

# Succession Planning:

Advance Designation of Custodian Attorney

Sale of Practice

Succession Planning Resources

Cessation of Practice

Women and the Law Section

State Bar of Texas

December 11, 2024



# *Succession Planning Myths*

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

**✘** False. The State Bar doesn't have authority to act as a custodian of an attorney's files without court appointment.

**If I appoint someone as my custodian, they will be taking over as attorney for my clients.**

**✘** False. The custodian-attorney does not "inherit" the lawyer's law practice but serves in a more limited role to wind down the practice if needed.

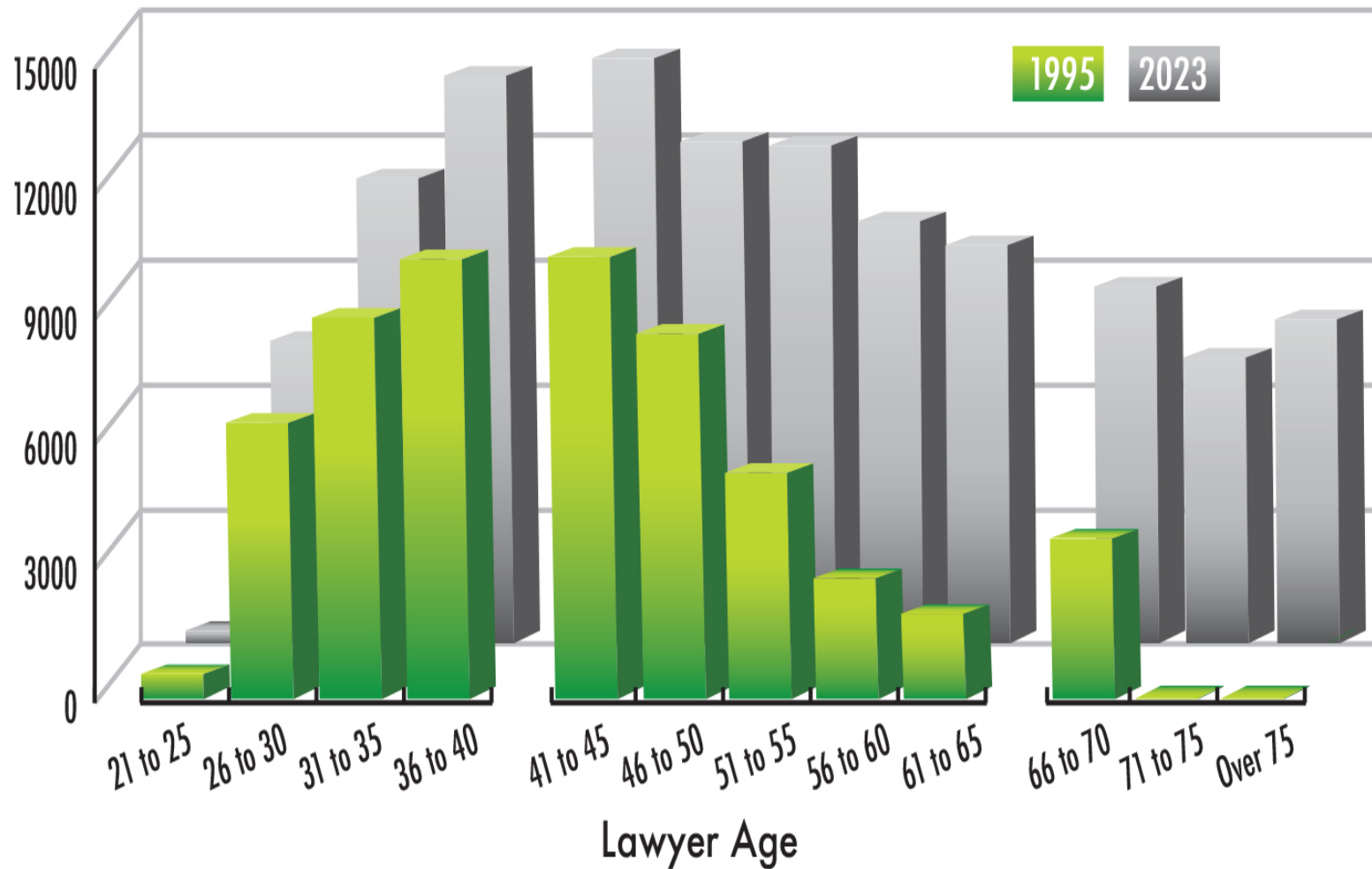
**I don't need to think about succession planning until I'm getting ready to retire.**

**✘** False. The best time to make plans is when you are setting up your practice. But the second-best time is now! Don't wait until a crisis strikes to think about how you will wind down your practice.

