New Mexico Supreme Court
Lawyer Succession and Transition Committee

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Caution Regarding Sample Forms

This handbook is a guide to help New Mexico lawyers protect their clients when a law practice is interrupted. The forms provided are samples only and anyone using these forms must adapt them to fit his or her individual circumstances.

Further, the sample forms and the recommendations made in this handbook are not intended to excuse users’ compliance with all laws, statutes and applicable court rules, including but not limited to the Rules of Professional Conduct. If any provisions of this handbook or any terms of the sample forms conflict with New Mexico statutes, court rules or case law, the applicable legal authority shall control. Users must confirm that any forms used comply with all applicable laws and rules.

Acknowledgments

The Lawyer Succession and Transition Committee was established as an official Supreme Court committee effective Jan. 1, 2013. Research soon showed that the succession planning guide published by the Oregon State Bar Professional Liability Fund in 1999 was the seminal resource for several other states. The New Mexico committee gratefully acknowledges Oregon’s pioneering work in this area and its generosity in sharing its guide.

The committee also gratefully acknowledges the assistance of the American Bar Association and the New York State Bar Association in granting permission to use the excerpts from their resources that are reprinted or adapted in this handbook.

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Co-Editors: Charles D. Noland, Gaelle D. McConnell, William D. Slease
Dear Colleague:

When a client hires a lawyer—whether it is to represent the client in a domestic relations case, civil litigation, criminal litigation, or to draft legal documents—the client expects the lawyer to complete the assignment. Whether you are a sole practitioner, in a small law firm, or even in a large law firm, and whether you are new to our profession or have been a lawyer for decades, you need to ask yourself: "If I suffer an unexpected tragedy rendering me permanently or temporarily incapacitated, or if I need to be away for a prolonged period because of a personal or family emergency, or if I simply want to retire, do I have a plan in place to protect my clients and make sure that their legal problems will be taken care of with the least disruption possible?"

Most attorney-client relationships last for months, if not years. And when clients hire you, they are relieved that a competent professional will diligently protect their interests, safeguard the property they entrust to you, and, in a very real sense, they trust you to map out a strategy to secure their futures. However, your clients don't realize that you might fall victim to an unexpected tragedy or that you may be unable to work for an undetermined amount of time. They don't have a Plan B in place if they suddenly need a new lawyer. It is your job to set up that Plan B for your clients.

Although no one can predict the future, lawyers must strive to lessen the impact of unexpected interruptions in their relationships with their clients. Your duty to competently and diligently represent your clients requires this, but more importantly, it is the right thing to do. So how do you protect your clients from necessary interruptions in the attorney-client relationship? You develop a succession and transition plan!

Creating an effective succession and transition plan will help protect your clients, your hard-earned reputation, and your family and loved ones. My colleagues and I on the Supreme Court recognize that developing an effective succession plan can be complicated and it takes time. To help you in this process, the Supreme Court Lawyer Succession and Transition Committee has prepared this Succession Planning Handbook to provide you with necessary information and sample forms to guide you in developing an effective plan. These resources are also available at www.nmbar.org/LSTC.html.

Have a plan. Put it in writing. Talk to your clients about the plan. Let them know that you really are looking out for their interests, both now and in the future.

Edward L. Chávez
Justice
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Chapter 1 – Your Client Doesn’t Have a Plan B

Cautionary Tales from New Mexico

A lawyer’s failure to plan for an unexpected interruption in his/her practice is not just theoretical. Indeed, in the past three years we have seen tragic examples of the fallout to clients, families and colleagues caused when a lawyer experiences an unexpected interruption in a thriving practice including:

Unexpected Medical Calamities

- A solo practitioner experienced a medical crisis that rendered the lawyer unable to communicate for weeks. Unfortunately, the lawyer had no staff and the nature of the lawyer’s practice was such that all files had been scanned to a computer for which no one had the password. Further, the lawyer had no client list, no record of work done on client matters for the past month, no billing records (other than those locked behind the password) and no calendar (other than that locked behind the password), and no other way to determine upcoming deadlines or hearings. Needless to say, the lawyer’s spouse, who was not a lawyer, was struggling with both the lawyer’s medical crisis as well as the onslaught of calls and correspondence from anxious clients and courts wanting to know the status of matters.

- Another lawyer went into the hospital for a “routine” medical procedure and ended up spending several months hospitalized and unable to attend to any client matters. The lawyer’s single staff member attempted to make the necessary notifications to clients and courts but was quickly overwhelmed and, as a result, important case deadlines were missed, hearings were missed and cases were dismissed for failure to prosecute.

A Divorce Practice in Crisis

“Mary,” a 15-year divorce attorney with an active practice and several younger attorneys working for her became ill, was hospitalized, had emergency surgery and died within two weeks. Although there were other attorneys employed by the firm, they did not have any ownership. There were no other names or signers on the trust or operating accounts. The building lease and vendor accounts were in Mary’s name personally.

Because of the nature of her divorce practice, there were dozens of clients who had paid retainers to the firm. Most of the clients were of modest means and the retainers they had paid were by credit card, borrowed from their family or were every penny they could scrape together. These attorneys were in court regularly on the clients’ cases for motion hearings and trials. Litigation deadlines had to be met. Some of the clients did not want any of the younger attorneys representing them and wanted to go to new attorneys.
Because there was no way to access the trust account, fees earned for work in progress and work completed could not be transferred to the operating account. No one could sign on the Operating Account, staff could not be paid, rent could not be paid, vendors could not be paid and clients who wanted to change firms could not access their retainers to hire new attorneys.

It was necessary to get a court order for the bank to release funds from the trust and operating accounts and, by the time the firm was able to access the funds, it and the clients were in crisis. The crisis did not begin when Mary died; it began when she became ill. From that point, she was incapacitated. There was no plan in place. The firm dissolved. Staff could not pay their personal bills because they did not receive salaries. The firm could not pay its’ bills and became in default. Clients’ rights were impacted when they could not hire new attorneys. All of this could have been avoided if a plan for succession or transition had been in place and Mary had added trusted signors to the accounts.

The Lawyer with Dementia

“John” had been an attorney for more than 40 years. He was respected in the community and had long-term relationships with his clients. His secretary and paralegal had noticed that his memory was not what it used to be. In fact, John was failing to get his clients’ work completed, let alone started. John still went to court on occasion, but sometimes forgot to tell his secretary about deadlines. He was misplacing important documents. Both of John’s assistants had worked for him for a long time. They were grateful that he had employed them and were very loyal to him. John’s wife was never involved with his practice. He used a part-time bookkeeper that came in once a week. John was “old school,” and because he was the lawyer, he was the only signor on the trust and operating accounts. John also was the only one who knew the combination to the safe, which is where the office kept important client papers such as original executed wills and real estate documents.

Although John was getting worse, his assistants were afraid to tell anyone. Their beloved boss really couldn’t function anymore. But, what would people think? What would happen? A client had an important time-sensitive closing and needed a document from the safe to execute the deal. The funds for the closing were in John’s trust account. John had not shown up for the meeting and the document could not be retrieved. It got worse. John had gotten lost on his way to the office that day. When the police located him, he was disoriented and did not know who he was. The staff could not get into the safe. John had not signed the check for the client’s closing. There was an immediate crisis.

But the crisis was bigger. Who was going to step in and deal with John’s cases? What would happen with John’s clients? How could the accounts be accessed? How would the staff be paid? How would the office bills be paid? How could the safe combination and passwords be accessed? What would happen to John? What would happen to John’s wife? If John had a plan, and had a list of important passwords and combinations, his staff could have helped. If
John had an agreement with another attorney, work would not have to stop. If John had allowed additional access and responsibility for the bank accounts, the immediate crisis and probably his long-term practice would look very different.

