

Succession Planning:

Cessation of Practice

Advance Designation of Custodian Attorney

Sale of Practice

Succession Planning Resources

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Women and the Law Section
Wellness Retreat Tapatio Springs
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Cessation of Practice Myths

If something happens to me, the State Bar will take over my practice.

✘ False. The State Bar does not take over client files or assign new counsel. Instead, a court might assume jurisdiction over a lawyer's practice and appoint custodian attorneys to close the practice.

I don't need to think about succession planning until I'm getting ready to retire.

✘ False. Cessation of Practice is regulated by the Texas Rules of Disciplinary Procedure. Don't wait for a crisis to strike.

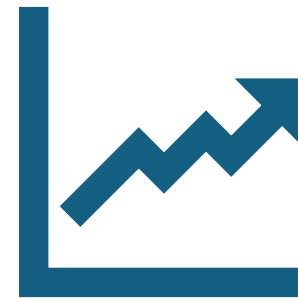
Sudden Cessations of Practice

- Court ordered well-check on absent lawyer; the lawyer died at age 49 after a drug overdose; the practice left active matters pending across multiple counties
- Lawyer declared a missing person; law enforcement found the lawyer's body in a storage unit, suspected suicide; solo practitioner with no office assistant
- Lawyer reported his father (also a lawyer) suffered from dementia; soon afterword, the son died unexpectedly, leaving decades of files for both practices

Emergency Cessations



Traditionally handled ad hoc by regional offices of the Chief Disciplinary Counsel



By 2017, increase in demand for CDC time and resources to address cessations

*Grievance
Oversight
Committee
Biennial Report
2018*

“[C]essation of practice cases ... are a rapidly growing part of [CDC’s] workload and often require an extensive use of CDC resources.”

Advance Designation of Custodian Attorney

SUCCESSION PLANNING



MORE INFORMATION

[Contact Us](#)

