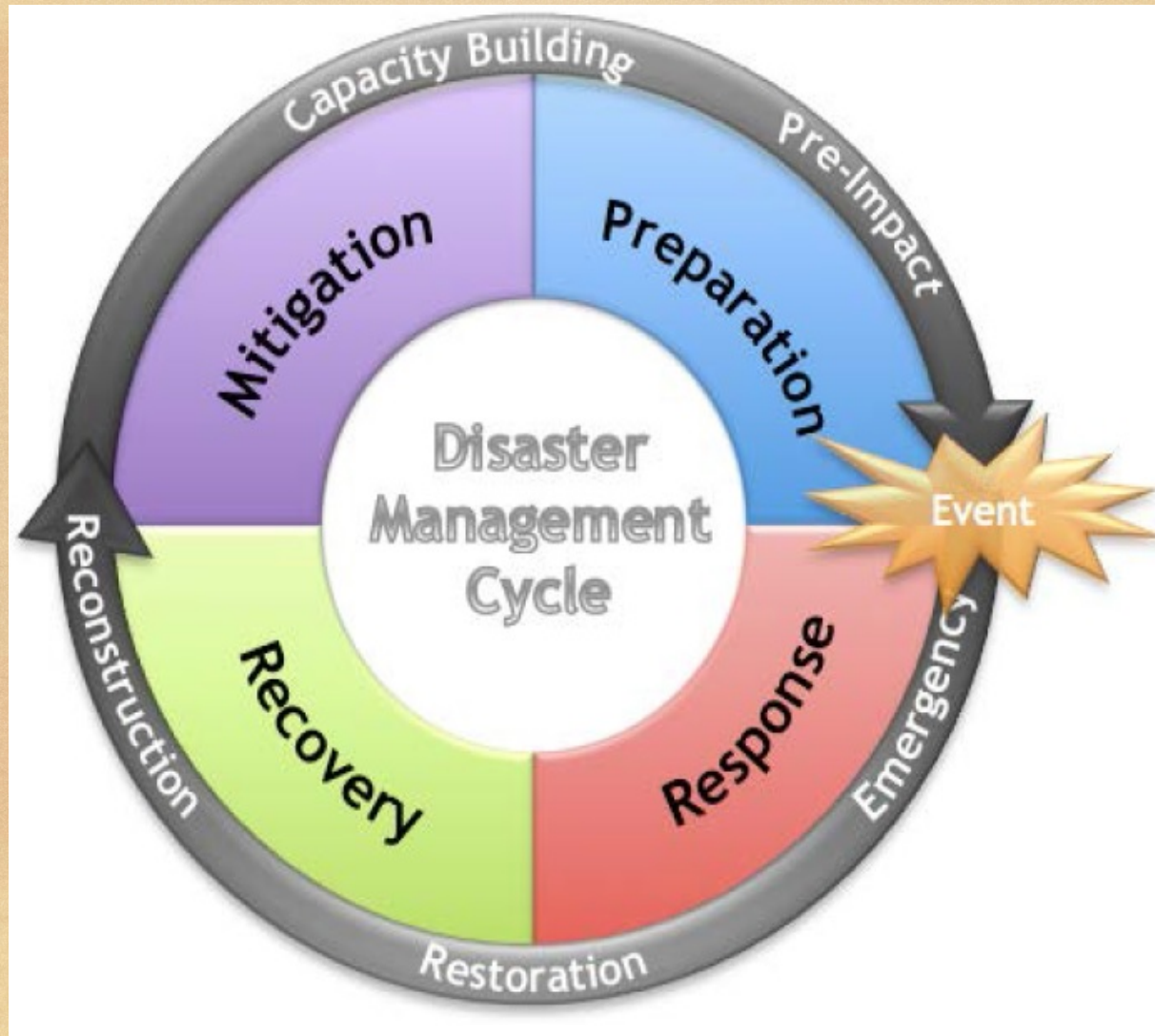
Loss of Function Hierarchy

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

****A Medical Emergency**



Before



After

During

Mitigation Phase



- △ Combat isolation
- △ Care and feeding of a workaholic
- △ Recognize signs of depression and substance abuse

▶ TLAP ◀

- △ Enhance proactive discipline

Mitigation Phase



Proactive Discipline

- △ Advance designation of custodian(s)
- △ Confidential self-assessments
- △ Succession planning

Preparation 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

Preparation Phase



Training

Peer Teams

Standing Committees

Disciplinary Safety Systems

Response Phase



A difficult place to start

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

If custodianship, recruit a team

△ △ △ △ △ △ △

Response Phase



TEXAS RULES OF DISCIPLINARY PROCEDURE

PART XIII. CESSATION OF PRACTICE

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 ...

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.

Recovery Phase



Lawyer Referral Service

Client Security Fund

What did we learn?

Cessations are a concern for the discipline of law practice

Disciplinary Safety Systems

... and the Discipline of Law Practice is changing



Value

Analytics

LPM and LPI

More, Better, Faster

Lawyer Wellness Issues

“Alternative” Service Providers

Commoditization and Segmentation

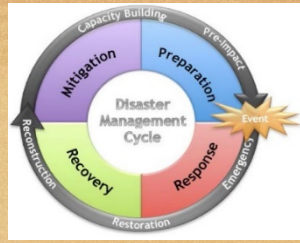


In a crucible ≈

≈ something new



Recovery Phase



- I. The Discipline of Law Practice is Changing**
- A. Business Markets & Transition to Value
 - B. Commoditization & Segmentation
 - C. Automation, Analytics, Acceleration
 - D. Alternative Legal Service Providers (ALSPs)
 - E. Non-Lawyer Investors & Third-Party Financing
 - F. In-Housing & Outsourcing
 - G. The Rise of Manage Legal Case: Prepaid Legal Insurance Plans & Corp Proc of Law
 - H. Disruption → The Impact of "More, Better, Faster"
 - 1. Testing the Bedrock
 - 2. Deep Learning v. The Shallows
 - 3. Meaningful Access to Justice
 - I. Lawyer wellness issues
 - J. Disciplinary Safety Systems

