



PLAN AHEAD FOR CLOSING A LAW PRACTICE

Procedures for Retirement, Moving to a
New Firm, or Your Death or Disability

RISK MANAGEMENT PRACTICE
GUIDE OF LAWYERS MUTUAL

PLAN AHEAD FOR CLOSING A LAW PRACTICE:

Procedures for Retirement, Moving to a New Firm, or Your Death or Disability

RISK MANAGEMENT PRACTICE GUIDES OF LAWYERS MUTUAL

TABLE OF CONTENTS

Introduction	2
Exit Strategy	3
Planning for the Unthinkable	5
Ethical Considerations	10
The Duty Owed by Lawyers Who Leave a Firm	15
 <u>CHECKLISTS</u>	
Checklist for Creating an Advance Exit Plan	17
Checklist for Closing Your Own Law Office	19
Checklist for Closing Another Attorney's Law Office	22
Checklist for Lawyers Planning to Protect Clients' Interests in the Event of the Lawyer's Death, Disability, Impairment or Incapacity	24
 <u>FINANCIAL PLANNING</u>	
Financial Planning for the Closing or "Show Me the Money"	26
Will Provisions	27
 <u>LETTERS</u>	
<u>Closing Your Own Firm</u>	
Letter Advising That Lawyer is Closing His/Her Office	28
Letter Notifying Client of Destruction of File	29
 <u>Closing Another Attorney's Office</u>	
Letter Advising Lawyer is Unable to Continue Practice	30
Letter from Firm Offering to Continue Representation	31
 <u>Leaving a Law Office</u>	
Unilateral Letter to Client from a Departing Attorney	32

DISCLAIMER: *This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.*

TABLE OF CONTENTS (cont.)

EMERGENCY ATTORNEY AGREEMENTS

Agreement to Close Law Practice - Full Form	33
Consent to Close Office - Short Form	37
Notice to Lawyers Mutual of Designated Emergency Attorney	40
Power of Attorney - Limited	41
Conditional Durable Power of Attorney	42
Specimen Signature of Attorney-in-Fact	43
Letter of Understanding for Delivery of Power of Attorney	44
Sample Language to Include in Engagement Letter and Fee Agreement	45

FORMS

Office Closure File Tracking Chart	46
Authorization for Transfer of Client File	47
Request for File	48
Acknowledgment of Receipt of File	49
Law Office List of Contacts	50

ETHICS OPINIONS

NC Gen Stat. §84-28(j); 27 Admin. Code, 1B § .0122	60
RPC 16: Files of a Deceased Lawyer	62
RPC 48: Law Firm Dissolution	64
RPC 133: Recycling Office Waste Paper	66
RPC 178: Release of Client's File	67
RPC 209: Disposing of Closed Client Files	69
RPC 234: Electronic Storage of Client's File	71

APPOINTED TRUSTEE DOCUMENTS

NC State Bar Letter Notifying Trustee of Appointment	72
Petition for Order Appointing Trustee of Deceased Attorney's Practice & Order	74
Petition for Order Discharging Trustee of Deceased Attorney's Practice & Order	79
Notice of Hearing	83

Additional Resources	84
----------------------	----



INTRODUCTION

There are a number of steps that you can take while you are still practicing to make the process of closing your office smooth and inexpensive. These steps include making sure that your office procedures manual explains how to produce a list of client names and addresses for open files, keeping all deadlines and follow-up dates on your calendaring system, thoroughly documenting client files, keeping your time and billing records up-to-date, and making sure you do not keep clients' original documents, such as wills or other estate plans.

An organized law practice is a valuable asset. This handout includes many forms to assist with making winding down your practice as easy as possible by maintaining organization throughout the process.



There are a number of steps that you can take while you are still practicing to make the process of closing your office smooth and inexpensive . . . An organized law practice is a valuable asset. This handout includes many forms to assist with making winding down your practice as easy as possible by maintaining organization throughout the process.

EXIT STRATEGY¹

Walking away from your law practice isn't easy. It's always a good idea to have an exit strategy. Perhaps you need to close the doors due to appointment to a judgeship. Or you need a plan should the unexpected happen. Or you may simply be at the beginning stages of planning for retirement. Following orderly steps will make the how and when of closing your office doors occur smoothly.

GETTING THE WORD OUT

Before you announce to the world that you're closing your office, you should inform your staff. They will be needed for creating and implementing your exit strategy. Trusted staff also deserve to know how long their jobs will remain intact. If staff members are not prepared to retire, contacting colleagues who are potential employers would be helpful in assisting them to find work.

Long-term clients should be personally contacted, preferably via personal meeting or telephone. Review the status of any open matter beforehand so you can answer any questions the clients have. Also, review the client's account before informing the client of your decision. A client may be less likely to pay an outstanding bill if they know you are closing your doors. As always, follow up with written correspondence to ensure the client understands what you have discussed.

CLIENT FILE STATUS

After you've made your notifications, you will need to ascertain the status of your open files to develop an

adequate timeline for closing your practice. Depending on the reason for closing the practice, it may be impractical to see every file to conclusion before you close your doors. For each open file, you will need to ask two questions: What is the status of this file? What is the fee arrangement?

Some cases will require special handling. You may need to reschedule pending appearances and prepare a Motion to Withdraw, in accordance with North Carolina State Bar Ethics Rule 1.16, and Rule 16 of the General Rules of Practice for the Superior and District Courts. Be sure to comply early to provide clients' time to find new counsel. In some cases, you may have to refund part of your fee to the client should a flat fee have been charged for work you are not completing.



PRACTICE TIP

Have an **EXIT STRATEGY** when it is time to walk away from your law practice.

- Inform your staff and long-term clients
- Get status of open files for realistic timeline to close your practice
- Close out bank accounts and trust accounts
- Take right steps when closing doors, including terminating leases, equipment rentals, utilities, phone services, etc.
- Contact your malpractice provider for extended reporting endorsement.

¹ Blackford, Sheila M. and Roberts, Peter. "Closing a Solo Practice: An Exit To Do List" *Law Practice Magazine*. May/June 2011: 48-52. Print.

Remember to stress the essence of time to the client so that they do not procrastinate in choosing counsel. Files should be transferred with a copy of the file retained for your records. Clients should provide a written request for transfer of file, which should remain in your file.

ADDRESSING THE TRUST ACCOUNT

In addition to addressing the status of client files, you will need to close out your bank accounts, including your trust account.

CLOSING THE DOORS

Once the official client matters have been addressed, the fundamental aspects of closing a small business must be considered. Terminating contracts and removal of property are two items that cannot be overlooked.

- **Terminate your lease.** You will need to notify your landlord of your decision to move. You may need to negotiate early termination terms.
- **Equipment leases and removal.** If you lease copiers and printers, these leases will also need to be terminated. If you own your equipment, you may want to sell it or donate it to a charitable organization. Be sure that the memory of these machines is properly erased beforehand to prevent confidential information from being inadvertently discovered.
- **Utilities and services.** Electricity, internet and

other monthly services will need to be canceled timely so that the final bill can be received shortly after closing. If you have a website, do not forget to terminate hosting services.

- **Closed file storage.** Clients should be given the opportunity to receive their file before the file is sent into storage. If a client does not pick up a copy of their file before you close your office, provide the client with information regarding procedures for retrieval of the file. Closed files must be stored in accordance with North Carolina State Bar guidelines. RPC 209 provides guidelines for the disposal of closed client files.
- **Extended Reporting Endorsement.** Contact your malpractice carrier for an extended reporting endorsement, which covers you for a certain period of time should a claim be made against you after you stop practicing. Typical ERE's cover the Statute of Limitation and Statute of Repose or can be for an unlimited period of time.
- **Accounting Records.** Retain your accounting records for IRS review should they need them to verify income or deductions. Ask a CPA for advice regarding retention periods. NC State Bar Ethics Rule 1.15-3 provides guidelines for records and accounting.
- **Phone service.** At the conclusion of winding down your practice, have your office phone calls forwarded to either your home or to a lawyer who is assisting with the closure of your office. This will ensure clients receive the proper assistance if they attempt to contact you after you have closed your office.



Once the official client matters have been addressed, the fundamental aspects of closing a small business must be considered. Terminating contracts and removal of property are two items that cannot be overlooked.

PLANNING FOR THE UNTHINKABLE

We do not like to think about unexpected events that could cause us to abruptly cease practicing law. However, events such as accidents, unexpected illnesses, and untimely death unfortunately do occur. If any of these events were to happen to you, have you made adequate plans to assure that your clients' interests will be protected?

A lawyer has a duty of competent and diligent representation pursuant to the Rules of Professional Conduct. **See** RPC 1.1, et seq. This includes making arrangements that will safeguard the client's interests (including the integrity of any money or property held in trust, confidentiality of information, and the continuing viability of the client's legal matter) in the event of the lawyer's death, disability, impairment, or incapacity. Comment [5] to Rule 1.3 states:

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate action.

This handbook is intended to assist you in planning for an orderly transfer of responsibility for your clients' affairs in the event of a crisis in your life.

In planning the transfer of a client's case, you want to make sure that the client will promptly receive his or her file so the client's rights are not jeopardized and the client can take the file to the new attorney. You must also arrange for any money in the client's trust account to be promptly returned.

“

Events such as accidents, unexpected illnesses, and untimely death unfortunately do occur. If any of these events were to happen to you, have you made adequate plans to assure that your clients' interests will be protected?

TERMINOLOGY

- The term “Assisting Attorney” is used throughout this handbook. It refers to the lawyer(s) you have made arrangements with to close down your practice or to handle it while you are incapacitated.
- The term “Authorized Signer” is used to refer to the person you have authorized as a signer on your lawyer trust account.
- The term “Affected Attorney” refers to you, your estate, or your personal representative.

IMPLEMENTING THE PLAN

STEP 1: Designate an Assisting Attorney and Authorized Signer

The first step in the planning process is to find an attorney to manage or close your practice in the event of your disability, incapacity, retirement or death. Your arrangement with the Assisting Attorney can be established through a limited power of attorney, a comprehensive agreement with detailed powers, or a short form authorization and consent form to close or manage a law practice.

Not only do you need to have at least one Assisting Attorney, you also need to recruit an Authorized Signer who can sign on your trust account under these circumstances. This should be someone other than the Assisting Attorney to provide 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 could arise if the trust account does not balance.

STEP 2: Prepare the Necessary Authorizations and Instructions

The arrangements you make for closure of your office, or the temporary takeover of your practice, should include a signed consent form authorizing the Assisting Attorney to contact your clients for instructions on transferring their files, authorization to obtain extensions of time in litigation matters when needed, and authorization to provide all relevant people with notice of closure of your practice.

The agreement should 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.

Your plans can also include instructions as to:

- disposition of closed files;
- disposition of your office furnishings and equipment;
- authorization to draw checks on your office and trust accounts (discussed in greater detail below);
- payment of current liabilities of the office;
- billing fees on open files;
- collecting accounts receivable;
- access to important information (e.g. account numbers, passwords, and usernames); and
- insurance matters.

STEP 3: Discuss Your Plans with the Appropriate Parties

It is important to inform your family, your designated Assisting Attorney, your nominated executor, and your key office staff of your plans to avoid confusion or delay in the event of your disability, incapacity, or death.

PRACTICE TIP



Have a **CRISIS PLAN** in the event the unthinkable happens.

STEP 1: Designate an assisting attorney and authorized signer.

STEP 2: Prepare the necessary authorizations and instructions.

STEP 3: Discuss your plans with the appropriate parties.

STEP 4: Consider how your incapacity will be determined.

STEP 5: Determine the scope of your agreement with the assisting attorney.

STEP 6: Determine how the assisting attorney will be compensated.

STEP 7: Client Notification

STEP 8: Other actions, including documentation about office procedures.

STEP 4: Consider How Your Incapacity Will be Determined

If you are incapacitated, you may not be able to give consent to someone to assist you. Have you determined under what circumstances you want someone to assert the right to help you or take over your practice? Who decides that you are incapacitated and what criteria will be used?

One suggested approach is to give the Assisting Attorney and/or the Authorized Signer access during a specific time period or after a specific event and to allow the Assisting Attorney and/or the Authorized Signer to determine whether the contingency has occurred. Another approach is to have someone else (such as a spouse, 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 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, are 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 the Authorized Signer must review the specific terms and be comfortable with them.

The same issues apply if you choose to have a family member or friend hold a general power of attorney until the events or contingency occurs. All parties need to know what to do and when to do it.



If you are incapacitated, you may not be able to give consent to someone to assist you. Have you determined under what circumstances you want someone to assert the right to help you or take over your practice?

Your plan should also include authorizations to release medical information (required by HIPAA) to the designated person so that he or she can assess your capacity to continue in practice.

STEP 5: Determine the Scope of Your Agreement with the Assisting Attorney

It is important at the outset of the planning process to nail down the scope of the Assisting Attorney's duties to you and your clients. If the Assisting Attorney is representing your interests as your attorney, he or she may be prohibited from also 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 not inform a client of your legal malpractice or ethical violations, unless you consented in writing. However, if the Assisting Attorney is expected to represent your clients, he or she may have an ethical obligation to inform the client of your errors or omissions.

In either event, the Assisting Attorney 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 in transferring clients' files. In the latter case, the conflicts check must occur before the file review.

STEP 6: Determine How the Assisting Attorney Will be Compensated

Your plan should include an arrangement for payment by you or your estate to your Assisting Attorney and staff for services rendered on your behalf in closing, temporarily managing until your return, or managing your practice pending its sale. For example, the agreement with your Assisting Attorney may provide for compensation based on an hourly rate, for reimbursement of reasonably necessary expenses, and for billing on a monthly basis.

You also will need to address the funding of this compensation to your Assisting Attorney and support staff. You can direct that payment be made from your office receipts. If you are concerned that your law practice income will be insufficient to defray this expense, you may want to consider disability insurance in an amount sufficient to cover this potential liability. Business Overhead Expense Insurance is a variation on Disability Income Insurance that specifically covers the ongoing expenses of running your office (including non-lawyer staff salaries, rent, equipment leasing, etc.), in the event of your disability.

In the case of death, since your estate will be responsible for payment to the Assisting Attorney, your executor or other personal representative should be notified in advance of any arrangements you may have made with regard to this issue. You may want to consider purchasing an insurance policy naming the estate as beneficiary and specify in your will that the proceeds from the policy be used for this purpose.

STEP 7: Client Notification

Once you have made arrangements with an Assisting Attorney and/or Authorized Signer, the next step is to provide your clients with information about your plan. The easiest way to do this is to include the information in your retainer agreements and engagement letters. This provides clients with information about your arrangements and should constitute informed consent. Your client's signature on a retainer agreement provides written authorization for the Assisting Attorney to proceed on the client's behalf, if necessary. See Sample Language to Include Engagement Letter and Fee Agreement (page 45).

STEP 8: Other Actions

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:

- Making sure that your office procedures manual explains how to produce a list of client names and addresses for open files;
- Keeping all deadlines and follow-up dates on your calendaring system;
- Thoroughly documenting client files;
- Keeping your time and billing records up to date;
- Familiarizing your Assisting Attorney and/or Authorized Signer with your office systems;
- Renewing your written agreement with the Assisting Attorney and/or Authorized Signer each year; and
- Periodically communicating with clients for whom wills or other original documents are held by your firm to confirm that addresses are up-to-date and documents are still relevant.

DEATH OF A SOLE PRACTITIONER: SPECIAL CONSIDERATIONS

If you authorize another lawyer to administer your practice in the event of death, disability, impairment, or incapacity, that authority terminates when you die. The personal representative of your estate has the legal authority to bring your practice to a close. 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 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 management and closure of your law practice can be addressed without delay and attendant harm to clients.