NAVIGATION

--Select one--



Advance Designation of Custodian Attorney

texasbar.com/succession



STATE BAR *of* TEXAS

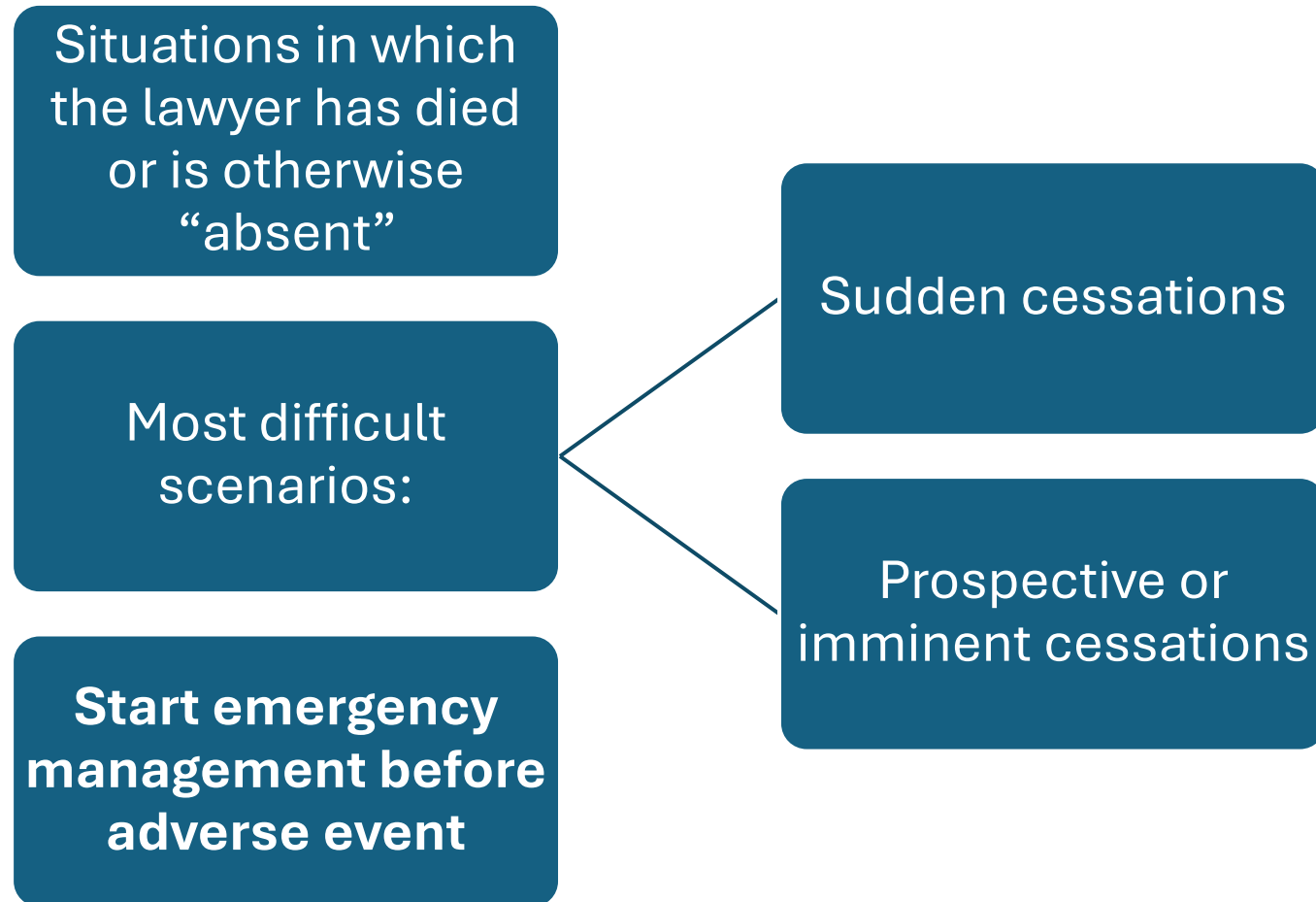
Designation of Custodian Attorney

The arc of a lawyer's law practice eventually comes to an end. Ideally, the lawyer is ready, and transition from practice goes according to plan. However, in some events, cessation of practice is sudden and unexpected.

Succession planning fosters order and emergency preparedness. The Texas Supreme Court regulates cessation of practice consistent with these principles. [Texas Rules of Disciplinary Procedure](#)

For emergency management and client protection, the State Bar of Texas urges all lawyers to designate in advance one or more custodian attorneys. The role of the custodian attorney is to assist in winding down the lawyer's law practice. Practical objectives of custodianship include:

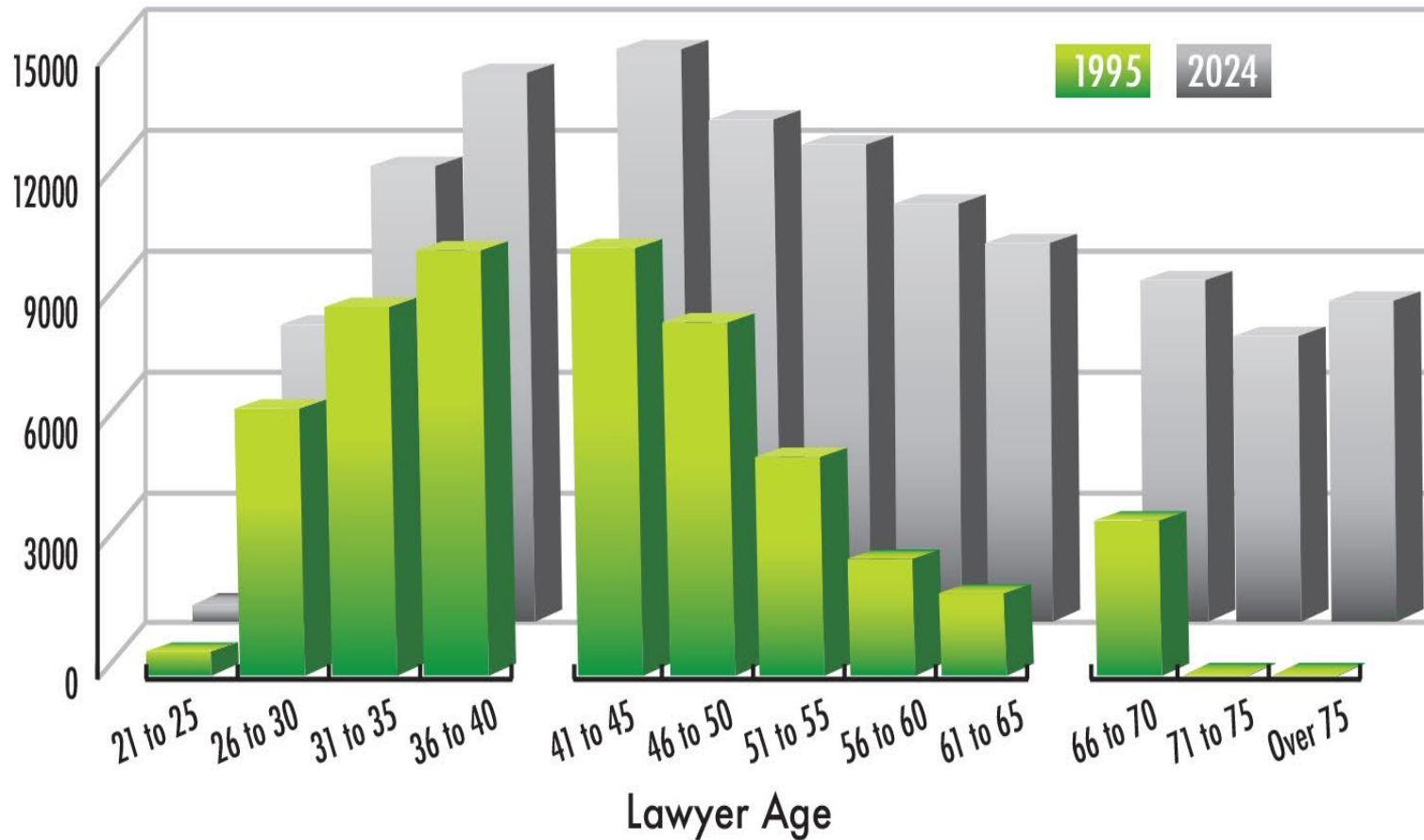
Cessation of Practice Issues



Cessations Drivers

- 1. Personal Crisis, Sudden Death or Incapacity**
- 2. Mental Illness and Substance Use Disorders**
- 3. Risk of Market Disruption (AI, Legal Ops, ALSPPs)**
- 4. The Graying of the Profession**