**It's impermissible to sell my practice.**

**✘** False. Sale of practice invokes rules, but no rule prohibits sale of a practice.

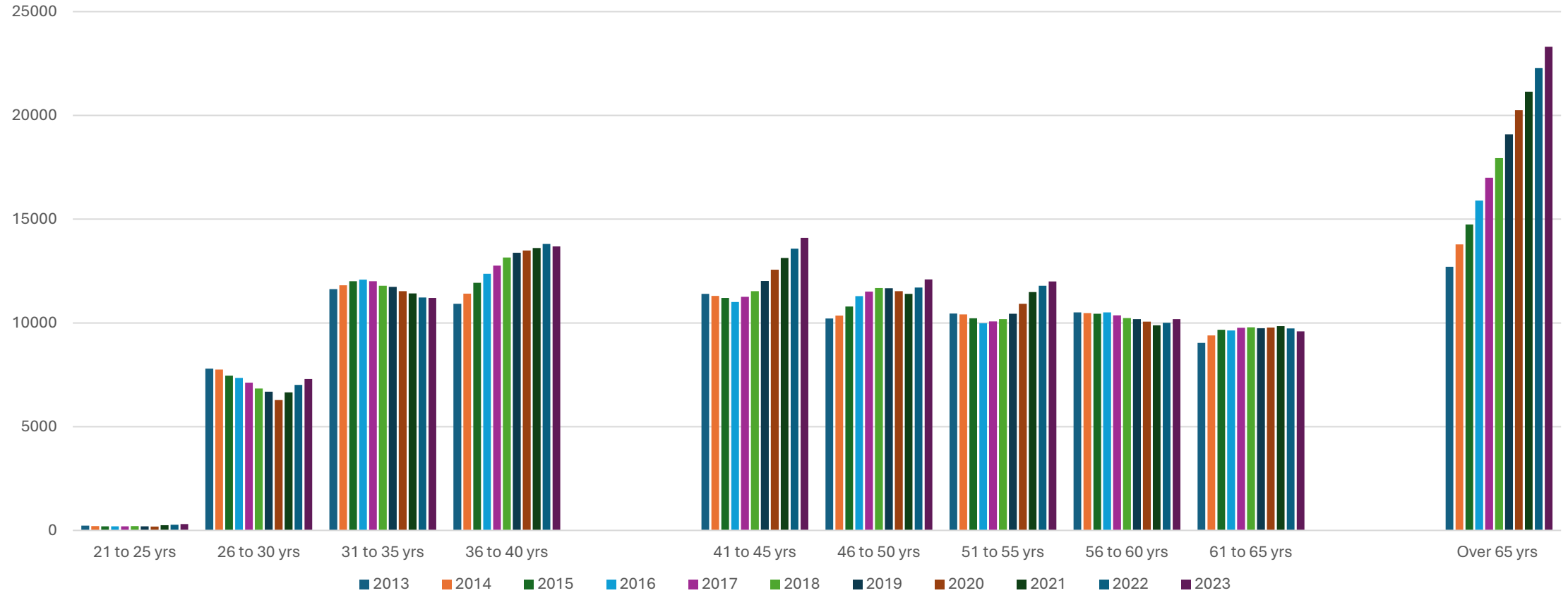
# The Graying of the Profession



	1995	2023
<b>21 to 25 yrs</b>	573	301
<b>26 to 30 yrs</b>	6626	7292
<b>31 to 35 yrs</b>	9116	11,207
<b>36 to 40 yrs</b>	10,587	13,686
<b>41 to 45 yrs</b>	10,630	14,103
<b>46 to 50 yrs</b>	8785	12,098
<b>51 to 55 yrs</b>	5439	12,003
<b>56 to 60 yrs</b>	2876	10,178
<b>61 to 65 yrs</b>	2044	9595
<b>66 to 70 yrs</b>	3866*	8607
<b>71 to 75 yrs</b>	0	6888
<b>Over 75 yrs</b>	0	7812

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

# Lawyers by Age 2013 - 2023



2013    2014    2015    2016    2017    2018    2019    2020    2021    2022    2023

