

Succession planning may not be the most exciting task, but it is essential for every lawyer. The earlier you begin, the easier it is to establish a long-term strategy that aligns with your goals.

Developing Your Succession Plan: When and Where to Start

The key to a successful transition or exit is to start early and keep the plan flexible. Focusing on these three elements can help you get started:

1. **A Plan:** Define your objectives and the steps needed to achieve them. This roadmap will guide your transition.
2. **A Timeline:** Establish a disciplined timeline for implementing your strategy, ensuring it aligns with your goals.
3. **Start Early:** Ideally, begin planning at least five years before you intend to retire or exit the practice.

Key Decisions to Make:

- When do you plan to leave the practice?
- How much income will you need post-exit?
- Who will take over your practice?

Succession, Transition, and Exit Strategies

- **Internal Transition – Mentoring Associates:** Mentoring associates with leadership potential can ensure continuity, but don't assume all associates want equity partnerships. Engage them early to understand their goals.
- **Unexpected Departure of Key Earners:** When a top earner leaves unexpectedly, it can disrupt revenue and client relationships. To mitigate this risk, have contingency plans in place, such as cross-training other attorneys to manage key clients.
- **Selling or Merging with Another Firm:** Some lawyers prefer to join another firm without a full merger. In this case, you close your practice and join as an employee, with compensation typically tied to collections and client originations.
- **Of Counsel:** You may opt to become "Of Counsel" at another firm, working part-time or in an advisory role. This allows for a gradual transition. Be sure to obtain client consent and set up a compliant fee-sharing agreement.
[Ethics Informational Packet – Of Counsel](#)
- **Closing the Practice:** If other options aren't viable, you may choose to wind down your practice, stop taking new clients, and transition existing ones. Refer to [LegalFuel's Retirement/Closing a Law Office Checklist](#) for guidance on this process.

Valuation Tips and Key Considerations

- **Set Realistic Expectations:** Your firm's value may be lower than expected, especially if client loyalty is heavily tied to you personally. Consider if your firm's name and reputation can attract new business post-exit.
- **Get a Professional Valuation:** Engage a valuation expert. Ensure that trust and operating accounts, as well as referral records are in order.
- **Financial Obligations:** Consider ongoing expenses like leases and subscriptions, as these will affect the firm's valuation.

Typical Documents Required for Firm Valuation (3 to 5 years of data):

- Financial statements
- Income tax returns
- Attorney compensation data
- Client headcount
- Documents on pension obligations, loans, leases
- Malpractice insurance application
- Accounts receivable
- Contingency fee case reports and projections
- Summary of work in progress
- Timekeeper productivity reports
- Cash receipts
- Practice area breakdowns
- Unpaid payables and cash requirements
- Firm budget
- Partner/associate compensation
- Partnership and buy-sell agreements
- Marketing plan

Professionals Who Can Assist with Firm Valuation:

- Certified Public Accountants (CPAs)
- Appraisal Firms (e.g., Trugman Valuation)
- Business Attorneys

Other Considerations

Inventory Lawyer Requirement: The Supreme Court requires most Florida Bar members to name another Florida Bar member to serve as an inventory lawyer should the original lawyer suddenly become unable to practice law. The rule, which took effect January 1, 2006, protects the interests of clients if their lawyer cannot or will not do so.

Inventory lawyers take possession of the files of a Florida Bar member who dies, disappears, is disbarred or suspended, becomes delinquent, or suffers involuntary leave of absence due to military service, and no other responsible party capable of conducting the member's affairs is known. The inventory lawyer reviews the files to determine which clients need services and notifies those clients of their lawyer's unavailability and their legal services needs. The inventory lawyer may give the file to a client to find substitute counsel; make referrals to substitute counsel with the agreement of the client; or accept representation of the client. An inventory lawyer is not required to represent the clients.

The Bar will contact designated inventory lawyers if the need arises to ask their willingness to serve as an inventory lawyer. If the designated inventory lawyer is unable or unwilling to serve, or if no one has been designated, the Lawyer Regulation Department will seek a volunteer to assist.

For more information, visit: <https://www.floridabar.org/member/inv-atty/>

File Retention & Destruction: Attorneys must manage client property and documents responsibly. Original documents should be returned to clients at the start of a case, with attorneys retaining copies. Files should be reviewed at the close of a matter, discarding unnecessary duplicates or scratch notes.

The Florida Bar does not have specific guidelines for file retention except for certain records (e.g., trust accounting and contingency fee agreements) which must be kept for six years. However, firms should develop a written file retention policy, and include it in their fee agreements so clients are notified of the policy from the beginning. The Florida Bar offers a Model File Retention Policy in the [Ethics Informational Packet on Closed Files](#).

Disposing of Client Files:

- Keep an index of destroyed files, along with dated receipts from shredding services.
- Seek client authorization before disposing of files.
- Without client approval, review files to ensure no important documents are destroyed.

To review Bar Rules and Relevant Opinions related to closed files, visit:

<https://www.legalfuel.com/closedfiles/>

Florida Bar Rules That May Affect a Succession Plan

RULE 4-1.1 COMPETENCE

A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

RULE 4-1.4 COMMUNICATION

(a) Informing Client of Status of Representation. A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

Ethics Informational Packet – Notifying Clients of Change in Firm Composition

RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS

(a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer must not represent a client if:

- (1) the representation of 1 client will be directly adverse to another client; or
- (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Informed Consent. Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

(d) Lawyers Related by Blood, Adoption, or Marriage. A lawyer related by blood, adoption, or marriage to another lawyer as parent, child, sibling, or spouse must not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except with the client's informed consent, confirmed in writing or clearly stated on the record at a hearing.

