

How to Select a Backup and Successor Attorney and Why Doing So Matters

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Meet Mark:

Mark Bassingthwaighte, Esq., serves as Risk Manager at [ALPS](#), a leading provider of insurance and risk management solutions for law firms. Since joining ALPS in 1998, Mark has worked with more than 1200 law firms nationwide, helping attorneys identify vulnerabilities, strengthen firm operations, and reduce professional liability risks.

He has presented over 700 continuing legal education (CLE) seminars across the United States and written extensively on the topics of risk management, legal ethics, and cyber security.

A trusted voice in the legal community, Mark is a member of the State Bar of Montana and the American Bar Association and holds a J.D. from Drake University Law School. His mission is to help attorneys build safer, more resilient practices in a rapidly evolving legal environment.



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Solo attorneys face unique operational and ethical risks when unexpected absences occur. Illness, emergencies, or other disruptions can jeopardize client interests if no continuity plan is in place. Designating a backup or successor attorney is one of the most effective ways to reduce malpractice exposure and ensure uninterrupted client service.

Understanding the Difference Between a Backup Attorney and a Successor Attorney:

For most solos, the same individual often agrees to serve as both a backup and successor attorney. While the roles are related, they serve distinct purposes:

- **Backup Attorney** - Provides short-term coverage during temporary absences such as vacations, brief illnesses, or emergencies.
- **Successor Attorney** - Steps in to wind down the practice in the event of the solo practitioner's death, disability, or incapacity.

Neither role involves running a second practice long-term. Clarifying this distinction can make it easier to find a colleague willing to serve, especially if there's a decision to make the arrangement reciprocal.

Key Qualities to Look for When Selecting a Backup/Successor Attorney:

Choosing the right individual is essential for protecting clients and minimizing risk. Look for someone who:

- Is competent and experienced in your primary practice areas,
- Is unlikely to encounter significant conflicts of interest,
- Has the time, or the ability to find the time, to take on additional responsibilities for short-periods of time, and
- Understands the ethical obligations involved in stepping into your practice.

Once selected, make sure to let your staff know who this person is and how he or she can be reached in the event of an emergency.

Essential Preparatory Steps:

Beyond designating a backup/successor attorney, there are several other things you should do as part of the process.

- Prioritize maintaining a current office procedures manual that discusses the calendaring system, conflict system, active file list, open and closed file systems, accounting system, and any other key system. This can be valuable in expeditiously bringing the designated attorney up to speed on how your practice is run.
- Keep critical systems such as the calendar and conflict systems current at all times.
- And make certain that all files are thoroughly documented and current as to their status because the designated attorney will need to make decisions based upon what's in your files. Mistakes can and will be made with poorly documented and/or incomplete files.

Reducing Malpractice Risk Through Proactive Client Communication:

Finally, proactively informing clients about your backup/successor attorney arrangement reinforces transparency and demonstrates your commitment to protecting their interests. Including a brief notice in your fee agreement is a simple, effective way to set expectations and reduce confusion during an emergency. Consider using something along the lines of the following:

Succession Planning / Backup Attorney Notice:

While I strive to deliver excellent legal services to every client, I also have an ethical obligation to protect your interests during any extended absences, such as a vacation, an illness, or in the event of my unexpected death or disability. To accomplish this, I have named [insert name] as my backup attorney. This attorney will be available during any extended absences or may step in to assist in the closing of my practice should that ever prove necessary. I will provide advance notice of any planned absences, and my office staff or backup attorney will contact you with information on how to proceed should any unexpected event occur.