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A Word to the Wise: What To Expect When You’re Not Expecting To Close a Solo Practice

By Robert L. Ostertag

The Voice of Experience, ABA Senior Lawyers Division, Fall 2013
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It seems generally acknowledged within our profession that the most burdensome and demanding way to practice law is as a solo general practitioner. What follows is the story of one solo practitioner, my friend Josh, whose workload and dedication to his clients were leading factors in the occurrence of the sudden stroke that left him unable to live meaningfully and unready to die, and of his clients who suffered his loss more than they would have had he merely prepared for his sudden and probably inevitable departure from the scene. Let me provide some background.

Josh and I lunched together almost every Friday for 49 years prior to his ill-fated day a year and a half ago. A soft-spoken, gentle soul, a devoted husband, an extraordinary father of four, grandfather of seven, and a competent real estate lawyer for the most part, he delved infrequently into estate administration and other less-familiar areas only when the economy went dry, as was the case shortly before he was stricken. Josh practiced out of an office he shared amiably with two other attorneys who were his tenants. His real estate clients were residential and commercial buyers and sellers and several banks—a typical small-city, upstate New York practitioner.

In the following account, out of respect for Josh and his family and clients, I have changed his name and have occasionally withheld or embellished facts initially to emphasize a point. But I have substantially related my general experience as I lived it.

Aftermath of a Stroke

Josh’s stroke left him with some critical paralysis on one side from top to bottom. He was hospitalized for more than a half year, and of late he’s incurred virtual total paralysis and relatively sudden mental incapacity. He sits in his wheelchair these days unable to move or even to communicate. Despite his advanced years and his strangely inconsistent problematic
pre-stroke physical condition (he had diabetes, among other maladies), he appears now to be capable of sustaining physical life as a near vegetable for what may prove to be the long term.

I haven’t seen Josh for a while now. Were I to visit, he probably wouldn’t even know me at this point. I might unexpectedly catch him aware, but I don’t want to remember him as he is now. I do see his family. There but for the grace of God, however, go I, or indeed any of us. He is undeserving of all this suffering of which, until recently at least, he was acutely aware.

**A Successful Practice, But Not an Organized One**

Despite his professional competence and success, and like many (most?) solo practitioners, Josh was not the model of organization and efficiency. He left behind files that were current, files that were not. Some needed, and still need, attention. He left behind an escrow account that lacked, to some extent at least, recorded information that he no doubt had in his head. A few of his escrow accounts required his signature (later, his mark) to protect them from multiyear inactivity transfers to the New York State banking department. While once he could provide his signature, he cannot now, not even his mark. The bank will not accept the signature of his attorney-in-fact (his son), but in attempting to help, I became aware that a $10 deposit would activate such accounts. I’ve made them from my personal funds where necessary to buy time. Since I couldn’t commingling his clients’ escrow funds with my own, those deposits were gifts to his clients, and are not refundable to me. The only acceptable alternative was a petition to the court for a guardianship and limited relief, and in New York, procedurally, that can be a big prolonged deal to be avoided almost at all costs, if possible. As with many things in the law, what used to be simple, no longer is.

**How To Help?**

I was asked to help and I have. But what to do in such situations? Though not a theoretical novice to the problem, this was real-time virgin territory for me. Who is responsible for a suddenly incapacitated or deceased attorney’s transactional files? Or for his escrow accounts? Or for his litigation or other files that are statutorily limited or otherwise time constrained? Or for the myriad of other considerations that would normally require the attention of an attorney? Is an attorney’s widow, a lay person, free to rummage through his operating or especially his escrow accounts? Or his client’s files? What about clients’ confidences and secrets? What about the rules of professional conduct? Certainly, those restrictive professional considerations are not applicable to lay widows, executors, or administrators. New York City alone has over 105,000 lawyers registered with our state’s Office of Court Administration. Few of them know almost any of the others, and the city’s many judges have active calendars. Who is to notify them? What is to be done about contractual matters as to which times or other considerations are of the essence? What about the attorney’s outstanding liabilities, his receivables, his payables, and even his employees? And what about clients’ wills he had stored in his office for convenience and safekeeping?
There was the initial problem of Josh’s office remaining open for a time, and what to do about his secretary. She stayed on despite Josh’s limited operating account balance. Her salary was eventually covered personally by Josh’s son, and ultimately he assumed her employment in his own business. She still is responsive to my periodic calls for help.

There were bills to be paid—rent, utilities and what not—and some very old client matters to be addressed, even including what for me was one case involving heavy hours of investment pro bono in what was now, but wasn’t always, an existing $800 estate. On and on it went.

**A Dearth of Useful Rules**

Problems such as these play themselves out every day throughout America. In many jurisdictions, only a few, often-inadequate rules seem to apply. New York itself has few useful rules (some say none at all), though our state bar association presented a complete set of proposed rules and specific guidelines to the state’s Administrative Board of the Courts for consideration and adoption. The Board has had them for about eight years now, but to date, nothing has resulted. While it is not comfortable to think about unforeseen accidents, disability, unplanned retirement, and untimely death, clearly there exists a duty to protect clients, even from one’s own death, particularly if one is a solo practitioner. And if one is and remains a two-person-firm partner and is middle-aged or older, chances are fifty-fifty that one or the other partner will someday, maybe soon, become a solo practitioner. That puts him or her in similar jeopardy. Some 63 percent of the privately practicing bar in the United States is comprised of solo and small-firm practitioners (one to five lawyers); almost half are solo. They are all in jeopardy, and they frequently are too overwhelmed to address their own needs.

**The Best-Laid Plans**


I sat down with Josh one day and pleaded with him to read them all and to implement their proposals. Using the *Guide* for background, we discussed his need to generate and thereafter maintain active, full, and specific lists (schedules? computer printouts?) of current clients. These would include names, addresses, phone and fax numbers, e-mail addresses, individualized file numbers, key subject matter identifiers, and any other information he might deem appropriate so that clients might readily be located should the need arise. We discussed
his need for a similar but separate current list of closed files and former clients, as well as for
information about the whereabouts of original documents and how they might be located.

Unfortunately, some of Josh’s files were near catastrophic to me, a stranger to them—
ripped up paper; undated notes, each seemingly unrelated to the others; entries on the back
sides of advertising mail. Just awful! But these are conditions endemic to many solo and small-
firm practitioners, particularly rural attorneys who personally know their clients and maintain
significant amounts of information about them and their matters in their heads because they
are overworked, underpaid, harried, and harassed, mostly. A precommitment view of such files
would discourage any prospective caretaker or successor attorney from becoming involved.

I asked Josh where his closed files were stored and how to access them. Some attorneys
maintain files for only those periods of time required by law or rule and are proficient at
destroying all closed files as soon as possible—seven years in the case of New York State. Not
always a good plan, but one that should always be done with care. Others store their closed
files forever. Ugh! They frequently are left for successor attorneys to deal with. Most of Josh’s
closed files were in his office.

I referred Josh to that part of our guidelines relating to calendaring systems. He
maintained a paper desk calendar for that. I mentioned the caretaker or successor attorney’s
need to reach that information quickly. I suggested he set up a computerized tickler system—
something better than his desk calendar. He was not computer literate. Malpractice carriers
demand a system, and certainly he should have had one. Some lawyers don’t have a system
and just lie to their carriers and hope for the best. (Josh didn’t lie.) Dangerous.

We discussed Josh’s financial accounts. Someone, I said, must be able to determine very
early on what money remains in his clients’ escrow and, indeed, his own operating accounts,
and to whom that money belongs. He acknowledged that his escrow account should and did
indicate what had been deposited for each client, but records were Neanderthalic and didn’t
always precisely reflect what had been withdrawn, when, and for what purpose, at least as far
as I could understand them.

