Succession Planning in Nevada

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Introduction

Most lawyers never consider that some unforeseen event might prevent them from handling their professional responsibilities and affect them financially. But the reality is that most lawyers will face an interruption in their ability to practice at least once during their careers. Therefore, the need to effectively address the issue of succession planning should be a priority due to the potential for serious harm to clients and a loss of confidence in the legal profession by the general public. While there is no professional obligation requiring lawyers to have succession planning, prudent lawyers should have a contingency plan in place.

How to Use this Book

Succession Planning Guide in Nevada is a resource book to help you close your practice or plan for an unexpected medical crisis or death. This guide is simply an overview of steps to consider when you begin your succession planning.

This guide contains sample forms. However, if you use these sample forms, please be sure to adapt them to fit your individual situations. If any information contained in this guide or any terms of the sample forms conflict with the Supreme Court Rules, Rule of Professional Conduct or Nevada Revised Statutes, please refer to the applicable legal authority.

If you have further questions on succession planning, please contact the Ethics Hotline, State Bar of Nevada at (702) 382-2200.

Terminology and Forms

The term *Assisting Attorney*, as used throughout this handbook, refers to the lawyer you have made arrangements with to close your practice. The term *Authorized Signer* refers to the person you have authorized as a signer on your lawyer trust account. The term *Planning Attorney* refers to you, your estate, or your personal representative.

The sample Agreement – Full Form, provided on page 24, authorizes the Assisting Attorney to transfer client files, sign checks on your general account, and close your practice. This form also provides for payment to the Assisting Attorney for services rendered, designates the procedure for termination of the Assisting Attorney's services, and provides the Assisting Attorney with the option to purchase the law practice. In addition, the form provides for the appointment of an Authorized Signer on your lawyer trust account. The Agreement – Full Form is a sample only. You may modify it as needed.

The sample Agreement – Short Form, provided on page 35, includes authorization to sign on your general account and consent to close your office. It also provides for the appointment of an Authorized Signer on your lawyer trust account. It does not include many of the terms found in the sample Agreement – Full Form version, but it does include the authorizations most critical to protecting your clients' interests.

Implementing Your Plan

The first step in the planning process is finding an attorney to close your practice or manage it for a short time your practice in the event of your death, disability, impairment, or incapacity.

The arrangements for closure of your office should include a signed consent form authorizing the Assisting Attorney to contact your clients for instructions on transferring their files, authorization to obtain extensions of time in litigation matters when needed, and authorization to provide all relevant people with notice of closure of your law practice. (See Sample Agreement – Full Form provided on page 24 and Sample Agreement – Short Form on page 35 of this handbook.)

The agreement could also include provisions that give the Assisting Attorney authority to wind down your financial affairs, provide your clients with a final accounting and statement, collect fees on your behalf, and liquidate or sell your practice. Arrangements for payment by you or your estate to the Assisting Attorney for services rendered can also be included in the agreement. (See sample Agreement – Full Form on page 24 of this handbook.)

At the beginning of your relationship, it is crucial for you and the Assisting Attorney to establish the scope of the Assisting Attorney's duty to you and your clients. If the Assisting Attorney represents you as your attorney, he or she may be prohibited from representing your clients on some, or possibly all, matters. Under this arrangement, the Assisting Attorney would owe his or her fiduciary obligations to you or your estate. For example, the Assisting Attorney could inform your clients of your legal malpractice or ethical violations only if you consented. However, if the Assisting Attorney is not your attorney, he or she may have an ethical obligation to inform your clients of your errors. (See What If? Answers to Frequently Asked Questions on page 18.)

Whether or not the Assisting Attorney is representing you, that person must be aware of conflict-of-interest issues and must check for conflicts if he or she (1) is providing legal services to your clients or (2) must review confidential file information to assist with transferring clients' files. Though not required, you may want to identify and designate a secondary Assisting Attorney who can handle any client file on which the primary Assisting Attorney has either an actual or potential conflict-of-interest.

In addition to arranging for an Assisting Attorney, you may also want to arrange for an Authorized Signer, who must be an attorney, on your trust account. While the Assisting Attorney should have authority to receive and view bank statements for the trust account, it is best to choose someone other than your Assisting Attorney to act as the Authorized Signer on your trust account. This provides for checks and balances, since two people will have access to your records and information. It also avoids the potential for any conflicting fiduciary duties that may arise if the trust account does not balance. Further, you should

consider naming one or more alternates to the primary people you select to serve as Assisting Attorney and/or Authorized Signor.

Planning ahead to protect your clients' interests in the event of your disability or death involves some difficult decisions, including the type of access your Assisting Attorney and/or Authorized Signer will have, the conditions under which they will have access, and who will determine when those conditions are met. These decisions are the hardest part of planning ahead.

If you are incapacitated, for example, you may not be able to give consent to someone to assist you. Under what circumstances do you want someone to step in? How will it be determined that you are incapacitated, and who do you want to make this decision?

One approach is to give the Assisting Attorney and/or Authorized Signer access only during a specific time period or after a specific event and to allow the Assisting Attorney and/or Authorized Signer to determine whether the contingency has occurred. Another approach is to have someone else (such as a spouse or partner, trusted friend, or family member) keep the applicable documents (such as a limited power of attorney for the Assisting Attorney and/or the Authorized Signer) until he or she determines that the specific event has occurred. A third approach is to provide the Assisting Attorney and/or Authorized Signer with access to records and accounts at all times.

If you want the Assisting Attorney and/or Authorized Signer to have access to your accounts contingent on a specific event or during a particular time period, you have to decide how you are going to document the agreement. Depending on where you live and the bank you use, some approaches may work better than others. Some banks require only a letter signed by both parties granting authorization to sign on the account. The sample agreements provided in this handbook should be legally sufficient to grant authority to sign on your account. However, you and the Assisting Attorney and/or the Authorized Signer may also want to sign a limited Power of Attorney. (See Power of Attorney – Limited provided on page 40 of this handbook.) Most banks prefer a power of attorney. Signing a separate limited power of attorney increases the likelihood that the bank will honor the agreement. It also provides you and the Assisting Attorney and/or the Authorized Signer with a document limited to bank business that can be given to the bank. (The bank does not need to know all the terms and conditions of the agreement between you and the Assisting Attorney and/or the Authorized Signer.) If you choose this approach, consult the manager of your bank in advance. When you do, be aware that Power of Attorney forms provided by the bank are generally unconditional authorizations to sign on your account and may include an agreement to indemnify the bank. Get written confirmation that the bank will honor your limited Power of Attorney or other written agreement. Otherwise, you may think you have taken all necessary steps to allow access to your accounts, yet when the time comes the bank may not allow the access you intended.

If the access is going to be contingent, you may want to have someone (such as your spouse or partner, family member, personal representative, or trusted friend) hold the power of

attorney until the contingency occurs. This can be documented in a letter of understanding, signed by you and the trusted friend or family member. (See Letter of Understanding provided on page 42 of this handbook.) When the event occurs, the trusted friend or family member provides the Assisting Attorney and/or the Authorized Signer with the Power of Attorney.

If the authorization will be contingent on an event or for a limited duration, the terms must be specific and the agreement should state how to determine whether the event has taken place. For example, you can specify that the Assisting Attorney and/or the Authorized Signer is authorized to sign on your accounts only after obtaining a letter from a physician that you are disabled or incapacitated, or the Nevada Supreme Court changes your license status to "disabled inactive." You can also indicate if the Assisting Attorney and/or the Authorized Signer can be authorized based on reasonable belief. The authorization can be for a specific period of time, for example, a period during which you are on vacation. In some cases, it may be necessary to grant your Assisting Attorney, Authorized Signer, or other parties a HIPAA Authorization and Release to allocate access to your medical records to determine your disability, incapacity, or incompetency.

You and the Assisting Attorney and/or Authorized Signer must review the specific terms and be comfortable with them. These same issues apply if you choose to have a family member or friend hold a general Power of Attorney until the event or contingency occurs. All parties need to know what to do and when to do it. Likewise, to avoid problems with the bank, the terms should be specific, and it must be easy for the bank to determine whether the terms are met.

Another approach is to allow the Assisting Attorney and/or Authorized Signer access at all times. With respect to your bank accounts, this approach requires going to the bank and having the Assisting Attorney and/or Authorized Signer sign the appropriate cards and paperwork. When the Assisting Attorney and/or Authorized Signer is authorized to sign on your account, he or she has complete access to the account. This is an easy approach that allows the Assisting Attorney and/or Authorized Signer to carry out office business even if you are just unexpectedly delayed returning from vacation.

Adding someone as a signer on your accounts allows him or her to write checks, withdraw money, or close the account at any time, even if you are not dead, disabled, impaired, or otherwise unable to conduct your business affairs. Under this arrangement, you cannot control the signer's access. These risks make it an extremely important decision. If you choose to give another attorney full access to your accounts, your choice of signer is crucial to the protection of your clients' interests, as well as your own. You should confirm with your bank that you have the authority to remove an additional signer unilaterally and that the additional signer cannot add other signers without your written consent.

Access to the Trust Account

As mentioned above, when arranging to have someone take over or wind down your financial affairs, you should also consider whether you want someone to have access to your trust account. If you do not make arrangements to allow someone access to the trust account, your clients' money will remain in the trust account until a court orders access. For example, if you become physically, mentally, or emotionally unable to conduct your law practice and no access arrangements were made, your clients' money will most likely remain in your trust account until the court takes jurisdiction over your practice and your accounts, pursuant to potential guardianship and/or probate proceedings. This delay puts the client in a difficult position. Often, the client needs the money he or she has on deposit in the lawyer's trust account to hire another attorney. These delays are likely to prompt ethics complaints, Clients' Security Fund claims, malpractice complaints, or other civil suits.

As emphasized above, allowing access to your trust account is a serious matter. You must give careful consideration to whom you give access and under what circumstances. If someone has access to your trust account and that person misappropriates money, your clients will suffer damages and you could be held responsible.

There are no easy solutions to this problem, and there is no way to know absolutely whether you are making the right choice. There are many important decisions to make. Each person must look at the options available to him or her, weigh the relative risks, and make the best choices he or she can.

It is important to check and assure that adding an Assisting Attorney or Authorized Signer to your general or lawyer trust account is consistent with and permitted for the form of entity you use for practicing law.

Client Notification

Once you have made arrangements with an Assisting Attorney and/or Authorized Signer, the next step is to provide your clients with information about your plan. The easiest way to do this is to include the information in your retainer agreements and engagement letters. This provides clients with information about your arrangement and gives them an opportunity to object. Your client's signature on a retainer agreement provides written authorization for the Assisting Attorney to proceed on the client's behalf, if necessary. Following is a sample language that may be included in the retainer agreement and engagement letters:

> "Client understands that Attorney many enter into an agreement with another attorney to assist with the closure of Attorney's law practice in the event of Attorney's death, disability, impairment or incapacity. In such event, Client agrees that the assisting attorney shall be permitted to review Client's file and take whatever steps are necessary to protect Client's rights and assist with the closure of Attorney's law practice."

Other Steps That Pay Off

You can take a number of steps while you are still practicing to make the process of closing your office smooth and inexpensive. These steps include (1) making sure that your office procedures manual explains how to produce a list of client names and addresses for open files, (2) keeping all deadlines and follow-up dates on your calendaring system, (3) thoroughly documenting client files, (4) keeping your time and billing records up-to-date, (5) familiarizing your Assisting Attorney and/or Authorized Signer with your office systems, (6) renewing your written agreement with the Assisting Attorney and/or Authorized Signer each year, (7) making sure you do not keep clients' original documents, such as wills or other estate plans, and (8) visiting your bank to make sure the bank is aware of your written agreement with Assisting Attorney and/or Authorized Signor so that it will be honored. (See Checklist for Closing Your Practice, provided on page 8.)

If your office is in good order, the Assisting Attorney will not have to charge more than a minimum of fees for closing the practice. Your law office will then be an asset that can be sold and the proceeds remitted to you or your estate. An organized law practice is a valuable asset. In contrast, a disorganized practice requires a large investment of time and money and is less marketable.