You also should consider a source of funding to compensate your designated Assisting Attorney, office staff, or attorney and staff retained by your executor who will be working during this transition period. Since your practice may be your only probate asset and your

operating account may not have sufficient funds for this purpose, you may want to consider an insurance policy as a source of funding to defray this expense. The beneficiary of the policy could be the estate with specific instructions in your will that proceeds be used for this purpose. Alternatively, the beneficiary could be your spouse with instructions on how the money is to be used.

You may want to include language in your will that expressly addresses the handling of your law practice. The appropriate language will depend on the nature of the practice and the arrangements you make ahead of time.

START NOW

We encourage you to immediately select an attorney to assist you, follow the procedures outlined in this handbook, and call Lawyers Mutual if you need assistance.

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



PRACTICE TIP

In the event of death, disability, impairment, or incapacity, that authority terminates when you die.

The personal representative of your estate has the legal authority to bring your practice to a close. He or she must be told about your arrangement with the Assisting Attorney and/or Authorized Signer. The personal representative can then authorize the Assisting Attorney and/or Authorized Signer to proceed.

It is imperative that you have an up-to-date will nominating a personal representative so that management and closure of your law practice can be addressed without delay and attendant harm to clients.

ETHICAL CONSIDERATIONS

If you are an attorney planning to close your office (the Affected Attorney) or if you are an attorney considering helping a friend or colleague close his or her practice (the Assisting Attorney), in the event of death or disability, there are numerous issues to resolve. The first may be drafting the agreement that you should both sign. 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; (2) errors in the Affected Attorney's trust account; or (3) misappropriation of client funds.

Discussing these issues at the beginning of the relationship with your friend or colleague will help to avoid misunderstandings later when the Assisting Attorney interacts with the Affected Attorney's former clients. If these issues are not discussed, the Affected Attorney and the Assisting Attorney may be surprised to find that the Assisting Attorney has an obligation to inform the Affected Attorney's clients about a potential malpractice claim.

The best way to avoid these problems is to have a written agreement with the Assisting Attorney and, when applicable, with the Affected Attorney's former clients. If there is no written agreement clarifying the obligations and relationships, the Affected Attorney may believe that the Assisting Attorney is representing the Affected Attorney's interests. At the same time, the former clients of the Affected 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. See, e.g., *Ferguson v. DDP Pharmacy, Inc.*, 174 N.C. App. 532, 537, 621 S.E.2d 323, 327 (2005); *N.C. State Bar v. Sheffield*, 73 N.C. App. 349, 357, 326 S.E.2d 320, 325 (1985).

This section reviews some of these issues and the

various arrangements that the Affected Attorney and the Assisting Attorney can make. All of these frequently asked questions, **except #8**, are presented as if the Assisting Attorney is posing the questions.

You should also be aware that a process exists for a court to appoint a trustee to protect the clients of a North Carolina attorney who is "missing, suspended, disbarred, disabled, or deceased." N.C. Gen. Stat. §84-28(j).

1. Must I notify the former clients of the Affected Attorney if I discover a potential malpractice claim against the Affected Attorney?

The answer is largely determined by the agreement that you have with the Affected Attorney and the Affected Attorney's former clients. If you do not have an attorney-client relationship with the Affected Attorney, and you are the new lawyer for the Affected Attorney's former clients, you must inform your client (the Affected Attorney's former client) of the error, and advise him or her to seek independent legal advice.

If you are the Affected Attorney's lawyer, and not the lawyer for his or her former clients, you should discuss the error with the Affected Attorney and review his or her obligation to inform the client and malpractice insurance carrier of the error. Under these circumstances, you would not be obligated to inform the Affected Attorney's client of the error.

However, you must be careful to avoid making any misrepresentations. See RPC 4.1 ; 8.4(c). This situation could arise if the Affected Attorney refuses to fulfill his or her obligation to inform the client – and also instructs you not to tell the client. Thus, for example, if the Affected Attorney previously told the client a complaint had been filed, but the complaint had not

actually been filed, you should not say or do anything that would lead the client to believe the complaint had been filed. In any event, keep in mind that the Affected Attorney's malpractice insurance carrier should be notified as soon as you become aware of any error or omission that may be a potential malpractice claim in order to prevent denial of coverage under the policy due to a "late notice" provision.

If you are the Affected Attorney's lawyer, an alternative arrangement you can make with the Affected Attorney is that you may inform the Affected Attorney's former clients of any malpractice errors. This would not be permission to represent the former clients on malpractice actions against the Affected Attorney. Rather, it would authorize you to inform the Affected Attorney's former clients that a potential error exists and that they should seek independent counsel.

See *Agreement to Close Law Practice - Full Form (page 33)* and *Consent to Close Office - Short Form (Page 37)*.

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

Again, the answer depends on your relationship with the Affected Attorney and the Affected Attorney's clients. If you are the Affected Attorney's lawyer, you would be limited to disclosing any information that the Affected Attorney authorizes you to disclose. You would, however, want to make clear to the Affected Attorney's clients that you do not represent them and that they should seek independent counsel. If the Affected Attorney suffers from a condition of a sensitive nature and does not want you to disclose this information to the client, you cannot do so.

See *Agreement to Close Law Practice - Full Form (page 33)* and *Consent to Close Office - Short Form (Page 37)*.

3. Because the Affected Attorney is no longer practicing law, does the Affected Attorney have malpractice coverage?

This depends on the type of coverage the Affected Attorney had. Most malpractice policies provide options to purchase an extended reporting endorsement (often called a tail). These extended reporting endorsements do not provide ongoing coverage for new errors, but

PRACTICE TIP



ETHICAL CONSIDERATIONS for Affected Attorney and Assisting Attorney:

1. What to do about potential malpractice claims against Affected Attorney?
2. Disclosing sensitive information to former clients
3. Does the Affected Attorney continue to have malpractice coverage?
4. Can Assisting Attorney represent Affected Attorney's clients?
5. What about distributing funds from Affected Attorneys trust account?
6. What to do if Assisting Attorney discovers an ethical violation?
7. If the Affected Attorney stole client funds, what exposure do I have?
8. Pros and Cons of Authorize Signees and trust accounts
9. Can I be the trust account signer and attorney for the Affected Attorney?

allow reporting under the expiring policy for errors that surface after the end of the policy period, if those errors occurred within the extended reporting endorsement timeframe.

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

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

If you are representing the Affected Attorney, you are unable to represent the Affected Attorney's former clients on any matter in which there would be a conflict of interest with the Affected Attorney. This would include, but not limited to, representing the Affected Attorney's former client on a malpractice claim, ethics complaint, or fee claim against the Affected Attorney.

If you do not represent the Affected Attorney, you are limited, as you would be with any new potential client, by conflicts of interest 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 an Affected Attorney's former client.

Even if a conflict check reveals that you are permitted to represent the client, you might be wise to refer the case. A referral is advisable if the matter is outside

your area of expertise, or if you do not have adequate time, financial resources, or staff to handle the case. In addition, if the Affected 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 refer the client to the North Carolina Bar Association's Lawyer Referral Service (1-800-662-7660 or www.ncbar.org/public-pro-bono/lawyer-referral-service/nc-find-a-lawyer).

5. What procedures should I follow for distributing the funds that are in the Affected Attorney's trust account?

If your review (or the Authorized Signer's review) of the Affected Attorney's trust account indicates that there may be conflicting claims to the funds in the account, you should initiate a procedure for distributing the existing funds, such as a court-directed interpleader pursuant to N.C. Gen. Stat. §1A-1, Rule 22. Or, if there is a clear shortfall in the available funds, you will need to involve the North Carolina State Bar, as discussed below.

6. If there is an ethical violation, must I tell the Affected Attorney's former clients?

The answer depends on the relationships and the circumstances. If the Affected Attorney has violated an ethics rule and you are his or her lawyer, you are not



If you are representing the Affected Attorney, you are unable to represent the Affected Attorney's former clients on any matter in which there would be a conflict of interest with the Affected Attorney.


obligated, and in many cases not permitted, to inform the Affected Attorney's former clients of such violations if your knowledge of the misconduct is confidential information of your client, the Affected Attorney. See RPC 8.3, cmt. [5] ("The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship."). However, under the ethics rules, disclosure is mandatory to the extent you reasonably believe necessary to prevent reasonably certain death or substantial bodily harm (RPC 1.6(b)(3)), or when disclosure is necessary to avoid assisting a criminal or fraudulent act by the lawyer who is your client (RPC 1.6(b)(2), (4)).

You may have other responsibilities as well. For example, if you discover that some client funds are not in the Affected Attorney's trust account as they should be, you, as the attorney for the Affected Attorney, should discuss this matter with the Affected Attorney and encourage the Affected Attorney to correct the shortfall. If the Affected Attorney does not correct the shortfall, and you believe the Affected Attorney's conduct violates the disciplinary rules, you should resign. See RPC 1.2(d); 4.1, cmt. [3]; 8.4(a); 8.4(c).

If you are the attorney for the Affected Attorney, and the Affected Attorney is deceased, you should contact the personal representative of the estate. If the Affected Attorney is alive but unable to function, you (or the Authorized Signer) may have to disburse the amounts that are available and inform the Affected Attorney's former clients that they have the right to seek independent legal advice.

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

If you are not the attorney for the Affected Attorney,



PRACTICE TIP

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

and you are not representing any of the former clients of the Affected Attorney, you may still have a fiduciary obligation (as an Authorized Signer on the trust account) to notify the clients of a shortfall in the trust account. You should also report any notice of a potential claim to the Affected Attorney's malpractice insurance carrier in order to preserve coverage under the Affected Attorney's malpractice insurance policy.

If you are the attorney for a former client of the Affected Attorney, you have an obligation as a fiduciary to inform the client of ethical violations by the Affected Attorney that are relevant to that client's interests. See RPC 1.4. If you are a friend of the Affected Attorney, this is a particularly important issue.

You may wish to limit, *in advance*, the scope of your representation by informing your clients (the former clients of the Affected Attorney) that you do not intend to inform them about ethics violations, or potential ethics violations, of the Affected Attorney. A limited representation must be reasonable under the circumstances, and the clients must give informed consent, preferably in writing. RPC 1.2(c). It is recommended that you also advise the client, in writing, to seek independent representation on these issues.

Nevertheless, there may be situations in which such a limitation will not be reasonable and you will be obligated ethically and legally to inform your clients of an Affected Attorney's ethical violation, notwithstanding the agreement limiting the representation.

See Agreement to Close Law Practice - Full Form (page 33) and Consent to Close Office - Short Form (Page 37).

7. If the Affected Attorney stole client funds, do I have exposure to professional discipline against me?

You will not be disciplined for stealing the money unless: (1) in some way you aided or abetted the Affected Attorney in the unethical conduct (RPC 8.4(a)), or (2) the Affected Attorney was your client and you counseled or assisted him or her in such criminal or fraudulent conduct (RPC 1.2(d)). Whether you have an obligation to inform the Affected Attorney's former clients of the defalcation depends on your relationship with the Affected Attorney and with the Affected Attorney's former clients. (See #6 above.)

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

8. Question Posed by the Affected Attorney: 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 suddenly become unavailable or unable to continue your practice, an Authorized Signer is able to transfer money from your trust account to pay appropriate fees, disbursements, and costs, to provide your clients with settlement checks, and to 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 your clients at a disadvantage, since settlement funds or unearned fees held in trust may be needed to hire a new lawyer.

On the other hand, the most important "con" of authorizing 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 for some other reason 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, you must decide if you want to give: (a) access only during a specific time period or when a specific event occurs (e.g., incapacity), or (b) access all the time.

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

Not if there is a conflict of interest. As an Authorized Signer on the Affected Attorney's trust account, you would have a duty to properly account for the funds belonging to the Affected Attorney's former clients. This duty could conflict with your duty to the Affected Attorney if: (a) you were hired to represent him or her on issues related to the closure of his or her law practice, and (b) there were defalcations in the trust account. Because of this potential conflict of interest, it is probably best EITHER to choose to be an Authorized Signer OR to represent the Affected Attorney on issues related to the closure of his or her practice, but not both. (See #4 above.)

THE DUTY OWED BY LAWYERS WHO LEAVE A FIRM

In re Smith, 315 Or. 260,843 P.2d 449 (1992). Attorney was disciplined for secreting files in an attempt to take clients upon withdrawal from firm.

Matter of Cupples, 952 S.W.2d 226 (Mo. 1997).

The Missouri Supreme Court issued a public reprimand in an attorney discipline matter. An attorney leaving a firm was charged with (1) secreting client files from his partners in expectation of his leaving the firm, and (2) removing files from the firm without the client's consent.

- “[I]t is the responsibility of both that attorney and the law firm to ensure that the clients for whom that attorney had provided material representation are informed of the change in the circumstances of the clients’ representation. This duty requires communication with those clients - whether written, personal, or by some other means - that is professional in nature and content. The primary purpose of the communication is to assist these clients in determining whether their legal work should remain with the law firm, be transferred to the departing attorney, or be transferred elsewhere . . . [T]he primary purpose of the communication is to assist the clients in their needs and not to solicit the clients’ business.
- The court said the departing attorney had a fiduciary duty to be candid concerning business opportunities, to be fair, to not put self-interests before the partnership interests, and not to compete with the partnership in the business of partnership.
- Duties of withdrawing attorney can be summarized as follows: “Prior to withdrawal, lawyers within a firm have a duty to treat each other fairly and honestly and to put the interests of the law firm regarding firm business before their individual interests. The lawyer may not

compete with the firm for business opportunities. Each lawyer has a duty to the firm to represent firm clients diligently, competently, and zealously. After an attorney withdraws from a firm, the fiduciary duties no longer prohibit competition. However, the firm and the departing attorney have a duty to deal in good faith in winding up the firm business. Both the withdrawing attorney and the firm have a duty to inform firm clients of any material change in representation and to obtain the clients’ informed direction as to how the client wishes its work to be handled. The withdrawing attorney and the firm also have a duty to orderly maintain or transfer the clients’ files in accordance with the clients’ directions and to withdraw from representing those clients by whom they are discharged. Both the withdrawing attorney and the firm have a mutual duty, not only to the client, but to each other as well, to make certain that these tasks are completed in a competent and professional manner to the reasonable satisfaction of their clients.”

District of Columbia Bar, Ethics Opinion 273 (Sept. 17, 1997). A lawyer’s decision to leave a firm is a material fact that should be communicated in advance to clients and to the firm. If the change involves the termination of representation, the terminated lawyer needs to surrender the file, but a copy may be retained. The duty of confidentiality continues even after termination. The firm and departing lawyer must safeguard against conflicts of interest. Once a partner leaves a firm to join another firm, his or her name must be removed from the firm name to avoid misleading the public.

Futch v. McAllister, 491 S.E.2d 577 (S.C. Court of Appeals, 1997). Departing lawyer may not solicit firm clients prior to actual departure. “Absent a contrary

agreement, an employee has a right to compete with his employer following the termination of employment . . . An employee, however, has a duty not to do disloyal acts looking to future competition . . . Although an employee has the privilege of making pretermination plans to compete with his employer, an employee is disloyal if he solicits his employer's customers. This duty of loyalty continues undiminished throughout the term of employment."

ABA Center for Professional Responsibility Inquiry.

Inquiry: A lawyer has been representing a client on a contingent fee basis. The trial is now concluded, and the jury has begun deliberations. The client has discharged the lawyer. Is the lawyer still entitled to his contingent fee under the terms of the original agreement? **Response:** Most ethics opinions and case law in this area state that if a client discharges his lawyer in the midst of a contingent fee case without good cause, the lawyer is entitled to be compensated on a quantum meruit basis . . . There is authority which holds that the lawyer may still hold the client to the contingent fee agreement if the matter is substantially completed."

