PLANNING AHEAD GUIDE: ATTORNEY TRANSITION PLANNING IN THE EVENT OF DEATH OR INCAPACITY

A Handbook and Forms

OKLAHOMA BAR ASSOCIATION

2014

OKLAHOMA BAR ASSOCIATION

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DISCLAIMER

This handbook is designed to minimize the likelihood of you or your estate being sued for legal malpractice in the event of your death, incapacity or disappearance. The material presented does not establish, report, or create the standard of care for attorneys. The material is not a complete analysis of the law or topic, and readers should conduct their own appropriate legal research. This material is intended as information for our members and not as legal advice. The documents and forms are samples only. Each attorney should modify or create their own documents based upon their own unique circumstances.

November 2014

Dear Oklahoma Lawyer:

This handbook was created to help you fulfill your ethical obligations to protect your clients' interests in the event of your death, incapacity or disappearance. Although it is difficult to think about events that could render you unable to continue practicing law, accidents, unexpected illness, and untimely death do occur. Following the suggestions in this handbook will help to protect your clients' interests. In addition, it will simplify the closure of your office – a step your family and colleagues will very much appreciate.

In addition to this handbook, for specific questions the OBA Ethics Counsel and Management Assistance Program Director will also offer free and confidential practice management advice on an individual basis.

We hope this handbook will be of assistance to you.

Sincerely yours,

Oklahoma Bar Association

ACKNOWLEDGMENT

The Transitions Task Force gratefully acknowledges the support and assistance of the OBA Board of Governors and others who helped in the preparation of this handbook.

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CHAPTER 1 - THE DUTY TO PLAN AHEAD

It is hard to think about events that could render you unable to continue practicing law, or temporarily unable to practice law. Unfortunately, accidents, unexpected illnesses, mental challenges, and untimely death do occur. In addition, approximately once or twice a year the Oklahoma Bar Association is notified of a lawyer that has "disappeared", usually because of a mental health challenge or substance abuse. The "missing" lawyer is included within the scope of these materials as well. If any of these events happen to you, your clients' interests may be unprotected.

For this reason, a lawyer should arrange to safeguard the clients' interests in the event of the lawyer's death, incapacity, or disappearance. *Oklahoma Rules of Professional Conduct* (ORPC) Rule 1.3 comment [5]; *Rules Governing Disciplinary Proceedings* (RGDP) Rules 12.1-12.3. ABA Formal Op 92-369. The Oklahoma Bar Association offers this handbook to help you fulfill your ethical responsibilities and to provide guidance for reducing future malpractice claims against you and your estate.

In addition, the OBA Ethics Counsel and Management Assistance Program Director can help you understand the steps to take when planning ahead to safeguard your clients' interests. The OBA itself cannot wind down your practice for you; we can only help you put a process in place.

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 in Chapter 4, authorizes the Assisting Attorney to transfer client files, sign checks on your operating 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.

The sample *Agreement – Short Form,* also provided in Chapter 4, includes authorization to sign on your operating 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. It is a sample only.

IMPLEMENTING THE PLAN

The first step in the planning process is for you to find someone – preferably an attorney – to close your practice in the event of your death, incapacity or disappearance.

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 pursuant to ORPC 1.17. 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* provided in Chapter 4 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. 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,* Chapter 2 of this handbook.)

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. Your staff should be instructed to initially review your files to "pull" the files where there is an obvious conflict of interest (e.g. Assisting Attorney is opposing counsel) so that the Assisting Attorney need never see any information contained in those files.

In addition to arranging for an Assisting Attorney, you may also want to arrange for an Authorized Signer on your 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.

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. However, you and the Assisting Attorney and/or the Authorized Signer may also want to sign a limited power of attorney. 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. 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. 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, is the Assisting Attorney and/or the Authorized Signer authorized to sign on your accounts only after obtaining a letter from a physician that you are disabled or incapacitated? Is it when the Assisting Attorney and/or the Authorized Signer, based on reasonable belief, says so? Is it for a specific period of time, for example, a period during which you are on vacation? 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 person full access to your accounts, your choice of signer is crucial to the protection of your clients' interests, as well as your own. Whatever approach you take, you should discuss it with the bank so that there are no misunderstandings.

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 either a probate is opened and a personal representative is appointed or the OBA's General Counsel petitions the Court to appoint lawyers to notify clients and take any immediate action necessary to protect them. Both of these approaches are far less desirable then making plans yourself. In many instances, the client needs the money he or she has on deposit in the lawyer's trust account to hire a new lawyer, and a delay puts the client in a difficult position. This is likely to prompt ethics complaints, Client Security Fund claims, malpractice complaints, or other civil suits.

On the other hand, 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. In addition, you or your estate may 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.

Adding an Assisting Attorney or Authorized Signer to your operating or lawyer trust account is permitted regardless of 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 fee agreement and related materials. This provides clients with information about your arrangement and gives them an opportunity to object. Your client's signature on a properly prepared fee agreement provides their consent and written authorization for the Assisting Attorney to proceed on the client's behalf, if necessary.

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, and (7) making sure you do not keep clients' original documents, such as wills or other estate plans.

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 incapacity or disappearance, that authority terminates when you die. Upon your death, the personal representative of your estate has the legal authority to administer your practice. He or she 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 of your estate 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.

Oklahoma law gives broad powers to a personal representative to continue a decedent's business to preserve its value, to sell or wind down the business, and to hire professionals to help administer the estate. However, for the personal representative's protection, you may want to include language in your will that expressly authorizes that person to arrange for closure of your law practice and authorize access and distribution of funds to the operating and trust accounts.

The appropriate language will depend on the nature of the practice and the arrangements you make ahead of time.