Death of a Sole Practitioner: Special Considerations

If you authorize another lawyer to administer your practice in the event of disability, impairment, or incapacity via Power of Attorney then you need to understand that this authority terminates when you die. Therefore, it is imperative to execute the necessary documents to also give that person authority to continue administering your practice upon your death. The necessary documents for the person to have authority upon your death may be to nominate the person in your Will or Revocable Living Trust, or to amend your Operating Agreement (or other firm governing document) to confirm that authority continues after death. The exact documents you need will depend on how your firm is structured and thus it is important to discuss your specific needs with counsel.

The personal representative of your estate could have the legal authority to administer your practice; however, if he or she is not a licensed Nevada attorney, then the personal representative may not be allowed access to your attorney-client files under SCR 5.4. As such, the personal representation must be told about your arrangement with the Assisting Attorney and/or Authorized Signer and about your desire to have the Assisting Attorney and/or Authorized Signer carry out the duties of your agreement. The personal representative can then authorize the Assisting Attorney and/or Authorized Signer to proceed.

It is imperative that you have an up-to-date will nominating a personal representative (and alternates if the first nominee cannot or will not serve) so that probate proceedings can begin promptly and the personal representative can be appointed without delay. If you have no will,

there may be a dispute among family members and others as to who should be appointed as personal representative. A will can provide that the personal representative shall serve without bond. Absent such a provision, a relatively expensive fiduciary bond may have to be obtained or arrangements made for the establishment of blocked accounts before the personal representative is authorized to act.

For many sole practitioners, the law practice may be the only asset subject to probate. Other property will likely pass outside probate to a surviving joint tenant, usually the spouse. This means that unless you keep enough cash in your law practice bank account, there may not be adequate funds to retain the Assisting Attorney and/or Authorized Signer or to continue to pay your clerical staff, rent, and other expenses during the transition period. It will take some time to generate statements for your legal services and to collect the accounts receivable. Your accounts receivable may not be an adequate source of cash during the time it takes to close your practice. Your Assisting Attorney and/or Authorized Signer may be unable to advance expenses or may be unwilling to serve without pay. One solution to this problem is to maintain a small insurance policy, naming your Assisting Attorney and/or Authorized Signer as the beneficiary for the sole and limited purpose of using the funds to wind up the practice of law with any remainder turned over to the Estate. Alternately, your surviving spouse or other family members can be named as beneficiary, with instructions to lend the funds to the estate, if needed.

Under NRS 89.070, a revocable trust may own a professional business entity so long as the trustee making decisions relating to legal services being rendered is licensed to perform those services and any unlicensed trustee does not participate in decisions relating to the rendering of services. NRS 89.080(3) allows the trustee to continue to retain the interest "for a reasonable period" and restricts who can receive a distribution of the trust's interest in the professional entity. Trust ownership of the professional entity will avoid the need for probate, but it requires that the trust instrument contain provisions that assure compliance with these statutory provisions. The trust's provisions should be clear about the management of the trust-owned professional entity both during incapacity and after death. It is best if the trust's provisions are well coordinated with the overall succession plan.

NRS 163.285 gives a fiduciary the power to continue or participate in the operation of a business. That statute is automatically incorporated into any will or trust executed after October 1, 2009, and it is frequently incorporated by reference into wills and trusts executed prior to that date. In a probate proceeding, NRS 143.050 allows a personal representative to continue operating a business, but court authority must be sought by petition unless independent administration has been approved and NRS 143.520 applies. Even when court authority does not need to be sought, some actions require a notice of proposed action.

For the personal protection of your personal representative or trustee, you may want to include language in your will or revocable trust that expressly authorizes that person to arrange for closure of your law practice. The appropriate language will depend on the nature of the practice and the arrangements you make ahead of time. (See Will Provisions on page 43 of this handbook.) For an instructive and detailed will for a sole practitioner, see Thomas

G. Bousquet, Retirement of a Sole Practitioner's Law Practice, 29 LAW ECONOMICS & MANAGEMENT 428 (1989); updated: 33 The Houston Lawyer 37 (January/February 1996).

It is important to allocate sufficient funds to pay an Assisting Attorney and/or Authorized Signer and necessary secretarial staff in the event of disability, incapacity, or impairment. To provide funds for these services, consider maintaining a disability insurance policy in an amount sufficient to cover these projected office closure expenses.

Start Now

We encourage you to select an attorney to assist you; follow the procedures outlined in this handbook; and forward the name, address, and phone number of your Assisting Attorney to the State Bar of Nevada.

This is something you can do now, at little or no expense, to plan for your future and protect your assets. Don't put it off – start the process today and periodically update your plan.

Checklist for Closing Your Practice

This material is intended as only an example which you may use in developing your own form. It is not considered legal advice and as always, you will need to do your own research to make your own conclusions with regard to the laws and ethical opinions of your jurisdiction. In no event will ALPS or the State Bar of Nevada be liable for any direct, indirect, or consequential damages resulting from the use of this material.

- ☐ Build out a timeline and assess the status of all active matters.
- ☐ Notify staff of your plans because you will need their help.
- ☐ Cease taking on any new matters.
- ☐ Bring to completion and close as many active matters as you can.
- ☐ Give notice of termination of all rental or lease agreements.
- ☐ Notify all clients of your plans on matters you are unable to complete. This letter should advise them that you are unable to continue representing them and that they will need to retain new counsel. Inform them about relevant time limitations and time frames important to their matter. Explain how and where they can obtain a copy of their file and set forth a deadline for doing so, according to RPC 1.16.

- Provide active clients with copies of their file and keep your original files. Clients who pick up their file should sign a receipt. Clients who wish to have their file transferred to another attorney should sign an authorization for you to do so.

- Notify the court. On matters with pending court dates, depositions, or hearings, discuss how to proceed with each client. Request extensions, continuances, and the resetting of hearings where appropriate. Send written confirmation of these changes to opposing counsel and your client. Obtain permission to submit a motion and order to withdraw as attorney of record.

- Confirm you are out. On matters before an administrative body or court, pick an appropriate future date to check and to confirm that a substitution of counsel has been filed or that your motion to withdraw has been granted and then follow through with the check.

- Notify all clients of your file storage arrangements. Let them know where files will be stored, how they can obtain a copy if ever necessary, and if not previously addressed, set forth your retention policy. If closed files will be stored by another attorney, obtain client permission to have the closed files transferred and provide contact information for this attorney. See RPC 1.15 and SCR 78.5.

- Closeout your trust account once it has been audited and reconciled. If funds are to be transferred to a new attorney, disburse those funds by making the check payable to the client and the new attorney. Notify the Bar that your trust account has been closed and maintain your trust account records in accordance with the rules in your jurisdiction. See RPC 1.15 and SCR 78.5.

Deal with client property

- Address client property still in your possession such as original wills, client corporate books, etc. Authorize your Assisting Attorney to take over custody of any original documents and to notify the State Bar office accordingly. Notify client or secretary of state regarding resignation as registered agent. See NRS 77.370.

And Winding up the Business

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- Cancel your telephone service and arrange to have calls to your office number forwarded to your home or other number or consider placing an automated message on your office line that will remain active for at least several months post closure.

- Address any confidentiality and file storage concerns with computers and related tech. Prior to donating, selling, or giving away any device, backup all data that you wish to maintain long-term and then wipe the data from every device.

- Notify all vendors and make plans to close these accounts.

- Cancel or change any existing advertisements and legal directory listings wherever possible. Don't forget about your website and social media presence.

- Meet with your accountant to discuss dissolution of your firm, obtain tax advice, establish the schedule for preparation of final financial statements, determine what state and federal agencies need to be notified, etc.

- Meet with any lenders to discuss repayment of outstanding loans.

- Cancel all firm credit cards.

- Determine where and for how long you will need to store your business records. See SCR 78.5 and RPC 1.15.

- Determine where regular mail and e-mail should go post closure then notify the post office and make any necessary changes to all email accounts.

- Consider setting up an automated reply on email accounts that are to be closed and placing a static page on your website that announces the closure of your practice along with information about where closed files will be stored.

- Cancel all business memberships and subscriptions to include online accounts.

- Determine the disposition of furniture, fixtures, library, art, etc.

- Make arrangements to have all utilities turned off in a timely fashion.

- Check with your accountant or financial planner regarding retirement plans and rollover options.

- Notify all insurance companies, to include your premises liability and workers compensation carrier. Don't forget to obtain advice on conversion options for health, life, and disability insurance.

- Close the operating account once all outstanding receivables have been collected and all outstanding bills have been paid.

- Destroy all unused checks, deposit slips, etc.

- Dispose of unused office supplies. Schools or charitable organizations would be pleased to be the beneficiary of such items.

Closing Another Attorney's Office

The term "Closing Attorney" refers to the attorney whose office is being closed.

- Check the calendar and active files to determine which items are urgent and/or scheduled for hearings, trials, depositions, court appearances, and so on. If necessary, check the Nevada court repositories for those items.
- Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances, or discovery. Obtain permission for reset. (If making these arrangements poses a conflict of interest for you and your clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs.)
- Contact courts and opposing counsel immediately for files that require discovery or court appearances. Obtain resets of hearings or extensions when necessary. Confirm extensions and resets in writing.
- Open and review all unopened mail. Review all mail and email that is not filed and match it to the appropriate files.
- Look for an office procedure manual. Determine whether anyone has access to a list of clients with active files.
- Determine whether the Closing Attorney stored files online. Locate the user name and password, retrieve the digital data, and arrange for the cloud storage provider to close the account.
- Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney and/or pick up a copy of the open file. Provide clients with a date by which they should pick up copies of their files. Inform clients that new counsel should be chosen immediately. (See sample Letter Advising That Lawyer Is Unable to Continue in Practice provided on page 44 of this handbook.)
- For cases before administrative bodies and courts, obtain permission from the clients to submit a motion and order to withdraw, or a notice of death to the Closing Attorney as attorney-of-record. See SCR 47
- If the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.

- Select an appropriate date to check whether all cases have either a motion and order allowing withdrawal of the Closing Attorney or a Substitution of Attorney filed with the court.

- Make copies of files for clients. Retain the Closing Attorney's original files. All clients should either pick up a copy of their files (and sign a receipt acknowledging that they received it) or sign an authorization for you to release a copy to a new attorney. If the client is picking up a copy of the file and the file contains original documents that the client needs (such as a title to property), return the original documents to the client and keep copies for the Closing Attorney's file.

- Advise all clients where their closed files will be stored and whom they should contact in order to retrieve a closed file.

- Notify State Bar of the contact information person that will store the Closing Attorney's closed files.

- Establishing a forward number/email for after the Closing Attorney's number/email is terminated.

- Contact the Closing Attorney's malpractice carrier about extended or "tail" coverage.

- Handle the Closing Attorney's practice finances

    - Locate undeposited checks and verify whether to keep or return
    - Identify trust funds
    - Prepare final billing statement
    - Manage general bank accounts if granted access
    - File petition with appropriate court to turn over IOLTA accounts to court or appoint receiver for the same
    - Pay practice expenses; safekeep reserves for Closing Attorney or estate

- If authorized to do so, liquidate or sell the Closing Attorney's practice.

- Seek reimbursement/compensation as permitted by State Bar or as claim against the Closing Attorney's estate.

- If intend to represent the Closing Attorney's clients, obtain client consent, check for conflicts, sign new engagement letters.

Checklist for Closing Your Trust Accounts

- ☐ Fully reconcile the trust accounts. Any funds remaining in an account should correspond to specific clients or nominal funds used to open the account or should cover reasonably anticipated bank charges.

- ☐ Contact the bank to determine whether there will be any charges associated with closing the accounts. If a closing fee will be assessed, deposit sufficient funds to cover the closing fee. (You are responsible for this bank charge – do not use client funds to cover this fee. See RPC 1.5)

- ☐ Prepare and send final client bills, if necessary.

- ☐ Disburse funds belonging to you (earned fees, reimbursement for costs advanced) and deposit into your business account.

- ☐ Disburse funds belonging to clients. Send to clients with a duplicate copy of their final bill or prepare cover letters transmitting your checks.

- ☐ For unclaimed trust account funds belonging to clients whose last known address was in Nevada, follow the procedures set forth in NRS Chapter 120A. Note that if the unclaimed funds consist of an uncashed witness fee, or other payments not cashed by a third party, the funds revert to the client and should be reimbursed to the client.

- ☐ Do not close the accounts until all outstanding checks have cleared.