The Graying of the Profession

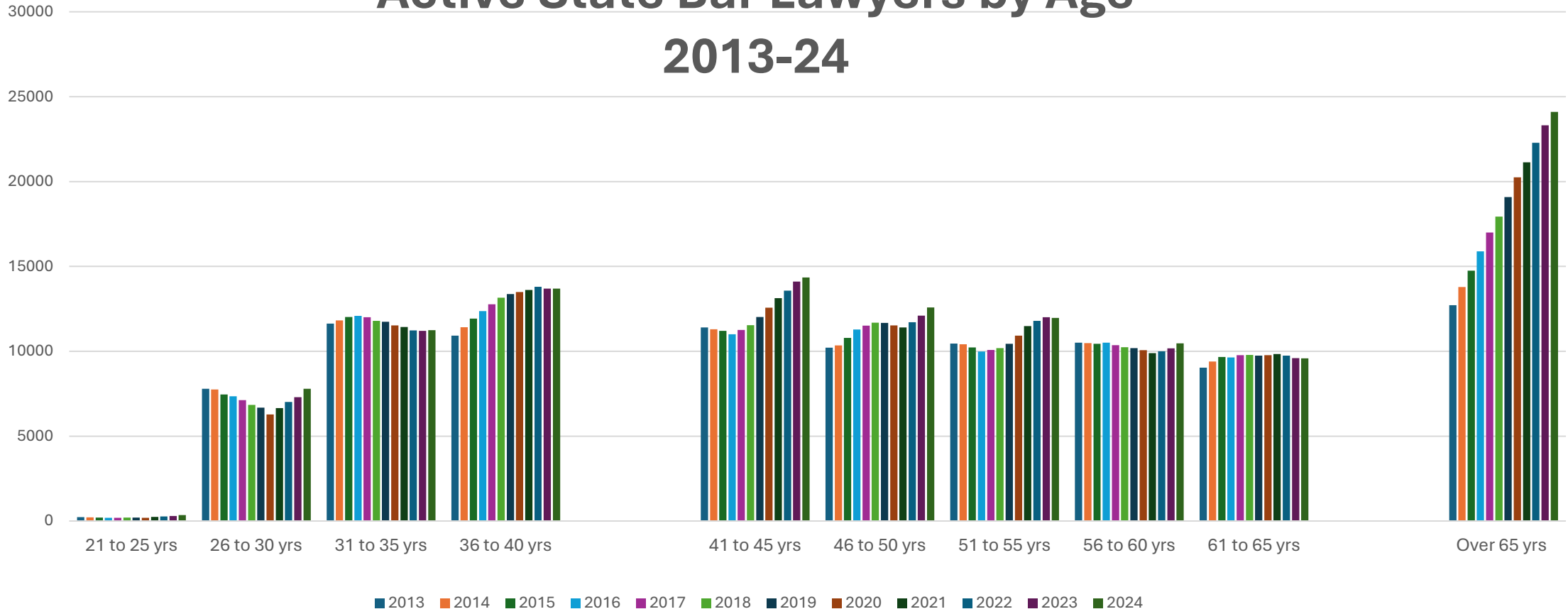


	1995	2024
21 to 25 yrs	573	356
26 to 30 yrs	6626	7792
31 to 35 yrs	9116	11,240
36 to 40 yrs	10,587	13,686
41 to 45 yrs	10,630	14,352
46 to 50 yrs	8785	12,583
51 to 55 yrs	5439	11,970
56 to 60 yrs	2876	10,461
61 to 65 yrs	2044	9578
66 to 70 yrs	3866*	8590
71 to 75 yrs	0	7165
Over 75 yrs	0	8354

*total includes all lawyers over 65 years of age for 1995

Active State Bar Lawyers by Age

2013-24



2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024

Over-65: 12709 13782 14743 15892 16997 17937 19085 20254 21137 22288 23307 24109

Cessation of Practice is Regulated

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.

New Rules Added by Referendum Elections

- **TRDP 13.04: Voluntary Appointment of Custodian Attorney for Cessation of Practice**
 - Effective July 1, 2021
 - Enables lawyers to name their own custodian
 - Provides custodian attorney with same liability protection as court-appointed custodian

New Rules Added by Referendum Elections

- **TRDP 13.05: Termination of Custodianship**
 - Effective October 1, 2024
 - Outlines when and how to terminate a custodianship
 - Enables the appointing attorney to return to the practice before it is closed when appropriate.

Some Cessations Prove Temporary

- In one case, a lawyer suffered a stroke during trial. There was a sudden cessation, but the lawyer recovered and returned to practice.
- During the pandemic, many lawyers contracted Covid 19. One lawyer fell into a coma, survived the illness, and came back.
- Lawyers are sometimes needed by loved ones to serve as care providers. Practice may be interrupted when a family member is seriously injured, in cognitive decline, or suffering from life threatening or terminal illness.