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

# 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](https://texasbar.com/succession).



# ***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.

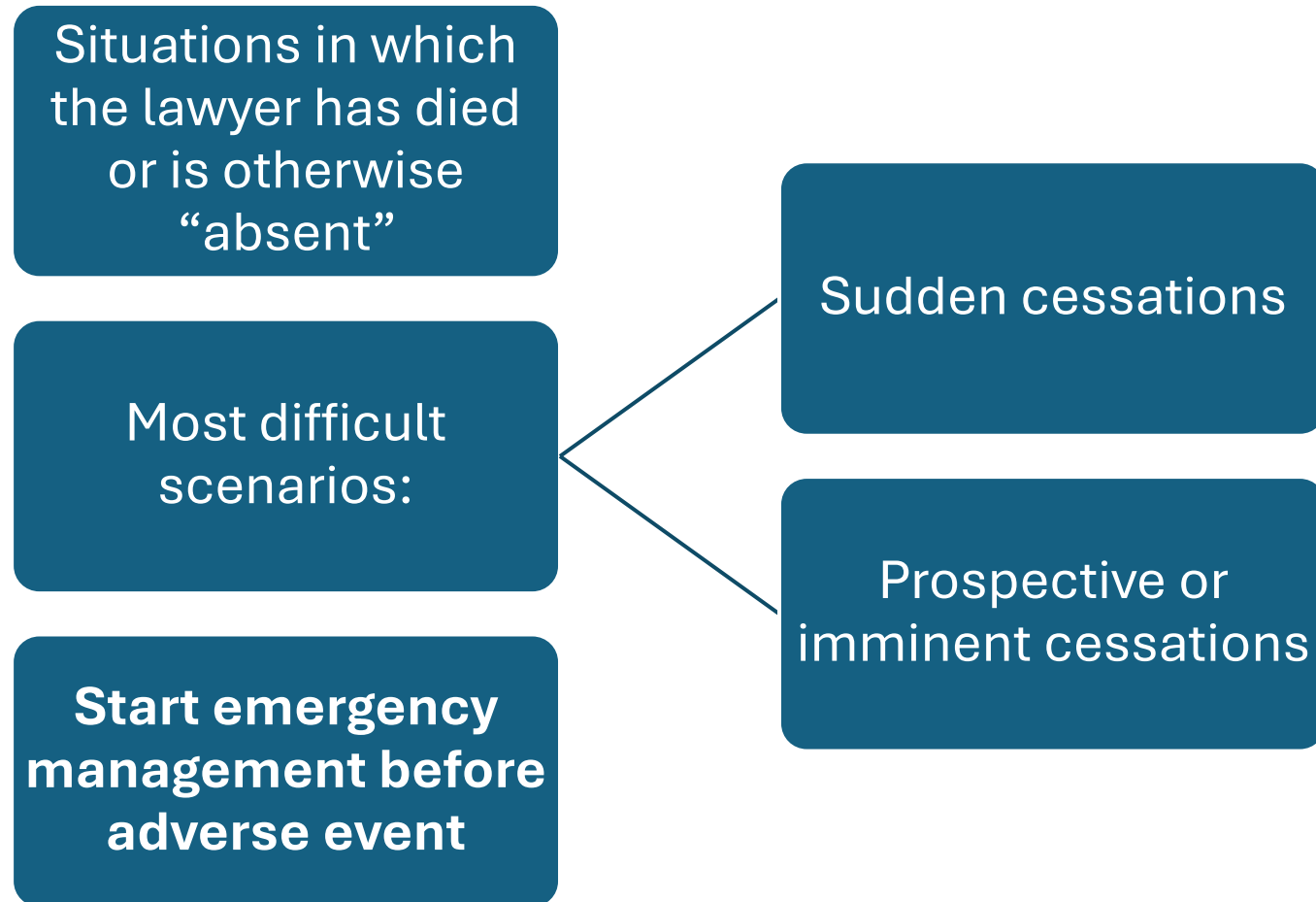
# *Heartbreak Stories*

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- Court ordered well-check on absent lawyer; the lawyer died at age 49 after an apparent 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, gunshot wound, suspected suicide; solo practitioner with no office assistant
- Lawyer reported that his father (also a lawyer) suffered from dementia; thereafter, the son died suddenly, leaving decades of files for both practices

# *Cessation of Practice Issues*

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# Cessation of Practice is Regulated

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## TEXAS RULES OF DISCIPLINARY PROCEDURE

### PART XIII. CESSATION OF PRACTICE

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**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 ...

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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.

# Succession Planning

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[texasbar.com/succession](https://texasbar.com/succession)

SUCCESSION PLANNING



MORE INFORMATION

[Contact Us](#)

NAVIGATION

--Select one--

The image shows a screenshot of a website page titled "SUCCESSION PLANNING". At the top, the title is centered in a serif font. Below the title is a large photograph of four business professionals (two men and two women) in a meeting around a conference table. To the right of the photograph is a sidebar with a "MORE INFORMATION" section containing a "Contact Us" link, and a "NAVIGATION" section containing a dropdown menu with the text "--Select one--".