- ☐ Shred unused checks and deposit slips once the trust accounts are closed. This will prevent fraud and protect you from mistakenly using checks and deposit slips from your closed accounts.

- ☐ Keep the trust check registers, client ledgers, bank statements, and other records for at least five years: "Complete records of [trust] account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the final disposition of the matter." See SCR 78.5.

File Retention and Destruction

Most client files (whether paper or electronic) should be kept for a minimum of two years after final judgment for any litigation involving the attorney's acts to ensure the file will be available to defend you against malpractice claims. Files that should be kept longer may include:

1. Cases involving a child who is still a minor;
2. Estate plans should be maintained for a minimum of two years after the client has died or after the attorney has been notified that the client has retained other counsel to update the estate plan (note – do no retain original estate planning documents in the client files; return the same to the client after signing);
3. Contracts or other agreements that are active or are still being paid off;
4. Cases in which a judgment should be renewed;
5. Files establishing a tax basis in property;
6. Criminal law cases. Keep for two years after the client is released or exonerated;
7. Support and custody files in which the children are minors or the support obligation is not paid;
8. Corporate books and records;
9. Adoption files;
10. Intellectual property files; and
11. Files of problem clients.

When closing your file, return original documents to clients or transfer them to their new attorneys. Be sure to get a receipt for the property and keep the receipt in your paper or electronic file.

The first step in the file retention process begins when you are retained by the client. Your engagement letter should remind clients that you will be destroying the file after certain conditions are met.

The second step in the file retention process is when the file is closed. When closing the file, establish a destruction date and calendar that date. If you have not already obtained the client's permission to destroy the file (in the fee agreement or engagement letter), you can get written permission when you close the file or you can make sure that the client has a complete copy of the file. This includes all pleadings, correspondence, and other papers and documents necessary for the client to construct a file for personal use. If you choose the latter alternative, be sure to document that the client has a complete file. This means that the paper or electronic file you have in your office is yours (and can be destroyed without permission) and the file the client has is the client's copy. File closing is also a good time to advise clients of your firm's policy on retrieving and providing file material once a matter is closed.

The final step in the file retention process involves reviewing the firm's electronic records for client-related material. Electronic data may be stored in a secure electronic format. See Ethics Opinion No. 33. Examples include e-mail communications, instant messages, electronic faxes, digitized evidence, word processing, or other documents generated during the course of the case. Review these sources to ensure that the client file is complete. If these documents exist only in electronic form, you may choose to store them electronically or print them out and place them in the appropriate location in the client's file.

If you possess personal health information of clients or others within the meaning of the Health Insurance Portability and Accountability Act (HIPAA), you are obligated to conduct a risk analysis and take proper steps to secure your records. Failure to do so can result in civil penalties.

The retention policy for electronic data should be consistent with the retention policy for paper files.

Organization and Destruction of Closed Files

Keep a permanent inventory of files you destroy and the destruction dates. Before destroying any client file, review it carefully. Some files need to be kept longer, as noted above. Others may contain conflict information that needs to be added to your conflict database or original documents of the client, which should never be destroyed. A recommended best practice is to always retain proof of the client's consent to destroy the file. This is easily done by including the client's consent in your fee agreement or engagement letter and retaining the letters with your inventory of destroyed files. Follow the same guidelines when evaluating whether to destroy electronic records.

On June 1, 2005, a new law took effect that regulates the disposal of consumer information. The Fair and Accurate Credit Transaction Act (FACTA) Disposal Rule (the Rule) requires any person who maintains or possesses "consumer information" for a business purpose to properly dispose of such information by taking "reasonable measures" to protect against unauthorized access to or use of the information in connection with its disposal. The Rule defines "consumer information" as any information about an individual that is in or derived from a consumer report. Although the Rule doesn't specifically refer to lawyers, it may be interpreted to apply to lawyers, and the practices specified in the Rule would safeguard clients' confidential information.

"Reasonable measures" for disposal under the Rule are:

(1) burning, pulverizing, or shredding physical documents;

(2) erasing or physically destroying electronic media; and

(3) entering into a contract with a document disposal service.

Permanent destruction of electronic data requires special expertise.

What If? Answers to Frequently Asked Questions

If you are planning to close your office or if you are considering helping a friend or colleague close his or her practice, you should think through a number of issues. How you structure your agreement will determine what the Assisting Attorney must do if the Assisting Attorney finds (1) errors in the files, such as missed time limitations, or (2) misappropriation of client funds. See SCR 118.

Discussing these issues at the beginning of the relationship will help to avoid misunderstandings later when the Assisting Attorney interacts with the Planning Attorney's former clients. If these issues are not discussed, the Planning Attorney and the Assisting Attorney may be surprised to find that the Assisting Attorney (1) has an obligation to inform the Planning Attorney's clients about a potential malpractice claim or (2) may be required to report the Planning Attorney to the State Bar of Nevada.

The best way to avoid these problems is to have a written agreement with the Planning Attorney and, when applicable, with the Planning Attorney's former clients. If there is no written agreement clarifying the obligations and relationships, an Assisting Attorney may find that the Planning Attorney believes the Assisting Attorney is representing the Planning Attorney's interests. At the same time, the former clients of the Planning Attorney may also believe that the Assisting Attorney is representing their interests. It is important to keep in mind that an attorney-client relationship may be established by the reasonable belief of a prospective client.

This section reviews some of these issues and the various arrangements that the Planning Attorney and the Assisting Attorney can make. All of these frequently asked questions, except question 8, are presented as if the Assisting Attorney is posing the questions.

1. If the Planning Attorney is unable to practice and I am assisting with the office closure, must I notify the former clients of the Planning Attorney if I discover a potential malpractice claim against the Planning Attorney?

The answer is largely determined by the agreement you have with the Planning Attorney and the Planning Attorney's former clients. If you do not have an attorney-client relationship with the Planning Attorney, and you are the new lawyer for the Planning Attorney's former

clients, you must inform your client (the Planning Attorney's former client) of the error, and advise him or her to submit a claim to the Planning Attorney's malpractice carrier, if any, unless the scope of your representation of the client excludes actions against the Planning Attorney. If you want to limit the scope of your representation, do so in writing and advise your clients to get independent advice on the issues.

If you are the Planning Attorney's lawyer, and not the lawyer for his or her former clients, you should discuss the error with the Planning Attorney and inform the Planning Attorney of his or her obligation to inform the client of the error. As the attorney for the Planning Attorney, you are obligated to follow the instructions of the Planning Attorney. You must also be careful that you do not make any misrepresentations. See RPC 8.4(c). This situation could arise if the Planning Attorney refused to fulfill his or her obligation to inform the client – and also instructed you not to tell the client. If that occurred, you must be sure you do not say or do anything that would mislead the client. You may also seek to withdraw at this point.

In most cases, the Planning Attorney will want to fulfill his or her obligation to inform the client. As the Planning Attorney's lawyer, you and the Planning Attorney can include a clause in your agreement that gives you (the Assisting Attorney) permission to inform the Planning Attorney's former clients of any malpractice errors. This would not be permission to represent the former clients on malpractice actions against the Planning Attorney. Rather, it would authorize you to inform the Planning Attorney's former clients that a potential error exists and that they should seek independent counsel.

If the Planning Attorney is incapacitated, incompetent, deceased, or unable to communicate or give consent to the disclosure of information to the Planning Attorney's former clients of any malpractice errors, the agreement should address whether the Planning Attorney is authorized to notify the Planning Attorney's malpractice carrier for direction or notice of a potential claim.

2. I know sensitive information about the Planning Attorney. The Planning Attorney's former client is asking questions. What information can I give the Planning Attorney's former client?

Again, the answer is based on your relationship with the Planning Attorney and the Planning Attorney's clients. If you are the Planning Attorney's lawyer, you would be limited to disclosing only information that the Planning Attorney wished you to disclose. You would, however, want to make clear to the Planning Attorney's clients that you do not represent them and that they should seek independent counsel.

3. Since the Planning Attorney is now out of practice, does the Planning Attorney have malpractice coverage?

When attorneys leave private practice, they may purchase extended reporting coverage or "tail" coverage. However, Nevada attorneys are not required to have insurance. Notwithstanding, the written agreement should address the Planning Attorney's intentions to maintain continuous coverage and authorization for you to obtain the extended reporting coverage if the Planning Attorney is unable to consent to the same.

4. In addition to transferring files and helping to close the Planning Attorney's practice, I want to represent the Planning Attorney's former clients. Am I permitted to do so?

Whether you are permitted to represent the former clients of the Planning Attorney depends on (1) whether the clients want you to represent them and (2) who else you represent.

If you are representing the Planning Attorney, you cannot represent the Planning Attorney's former clients on any matter against the Planning Attorney. This would include representing the Planning Attorney's former clients on a malpractice claim, ethics complaint, or fee claim against the Planning Attorney. If you do not represent the Planning Attorney, you are limited by conflicts arising from your other cases and clients. You must check your client list for possible conflicts before undertaking representation or reviewing confidential information of a former client of the Planning Attorney.

Even if a conflict check reveals that you are permitted to represent the client, you may prefer to refer the case to another lawyer. A referral is advisable if the matter is outside your area of expertise or if you do not have adequate time or staff to handle the case. In addition, if the Planning Attorney is a friend, bringing a legal malpractice claim or fee claim against him or her may make you vulnerable to an allegation of a personal interest conflict. See RPC 1.7. To avoid this potential exposure, you should provide the client with names of other attorneys or refer the client to the State Bar of Nevada's Lawyer Referral and Information Service.

If intended to represent the Planning Attorney's clients and they consent to the same, you should sign new engagement letters.

5. What procedures should I follow for distributing the funds in the trust account?

If your review or the Authorized Signer's review of the lawyer trust account indicates that there may be conflicting claims to the funds in the trust account, you should initiate a

procedure for distributing the existing funds, such as a court-directed interpleader, pursuant to RPC 1.15.

6. If there may be a violation of the Nevada RPCs, must I tell the Planning Attorney's former clients?

The answer depends on the relationships. The answer is (1) no, if you are the Planning Attorney's lawyer; and (2) maybe, if you are not representing the Planning Attorney.

If the Planning Attorney violated a disciplinary rule and you are his or her lawyer, you are not obligated to inform the Planning Attorney's former clients of any professional conduct violations or report any of the Planning Attorney's professional conduct violations to the State Bar of Nevada if your knowledge of the misconduct is the result of confidential information obtained from your client, the Planning Attorney. See RPC 8.3(g). Although you may have no duty to report, you may have other responsibilities. For example, if you discover that some of the client funds are not in the lawyer trust account as they should be, you, as the attorney for the Planning Attorney, should discuss this matter with the Planning Attorney and encourage the Planning Attorney to correct the shortfall. If you are the attorney for the Planning Attorney and the Planning Attorney is deceased, you should contact the personal representative of the estate. If the Planning Attorney is alive but unable to function, you (or the Authorized Signer) may have to disburse the amounts that are available and inform the Planning Attorney's former clients that they have the right to seek legal advice.

If you are the Planning Attorney's lawyer, you should make certain that former clients of the Planning Attorney do not perceive you as their attorney. This may include informing them in writing that you do not represent them. See RPC 4.3.

If you are a signer on the trust account and (1) you are not the attorney for the Planning Attorney and (2) you are not representing any of the former clients of the Planning Attorney, you may still have a fiduciary obligation to notify the clients of a shortfall, and you may have an obligation under RPC 8.3(a) to report the Planning Attorney to the State Bar of Nevada.

If you are the attorney for a former client of the Planning Attorney, you have an obligation to inform the client about a shortfall and advise the client of available remedies. These remedies may include (1) pursuing the Planning Attorney for the shortfall, (2) filing a claim with the Clients' Security Fund, (3) filing a claim with the malpractice insurance carrier, if any, or (4) filing a grievance with the State Bar of Nevada. You may also have an obligation under RPC 8.3(a) to report the Planning Attorney to the State Bar of Nevada. If you are a friend of the Planning Attorney, this is a particularly important issue. You should determine ahead of

time whether you are prepared to assume (1) the obligation to inform the Planning Attorney's former clients of the Planning Attorney's errors and (2) the potential duty to report the Planning Attorney to the State Bar of Nevada if a violation of a rule of professional conduct occurs. Even if you limit the scope of your representation, that does not eliminate your potential duty to report pursuant to RPC 8.3(a).