It is important to allocate sufficient funds to pay an Assisting Attorney and/or Authorized Signer and necessary secretarial staff in the event of death, incapacity, or disappearance. To provide funds for these services, consider maintaining a disability insurance policy or other funds 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. 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.

CHAPTER 2 - 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.

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 OBA.

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 can be established by the reasonable belief of a would-be 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 Client Security Fund, 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. Rule 4.1 ORPC. 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.

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.

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. If the Planning Attorney suffered from a condition of a sensitive nature and did not want you to disclose this information to the client, you could not do so.

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

Malpractice coverage is not mandatory in Oklahoma. The Planning Attorney may or may not have it. The Planning Attorney should clearly indicate whether he or she has coverage and list the contact information for the company and agent in the "Law Office List of Contacts." If the Planning Attorney was retired from practice at the time of death or disability, the attorney may still have coverage for some through what is known as an Extended Reporting Coverage form, otherwise known as "tail" coverage.

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 client 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 the allegation that you did not zealously advocate on behalf of your new client. To avoid this potential exposure, you should provide the client with names of other attorneys or direct the client to the "Find a Lawyer" list on the OBA website.

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.

6. If there is an ethical violation, 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; (2) maybe, if you are not representing the Planning Attorney or the Planning Attorney's former clients; and (3) yes, if you are the attorney for the Planning Attorney's former clients.

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 ethical violations or report any of the Planning Attorney's ethical violations to the OBA if your knowledge of the misconduct is the result of confidential information obtained from your client, the Planning Attorney. Rule 8.3 (c) ORPC. 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 the Planning Attorney does not correct the shortfall and you believe the Planning Attorney's conduct violates the disciplinary rules, you should resign. Rule 1.16 ORPC. 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.

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 the shortfall, and you may have an obligation under Rule 8.3(a) ORPC to report the Planning Attorney to the OBA.

If you are the attorney for a former client of the Planning Attorney, you have an obligation to inform the client about the 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 Client Security Fund, or (3) filing a claim with the Planning Attorney's malpractice carrier. You may also have an obligation under Rule 8.3(a) ORPC to report the Planning Attorney to the OBA. 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 ethical errors and (2) the potential duty to report the Planning Attorney to the OBA if a violation occurs. If you do not want to inform your clients (the former clients of the Planning Attorney) about possible ethics violations, you must explain to your clients that you are not providing them with any advice on ethics violations of the Planning Attorney. You should advise the clients, in writing, to seek independent representation on these issues. Limiting the scope of your representation, however, does not eliminate your duty to report pursuant to Rule 8.3(a) ORPC.

7. If the Planning Attorney stole client funds, do I have exposure to an ethics complaint against me?

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

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 ethical violations, you may be exposed to the allegation that you have violated your ethical 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 delay may leave the clients at a disadvantage, since settlement funds, or unearned fees held in trust, are often needed to hire a new lawyer.

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 carefully choose the person 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* in Chapter 1 of this handbook.)

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

Although this generally works out fine, the arrangement may result in a conflict of fiduciary interests. As an Authorized Signer on the Planning Attorney's trust account, you would incur a duty to properly account for the funds belonging to the former clients of the Planning Attorney if you write checks or take over control of the account. 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 interests, 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.)

CHAPTER 3 - CHECKLISTS

CHECKLIST FOR LAWYERS PLANNING TO PROTECT CLIENTS' INTERESTS IN THE EVENT OF THE LAWYER'S DEATH, INCAPACITY OR DISAPPEARANCE

1. Use fee agreements that state you have arranged for an Assisting Attorney to close your practice in the event of death, incapacity or disappearance.

2. Have a thorough and up-to-date office procedure manual that includes information on:

    a. How to check for a conflict of interest;
    b. How to use the calendaring system;
    c. How to generate a list of active client files, including client names, addresses, emails and phone numbers;
    d. Where client ledgers are kept;
    e. How the open/active files are organized;
    f. How the closed files are organized and assigned numbers;
    g. Where the closed files are kept and how to access them;
    h. The office policy on keeping original client documents;
    i. Where original client documents are kept;
    j. Where the safe deposit box is located and how to access it;
    k. The bank name, address, account signers, and account numbers for all law office bank accounts;
    l. The location of all law office bank account records (trust and general);
    m. Where to find, or who knows about, the computer passwords;
    n. How to access your voice mail and the access code numbers; and
    o. Where the post office or other mail service box is located and how to access it.

3. Make sure all your file deadlines (including follow-up deadlines) are calendared.

4. Document your files.

5. Keep your time and billing records up-to-date.

6. Avoid keeping original client documents, such as wills and other estate planning documents.

7. Have a written agreement with an attorney who will close your practice (the "Assisting Attorney") that outlines the responsibilities involved in closing your practice. Determine whether the Assisting Attorney will also be your personal attorney. Choose an Assisting Attorney who is sensitive to conflict-of-interest issues.

8. If your written agreement authorizes the Assisting Attorney to sign operating account checks, follow the procedures required by your local bank. Decide whether you want to authorize access at all times, at specific times, or only on the happening of a specific

event. In some instances, you and the Assisting Attorney will have to sign bank forms authorizing the Assisting Attorney to have access to your operating account.

9. If your written agreement provides for an Authorized Signer for your trust account checks, follow the procedures required by your local bank. Decide whether you want to authorize access at all times, at specific times, or only on the happening of a specific event. In most instances, you and the Authorized Signer will have to sign bank forms providing for access to your trust account. Choose your Authorized Signer wisely; he or she will have access to your clients' funds.