# *Advance Designation of Custodian Attorney*

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*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:

# ***New Rules Added by Referendum Elections***

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- **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***

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- **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.



# **Succession Planning**

## Traditional Transitions and Sale of a Practice

## Unplanned Succession and Closing

- Court Supervised Custodianship, DRP 13.01-13.03
- Voluntary Custodianship, New DRP 13.04 & 13.05

## Planned Succession

- Orderly Disposition of files to successor attorneys
- Merger or association with another firm or lawyer
- Sale of the practice

## **Mechanics of TRDP Part 13**

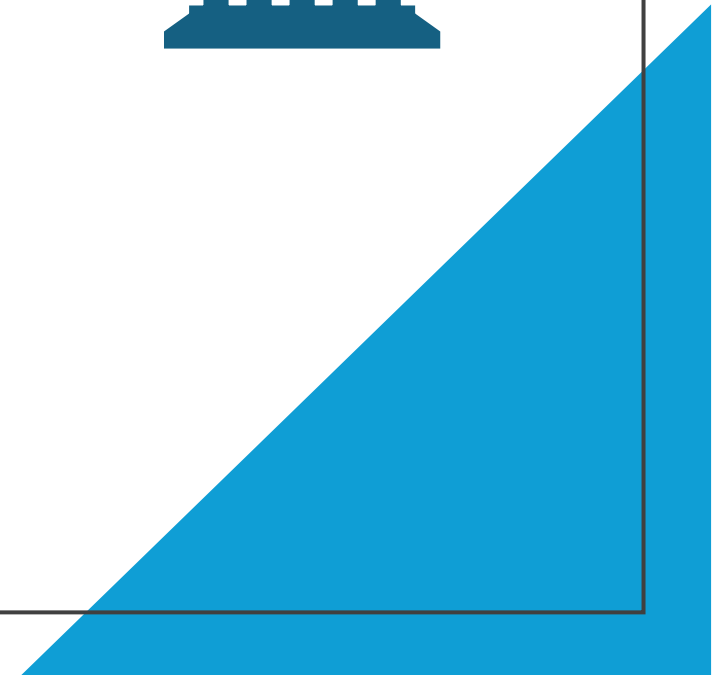
13.01 – Ordinary Cessations

13.02 – Extraordinary Cessations

13.03 – Court-appointed Custodianship


13.04 – Voluntary Appointment of Custodian

13.05 – Termination of Custodianship .






**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 with another firm** and introduce clients to the new firm attorneys and arrange compensation according to the value of the work or “book of business” brought to the firm and arrange origination and departure compensation accordingly.



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

# CAN I SELL MY LAW PRACTICE?

## Ethics Opinion 266 and Canons of Ethics Pre-1990

- **Opinion 266 (1963)**

Concluded sale of a practice would violate Canons that prohibited attorney solicitation and protected confidentiality

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

- No Canon prohibited sales per se then.
- No Disciplinary Rule expressly prohibits sales now either.
- ***But any sale of a practice must follow applicable Disciplinary Rules.***

# ABA Model Rule 1.17

- A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:
- (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;
- (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
- (c) The seller gives written notice to each of the seller's clients regarding:
  - (1) the proposed sale;
  - (2) the client's right to retain other counsel or to take possession of the file; and
  - (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.
  - If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.
- (d) The fees charged clients shall not be increased by reason of the sale.

# Rules Implicated in Sale of a Law Practice

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- 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)

# Rules Implicated in Sale of a Law Practice

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## **Rule 1.04 Fees – Sham Sales or Impermissible Fee Sharing**

(f) A division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if . . .

(1) the division is:

(i) in proportion to the professional services performed by each lawyer; or

(ii) made between lawyers who assume joint responsibility for the representation; and

(2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed...

# Rules Implicated in Sale of a Law Practice

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## **Rule 1.05: Confidentiality of Information**

(c) A lawyer may reveal confidential information:

- (1) When the lawyer has been expressly authorized to do so in order to carry out the representation.
- (2) When the client consents after consultation.

### **LPM Practice Tip:**

Before disclosure of information relating to a specific representation of an identifiable client, the selling lawyer should secure consent from the client and an agreement to maintain client confidences from the acquiring lawyer.

# Rules Implicated in Sale of a Law Practice

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## **Rule 1.09: Conflict of Interest: Former Client**

- (a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client.

### **LPM Practice Tip:**

An acquiring lawyer who ultimately decides not to purchase all or a part of the selling lawyer's practice must consider conflicts of interest. Specifically, the information learned during review of the selling lawyer's client matters may prohibit future representation and require withdrawal from current representation if adverse to clients in the matters being sold.