I suggested to Josh the need for him to prearrange with his banks to permit the deposit
and withdrawal of escrow and operating funds by an intended caretaker or successor attorney.
Josh was then about 79 years of age. I urged also that such arrangements be agreed upon with
the bank sooner rather than later and that the identity and location of each of his banks should
also be readily available to a caretaker or successor attorney. We agreed that to carry all that to
its conclusion, he must preselect a caretaker or successor attorney. The bank would very likely
require a name. I suggested that he not select me.

I reminded him of the need for available information on the location of all his tax
returns, office or firm contracts, leases, deeds, office equipment information, and anything else
pertaining to his office, and, not least of all, to his employee. His secretary, as his sole full-time
employee, should ideally know most of the answers.
We discussed his computer system. He had a computer on his desk. He really had no idea how to use it. His secretary had another computer with what might loosely be called a system. I advised him of the need for information on passwords and such other even more secret information that would allow someone to utilize the equipment for the benefit of clients, himself, and such other interests as might be included in the system. He maintained in his head almost all such information, such as, for example, the identity and whereabouts of his computer technician and repair person who, I suggested, would likely have information about his system that might be important but unknown to Josh.

Josh maintained a bank safe deposit box and carried its combination in his wallet. I suggested that the location of his keys be included in his equipment list, not only to the office door, but to whatever he kept locked in the office. I inquired again about names and addresses of all his suppliers and repair people and the identities of those with whom he might have a special personal or professional relationship who might be helpful in providing important information. Not much response.

I emphasized to Josh that all this required his time and effort, which is why it so infrequently gets accomplished by solos. I told him he was no different than many, perhaps most, other solo and small-firm practitioners in that his office was the key to his family’s financial life and other aspects of their future. I suggested he think of it that way so as to make it less difficult for him to apply himself to the project. But I just knew it wouldn’t get done.

Finally, I urged him to think about selecting a caretaker or successor attorney, one who was obviously a well-respected colleague at the bar; competent; well-regarded professionally, intellectually, and ethically; someone with litigation skills if litigation were to become either a client issue or practice-transfer issue; preferably someone in our small-city community who knew Josh’s family and would be able and willing to take on what would likely be a substantial, intrusive, and time-consuming burden. I again suggested he not think of me. I’m long in the tooth, indeed, older even than he. I’m far beyond retirement age, engaged in my own practice, still actively involved with our state bar association and the ABA, and just not the right person for the task. He promised not to—but I just knew who that person would be.

Lo, Josh never accomplished anything I urged upon him. He took the materials I’d assembled for him and placed them carefully on his credenza—where I found them one day, dusty and seemingly untouched. And what did I do? Having been asked, I volunteered. Dummkopf! But Josh was my friend.

**When You’re Not Expecting To Be Successor Attorney**

Let me now give you just a brief, real-life glimpse of my own double-duty life over the last year and a half just as an example of what to expect should you choose to take on the burdens of a caretaker or successor attorney—or should you perhaps someday need one but thoughtlessly leave him or her unprepared.
One of my threshold problems was that I did not have Josh’s power of attorney or any other written authority from him to pick up where he left off. Josh’s son, a layman, had his power of attorney, and I obtained from him early on his written authority to protect Josh’s clients and his practice. Whether it might have been better to seek judicial approval and authority, the fact was that I didn’t have time for judges. I understood the risks.

The second problem was that I did not know, and had no way of determining other than to wait it out, whether Josh would ever seek to return to the practice of law despite his infirmity. He was not a quitter. I chose stubbornly, and mistakenly, to assume that he would try to do so if at all humanly possible. But it became suddenly obvious at the eighth or ninth month—after he’d somewhat improved and appeared more attuned to his condition but then suddenly took a serious turn for the worse—that it wouldn’t happen. I suppose I should have discussed with Josh during the early months, while he was lucid and somewhat responsive, what he wanted me to do for his clients and what issues he knew might arise over the course of their representation. He was in such a sudden physical and mental state of shock at the time, however, that neither I nor his family felt it wise to burden him with issues beyond his health, and indeed his life. Accordingly, I withheld all discussions about his office and simply plodded ahead as I thought appropriate. Somehow, things got done, though the hard way. Josh’s family members were ever cooperative—particularly his son, whose own business was flourishing but whose time was as limited as mine.

Josh’s son and I set up an arrangement whereby he took possession of all Josh’s open files and made them available to me for the asking. Did he or any of his three siblings go through those files? I don’t know. I advised him from the beginning—and at length—that he and they shouldn’t. I seriously doubt that they did. But I’m really not certain that I want to know.

I found early on that people who write the professional responsibility rules don’t always understand the practical aspects of practicing law. Many, who frequently have risen from the political ranks, have never practiced law and have no concept of its various complexities. Ethics rules are conceptual niceties, but their implementation occasionally conflicts with the realities of life and simply gets in the way, and one must sometimes make difficult choices.

Overhead costs were always an issue. Financial arrangements had to be made, including those to cover the cost of maintaining his now-unused part of the office until a new occupant could be found, and Josh’s office wasn’t pretty. Moreover, the attorneys sharing his space loomed large. All of that had a practical impact upon the niceties of professional ethics.

Other problems have been multiple in number. These included our fee policies, as opposed to Josh’s, and the need to address them professionally. I have not profited on Josh’s files—nor would I, but some fee issues had to be addressed. Other problems that arose included financial and tax reporting. The continued maintenance of books and records, many of which were deficient and had been for years. The satisfaction of prior financial obligations to vendors, service suppliers and the rest. The handling of open litigation matters, some of which,
surprisingly to me, existed in Josh’s practice. Client relationships. Mail. The inventory and examination of open and some closed client files. The safeguarding of original documents. The extension of time limitations. Notifications to courts, counsel, and others. Personnel, his and mine. Insurance coverage. Access to the safe deposit box. Professional liability as between Josh and my office. And on and on and on. Having never before assumed such a responsibility, and despite our Planning Ahead Guide, I was only tangentially aware of all the real-life hazards. At this point, frankly, I would not suggest that anyone take on such a responsibility without first having entered into an informed agreement specifying virtually every reasonable and anticipated responsibility and fiduciary duty, and without having a reasonable familiarity with what is likely to lie ahead were the hammer to fall and the occasion to occur. Josh never asked me to be his caretaker or successor counsel; only his family did, after the fact. But I knew that would have been his preference, the scoundrel. And the family was ever helpful and cooperative, his son particularly.

I have occasionally considered a theoretical reverse situation in which it is I in Josh’s circumstance and he who presented to me the Planning Ahead Guide and other materials several years prior to my own sudden unanticipated disability. Would I have placed it on my credenza as he did, with the intent of someday reading it? Someday when I might become ill in the far distant future? For, after all, none of this would ever befall me!?! I know deep down that I might have relegated the materials to my own credenza. But then, I have partners.

I won’t be here in 30 years; I hope to be in 10, if I’m lucky. If I am, I suspect I’ll still be dealing in one way or another with remnants of Josh’s practice. Hopefully, his and his family’s experience shall never become mine or my family’s. I end with a word to the wise among our solo and at least two-person practitioner readers, particularly our veterans at the bar. Take care of yourselves, your clients, and your families. Address this grim and disagreeable problem. Just do it, now.

VOE Editor’s Note: Josh passed away shortly after this article was written. The author writes: “I have never witnessed such suffering. Neither he nor his family deserved this. But he is at peace, finally and forever.”
Chapter 2 – The Duty To Plan Ahead

Lawyers and Succession Planning: Why a Little Action Now Is Better Than a Lot of Panic Later

Lawyers face many challenges every day: client demands, constant deadline pressure, the stress of operating a business and practicing law. Most find it rewarding. Most also plan on retiring some day. And most, like every other person, are at risk for an unplanned event such as an injury, illness, incapacitation, disability or death, which makes it temporarily or permanently impossible to continue in the practice of law. An interruption or cessation of practice, voluntary or otherwise, carries with it a substantial risk that clients will be abandoned by their lawyer in the middle of the clients’ matters. It also creates a risk that colleagues, staff, friends and family will be left scrambling to make sense of the lawyer’s practice at a time of great personal stress.