Resnick v. Kaplan, 49 Md. App. 499, 434 A.2d 582 (1981). A departing lawyer is required to account for fees earned after departure from cases taken from prior firm.

NC RPC 48: Law Firm Dissolution. Opinion outlines professional responsibilities of lawyers involved in a law firm dissolution.

NC RPC 200: Contacts with Clients after a Lawyer Leaves a Firm. Opinion rules that the lawyers remaining with a firm may contact by phone or in person clients whose legal matters were handled exclusively by a lawyer who has left the firm.

NC 2003 FEO 11: Duty of Departed Lawyer When Dividing Fee with Former Firm. Opinion rules that a lawyer must deal honestly with the members of her former firm when dividing a legal fee.

NC 2006 FEO 20: Departed Firm Owner's Surname Used in Firm Name. Opinion rules that a law firm may not continue to use a former member's surname in the law firm name if the member continues the practice of law with another firm.

NC 2008 FEO 8: Division of Fees in Departure Provision of Law Firm's Employment Agreement. Opinion rules that a provision in a law firm employment agreement for dividing legal fees received after a lawyer's departure from a firm must be reasonable and may not penalize or deter the withdrawing lawyer from taking clients with her.

NC 2012 FEO 12: Division of Fees in Agreement upon Lawyer's Departure From Firm. Opinion rules that an agreement for a departing lawyer to pay his former firm a percentage of any legal fee subsequently recovered from the continued representation of a contingent fee client by the departing lawyer does not violate Rule 5.6 if the agreement was negotiated by the departing lawyer and the firm after the departing lawyer announced his departure from the firm and the specific percentage is a reasonable resolution of the dispute over the division of future fees.

NC 2012 FEO 13: Duty to Safekeep Client Files Upon Suspension, Disbarment, Disappearance, or Death of Firm Lawyer

Opinion rules that the partners and managerial lawyers remaining in a firm are responsible for the safekeeping and proper disposition of both the active and closed files of a suspended, disbarred, missing, or deceased member of the firm.

NC 2013 FEO 8: Responding to the Mental Impairment of Firm Lawyer

Opinion analyzes the responsibilities of the partners and supervisory lawyers in a firm when another firm lawyer has a mental impairment.

CHECKLIST FOR CREATING AN ADVANCE EXIT PLAN

These matters need to be attended to by a responsible attorney planning for death, disability, impairment or incapacity.

1. Use retainer agreements with clients that state you have arranged for an attorney (the “Assisting Attorney”) to close your practice in the event of death, disability, impairment, or incapacity. Include a statement of consent, authorizing the Assisting Attorney to contact the client if necessary.
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, 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 general and trust accounts;
 - l. The location of all law office bank account records (trust and general);
 - m. The location of all electronically stored firm and client records. Include where to find, or who knows about, the computer passwords for email, online storage and all other web-based systems;
 - n. How to access your voice mail (or answering service) and the access code numbers;
 - o. Where the post office or other mail service box is located and how to access it; and
 - p. How to access any online law practice identities, including Facebook, Twitter, LinkedIn and other social media accounts.

See Law Office List of Contacts (page 50).

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 documents of clients, such as wills and other estate planning documents. If you do have original documents, maintain them in a central place, indexed, within the office.
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. *See Agreement to Close Law Practice - Full Form (page 33) and Consent to Close Office - Short Form (Page 37).*

8. If your written agreement authorizes the Assisting Attorney to sign trust or general 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 upon 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 trust or general account. Choose your Assisting Attorney wisely as he or she may have access to your clients' funds.
9. Familiarize your Assisting Attorney with your office systems and keep him or her apprised of staff and other office changes. *See Law Office List of Contacts (page 50).*
10. 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. *See Law Office List of Contacts (page 50).*
11. Inform your spouse or closest living relative and the personal representative of your estate of the existence of the agreement and how to contact the Assisting Attorney and/or Authorized Signer. *See Notice of Designated Assisting Attorney (page 33) and Will Provisions (page 27).*
12. Forward the contact information of your Assisting Attorney to Lawyers Mutual Liability Insurance Company or your professional liability insurance carrier each year. This will enable your professional liability insurance carrier to locate the Assisting Attorney in the event of your death, disability, impairment, or incapacity.
12. Renew your written agreement with your Assisting Attorney and/or Authorized Signer annually. *See Agreement to Close Law Practice - Full Form (page 33) and Consent to Close Office - Short Form (Page 37).*
13. Review your engagement letters and retainer agreement each year to make sure that the name of your Assisting Attorney is current. *See Sample Language to Include in Engagement Letter and Fee Agreement (page 45).*
14. Arrange for payment of your Assisting Attorney, Trust Account Signor and support staff during the closing process. Consider purchasing (or having the firm purchase) an insurance policy to cover these costs.
15. Fill out the Law Office List of Contacts practice aid provided in this handbook (page 50). Make sure your Assisting Attorney has a copy.

CHECKLIST FOR CLOSING YOUR OWN LAW OFFICE

1. Stop accepting new cases.
2. Inform staff of plans.
3. Finalize as many active files as possible.
 - a. For cases that have pending court dates, depositions, or hearings, discuss with the clients how to proceed. Where appropriate, request continuances of hearing dates. Send written confirmations of these continuances to opposing counsel and to your client. Obtain the client's permission to submit a motion and order to withdraw as attorney of record. Review Rule 1.16. Pick an appropriate date and verify all cases have a Motion and Order allowing your withdrawal as attorney of record.
 - b. For cases before administrative bodies and courts, obtain the clients' permission to submit a motion and order to withdraw as attorney of record. Review Rule 1.16 regarding assisting the client upon withdrawal.
 - c. In cases where the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
 - d. Pick an appropriate date and check to verify that all cases have either a Motion and Order allowing your withdrawal as attorney of record, or a Substitution of Attorney filed with the Court.
4. Inform clients of plans.
 - a. 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 case. The letter should explain how and where they can pick up copies of their files and should give a time deadline for doing this. (See Letter Advising That Lawyer is Closing His/Her Office provided in this handbook.) If possible, refer the client to another attorney who may be able to handle the client's matter.
 - b. Make copies of files for your clients. Retain your original files. 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 Acknowledgment of Receipt of File and Authorization provided in this handbook.) If a client is picking up the file, original documents should be returned to the client and copies should be kept in your file.
 - c. All clients should be informed in writing where their closed files will be stored and whom they should contact in order to retrieve them. Obtain all clients' permission to destroy the files after six years. (Note that some types of files must be retained for 10 years or longer due to statutes of limitation.) If a closed file is to be stored by another attorney, get the client's permission to allow the attorney to store the file and provide the client with the attorney's name, address, and phone number.
5. Transfer files to new lawyer(s).
6. Develop handling procedures for closed files and original documents, such as wills. Clients should be notified of where their file is stored and whom they should contact to retrieve it. Write letters to clients confirming instructions.
7. Send the name, address, and phone number of the person who will be retaining your closed files to the North Carolina State Bar, P.O. Box 25908, Raleigh, North Carolina 27611. Closed files must be stored in accordance with N.C. State Bar guidelines. RPC 209 provides guidelines for the disposal of stored client files.
8. Take care of outstanding trust account funds and firm expenses, including but not limited to these items:

CLOSING A LAW PRACTICE

- a. Disburse funds held in your trust account to the appropriate clients with a final accounting. You can also deliver the funds to new legal counsel designated by the client. Close out your trust account. For questions, call Peter Bolac, Trust Accounting Compliance Counsel, at the N.C. State Bar at 919.828.4620.
 - b. Review accounts receivable. Ensure balances are paid or total in the aggregate is in the low four figures before you announce that you intend to close your office.
 - c. Retain your accounting records for IRS review, if necessary to prove income, expenses, deductions, etc. Ask your CPA or accounting professional for advice concerning retention periods. Ethics Rule 1.15-3 provides guidance for records and accounting.
 - d. Confer with lenders.
 - e. Meet with your accountant. Finalize accounting details. Close checking and other related accounts. Close client trust accounts after audit is completed. Address unclaimed client funds.
 - f. Return safe deposit box contents.
 - g. Terminate your lease. You will need to notify your landlord of your decision to move. You may need to negotiate early termination terms.
 - h. Arrange for termination of equipment leases and removal. If you lease copiers and printers, these leases will also have to be terminated. Be sure to wipe these computers clean of any confidential client data.
9. Notify bar associations and professional organizations. Call the N.C. State Bar Membership Section and update all your contact information and membership records. You may contact Tammy Jackson at 919.828.4620.
10. If you wish to obtain “inactive” status, you must complete a petition to be placed on inactive status. These petitions can be found on the N.C. State Bar website at www.ncbar.com/PDFs/24.pdf. The petition must be completed and received no later than December 30 in order to avoid fees for the following year. All petitions for inactive status are heard at the State Bar’s quarterly meetings. If you have questions you may contact the Membership Department of the North Carolina State Bar at 919.828.4620.

In 2014, the State Bar created a new subcategory of Inactive membership: Retired member. This subcategory includes those members who are retired from the practice of law and who no longer hold themselves out as practicing attorneys. A retired member must hold himself or herself out as a “Retired Member of the North Carolina State Bar” or by some similar designation, provided such designation clearly indicates that the attorney is “retired.”

11. Cancel office subscriptions and other memberships.
12. Contact Lawyers Mutual or your professional liability insurance carrier about necessary continued malpractice coverage.
13. Notify other insurance carriers regarding other liability coverages.
14. Consult with professional planners regarding your benefits such as health, life and disability insurance as well as retirement plan.
15. Consider purchasing an Extended Reporting Endorsement (ERE). Contact your professional liability insurance carrier for an ERE to your existing malpractice policy. An ERE is commonly referred to as a “tail policy.” As

the name implies, an ERE extends the period during which you may report a claim to your carrier. Discuss with your carrier the appropriate period of time for an ERE.

16. Contact Your Information Technology (IT) Professional to inventory all office and personal equipment that may contain client sensitive information and to develop a decommissioning plan. Areas of concern that may need to be addressed with your IT Professional include:
 - a. Professionally removing computer hard drives and safely packaging and storing them;
 - b. Giving sufficient notice to your internet service provider and your telephone company;
 - c. Protecting any check printing media;
 - d. Retaining ownership of office's domain name to avoid impersonation;
 - e. Turning off email services, as well as archiving, consolidating, and retaining existing email prior to cleaning them off the hard drive;
 - f. Archiving security codes, passcodes, and usernames, particularly for encrypted devices;
 - g. Archiving voice mail and erasing voice mail storage mechanism;
 - h. Removing business account information from personal cell phone and clearing personal cell phone;
 - i. Contacting equipment leasing companies that may store client information and insisting on a factory reset of the machines while on office premises with IT Professional present;
 - j. Contacting Professional Document Destruction Company regarding proper disposal (shredding) of Clients' Non Public Personal Information and attorney's privileged information, as well as proper disposal by IT Professional of any USB Drives and any "back- up" materials.
17. Organize the disposition of furniture, fixtures, and other items.
18. Notify the post office and messenger services.
19. If you are a solo practitioner, ask the telephone company for a new phone number to be given out when your old phone number is called. Alternatively, consider having your office phone calls forwarded to either your home or to a lawyer who is assisting with the closure of your office. This will insure clients receive the proper assistance if they attempt to contact you after you have closed your office.
20. Write goodwill, farewell thank you notes.
21. Relax and enjoy the rest of your life!

CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S OFFICE

The term “Affected 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, etc.
2. Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances, or discovery. Obtain permission for reset. (If making these arrangements constitutes a conflict of interest for you and your clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs.)
3. Contact courts and opposing counsel for files that require discovery or court appearances immediately. Obtain resets of hearings or extensions where necessary. Confirm extensions and resets in writing.
4. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.
5. Look for an office procedures manual. Determine if there is a way to get a list of clients with active 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 to pick up the open file. Provide clients with a date by which they should pick up copies of their files. Inform clients that new counsel should be chosen immediately. (See sample Letter Advising That Lawyer is Unable to Continue in Practice provided on page 23 of this handbook.)
7. For cases before administrative bodies and courts, obtain permission from the clients to submit a Motion and Order to withdraw the Affected Attorney as attorney of record.
8. In cases where the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
9. Pick an appropriate date and check to see if all cases have either a motion and order allowing withdrawal of the Affected Attorney or a Substitution of Attorney filed with the court.
10. Make copies of files for clients. Retain the Affected Attorney's original file. All clients should either pick up a copy of their files (and sign a receipt acknowledging that they received it) or sign an authorization for you to release a copy to a new attorney. If the client is picking up a copy of the file and there are original documents in it that the client needs (such as a title to property), return the original documents to the client and keep copies for the Affected Attorney's file.
11. All clients should be advised on where their closed files will be stored, and who they should contact in order to retrieve a closed file.

12. Send the name, address, and phone number of the person who will be retaining the closed files to the North Carolina State Bar, 298 Fayetteville Street Mall, Raleigh, NC 27601.
13. If the attorney whose practice is being closed was a sole practitioner (the Affected Attorney), try to arrange for his or her phone number to have a forwarding number. This eliminates the problem created when clients call the Affected Attorney's phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.
14. Contact Lawyers Mutual and the Affected Attorney's excess carrier, if applicable, about extended reporting coverage.
15. (optional) If you have authorization to handle the Affected Attorney's financial matters, look around the office for checks or funds that have not been deposited. Determine if 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 either be 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 Affected Attorney's accounts, you will probably need to be an authorized signer on the accounts, you will need a written agreement such as the sample provided in Sample Forms of this handbook, or you will need a limited power of attorney. If this has not been done and is not obtainable from the Affected Attorney due to death, disability, impairment, or incapacity, you may have to request that the North Carolina State Bar petition the court to take jurisdiction over the practice and the accounts pursuant to N.C. Gen. Stat. § 84-28(j). If the Affected 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 Affected Attorney should go to the Affected Attorney or his/her estate.
16. (optional) If you are authorized to do so, handle financial matters, pay business expenses, and liquidate or sell the practice.
17. (optional) If your responsibilities include sale of the practice, you may want to advertise in the local bar newsletter, the North Carolina Lawyers Weekly, and other appropriate places.
18. (optional) If your arrangement with the Affected Attorney or estate is that you are to be paid for closing the practice, submit your bill.
19. (optional) If your arrangement is to represent the Affected Attorney's clients on their pending cases, obtain each client's consent to represent the client and check for conflicts of interest.

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

1. Use retainer agreements that state you have arranged for an Emergency Attorney to close your practice in the event of death, disability, impairment, or incapacity.
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, 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 documents of clients;
 - 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 (or answering machine) 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 of your file deadlines (including follow-up deadlines) are on your calendaring system.
4. Document your files.
5. Keep your time and billing records up-to-date.
6. Avoid keeping original documents of clients, such as wills and other estate planning documents.
7. Have a written agreement with an attorney who will close your practice (the “Emergency Attorney”) that outlines the responsibilities involved in closing your practice. Determine whether the Emergency Attorney will also be your personal attorney. Choose an Emergency Attorney who is sensitive to conflict of interest issues.
8. If your written agreement authorizes the Emergency Attorney to sign trust or general 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 upon the happening of a specific event. In some instances, you and the Emergency Attorney will have to sign bank forms authorizing the Emergency Attorney to have access to your trust or general account. Choose your Emergency Attorney wisely—he or she may have access to your clients' funds.