10. Familiarize your Assisting Attorney with your office systems and keep him or her apprised of office changes.

11. Introduce your Assisting Attorney and/or Authorized Signer to your office staff. Make certain your staff knows where you keep the written agreement and how to contact the Assisting Attorney and/or Authorized Signer if an emergency occurs before or after office hours. If you practice without regular staff, make sure your Assisting Attorney and/or Authorized Signer knows whom to contact (the landlord, for example) to gain access to your office.

12. Inform your spouse, partner, or closest living relative and the personal representative of your estate of the existence of this agreement and how to contact the Assisting Attorney and/or Authorized Signer.

13. Renew your written agreement with your Assisting Attorney and/or Authorized Signer annually.

14. Review your fee agreement each year to make sure that the name of your Assisting Attorney is current.

15. Fill out the *Law Office List of Contacts* practice aid provided in Chapter 4 of this handbook. Make sure your Assisting Attorney has a copy, and that it is updated regularly.

CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S OFFICE

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

1. Check the calendar and active files to determine which items are urgent and/or scheduled for hearings, trials, depositions, court appearances, and so on.
2. Look for an office procedure manual. Determine whether anyone has access to a list of clients with active files.
3. 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.)
4. 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.
5. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.
6. 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.
7. Provide clients with a date by which they should pick up copies of their files. Inform clients that new counsel should be chosen immediately.
8. Obtain permission from the clients to submit a motion and order to withdraw the Closing Attorney as attorney of record.
9. If the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
10. 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.
11. Return all original client documents to each client, keep copies for the file and get a receipt. Return a complete copy of the client file to the client and retain the original file for the attorney's estate. (In some cases, for example in ongoing litigation, it may be preferable to provide the original file to the client and keep a copy for the attorney or estate).
12. Retain copies of all financial records (fee agreements, billing, time sheets, related correspondence, bank statements, operating and trust account ledgers, etc.) and any other document that might be helpful to the lawyer's estate in the event of a future claim of the client. Obtain a receipt from the client as to anything provided. If papers or the file are to be delivered to a new attorney, obtain an authorization from the client to do so. Keep a master list of all files and what was done with each.
13. Advise all clients where their closed files will be stored and whom they should contact in order to retrieve a closed file.

14. If the Closing Attorney was a sole practitioner, try to arrange for his or her phone number to have a forwarding number. This eliminates the problem created when clients call the Closing Attorney's phone number, get a recording stating that the number is disconnected, and do not know where to turn for information.

15. Contact the Closing Attorney's malpractice carrier, if applicable, about extended reporting coverage.

16. If the Closing Attorney died, you may wish to speak to family members about submitting memorial notices or obituaries to appropriate publications. *In Memoriam* notices may be submitted to the Editor of the Oklahoma Bar Journal, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036.

17. *(optional)* If you have authorization to handle the Closing Attorney's financial matters, look around the office for checks or funds that have not been deposited. Determine whether funds should be deposited or returned to clients. (Some of the funds may be for services already rendered.) Get instructions from clients concerning any funds in their trust accounts. These funds should be either returned to the clients or forwarded to their new attorneys. Prepare a final billing statement showing any outstanding fees due and/or any money in trust. (To withdraw money from the Closing Attorney's accounts, you will probably need: (1) to be an Authorized Signer on the accounts; (2) to have a written agreement such as the sample provided in Chapter 4 of this handbook; or (3) to have a limited power of attorney. If none of these have been done and the Closing Attorney is dead, incapacitated, or missing, you may have to request the OBA General Counsel to petition the court to take jurisdiction over the practice and the accounts pursuant to Rules 12.1 – 12.3 RDGP. If the Closing Attorney is deceased, another alternative is to petition the court to appoint a personal representative under the probate statutes.) Money from clients for services rendered by the Closing Attorney should go to the Closing Attorney or his/her estate.

18. *(optional)* If you are authorized to do so, handle financial matters, pay business expenses, and liquidate or sell the practice.

19. *(optional)* If your responsibilities include sale of the practice, you may want to advertise in the local bar newsletter, the Oklahoma Bar Journal, and other appropriate places.

20. *(optional)* If your arrangement with the Closing Attorney or estate is that you are to be paid for closing the practice, submit your bill.

21. *(optional)* If your arrangement is to represent the Closing Attorney's clients on their pending cases, obtain each client's consent to represent the client and check for conflicts of interest.

CHECKLIST FOR CLOSING YOUR OWN OFFICE

1. Calculate accounts receivable. Ensure sufficient cash is on hand or a sufficient amount will be coming in to sustain you through the announcement and closure of your office.
2. Stop taking new matters.
3. Inform your staff, in person and in writing.
4. Provide your staff a simple, truthful reason for the closure.
5. Finalize as many active files as possible.
6. Write to clients with active files, advising them that you are unable to continue representing them and that they need to retain new counsel. Your letter should inform them about time limitations and time frames important to their cases. The letter should explain how and where they can pick up copies of their files and should give a time deadline for doing this.
7. For cases with pending court dates, depositions, or hearings, discuss with the clients how to proceed. When appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmations of these extensions, continuances, and resets to opposing counsel and your client.
8. Obtain the clients' permission to submit a motion and order to withdraw as attorney of record.
9. If the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
10. Pick an appropriate date to check whether all cases either have a motion and order allowing your withdrawal as attorney of record or have a Substitution of Attorney filed with the court.
11. Give notice and terminate leases and rental agreements.
12. Make copies of files for clients. Retain your original files, unless it makes more sense to provide the client the original file, for an ongoing case, for example. All clients should either pick up their files (and sign a receipt acknowledging that they received them) or sign an authorization for you to release the files to their new attorneys. (See sample *Acknowledgment of Receipt of File* and *Authorization for Transfer of Client File* provided in Chapter 4 of this handbook.) If a client is picking up the file, return their original documents to the client and keep copies in your file. You may scan and digitally store your documents, but be careful to keep original documents that may be helpful to you in the event of a dispute with a client, e.g. fee agreement, letters etc. An original may be preferred for evidentiary purposes. Create a log as to the disposition of every file e.g. delivered to client, stored, transferred to new attorney, etc.
13. Tell all clients where their closed files will be stored and whom they should contact to retrieve them. Obtain all clients' permission, if you have not already, to destroy the files after five years following the end of the representation (but review the file to determine if special circumstances require keeping the file longer). If a closed file is to be stored by another attorney, get the client's permission to allow the attorney to store the file for you

and provide the client with the attorney's name, address, and phone number.