Of course, the duties that a lawyer owes to his or her client under the Rules of Professional Conduct, including duties of competence, diligence, communication and the safekeeping of confidences and property, mandate that a lawyer not abandon a client and the client’s legal needs. Thus, the need for every lawyer to take affirmative steps to plan for an interruption or cessation of practice, voluntary or otherwise, cannot be overstated, particularly for those practicing in a solo practice setting. By doing so, you can protect your clients, your family, your staff and your reputation in times of uncertainty and, hopefully, avoid personal and financial strife as well as unnecessary disciplinary complaints.

While not yet mandatory here, succession planning by lawyers may someday be required in New Mexico as part of a lawyer’s duties under the Rules of Professional Conduct. Indeed, some jurisdictions have already taken steps to enact rule changes or add commentary to existing rules to require or encourage lawyers to name successor attorneys and develop a comprehensive succession or transition plan.1 For now, however, there are many things that you should consider in developing a plan for your expected or unexpected cessation of practice. Some of the issues include, but are not limited to:

- Who will close or operate my practice if I am away for an extended period of time or never return?

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1 See, e.g., Arkansas Rules of Professional Conduct, Rule 1.3 comment 5 (“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 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 protective action”); Disciplinary Code for the Wyoming State Bar, Rule 23(a), Protection of Client Interests (“Solo practitioners shall execute a ‘Designation of Surrogate Attorney Form’ as provided by the Wyoming State Bar”).
• Will that person take over the representation of clients or simply inventory my files and funds and distribute them to the clients and substitute counsel?

• Do I have an updated client list and an updated list of closed matters, and can they be easily located?

• Does the person who will step in to close or operate my practice, or some other responsible party:
  
  ➢ Know where my files are located, physically and on computers, and can they access the files? Does anyone know my computer password?
  
  ➢ Know where my calendars are located so that all deadlines can be tracked and either met or conveyed to clients and any substitute counsel?
  
  ➢ Have access to my time and billing records and know how to generate bills and collect fees that may be due to me or my estate?
  
  ➢ Have access to my unpaid invoices and instructions on how to make payments that may be outstanding?
  
  ➢ Know where my operating and trust bank accounts are held, and where the trust ledgers, reconciliations, and other bank operating account and trust account records are located?

• Do I need to execute a limited springing power of attorney or some other legal document to allow someone to sign on my bank accounts, and will my banker accept such a power of attorney?

• What sort of other written agreements should I enter into with the person or persons who I would like to close or operate my practice?

• How will clients, courts and opposing counsel be notified of my cessation of practice?
Succession Planning Handbook for New Mexico Lawyers

Should I consider disability and/or practice interruption insurance, including overhead expense coverage, and monthly disability income insurance?

This list is not intended to be exhaustive. The point is to begin thinking about and planning now, while you have time and the ability to carefully consider the issues and craft a plan for succession, rather than leave others to manage a stressful and chaotic crisis in your professional and personal life without any guidance from you.

Fortunately, there are many good resources available to you to help with succession planning. Many malpractice carriers are starting to insist that a lawyer provide information to the carrier about the lawyer’s succession planning. Counsel for these carriers may be able to help you design a plan that works for your situation. Although written to assist a person who is closing a lawyer’s practice after the lawyer has left practice, the Senior Lawyers Division of the State Bar of New Mexico has published an informative guide, “Closing a Law Office: New Mexico Guide for a Third Party Closer,” which appears in this handbook on page 49. This guide details the types of issues a person closing a law office will face and can, therefore, be used by a lawyer to plan in advance how to assist that closer with the tasks he or she will face. The guide also is available online at www.nmbar.org/AboutSBNM/SLD/NMguideclosinglawoffice.pdf.

Likewise, a number of jurisdictions, including California, Colorado, Florida, Iowa, North Carolina, Oregon, Washington, and West Virginia, have excellent succession planning manuals and/or online resources that provide step-by-step suggestions and useful forms for lawyers to use in effective succession planning. These guides often include helpful forms that can be used in succession planning, although these forms will need to be modified to insure compliance with New Mexico laws and each lawyer’s individual circumstances. There are also a number of other articles and forms available online that lawyers can use as a resource in succession planning; just search for “lawyer succession planning.” And, of course, there is this handbook, written specifically for New Mexico lawyers. Every New Mexico lawyer is encouraged to use these resources and take action now to plan for the future.

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

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Formal Opinion 92-369
Disposition of Deceased Sole
Practitioners’ Client Files and Property

To fulfill the obligation to protect client files and property, a lawyer should prepare
a future plan providing for the maintenance and protection of those client interests
in the event of the lawyer’s death. Such a plan should, at a minimum, include the
designation of another lawyer who would have the authority to review client files
and make determinations as to which files need immediate attention, and who would
notify the clients of their lawyer’s death.

A lawyer who assumes responsibility for the client files and property of a deceased
lawyer must review the files carefully to determine which need immediate attention.
Because the reviewing lawyer does not represent the client, only as much of the file
as is needed to identify the client and to make a determination as to which files need
immediate attention should be reviewed. Reasonable efforts must be made to contact
all clients of the deceased lawyer to notify them of the death and to request
instructions in accordance with Rule 1.15.

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

The questions posed are two:

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

December 7, 1992
2) What obligations do lawyers representing the estates of deceased lawyers, or
appointed or otherwise responsible for review of the files of a lawyer who dies intestate,
have with regard to the deceased lawyer’s client files and property?

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

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

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

**Rule 1.1 Competence**

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

**Rule 1.3 Diligence**

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

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

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

According to Rule 1.1, competence includes “preparation necessary for the representation,” 
which when read in conjunction with Rule 1.3 would indicate that a lawyer should diligently 
prepare for the client’s representation. Although representation should terminate when the attorney 
is no longer able to adequately represent the client,¹ the lawyer’s fiduciary obligations of loyalty and 
confidentiality continue beyond the termination of the agency relationship.²

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

² *See Murphy v. Riggs, 213 N.W. 110 (Mich. 1927) (fiduciary obligations of loyalty and confidentiality 
continue after agency relationship concluded); Eoff v. Irvine, 18 S.W. 907 (Mo. 1892) (same).*
Lawyers have a fiduciary duty to inform their clients in the event of their partnership’s dissolution. A sole practitioner would seem to have a similar duty to ensure that his or her clients are so informed in the event of the sole practitioner’s dissolution caused by the sole practitioner’s death. Because a deceased lawyer cannot very well inform anyone of his or her death, preparation of a future plan is the reasonable means to preserve these obligations. Thus, the lawyer ought to have a plan in place which would protect the clients’ interests in the event of the lawyer’s death.

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

Although there is no specifically applicable requirement of the rules of ethics, it is fairly to be inferred from the pertinent rules that lawyers should make arrangements for their client files to be maintained in the event of their own death. Such a plan should at a minimum include the designation of another lawyer who would have the authority to look over the sole practitioner’s files

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

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

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


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

7 Obviously, sanctions would have no deterrent effect on deceased lawyers.
and make determinations as to which files needed immediate attention, and provide for notification to the sole practitioner’s clients of their lawyer’s death.  

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

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

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

A. **Duty to inspect files**

Many state and local bar associations have explored the issues presented when a lawyer assumes responsibility for a deceased lawyer’s client files. The ABA Model Rules for Lawyer

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

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

Appointment of Receiver. When it comes to the attention of the circuit court in any judicial circuit from any source that a lawyer in the circuit is unable properly to discharge his responsibilities to his clients due to disability, disappearance or death, and that no partner, associate, executor or other responsible party capable of conducting that lawyer’s affairs is known to exist, then, upon such showing of the presiding judge in the judicial circuit in which the lawyer maintained his practice, or the supreme court, may appoint an attorney from the same judicial circuit to perform certain duties hereafter enumerated Duties of Receiver. As expeditiously as possible, the receiver shall take custody of and make an inventory of the lawyer’s files, notify the lawyer’s clients in all pending cases as to the lawyer’s disability, or inability to continue legal representation, and recommend prompt substitution of attorneys, take appropriate steps to sequester client funds of the lawyer, and to take whatever other action is indicated to protect the interests of the attorney, his clients or other affected parties.