# Rules Implicated in Sale of a Law Practice

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## **Rule 7.03(c) and (d): Prohibited Solicitations and Payments**

(c) A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(f) or by paragraph (b) of this Rule.

(d) A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).



# Rules Implicated in Sale of a Law Practice

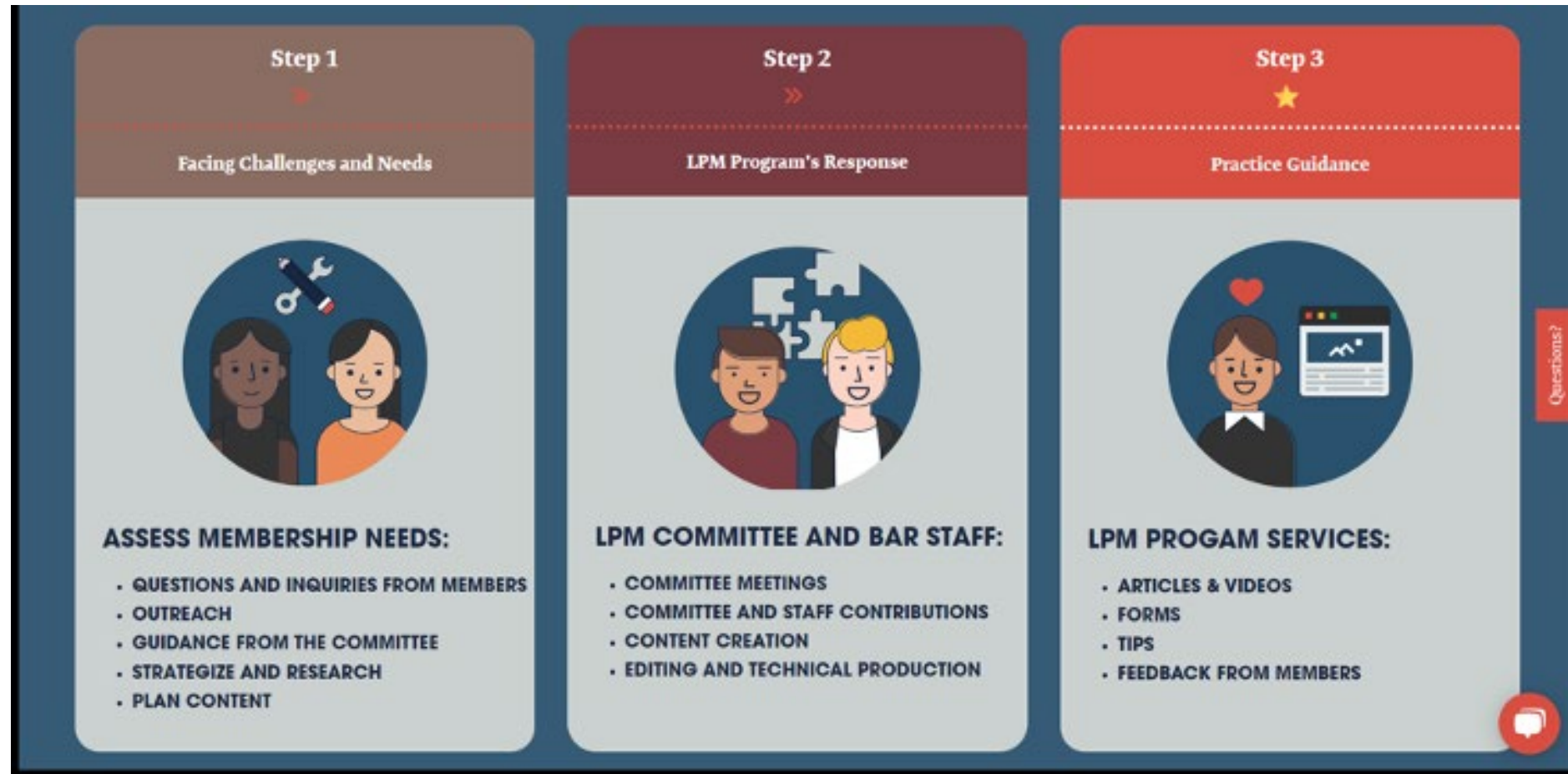
Another Rule implicated in negotiating and drafting the terms of the sale agreement and in communications with the clients by any of the lawyers involved is Rule 8.04:

## **Rule 8.04. Misconduct**

(a) A lawyer shall not:

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

# Law Practice Management Program



# *Law Practice Management Resources*

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*texasbarpractice.com*

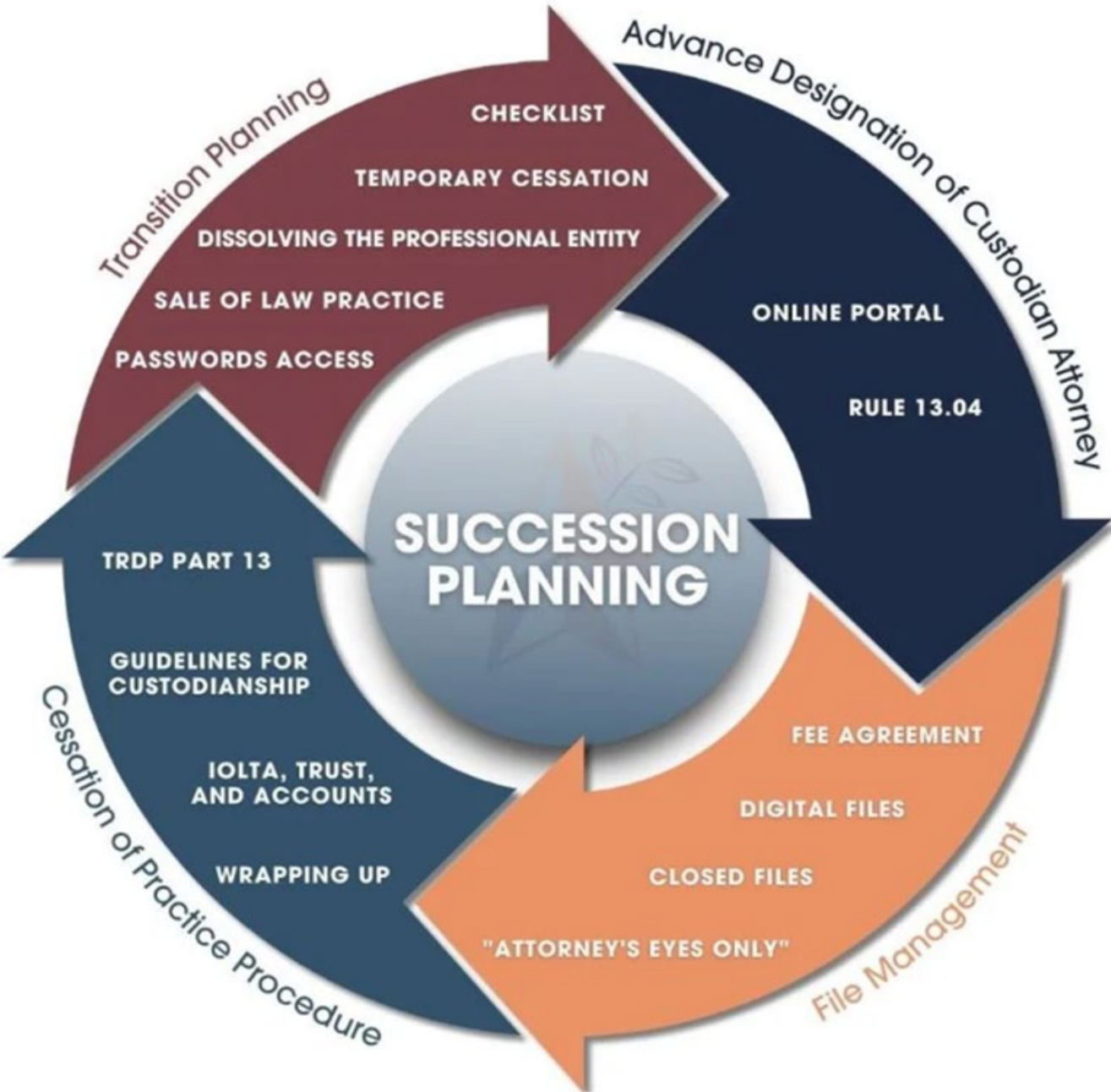


## Free Resources on:

- Starting a Practice
- Maintaining a Practice
- Growing a Practice
- Succession Planning
- Closing a Practice
- Disaster Preparedness
- Practice Technology

[texasbarpractice.com](http://texasbarpractice.com)

# Succession Planning Toolkit



# *Succession Planning Toolkit*

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# 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.