Mechanics of TRDP Part 13

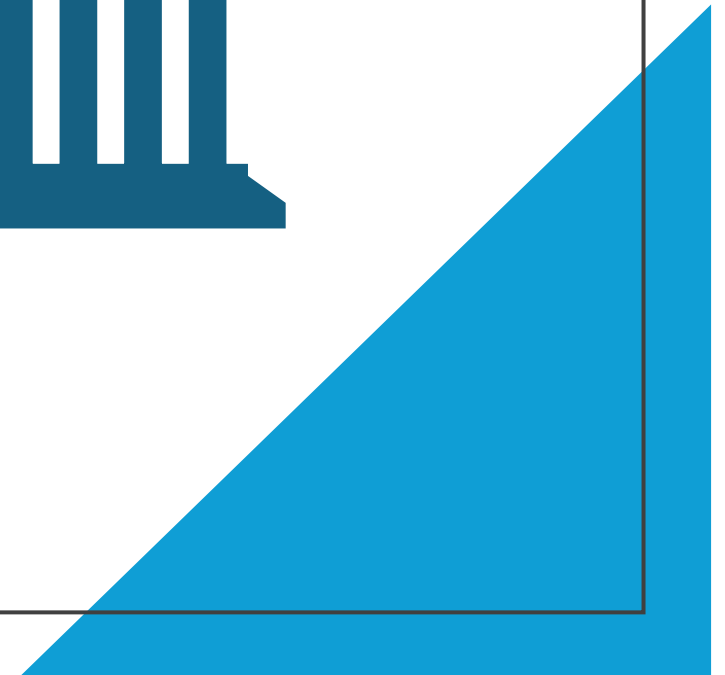
13.01 – Ordinary Cessations

13.02 – Extraordinary Cessations

13.03 – Court-appointed Custodianship

13.04 – Voluntary Appointment of Custodian

13.05 – Termination of Custodianship



Succession Planning

Traditional Transitions and
Sale of Practice

Unplanned Cessation and Closing Office

Court-Appointed Custodianship,
TRDP 13.01-13.03

Voluntary Custodianship, TRDP
13.04 & 13.05

Planned Succession

Orderly Transfer of files to
successor attorneys

Merger or association with
another firm or lawyer

Sale of the practice

Traditional Methods of Transferring Client Matters to Successor Lawyers



Hire

Hire a younger lawyer into the firm and transfer client matters over time with client consent, then arrange departure compensation for the senior lawyer at the proper time.



Join or merge

Join or merge with another firm and introduce clients to the new firm's lawyers and arrange for permissible compensation and client consent to transfer files.



Co-Counsel

Engage outside co-counsel with client consent and enter a permissible fee sharing arrangement based on work performed or shared.

Can I Sell My Practice?

Opinion 266

Concluded that sale of practice in 1963 would violate Canons that prohibited attorney solicitation and protected confidentiality.

“Clients are not merchandise. Lawyers are not Tradesmen.”

Note

The opinion predates our Texas Disciplinary Rules of Professional Conduct. Advertisement of the sale inferred it was a sale of “clientele.”

Lawyers don’t sell clients or client files. Find value in the tangible and intangible property of the practice.

No Texas disciplinary rule expressly prohibits sale of practice.

However, any sale of practice must follow applicable disciplinary rules.

Rules implicated in sale of practice include:

Rule 1.01 Competent and Diligent Representation

Rule 1.02 Scope and Objectives of Representation

Rule 1.03 Communication

Rule 1.04 Fees

Rule 1.05 Confidentiality of Information

Rule 1.09 Conflicts of Interest

Rule 1.14 Safekeeping of Property (IOLTA)