14. If you are a sole practitioner, ask the telephone company for a new phone number to be given out when your disconnected phone number is called. This eliminates the problem created when clients call your phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.

15. Close IOLTA accounts and distribute to yourself fees (if earned) and/or the minimal amount you deposited for bank charges or to the clients or third-parties. Notify the OBA and the Oklahoma Bar Foundation of the closure within 30 days. ORPC 1.15

16. Notify the postal service and provide a forwarding address.

17. Consult with your malpractice carrier regarding Extended Reporting or "Tail" coverage.

18. Notify the OBA of new contact information within 30 days of office closure.

19. Prepare instructions in the event of your later death, incapacity or disappearance.

CHECKLIST FOR CLOSING YOUR IOLTA ACCOUNT

1. Fully reconcile the IOLTA account. Any funds remaining in the account should correspond to specific clients or nominal funds used to open the account or should cover reasonably anticipated bank charges. See ORPC 1.15 (b).
2. Contact the bank to determine whether there will be any charges associated with closing the account. 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.
3. Prepare and send final client bills, if necessary.
4. Disburse funds belonging to you (earned fees, reimbursement for costs advanced) and deposit into your operating account.
5. Disburse funds belonging to clients. Send to clients with a duplicate copy of their final bill or prepare cover letters transmitting your checks.
6. If you have unclaimed funds in your trust account, you have three options.
    1. You may keep the money in the account until its ownership becomes clear.
    2. You may research and determine the scope and applicability of the Oklahoma Unclaimed Property Program. It can be contacted at:

        Oklahoma State Treasurer
        Unclaimed Property Division
        2300 N. Lincoln Blvd., Room 217
        Oklahoma City, OK 73105
        (405) 521-4273

        Office Hours: 8:00 am to 5:00 pm Mon. – Fri.
        E-mail: Unclaimed@treasurer.ok.gov
    3. If you are satisfied the unclaimed funds are not subject to the Unclaimed Property Program, you may send the funds by check to the Oklahoma Bar Foundation along with a letter of explanation and the name of the clients to whom the funds are owed. In the event the clients reappear and claim the funds from you, the OBF will refund them (but not interest earned) to you for distribution to the client(s).
7. Do not close the account until all outstanding checks have cleared.
8. Shred unused checks and deposit slips once the IOLTA account is closed. This will prevent fraud and protect you from mistakenly using checks and deposit slips from your closed account.
9. Keep the IOLTA check register, client ledgers, bank statements, and other records for at least five years from the end of representation. Rule 1.15 (a) ORPC.
10. Send notice of the closure of your IOLTA account within 30 days to:

Oklahoma Bar Association
Attn: Membership
1901 N. Lincoln Blvd.

Oklahoma Bar Foundation
Attn: IOLTA records
1901 N. Lincoln Blvd.

PO Box 53036
Oklahoma City, OK 73152-3036

PO Box 53036
Oklahoma City, OK 73152-3036

Include your name and contact information, the name of the financial institution, city and state of the financial institution, and Oklahoma IOLTA trust account number.

CHAPTER 4 – SAMPLE FORMS

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 Chapter 1, *The Duty to Plan Ahead*, and Chapter 2, *What If? Answers to Frequently Asked Questions*, 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*, *Access to the Trust Account*, in Chapter 1 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, incapacity or disappearance.

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 for the funds belonging to Planning Attorney's clients.

3. Establishing Death, Incapacity or Disappearance.
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 death, incapacity or disappearance 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, incapacity or disappearance. 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, incapacity or disappearance. The appointment of Assisting Attorney shall not be invalidated because of Planning Attorney's death, incapacity or disappearance, but, instead, the appointment shall fully survive such death, incapacity or disappearance 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, incapacity or disappearance, 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:

- Entering Planning Attorney's office and using Planning Attorney's equipment and supplies, as needed, to 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 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 Oklahoma Rules of Professional Conduct. Assisting Attorney has permission to inform the Professional Liability Fund 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 ethics violations committed by Planning Attorney.

OR:

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 Professional Liability Fund 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 ethics violations 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 Oklahoma State Bar Client 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, refer the clients to another attorney.

10. Informing Oklahoma Bar Association.
Assisting Attorney agrees to inform the Oklahoma Bar Association 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 Client Security Fund.
Planning Attorney authorizes Assisting Attorney to contact the Client Security Fund (CSF) concerning any legal malpractice claims or potential claims. (**Note to Planning Attorney:** Assisting Attorney's role in contacting the CSF will be determined by Assisting Attorney's arrangement with Planning Attorney. See Section 7 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:

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:

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 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 Oklahoma 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 an arbitrator or arbitration panel selected by the Master Lawyer section of the OBA.