7. If the Planning Attorney stole client funds, do I have exposure to a professional conduct complaint against me?

You do not have exposure to a professional conduct complaint for stealing the money, unless you in some way aided or abetted the Planning Attorney in the misconduct.

Whether you have an obligation to inform the Planning Attorney's former clients of the misappropriation depends on your relationship with the Planning Attorney and the Planning Attorney's former clients. (See question 6 above.)

If you are the new attorney for a former client of the Planning Attorney and you fail to advise the client of the Planning Attorney's professional conduct violations, you may be exposed to the allegation that you have violated your professional responsibilities to your new client.

8. What are the pros and cons of allowing someone to have access to my trust account? How do I make arrangements to give my Authorized Signer access?

The most important "pro" of authorizing someone to sign on your trust account is the convenience it provides for your clients. If you (the Planning Attorney) suddenly become unable to continue in practice, an Authorized Signer is able to transfer money from the trust account to pay appropriate fees, provide your clients with settlement checks, and refund unearned fees. If these arrangements are not made, the clients' money must remain in the trust account until a court allows access. This court order may be through a conservatorship or an order pursuant to SCR 118.

On the other hand, the most important "con" of authorizing trust account access is your inability to control the person who has been granted access. An Authorized Signer with unconditional access has the ability to write trust account checks, withdraw funds, or close the account at any time, even if you are not dead, disabled, impaired, or otherwise unable to conduct your business affairs. It is very important to choose the person carefully you authorize as a signer and, when possible, to continue monitoring your accounts.

If you decide to have an Authorized Signer, decide whether you want to give (1) access only during a specific time period or when a specific event occurs or (2) access all the time. (See The Duty to Plan Ahead on page 82 of this handbook.)

9. The Planning Attorney wants to authorize me as a trust account signer. Am I permitted to be Assisting Attorney also?

Although this generally works out fine, the arrangement may result in a conflict of fiduciary duties. As an Authorized Signer on the Planning Attorney's trust account, you would have a duty to account properly for the funds belonging to the former clients of the Planning Attorney. This duty could be in conflict with your duty to the Planning Attorney if (1) you were hired to represent him or her on issues related to the closure of his or her law practice and (2) there were misappropriations in the trust account and the Planning Attorney did not want you to disclose them to the clients. To avoid this potential conflict of fiduciary duties, the most conservative approach is to choose one role or the other: be an Authorized Signer OR be an Assisting Attorney representing the Planning Attorney on issues related to the closure of his or her practice. (See question 4 above.)

Sample Forms

This section contains sample forms attorneys can use in closing down their practices.

Agreement – Full Form

(Sample – Modify as appropriate)

The sample Agreement – Full Form beginning on the next page gives the Assisting Attorney the power to determine whether you are disabled, impaired, or incapacitated and provides the Assisting Attorney with authority under the designated circumstances to sign on your business bank accounts (except your trust account) and to close your law practice. The agreement gives an Authorized Signer authority to sign on your trust accounts. (See Caveat below.) The agreement also enumerates powers such as termination, payment for services, and resolution of disputes.

Caveat: The Assisting Attorney must determine ahead of time whether he or she is going to represent the Planning Attorney, clients of the Planning Attorney, or no one (acting exclusively as a neutral file-transferring agent). If the Assisting Attorney (1) represents the Planning Attorney on issues related to office closure, (2) is an Authorized Signer on the lawyer trust account, (3) finds misappropriations in the lawyer trust account, and (4) is instructed by the Planning Attorney not to inform the clients about the misappropriations, the Assisting Attorney will have conflicting fiduciary duties. To avoid this potential for conflicting fiduciary duties, it is best if the Planning Attorney selects one person to represent him or her as Assisting Attorney and another person to serve as the Authorized Signer on the trust account. (See The Duty to Plan Ahead on page 82, and What If? Answers to Frequently Asked Questions, on page 18 in this handbook for more detailed information on these topics.)

Authorizing someone to sign on bank accounts in an agreement may not meet the banking institution's record-keeping requirements. The Planning Attorney should consult his or her banking institution to complete the paperwork required for its records.

If you do not want the Assisting Attorney to be the person who determines whether you are disabled, incapacitated, or impaired, you will need to modify this agreement. For a discussion of alternatives, see The Duty to Plan Ahead on page 82, Access to the Trust Account, on page 5 of this handbook.

Agreement to Close Law Practice

Between_____, hereinafter referred to as "Planning Attorney"

And:_____, hereinafter referred to as "Assisting Attorney"

And:_____, hereinafter referred to as "Authorized Signer"

1. Purpose.

The purpose of this Agreement to Close Law Practice (hereinafter "this Agreement") is to protect the legal interests of the clients of Planning Attorney in the event Planning Attorney is unable to continue Planning Attorney's law practice due to death, disability, impairment, or incapacity. An attorney transferred to disability inactive status under the provisions of SCR 117 may not resume active status until reinstated by order of the Supreme Court. See SCR 117.4.

2. Parties.

The term Assisting Attorney refers to the attorney designated in the caption above or the Assisting Attorney's alternate. The term Planning Attorney refers to the attorney designated in the caption above or the Planning Attorney's representatives, heirs, or assigns. The term Authorized Signer refers to the person designated to sign on Planning Attorney's trust account and to provide an accounting of the funds belonging to Planning Attorney's clients.

3. Establishing Death, Disability, Impairment, or Incapacity.

In determining whether Planning Attorney is dead, disabled, impaired, or incapacitated, Assisting Attorney may act upon such evidence as Assisting Attorney shall deem reasonably reliable, including, but not limited to, communications with Planning Attorney's family members or representative or a written opinion of one or more medical doctors duly licensed to practice medicine. Similar evidence or medical opinions may be relied upon to establish that Planning Attorney's disability, impairment, or incapacity has terminated. Assisting Attorney is relieved from any responsibility and liability for acting in good faith upon such evidence in carrying out the provisions of this Agreement.

4. Consent to Close Practice.

Planning Attorney hereby gives consent to Assisting Attorney to take all actions necessary to close Planning Attorney's law practice in the event that Planning Attorney is unable to continue in the private practice of law and Planning Attorney is unable to close Planning Attorney's own practice due to death, disability, impairment, or incapacity. Planning Attorney hereby appoints Assisting Attorney as attorney-in-fact, with full power to do and accomplish all the actions contemplated by this Agreement as fully and as completely as Planning Attorney could do personally if Planning Attorney were able. It is Planning Attorney's specific intent that this appointment of Assisting Attorney as attorney-in-fact shall become effective only upon Planning Attorney's death, disability, impairment, or incapacity. The appointment of Assisting Attorney shall not be invalidated because of Planning Attorney's death, disability, impairment, or incapacity, but, instead, the appointment shall fully survive such death, disability, impairment, or incapacity and shall be in full force and effect so long as it is necessary or convenient to carry out the terms of this Agreement. In the event of Planning Attorney's death, disability, impairment, or incapacity, Planning Attorney designates Assisting Attorney as signator, in substitution of Planning Attorney's signature, on all of Planning Attorney's law office accounts with any bank or financial institution, except Planning Attorney's lawyer trust account(s). Planning Attorney's consent includes, but is not limited to:

- Providing all keys, access codes, etc. to enable Assisting Attorney to enter Planning Attorney's office and use Planning Attorney's equipment and supplies, as needed, access files and close Planning Attorney's practice;
- Opening Planning Attorney's mail and processing it;
- Taking possession and control of all property comprising Planning Attorney's law office, including client files and records;
- Examining client files and records of Planning Attorney's law practice and obtaining information about any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients that Planning Attorney has given this authorization and that it is in their best interest to obtain other legal counsel;
- Copying Planning Attorney's files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by the clients;
- Filing notices, motions, and pleadings on behalf of clients when their interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected and informing them that Planning Attorney has given this authorization;

- Arranging for transfer and storage of closed files;
- Winding down the financial affairs of Planning Attorney's practice, including providing Planning Attorney's clients with a final accounting and statement for services rendered by Planning Attorney, return of client funds, collection of fees on Planning Attorney's behalf or on behalf of Planning Attorney's estate, payment of business expenses, and closure of business accounts when appropriate;
- Advertising Planning Attorney's law practice or any of its assets to find a buyer for the practice; and
- Arranging for an appraisal of Planning Attorney's practice for the purpose of selling Planning Attorney's practice.

Planning Attorney authorizes Authorized Signer to sign on Planning Attorney's lawyer trust account(s).

Assisting Attorney and Authorized Signer will not be responsible for processing or payment of Planning Attorney's personal expenses.

Planning Attorney's bank or financial institution may rely on the authorizations in this Agreement, unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.

5. Payment for Services.

Planning Attorney agrees to pay Assisting Attorney and Authorized Signer a reasonable sum for services rendered by Assisting Attorney and Authorized Signer while closing the law practice of Planning Attorney. Assisting Attorney and Authorized Signer agree to keep accurate time records for the purpose of determining amounts due for services rendered. Assisting Attorney and Authorized Signer agree to provide the services specified herein as independent contractors.

6. Preserving Attorney Client Privilege.

Assisting Attorney and Authorized Signer agree to preserve confidences and secrets of Planning Attorney's clients and their attorney client privilege. Assisting Attorney and Authorized Signer shall make only disclosures of information reasonably necessary to carry out the purpose of this Agreement.

7. Assisting Attorney Is Attorney for Planning Attorney. (Delete the following paragraphs as appropriate, depending on Planning Attorney's choices.)

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney client relationship and follow the Nevada Rules of Professional Conduct. Assisting Attorney has permission to inform the malpractice insurance carrier, if any, of errors or potential errors of Planning Attorney.

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any violations of the rules of professional conduct committed by Planning Attorney.

OR (in the alternative):

Assisting Attorney Is Not Attorney for Planning Attorney.

While fulfilling the terms of this Agreement, Assisting Attorney is not the attorney for Planning Attorney. Assisting Attorney has permission to inform the malpractice insurance carrier, if any, of errors or potential errors of Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any violations of the rules of professional conduct committed by Planning Attorney.

8. Authorized Signer Is Not Attorney for Planning Attorney.

While fulfilling the terms of this Agreement, Authorized Signer is not the attorney for Planning Attorney. Authorized Signer has permission to inform Planning Attorney's present and former clients of any misappropriations in Planning Attorney's trust account and instruct them to obtain independent legal advice or to contact the State Bar of Nevada's Client's Security Fund.

9. Providing Legal Services.

Planning Attorney authorizes Assisting Attorney to provide legal services to Planning Attorney's clients, provided Assisting Attorney has no conflict of interest and obtains the consent of Planning Attorney's clients to do so. Assisting Attorney has the right to enter into an attorney-client relationship with Planning Attorney's clients and to have clients pay Assisting Attorney for his or her legal services. Assisting Attorney agrees to check for

conflicts of interest and, when necessary, decline the representation and may refer the clients to another attorney.

10. Informing State Bar of Nevada.

Assisting Attorney agrees to inform the State Bar of Nevada where Planning Attorney's closed files will be stored and the name, address, and phone number of the contact person for retrieving those files.

11. Contacting the Malpractice Insurance Carrier.

Planning Attorney authorizes Assisting Attorney to contact the malpractice insurance carrier, if any, concerning any legal malpractice claims or potential claims. (Note to Planning Attorney: Assisting Attorney's role in contacting the malpractice insurance carrier, if any, will be determined by Assisting Attorney's arrangement with Planning Attorney. See Section X of this Agreement.)

12. Providing Clients with Accounting.

Authorized Signer and/or Assisting Attorney agree[s] to provide Planning Attorney's clients with a final accounting and statement for legal services of Planning Attorney based on Planning Attorney's records. Authorized Signer agrees to return client funds to Planning Attorney's clients and to submit funds collected on behalf of Planning Attorney to Planning Attorney or Planning Attorney's estate representative.

13. Assisting Attorney's Alternate. (Delete one of the following paragraphs as appropriate.)

If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____ as Assisting Attorney's alternate (hereinafter "Assisting Attorney's Alternate"). Assisting Attorney's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Assisting Attorney's Alternate shall comply with the terms of this Agreement. Assisting Attorney's Alternate consents to this appointment, as shown by the signature of Assisting Attorney's Alternate on this Agreement.