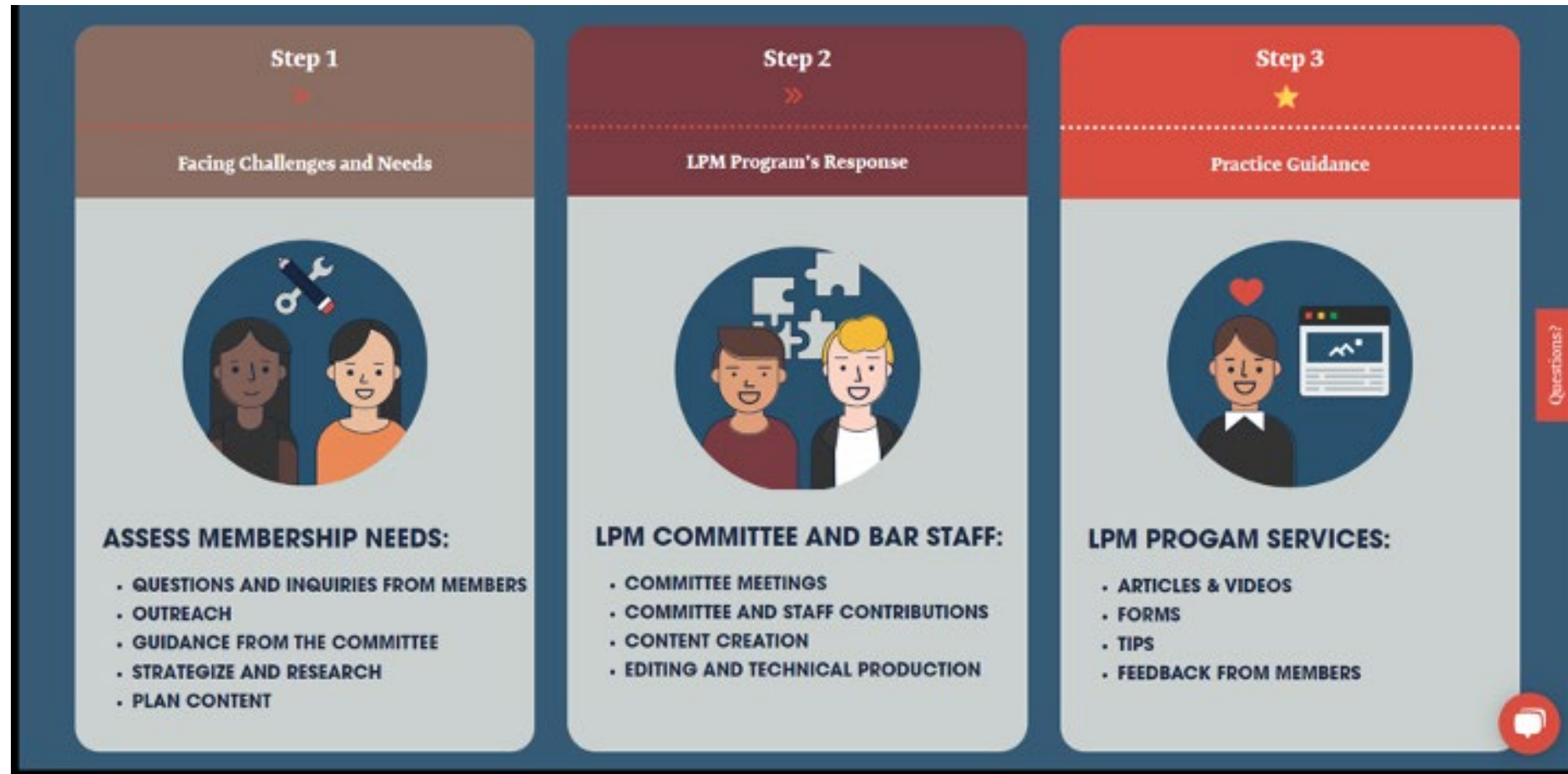
Rule 1.15 Declining or Terminating Representation

Rule 5.06 Restrictions on Right to Practice

Rule 7.04 Prohibition of Solicitation (Anti-Barratry)

Rule 8.04 Misconduct (Misrepresentation)