9. Familiarize your Emergency Attorney with your office systems and keep him or her apprised of office changes.
10. Introduce your Emergency Attorney to your office staff. Make certain your staff knows where you keep the written agreement and how to contact the Emergency Attorney if an emergency occurs before or after office hours. If you practice without regular staff, make sure your Emergency Attorney knows who to contact (the landlord, for example) to gain access to your office.
11. Inform your spouse or closest living relative and the personal representative of your estate of the existence of this agreement and how to contact the Emergency Attorney.
12. Forward the name, address, and phone number of your Emergency Attorney to Lawyers Mutual, Attention: Risk Management, P.O. Box 1929, Cary, NC 27512. (See Notice of Designated Emergency Attorney provided on page 33 of this handbook.) This will enable Lawyers Mutual to locate the Emergency Attorney in the event of your death, disability, impairment, or incapacity.
13. Renew your written agreement with your Emergency Attorney each year. If you include the name of your Emergency Attorney in your retainer agreement, make sure it is current.

FINANCIAL PLANNING FOR THE CLOSING OR “SHOW ME THE MONEY”

Attorneys who have assisted in closing law practices for attorneys who died or became suddenly incapacitated regularly complain that the funds available to pay for the orderly closing of the law practice are often insufficient. The Planning Attorney should also plan to make funds available as working capital to pay staff, rent, utilities and the Assisting Attorney to insure the orderly closing of the practice. Assisting Attorneys often find themselves in a position of having to go to the Court for their fees from the general estate which may cause some conflicts. Assisting Attorneys and Staff members should not have to worry about their compensation while being asked to assist the Deceased Attorney’s estate and family by closing the decedent’s practice in an orderly manner and thereby likely increasing the practice’s value to the estate.

The Planning Attorney should arrange to make funds available as working capital to pay expenses such as staff, rent and the Assisting Attorney to insure the orderly closing of the practice. Suggested methods of funding an office closing include:

1. Establish an Office Closing Fund of \$10,000–\$20,000 and designate the Fund’s purpose. Authorize the use of the Fund in your Will and direct your Personal Representative to use or allow its use for the purpose of funding the orderly closing of the office.
2. Take out a small life insurance policy of \$10,000–\$25,000 on your life and direct your personal representative to use the proceeds for the orderly closing of your office as an expense of the estate.
3. Organize your practice as a professional association or professional limited liability company and leave a legacy to the corporation or company with directions that the funds immediately be made immediately available to the Assisting Attorney to pay the bills of closing the office.
4. Have your PA or PLLC purchase a life insurance policy on your life naming the PA or PLLC as beneficiary of the policy. Direct in your Will or Trust that the life insurance funds be used for that purpose.
5. Discuss other insurance products with your insurance professional, such as a “Buyout Policy” or a “Professional Overhead Policy” that can be used to fund the orderly closing of the office.

The closing of your law practice should take only a few weeks if it is properly planned and funded so that your staff can begin work immediately under the direction of the Assisting Attorney to pull files together, notify clients and opposing attorneys, collect accounts receivable, prepare motions and notices to the Courts and other measures that will ease the transfer of files to clients and enhance the value of the practice.

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 _____, ____; if that Agreement is not in effect, my personal representative is authorized to enter into a similar agreement or agreements with other attorneys as 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, including but not limited to: sale of the practice, collection of accounts receivable, payment of expenses relating to the practice, and employing an attorney or attorneys to review my files, complete unfinished work, notify my clients of my death and assist them in finding other attorneys, and provide long-term storage of and access to my closed files.

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: sale of the practice, collection of accounts receivable, payment of expenses relating to the practice, and employing an attorney or attorneys to review my files, complete unfinished work, notify my clients of my death and assist them in finding other attorneys, and provide long-term storage of and access to my closed files.

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. Also, the North Carolina Bar Association provides a lawyer referral service that can be reached at the North Carolina Bar Association by calling 1-800-662-7660 or (919) 677- 8574. If my representation of you involves an active court case, I am required to file a motion in that action asking the court's permission to withdraw from your representation.

When you select your new attorney, please provide me with written authority to transfer your file and any of your funds that I am holding in my trust account for you to your new attorney. If you prefer, you may come to our office and pick up your file, any property or funds of yours that we are holding for you, and deliver them to that attorney yourself.

It is imperative that you obtain a new attorney immediately. Please let me know the name of your new attorney, or pick up a copy of your file by [date].

If you consent, [I/Name of Attorney who will store files] will continue to store my copy of your closed file for a minimum of six (6) years. After that time, [I/Name of Attorney who will store files] may 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 <Name of Attorney who will store 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. I will be happy to provide you with a copy.

Within the next [number] weeks I will be providing you with a full accounting of your funds in my trust account along with any fees currently owed. If there are any of your funds remaining in my trust account at this time, I will include a trust account check with the accounting.

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 of providing you with legal services. Please do not hesitate to give me a call if you have any questions or concerns.

Sincerely,

[Attorney]

[Firm]

LETTER NOTIFYING CLIENT OF DESTRUCTION OF FILE

[Date]

[Client Name]

[Street]

[City State Zip]

RE: [Name of Case]

Dear: [Name]

Please be advised that the Firm is purging its files of records pertaining to matters that have been closed for more than six (6) years. Our policy is to contact our clients and notify them of our intention to destroy the records unless they wish them returned.

Since these dead files pertain to matters that were concluded over six (6) years ago, you may not wish for their return. However, we will make these files available to you upon your written request. Please indicate your preference for destruction or return of the files on the attached listing and return it in the enclosed, self-addressed stamped envelope.

If you select destruction, the files will be physically destroyed by a method that will preserve client confidentiality. You will not be charged for this service.

If we are notified that you have received this letter, but we receive no response within six (6) weeks of your receipt, we will assume that you wish the file(s) to be destroyed.

If you wish the records returned, please contact us to arrange transfer of the file.

If you have questions, please address them to _____.

As always, we greatly appreciate your business and hope to continue working with you. Thank you for your assistance. You may receive additional correspondence regarding closed files for other work we have done on your behalf.

Sincerely,

Attorney]

[Firm]

_____ I/we prefer the file materials be destroyed.

_____ I/we prefer the return of the file(s).

[Client]

[Date]

LETTER ADVISING THAT LAWYER IS UNABLE TO CONTINUE IN PRACTICE

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 of 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 of 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]

If any funds or property are being held by *[Affected Attorney]* on your behalf, you are entitled to have them delivered to you as soon as reasonably possible. Within the next *[time period]*, you will be provided with a full accounting of your funds in *[Affected Attorney]* trust account, along with any fees currently owed *[Affected Attorney]*. If there are any of your funds remaining in *[Affected Attorney]* trust account at that time, a trust account check will be included with the accounting.

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 FROM FIRM OFFERING TO CONTINUE REPRESENTATION

Re: *[Name of Case]*

Dear *[Name]*:

Due to ill health, *[Affected Attorney]* is no longer able to continue representing you on your case(s). Our firm is willing to continue representing you and *[Attorney Name]*, a member of this firm, is available to continue handling your case if you wish *[him/her]* to do so. However, 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 our office. If this is not your desire, we recommend that you retain the services of another attorney immediately so that all of your legal rights can be preserved.

If you choose to retain another attorney, you will need a copy of your legal file for use by you and your new attorney. We are 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 pickup]* and pick up a copy of your file so that you can deliver it to your new attorney yourself.

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 to your new attorney by *[date]*, so that all of your legal rights can be preserved.

If any funds or property are being held by our firm on your behalf, you are entitled to have them delivered to you as soon as reasonably possible. Within the next *[number]* weeks you will be provided with a full accounting of your funds in this firm's trust account, along with any fees currently owed *[Affected Attorney]*. If there are any of your funds remaining in our firm's trust account at that time, a trust account check will be included with the accounting.

On behalf of *[Affected Attorney]*, I would like to thank you for giving *[Attorney Name]* and our firm the opportunity to provide you with legal services. If you have any additional concerns or questions, please feel free to contact me.

[Assisting Attorney]

Enclosures

I want a member of the firm of *[Law Firm name]* to handle my case in place of *[Affected Attorney]*.

[Client]

[Date]

UNILATERAL LETTER TO CLIENT FROM A DEPARTING ATTORNEY

(Sample — Modify as appropriate)

Dear *[client]*:

Effective *[date]*, I became a *[partner/shareholder/member]* of *[name + address of new law firm]*, having withdrawn from *[name of old law firm]*. My decision represents an opportunity to broaden my experiences, and should not be construed as adversely reflecting in any way on my former firm. It is simply one of those things that sometimes happens in business and professional life.

I want to be sure that there is no disadvantage to you, as the client, from my move. The decision as to how the matters I have worked on for you are handled, and who handles them in the future, will be completely yours. Whatever you decide will be determinative.

Sincerely,

[name of departing attorney]

Please, at your earliest opportunity:

- (1) Check the appropriate statement reflecting your wishes.
- (2) Retain one of the two copies of your directive contained herein for your records.
- (3) Return one copy in the herein provided prepaid addressed envelope. To best protect your interest and promote continuity of representation, please respond quickly.

I wish to continue being represented by *[departing attorney]*. Please transfer to [him/her], at the above stated address, all records, files and property in the possession of *[name of former firm]* as quickly as possible.

I wish to continue being represented by *[name of former firm]*. Please have a firm representative contact me to discuss continuity of representation.

I wish to now be represented by _____ (Name and Address of other Lawyer).

Irrespective of your choice, you remain responsible for any fees and costs already incurred. Any fees or costs may be deducted from any trust fund balance held by the firm. Should photocopying of documents be required you will be charged (10) (15) (20) (25) cents per copy.

Printed Name

Signature

____/____/____
Date

AGREEMENT TO CLOSE LAW PRACTICE — FULL FORM

(Sample — Modify as appropriate)

The sample Agreement—Full Form provided gives the Assisting Attorney the power to determine if you are disabled, impaired, or incapacitated and provides the Assisting Attorney with authority under the designated circumstances to sign on your bank accounts (including your trust account) and to close your law practice. The Agreement also enumerates powers such as termination, payment for services, and resolution of disputes.

If you do not want the Assisting Attorney to be the person who determines if you are disabled, incapacitated, or impaired, you will need to modify this agreement.

If you want a separate Trust Account Signor and you do not want the Assisting Attorney to be the person who signs on your trust account, you will need to modify this agreement.

Between: _____, hereinafter referred to as “Planning Attorney,”

And: _____ hereinafter referred to as “Assisting Attorney.”

1. PURPOSE.

The purpose of this agreement is to protect the legal interests of the clients of Planning Attorney in the event Planning Attorney is unable to continue Planning Attorney’s law practice due to death, disability, impairment, or incapacity.

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 and the Planning Attorney’s representatives, heirs, or assigns.

3. ESTABLISHING DEATH, DISABILITY, IMPAIRMENT, OR INCAPACITY.

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

4. CONSENT TO CLOSE PRACTICE.

Planning Attorney hereby gives consent to Assisting Attorney to take all actions necessary to close Planning Attorney’s legal practice in the event that Planning Attorney is unable to continue in the private practice of law and Planning Attorney is unable to close Planning Attorney’s own practice due to death, disability, impairment, or incapacity. Planning Attorney hereby appoints Assisting Attorney as attorney-in-fact, with full power to do and accomplish all of the actions contemplated by this Agreement as fully and as completely as Planning Attorney could do personally if Planning Attorney were able. It is Planning Attorney’s specific intent that this appointment of Assisting Attorney as attorney-in-fact shall become effective only upon Planning Attorney’s death, disability, impairment, or incapacity. The appointment of Assisting Attorney shall not be invalidated because of Planning Attorney’s death, disability, impairment, or incapacity, but instead the appointment shall fully survive such death, disability, impairment, or incapacity and shall be in full force and effect so long as it is necessary or convenient to carry out the terms of this Agreement. In the event of Planning Attorney’s

CLOSING A LAW PRACTICE

death, disability, impairment, or incapacity, Planning Attorney designates Assisting Attorney as signator, or in substitution of Planning Attorney's signature, on all of Planning Attorney's law office accounts with any bank or financial institution, including, but not limited to, checking accounts, savings accounts, and trust accounts. Planning Attorney's consent includes but is not limited to:

- Entering Planning Attorney's office and using the 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 files and records of Planning Attorney's law practice and obtaining information as to 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;
- Accessing any desktop or laptop computers, telephones, applications or software programs or any other electronic media or device that Assisting Attorney reasonably believes may contain client files or other law office information;
- 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 where the clients' 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 Assisting 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 potential purchasers; and
- Arranging for an appraisal of Planning Attorney's practice for the purpose of selling Planning Attorney's practice.

Planning Attorney's bank or financial institution may rely on the authorizations in the 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 a reasonable sum for services rendered by Assisting Attorney while closing the law practice of Planning Attorney. Assisting Attorney agrees to keep accurate time records for the purpose of determining amounts due for services rendered. Assisting Attorney agrees to provide the services specified herein as an independent contractor.

6. PRESERVING ATTORNEY-CLIENT PRIVILEGE.

Assisting Attorney agrees to preserve confidences and secrets of Planning Attorney's clients and their attorney-client privilege and shall only make 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).

Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney-client relationship and follow the North Carolina State Bar Code of Professional Responsibility.

OR:

ASSISTING ATTORNEY IS NOT ATTORNEY FOR PLANNING ATTORNEY

Assisting Attorney is not the attorney for Planning Attorney.

8. PROVIDING LEGAL SERVICES.

Planning Attorney authorizes Assisting Attorney to provide legal services to Planning Attorney's former clients providing Assisting Attorney has no conflict of interest and obtains the consent of Planning Attorney's former clients to do so. Assisting Attorney has the right to enter into an attorney-client relationship with Planning Attorney's former 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, to refer the clients to another attorney.

9. INFORMING NORTH CAROLINA STATE BAR.

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

10. CONTACTING LAWYERS MUTUAL LIABILITY INSURANCE COMPANY (OR OTHER CARRIER).

Planning Attorney authorizes Assisting Attorney to contact Lawyers Mutual Liability Insurance Company or other professional liability insurance carrier concerning any legal malpractice claims or potential claims.

11. PROVIDING CLIENTS WITH ACCOUNTING.

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

12. INDEMNIFICATION.

Planning Attorney agrees to indemnify Assisting Attorney against any claims, loss, or damage arising out of any act or omission by Assisting Attorney under this agreement, provided the actions or omissions of Assisting Attorney 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 was assisting Planning Attorney with the closure of Planning Attorney's office. This indemnification agreement does not extend to any acts, errors, or omissions of Assisting Attorney while rendering or failing to render professional services in Assisting Attorney's capacity as attorney for the former clients of Planning Attorney. Assisting Attorney shall be responsible for all acts and omissions of gross negligence and willful misconduct.

13. OPTION TO PURCHASE PRACTICE.

Assisting Attorney shall have the first option to purchase the practice of Planning Attorney under the terms and conditions specified by Planning Attorney or Planning Attorney's representative in accordance with the North Carolina State Bar Code of Professional Responsibility and other applicable law.

14. ARRANGING TO SELL PRACTICE.

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

CLOSING A LAW PRACTICE

15. FEE DISPUTES TO BE ARBITRATED.

Planning Attorney and Assisting Attorney agree that all fee disputes between them will be decided by the North Carolina State Bar Fee Arbitration Program.

16. TERMINATION.

This Agreement shall terminate upon: (1) delivery of written notice of termination by Planning Attorney to Assisting Attorney during any time that Planning Attorney is not under disability, impairment, or incapacity as established under Section 3 of this Agreement; (2) delivery of written notice of termination by Planning Attorney’s representative upon a showing of good cause; or (3) delivery of a written notice of termination given by Assisting Attorney to Planning Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Assisting Attorney pursuant to this Agreement.

If this Agreement is terminated for any reason, Assisting Attorney or Assisting Attorney’s Alternate acting on his or her behalf shall (1) provide a full and accurate accounting of financial activities undertaken on Planning Attorney’s behalf within thirty (30) days of termination or resignation; and (2) provide Planning Attorney with Planning Attorney’s files, records, and funds.