# *Law Practice Management Program*

For additional questions on:

- ~ Succession Planning
- ~ Cessation of Practice
- ~ Closing a Law Office

Contact the Law Practice Management Helpline

Email: [lpm@texasbar.com](mailto:lpm@texasbar.com)

Phone: 512.427.1300

# **Emergency Management and Difficult Cessations**

(And How You Can Help)



*Grievance Oversight  
Committee Biennial  
Report 2018*

**CDC experienced  
increase in demand  
to address situations  
in which lawyers were  
deceased or  
otherwise “absent”**

**Calls  
centralized  
to CDC  
Special  
Projects**



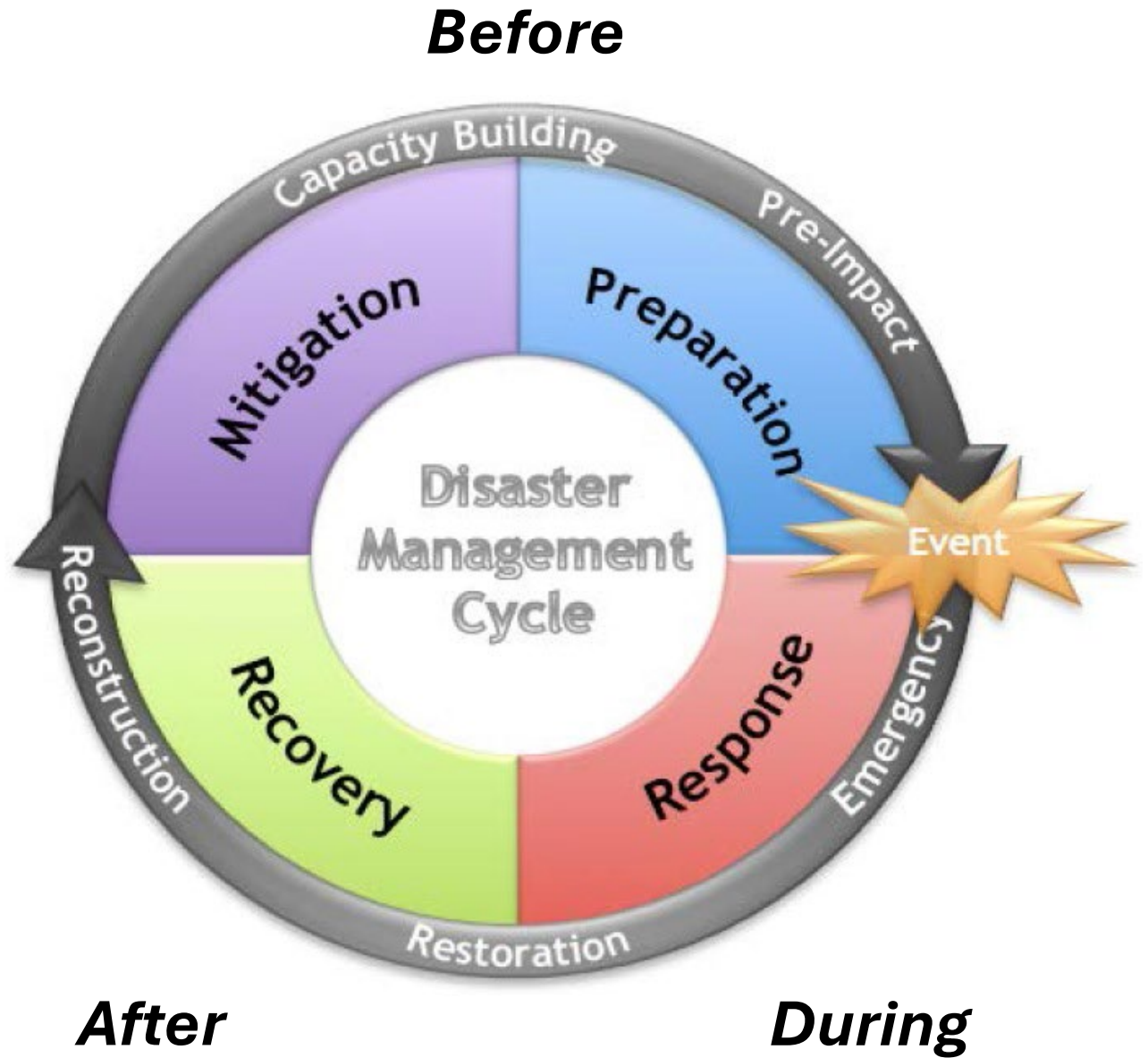
- Clients**
- Colleagues**
- Families**
- Staff**
- Landlords**
- Counsel**
- Courts**
- Other**

# This wasn't going away

## We needed to develop a method

- \* Shock impact of lawyer suicides
- \* Repercussions of sudden cessations
- \* Suspense of “prospective” cessations
- \* Underfunded IOLTAs
- \* Burden of client files