Law Practice Management Program



Law Practice Management Resources

texasbarpractice.com



Starting a Practice

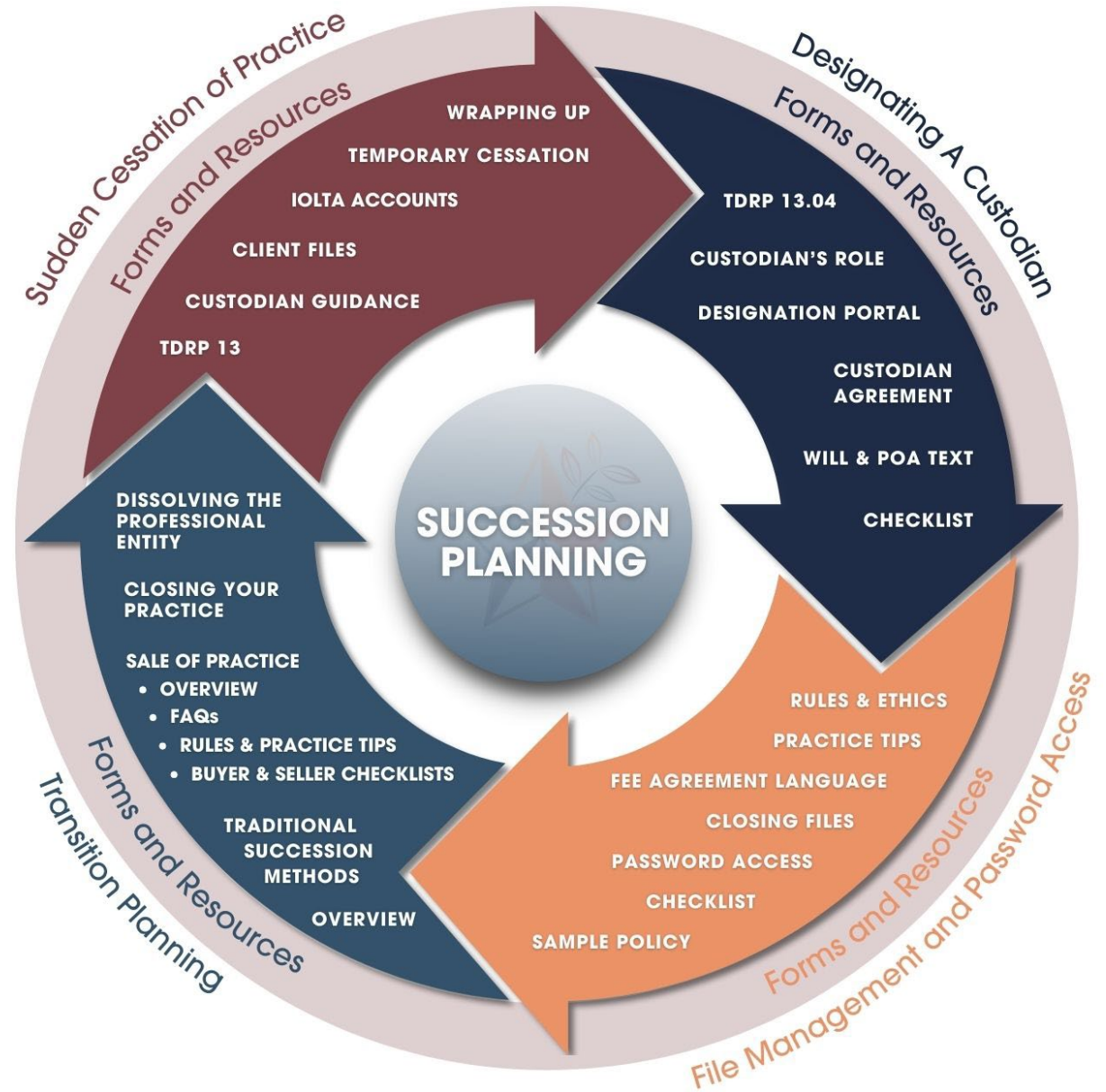
Growing a Practice

Succession Planning

Closing a Practice

texasbarpractice.com

Succession Planning Toolkit



Succession Planning Toolkit





Tools for Custodians

- Guidelines for custodianship
- Guidelines for the disposition of client files
- Discussion of how to deal with IOLTA, trust accounts, and escrow accounts, and
- Sample forms an attorney can use
 - To give clients notice and get consent while acting as a custodian attorney.

Sometimes, you don't see it coming.

An interruption or cessation of your practice can be sudden and unexpected. Visit the Bar's Succession Planning Portal and designate a colleague to act as a custodian attorney if the need arises.

Scan the code using your cell phone camera, and tap the notification to open the link to the Succession Planning Portal. Or, visit texasbar.com/succession.



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