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

Disciplinary Enforcement also address some aspects of the question.\textsuperscript{12} A lawyer who assumes such responsibility must review the client files carefully to determine which files need immediate attention; failure to do so would leave the clients in the same position as if their attorney died without any plan to protect their interests. The lawyer should also contact all clients of the deceased lawyer to notify them of the death of their lawyer and to request instructions, in accordance with Rule 1.15.\textsuperscript{13} Because the reviewing lawyer does not represent the clients, he or she should review only as much of the file as is needed to identify the client and to make a determination as to which files need immediate attention.\textsuperscript{14}

**B. Duty to maintain client files and property**

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

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

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

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

**APPOINTMENT OF COUNSEL TO PROTECT CLIENTS’ INTERESTS WHEN RESPONDENT IS TRANSFERRED TO DISABILITY INACTIVE STATUS, SUSPENDED, DISBARRED, DISAPPEARS, OR DIES.**

A. Inventory of Lawyer Files. If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 27, and no partner, executor or other responsible party capable of conducting the respondent’s affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice, upon proper proof of fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

B. Protection for Records Subject to Inventory. Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

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

\textsuperscript{14} Again, while issues of client confidentiality would appear to be raised here, a reasonable reading of Rule 1.6 suggests that any disclosure of confidential information to the reviewing attorney would be impliedly authorized in the representation. \textit{See} note 8, \textit{supra}. 

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

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

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

15 Responding to a recent inquiry, the Committee on Professional Ethics of the Bar Association of Nassau County suggested that an attorney assuming responsibility for a deceased attorney’s client files has an ethical obligation to treat the assumed files as his or her own. Bar Ass’n of Nassau County (N.Y.), Comm. on Professional Ethics, Op. 92-27 (1992).

Chapter 3 – Anatomy of the Planning Process

Facing the Possibilities

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

For this reason, a lawyer’s duty of competent representation includes arranging to safeguard the clients’ interests in the event of the lawyer’s death, disability, impairment, or incapacity. ABA Formal Op 92-369. Most commercial malpractice carriers require the lawyers they ensure to make arrangements for office closure in the event of death or disability. The purpose of this handbook is to help you fulfill your ethical responsibilities, protect your client’s interests, minimize the stress on your family and friends during a difficult time, and to reduce future potential malpractice claims against you or your estate.

This handbook is designed to assist you in putting an appropriate plan in place to enable your clients to get a copy of their file to take to a new lawyer and ensure your clients’ money in your trust account is returned to them. Additionally, it provides a mechanism to wind down your practice and possibly preserve its value for you or your estate.

In essence, the outlined structure embodies an agreement between the “Planning Attorney” and the “Assisting Attorney,” which includes a limited durable power of attorney authorizing the Assisting Attorney to deal with the issues of continuing or closing the Planning Attorney’s law practice in the event of disability or death. Through the use of an agreement, the authorization extends beyond the Planning Attorney’s death and is binding upon the Planning Attorney’s heirs and personal representative.

Terminology and Forms

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

The sample Agreement – Full Form, in Chapter 6, authorizes the Assisting Attorney to transfer client files, sign checks on your general account, and close your practice. This form also provides for payment to the Assisting Attorney for services rendered, designates the procedure for termination of the Assisting Attorney’s services, and provides the Assisting Attorney with the option to purchase the law practice. In addition, the form provides for the appointment of an Authorized Signer on your lawyer trust account. The Agreement – Full Form is a sample only. You should modify it as needed to fit your particular circumstances.
The sample Agreement – Short Form, also in Chapter 6, includes authorization to sign on your general account and consent to close your office. It also provides for the appointment of an Authorized Signer on your lawyer trust account. It does not include many of the terms found in the sample Agreement – Full Form version, but it does include the authorizations most critical to protecting your clients’ interests.

**Implementing the Plan**

The first step in the planning process is for you to collect the information vital to your practice in a single resource that will be accessible to your Assisting Attorney. Many attorneys have this information in their head. You should ask yourself, if something happened to me tomorrow, what would someone need to know to assist my clients or to close my practice? Completing a checklist such as those in Chapter 6 can be invaluable in providing this essential information. Having this information assembled in a single resource may also be beneficial to you in administering your practice.

The second step, and most important, is for you to find someone—preferably an attorney—to close your practice in the event of your death, disability, impairment, or incapacity.

The arrangements you make for closure of your office should include a signed consent form authorizing the Assisting Attorney to contact your clients for instructions on transferring their files, authorization to obtain extensions of time in litigation matters when needed, and authorization to provide all relevant people with notice of closure of your law practice. (See sample Agreement – Full Form and sample Agreement – Short Form in Chapter 6.)

The agreement could also include provisions that give the Assisting Attorney authority to wind down your financial affairs, provide your clients with a final accounting, collect fees on your behalf, and liquidate or sell your practice. Arrangements for payment by you or your estate to the Assisting Attorney for services rendered can also be included in the agreement.

At the beginning of your relationship, it is crucial for you and the Assisting Attorney to establish the scope of the Assisting Attorney’s duty to you and your clients. If the Assisting Attorney represents you as your attorney, he or she may be prohibited from representing your clients on some, or possibly all, matters. Under this arrangement, the Assisting Attorney would owe his or her fiduciary obligations to you. For example, the Assisting Attorney could inform your clients of your legal malpractice or ethical violations only if you consented or if otherwise required by the Rules of Professional Conduct. However, if the Assisting Attorney is not your attorney, he or she may have an ethical obligation to inform your clients of your errors. (See Chapter 4.)

Whether or not the Assisting Attorney is representing you, that person must be aware of conflict-of-interest issues and must check for conflicts if he or she (1) is providing legal
services to your clients or (2) must review confidential file information to assist with transferring clients’ files.

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

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

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

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

If you want the Assisting Attorney and/or Authorized Signer to have access to your accounts contingent on a specific event or during a particular time period, you have to decide how you are going to document the agreement. Depending on where you live and the bank you use, some approaches may work better than others. Some banks require only a letter signed by both parties granting authorization to sign on the account. The sample agreements in Chapter 6 should be legally sufficient to grant authority to sign on your account. However, you and the Assisting Attorney and/or the Authorized Signer may also want to sign a limited power of attorney. (See Power of Attorney – Limited in Chapter 6.) Most banks prefer a power of attorney. Signing a separate limited power of attorney increases the likelihood that the bank will honor the agreement. It also provides you and the Assisting Attorney and/or the Authorized Signer with a document limited to bank business that can be given to the bank. (The bank does not need to know all the terms and conditions of the agreement between you and the Assisting Attorney and/or the Authorized Signer.) If you choose this approach, consult the manager of your bank. When you do, be aware that power of attorney forms provided by the bank are generally unconditional authorizations to sign on your account and may include an agreement
to indemnify the bank. Get written confirmation that the bank will honor your limited power of attorney or other written agreement. Otherwise, you may think you have taken all necessary steps to allow access to your accounts yet, when the time comes, the bank may not allow the access you intended.

If the access is going to be contingent, you may want to have someone (such as your spouse or partner, family member, personal representative, or trusted friend) hold the power of attorney until the contingency occurs. This can be documented in a letter of understanding, signed by you and the trusted friend or family member. (See Letter of Understanding in Chapter 6.) When the event occurs, the trusted friend or family member provides the Assisting Attorney and/or the Authorized Signer with the power of attorney.