(e) Representation of Insureds. Upon undertaking the representation of an insured client at the expense of the insurer, a lawyer has a duty to ascertain whether the lawyer will be representing both the insurer and the insured as clients, or only the insured, and to inform both the insured and the insurer regarding the scope of the representation. All other Rules Regulating The Florida Bar related to conflicts of interest apply to the representation as they would in any other situation.

RULE 4-1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, provided that:

(a) Sale of Practice or Area of Practice as an Entirety. The entire practice, or the entire area of practice, is sold to 1 or more lawyers or law firms authorized to practice law in Florida.

(b) Notice to Clients. Written notice is served by certified mail, return receipt requested, on each of the seller's clients of:

- (1) the proposed sale;
- (2) the client's right to retain other counsel; and
- (2) the fact that the client's consent to the substitution of counsel will be presumed if the client does not object within 30 days after being served with notice.

(c) Court Approval Required. If a representation involves pending litigation, there will be no substitution of counsel or termination of representation unless authorized by the court. The seller may disclose, in camera, to the court information relating to the representation only to the extent necessary to obtain an order authorizing the substitution of counsel or termination of representation.

(d) Client Objections. If a client objects to the proposed substitution of counsel, the seller must comply with the requirements of rule 4-1.16(d).

(e) Consummation of Sale. A sale of a law practice may not be consummated until:

- (1) with respect to clients of the seller who were served with written notice of the proposed sale, the 30-day period referred to in subdivision (b)(3) has expired or all these clients have consented to the substitution of counsel or termination of representation; and
- (2) court orders have been entered authorizing substitution of counsel for all clients who could not be served with written notice of the proposed sale and whose representations involve pending litigation; provided, in the event the court fails to grant a substitution of counsel in a matter

involving pending litigation, that matter may not be included in the sale and the sale otherwise will be unaffected. Further, the matters not involving pending litigation of any client who cannot be served with written notice of the proposed sale may not be included in the sale and the sale otherwise will be unaffected.

(f) Existing Fee Contracts Controlling. The purchaser must honor the fee agreements that were entered into between the seller and the seller's clients. The fees charged clients may not be increased by reason of the sale.

RULE 4-5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) Sharing Fees with Nonlawyers. A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to 1 or more specified persons;
- (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;
- (3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, in accordance with the provisions of rule 4-1.17, pay to the estate or other legally authorized representative of that lawyer the agreed upon purchase price;
- (4) bonuses may be paid to nonlawyer employees for work performed, and may be based on their extraordinary efforts on a particular case or over a specified time period. Bonus payments shall not be based on cases or clients brought to the lawyer or law firm by the actions of the nonlawyer. A lawyer shall not provide a bonus payment that is calculated as a percentage of legal fees received by the lawyer or law firm; and
- (5) a lawyer may share court-awarded fees with a nonprofit, pro bono legal services organization that employed, retained, or recommended employment of the lawyer in the matter.

Eligibility to Purchase a Florida Law Firm

RULE 4-5.5 UNLICENSED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) Practice of Law. A lawyer may not practice law in a jurisdiction other than the lawyer's home state, in violation of the regulation of the legal profession in that jurisdiction, or in violation of the regulation of the legal profession in the lawyer's home state or assist another in doing so.

(b) Prohibited Conduct. A lawyer who is not admitted to practice in Florida may not:

- (1) except as authorized by other law, establish an office or other regular presence in Florida for the practice of law;
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in Florida; or
- (3) appear in court, before an administrative agency, or before any other tribunal unless authorized to do so by the court, administrative agency, or tribunal under the applicable rules of the court, administrative agency, or tribunal.

RULE 4-5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

RULE 4-7.21 FIRM NAMES AND LETTERHEAD

(a) **False, Misleading, or Deceptive Firm Names.** A lawyer may not use a firm name, letterhead, or other professional designation that violates rules 4-7.11 through 4-7.15.

(b) **Trade Names.** A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rules 4-7.11 through 4-7.15. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) **Advertising Under Trade Names.** A lawyer may not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name is in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) **Law Firm with Offices in Multiple Jurisdictions.** A law firm with offices in more than 1 jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(e) **Name of Public Officer in Firm Name.** The name of a lawyer holding a public office may not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) **Partnerships and Business Entities.** A name, letterhead, business card or advertisement may not imply that lawyers practice in a partnership or authorized business entity when they do not.

(g) **Insurance Staff Attorneys.** Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

(1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;

(2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;

(3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;

(4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be required by these rules if the lawyers were private practitioners sharing space with the insurer; and

(5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

Advertising Rules

To view the advertising rules, please click on the link, click on Chapter 4 Rules of Professional Conduct, then click on any of rules 4-7.11 through 4-7.22 in the bookmarks of the pdf: [Lawyer advertising rules – Subchapter 4-7 Rules Regulating The Florida Bar](#)

Handbook on Lawyer Advertising and Solicitation

The [Handbook on Lawyer Advertising and Solicitation](#), published by the [Standing Committee on Advertising](#), is a handy reference that gives general information on lawyer advertising, how to file advertisements with The Florida Bar, current rules regarding advertising and sample ads for reference. The handbook was updated August 16, 2023 and includes the most recent amendments to the lawyer advertising rules.

Note: Florida Bar Rules are subject to periodic updates. For the most current version of the Rules Regulating The Florida Bar, visit: <https://www.floridabar.org/rules/rtrfb/>

For questions regarding these Rules or Ethics Informational Packets, please contact Ethics at 800-235-8619.