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 death, incapacity or disappearance, 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 OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____ _____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____
[Assisting Attorney] *[Date]*

STATE OF OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____ _____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____
[Assisting Attorney's Alternate] *[Date]*

STATE OF OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____ _____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____
[Assisting Attorney's Alternate] *[Date]*

STATE OF OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____ _____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____
[Assisting Attorney's Alternate] *[Date]*

STATE OF OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____ _____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____

[Assisting Attorney's Alternate] *[Date]*

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 Chapter 1, *The Duty to Plan Ahead,* and Chapter 2, *What If? Answers to Frequently Asked Questions,* 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. 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, and any attorney or agent acting on my behalf, to take all actions necessary to close my law practice upon my death, incapacity or disappearance. These actions include, but are not limited to:

- Entering my office and using my equipment and supplies, as needed, 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 Office of General Counsel where closed files will be stored and the name, address, and phone number of the contact person for retrieving the files; and
- Contacting my malpractice carrier 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, incapacity or disappearance 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 represents me and acts as my attorney in closing my law practice. Assisting Attorney has permission to inform my malpractice carrier of my errors or potential errors. Assisting Attorney has permission to inform my clients of any errors or potential errors and to instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform my clients of any ethics violations committed by me.

OR:

Assisting Attorney does not represent me and is not acting as my attorney in closing my law practice. While fulfilling the obligations of this Consent, Assisting Attorney has permission to inform my malpractice carrier of my errors or potential errors. Assisting Attorney may inform my clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform my clients of any ethics violations committed by me.

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 OBA Client Security Fund.

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

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 agree to defend and 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/or Authorized Signer may revoke this acceptance 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 OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____ _____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____

[Assisting Attorney's Alternate] *[Date]*

STATE OF OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____ _____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____

[Assisting Attorney's Alternate] *[Date]*

STATE OF OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____ _____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____
[Assisting Attorney's Alternate] *[Date]*

POWER OF ATTORNEY – LIMITED

I, _____, do hereby 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 bank account(s) and safe deposit box(es). I do further authorize my banking institutions to transact my account(s) as directed by my attorney-in-fact and to afford 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 Power of Attorney will continue until the banking institution receives my written revocation of this Power of Attorney or written instructions from my attorney-in-fact to stop honoring the signature of my attorney-in-fact.

This Power of Attorney shall not be affected by my subsequent death, incapacity or disappearance.

_____ _____

[Account Holder] *[Date]*

STATE OF OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____ _____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____

[Assisting Attorney's Alternate] *[Date]*

SPECIMEN SIGNATURE OF ATTORNEY-IN-FACT

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

_____ _____

[Attorney-in-Fact] *[Date]*

STATE OF OKLAHOMA)
) ss.
County of _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by ____
_____ (name(s) of person(s)).

_____
NOTARY PUBLIC

Print Name: _____

My commission expires: _____

_____ _____

[Assisting Attorney's Alternate] *[Date]*

LETTER OF UNDERSTANDING

TO: _____

I am enclosing a 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 Power of Attorney to me or to any person whom I designate.

2. You will deliver the 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 death, incapacity or disappearance. In determining whether to deliver the 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 Power of Attorney, I will compensate you for the expenses incurred.

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]*

NOTICE OF DESIGNATED ASSISTING ATTORNEY

I, _____, have authorized the following attorneys to assist with the closure of my practice:

Name of Authorized Assisting Attorney: _____
Address: _____
Phone Number: _____

Name of Assisting Attorney's Alternate: _____
Address: _____
Phone Number: _____

_____ _____
[Planning Attorney] *[Date]*

_____ _____
[Assisting Attorney] *[Date]*

_____ _____
[Alternate Assisting Attorney] *[Date]*

NOTICE OF DESIGNATED AUTHORIZED SIGNER

I, _____, have authorized the following [attorneys] to sign on my lawyer trust account(s) upon the closure of my practice:

Name of Authorized Signer for Trust Account(s): _____
Address: _____
Phone Number: _____

Name of Authorized Signer's Alternate: _____
Address: _____
Phone Number: _____

_____ _____
[Planning Attorney] *[Date]*

_____ _____
[Authorized Signer] *[Date]*

_____ _____
[Alternate Authorized Signer] *[Date]*

[NOTE: This form may be used in lieu of, or in addition to, the Notice of Designated Assisting Attorney. If you have selected an Assisting Attorney to help in the closure of your practice and added someone as an Authorized Signer on your lawyer trust account, you should communicate your choices to your family, the Assisting Attorney, the Authorized Signer, and any designated alternates to avoid confusion.]

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 dispose of my practice.

OR

My personal representative is expressly authorized and directed to take such steps as he or she deems necessary or desirable, in my personal representative's 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, selling of the practice, collecting accounts receivable, paying expenses relating to the practice, providing trust accounting and issuing unused trust balances owing to my clients, employing an attorney or attorneys to review my files, completing unfinished work, notifying my clients of my death and assisting them in finding other attorneys, and providing long-term storage of and access to my closed 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, [*Affected 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 [*Affected 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 that time, you can contact [*Affected Attorney*] for your closed files at the following address and phone number:

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

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

On behalf of [*Affected 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.

When you select your new attorney, please provide me with written authority to transfer your file to the new attorney. 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 at least 5 years after the end of my representation. 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 need a copy of the closed file, please feel free to contact me. There is an additional charge for copies.

Within the next [*fill in number*] weeks, I will be providing you with an 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.