II. Increase in Demand to Address Situations in which Lawyers are Deceased or Otherwise "Absent"

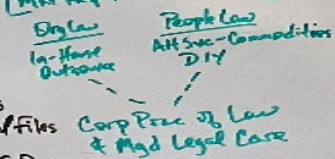
- A. Calls Centralized to CDC Special Projects**
1. Points of Intake @ SBDT
 2. Impetus for the Calls
 - a) The Reporter
 - b) The Lawyer at Issue
 - c) Context of Subject Law Practice
 3. Evolution of Action Items
 - a) "Look-in" if applicable
 - b) Refer or build, if meaningful
 - c) Court filing, when there is no other way

Transition to "Cessations Docket"

LPM: Absorbing & Exit

LPI: Ongoing Process & Improvement

- B. Rationale for Pilot Program**
- C. Key Problems in View** [Mkt Resp to Prohibitor Cost]
- 1. Lawyer Suicides
 - 2. Sudden Cessations
 - 3. Prospective Cessations
 - 4. Underfunded IOLTAs
 - 5. Final Disposition of Physical Files
- D. Practical Limits of CDC Resources**
- E. Reporting**



III. Stats - Cessations Docket Pilot Program

A. Total = as of 1/23/20 = 464

B. Statute Time of Initial Contact

1. Deceased	265
2. Inhab for Proprietor Look-in	105
3. Distressed, RILD, Suspended	72
4. Inactive, Vol Resig, Exempt from the	19
5. Disability Suspension	2
6. Other	1

C. Pattern or Type:

1. Sudden Cessation	140
2. Evaluation or Monitoring	91
3. Custodianship	9
4. Attorney's Estate	19
5. Third-Party Storage	20
6. Client File	86
7. Dormant Proceeding	19
8. Will Search	78
9. Other	2

D. Class (for prospective handling)

1. Class A - Trend toward more complex	259
2. Class B - Occasionally complex	20
3. Class C - Trend toward less complex	183
4. Other	2

IV. What Did We Learn?

A. Cessations Issues Are a Concern for the Discipline of Law Practice

1. Issues are National in Scope
2. High Costs & No Funding
3. Most Difficult Scenarios
 - a. Sudden Cessations
 - b. Prospective Cessations
4. Anecdotes
 - a. Estate Manager
 - b. Lighthouse Keeper
 - c. Emergency Responder

Consequence to Discipline of Law Practice
 • Projected reduction of 30-40% "Lawyer Time"
 • Training bags & Grayings of Profession
 • Lawyer wellness issues

Increase in Demand to respond to Lawyer Absence

Transform Discipline of Law Practice

B. Emergency Management Cycle

1. Mitigation Phase

- a. TLAP & Peer Teams
- b. Educate & Communicate
 - i) Contact Isolation
 - ii) Pay attention to signs of impairment
- c. Proactive Discipline (OEA and others...)
 - i) Self-assessment
 - ii) Advance Notice of Custodianship
 - iii) Succession Planning

2. Preparation Phase

- a. Early Warning Systems
- b. Standing Committees, Local & State
- c. Emergency Preparedness Network

3. Response Phase

- a. New counsel: successor, LPLS, etc...
- b. Practical Objectives of TRDP Part 13
- c. Markers for Custodianship
- d. Info Screening Issues
 - i. Active matter priorities
 - ii. Actv: Exp. Outing - checked matter to del
 - iii. Non-Disclose Agmt & Proprietary Info
- e. Aged, closed files
- f. IOLTA Issues

4. Recovery Phase

- a. Final Disposition of Client Files
- b. Claims on Att'y Estate, Law Firm Receivables...
- c. Client Security Fund
- d. Always ask: what did we learn?

C. LPM & LPI

1. 5 Steps of Legal Project Mgt (LPM)
 - a. Define Objectives and Scope
 - b. Plan the Project
 - c. Execute the Plan
 - d. Monitor Progress
 - e. Post-project Review
 - i. What did well?
 - ii. What to do better next time.
2. LPI Important to Finish
3. LPI to Ongoing
 - a. Efficiency, Improvement
 - i. Reduce # of steps & Time to Complete
 - ii. Science of Quality Decision Making
 - b. Employ Root Cause Analysis
 - i. 5 Whys, Fishbone Diagrams...
 - ii. Lean Six Sigma
 - c. Continuous Improvement Protocol

"Agile methodology"
 • Dynamic
 • Constant collaboration
 • Rapid feedback
 • Continuous adaptation
 • Law firms & ALSPs
 Power of LPI on p. 301

V. Insight from Etymology:

Evaluation of the Discipline of Law Practice as the unfolding of instruction in the use of that which has been fixed in case down

Mitigation

(Online) Advance Design
of Custodian in the event
of need under TRDP Part 13

(Written) Succession
Planning

Admin Service
Providers

Preparation

Training

Early Warning
Systems

Practice
Managers

EVENT

Response

TRDP Part 13

Local
Responders

"Cessations Docket"
Pilot Program

Recovery

LRIS

CSF

Always Ask:
What did we learn?

LAW PRACTICE MGT COMM



SUCCESSION PLANNING WORKGROUP

We learned that discipline
comes from a word that means ... learning