[Planning Attorney] [Date]

[Planning Attorney] [Date]

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid; certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this the __ day of _____.

Notary Public

My Commission Expires: _____

[Assisting Attorney] [Date]

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid; certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this the __ day of _____.

Notary Public

My Commission Expires: _____

CONSENT TO CLOSE OFFICE — SHORT FORM

(Sample — Modify as appropriate)

The sample Consent to Close Office –Short Form provided 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 to Close Law Practice –Full Form (page 25).

Between: _____, hereinafter referred to as “Affected Attorney,” and:
 _____, hereinafter referred to as “Assisting Attorney,” and:
 _____, hereinafter referred to as “Authorized Signer.”

I, *(insert name of Affected 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, disability, impairment, or incapacity. 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 the 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 interest much 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 North Carolina State Bar where closed files will be stored and the name, address, and phone number of the contact person for retrieving the files; and
- Contacting the Affected Attorney’s professional liability insurance 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 in no longer in effect.

CLOSING A LAW PRACTICE

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

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

(Delete one of the following paragraphs as appropriate:)

Assisting Attorney represents me and acts as my attorney in closing my law practice. Assisting Attorney has permission to inform the Affected Attorney's professional liability insurance 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 the Affected Attorney's professional liability insurance 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 North Carolina State Bar Client Security Fund.

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

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

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

Assisting Attorney and/or Authorized Signer may revoke this acceptance 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.

[Affected Attorney]

[Date]

STATE OF NORTH CAROLINA

County of _____

I, _____, a Notary Public for said county and state, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ day of ____ in the year of _____.

NOTARY PUBLIC
My commission expires: _____

[Assisting Attorney]

[Date]

STATE OF NORTH CAROLINA

County of _____

I, _____, a Notary Public for said county and state, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ day of ____ in the year of _____.

NOTARY PUBLIC
My commission expires: _____

[Authorized Signer]

[Date]

STATE OF NORTH CAROLINA

County of _____

I, _____, a Notary Public for said county and state, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ day of ____ in the year of _____.

NOTARY PUBLIC
My commission expires: _____

NOTICE TO LAWYERS MUTUAL OF DESIGNATED EMERGENCY ATTORNEY

I, _____, have authorized the following attorney(s) to assist with the closure of my practice:

Name of Authorized Assisting Attorney: _____

Address: _____

Phone: _____

N.C. State Bar #: _____

Name of Authorized Assisting Attorney: _____

Address: _____

Phone: _____

N.C. State Bar #: _____

[

]

Mail this form to:

Lawyers Mutual
PO Box 1929
Cary, NC 27512-1929

North Carolina State Bar
PO Box 25908
Raleigh, NC 27611-5908

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(es).

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 disability or incapacity.

[Account Holder]

[Date]

STATE OF NORTH CAROLINA

County of _____

I, _____, a Notary Public for said county and state, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ day of ____ in the year of _____.

NOTARY PUBLIC

My commission expires: _____

CONDITIONAL DURABLE POWER OF ATTORNEY

NORTH CAROLINA
COUNTY OF _____

CONDITIONAL DURABLE
POWER OF ATTORNEY
(Law Office Closing)

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 law office 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 law office account(s), make electronic funds transactions, receive statements and notices on the account(s), and do anything with respect to the law office account that I would be able to do. I am also authorizing my named 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 shall be effective upon execution; however, my attorney-in-fact shall not be empowered to act on my behalf until I become incapacitated or mentally incompetent. My attorney-in-fact will NOT (except by my written request) exercise any authority granted by this instrument unless and until (s)he receives a written certificate by two (2) licensed medical doctors stating that physically or mentally I am incapable of handling my own business affairs. My said attorney-in-fact shall have no duty to inquire regarding my physical or mental condition, and shall have no duty (except at my written request) to exercise his/her powers under this instrument until (s)he has received certification from two medical doctors as described above.

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 disability or incapacity.

[Planning Attorney]

[Date]

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid; certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this the ___ day of _____.

Notary Public
My Commission Expires: _____

SPECIMEN SIGNATURE OF ATTORNEY-IN-FACT

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

[Attorney-in-Fact]

[Date]

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid; certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this the ___ day of _____.

Notary Public

My Commission Expires: _____

LETTER OF UNDERSTANDING FOR DELIVERY OF POWER OF ATTORNEY

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 that 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 disability, impairment, incapacity, illness, or absence. 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 if 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]

SAMPLE LANGUAGE TO INCLUDE IN ENGAGEMENT LETTER AND FEE AGREEMENT

(Sample — Modify as appropriate)

My goal is to provide you with excellent legal services. I also want to protect your interests in the event of my unexpected death, disability, impairment, or incapacity. In order to accomplish this, I have arranged with another attorney to assist with closing my practice in the event of my death, disability, impairment, or incapacity. In such event, my office staff or the assisting attorney will contact you and provide you with information about how to proceed.

[NOTE: Additional information regarding engagement letters, including sample letters for various fee arrangements and practice areas, can be found in Lawyers Mutual's [Attorney-Client Agreements Toolkit](#) and [Attorney-Client Relationships](#) handout.]

AUTHORIZATION FOR TRANSFER OF CLIENT FILE

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

[*Client*] [Date]

REQUEST FOR FILE

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

[*Client*]

[*Date*]

ACKNOWLEDGMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received a copy of my file from the law office of *[Firm/Attorney Name]*. I also understand and agree that the law office of *[Firm/Attorney Name]* will take no further action on my behalf in this matter.

[Client] *[Date]*

LAW OFFICE LIST OF CONTACTS

ATTORNEY NAME: _____

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

Date of Birth: _____

Office Address: _____

Office Phone: _____

Home Address: _____

Home Phone: _____

SPOUSE:

Name: _____

Work Phone: _____

Employer: _____

OFFICE MANAGER:

Name: _____

Home Address: _____

Home Phone: _____

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: _____

Home Phone: _____

POST OFFICE OR OTHER MAIL SERVICE BOX:

Location: _____

Box No.: _____

Obtain Key From: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

SECRETARY:

Name: _____

Home Address: _____

Home Phone: _____

BOOKKEEPER:

Name: _____
Home Address: _____

Home Phone: _____

LANDLORD:

Name: _____
Address: _____

Phone: _____

PERSONAL REPRESENTATIVE:

Name: _____
Address: _____

Phone: _____

ATTORNEY:

Name: _____
Address: _____

Phone: _____

ACCOUNTANT:

Name: _____
Address: _____

Phone: _____

ATTORNEYS TO HELP WITH PRACTICE CLOSURE:

First Choice: _____
Address: _____

Phone: _____

Second Choice: _____
Address: _____

Phone: _____

Third Choice: _____
Address: _____

Phone: _____

CLOSING A LAW PRACTICE

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 PROPERTY/LIABILITY COVERAGE:

Insurer: _____

Address: _____

Phone: _____

Policy No.: _____

Contact Person: _____

OTHER IMPORTANT CONTACTS:

Name: _____
Address: _____

Phone: _____
Reason for Contact: _____

Name: _____
Address: _____

Phone: _____
Reason for Contact: _____

Name: _____
Address: _____

Phone: _____
Reason for Contact: _____

GENERAL LIABILITY COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

LEGAL MALPRACTICE-PRIMARY COVERAGE:

Provider: Lawyers Mutual
Address: P.O. Box 1929
Cary, NC 27512
Phone: 800-662-8843

LEGAL MALPRACTICE EXCESS COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

VALUABLE PAPERS COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

CLOSING A LAW PRACTICE

OFFICE OVERHEAD/DISABILITY INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

HEALTH INSURANCE:

Insurer Name: _____
Address: _____

Phone: _____
Policy No.: _____
Persons Covered: _____
Contact Person: _____

DISABILITY INSURANCE:

Insurer Name: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

LIFE INSURANCE:

Insurer Name: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

CYBER-LIABILITY INSURANCE:

Insurer Name: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

WORKERS' COMPENSATION INSURANCE:

Insurer Name: _____
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:

Institution: _____

Box No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

Items Stored: _____

CLOSING A LAW PRACTICE

Institution: _____
Box No.: _____
Address: _____

Phone: _____
Obtain Key From: _____
Address: _____

Phone: _____
Other Signatory: _____
Address: _____

Phone: _____
Items Stored: _____

Institution: _____
Box No.: _____
Address: _____

Phone: _____
Obtain Key From: _____
Address: _____

Phone: _____
Other Signatory: _____
Address: _____

Phone: _____
Items Stored: _____

LEASES:

Item Leased: _____
Lessor: _____
Address: _____

Phone: _____
Expiration Date: _____

Item Leased: _____
Lessor: _____
Address: _____

Phone: _____
Expiration Date: _____

Item Leased: _____
Lessor: _____
Address: _____

Phone: _____
Expiration Date: _____

Item Leased: _____
Lessor: _____
Address: _____

Phone: _____
Expiration Date: _____

LAWYER TRUST ACCOUNT:

IOLTA:

Institution: _____
Address: _____

Phone: _____
Account Number: _____
Other Signatory: _____
Address: _____

Phone: _____

INDIVIDUAL TRUST ACCOUNT:

Name of Client: _____
Institution: _____
Address: _____

Phone: _____
Account Number: _____
Other Signatory: _____
Address: _____

Phone: _____

GENERAL OPERATING ACCOUNT:

Institution: _____
Address: _____

Phone: _____
Account Number: _____
Other Signatory: _____
Address: _____

Phone: _____

CLOSING A LAW PRACTICE

Institution: _____
Address: _____

Phone: _____
Account Number: _____
Other Signatory: _____
Address: _____

Phone: _____

GENERAL OPERATING ACCOUNT: (CONTINUED)

Institution: _____
Address: _____

Phone: _____
Account Number: _____
Other Signatory: _____
Address: _____

Phone: _____

BUSINESS CREDIT CARD:

Institution: _____
Address: _____

Phone: _____
Account Number: _____
Other Signatory: _____
Address: _____

Phone: _____

Institution: _____
Address: _____

Phone: _____
Account Number: _____
Other Signatory: _____
Address: _____

Phone: _____

MAINTENANCE CONTRACTS:

Item Covered: _____
Vendor Name: _____
Address: _____

Phone: _____
Expiration: _____

Item Covered: _____
Vendor Name: _____
Address: _____

Phone: _____
Expiration: _____

Item Covered: _____
Vendor Name: _____
Address: _____

Phone: _____
Expiration: _____

COMPUTER DATA:

Email Host: _____

Cloud Storage Host: _____

Website Host: _____

Social Media Identities: _____

Location of External _____

Hard Drive: _____

ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES:

State of: _____

Bar Address: _____

Phone: _____

Bar ID #: _____

State of: _____

Bar Address: _____

Phone: _____

Bar ID #: _____

State of: _____

Bar Address: _____

Phone: _____

Bar ID #: _____

N.C. GEN. STAT. §84-28(j); 27 N.C. ADMIN. CODE, 1B §.0122

§ 84-28. Discipline and disbarment.

(a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the Council under such rules and procedures as the Council shall adopt as provided in G.S. 84-23.

(b) The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice under G.S. 84-4.1, individually or in concert with any other person or persons, shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise:

- (1) Conviction of, or a tender and acceptance of a plea of guilty or no contest to, a criminal offense showing professional unfitness;
 - (2) The violation of the Rules of Professional Conduct adopted and promulgated by the Council in effect at the time of the act;
 - (3) Knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct; failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter; or contempt of the Council or any committee of the North Carolina State Bar.
- (c) Misconduct by any attorney shall be grounds for:
- (1) Disbarment;
 - (2) Suspension for a period up to but not exceeding five years, any portion of which may be stayed upon reasonable conditions to which the offending attorney consents;
 - (3) Censure – A censure is a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or members of the public, but the protection of the public does not require suspension of the attorney's license;
 - (4) Reprimand – A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct, but the protection of the public does not require a censure. A reprimand is generally reserved for cases in which the attorney's conduct has caused harm or potential harm to a client, the administration of justice, the profession, or members of the public; or
 - (5) Admonition – An admonition is a written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

Any order disbaring or suspending an attorney may impose reasonable conditions precedent to reinstatement. No attorney who has been disbarred by the Disciplinary Hearing Commission, the Council, or by order of any court of this State may seek reinstatement to the practice of law prior to five years from the effective date of the order of disbarment. Any order of the Disciplinary Hearing Commission or the Grievance Committee imposing an admonition, reprimand, censure, or stayed suspension may also require the attorney to complete a reasonable amount of continuing legal education in addition to the minimum amount required by the North Carolina Supreme Court.

(d) Any attorney admitted to practice law in this State, who is convicted of or has tendered and has had accepted, a plea of guilty or no contest to, a criminal offense showing professional unfitness, may be disciplined based upon the conviction, without awaiting the outcome of any appeals of the conviction. An order of discipline based solely upon a conviction of a criminal offense showing professional unfitness shall be vacated immediately upon receipt by the Secretary of the North Carolina State Bar of a certified copy of a judgment or order reversing the conviction. The fact that the attorney's criminal conviction has been overturned on appeal shall not prevent the North Carolina State Bar from conducting a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

(d1) An attorney who is disciplined as provided in subsection (d) of this section may petition the court in the trial division in the judicial district where the conviction occurred for an order staying the disciplinary action pending the outcome of any appeals of the conviction. The court may grant or deny the stay in its discretion upon such terms as

it deems proper. A stay of the disciplinary action by the court shall not prevent the North Carolina State Bar from going forward with a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

- (e) Any attorney admitted to practice law in this State who is disciplined in another jurisdiction shall be subject to the same discipline in this State: Provided, that the discipline imposed in the other jurisdiction does not exceed that provided for in subsection (c) above and that the attorney was not deprived of due process in the other jurisdiction.
- (f) Upon application by the North Carolina State Bar, misconduct by an attorney admitted to practice in this State may be restrained or enjoined where the necessity for prompt action exists regardless of whether a disciplinary proceeding in the matter of the conduct is pending. The application shall be filed in the Superior Court of Wake County and shall be governed by the procedure set forth in G.S. 1A-1, Rule 65.
- (g) Any member of the North Carolina State Bar may be transferred to disability inactive status for mental incompetence, physical disability, or substance abuse interfering with the attorney's ability to competently engage in the practice of law under the rules and procedures the Council adopts pursuant to G.S. 84-23.
- (h) There shall be an appeal of right from any final order imposing admonition, reprimand, censure, suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status to the North Carolina Court of Appeals. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any appeal shall be as provided by statute or court rule for appeals in civil cases. A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of any appeal of right.
- (i) The North Carolina State Bar may invoke the process of the General Court of Justice to enforce the powers of the Council or any committee to which the Council delegates its authority.
- (j) The North Carolina State Bar may apply to appropriate courts for orders necessary to protect the interests of clients of missing, suspended, disbarred, disabled, or deceased attorneys.

The senior regular resident judge of the superior court of any district wherein a member of the North Carolina State Bar resides or maintains an office shall have the authority and power to enter orders necessary to protect the interests of the clients, including the authority to order the payment of compensation by the member or the estate of a deceased or disabled member to any attorney appointed to administer or conserve the law practice of the member. Compensation awarded to a member serving under this section awarded from the estate of a deceased member shall be considered an administrative expense of the estate for purposes of determining priority of payment. (1933, c. 210, s. 11; 1937, c. 51, s. 3; 1959, c. 1282, ss. 1, 2; 1961, c. 1075; 1969, c. 44, s. 61; 1975, c. 582, s. 5; 1979, c. 570, ss. 6, 7; 1983, c. 390, ss. 2, 3; 1985, c. 167; 1987, c. 316, s. 4; 1989, c. 172, s. 2; 1991, c. 210, s. 5; 1995, c. 431, s. 18.)

