

Emergency Cessations and Succession Planning

Be safe and preserve value.

WRITTEN BY DEAN SCHAFFER

Emergency cessations create hardship. A lawyer unexpectedly dies or becomes incapacitated and there is no succession plan. The lawyer's family is in crisis, and the clients have lost their champion. Succession planning protects against chaos and preserves value in the practice.

Historically, the State Bar of Texas handled emergency cessations ad hoc through the regional offices of the Office of Chief Disciplinary Counsel (CDC). By 2017, CDC experienced growing demand to address these situations. The Supreme Court of Texas' Grievance Oversight Committee (GOC) addressed the problem in its 2018 Biennial Report, stating:

"During its regional office interviews, the GOC first learned of an increase in CDC's time and resources being spent on attorney 'assumption' or 'cessation of practice' cases."

"[P]art of the increase ... could correlate to the increase in aging attorneys still in practice, and the prevalence of mental health issues affecting lawyers."

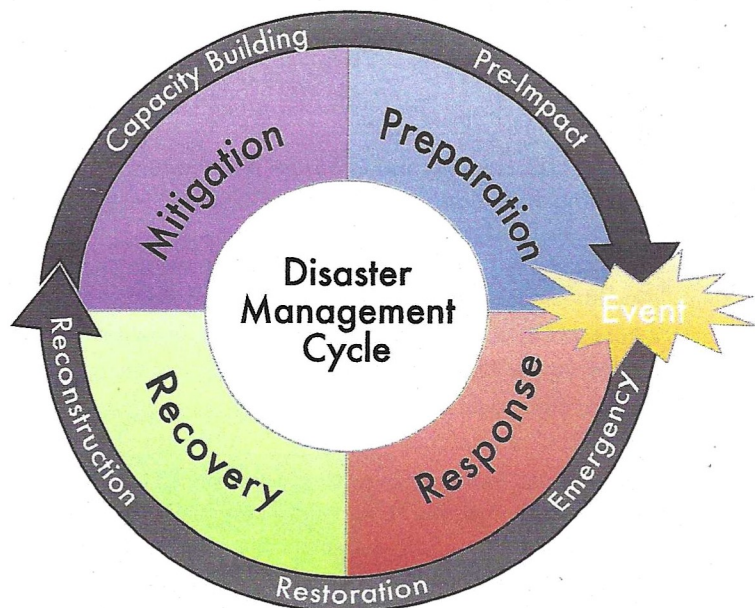
"CDC has reported that these kinds of cases are a rapidly growing part of its workload and often require an extensive use of CDC Resources."¹

The Office of Chief Disciplinary Counsel adapted by centralizing calls to CDC Special Projects. A pilot program was formed and calls poured in from lawyers' families and staff, clients, colleagues, courts, opposing counsel,

landlords, and others. The calls were not just heard, they were felt. Scenarios include the shock impact of lawyer suicides, repercussions of sudden deaths, personal crises, disappearances, injury, infirmity, and dementia. It was soon apparent this was not going away. CDC Special Projects needed a method.

The pilot took a lesson from the Federal Emergency Management Agency (FEMA) and adopted a cycle for managing emergencies. The cycle envisions four phases: mitigation, preparation, response, recovery.

Through this lens, starting the cycle in response phase



loses the benefit of mitigation and preparation. The adverse event has already happened.

The first cessation assigned to CDC Special Projects was a death case. The lawyer missed court appearances and a settlement conference. A local court issued a well check order. The lawyer was found alone, having died of a drug overdose. In this tragedy, the pilot observed that a lawyer could die, leaving practice at end but not at rest. The initial estimate was that the practice left 30 active matters pending across three counties.

In the first phase of the pilot, CDC Special Projects fielded calls on 464 practices. Patterns emerged and the response phase evolved. Most contacts involve deceased attorneys, for whom the grievance system does not apply. As a result, the pilot migrated from CDC to the State Bar of Texas Law Practice Resources Division.