If the authorization will be contingent on an event or for a limited duration, the terms must be specific and the agreement should state how to determine whether the event has taken place. For example, is the Assisting Attorney and/or the Authorized Signer authorized to sign on your accounts only after obtaining a letter from a physician that you are disabled or incapacitated? Is it when the Assisting Attorney and/or the Authorized Signer, based on reasonable belief, says so? Is it for a specific period of time, for example, a period during which you are on vacation? You and the Assisting Attorney and/or Authorized Signer must review the specific terms and be comfortable with them. These same issues apply if you choose to have a family member or friend hold a general power of attorney until the event or contingency occurs. All parties need to know what to do and when to do it. Likewise, to avoid problems with the bank, the terms should be specific, and it must be easy for the bank to determine whether the terms are met.

Another approach is to allow the Assisting Attorney and/or Authorized Signer access at all times. With respect to your bank accounts, this approach requires going to the bank and having the Assisting Attorney and/or Authorized Signer sign the appropriate cards and paperwork. When the Assisting Attorney and/or Authorized Signer is authorized to sign on your account, he or she has complete access to the account. This is an easy approach that allows the Assisting Attorney and/or Authorized Signer to carry out office business even if you are just unexpectedly delayed returning from vacation. Adding someone as a signer on your accounts allows him or her to write checks, withdraw money, or close the account at any time, even if you are not dead, disabled, impaired, or otherwise unable to conduct your business affairs. Under this arrangement, you cannot control the signer’s access. These risks make it an extremely important decision. If you choose to give another person full access to your accounts, your choice of signer is crucial to the protection of your clients’ interests, as well as your own.
Access to the Trust Account

As mentioned earlier, when arranging to have someone take over or wind down your financial affairs, you should also consider whether you want someone to have access to your trust account. If you do not make arrangements to allow someone access to the trust account, your clients’ money will remain in that account until a court orders access. For example, if you become physically, mentally, or emotionally unable to conduct your law practice and no access arrangements were made, your clients’ money will most likely remain in your trust account until the court takes jurisdiction over your practice and your accounts. In many instances, the client needs the money he or she has on deposit in the lawyer’s trust account to hire a new lawyer, and a delay puts the client in a difficult position. This is likely to prompt ethics complaints, Client Protection Fund claims, malpractice complaints, or other civil suits.

On the other hand, allowing access to your trust account is a serious matter. You must give careful consideration to whom you give access and under what circumstances. If someone has access to your trust account and that person misappropriates money, your clients will suffer damages. In addition, you may be held responsible.

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

Adding an Assisting Attorney and/or Authorized Signer to your general or lawyer trust account is permitted and advisable regardless of the form of entity you use for practicing law. An Authorized Signer does not necessarily have to be an attorney, although it is advisable because he or she will need to be familiar with the Rules of Professional Conduct and the fiduciary duties associated with administering the account.

Client Notification

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

Other Steps That Pay Off

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

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

**Death of a Sole Practitioner—Special Considerations**

If you authorize another lawyer to administer your practice in the event of disability, impairment, or incapacity using a power of attorney, that authority terminates when you die. After your death, the personal representative of your estate has the legal authority to administer your practice. Consequently, the planning for your practice should be coordinated with your estate plan. Your personal representative or successor trustee must be informed 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. (Sample will and trust provisions are in Chapter 6.)

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

It is fairly common practice for a law firm to be organized as a professional corporation. As such, only licensed professionals may own an interest in the corporation. Consequently, it may be wise to use a revocable trust as a will substitute and nominate the Assisting Attorney to be the special trustee to hold the deceased lawyer’s shares in the corporation until the practice can be sold or the shares purchased by the other shareholders. Sample language is included in Chapter 6 of this handbook.

Special consideration should be given to whether there is sufficient cash in the law firm’s operating account to provide adequate funds to retain the Assisting Attorney and/or Authorized Signer or to continue to pay the clerical staff, rent, and other expenses during the transition period. It will take some time to generate statements for your legal services and to collect the accounts receivable. Your accounts receivable may not be an adequate source of cash during the time it takes to close your practice. Your Assisting Attorney and/or Authorized Signer may be unable to advance expenses or may be unwilling to serve without pay. One solution to this problem is to purchase a small insurance policy, with your estate or special
trustee named as the beneficiary with specific instructions that the money may be loaned to the law firm if needed to maintain it until it is sold or otherwise disposed of.

New Mexico law gives broad powers to a personal representative to continue a decedent’s business to preserve its value, to sell or wind down the business, and to hire professionals to help administer the estate. However, a personal representative may only continue an unincorporated business for six months without a court order. Consequently, it may be wise to specifically provide that the personal representative is authorized to administer the law practice beyond six months to ensure adequate time to sell the practice or wind it down. For the personal representative’s protection, you may want to include language in your will that expressly authorizes that person to arrange for closure of your law practice. The appropriate language will depend on the nature of the practice and the arrangements you make ahead of time. For an instructive and detailed will for a sole practitioner, see Thomas G. Bousquet, *Retirement of a Sole Practitioner’s Law Practice*, 29 LAW ECONOMICS & MANAGEMENT 428 (1989); updated: 33 *The Houston Lawyer* 37 (January/February 1996).
Chapter 4 – What If?

Answers to Frequently Asked Questions

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

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

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

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

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

The answer is largely determined by the agreement you have with the Planning Attorney and the Planning Attorney’s former clients. If you do not have an attorney-client relationship with the Planning Attorney, and you are the new lawyer for the Planning Attorney’s former clients, you must inform your client (the Planning Attorney’s former client) of the error, and advise him or her to submit a claim to the Planning Attorney’s professional liability insurance carrier, unless the scope of your representation of the client excludes actions against the Planning Attorney. If you want to limit the scope of your representation, do so in writing and advise your clients to get independent advice on the issues.

If you are the Planning Attorney’s lawyer, and not the lawyer for his or her former clients, you should discuss the error with the Planning Attorney and inform the Planning Attorney of his or
her obligation to inform the client of the error. As the attorney for the Planning Attorney, you are obligated to follow the instructions of the Planning Attorney. You must also be careful that you do not make any misrepresentations. This situation could arise if the Planning Attorney refused to fulfill his or her obligation to inform the client—and also instructed you not to tell the client. If that occurred, you must be sure you do not say or do anything that would mislead the client.

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

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

   Again, the answer is based on your relationship with the Planning Attorney and the Planning Attorney’s clients. If you are the Planning Attorney’s lawyer, you would be limited to disclosing only information that the Planning Attorney wanted you to disclose. You would, however, want to make clear to the Planning Attorney’s clients that you do not represent them and that they should seek independent counsel. If the Planning Attorney suffered from a condition of a sensitive nature and did not want you to disclose this information to the client, you could not do so.

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

   Whether the Planning Attorney has malpractice coverage after he or she leaves private practice depends on what type of professional liability insurance the attorney has. Coverage after an attorney leaves practice is commonly referred to as "extended reporting coverage" or "tail" coverage. You should ask the Planning Attorney about the type, terms and policy limits of his or her coverage. If the Planning Attorney does not have tail coverage, it is advisable to contact his or her carrier to see if such coverage can be purchased on behalf of the Planning Attorney. If the Planning Attorney was a sole practitioner with excess coverage (or if the firm plans to drop excess coverage when the Planning Attorney leaves private practice), the Planning Attorney should contact the excess carrier before leaving practice to ask about tail coverage. In most cases, an extended reporting period for future claims is available for a period of up to five years for an additional premium, but this optional coverage can be purchased only during the first few days after termination or expiration of the existing excess coverage policy.

   If the Planning Attorney’s firm will continue in existence after the Planning Attorney leaves private practice, in most cases the firm’s existing excess coverage may continue to cover both the
firm and the Planning Attorney at no charge for new claims after the Planning Attorney leaves private practice. The best protection for the Planning Attorney is to have an agreement with the firm that requires the firm (1) to purchase tail coverage for a period of time after the Planning Attorney leaves and (2) to demonstrate to the Planning Attorney each year that it has tail coverage in place.