OR (in the alternative):

If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Assisting Attorney may appoint an alternate (hereinafter "Assisting Attorney's Alternate"). Assisting Attorney shall enter into an agreement with any such Assisting Attorney's Alternate, under which Assisting Attorney's Alternate consents to the terms and provisions of this Agreement.

14. Authorized Signer's Alternate. (Delete one of the following paragraphs as appropriate.)

If Authorized Signer is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____ as Authorized Signer's alternate (hereinafter "Authorized Signer's Alternate"). Authorized Signer's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Authorized Signer's Alternate shall comply with the terms of this Agreement. Authorized Signer's Alternate consents to this appointment, as shown by the signature of Authorized Signer's Alternate on this Agreement.

OR (in the alternative):

If Authorized Signer is unable or unwilling to act on behalf of Planning Attorney, Authorized Signer may appoint an alternate (hereinafter "Authorized Signer's Alternate"). Authorized Signer shall enter into an agreement with any such Authorized Signer's Alternate, under which Authorized Signer's Alternate consents to the terms and provisions of this Agreement.

15. Indemnification.

Planning Attorney and/or his/her estate agrees to indemnify Assisting Attorney and Authorized Signer against any claims, loss, or damage arising out of any act or omission by Assisting Attorney and Authorized Signer under this Agreement, provided the actions or omissions of Assisting Attorney and Authorized Signer were made in good faith, were made in a manner reasonably believed to be in Planning Attorney's best interest, and occurred while Assisting Attorney and Authorized Signer were assisting Planning Attorney with the closure of Planning Attorney's law practice. Assisting Attorney and Authorized Signer shall be responsible for all acts and omissions of gross negligence and willful misconduct.

This indemnification provision does not extend to any acts, errors, or omissions of Assisting Attorney as attorney for the clients of Planning Attorney.

16. Option to Purchase Practice.

Assisting Attorney shall have the first option to purchase the law practice of Planning Attorney under the terms and conditions specified by Planning Attorney or Planning Attorney's representative in accordance with the Nevada Rules of Professional Conduct and other applicable law.

17. Arranging to Sell Practice.

If Assisting Attorney opts not to purchase Planning Attorney's law practice, Assisting Attorney will make all reasonable efforts to sell Planning Attorney's law practice and will pay Planning Attorney or Planning Attorney's estate all monies received for the law practice.

18. Fee Disputes to be Arbitrated.

Planning Attorney, Assisting Attorney, and Authorized Signer agree that all fee disputes among them will be decided by the State Bar of Nevada Fee Dispute Arbitration Program.

19. Termination.

This Agreement shall terminate upon: (1) delivery of written notice of termination by Planning Attorney to Assisting Attorney and/or Authorized Signer during any time that Planning Attorney is not under disability, impairment, or incapacity, as established under Section 3 of this Agreement; (2) delivery of written notice of termination by Planning Attorney's representative upon a showing of good cause; or (3) delivery of a written notice of termination given by Assisting Attorney and/or Authorized Signer to Planning Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Assisting Attorney and/or Authorized Signer pursuant to this Agreement. If Assisting Attorney and/or Authorized Signer or their respective Alternates for any reason terminate this Agreement, or are terminated, Assisting Attorney and/or Authorized Signer or their respective Alternates shall (1) provide a full and accurate accounting of financial activities undertaken on Planning Attorney's behalf within 30 days of termination or resignation and (2) provide Planning Attorney with Planning Attorney's files, records, and funds.

_____ _____

[Planning Attorney] [Date]

STATE OF NEVADA)

) ss.

County of _____)

On this _____ day of _____ , before me (here insert the name and quality of the officer), personally appeared _____ , known or identified to me (or proved to me on the oath of _____), to be the person whose name is

subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

_____

NOTARY PUBLIC FOR NEVADA

My commission expires: _____

_____ _____

[Assisting Attorney] [Date]

STATE OF NEVADA)

) ss.

County of _____)

On this _____ day of _____ , before me (here insert the name and quality of the officer), personally appeared _____ , known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

_____

NOTARY PUBLIC FOR NEVADA

My commission expires: _____

_____ _____

[Assisting Attorney's Alternate] [Date]

STATE OF NEVADA)

) ss.

County of _____)

On this _____ day of _____ , before me (here insert the name and quality of the officer), personally appeared _____ , known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

_____

NOTARY PUBLIC FOR NEVADA

My commission expires: _____

_____ _____

[Authorized Signer] [Date]

STATE OF NEVADA)

) ss.

County of _____)

On this _____ day of _____ , before me (here insert the name and quality of the officer), personally appeared _____ , known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

_____

NOTARY PUBLIC FOR NEVADA

My commission expires: _____

_____ _____

[Authorized Signer's Alternate] [Date]

STATE OF NEVADA)

) ss.

County of _____)

On this _____ day of _____ , before me (here insert the name and quality of the officer), personally appeared _____ , known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

_____

NOTARY PUBLIC FOR NEVADA

My commission expires: _____

Agreement – Short Form

(Sample – Modify as appropriate)

The sample Agreement – Short Form beginning on the next page includes authorization for the Assisting Attorney to sign on your business bank accounts (except the lawyer trust accounts) and to close your law practice. It authorizes the Authorized Signer to sign on your trust account. It does not include a provision for payment to the Assisting Attorney, a description of termination powers, consent to represent the Planning Attorney's clients, or other provisions included in the sample Agreement – Full Form.

Caveat: The Assisting Attorney must determine ahead of time whether he or she is going to represent the Planning Attorney, clients of the Planning Attorney, or no one (acting exclusively as a neutral file-transferring agent.) If the Assisting Attorney (1) represents the Planning Attorney on issues related to office closure, (2) is a signer on the lawyer trust account, (3) finds misappropriations in the lawyer trust account, and (4) is instructed by the Planning Attorney not to inform the clients about the misappropriations, the Assisting Attorney will have conflicting fiduciary duties. To avoid this potential for conflicting fiduciary duties, it is best if the Planning Attorney selects one person to represent him or her as Assisting Attorney and another person to serve as the Authorized Signer on the trust account. (See The Duty to Plan Ahead on page 82, and What If? Answers to Frequently Asked Questions, on page 18 of this handbook for more detailed information on these topics.)

Authorizing someone to sign on bank accounts in an agreement may not meet the banking institution's record-keeping requirements. A Planning Attorney should consult his or her banking institution to complete the paperwork required for its records.

Consent to Close Office

This Consent to Close Office (hereinafter "this Consent") is entered into between _____, hereinafter referred to as "Planning Attorney," and _____, hereinafter referred to as "Assisting Attorney," and _____ , hereinafter referred to as "Authorized Signer."

I, (insert name of Planning Attorney), authorize (insert name of Assisting Attorney), Assisting Attorney, to take all actions necessary to close my law practice upon my death, disability, impairment, or incapacity. These actions include, but are not limited to:

Providing all keys, access codes, etc. to enable Assisting Attorney to enter my office and use my equipment and supplies, as needed, access files and to close my practice;

Opening and processing my mail;

Taking possession and control of all property comprising my law office, including client files and records;

Examining client files and records of my law practice and obtaining information about any pending matters that may require attention;

Notifying clients, potential clients, and others who appear to be clients that I have given this authorization and that it is in their best interest to obtain other legal counsel;

Copying my files;

Obtaining client consent to transfer files and client property to new attorneys;

Transferring client files and property to clients or their new attorneys;

Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;

Applying for extensions of time pending employment of other counsel by my clients;

Filing notices, motions, and pleadings on behalf of my clients when their interests must be immediately protected and other legal counsel has not yet been retained;

Contacting all appropriate persons and entities who may be affected and informing them that I have given this authorization;

Winding down the business affairs of my practice, including paying business expenses and collecting fees;

Informing the State Bar of Nevada where closed files will be stored and the name, address, and phone number of the contact person for retrieving the files; and

Contacting the malpractice carrier, if any, concerning claims and potential claims.

I authorize (insert name of Authorized Signer), Authorized Signer, to sign checks on my trust accounts and provide an accounting to my clients of funds in trust.

My bank or financial institution may rely on the authorizations in this Consent, unless such bank or financial institution has actual knowledge that this Consent has been terminated or is no longer in effect.

For the purpose of this Consent, my death, disability, impairment, or incapacity shall be determined by evidence the Assisting Attorney deems reasonably reliable, including, but not limited to, communications with my family members or representative or a written opinion of one or more medical doctors duly licensed to practice medicine. Upon such evidence, the Assisting Attorney is relieved from any responsibility or liability for acting in good faith in carrying out the provisions of this Consent.

Assisting Attorney and Authorized Signer agree to preserve client confidences and secrets and the attorney client privilege of my clients and to make disclosure only to the extent reasonably necessary to carry out the purpose of this Consent. Assisting Attorney and Authorized Signer are appointed as my agents for purposes of preserving my clients' confidences and secrets, the attorney client privilege, and the work product privilege. This authorization does not waive any attorney client privilege.

(Delete one of the following paragraphs as appropriate:)

Assisting Attorney Is Attorney for Planning Attorney. (Delete one of the following paragraphs as appropriate.)

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney client relationship and follow the Nevada Rules of Professional Conduct. Assisting Attorney has permission to inform the malpractice carrier, if any, of errors or potential errors of Planning Attorney.

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any violations of the rules of professional conduct committed by Planning Attorney.

OR (in the alternative):

Assisting Attorney Is Not Attorney for Planning Attorney.

While fulfilling the terms of this Agreement, Assisting Attorney is not the attorney for Planning Attorney. Assisting Attorney has permission to inform the malpractice carrier, if any, of errors or potential errors of Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any violations of the rules of professional conduct committed by Planning Attorney.

Authorized Signer is not my attorney. Authorized Signer may inform my clients of any misappropriations in my trust account and instruct them to obtain independent legal advice or contact the State Bar of Nevada Client's Security Fund.

I, Planning Attorney, appoint Authorized Signer as signator, in substitution of my signature, on my lawyer trust account(s) upon my death, disability, impairment, or incapacity.

I understand that neither Authorized Signer nor Assisting Attorney will process, pay, or in any other way be responsible for payment of my personal bills.

I and/or my estate agree to indemnify Assisting Attorney and Authorized Signer against any claims, loss, or damage arising out of any act or omission by Assisting Attorney and Authorized Signer under this Consent, provided the actions or omissions of Assisting Attorney and Authorized Signer were in good faith and in a manner reasonably believed to be in my best interest. Assisting Attorney and Authorized Signer shall be responsible for all acts and omissions of gross negligence and willful misconduct.

Assisting Attorney and/or Authorized Signer may revoke this acceptance in writing at any time, and each has the power to appoint a new assisting attorney or authorized signer in Assisting Attorney's and/or Authorized Signer's place. My authorization and consent to allow Assisting Attorney and Authorized Signer to perform these and other services necessary for the closure of my law office do not require Assisting Attorney and/or Authorized Signer to perform these services. If Assisting Attorney and/or Authorized Signer revokes this acceptance, Assisting Attorney and/or Authorized Signer must promptly notify me.

_____ _____

[Planning Attorney] [Date]

STATE OF NEVADA)

) ss.

County of _____)

On this _____ day of _____ , before me (here insert the name and quality of the officer), personally appeared _____ , known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

_____

NOTARY PUBLIC FOR NEVADA

My commission expires: _____

_____ _____

[Authorized Signer's Alternate] [Date]

Limited Power of Attorney

I, _____ , appoint _____ as my agent and attorney-in-fact for the limited purpose of conducting all transactions and taking any actions that I might do with respect to my law office bank account(s) and safe deposit box(es). I further authorize my banking institutions to handle my account(s) as directed by my attorney-in-fact and to give to the attorney-in-fact all rights and privileges that I would otherwise have with respect to my account(s) and safe deposit box(es). Specifically, I am authorizing my attorney-in-fact to sign my name on checks, notes, drafts, orders, or instruments for deposit; withdraw or transfer money to or from my account(s); make electronic fund transfers; receive statements and notices on the account(s); and do anything with respect to the account(s) that I would be able to do. I am also authorizing my attorney-in-fact to enter and open my safe deposit box(es), place property in the box(es), remove property from the box(es), and otherwise do anything with the box(es) that I would be able to do, even if my attorney-in-fact has no legal interest in the property in the box.