.0122 Appointment of Counsel to Protect Clients' Interests When Attorney Disappears, Dies, or is Transferred to Disability Inactive Status.

- (a) Whenever a member of the North Carolina State Bar has been transferred to disability inactive status, disappears, or dies and no partner or other member of the North Carolina State Bar capable of protecting the interests of the attorney's clients is known to exist, the senior resident judge of the superior court in the district of the member's most recent address on file with the North Carolina State Bar, if it is in this state, will be requested by the secretary to appoint an attorney or attorneys to inventory the files of the member and to take action to protect the interest of the member and his or her clients.
- (b) Any member so appointed will not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom such files relate except as necessary to carry out the order of the court which appointed the attorney to make such inventory.

History Note: Statutory Authority G.S. 84-23; G.S. 84 - 28(j)
Readopted Effective December 8, 1994.

RPC 16

October 24, 1986

Files of a Deceased Lawyer

Opinion rules that a lawyer appointed conservator of a deceased lawyer's files should comply with the instructions of the court and seek to preserve valuable documents and confidential information.

Inquiry:

Attorney A represents Client W, the widow of Attorney Y. Attorney Y practiced law in the area for approximately twenty-five years, during which time he accumulated numerous files. Attorney A has been appointed conservator of Attorney Y's files by the senior resident Superior Court Judge. As conservator, and counsel for Client W, Attorney A contacted each of Attorney Y's clients who had active files in his office at the time of Attorney Y's death. Most of those clients have picked up their files.

Attorney Y was associated with one other lawyer at the time of his death. Shortly after Y's death, that other lawyer opened up his own practice in a separate building.

Client W is planning to sell the office building where Y's practice was located and needs to do something with the numerous files that were accumulated over the years. Specifically, is the estate authorized to file these files in another attorney's office or in the Clerk's Office if such accommodations can be arranged? If those accommodations cannot be arranged, must the estate store these files indefinitely? Can the estate attempt to notify the clients involved by legal advertisement in the paper and then physically destroy all files not picked up in a reasonable period of time? Attorney A is concerned about problems of client confidentiality if files are turned over to another law firm. Attorney A is also concerned about the loss of valuable documents if files are shredded and destroyed.

What may Attorney A ethically do to handle the problem of Y's files?

Opinion:

The Bar cannot speak as to what the estate may or may not do as the estate is not an attorney bound by the Rules of Professional Conduct. Nor is Attorney Y's widow subject to the Rules. Nor can the Bar speak to any legal questions of the client's rights to their files.

Attorney A, as counsel for W and as conservator of Y's files, should seek to advise W reasonably according to any potential obligations she may have and should seek direction and approval from the court which appointed him conservator. There appear to be few ethics opinions dealing with ultimate disposition of the files of a deceased lawyer, particularly inactive files. On the other hand, many jurisdictions have dealt with the question of what an attorney or firm may do with their own files which become inactive and have recognized that even an

attorney in active practice is not required to retain entire files indefinitely. Generally, opinions have suggested that an attorney concerned with his own files may notify clients that inactive files may be destroyed within a reasonable period of time if the client does not pick up the file or direct that it be transferred to another attorney. In destroying files, opinions have generally suggested that attorneys should not destroy items which actually belong to the client, information useful in the assertion or defense of a client's position in a matter for which the statute of limitations is not expired, or information which the client may need, does not already have, and which is not readily fillable otherwise. Generally, attorneys should also retain accounts or records of their receipts or disbursements and an index or identification of destroyed files. In determining what should be destroyed, the files should be screened and determinations made according to the nature and contents of those files. See ABA Informal Opinion 1384 (March 14, 1977); Kentucky Bar Association Opinion E-300 (January 11, 1985); New York City Bar Association Opinion 82-15 (February 6, 1985); Maryland Opinion 85-77, 801 ABA/BNA Lawyer's Manual on Professional Conduct at 4359.

As an attorney, Attorney A is not in the same position as he would be with regard to the disposition of his own files, but should have due regard to the considerations involved in disposition of files of an attorney. Thus, Attorney A should take note of confidential information as governed by Rule 4 of the Rules of Professional Conduct and should avoid simply transferring a case to another attorney, without the client's instruction or consent, for handling by that other attorney. Storage in a reasonable location, whether in another attorney's office or elsewhere, would certainly be appropriate. Otherwise, Attorney A should comply with the direction of the court which appointed him conservator and follow his personal conscience and sense of professional responsibility in making every effort to see that files are dealt with appropriately.

RPC 48

October 28, 1988

Law Firm Dissolution

Opinion outlines professional responsibilities of lawyers involved in a law firm dissolution.

Inquiry:

What are the ethical responsibilities of lawyers involved in a firm dissolution?

Opinion:

The dissolution of a law firm involves four potential areas of ethical concern for the principals involved: (a) the continuity of service to clients; (b) the right of clients to counsel of their choice; (c) the obligation of the principals to deal honestly with each other; (d) the involvement of clients in the disputes of the principals; and (e) the protection of the property of clients entrusted to the firm.

A. The Continuity of Service to Clients

Canon VII of the North Carolina Rules of Professional Conduct requires that an attorney represent his or her client zealously. This Canon, and the Rules adopted pursuant to it, require that the attorneys involved in dissolution take care that they continue to fulfill the lawful objectives of their clients.

While the client may have a contractual relationship with the firm, any professional relationships with regard to legal matters are necessarily personal as between the client and at least one identifiable attorney. Any attorney involved in such a professional relationship with a client at the time of dissolution has an obligation to continue the representation, as contemplated by the contract of employment, until the matter is concluded or, until the attorney is required or permitted to withdraw.

B. The Right of Clients to Counsel of Their Choice

The attorneys also must take care to notify present clients of the change in the relationship among the attorneys. In giving this notice, the right of clients freely to choose counsel must be preserved. Ideally, the attorneys will agree on the notice to be sent, who sends it, to whom it is sent, and when it is sent. CPR 24. In the absence of agreement, any attorneys in the firm who have had significant professional contact with the client may send such a notice. Each attorney in the firm who has an ongoing professional relationship with the client has an obligation to see to it that such a notice is sent. Rule 6(b)(1) and (2).

The attorneys must take particular care in notifying a present client for whom the firm is handling a current matter. In addition to notice of the change, such a client should be informed of the status of the matter, the attorney or attorneys

who have been working on the matter, and should be asked to select an attorney or attorneys to continue the matter to conclusion. CPR 24, Rule 6(b)(1) and (2). Ideally, this communication to present clients should be sent, by agreement, over the signatures of those attorneys who have had a professional relationship with the client. Any attorney who has had such contact with the client may communicate the information and make the request.

C. The Obligation of the Principals to Deal Honestly With Each Other

In allocating the firm's personal property, accounts receivable, fees to be received in the future for work in progress, and other assets and liabilities of the firm, the lawyers must deal with each other in compliance with their obligation to refrain from conduct involving dishonesty, fraud, deceit, or misrepresentation. Rule 1.2(c).

D. The Involvement of Clients in the Disputes of the Principals

If the dissolution gives rise to disputes among the lawyers about their respective rights to the firm's personal property, accounts receivable, fees to be received in the future for work in progress, or other issues, the attorneys should strive to resolve such disputes amicably without involving the clients in negotiations or litigation. If the attorneys are unable to resolve such disputes by agreement, they should resolve them, where possible, by arbitration.

E. The Protection of the Property of Clients Entrusted to the Firm

A full and complete accounting of all fiduciary property of clients entrusted to the firm should be made to each client, with written request for their return or future disposition. Failure of the client to respond should be taken as a request for the return of said fiduciary property to the client, unless governed by a Court Order or proceeding to the contrary.

RPC 133

July 17, 1992

RECYCLING OFFICE WASTE PAPER

Opinion rules that a law firm may make its waste paper available for recycling.

Inquiry #1:

What kind of guarantees must be obtained from a recycling company before a law office may give the company its waste paper products?

Opinion #1:

A lawyer has a professional obligation under Rule 4 of the Rules of Professional Conduct to protect confidential information in his or her possession from unauthorized disclosure. This obligation extends to the handling of waste paper products embodying confidential information generated in the ordinary course of legal business. However, this professional obligation does not generally compel any particular mode of trash handling or disposal. In particular, there is no general requirement that waste paper which may evidence client confidences be shredded. It is sufficient in most cases for the responsible attorney to ascertain that those persons or entities responsible for the disposal of waste paper employ procedures which effectively minimize the risk that confidential information might be disclosed. The responsible attorney should take particular care to ensure that custodial personnel under his or her direct supervision are conscious of the fact that confidential information may be present in waste paper products and are aware that the attorney's professional obligations require that there be no breach of confidentiality in regard to such information. So long as the attorney takes the precautions noted above, there is no reason why his or her law firm's waste paper products could not be made available for recycling.

Inquiry #2:

Do any of a law firm's waste paper products need to be shredded to comport with ethical considerations of client confidentiality?

Opinion #2:

A law firm will occasionally generate waste paper embodying confidential information which is so sensitive that the attorney's professional obligations under Rule 4 can only be satisfied by the paper's retention or its destruction. Under such circumstances shredding the waste paper would be appropriate.

RPC 178

October 21, 1994

RELEASE OF CLIENT'S FILE

Opinion examines a lawyer's obligation to deliver the file to the client upon the termination of the representation when the lawyer represents multiple clients in a single matter.

Editor's Note: This opinion was originally published as RPC 178 (Revised).

Inquiry #1:

Attorney represented Client A on complicated litigation which resulted in the settlement and voluntary dismissal of all claims. Numerous documents were filed with the court and exchanged between the adverse parties. Client A agreed to reimburse Attorney for all out-of-pocket expenses associated with the representation. After the settlement agreement was signed, Client A obtained new counsel who required Client A to sign a release requesting Client A's file from Attorney. The release provides that only authorized out-of-pocket expenses will be reimbursed. Client A then requested a copy of the entire file from Attorney but refused to authorize Attorney to incur any out-of-pocket expenses. Is Attorney ethically required to incur the expense of copying the seven cartons of papers which constitute the file when Client A agreed to pay for the out-of-pocket expenses associated with the representation?

Opinion #1:

Yes, if Attorney would like to keep a copy of the documents in the file for her own records. Rule 2.8(a)(2) of the Rules of Professional Conduct requires a lawyer who is withdrawing from a case to deliver to the client all papers and property to which the client is entitled. By requiring a withdrawing or dismissed lawyer to provide the client with all of his or her papers and property, Rule 2.8(a)(2) recognizes that the file belongs to the client. See CPR 3, CPR 315, CPR 322 and CPR 328.

CPR 3 explains that a lawyer must provide a former client with originals or copies of anything in the file which would be helpful to the new lawyer but that "[t]he discharged lawyer's notes made for his own future reference and study and similar things not representing a completed work product need not be turned over."

Inquiry #2:

If Attorney represented several other clients in the same matter in which she represented Client A, is Attorney required to incur the expense of copying the file for each of the several clients she represented in the litigation?

Opinion #2:

No. Attorney must only incur the expense for making one set of copies to keep as her own record of the file. However, if Attorney has represented multiple clients on the same matter, she may give the original file to the client that the other clients agree should receive the original file and the other clients may make their own arrangements to get a copy of the file. If the clients cannot agree among themselves as to which client should receive the original file, Attorney may give the file to the client that the majority of the clients designate as the person who should receive the file or she may retain the file until such time as she receives a written agreement from all of the clients or a court order indicating to whom she should give the original file.

Inquiry #3:

Attorney is still representing a majority of the clients on the particular matter and the original file is required for the representation of the remaining clients. If Client A decides to obtain new legal counsel, is Attorney required to incur the expense of copying the file for Client A?

Opinion #3:

No. She must give Client A a reasonable opportunity to make copies of the materials in the file but does not have to do so at her own expense. However, any original documents in the file that relate solely to Client A must be given to Client A. If those original documents are not given to Client A, Attorney must make a copy for Client A at Attorney's expense and, until the original is provided to Client A, Attorney must provide and pay for copies of the original document requested by Client A. See RPC 169.

Inquiry #4:

Who is entitled to retain the original documents procured, filed, or exchanged on behalf of all the clients?

Opinion #4:

See Opinion #2 above. If the clients cannot agree who should get custody of the file, Attorney must give each client a reasonable opportunity to copy the materials in the file at his or her own expense. Attorney may withhold the delivery of the original file to one of the clients until she receives a court order or written agreement of the clients indicating that the original file may be released to a designated individual.

Inquiry #5:

If Attorney delivered original documents, but not the entire file, to Client A during the course of the representation, has she fulfilled the requirement under Rule 2.8(a)(2) to deliver the file to the client so that she may charge Client A for additional copies of these original documents?

Opinion #5:

When Attorney delivered original documents to Client A during the course of the representation, she fulfilled the requirements of Rule 2.8(a)(2) with regard to the delivery of those original documents. See RPC 169. If Attorney kept copies of the original documents, Attorney may charge Client A for any additional copies of those documents which Attorney makes for Client A, but Attorney may not condition the delivery of these copies upon the payment of her bill for services. See RPC 169. However, to the extent that there are other documents in the file, either originals or copies, which were not previously provided to Client A, Attorney has not fulfilled the requirement under Rule 2.8(a)(2) to deliver the entire file to the client upon the conclusion of the representation. With regard to Attorney's duty to deliver the file when she has multiple clients, see Opinions #2, #3 and #4 above.

Inquiry #6:

If the original documents were timely filed with the court or delivered to a third party on behalf of Client A and/or the other clients, has Attorney fulfilled the requirement under Rule 2.8(a)(2) to deliver the file to the client so that she may charge Client A and/or the other clients for additional copies of these original documents?

Opinion #6:

No. See Opinion #5 above.

RPC 209

January 12, 1996

Disposing of Closed Client Files

Opinion provides guidelines for the disposal of closed client files.

Inquiry #1:

Attorney A has been in practice for 20 years. Whenever he completes a matter for a client, he closes the client's file and retains it in his office. Attorney A has run out of space to store files in his office. The expense of renting storage space to store files is prohibitive. May Attorney A dispose of the closed client files?

Opinion #1:

Yes, subject to certain requirements.

The original file belongs to the client and, because of the general fiduciary duty to safeguard the property of a client, a lawyer should store a client's file in a secure location where client confidentiality can be maintained. See Rule 4 and Rule 10.1 of the Rules of Professional Conduct, and RPC 79.

With the consent of the client, a closed file may be destroyed at any time. Absent the client's consent to disposal of a file, a closed file must be retained for a minimum of six years after the conclusion of the representation. Six years is the required minimum period for retaining a closed client file because this retention period is consistent with retention period for records of client property set forth in Rule 10.2(b). Of course, the statute of limitations may require the retention of a closed file for more than six years.

If six years have not passed since a client's file became inactive, the file may only be destroyed with the consent of the client or, after notice to the client, the client fails to retrieve the file. The client should be contacted and advised that the lawyer intends to destroy the file unless the client retrieves the file or, within a reasonable period of time, directs that the file be transferred to another lawyer. See RPC 16. If the client indicates that he or she does not wish to retrieve the file, the lawyer may dispose of the file. On the other hand, if the client indicates that he or she would like to retrieve the file, the client must be given a reasonable opportunity to do so. If the client fails to retrieve the file within a reasonable period of time, the file may be destroyed. RPC 16. If the client fails to retrieve the file after notice, the lawyer should review the file and retain any items in the file that belong to the client or contain information useful in the assertion or defense of the client's position in a matter for which the statute of limitations has not expired. See RPC 16. These items should be retained until the client consents to their destruction or retention is no longer required by law or necessary to protect the client's rights.