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,

[Attorney]
[Firm]

LETTER FROM FIRM OFFERING TO CONTINUE REPRESENTATION

(Sample – Modify as appropriate)

Re: [*Name of Case*]

Dear [*Name*]:

Due to ill health, [*Affected 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

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

_____ _____

[Client] *[Date]*

ACKNOWLEDGMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received a complete copy of my file and all my original documents 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]*

Return this authorization to:
[*Name*]
[*Address*]
[*Address*]

REQUEST FOR FILE

I hereby request that [*Firm/Attorney Name*] provide me with a copy of my file. Please send the file to the following address:

_____

_____

_____

_____

_____ _____

[Client] *[Date]*

Return this request to:
[*Name*]
[*Address*]
[*Address*]

Insert Office Closure Tracking Chart

LAW OFFICE LIST OF CONTACTS

ATTORNEY NAME:_____ Social Security #:_____

OR State Bar #:_____ Federal Employer ID #:_____ State Tax ID #:_____

Date of Birth:_____

Office Address: _____

_____

Office Phone: _____

Cell Phone: _____

Home Address: _____

_____

Home Phone: _____

Email Address: _____

SPOUSE/PARTNER/CLOSEST RELATIVE:

Name: _____

Work Phone: _____

Cell Phone: _____

Email Address: _____

Employer: _____

OFFICE MANAGER:

Name: _____

Home Address: _____

_____

Cell Phone: _____

Home Phone: _____

Email Address: _____

COMPUTER AND TELEPHONE PASSWORDS:

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

Name: _____

Home Address: _____

_____

Cell Phone: _____

Home Phone: _____

Email Address: _____

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: _____

_____

Cell Phone: _____

Home Phone: _____

Email Address: _____

BOOKKEEPER:

Name: _____

Home Address: _____

_____

Cell Phone: _____

Home Phone: _____

Email Address: _____

LANDLORD:

Name: _____

Address: _____

_____

Cell Phone: _____

Home Phone: _____

Email Address: _____

PERSONAL REPRESENTATIVE:

Name: _____

Address: _____

_____

Cell Phone: _____

Home Phone: _____

Email Address: _____

PERSONAL ATTORNEY:

Name: _____

Address: _____

_____

Cell Phone: _____

Home Phone: _____

Email Address: _____

ACCOUNTANT:

Name: _____

Address: _____

_____

Cell Phone: _____

Home Phone: _____

Email Address: _____

ATTORNEYS TO HELP WITH PRACTICE CLOSURE:

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:

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 INSURANCE COVERAGE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person (Agent): _____

Phone: _____

Reason for Contact: _____

LEGAL MALPRACTICE – INSURANCE 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: _____

STORAGE LOCKER LOCATION:

Storage Company: _____ Locker No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Items Stored: _____

Storage Company: _____ Locker No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Items Stored: _____

_____

_____

_____

_____

Storage Company: _____ Locker No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Items Stored: _____

_____

_____

_____

SAFE DEPOSIT BOXES: (Continued on next page)

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: _____

_____

_____

_____

EQUIPMENT LEASES: (Continued on next page)

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 IOLTA TRUST ACCOUNT:

Institution: _____

Contact: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Signatory Cell Phone: _____

Address: _____

_____

Office Phone: _____

NON-IOLTA TRUST ACCOUNT:

Name of Client: _____

Institution: _____

Contact: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Signatory Cell Phone: _____

Address: _____

_____

Office Phone: _____

GENERAL OPERATING ACCOUNT: (Continued on next page)

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

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.: _____

Security Code: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Security Code: _____

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.: _____

OTHER IMPORTANT CONTACTS:

Name: _____

Address: _____

_____

Phone: _____

Reason for Contact: _____

Name: _____

Address: _____

_____

Phone: _____

Reason for Contact: _____

Name: _____

Address: _____

_____

Phone: _____

Reason for Contact: _____

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CHAPTER 5 – ARTICLES, RULES, FORMAL OPINIONS, RESOURCES

FILE RETENTION AND DESTRUCTION

Most state ethics committees agree that lawyers are not obligated to keep client files indefinitely. However, most jurisdictions concur that "clients and former clients reasonably expect from their lawyers that valuable and useful information in the lawyer's files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed." ABA Standing Committee on Ethics and Professional Responsibility, Informal Op. 1384 (1977).

The Oklahoma Rules of Professional Conduct (ORPC) do not provide specific direction or guidelines on the subject of file retention. However, Rule 1.15 (a) does require that complete records of client account funds and other client property be kept for five years after termination of the representation. A good general office policy for file retention would be to use the five year rule imposed on trust account records as a beginning evaluation point. **The length of time that a file should be retained depends on the type of case and/or the contents of the file.** Consider, for example:

1. Cases involving a minor.
2. Probate, Estate and Guardianship matters.
3. Contracts or other agreements that 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.
7. Support and custody files in which the children are minors or the support obligation continues.
8. Corporate books and records.
9. Adoption files.
10. Intellectual property files.
11. Real estate title claims and title insurance work.
12. Files of problem clients.

Ultimately, the decision should be based on factors such as statutes of limitations, **other substantive law**, the nature of the particular case and the client's needs. A lawyer should also consult his or her malpractice carrier for any specific requirements it has on document retention.

WHAT SHOULD I RETAIN FROM A CLIENT'S FILE?

All lawyers and law firms should implement a written file storage, management and retention policy and should follow the policy uniformly. Considerations for the retention policy include:

1) Files will be maintained only for a specified period of time.
2) Original documents will be returned to the client immediately after use or upon conclusion of the representation.

3) The client may have the file or a complete copy of the file, but must pay appropriate retrieval charges (if stored off-site) and copy charges.
4) If not retrieved by the client, the file will be destroyed once the time period passes.
5) Clients should be sent a closing letter notifying them of their right to take any documents not previously furnished to them and advising them of the date that the file documents will be destroyed.
6) The law firm's file retention policy should be set out in the fee agreement, or as an exhibit.

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 fee agreement or a document retention section attached as an exhibit should notify the client that you will (unless unusual circumstances) eventually destroy the file and should specify when that will occur. The client's signature on the fee agreement will provide consent to destroy the file. Avoid holding the client's original documents and return them as soon as possible.