CESSATION OF PRACTICE IS REGULATED

Cessation of practice is regulated at Part 13 of the Texas Rules of Disciplinary Procedure (TRDP). The rules apply to any situation in which the 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.²

To summarize, here are the mechanics of TRDP Part 13:

Rule 13.01. Notice of Attorney's Cessation of Practice:

Send written notice to affected persons that the attorney no longer practices.

Rule 13.02. Assumption of Jurisdiction:

In extraordinary circumstances, any interested person can request that a court assume jurisdiction over a lawyer's practice. In which case, no lawyer is handling matters with client consent and clients are at risk of harm.

Rule 13.03. Hearing and Order on Application to Assume Jurisdiction:

The court may appoint Texas-licensed attorneys to be custodians of the practice. The custodians are protected from liability, except for intentional misconduct or gross negligence.

Rule 13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice:

Lawyers can now appoint their own custodian attorneys, conferring the same liability protection as court-appointed custodians.

Rule 13.05. Termination of Custodianship:

This new rule governs when and how to end a custodianship. Importantly, Rule 13.05 recognizes that cessation may prove temporary and allows the lawyer to resume practice if competent and qualified.

GUIDANCE DEVELOPED THROUGH THE PILOT PROGRAM

In all, the pilot fielded calls on more than 1,500 law practices. Guidance developed along the way:

The practical objectives upon cessation:

1. Access client files.
2. Notify affected persons that the lawyer no longer practices.
3. Client direction on where the client wants the file to go.
4. Return of client property, including client files, unearned fees, and items held in trust or escrow.

To lawyers' families and staff:

1. Empathy first, perceive the loss.
2. Emphasize that cessation of practice is regulated.
3. Find out who has the most knowledge of the practice.
4. In death cases, the State Bar of Texas Membership Department will need a death certificate or obituary to change a lawyer's status to deceased.
5. The *Texas Bar Journal* provides a service to publish a memorial.

To custodian attorneys:

1. Custodian attorneys wind down the practice.
2. Custodians are not the new lawyers for the clients.
3. Custodian liability protection is written into the rules.
4. Best handled at the local level.
5. Recruit a team.

To courts and counsel of record:

1. To courts, on proof of cessation, please prepare case lists and reassign court appointments.
2. To opposing counsel, be mindful of ethics rules on communications; alert the court and request a status conference.

To clients:

1. The typical priority is to secure new counsel. It may take longer to locate the client file. Money issues tend to take the longest to sort out.
2. Make use of certified lawyer referral services; if nothing else, get a 30-minute consultation.
3. Consider legal service programs, such as legal aid, volunteer legal services, and employee benefits programs for lawyer assistance.
4. Study self-help materials at texaslawhelp.org.
5. Evaluate whether to apply for a grant from the State Bar of Texas Client Security Fund.

To local bar leaders:

1. Local bars are integral to success in handling

emergency cessations.

2. Urge members to contact a colleague they know and trust and ask if the lawyer is willing to close the practice, if needed. The designation can be mutual.
3. Lawyers can designate custodians at [texasbar.com/succession](https://www.texasbar.com/succession). An automatic email exchange confirms whether the designee accepts the designation.
4. Assemble local teams of prospective custodians to be trained and available when needed for appointment by local courts.

CESSATIONS DRIVERS

With the response phase stabilized, the pilot program transitioned to recovery phase. This is the reach for the new equilibrium. It concludes with deliberating the crucial question: What did we learn? What did we do well? How can we do better next time?

The pilot learned that four key drivers put practice at risk. The first driver is personal crisis, sudden death or incapacity. Such is life, and lawyers are not immune. The pilot fielded calls on deaths, disabilities, and diseases; cancer, Covid-19, heart attack, and stroke; falls; motor vehicle accidents; and all too many lawyer suicides.