# We took a lesson from FEMA





## Response Phase

**A difficult place to start!**





## Practical Objectives Upon Cessation

1. Access to client files
2. Notice to clients and others
3. Client direction on where client wants the file to go
4. Return of client property
  - a. The Client File
  - b. Final reconciliation of the IOLTA



## ***To Custodian Attorneys:***

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

# ***To Courts and Counsel of Record:***



## Courts and Court Staff:

On proof of cessation, prepare case lists and reassign court appointments

## Opposing Counsel:

Observe ethics rules on communications; alert the court and request status conference





## ***To Clients:***

1. Secure new counsel
2. Lawyer referral services
3. Legal service programs
4. Self-help resources ([texascourthelp.gov](http://texascourthelp.gov))
5. Client Security Fund

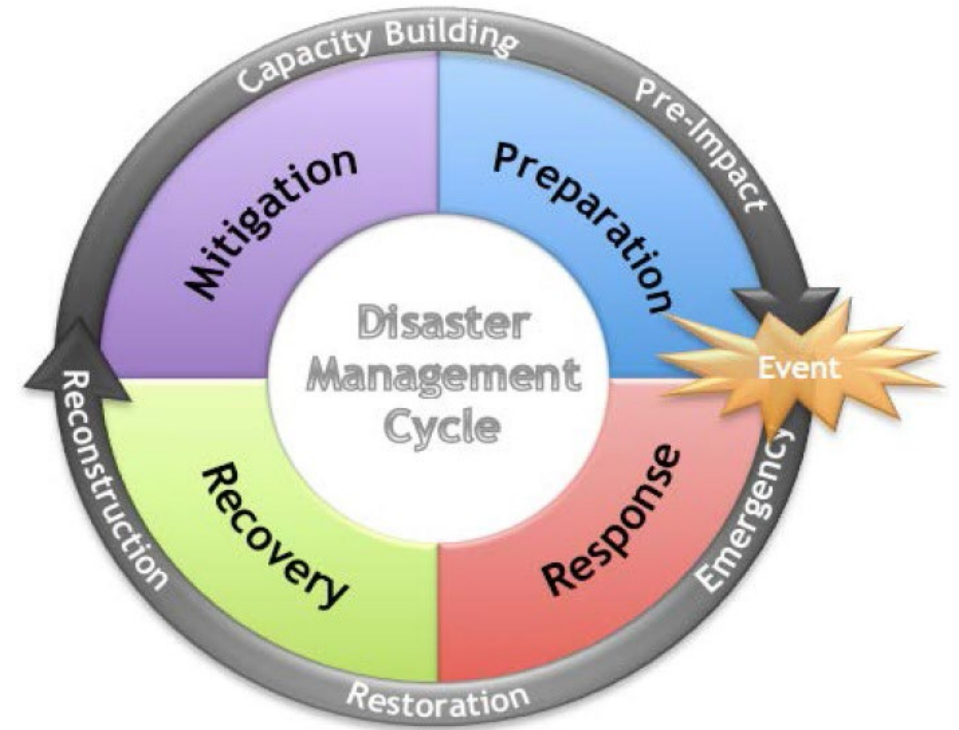


## ***To Family and Staff:***

1. Empathy first, feel the loss
2. Explain cessation of practice is regulated
3. Find persons with most knowledge of the practice
4. Membership needs obituary or death certificate
5. Texas Bar Journal service to publish a memorial

# Recovery Phase

**Always ask,  
What did we learn?**





## Cessations Drivers

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



Cessations are a concern for the discipline of law practice, and law practice as a discipline is changing.

Consider that Texas did not have mandatory CLE until the 1980s.

To address cessations, Texas practice may one day join the jurisdictions that require mandatory succession plans.

# Stats: Cessation of Practice Pilot Program

	Phase 1: CDC Special Projects	Phase 2: Law Practice Resources Division	Phase 3: Winding Down	Total
Law Practices at Issue	464	564	508	1,536
Female	65	72	56	193
Male	399	492	452	1343
<u>Status at First Prompt</u>				
Deceased	265	346	311	922
“Prospective” Cessation	105	101	61	267
Disbarred, RILD, Suspended	72	47	49	168
Inactive, Voluntary Resig	19	36	31	86
Disability Suspension	2	0	0	2
LPM-Related	n/a	25	44	69
Other	1	9	12	22

# How You Can Help

It begins with emphasis on succession planning.

At minimum, we can encourage advance designations of custodians at [texasbar.com/succession](https://texasbar.com/succession).

# How You Can Help

Emergency cessations are best handled at the local level. Custodians are needed in all areas of the state and in diverse practice areas.

For emergency preparedness, we can organize teams of prospective custodian attorneys, to be available when needed for appointment by local courts.



**Q & A**