This Limited Power of Attorney will continue until the banking institution receives my written revocation of this Power of Attorney, written instructions from my attorney-in-fact to stop honoring the signature of my attorney-in-fact, or an order from a court revoking the Limited Power of Attorney.

This Limited Power of Attorney shall not be affected by my subsequent disability or incapacity.

_____ _____

[Account Holder] [Date]

_____ _____

[Financial Institution] [Account Nos.]

STATE OF NEVADA)

) ss.

County of _____)

This instrument was acknowledged before me on _____ (date) by _____ (name of person).

OR (in the alternative):

Signed and sworn to (or affirmed) before me on _____ (date) by _____ (name of person(s) making statement).

NOTARY PUBLIC FOR NEVADA

My commission expires: _____

The attorney-in-fact acknowledges that the signature below is his/her signature.

_____ _____

[Attorney-in-Fact] [Date]

STATE OF NEVADA)

) ss.

County of _____)

This instrument was acknowledged before me on _____ (date) by _____ (name of person).

OR (in the alternative):

Signed and sworn to (or affirmed) before me on _____ (date) by _____ (name of person(s) making statement).

NOTARY PUBLIC FOR NEVADA

My commission expires: _____

Letter of Understanding

TO: _____

I am enclosing a Limited Power of Attorney in which I have named _____ as my attorney-in-fact. You and I have agreed that you will do the following:

1. Upon my written request, you will deliver the Limited Power of Attorney to me or to any person whom I designate.

2. You will deliver the Limited Power of Attorney to the person named as my attorney-in- fact (if more than one person is named, you may deliver it to either of them) if you determine, using your best judgment, that I am unable to conduct my business affairs due to disability, impairment, incapacity, illness, or absence. In determining whether to deliver the Limited Power of Attorney, you may use any reasonable means you deem adequate, including consultation with my physician(s) and family members. If you act in good faith, you will not be liable for any acts or omissions on your part in reliance upon your belief.

3. If you incur expenses in assessing whether you should deliver this Limited Power of Attorney, I will compensate you for the expenses incurred. You should show these signed directions to my Attorney-in-Fact along with records of expenses you incurred to claim reimbursement under this agreement.

4. You do not have any duty to check with me from time to time to determine whether I am able to conduct my business affairs. I expect that if this occurs, you will be notified by a family member, friend, or colleague of mine.

_____ _____

[Trusted Family Member or Friend/Attorney-in-Fact] [Date]

_____ _____

[Planning Attorney] [Date]

Will Provisions

(Sample – Modify as appropriate)

With respect to my law practice, my personal representative is expressly authorized and directed to carry out the terms of the Agreement to Close Law Practice I have made with Assisting Attorney on _____ , [and/or with Authorized Signer on _____]; if that [these] Agreement[s] are not in effect, my personal representative is authorized to enter into [a] similar agreement[s] with other attorneys that my personal representative, in his or her sole discretion, may determine to be necessary or desirable to protect the interests of my clients and to close my practice.

Alternate language:

> With respect to my law practice, my Personal Representative, if an attorney licensed to practice law in Nevada, is expressly authorized and directed to carry out the terms of the Agreement to Close Law Practice. If my Personal Representative is not an attorney licensed to practice law in Nevada, my Personal Representative is authorized and directed to honor an Agreement to Close Law Practice in which I have designated Assisting Attorney to protect the interests of my clients and dispose of my practice.

OR (in the alternative):

> With respect to my law practice, my Personal Representative is expressly authorized and directed to take such steps as he or she deems necessary or desirable, in his or her sole discretion, to protect the interests of the clients of my law practice and to wind down or dispose of that practice, including but not limited to the sale of the practice, collection of accounts receivable, payment of expenses relating to the practice, and employing an attorney or attorneys to review my files, complete unfinished work, notify my clients of my death and assist them in finding other attorneys and provide long term storage and access to my files.

Letter Advising That Lawyer Is Unable to Continue In Practice

(Sample – Modify as appropriate)

Re: [Name of Case]

Dear [Name]:

Due to ill health, [Planning Attorney] is no longer able to continue practice. You will need to retain the services of another attorney to represent you in your legal matters. I will be assisting [Planning Attorney] in closing [his/her] practice. We recommend that you retain the services of another attorney immediately so that all your legal rights can be preserved.

You will need a copy of your legal file for use by you and your new attorney. I am enclosing a written authorization for your file to be released directly to your new attorney. You or your new attorney can forward this authorization to us, and we will release the file as instructed. If you prefer, you can come to [address of office or location for file pick-up] and pick up a copy of your file so that you can deliver it to your new attorney yourself.

Please make arrangements to pick up your file or have your file transferred to your new attorney by [date]. It is imperative that you act promptly so that all your legal rights will be preserved.

Your closed files will be stored in [location]. If you need a closed file, you can contact me at the following address and phone number until [date]:

_____	_____	_____
[Name]	[Address]	[Phone]

After the above date, you can contact [Planning Attorney] for your closed files at the following address and phone number:

_____	_____	_____
[Name]	[Address]	[Phone]

You will receive a final accounting from [Planning Attorney] in a few weeks. This will include any outstanding balances that you owe to [Planning Attorney] and an accounting of any funds in your client trust account.

On behalf of [Planning Attorney], I would like to thank you for giving [him/her] the opportunity to provide you with legal services. If you have any additional concerns or questions, please feel free to contact me.

Sincerely,

[Assisting Attorney]

[Firm]

Enclosure

Letter Advising that Lawyer is Closing His/Her Office

(Sample – Modify as appropriate)

Re: [Name of Case]

Dear [Name]:

As of [date], I will be closing my law practice due to [provide reason, if possible]. I will be unable to continue representing you on your legal matters.

I recommend that you immediately hire another attorney to handle your case for you. You can select any attorney you wish, or I would be happy to provide you with a list of local attorneys who practice in the area of law relevant to your legal needs. In addition, the State Bar of Nevada provides a Lawyer Referral Service that can be reached at 702-382-0504 or call toll free 800-789-LRIS (5747).

When you select your new attorney, please provide me with written authority to transfer your file to the new attorney. I have enclosed an Authorization for Transfer of Client File form for you to complete and return to authorize that transfer. If you prefer, you may come to our office and pick up a copy of your file and deliver it to that attorney yourself.

It is imperative that you obtain a new attorney immediately. [Insert appropriate language regarding time limitations or other critical time lines that client should be aware of.] Please let me know the name of your new attorney or pick up a copy of your file by [date]. I [or insert name of the attorney who will store files] will continue to store my copy of your closed file for four years. See SCR 78.5 and RPC 1.15. After that time, I [or insert name of other attorney, if relevant] will destroy my copy of the file unless you notify me in writing immediately that you do not want me to follow this procedure. [If relevant, add: If you object to (insert name of attorney who will be storing files) storing my copy of your closed file, let me know immediately and I will make alternative arrangements.]

If you or your new attorney needs a copy of the closed file, please feel free to contact me. I will be happy to provide you with a copy. I have enclosed a Request for File form for you to complete and return if you would like to request a copy of a closed file.

Within the next [fill in number] weeks, I will be providing you with a full accounting of your funds in my trust account and fees you currently owe me. You will be able to reach me at the address and phone number listed on this letter until [date]. After that time, you or your new attorney can reach me at the following phone number and address:

_____	_____	_____
[Name]	[Address]	[Phone]

Remember, it is imperative to retain a new attorney immediately. This will be the only way that time limitations applicable to your case will be protected and your other legal rights preserved. If you do not retain new counsel by [date], then I will be filing a motion to withdraw from the representation.

I appreciate the opportunity to have provided you with legal services. Please do not hesitate to give me a call if you have any questions or concerns.

Sincerely,

[Planning Attorney]

[Firm]

Letter from Firm Offering to Continue Representation

(Sample – Modify as appropriate)

Re: [Name of Case]

Dear [Name]:

Due to ill health, [Planning Attorney] is no longer able to continue representing you on your case(s). A member of this firm, [Name], is available to continue handling your case if you wish [him/her] to do so. You have the right to select the attorney of your choice to represent you in this matter.

If you wish our firm to continue handling your case, please sign the authorization at the end of this letter and return it to this office.

If you wish to retain another attorney, please give us written authority to release your file directly to your new attorney. If you prefer, you may come to our office and pick up a copy of your file and deliver it to your new attorney yourself. We have enclosed these authorizations for your convenience.

Since time deadlines may be involved in your case, it is imperative that you act immediately. Please provide authorization for us to represent you or written authority to transfer your file by [date].

I want to make this transition as simple and easy as possible. Please feel free to contact me with your questions.

Sincerely,

[Assisting Attorney]

Enclosures

AUTHORIZATION FOR REPRESENTATION

I want a member of the firm of [insert law firm's name] to handle my case in place of [insert Planning Attorney's name].

_____ _____

[Client] [Date]

ACKNOWLEDGMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received a copy of my file from the law office of [Firm/Attorney Name].

_____ _____

[Client] [Date]

Return this receipt to:

[Name]

[Address]

[Address]

AUTHORIZATION FOR TRANSFER OF CLIENT FILE

I hereby authorize the law office of [Firm/Attorney Name] to deliver a copy of my file to my new attorney at the following address:

_____ _____

[Client] [Date]

REQUEST FOR FILE

I, [_____], request that [_____] provide me with a copy of my file. Please send the file to the following address:

_____ _____

[Client] [Date]

Office Closure File Tracking Chart

The following is a chart designed to help track the closing of your office.

Office Closure File Tracking Chart								
File Name	**File No.**	**Reviewed**	**Discussed w/ Client**	**Instructions Received**	**File Copied**	**File to New Lawyer/Client**	**Other Action Required**	**Receipt Rec'd & Filed**

Law Office List of Contacts

ATTORNEY NAME: _____ Social Security #: _____

State Bar of Nevada #: _____ Federal Employer ID #: _____

Date of Birth: _____

Office Address: _____

_____

Office Phone: _____

Home Address: _____

_____

Home Phone: _____

SPOUSE/PARTNER:

Name: _____

Work Phone: _____

Employer: _____

OFFICE MANAGER:

Name: _____

Home Address: _____

_____

Home Phone: _____

PASSWORDS (FOR COMPUTER SYSTEM, SOFTWARE PROGRAMS, WEB SITES, ONLINE DATA STORAGE, VOICEMAIL, CELL PHONES AND OTHER TECHNOLOGY USED IN YOUR PRACTICE):

(Name of person who knows passwords or location where passwords are stored, such as a safe deposit box)

Name: _____

Home Address: _____

_____

Home Phone: _____

POST OFFICE OR OTHER MAIL SERVICE BOX:

Location: _____

_____

Box No.: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

LEGAL ASSISTANT/SECRETARY:

Name: _____

Home Address: _____

_____

Home Phone: _____

BOOKKEEPER:

Name: _____

Home Address: _____

_____

Home Phone: _____

LANDLORD:

Name: _____

Address: _____

_____

Phone: _____

PERSONAL REPRESENTATIVE:

Name: _____

Address: _____

_____

Phone: _____

ATTORNEY:

Name: _____

Address: _____

_____

Phone: _____

ACCOUNTANT:

Name: _____

Address: _____

_____

Phone: _____

DESIGNTED ATTORNEY-IN-FACT:

First Choice: _____

Address: _____

_____

Phone: _____

Second Choice: _____

Address: _____

_____

Phone: _____

Third Choice: _____

Address: _____

_____

Phone: _____

LOCATION OF WILL AND/OR TRUST:

Access Will and/or
Trust by Contacting: _____

Address: _____

_____

Phone: _____

PROFESSIONAL CORPORATIONS, LLC or other:

Corporate Name: _____

Date Incorporated: _____

Location of Corporate

Minute Book: _____

Location of Corporate Seal: _____

Location of Corporate

Stock Certificate: _____

Location of Corporate

Tax Returns: _____

Fiscal Year-End Date:

Corporate Attorney: _____

Address: _____

_____

Phone: _____

PROCESS SERVICE COMPANY:

Name: _____

Address: _____

_____

Phone: _____

Contact: _____

OFFICE-SHARER OR OF COUNSEL:

Name: _____

Address: _____

_____

Phone: _____

Name: _____

Address: _____

_____

Phone: _____

OFFICE PROPERTY/LIABILITY COVERAGE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