The second driver is mental illness and substance use disorders. The Texas Lawyers' Assistance Program reports that 11% of lawyers have had suicidal thoughts at some point in their career; 19% demonstrate symptoms of anxiety; 28% struggle with some level of depression; and 32% of lawyers aged 30 or younger have a drinking problem.³

Driver three is the graying of the profession. The body of the bar has grown. From 2013 to 2024, seniors joined the over-65 demographic at a rate of almost 1,000 lawyers per year. In 2023, lawyers aged 76 and older outnumbered lawyers aged 30 and under. It happened again in 2024.

Driver four is the risk of market disruption. *The discipline of law practice is changing*. In the ascendant are artificial intelligence (AI), legal operations or legal ops, legal project management, and the advent of alternative legal service providers. As law practice transforms, cessations can be expected to be part of the fallout.

On a gentler note, new systems and processes should also emerge to improve the justice system. For example, a new role may appear for locum tenens counsel. These would be temporary stand-in lawyers to mitigate the fallout of temporary cessations.

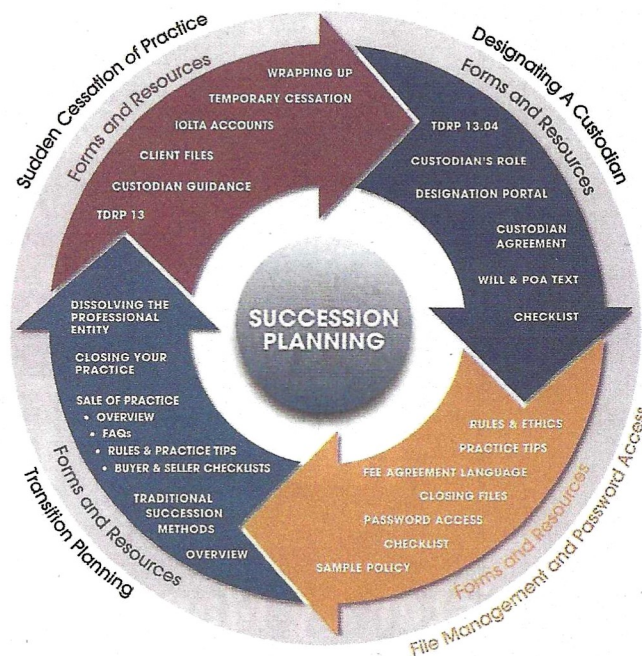
THE LPM PROGRAM AND SUCCESSION PLANNING RESOURCES

Succession planning promotes seamless representation of clients, while at the same time preserving value in the practice. The Law Practice Management Program created the Succession Planning Toolkit to help. The toolkit provides in-

depth treatment of the fundamentals:

1. Designate a custodian attorney.
2. Implement best practices for file management and password access.
3. Plan for and realize value from the practice.
4. Understand cessation of practice procedure.

The toolkit is a free resource at [texasbarpractice.com](https://www.texasbarpractice.com).



It includes template clauses for fee agreements to document consent to file retention policies; practice tips for transition planning and how to realize value from the practice; template pleadings for custodianship and forms for notice and correspondence; guidelines for final disposition of client files and IOLTA accounts; and more.

As lawyers brave the new legal landscape, beware that sudden interruption of practice can happen to anyone for a variety of reasons. Succession planning shields against adverse outcomes and protects you, your family, and your clients. **TBJ**

NOTES

1. Biennial Report of the Supreme Court of Texas' Grievance Oversight Committee (June 1, 2018), <https://www.txgoc.com/reports>.
2. Tex. Rules Disciplinary P.R. 13.01 – 13.02.
3. See <https://www.tlaphelps.org/>.



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administers the State Bar of Texas' succession planning program and assists the State Bar of Texas Law Practice Management Committee. He joined the State Bar of Texas staff in 2017 after 29 years in general litigation, trials, appeals, and outside general counseling. His work on the Cessation of Practice Pilot Program earned a State Bar of Texas Presidential Citation.