



# EDICTA

**EDICTA  
PRAETORIS:  
EXECUTIVE  
ORDERS  
AND THE  
FORCE OF LAW**



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# PLANNING FOR THE DAY YOUR PRACTICE ENDS

*“Turn out the lights, the party’s over.” – Willie Nelson*

One day you will no longer practice law. It doesn’t matter how good a lawyer you are, whether your name is on the door, your record on appeal, or how much your clients love you. The outcome will be the same regardless of your genes, how much you exercise, or how well you eat. Most of us hope our practices end because we retire or transition to another profession or business or service opportunity, but, for some of us, the end will come because we die or suffer a physical, mental or emotional setback that renders us incapable of practicing. Planned or unplanned, voluntarily or involuntarily, your practice will end because, as the saying goes, “time is undefeated.”

**Demographics.** Almost half of KBA members are aged 55 years and older. The average 60-year-old has a remaining life expectancy of under 25 years, meaning she’s entering the “fourth quarter,” and most lawyers don’t practice until death. In addition, many younger lawyers will leave law practice for other opportunities. Accordingly, a significant percentage of local lawyers will cease practicing law over the next 15 years.

**Shuttering a practice is difficult in the best of situations.** I’ve had the experience of shutting down my practice and a law firm at the same time, telling all my clients that they needed to find another attorney. (Almost three years later I returned to private practice and was disappointed to learn some had followed my advice!) Even though the transition was planned and the other three lawyers in my firm were moving their practices to other firms and thus available to help my clients, it still required a significant expenditure of financial and human resources. It is significantly more difficult when the transition is unplanned or involves one of the more than 1,000 solo lawyers in Knox County. Many a KBA member has volunteered vast hours to close the practice of a sole practitioner who died with no succession plan.

**You have help (and no excuse).** The good news is you’re not on your own and you don’t have to leave a mess for others to clean up. The KBA has prepared a handbook on practice succession entitled, “Planning Ahead: A Guide to Protecting Your Clients’ Interests in the Event of

Your Disability or Death.”<sup>1</sup> Adapted from similar handbooks by the Oregon and Idaho state bars, it provides a how-to on creating and implementing a comprehensive plan to leave law practice well.

The handbook starts with the truth that “a lawyer’s duty of competent and diligent representation includes arranging to safeguard the clients’ interests in the event of the lawyer’s death, disability, impairment, or incapacity.”<sup>2</sup> For those of us blessed with clients who think highly of us, we tend to want to return the favor by looking out for them, and that care should apply not only during our practice but also in looking ahead to make sure they’re served well beyond our practice. The handbook lays out the process by which attorneys can satisfy this duty.

The handbook addresses access to client trust accounts, notifying clients of the lawyer’s imminent or recent departure from practice, “other steps that pay off,” file retention and destruction, and special considerations related to the death of a sole practitioner. For those without colleagues in a law firm, the handbook suggests an agreement with a Receiver/Assisting Attorney to wrap up the attorney’s practice and even provides form agreements. The guide also includes answers to frequently asked questions, helpful checklists, numerous other forms, resource and contact info, relevant legal authorities, and an article entitled, “Why Did We Ever Want to Keep Original Wills?” Above all, the guide encourages lawyers to “start now.”

In future installments on this topic, I’ll dig into some of the details of lawyer succession and share helpful stories of what leaving practice looks like when done well and done poorly. In the meantime, you and I (especially if we practice alone) need to start planning now. Use the handbook, talk to practicing colleagues about what their plan is, and learn from those who’ve left the practice of law and those left to pick up the pieces.



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<sup>1</sup> Available at <https://www.knoxbar.org/?pg=SuccessionPlanning>. The handbook notes the “tireless efforts” of KBA Member Denise Moretz to bring the handbook to fruition.

<sup>2</sup> Citing Tenn. Sup. Ct. Rule 9, Section 29.1, and ABA Formal Op 92-369 (emphasis in original).