After the passage of six years, the lawyer is not required to notify the client that the file will be destroyed. However, if not previously reviewed and purged of the client's possessions, the lawyer should review the file and retain any items that belong to the client. These items should be returned to the client or retained in a secure place until retrieved by the client or until the items are deemed abandoned and escheat to the state under Chap. 116B of the North Carolina General Statutes. The remaining records in the file may be destroyed.

A record should be maintained of all destroyed client files. RPC 16.

Inquiry #2:

Do closed client files have to be destroyed or disposed of in a particular manner?

Opinion #2:

No particular method of destroying files is prescribed by the Rules of Professional Conduct. However, if closed files are destroyed, the method chosen must preserve client confidentiality. See Rule 4. RPC 133 ruled that a law firm may recycle its waste paper if the responsible attorney can "ascertain that those persons or entities responsible for the disposal of waste paper employ procedures which effectively minimize the risk that confidential information might be disclosed." When client files are destroyed, similar precautions should be taken.

Inquiry #3:

Attorney A has in storage not only the files of his own clients but also the client files of lawyers who were formerly his law partners. What should Attorney A do with these client files?

Opinion #3:

Although the files belong to clients of lawyers other than Attorney A, because Attorney A has retained possession of these files, he has a fiduciary obligation to see that the files are properly handled. A former client is most likely to look for the attorney who previously handled his or her matter when trying to locate a legal file. Therefore, Attorney A may return these files to the original lawyers. Alternatively, Attorney A may dispose of the files in a manner that is consistent with the guidelines set forth in this opinion.

RPC 234

October 18, 1996

ELECTRONIC STORAGE OF CLIENT'S File

Opinion rules that an inactive client file may be stored in an electronic format provided original documents with legal significance are preserved and the documents in the electronic file can be reproduced on paper.

Inquiry #1:

RPC 209 requires a lawyer to retain a client's file for six years after the file becomes inactive. During the six years, the file may only be destroyed with the consent of the client or, after notice to the client, the client fails to retrieve the file. Prior to the expiration of the six-year period, may a law firm convert the paper documents in a client's file into an electronic format, such as magnetic or optical disks readable by computer, store the disks, and destroy the original paper file?

Opinion #1:

Yes, provided: (1) original documents with legal significance, such as wills, contracts, stock certificates, etc., are culled from the paper file and stored in a safe place or returned to the client; and (2) the documents stored in an electronic format can be reproduced in a paper format. Rule 2.8(a)(1) and RPC 209.

NC STATE BAR LETTER NOTIFYING TRUSTEE OF APPOINTMENT

VIA US Mail

[Trustee Name]

[Address]

Re: Trustee of [Atty Name] Law Practice

Dear [Trustee]:

Please find enclosed for your review three copies of a draft petition and proposed orders seeking your appointment as Trustee for the law practice of [Attorney Name]. Also enclosed are a draft petition seeking your discharge as Trustee, a proposed order discharging you as Trustee, and a handbook prepared by the State Bar for use by law practice Trustees.

When you are satisfied with the content of the petition and order seeking your appointment, please file the petition in the [County Name] County Superior Court and present the proposed order to the Senior Resident Superior Court Judge for entry. Return a file stamped copy of the petition and order to me in the enclosed, self-addressed envelope, for the State Bar's records.

As we have discussed in our recent telephone conversations, the first task of the Trustee is to determine what active client matters need immediate attention and to contact those clients to inform them of the need to retain new counsel. As Trustee, you are not expected to serve as counsel for [Attorney Name]'s clients, although you may do so if you wish and the clients consent. Depending upon the urgency of the pending legal matters, you may need to contact some clients by telephone and/or seek a continuance of scheduled court hearings, and the like. You may consider notifying the clerks of court where lawsuits are pending to seek additional assistance in seeing that special attention is given to scheduling matters in [Mr. Attorney Last Name]'s ongoing cases, to the extent that [Mr. Attorney Last Name] was scheduled to make court appearances for clients and to the extent that he/she was required to make filings for any estates. For non-emergency cases, we recommend contacting clients to notify them of [Mr. Attorney Last Name]'s death and their need to retain new counsel by mailing a form letter. There are some sample letters in the handbook.

In the event that you decide to not keep [Mr. Attorney Last Name]'s office staffed and open full-time, you may consider scheduling blocks of time for [Mr. Attorney Last Name]'s clients to pick up their files. Regardless, you should make an inventory of all files and should keep track of which clients pick up their files. Before turning over client files, you may wish to obtain and photocopy appropriate forms of picture identification. We suggest that you have clients sign an acknowledgment of receipt of their file. Samples of such acknowledgments are in the trustee handbook. In order to be discharged as Trustee when your duties are completed, you will have to submit to the court a list of all client files, a list of those files picked up by clients and a list of all client files not picked up. Please keep this in mind when organizing the inventory of files and client receipts. It may be useful at this point for you to review the enclosed draft petition seeking your discharge as Trustee and the proposed order so that you will be familiar with what is required to complete your duties as Trustee.

To the extent that [Mr. Attorney Last Name] maintained inactive client files at [his] office, a reasonable effort should be made to inventory those files and to contact clients to offer them a chance to pick up their files before the files are destroyed by order of the Court. See RPC 16 and RPC 209 for some guidance on your responsibilities with respect to inactive (or closed) client files. Copies of these ethics opinions are enclosed for your convenience. Some Trustees choose to limit their inventory of closed files to those files in which the representation was concluded within the last six (6) years, which is the required minimum for retaining closed files pursuant RPC 209. Some attorneys chose a longer period, such as ten (10) years, because the statute of limitations may require that a particular file be retained for longer than six (6) years. Regardless, you should seek direction and approval of the court which appoints you in formulating a plan for disposal of [Mr. Attorney Last Name]'s files. What actions constitute reasonable attempts to contact the clients before

destroying closed files will depend on the number of closed files as well as other circumstances. You should seek the court's instructions if you are uncertain as to exactly what steps ought to be taken in order to contact the clients before disposing of files. You should not dispose of client files without an order of the court authorizing you to do so.

In addition to immediately contacting clients with pending matters, you should promptly secure [Mr. Attorney Last Name]'s trust and/or fiduciary accounts by notifying the financial institutions where such accounts are maintained that [Mr. Attorney Last Name] has died. It may be necessary for you to execute new directives concerning signatory authority for the accounts. You should also promptly obtain the account records in order to identify the ownership of any funds in such accounts, so that the clients/ beneficiaries may be reimbursed, or their funds forwarded as they may direct. The enclosed Order authorizes you to secure the accounts and obtain records from the bank(s), to the extent that trust account records are not on file in [Mr. Attorney Last Name]'s office. If you need help in obtaining the records and funds or preparing an accounting, please let me know.

Although the order appointing you as Trustee gives you the general authority to disburse funds from the trust and/or fiduciary accounts, it is probably wise to get another order specifically authorizing disbursement once you have determined what funds are to be disbursed and to whom. You will, of course, be required to account to the court for all funds and disbursements.

When you complete your duties, the last step in the process is to apply to the court for discharge. I have enclosed a draft petition seeking your discharge as Trustee. Please contact me for assistance in finalizing this pleading when the time comes. Again, it would be helpful for you to review the draft order at this time so that you are more familiar with what the court may require in order to discharge you upon completion of your duties.

You should keep track of your time and expenses incurred in winding down [Mr. Attorney Last Name]'s practice. You should also keep track of the time spent by your clerical staff. The court can award payment of counsel fees to a Trustee in the event of death; such fees may be paid as administrative expenses of the estate. N.C. Gen. Stat. 84-280. It is probably a good idea to seek interim orders of the court providing for payment of your fees and expenses as incurred if you desire to be promptly compensated by the Estate. Let me know if you need assistance in drafting a notice of hearing and petition seeking payment of your interim fees and expenses. You should present summaries of your services and expenses, along with any such interim or final orders authorizing payment of your fees, to the personal representative of the Estate and to the clerk of court in order to put the estate on notice of your claim.

[In the event of disability/disbarment/abandonment:

In the event that <Mr. Attorney Last Name> is unable to pay your fees, the State Bar would be in a position to pay you a modest fee in compensation for your time. As you proceed with the trusteeship of <Mr. Attorney Last Name>'s practice, please send me periodic statements reporting your time and expenses incurred so that I may advise the State Bar's Executive Director, Tom Lunsford. In any order discharging you as Trustee, it is important that the court set the fee to be paid to you for your services as Trustee.]

[In the event of death:

I am certain that you will have a number of questions about how to handle the closure of <Mr. Attorney Last Name>'s law practice. Call me or any of the other staff attorneys here at the N.C. State Bar if you need help or advice. Again, thank you for undertaking this very important service to the profession, the public, and <Mr. Attorney Last Name>'s family.]

With kind regards, I am

Very truly yours,

Larissa J. Erkman
Deputy Counsel

Enclosures

VERIFIED PETITION FOR ORDER APPOINTING TRUSTEE OF DECEASED ATTORNEY'S LAW PRACTICE

STATE OF NORTH CAROLINA

COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
JD# JUDICIAL DISTRICT
FILE # _____

IN RE: ATTY NAME,
ATTORNEY AT LAW.

VERIFIED PETITION FOR ORDER
APPOINTING TRUSTEE OF DECEASED
ATTORNEY'S LAW PRACTICE

Pursuant to N.C. Gen. Stat. § 84-280 and 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0122 of the Discipline & Disability Rules of the North Carolina State Bar, the North Carolina State Bar, by and through its Director, petitions and requests the Resident Superior Court Judge of the [Judicial District #] District to enter an order appointing a member of the Judicial District Bar to serve as Trustee of the law practice of [Mr./Ms.] [Attorney Last Name] due to [his/her] death. In support of this petition, the North Carolina State Bar shows the Court as follows:

According to the records of the North Carolina State Bar, [Mr./Ms.] [Attorney Last Name] was licensed to practice law [date of license]. At the time of [his/her] death, [Mr./Ms.] [Attorney Last Name] practiced law in [County Name] County, North Carolina.

According to the records of the North Carolina State Bar, the last address of record for [Mr./Ms.] [Attorney Last Name] is [address].

[Mr./Ms.] [Attorney Last Name] died on or around [date of death].

At the time of [his/her] death, [Mr./Ms.] [Attorney Last Name] had no partners or associates capable of winding down [his/her] law practice and ensuring that the interests of [his/her] clients and/or former clients are protected.

On information and belief, there remain funds belonging to clients or third parties on deposit in trust or fiduciary accounts held solely in the name of [Mr./Ms.] [Attorney Last Name]. At the time of [his/her] death, [Mr./Ms.] [Attorney Last Name] had no partners or associates capable of carrying out [his/her] obligations under Rules 1-15.1 and 1-15.2 under the Revised Rules of Professional Conduct.

[Trustee Name], an attorney licensed to practice in North Carolina and a member in good standing of [Judicial District #] Bar, has indicated that [he/she] is willing to serve as trustee of the North Carolina law practice of [Mr./Ms.] [Attorney Last Name], pursuant to Section .0122 of the Discipline & Disability Rules of the North Carolina State Bar, for purposes of protecting the interests of [Mr./Ms.] [Attorney Last Name]'s clients.

[Trustee Name]'s mailing address is: [Trustee's Address].

WHEREFORE, the Petitioner prays for:

An order appointing [Trustee Name], an attorney licensed to practice in North Carolina and a member in good standing of the [Judicial District #] Judicial District Bar, to serve as trustee of the law practice of [Mr./Ms.] [Attorney Last Name], and authorizing [Trustee Name] (hereafter “the Trustee”) to gain possession of [Mr./Ms.] [Attorney Last Name]’s client files, to secure [Mr./Ms.] [Attorney Last Name]’s trust and/or fiduciary accounts, to gain possession of [Mr./Ms.] [Attorney Last Name]’s attorney trust and/or fiduciary account records (including all bank statements, all canceled checks (front and back), all deposit slips, all check stubs and all client ledger cards) and to take such actions as are necessary to protect the interests of the clients and/or former clients of [Mr./Ms.] [Attorney Last Name]; and For such other and further relief as the Court deems appropriate.

Respectfully submitted, this the day of 20__.

L. Thomas Lunsford,
Director
The N.C. State Bar
P.O. Box 25908
Raleigh, N.C. 27611
(919) 828-4620

CLOSING A LAW PRACTICE

VERIFICATION

I, L. Thomas Lunsford, after being first duly sworn, depose and say as follows:

I am the Director of the North Carolina State Bar.

As Director of the North Carolina State Bar, I am an official custodian of the records of the North Carolina State Bar.

As an official custodian of the records, I hereby certify that the records of the North Carolina State Bar reflect the facts attributed to those records set forth in the foregoing Petition.

I hereby certify that the facts set forth upon information and belief are believed to be true by the Petitioner.

I hereby indicate my request for the appointment of an attorney licensed to practice law in North Carolina as trustee for the law practice of deceased attorney, [Mr./Ms.] [Attorney Last Name], to gain possession of [Mr./Ms.] [Attorney Last Name]'s client files, to secure [Mr./Ms.] [Attorney Last Name]'s trust and/or fiduciary accounts, to gain possession of [Mr./Ms.] [Attorney Last Name]'s attorney trust and/or fiduciary account records and funds, and to protect the interests of [his/her] clients and/or former clients.

This the _____ day of _____, 20____.

L. Thomas Lunsford, Director
The North Carolina State Bar

I, _____, a Notary Public of the County and State aforesaid mentioned, certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, 20____.

[Notary Public]

My commission expires: _____

ORDER APPOINTING TRUSTEE OF DECEASED ATTORNEY'S LAW PRACTICE

STATE OF NORTH CAROLINA

COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 BEFORE THE RESIDENT
 SUPERIOR COURT JUDGE OF THE
 JD# JUDICIAL DISTRICT

IN RE: ATTY NAME,
 ATTORNEY AT LAW.

ORDER APPOINTING TRUSTEE
 OF DECEASED ATTORNEY'S
 LAW PRACTICE

THIS CAUSE coming before the Resident Superior Court Judge of the [Judicial District #] District, pursuant to N.C. Gen. Stat. § 84-280 and 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0122 of the Discipline & Disability Rules of the North Carolina State Bar, upon the verified petition of the North Carolina State Bar for an order appointing a Trustee of the law practice of [Attorney Name], owing to [his/her] death, and based upon the petition before the Court, the undersigned makes the following:

FINDINGS OF FACT

According to the records of the North Carolina State Bar, [Mr. Attorney Last Name] was licensed to practice law [date of license]. At the time of [his/her] death, [Mr. Attorney Last Name] practiced law in [County Name] County, North Carolina.

According to the records of the North Carolina State Bar, the last address of record for [Mr. Attorney Last Name] is [address].

[Mr. Attorney Last Name] died on or around [date of death].

At the time of death, [Mr. Attorney Last Name] had no partners or associates capable of winding down [his/her] law practice and ensuring that the interests of [his/her] clients and/or former clients are protected.

On information and belief, there remain funds belonging to clients or third parties on deposit in trust or fiduciary accounts held solely in the name of [Mr. Attorney Last Name]. At the time of [his/her] death, [Mr. Attorney Last Name] had no partners or associates capable of carrying out [his/her] obligations under Rules 1-15.1 and 1-15.2 under the Revised Rules of Professional Conduct.

[Trustee Name], an attorney licensed to practice in North Carolina and a member in good standing with the [Judicial District #] Judicial District Bar, has indicated that he/she is willing to serve as trustee of the North Carolina law practice of [Mr. Attorney Last Name], pursuant to Section .0122 of the Discipline & Disability Rules of the North Carolina State Bar, for purposes of protecting the interests of [Mr. Attorney Last Name]'s clients.

[Trustee Name]'s mailing address is: [Trustee's Address].