The second step in the file retention process is when the file is closed. When closing the file, send the client a closing letter notifying of a specific destruction date, and calendar that date, or you can make sure the client has a complete copy of the file. This includes all pleadings, correspondence, and other papers and documents necessary or useful 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 reside on network servers, Web servers, Extranets, Intranets, the Internet, local hard drives of firm PCs, laptops, home computers, zip drives, disks, portable memory sticks and flash drives, PDAs and Smartphones, or other media. 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 electronic data containing clients' personal information you may be required by federal or state law to develop, implement and maintain safeguards to protect the security and disposal of the data. Be certain you comply with such requirements.

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 than others, 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. Always retain proof of the client's knowledge and acquiescence to destruction of the file. This is easily done by including the client's consent in your fee agreement and document retention policy (which has been approved by the client) and retaining the closing letters with your inventory of destroyed files. Follow the same guidelines when evaluating whether to destroy electronic records.

A lawyer must protect a client's confidences when disposing of file contents. This generally means that the file must be shredded or incinerated. Care should be taken if these tasks are contracted to outside companies. The lawyer should ensure that documents are disposed of without review by the contractor's employees or others. You should retain an index of destroyed files, copies of your fee agreement as well as the closing letter or other correspondence which notifies the client of your file retention policy.

MAY I STORE FILE MATERIAL ELECTRONICALLY?

There is no requirement that you must maintain a "paper" file. If you have gone to a paperless office or are just trying to cut down on paper, it is proper to store file material electronically. The key is to be sure and "back up" your files. It is best to do so offsite. In the case of a computer failure, you will be able to access all electronically stored information.

"WHY DID WE EVER WANT TO KEEP ORIGINAL WILLS?"

Well, it seemed like a good idea at the time. Other people were doing it. Our medium-sized firm had plenty of room in the office, and it spared clients from renting a safe deposit box of their own. The firm already had a fireproof filing cabinet, so I didn't think too much about the practice of retaining the original estate planning documents for clients. It seemed to make sense. The firm hoped that the service would be appealing to clients and that it would help us compete with similar services offered by other firms. The senior members of the firm believed that this office practice would pay off in the form of probate work.

That was the logic behind the decision to keep original wills. I did not take the time to glance into the future to examine the space that would be needed (this wasn't my job at the firm), nor did I ever consider the unthinkable – that the firm might split up. That was then. I never really gave it much thought . . . at the time.

You see, I left the medium-sized firm and started a new firm. In the spirit of tradition and mindlessness, I, too, offered the service of storing clients' original estate planning documents. I swallowed hard and purchased a fireproof filing cabinet and arranged to have all 800 pounds of it moved into my new office. In the beginning, it was not a problem. Time moved on, and my practice grew. I ended up moving to a nicer and larger space. This required moving my 800-pound fireproof filing cabinet. I often wondered whether using a regular filing cabinet would have been good enough, but the idea just did not seem wise, even in my weakest moments (moving day). As my practice grew, so did the problem. I had to purchase another cabinet (another 800 pounds). Soon I had no room in the second fireproof filing cabinet. Soon after that, I realized I had no room in my office. Reality had set in.

I could not stomach the thought of moving again, just so I could make space for more 800-pound monsters. Move avoidance propelled me into two radical decisions. First, I would no longer keep client documents. (No surprise, this was the easy decision.) Second, I would steadfastly and determinedly return the original documents that I had previously held. The reasons I made this second, more difficult decision are described at the end of the article. It was a good decision, but, as the saying goes, "I had no idea." The fun was just about to begin.

This project took about six months. The cost of returning the documents came in the form of copying the documents (I wanted to keep a file copy), staff (I had to hire temporary personnel), and postage (certified mail). In addition, my legal assistant spent many hours writing letters to clients announcing our new procedure, talking to clients on the phone about our new procedure, arranging for file pickup, obtaining the signature of the client (and the client's spouse when both spouses were clients), writing receipts for files, and other record keeping.

Although this task was overwhelming for a while, I am happy we did it. It completely released me from the bondage of my 800-pound Darth Vadars and freed up space for a wonderful client meeting area. Since I was forced to carefully think this problem through, I want to spare others the pain and expense of keeping original documents. Here is what I learned, and why I vehemently recommend that you do not keep original documents:

First, since my clients never had to get a safe deposit box, they never really knew that I was saving them money by keeping the documents. In that way, my goal of being appreciated for saving my clients the bother never materialized.

Stress to your clients the importance of safeguarding the original will. One attorney I know discovered his client's original will in the decedent's dresser drawer. Another decedent apparently had a will, but it could not be found. The decedent's brother thought that the will had been kept in the rolled-up window shade in the decedent's apartment! Since I had been told by the decedent that he had a will, I believe it was removed by a relative. Other clients have used a home safe to store their wills, which can easily be carted off by a thief. I fear that those safes are not terribly fireproof or waterproof. A safe deposit box is the best place for an original will.

If you do have an original will of a client, photocopy the entire, fully executed will and place that copy in the client's file before releasing the original will to the client. While it may be possible to admit a copy of a will into probate in certain cases, it should not be relied upon.

Second, I realized that times have changed. Many clients are uncomfortable about having the lawyer keep their original documents – they feel (correctly) as if the lawyer is trying to retain control of something that is theirs. This feeds the fuel of suspicion that prompted the chant:

DON'T LET LAWYERS AND PROBATE EAT UP YOUR HARD-EARNED MONEY!

Third, it is important to maintain the integrity of the original will. I have had several clients mark up original wills. Often these original wills were admitted to probate court and became public documents. In one case, the client intended to revise her will, but died before doing so. She had written rather slanderous remarks about her "uncaring and selfish" children on the margins of her will. I was loath to provide those children with a copy of her will.