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

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

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

Even if a conflict check reveals that you are permitted to represent the client, you may prefer to refer the case to another lawyer. A referral is advisable if the matter is outside your area of expertise or if you do not have adequate time or staff to handle the case. In addition, if the Planning Attorney is a friend, bringing a legal malpractice claim or fee claim against him or her may make you vulnerable to the allegation that you did not zealously advocate on behalf of your new client. To avoid this potential exposure, you should provide the client with names of other attorneys.

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

The Assisting Attorney and Authorized Signer should make a complete written accounting of all funds in the trust account. Earned fees that are not in dispute should be distributed to the Planning Attorney or the Planning Attorney’s Estate. Unearned fees or other client funds held in the trust account should be refunded to the appropriate clients entitled to such refunds. Disputed funds should be held in trust until the dispute is resolved, either by agreement of the disputing parties or pursuant to a court order.

6. If there is an ethical violation, must I tell the Planning Attorney’s former clients, the Disciplinary Board, or both?

Mandatory or permissive disclosure of an ethical violation to the Planning Attorneys’ former clients or the Disciplinary Board, or both, depends upon a number of circumstances including: (1) whether there is an attorney-client relationship between the Planning Attorney and Assisting Attorney; (2) an attorney-client relationship between the Assisting Attorney and the...
Planning Attorney’s former clients (which may itself create a conflict of interest that must be examined); (3) the manner in which the ethical violation is discovered; (4) the nature of the ethical violation; and (5) whether mandatory or permissive disclosure is permitted under the Rules of Professional Conduct (see, e.g., Rule 16-106(B) NMRA, Rule 16-303 NMRA). Moreover, the Assisting Attorney must also consider his or her duties under Rule 16-803(A) in the context of the foregoing analysis. In short, the Assisting Attorney must carefully review the nature of the violation, the manner in which it is discovered and the duties owed to various parties and the profession under the Rules of Professional Conduct to determine if the violation can or must be disclosed to the Planning Attorney’s former clients and regulatory authorities, including the Disciplinary Board.

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

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

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

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

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

From the Planning Attorney’s perspective, the most important “pro” of authorizing someone to sign on your trust account is the convenience it provides for your clients. If you (the Planning Attorney) suddenly become unable to continue in practice, an Authorized Signer is able to transfer money from the trust account to pay appropriate fees, provide your clients with settlement checks, and refund unearned fees. If these arrangements are not made, the clients’ money must remain in the trust account until a court allows access. This delay may leave the clients at a disadvantage, since settlement funds, or unearned fees held in trust, are often needed to hire a new lawyer. Additionally, allowing access to the trust account will enable the payment of earned fees which can be deposited into the firm’s operating account to help with cash flow during the crisis.

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

If you decide to have an Authorized Signer, decide whether you want to give (1) access only during a specific time period or when a specific event occurs or (2) access all the time. (See Chapter 2.)

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

Although this generally works out fine, the arrangement may result in a conflict of fiduciary interests. As an Authorized Signer on the Planning Attorney’s trust account, you would have a duty to properly account for the funds belonging to the former clients of the Planning Attorney. This duty could be in conflict with your duty to the Planning Attorney if (1) you were hired to represent him or her on issues related to the closure of his or her law practice and (2) there were misappropriations in the trust account and the Planning Attorney did not want you to disclose them to the clients. To avoid this potential conflict of fiduciary interests, the most conservative approach is to choose one role or the other: be an Authorized Signer or be an Assisting Attorney representing the Planning Attorney on issues related to the closure of his or her practice. (See question 4.)
Chapter 5—Succession Scenarios

Your Future Path(s)

The American Bar Association determined in 2011 that more than 35 percent of all attorneys nationally are over age 55. In 2014, more than 50 percent of New Mexico attorneys are over age 50. Attorneys as a group are aging. The Baby Boomer generation is redefining retirement age and what retirement looks like. That applies to attorneys as well.

Many attorneys are defined by what they do. What will happen if you are no longer an attorney? What will you be? Will your status change? Some attorneys may decide to leave the practice entirely, some may slow down and modify their practice, some may become “Of Counsel” to their own or another firm. Other choices include transitioning their practice to younger firm members, or selling their practice and pursuing other interests. There are lawyers who intend to keep practicing until they die at their desk.

There are many choices. Most of them require planning and preparation. This chapter collects some resources that may help you plan your next steps.

Succession Planning as a Business Strategy

Special Issue on Succession Planning
Law Practice Magazine, ABA Law Practice Division, May-June 2011

The following descriptions from the table of contents are reprinted here by permission. The complete special issue is available online at http://www.americanbar.org/publications/law_practice_magazine/2011/may_june.html or through the links below in the PDF version of this handbook.

COVER STORY
A Short Course in Succession Planning: Transitioning Practices and Clients to the Next Generation
By Marcia Pennington Shannon
As significant numbers of law firm partners near retirement age, firms face the daunting question of how to smoothly transition their clients and practices to the next generation. Here’s a snapshot of fundamental steps and issues to consider in charting out a practice’s transition process.

LAW PRACTICE PROFILES
Thinking Ahead: Moving Young Lawyers into the Leadership Pipeline
By Steven T. Taylor
Grooming future leaders is a high priority at Detroit’s Honigman Miller Schwartz and Cohn, and its attorney development partner, Tricia Sherick, is a case in point.
New Direction: Co-founders Address the “What-If” Scenario
By Steven T. Taylor
For Fred Hacker’s 16-lawyer firm, Hacker Gignac Rice, succession planning led to a major overhaul of the firm’s associate-heavy structure.

Step By Careful Step: Implementing the Management Succession Plan
By Steven T. Taylor
When LeClairRyan named David Freinberg as its next CEO, it was the result of a measured, step-by-step and multiyear process.

FEATURES
Five Questions To Ask About Your Firm’s Succession Readiness
By Tom Grella
As his firm begins to grapple with the many tough issues involved, the managing partner of midsize McGuire, Wood & Bissette shares insights into the process of “planning to plan” for succession—and the five basic questions leaders need to ask.

Financial Aspects Of Succession Planning
By Stephen Mabey and Karen MacKay
With law firms beginning to recognize the reality of the generational shift, more and more are putting succession planning on their to-do lists. However, many fail to fully sense the urgency of the situation and how the number of partners who are currently nearing retirement age may have a devastating impact on firm revenues absent effective planning.

Closing A Solo Practice: An Exit To-Do List
By Sheila Blackford and Peter Roberts
Ideally, when it’s time to close your practice, your route will have been charted out well in advance. Then again, if getting away for a vacation has proved difficult, the idea of getting away for good can seem really daunting. So here are steps to help with the hows and whens of closing your office doors.

FRONTLINES
Notes From Editor-In-Chief Dan Pinnington
By Dan Pinnington, Editor-in-Chief
A huge proportion of the bar is nearing retirement age, and law firms are facing the challenging question of succession planning. Unfortunately, the topic gets little attention at most firms, since it raises just about every issue lawyers and law firms dread and avoid: client transitions, leadership changes and partner income and payouts.

Perspectives From The LPM Section Chair
By Andrea S. Hartley
WHO IS NEXT IN LINE? Whether the question is who will be the next managing shareholder, the next attorney in charge of a client relationship or the next president of the United States, knowing who is next in line is critical.
Mentoring: The Prelude To Succession Planning
By Robert W. Denney
As the legal profession continues to change, new trends continue to arise. But one of the most important trends of the day is not new to law firms. It is the return of the oldest, tried-and-true approach to associate development and retention—mentoring.