OTHER IMPORTANT CONTACTS:

Name: _____

Address: _____

_____

Phone: _____

Reason for Contact: _____

Name: _____

Address: _____

_____

Phone: _____

Reason for Contact: _____

Name: _____

Address: _____

_____

Phone: _____

Reason for Contact: _____

GENERAL LIABILITY COVERAGE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

LEGAL MALPRACTICE – PRIMARY COVERAGE:

Provider: _____

Address: _____

_____

Phone: _____

LEGAL MALPRACTICE – EXCESS COVERAGE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

VALUABLE PAPERS COVERAGE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

OFFICE OVERHEAD/DISABILITY INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

HEALTH INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Persons Covered: _____

Contact Person: _____

DISABILITY INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

LIFE INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

WORKERS' COMPENSATION INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

CLOUD or INTERNET-BASED STORAGE LOCATION:

Cloud Provider: _____ Account No.: _____

Address: _____

Phone: _____

Location of Password (if not included on page one): _____

Cloud Provider: _____ Account No.: _____

Address: _____

_____

Phone: _____

Location of Password (if not included on page one): _____

STORAGE LOCKER LOCATION:

Storage Company: _____ Locker No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Items Stored: _____

_____

_____

Where Inventory of Files Can Be Found: _____

Storage Company: _____ Locker No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Items Stored: _____

_____

_____

STORAGE LOCKER LOCATION:

Where Inventory of Files Can Be Found: _____

Storage Company: _____ Locker No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Items Stored: _____

_____

_____

SAFE DEPOSIT BOXES:

Institution: _____

Box No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Items Stored: _____

Institution: _____

Box No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Items Stored: _____

Institution: _____

Box No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Items Stored: _____

Institution: _____

Box No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Items Stored: _____

LEASES:

Item Leased: _____

Lessor: _____

Address: _____

_____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

_____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

_____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

_____

Phone: _____

Expiration Date: _____

LAWYER TRUST ACCOUNT:

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

INDIVIDUAL TRUST ACCOUNT:

Name of Client: _____

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

GENERAL OPERATING ACCOUNT:

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

BUSINESS CREDIT CARD:

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

MAINTENANCE CONTRACTS:

Item Covered: _____

Vendor: _____

Address: _____

_____

Phone: _____

Expiration: _____

Item Covered: _____

Vendor: _____

Address: _____

_____

Phone: _____

Expiration: _____

Item Covered: _____

Vendor: _____

Address: _____

_____

Phone: _____

Expiration: _____

ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES:

State of: _____

Bar Address: _____

_____

Phone: _____

Bar ID No.: _____

State of: _____

Bar Address: _____

_____

Phone: _____

Bar ID No.: _____

State of: _____

Bar Address: _____

_____

Phone: _____

Bar ID No.: _____

State of: _____

Bar Address: _____

_____

Phone: _____

Bar ID No.: _____

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Resource Phone Numbers, Addresses, and Contacts

LAWYER REFERRAL AND INFORMATION SERVICE (FOR CLIENTS)

State Bar of Nevada

Lawyer Referral Service

3100 W. Charleston Blvd.

Suite 100

Las Vegas, NV 89102

Phone: 702-382-2200

Fax: 702-385-2878

QUESTIONS ABOUT CLOSING A PRACTICE FORMS

State Bar of Nevada

Ethics Hotline

3100 W. Charleston Blvd.

Suite 100

Las Vegas, NV 89102

Phone: 702-382-2200

Fax: 702-385-2878

CLIENT ASSISTANCE FUND CLAIMS

State Bar of Nevada

Clients' Security Fund

3100 W. Charleston Blvd.

Suite 100

Las Vegas, NV 89102

Phone: 702-382-2200

Fax: 702-385-2878

ATTORNEY OBITUARIES

State Bar of Nevada

Member Services

3100 W. Charleston Blvd.

Suite 100

Las Vegas, NV 89102

Phone: 702-382-2200

Fax: 702-385-2878

Appointed Attorneys

Appointed attorneys serve an important service to the public and to the profession by volunteering to close the practices of attorneys who have disappeared, been transferred to disability inactive status, died, or have otherwise been removed from the practice of law. Appointed attorneys may be asked to assume the responsibility for client file retention, handle cases directly, notify clients of the need to obtain substitute counsel, and take appropriate measures to distribute case files as directed. Additionally, there are times when the appointed attorney may be granted access to the attorney's client trust account for the purposes of taking inventory of missing funds, disbursing funds to clients, and/or collecting fees from clients who elect to retain the appointed attorney for future representation.

Authority for practice takeover is granted in Supreme Court Rule 118:

Rule 118. Appointment of counsel to protect client's interest.

1. Judicial action; compensation; right of reimbursement. Whenever an attorney has been transferred to disability inactive status, abandoned his or her practice, resigned, died, or been suspended or disbarred, and there is evidence that the attorney has not complied with Rule 115, and a responsible person capable of conducting the attorney's affairs cannot be found, the chief or presiding judge, or designee in the judicial district(s) in which the attorney maintained his or her practice, upon application by bar counsel, the state bar may appoint a disinterested attorney(s) to examine and inventory the attorney's files and to take such action as is necessary to protect the interests of the attorney and the attorney's clients. An appointed attorney may petition the board of governors for reasonable compensation. The board of governors may seek reimbursement from the attorney, out of the attorney's property, or from the attorney's clients whose interests are served under this rule.

2. Confidentiality. An attorney appointed under this rule shall not disclose any information contained in the files examined or inventoried without the consent of the client for whom the file was maintained, except as necessary to carry out the order of the court which appointed the attorney.

3. Immunity. An attorney appointed pursuant to this rule shall be absolutely immune from civil liability for any act or omission in connection with, or in the course of, duties performed pursuant to the appointment.

Nature of Practice Takeovers

Most practice takeovers will involve solo practitioners without a structure in place where a designated attorney handles cases in the event that the practitioner becomes unable or unavailable to practice. The size and scope of a practice takeover – and the appointed attorney's commitment to a practice takeover – will depend on several factors including:

- Number of clients actively represented prior to practice cessation.
- Whether the attorney was able to wrap up some or all of the pending cases prior to ceasing practice.
- The organization of files, location of files (i.e. storage, office, etc.), and adherence to record retention and destruction schedules.

Selection of Appointed Attorneys

The State Bar of Nevada maintains a list of attorneys who have volunteered to serve as appointed attorneys. Any appointed attorney within the attorney's practice location, who is in good standing with the State Bar, and who is willing to perform the duties of the appointed attorney is eligible to serve. Preference will be given to appointed attorneys who practice within the same area of law as the attorney and who are or may be familiar with the client base (i.e. co-counsel on any of the cases, attorney partners, etc).

Prior to approaching a potential appointed attorney to conduct a practice takeover, State Bar staff will obtain as much information as possible about the nature of the practice, number of potential open and closed case files, contact information for previous office secretarial and paralegal staff, and pending court dates that need to be addressed immediately. This information will be shared with the potential appointed attorney prior to the potential appointed attorney's acceptance of the assignment.

Access to Attorney Files

Depending on the nature of the practice takeover, appointed attorneys may be given permission to access an attorney's files informally, usually in the form of a letter from the State Bar, or through a SCR 118 Petition to the Nevada District Court. A SCR 118 Petition is typically required when the trustee needs to gain access to the attorney's client trust account. The Petition is prepared by the State Bar's Office of Bar Counsel and it identifies:

- The name of the attorney,
- The nature by which the attorney became unavailable,
- The size and type of client base the attorney had,
- Upcoming court dates,
- Any foreseeable problems with the client files or trust accounts,
- The name of the trustee,
- The trustee's qualifications to take over the practice,
- The scope of responsibility the trustee will have over the client files and trust account.

The State Bar of Nevada will present the SCR 118 Petition to the appropriate District Court Chief Justice, presiding judge, or designee. Upon approval by the court, the State Bar will provide the trustee with a copy of the order officially appointing the trustee as custodian of the client files.

Practice Takeover Duties

While a trustee's duties will vary depending on the scope of the practice takeover, the following checklist can be used as a guide to client file safekeeping:

Enter the attorney's office and, if necessary, remove files to a safe place.

Inventory the files to determine active and inactive files. Keep a list of the files reviewed with a summary containing the name of the client, nature of the file, work done by the trustee and the disposition of the file. If inactive files are past the seven-year retention period, they may be destroyed without taking an inventory.

Send a letter to each client with an active matter pending. The letter may contain instructions for retrieving the file, making arrangements to obtain substitute counsel and transfer the file to another attorney, or give the client the opportunity to retain you for continued representation.

Take steps to preserve rights of the clients while they are arranging for substitute counsel. Often, one telephone call to opposing counsel or relevant judges explaining the problem is sufficient.

Distribute files to clients as the clients direct. Keep records of how and to whom the files are distributed. Follow the court order regarding the disposition of unclaimed files.

If there are funds in the attorney's trust account, reconcile the trust account records to determine ownership of the funds.

In appropriate cases, disburse funds belonging to clients from the trust account after filing a motion, giving notice to claimants if necessary, and obtaining a proper order.

Keep track of services provided by you and any assistants, along with expenses occurred.

Reimbursement of Costs

Trustees should maintain an accounting of costs and time expended during the course of their duties. This includes services provided by the trustee and assistants, as well as costs associated with document destruction, etc. Please contact the State Bar prior to incurring these expenses, as the Bar may have alternative resources available.

State Bar of Nevada Assistance

State Bar of Nevada staff will make the necessary preliminary arrangements, such as contacting the last known office personnel, owners of storage units, etc. and assist the trustee if and when complications arise. State Bar of Nevada staff will also monitor the trustee's progress on the client files. Trustees should not hesitate to contact the State Bar of Nevada for assistance or guidance.

Contact:

Office of Bar Counsel

State Bar of Nevada

3100 W. Charleston Blvd.

Suite 100

Las Vegas, NV 89102

Phone: 702-382-2200

Conclusion

Acting as an appointed attorney of an abandoned practice can be a difficult and time consuming matter. However, it is often a very rewarding experience, as the trustee has the satisfaction of rendering a great service to the public and other members of the State Bar. Each trustee's experience and problems are unique and it is impossible to anticipate every question that may be asked. Appointed attorneys should feel free to contact us any time a problem arises. We're here to help.

Appendix 1

Formal Opinion from the American Bar Association

Regarding Deceased Attorney Files

Formal Opinion 92-369 Dec. 7, 1992

Disposition of Deceased Sole

Practitioners' Client Files and Property

To fulfill the obligation to protect client files and property, a lawyer should prepare a future plan providing for the maintenance and protection of those client interests in the event of the lawyer's death. Such a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention, and who would notify the clients of their lawyer's death. A lawyer who assumes responsibility for the client files and property of a deceased lawyer must review the files carefully to determine which need immediate attention. Because the reviewing lawyer does not represent the client, only as much of the file as is needed to identify the client and to make a determination as to which files need immediate attention should be reviewed. Reasonable efforts must be made to contact all clients of the deceased lawyer to notify them of the death and to request instructions in accordance with Rule 1.15.

The committee has been asked to render an opinion based on the following circumstances. A lawyer who has a large solo practice dies. The lawyer had hundreds of client files, some of which concern probate matters, civil litigation and real estate transactions. Most of the files are inactive, but some involve ongoing matters. The lawyer kept the active files at his office; most of the inactive files he removed from the office and kept in storage at his home.

The questions posed are two:

- What steps should lawyers take to ensure that their clients' matters will not be neglected in the event of their death?
- What obligations do lawyers representing the estates of deceased lawyers, or appointed or otherwise responsible for review of the files of a lawyer who dies intestate, have with regard to the deceased lawyer's client files and property?

I. Sole practitioner's obligations with regard to making plans to ensure that client matters will not be neglected in the event of the sole practitioner's death

The death of a sole practitioner could have serious effects on the sole practitioner's clients. See Program: Preparing for and Dealing with the Consequences of the Death of a Sole Practitioner, prepared by the ABA General Practice Section, Sole Practitioners and Small Law Firms Committee, August 7, 1986. Important client matters, such as court dates, statutes of limitations, or document filings, could be neglected until the clients discover that their lawyer has died. As a precaution to safeguard client interests, the sole practitioner should have a plan in place that will ensure insofar as is reasonably practicable that client matters will not be neglected in the event of the sole practitioner's death.