It is fairly common for clients to cross out specific bequests or add new provisions on the original will. If a new will is never made, the insertions are likely to bring into question the validity of the marked-up will. The moral: When entrusting original documents – especially wills – to the client, clearly mark the original and the copy, and stress the importance of maintaining the integrity of the original. The copy should state the location of the original. Example: "Original kept in safekeeping at US Bank, Main Branch, Oklahoma City, Oklahoma, Box No. . . . " I generally type "Original" on the backer, but am considering stamping the first page as well.

Fourth, more than thirteen years have passed since I started my mission, and I still have some original wills that I have been unable to return to clients for various reasons. It has been a huge time drain and a very expensive process. In addition to the expenses and difficulties already mentioned in this article, I also encountered untold nightmares with storage facilities. These nightmares included flooded storage areas, molding files, dangerous characters lurking around the storage facility, and inconvenient hours. I also had to list the storage locker location on my business insurance and provide proof of insurance to the storage facility.

Fifth, I realized that the practice of keeping original wills is an absolute nightmare for the person who ends up trying to close your practice when you die or become disabled. The person closing your practice will have to return all of the documents, and that is likely to be a difficult and

expensive task. Most people move every seven years; many of those people do not think to let their lawyer/holder-of-their-original-will know their new address. As a result, your personal representative, or the person assisting with the closure of your practice, may have difficulty finding the testators. This problem may end up being a burden for the person helping you close your practice, your personal representative, and maybe even for his or her personal representative! If you are a member of a firm and breathing a sigh of relief – thinking this doesn't apply to you – think again. My former law firm eventually completely split up. Someone ended up with the albatross of dealing with all of those original wills.

Lastly, and perhaps most importantly, I discovered that even with the best intentions, keeping the original estate planning documents may actually make it difficult for your client, or the family of your client. The client may have left the area, yet the estate documents will be with you. You will have to be found, and the documents will have to be mailed. You may decide to change firms, leave the area, or stop practicing law. Any of these choices could make it difficult for your client, or your client's family members, to find you.

In short, if I had to do it over again, I would never have incurred the expense and liability of retaining original documents. I hope that this testimonial helps new lawyers get on the right track, and inspires some of you more seasoned folks to get on the bandwagon and stop keeping those documents. For those of you who decide to go for it and return the originals you have in your possession, I can assure you that it is worth it in the long run!

By - "Will I EVER Be Free of the Albatross?"

Reprinted from *In Brief*, March 2007, Oregon Professional Liability Fund.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

This opinion is based on the Model Rules of Professional Conduct and, to the extent indicated, the predecessor Model Code of Professional Responsibility of the American Bar Association. The laws, court rules, regulations, codes of professional responsibility and opinions promulgated in the individual jurisdictions are controlling.

Formal Opinion 92-369 **December 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:

1) What steps should lawyers take to ensure that their clients' matters will not be neglected in the event of their death?

2) 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.

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

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[1] *See* Model 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 . . .")

[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).

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 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

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[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(M) (Undated) discussed the obligations of a lawyer who was terminally ill with regard to client files:

> After diligent attempt is made to contact all clients whose files he holds, a lawyer anticipating termination of his practice by death should dispose of all files according to his client's instructions. The files of those clients who do not respond should be individually reviewed by the lawyer and destroyed only if no important papers belonging to the clients are in the files. Important documents should be indexed and placed in storage or turned over to any lawyer who assumes control of his active files. In any event, the files may not be automatically destroyed after 90 days.

[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).

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

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]

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

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[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 death, incapacity or disappearance, 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).

[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); Ore. State Bar, Ethics Comm., Op. 1991-129 (1991).

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:

> 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.

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[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 8, *supra.*

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 recent 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. Bar Ass'n of Nassau County (N.Y.), Comm. on Professional Ethics, Op. 92-27 (1992).

[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. *See, e.g.*, State Bar of S.D., Ethics Comm., Op. 91-20 (1991); State Bar of Ariz., Comm. on Rules of Professional Conduct, Op. 90-11 (1990); R.I. Sup. Ct., Ethics Advisory Panel, Op. 90-21 (1990); Alaska Bar Ass'n, Ethics Comm., Op. 90-3 (1990); Md. State Bar Ass'n, Inc., Comm. on Ethics, Op. 90-25 (1990); Bar Ass'n of Nassau County (N.Y.), Comm. on Professional Ethics, Op. 89 (1990).

RESOURCE PHONE NUMBERS, ADDRESSES, AND CONTACTS

PRACTICE MANAGEMENT ASSISTANCE FOR ATTORNEYS

OBA Management Assistance Program
1901 N. Lincoln Blvd., Oklahoma City, OK 73105
PO Box 53036, Oklahoma City, OK 73152-3036
405-416-7008
Contacts: Jim Calloway, Director
Nickie Day, Administrative Assistant

OKLAHOMA FIND A LAWYER

On-line directory of participating lawyers by practice area and location
http://www.oklahomafindalawyer.com/FindALawyer

LEGAL ETHICS QUESTIONS

OBA Ethics Counsel
1901 N. Lincoln Blvd., Oklahoma City, OK 73105
P.O. Box 53036, Oklahoma City, OK 73152-3036
405-416-7055 or 1-800-522-8065
Contacts: Travis Pickens, Ethics Counsel
Nickie Day, Administrative Assistant

ETHICS COMPLAINTS

http://www.okbar.org/public/Complaint.aspx

CLIENT SECURITY FUND CLAIMS

http://www.okbar.org/members/GeneralCounsel/CSFfaq.aspx

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(Alphabetical Listing)