CLOSING A LAW PRACTICE

BASED UPON THE FOREGOING FINDINGS OF FACT, the undersigned makes the following:
CONCLUSIONS OF LAW

1. The Court has jurisdiction of this cause pursuant to N.C. Gen. Stat. § 84-280.
2. [Attorney Name] has died and has no partners or associates, necessitating the appointment of a member of the [Judicial District #] Judicial District Bar as trustee of [Mr. Attorney Last Name]'s law practice, to gain possession of [Mr. Attorney Last Name]'s client files, to secure [Mr Attorney Last Name]'s trust and/or fiduciary accounts, to gain possession of [Mr. Attorney Last Name]'s trust and/or fiduciary account records (including all bank statements, all canceled checks (front and back), all deposit slips, all check stubs and all client ledger cards), and to take such actions as are necessary to protect the interests of the clients and/or former clients of [Mr. Attorney Last Name].

THE COURT THEREFORE ORDERS THAT:

1. [Trustee Name], an attorney licensed to practice law in North Carolina and a member in good standing with the [Judicial District #] Judicial District Bar, is hereby appointed trustee of the law practice of [Attorney Name].
2. As Trustee, [Trustee Name] is authorized to take such actions as are necessary to obtain possession of any known client files of [Mr. Attorney Last Name] and shall notify [Mr. Attorney Last Name]'s clients of [his/her] death and their need to obtain new counsel. [His/Her] duties as Trustee shall include receiving calendar notices and moving for appropriate continuances in the various courts; returning files to [Mr. Attorney Last Name]'s clients and/or former clients; obtaining all records related to [Mr. Attorney Last Name]'s trust and/or fiduciary account(s); supervising the disbursement of funds from any trust and/or fiduciary accounts to the appropriate persons; and any other act necessary to wind down [Mr. Attorney Last Name]'s practice and protect the interests of [Mr Attorney Last Name]'s clients until all known clients have secured other legal counsel, have chosen to pick up their files and have received all money held in trust for their benefit. As [Trustee Name] is authorized to take such actions as are necessary to identify [Mr. Attorney Last Name]'s trust and fiduciary accounts, as such accounts are defined in Rules 1.15-1 and 1.15-2 of the Revised Rules of Professional Conduct, and to obtain possession of [Mr. Attorney Last Name]'s trust account and fiduciary account records. As Trustee, [Trustee Name] shall take such actions as are necessary to identify the ownership of any funds in such accounts so that the clients/beneficiaries may be reimbursed, or their funds forwarded as they may direct. As Trustee, [Trustee Name] shall maintain adequate accounts of the funds held in [Mr. Attorney Last Name]'s attorney trust or fiduciary accounts and shall account to the Court for approval annually or at the completion of the disbursement of the funds. [He/She] shall be discharged as Trustee upon the completion of [his/her] duties.
3. As Trustee, Trustee Name is hereby authorized to take such actions as are necessary to secure Mr. Atty Last Name's trust and fiduciary accounts, including, but not limited to, executing new directives regarding signatory authority over such accounts. As Trustee, Trustee Name is also authorized to obtain records relevant to Mr. Atty Last Name's attorney trust and/or fiduciary accounts from all financial institutions where accounts in which funds of client or fiduciary funds have been or are deposited by or in the name of Atty Name, and to execute authorizations directing such financial institutions to release copies of all relevant records relating to such accounts to representatives of the North Carolina State Bar.
4. This cause is retained for further orders of this Court.

This the _____ day of _____ 20____.

Resident Superior Court Judge
JD# Judicial District

PETITION FOR ORDER DISCHARGING TRUSTEE OF DECEASED ATTORNEY'S LAW PRACTICE

STATE OF NORTH CAROLINA

COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
JD# JUDICIAL DISTRICT
FILE # _____

IN RE: ATTY NAME,
ATTORNEY AT LAW.

PETITION FOR ORDER
DISCHARGING TRUSTEE OF DECEASED
ATTORNEY'S LAW PRACTICE

NOW COMES, [Trustee Name], Trustee of the law practice of [Attorney Name] ("Trustee"), and petitions the Court for an order discharging [him/her] as trustee of the law practice of [Mr. Attorney Last Name]. In support of the petition, the Trustee respectfully shows:

1. On [Date], upon motion of the N.C. State Bar, the Court appointed [Trustee Name], as Trustee- Conservator of the law practice of [Attorney Name] for the purpose of obtaining possession of files belonging to [Mr. Attorney Last Name]'s clients, securing funds held in [Mr. Attorney Last Name]'s trust and/or fiduciary accounts, obtaining [Mr. Attorney Last Name]'s trust and/or fiduciary account records, and protecting the interests of the clients and/or former clients of [Mr. Attorney Last Name].
2. The undersigned Trustee has now taken all reasonable steps within [his/her] power to fulfill [his/her] obligations as Trustee-Conservator of the law practice of [Mr. Attorney Last Name]. [He/She] has returned or attempted to return all client files to their rightful owners. [He/She] has secured funds held in [Mr. Attorney Last Name]'s trust or fiduciary accounts and has identified or attempted to identify the persons to whom those funds belong.
3. The undersigned Trustee has reviewed [Mr. Attorney Last Name]'s clients' files. An inventory of the client files is attached as Exhibit A.
4. The undersigned Trustee has distributed files to a number of clients and/or former clients of [Mr. Attorney Last Name]. A list of the files which have been returned to [Mr. Attorney Last Name]'s clients is attached hereto as Exhibit B.
5. A number of [Mr. Attorney Last Name]'s clients have not picked up their files, despite receiving notice from the Trustee to do so. [Add description of files remaining to be claimed or distributed to clients and description of steps taken to notify clients. For example: The Trustee now has in his/her possession <number of files> closed client files wherein he/she has written the respective clients and has received no instructions regarding the storage or return of the files]. A list of the files which have not been claimed by the clients is attached hereto as Exhibit C.

CLOSING A LAW PRACTICE

6. Some disposition needs to be made of the remaining files of [Mr. Attorney Last Name]'s former clients. [Add any proposal for storage or disposition of files. For example: The Trustee has indicated that <he/she> is willing to store the remaining closed files at <his/her> law offices located at <address>, and make the files available to the respective clients or their legal representatives should they wish to retrieve them for a period of one year from the date of any order discharging <him/her> as Trustee, at which time <he/she> would destroy any unclaimed files.]
7. The undersigned Trustee has disbursed all funds from any trust and/or fiduciary accounts held by [Mr. Attorney Last Name] to the appropriate persons. An order approving said disbursements is attached hereto as Exhibit D and an accounting of said disbursements is attached thereto.
- 8 [If there is any unclaimed money, it must be reported to the Court].
9. The undersigned Trustee has submitted a summary of [his/her] time and expenses incurred in serving as Trustee of the law practice of [Mr. Attorney Last Name]. The summary of [his/her] time and expenses is attached hereto as Exhibit E. In carrying out [his/her] duties as Trustee-Conservator, the undersigned Trustee has provided services and incurred expenses in the total amount of [dollar amount].

WHEREFORE, the undersigned Trustee respectfully requests the court to enter an order as follows:

1. Discharging [him/her] as Trustee of the law practice of [Mr. Attorney Last Name];
2. Allowing [him/her] to retain the unclaimed files of clients of [Mr. Attorney Last Name] for one year of the date of this order, after which time [he/she] should be authorized to destroy any files of clients of [Mr. Attorney Last Name] that remain unclaimed [or alternative proposal]; and
3. Finding that [he/she] is entitled to reasonable compensation for [his/her] services as Trustee of the law practice of [Mr. Attorney Last Name] and reimbursement of expenses incurred while serving as Trustee of the law practice of [Mr. Attorney Last Name] in the amount of [dollar amount].

This the _____ day of _____, 20__.

Trustee of the Law Practice of Atty Name

ORDER DISCHARGING TRUSTEE

STATE OF NORTH CAROLINA

COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
JD# JUDICIAL DISTRICT

IN RE: ATTY NAME,
ATTORNEY AT LAW.

ORDER DISCHARGING TRUSTEE

THIS MATTER coming on to be heard and being heard by the undersigned Senior Resident Superior Court Judge of the [Judicial District #] District upon the motion of the Trustee herein for an order discharging [him/her] as Trustee of the law practice of [Mr. Attorney Last Name], the Court makes the following:

FINDINGS OF FACT

1. On [date], upon motion of the N.C. State Bar, the Court appointed [Trustee Name], as Trustee- Conservator of the law practice of [Attorney Name] for the purpose of obtaining possession of files belonging to [Mr. Attorney Last Name]'s clients, securing funds held in [Mr. Attorney Last Name]'s trust and/or fiduciary accounts, obtaining [Mr. Attorney Last Name]'s trust and/or fiduciary account records, and protecting the interests of the clients and/or former clients of [Mr. Attorney Last Name].
2. [Trustee Name], Trustee of the law practice of [Mr. Attorney Last Name], has now taken all reasonable steps within [his/her] power to fulfill [his/her] obligations as Trustee-Conservator of the law practice of [Mr Attorney Last Name]. [He/She] has returned or attempted to return all client files to their rightful owners. [He/She] has secured funds held in [Mr. Attorney Last Name]'s trust or fiduciary accounts and has identified or attempted to identify the persons to whom those funds belong.
3. [Trustee Name] has reviewed [Mr. Attorney Last Name]'s clients' files. An inventory of the client files is attached as Exhibit A.
4. [Trustee Name] has distributed files to a number of clients and/or former clients of [Mr. Attorney Last Name]. A list of the files which have been returned to [Mr. Attorney Last Name]'s clients is attached hereto as Exhibit B.
5. A number of [Mr. Attorney Last Name]'s clients have not picked up their files, despite receiving notice from the Trustee to do so. [Add description of files remaining to be claimed or distributed to clients and description of steps taken to notify clients. For example: <Trustee Name> now has in <his/her> possession <# of files> closed client files wherein <he/she> has written the respective clients and has received no instructions regarding the storage or return of the files]. A list of the files which have not been claimed by the clients is attached hereto as Exhibit C.]
6. Some disposition needs to be made of the remaining files of [Mr./Ms.] [Attorney Last Name]'s former clients. [Add any proposal for storage or disposition of files. For example: <Trustee Name> has indicated that <he/she> is willing to store the remaining closed files at <his/her> law offices located at <address>, and make the files available to the respective clients or their legal representatives should they wish to retrieve them for a period of one year from the date of any order discharging <him/her> as Trustee, at which time <he/she> would destroy any unclaimed files.]

CLOSING A LAW PRACTICE

7. [Trustee Name] has disbursed all funds from any trust and/or fiduciary accounts held by [Mr. Attorney Last Name] to the appropriate persons. An order approving said disbursements is attached hereto as Exhibit D and an accounting of said disbursements is attached thereto.
8. [If there was any unclaimed money, its disposition must be described here].
9. [Trustee Name] has submitted a summary of [his/her] time and expenses incurred in serving as Trustee of the law practice of [Mr. Attorney Last Name]. The summary of [his/her] time and expenses is attached hereto as Exhibit E. In carrying out [his/her] duties as Trustee-Conservator, the undersigned Trustee has provided services and incurred expenses in the total amount of [dollar amount].

Based upon the foregoing FINDINGS OF FACT, the Court enters the following:

CONCLUSIONS OF LAW

1. [Trustee Name], Trustee of the law practice of [Mr. Attorney Last Name], has taken all reasonable steps in [his/her] power to fulfill [his/her] obligations as Trustee-Conservator of the law practice of [Mr. Attorney Last Name], to obtain the return of all client files, and to disburse all funds in [Mr. Attorney Last Name]'s trust or fiduciary accounts.
2. [Trustee Name] is entitled to an order discharging [him/her] as Trustee-Conservator of the law practice of [Mr. Attorney Last Name].
3. [Trustee Name] is entitled to reasonable compensation for [his/her] services rendered and reimbursement of expenses incurred while serving as Trustee-Conservator of [Mr. Attorney Last Name]'s law practice in the amount of [dollar amount].
4. [Trustee Name] should be authorized to [add provision regarding disposal of any remaining client files, as proposed by Trustee in petition seeking discharge and approved by the Court].

WHEREFORE it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. [Trustee Name] is hereby discharged as Trustee-Conservator of the law practice of [Mr. Attorney Last Name].
2. [Provision regarding disposal of files as stated above. For example: <Trustee Name> is hereby authorized to maintain in storage at <his/her> law office for a period of one year from the date of this order those closed client files that have not yet been retrieved by the clients of <Mr. Attorney Last Name>, after which <he/she> is authorized to destroy any files of clients of <Mr. Attorney Last Name> that remain unclaimed, after making a reasonable attempt to remove from said files any original documents that may have independent legal significance, such as original wills and stock certificates and the like. <Trustee Name> shall retain any such original documents at <his/her> law office for a period of <# of years> years, at which time <he/she> is authorized to destroy all unclaimed documents.]
3. [Trustee Name] is entitled to reasonable compensation for [his/her] services as Trustee for the law practice of [Mr. Attorney Last Name] and reimbursement for expenses incurred by [him/her] while serving as Trustee in the amount of [dollar amount]. Said compensation and expenses are to be paid by the Estate of [Mr. Attorney Last Name], pursuant to N.C. Gen. Stat. § 84-280, as an administrative expenses of the Estate upon presentation of this Order.

This the ____ day of _____, 20____.

Resident Superior Court Judge
JD# Judicial District

NOTICE OF HEARING

STATE OF NORTH CAROLINA

COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

JD# JUDICIAL DISTRICT

FILE # _____

 IN RE: ATTY NAME,
ATTORNEY AT LAW.

NOTICE OF HEARING

 To: [Give notice to State Bar and Estate of Atty Name]

Take notice that the undersigned [Trustee Name], Trustee for law practice of [Mr. Attorney Last Name], will appear before the Superior Court, [County Name] County on [date] at [time] in Courtroom [courtroom #] of the [County Name] County Courthouse for a determination of [his/her] motion seeking discharge as Trustee for the law practice of [Mr. Attorney Last Name], a [deceased/disabled/disbarred] attorney [or: an attorney who abandoned <his/her> law practice], and for the determination of reasonable compensation for [his/her] services rendered and reimbursement of expenses incurred while serving as Trustee of [Mr. Attorney Last Name]'s law practice.

[In the event of death, use:

Said compensation and expenses are deemed administrative expenses of the Estate of <Mr. Attorney Last Name>, pursuant to N.C. Gen. Stat. § 84-280.]

This ____ day of _____, 20____.

 Trustee Name

Trustee for the Law Practice of [Mr. Attorney Last Name]

ADDITIONAL RESOURCES

LAWYERS MUTUAL RESOURCES

“Buying or Selling a Law Practice.” Available at: http://files.www.lawyersmutualnc.com/risk-management-resources/risk-management-handouts/Buy_or_Sell_Practice.pdf

“Contract Attorneys.” Available at: http://files.www.lawyersmutualnc.com/risk-management-resources/risk-management-handouts/Contract_Attorney.pdf

“Extended Leave.” Available at: http://files.www.lawyersmutualnc.com/risk-management-resources/risk-management-handouts/Extended_Leave.pdf

“Law Firm Succession: Secrets to a Successful Transition or Sale of a Law Practice.” Available at: <http://files.www.lawyersmutualnc.com/risk-management-resources/risk-management-handouts/Handout-web.pdf>

*These books are available in the lawyers mutual lending library, a free service for insureds

OTHER RESOURCES

“Turning Out the Lights.” Published by the North Carolina Bar Association. Available at: <http://www.ncbar.org/publicpro-bono/publications/turning-out-the-lights.aspx> as a free PDF download.

Published by the American Bar Association. Available at www.abanet.org or by phone at 800.285.2221; product code 5150315. Price is \$99.95 regular or \$79.95 for members of the ABA General Practice, Solo and Small Firm, or Senior Lawyers Division.