Rules of Professional Conduct 1.1 (Competence) and 1.3 (Diligence) are relevant to this issue, and read in pertinent part:

Rule 1.1 Competence

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

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Furthermore, the Comment to Rule 1.3 states in relevant part:

A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety . . .

According to Rule 1.1, competence includes "preparation necessary for the representation," which when read in conjunction with Rule 1.3 would indicate that a lawyer should diligently prepare for the client's representation. Although representation should terminate when the attorney is no longer able to adequately represent the client,[1] the lawyer's

[1] See Rule of Professional Conduct 1.16 (". . . a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if: . . . 2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client . . .")

fiduciary obligations of loyalty and confidentiality continue beyond the termination of the agency relationship.[2]

Lawyers have a fiduciary duty to inform their clients in the event of their partnership's dissolution.[3] A sole practitioner would seem to have a similar duty to ensure that his or her clients are so informed in the event of the sole practitioner's dissolution caused by the sole practitioner's death. Because a deceased lawyer cannot very well inform anyone of his or her death, preparation of a future plan is the reasonable means to preserve these obligations. Thus, the lawyer ought to have a plan in place which would protect the clients' interests in the event of the lawyer's death.[4]

Some jurisdictions, operating under the Model Code of Professional Responsibility, have found lawyers to have violated DR 6-101(A)(3) when the attorneys have neglected client matters by reason of ill-health, attempted retirement, or personal problems.[5] The same problems are clearly presented by the attorney's death, thus suggesting that a lawyer who died without a plan for the maintenance of his or her client files would be guilty of neglect. Such a result is also consistent with two of the three justifications for lawyer discipline.[6] Sanctioning of lawyers who had inadequately prepared to protect their clients in the event

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2 See Murphy v. Riggs, 213 N.W. 110 (Mich. 1927) (fiduciary obligations of loyalty and confidentiality continue after agency relationship concluded); Eoff v. Irvine, 18 S.W. 907 (Mo. 1892) (same).

3 See Vollgraff v. Block, 458 N.Y.S. 2d 437 (Sup. Ct. 1982) (breach of fiduciary duty if partnership's clients not advised of dissolution of partnership). A state bar association is considering creating an "archive form" – indicating the location of client files – which lawyers would complete and file with the state bar association in the event they terminate or merge their practice, thus enabling clients to locate their files. See ABA ETHICSearch, September 1992 Report. Such a form would be consistent with the duty discussed in Vollgraff, as simply informing a client of a firm's dissolution without telling the client where the client's files are located would be tantamount to saying "your files are no longer here."

4 The Fla. Bar, Professional Ethics Comm., Op. 81-8 (Undated) discussed the obligations of a lawyer who was terminally ill with regard to client files:

After diligent attempt to contact all clients whose files are subject to destruction, the the attorney should then dispose of all files in accordance with his clients' directives. The problem, of course, arises in connection with those clients who cannot be reached. ....[i]t is our opinion that client files cannot be automatically destroyed after 90 days, but that the files of those clients who do not respond must be reviewed individually by the attorney and can be destroyed by him only after he is satisfied that no important papers of the clients are contained in the file. If the attorney does find any such papers, he should have them indexed and either placed in storage or turned over to any attorney who assumes control of his active files.

5 See In re Jamieson, 658 P.2d 1244 (Wash. 1983) (neglect due to ill-health and attempted retirement); In Re Whitlock, 441 A.2d 989 (D.C. App. 1982) (neglect due to poor health, marital difficulties and heavy caseload); Committee on Legal Ethics of West Virginia State Bar v. Smith, 194 S.E.2d 665 (W. Va. 1973) (neglect due to illness and personal problems).

6 See In Re Moynihan, 643 P.2d 439 (Wash. 1982) (three objectives of lawyer disciplinary action are to prevent recurrence, to discourage similar conduct on the part of other lawyers, and to restore public confidence in the bar).

of their death would tend to dissuade future acts by other lawyers, and it would help to restore public confidence in the bar.[7]

Although there is no specifically applicable requirement of the rules of ethics, it is fairly to be inferred from the pertinent rules that lawyers should make arrangements for their client files to be maintained in the event of their own death. Such a plan should at a minimum include the designation of another lawyer who would have the authority to look over the sole practitioner's files and make determinations as to which files needed immediate attention, and provide for notification to the sole practitioner's clients of their lawyer's death.[8]

II. Duties of lawyer who assumes responsibility for deceased lawyer's client files

This brings us to the second question, namely the ethical obligations of the lawyer who assumes responsibility for the client files and property of the deceased lawyer. Issues commonly confronting the lawyer in this situation involve the nature of the lawyer's duty to inspect client files, the need to protect client confidences and the length of time the lawyer should keep the client files in the event that the lawyer is unable to locate certain clients of the deceased lawyer.

At the outset, the Committee notes that several states' rules of civil procedure make provision for court appointment of lawyers to take responsibility for a deceased lawyer's client files and property.[9] Since the lawyer's duties under these statutes constitute questions of law, the Committee cannot offer guidance as to how to interpret them.[10]

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7 Obviously, sanctions would have no deterrent effect on deceased lawyers.

8 Although the designation of another lawyer to assume responsibility for a deceased lawyer's client files would seem to raise issues of client confidentiality, in that a lawyer outside the lawyer-client relationship would have access to confidential client information, it is reasonable to read Rule 1.6 as authorizing such disclosure. Model Rule of Professional Conduct 1.6(a) ("A lawyer shall not reveal information relating to representation of a client . . . except for disclosures that are impliedly authorized in order to carry out the representation.") Reasonable clients would likely not object to, but rather approve of, efforts to ensure that their interests are safeguarded.

9 See, e.g., Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases:

Appointment of Receiver. When it comes to the attention of the circuit court in any judicial circuit from any source that a lawyer in the circuit is unable properly to discharge his responsibilities to his clients due to disability, disappearance or death, and that no partner, associate, executor or other responsible party capable of conducting that lawyer's affairs is known to exist, then, upon such showing of the presiding judge in the judicial circuit in which the lawyer maintained his practice, or the supreme court, may appoint an attorney from the same judicial circuit to perform certain duties hereafter enumerated …

Duties of Receiver. As expeditiously as possible, the receiver shall take custody of and make an inventory of the lawyer's files, notify the lawyer's clients in all pending cases as to the lawyer's disability, or inability to continue legal representation, and recommend prompt substitution of attorneys, take appropriate steps to sequester client funds of the lawyer, and to take whatever other action is indicated to protect the interests of the attorney, his clients or other affected parties.

10 Lawyers who act as administrators of estates have fiduciary duties to all those who have an interest in it, such as beneficiaries and creditors. Questions involving the lawyer's fiduciary responsibility to the estate of a deceased lawyer are also questions of law that this Committee cannot address. See, e.g., In Re Estate of Halas, 512 N.E.2d 1276 (Ill. 1987); Aksomitas v. Aksomitas, 529 A.2d 1314 (Conn. 1987).

A. Duty to inspect files

Many state and local bar associations have explored the issues presented when a lawyer assumes responsibility for a deceased lawyer's client files.[11] The ABA Model Rules for Lawyer Disciplinary Enforcement also address some aspects of the question.[12] A lawyer who assumes such responsibility must review the client files carefully to determine which files need immediate attention; failure to do so would leave the clients in the same position as if their attorney died without any plan to protect their interests. The lawyer should also contact all clients of the deceased lawyer to notify them of the death of their lawyer and to request instructions, in accordance with Rule 1.15.[13] Because the reviewing lawyer does not represent the clients, he or she should review only as much of the file as is needed to identify the client and to make a determination as to which files need immediate attention.[14]

B. Duty to maintain client files and property

Questions also arise as to how long the lawyer who assumes responsibility for the deceased lawyer's client files should keep the files for those clients he or she is unable to locate. ABA Informal Opinion 1384 (1977) provides general guidance in this area. We believe that the principles set out in that opinion are applicable to the instant question. Informal Opinion 1384 states as follows:

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11 See, e.g., Md. State Bar Ass'n, Inc., Comm. on Ethics, Op. 89-58 (1989); State Bar of Wis., Comm. on Professional Ethics, Op. E-87-9 (1987); Miss. State Bar, Ethics Comm., Op. 114 (1986); N.C. State Bar Ass'n, Ethics Comm., Op. 16 (1986); Ala. State Bar, Disciplinary Comm'n., Op. 83-155 (1983); Bar Ass'n of Nassau County (N.Y.), Comm. on Professional Ethics, Ops. 89-43 and 89-23 (1989); Op. 2005-129.

12 ABA Model Rules for Lawyer Disciplinary Enforcement (1989), Rule 28 states in relevant part:

APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTERESTS WHEN RESPONDENT IS TRANSFERRED TO DISABILITY INACTIVE STATUS, SUSPENDED, DISBARRED, DISAPPEARS, OR DIES. A. Inventory of Lawyer Files. If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 27, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice, upon proper proof of fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients. B. Protection for Records Subject to Inventory. Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

13 Model Rule of Professional Conduct 1.15(b) ("Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.")

14 Again, while issues of client confidentiality would appear to be raised here, a reasonable reading of Rule 1.6 suggests that any disclosure of confidential information to the reviewing attorney would be impliedly authorized in the representation. See note 9, supra.

A lawyer does not have a general duty to preserve all of his files permanently. Mounting and substantial storage costs can affect the cost of legal services, and the public interest is not served by unnecessary and avoidable additions to the cost of legal services.

But clients (and former clients) reasonably expect from their lawyers that valuable and useful information in the lawyers' files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed to the clients' detriment.

Informal Opinion 1384 then lists eight guidelines that lawyers should follow when deciding whether to discard old client files. One of these guidelines states that a lawyer should not "destroy or discard items that clearly or probably belong to the client. Such items include those furnished to the lawyer by or in behalf of the client, and original documents." Another suggests that a lawyer should not "destroy or discard information that the lawyer knows or should know may still be necessary or useful in the assertion or defense of the client's position in a matter for which the applicable statutory limitations period has not expired."

There is no simple answer to this question. Each file must be evaluated separately. Reasonable efforts must be made to contact the clients and inform them that their lawyer has died, such as mailing letters to the last known address of the clients explaining that their lawyer has died and requesting instructions.[15]

Finally, questions arise with regard to unclaimed funds in the deceased lawyer's client trust account. In this situation, reasonable efforts must be made to contact the clients. If this fails, then the lawyer should maintain the funds in the trust account. Whether the lawyer should follow the procedures as outlined in the applicable Disposition of Unclaimed Property Act that is in effect in the lawyer's state jurisdiction is a question of law that this Committee cannot address.[16]

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15 Responding to a inquiry, the Committee on Professional Ethics of the Bar Association of Nassau County suggested that an attorney assuming responsibility for a deceased attorney's client files has an ethical obligation to treat the assumed files as his or her own. ABA Comm. On Ethics and Professional Responsibility Formal Opinion 92-369.

16 There are at least 27 state and local bar opinions that discuss a lawyer's obligations when the lawyer cannot locate clients who have funds in lawyer trust accounts. ABA Comm. On Ethics and Professional Responsibility Formal Opinion 92-369.

The Duty to Plan Ahead

It is hard to think about events that could render you unable to continue practicing law. Unfortunately, accidents, unexpected illnesses, and untimely death do occur. If any of these events happen to you, your clients' interests may be unprotected.

For this reason, a lawyer's duty of competent and diligent representation includes arranging to safeguard the clients' interests in the event of the lawyer's death, disability, impairment, or incapacity. See IRPC 1.3 comment [5], ABA Formal Op 92-369. Most commercial malpractice carriers require the lawyers they insure to make arrangements for office closure in the event of death or disability. The State Bar of Nevada has created this handbook to help you fulfill your ethical responsibilities and to reduce future malpractice claims against you and your estate.

In addition, this handbook can help you understand the steps to take when planning ahead to safeguard your clients' interests. The State Bar of Nevada cannot wind down your practice for you; we can only help you put a process in place. So, if you want to be sure that your clients get a copy of their file to take to a new lawyer and that your clients' money in your trust account is returned to them, use this handbook to put an appropriate plan in place.