New Mexico Rules of Professional Conduct
Rule 16-117 NMRA, Sale of a Law Practice
A lawyer or a law firm may sell or purchase a law practice or an area of practice, including good will, if the following conditions are satisfied:

A. The seller ceases to engage in the private practice of law or in the area of practice that has been sold in the jurisdiction in which the practice has been conducted;

B. The entire practice or the entire area of practice is sold to one or more lawyers or law firms;

C. The seller gives written "notice" to each of the seller’s clients for whom the attorney is performing ongoing legal service at the time of the sale or for whom the attorney has performed any legal services within twelve (12) months prior to the date of sale regarding:
   (1) the proposed sale and that the seller has ceased to engage in the private practice of law or in the area of practice that has been sold;
   (2) the name and address of the purchaser;
   (3) the client’s right to retain other counsel or to take possession of the file; and
   (4) the fact that the client’s consent to the transfer of the client’s files will be presumed if the client does not take any action or does not otherwise object within sixty (60) days of receipt of the notice;

D. If the client cannot be notified by written notice, the representation of that client may be transferred to the purchaser only:
   (1) upon entry of an order authorizing the transfer by a court having jurisdiction; or
   (2) by publishing notice once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the seller’s principal office is located setting forth the matters specified in Subparagraphs (1), (2), (3) and (4) of Paragraph C of this rule, but not containing the name of the client. The published notice shall also contain the address where any person entitled to do so may object to the proposed transfer or claim the files within sixty (60) days after the final date of publication; and

E. The fees charged clients shall not be increased by reason of the sale.
[Approved, effective February 6, 2002; as amended by Supreme Court Order No. 08-8300-29, effective November 3, 2008.]
Committee Commentary

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this rule, when a lawyer or an entire firm ceases to practice or ceases to practice in an area of law and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice. See Rules 16-504 and 16-506 NMRA of the Rules of Professional Conduct. Termination of Practice by the Seller

[2] The requirement that all of the private practice or all of an area of practice be sold is satisfied if the seller in good faith makes the entire practice or the area of practice available for sale to the purchasers. The fact that a number of the seller’s clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of a change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The rule permits a sale of an entire practice upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state.

[5] This rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Paragraph E of Rule 16-105 NMRA of the Rules of Professional Conduct.

Sale of Entire Practice or Entire Area of Practice

[6] The rule requires that the seller’s entire practice or an entire area of practice be sold. The prohibition against the sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area subject to client consent. This requirement is satisfied,
however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

**Client Confidences, Consent and Notice**

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 16-106 NMRA of the Rules of Professional Conduct than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within sixty (60) days. If nothing is heard from the client within that time, consent to the sale is presumed. If actual written notice cannot be given, the seller may file with the court or may publish a constructive notice. If no objection is received within sixty (60) days of the final publication, consent is presumed. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted and whether the absent client’s legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[8] A lawyer or law firm ceasing to practice or ceasing to practice in an area of law cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. The requirement of actual notice as well as constructive notice suffices.

[9] All the elements of client autonomy, including the client’s absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

**Fee Arrangements Between Client and Purchaser**

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

**Other Applicable Ethical Standards**

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller’s obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser’s obligation to undertake the representation competently, see Rule 16-101 NMRA of the Rules of Professional Conduct; the obligation to avoid disqualifying conflicts, and to secure the client’s informed consent for those conflicts that can be agreed to, see Rule 16-107 NMRA of the Rules of Professional Conduct (regarding conflicts) and Paragraph E of Terminology of the Rules of Professional Conduct (for the definition of “informed consent”); and
the obligation to protect information relating to the representation, see Rule 16-106 NMRA, Rule 16-109 NMRA and Paragraph B of Rule 16-108 NMRA of the Rules of Professional Conduct (regarding conflicts).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale. See Rule 16-116 NMRA of the Rules of Professional Conduct.

Applicability of the Rule

[13] This rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements and a sale of tangible assets of a law practice do not constitute a sale or purchase governed by this rule.

[15] This rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

[Adopted by Supreme Court Order No. 08-8300-29, effective November 3, 2008.]

Transfer of a Law Practice

From Planning Ahead: Establish an Advance Exit Plan to Protect Your Clients’ Interests in the Event of Your Disability, Retirement or Death, by the New York State Bar Association Committee on Law Practice Continuity (2005). Reprinted by permission.


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For all time prior to the last decade, lawyers in America were perhaps the only corps of professional people who were prohibited from recognizing any financial value from their good names and the goodwill of their practices. We were told that clients were not chattels or vendible commodities, that lawyers were not tradesmen, and that the sale of law practices would necessarily involve the disclosure of client confidences and secrets, a serious violation of a core principle of our profession. Lawyers, therefore, had nothing to sell but their desks, their chairs, their typewriters and their libraries.
In 1989, however, the Supreme Court of California promulgated a new rule of professional conduct that for the first time permitted the sale of the goodwill aspects of a deceased lawyer's practice by his or her surviving spouse or estate. In 1990, given that impetus, the American Bar Association adopted a new Rule 1.17 to its Model Rules of Professional Conduct that proposed, even more expansively, to permit the sale of law practices. Since the ABA has no authority to promulgate rules enforceable in any of our jurisdictions, each had to decide for itself whether it would follow California's and the ABA's lead. Indeed, it was not long before a substantial number of them did, and now [2005] no fewer than 41 jurisdictions permit such transfers, whether by rule or otherwise, New York included.

New York's rule governing the sale of a law practice can be found at 22 NYCRR §1200.15-a. It is more readily recognizable as Disciplinary Rule (or DR) 2-111. See also Ethical Considerations (or ECs) 2-34 to 2-36.) What the rule means, in general terms, is that lawyers, their personal representatives and their estates may transfer for value, under specifically stated limited conditions, not only the property comprising the physical plants in which they practice, but also the value of their own good names, their reputations and the cases and matters they have in their offices, and they can do so whether upon a lawyer's retirement, disability, or death. Attorneys licensed to practice in more than one jurisdiction, therefore, should take extreme care to identify the conditions under which they may transfer their respective practices for value. The following information pertains only to the New York rule.

### Who May Transfer a Law Practice for Value?

Lawyers retiring from the private practice of law, or law firms one or more of whose members are retiring from the private practice of law within the firm, or the personal representatives of deceased, disabled or "missing" lawyers may sell the lawyers' or firms' law practices, including their goodwill.

We deal here primarily with solo practitioners, however. For many years, law firm partners have found legitimate ways, though not authorized by rule, to transfer the value of their practices upon retirement, disability or death, usually by means of in-house contractual arrangements with their long existing or even newly acquired partners or associates. Until now, solo practitioners have never had that opportunity, and that was the inequity of the former rule. Now they may do so.

But not only may solo practitioners or their personal representatives, by specific rule, and for value, transfer the goodwill and other proprietary aspects of their practices upon retirement, disability or death; so also may non-solo law firms by specifically stated means. It would appear, therefore, that the inclusion in the new rules of a specific grant of right to members of non-solo law firms represents merely the drafters' acknowledgment of the existence of an already acceptable, long-standing end, but not necessarily its means.
Interestingly, the rule also applies to situations wherein lawyers are missing, but it does not define the term "missing." We will use "missing" to refer to attorneys absent without explanation of reason for more than 21 days.

**To Whom May a Law Practice Be Transferred for Value?**

A private practice may be sold to one or more other lawyers or law firms. That obviously includes any practitioner licensed and in good standing to practice law in the State of New York and any similarly situated New York law firm. Does it mean that a practice may be sold to a non-New York lawyer or law firm? The rule doesn't address the question, but since those unlicensed in New York are generally considered not to be lawyers for purposes of practicing here, presumably they would be excluded.

What about multi-jurisdictional firms, i.e., those with offices in more than one jurisdiction, where each such office is staffed by attorneys licensed to practice in the state wherein they are assigned by the firm as, for example, in New York? Presumably they would qualify for such purpose.

And what about firms whose professional staffs are not licensed to practice in New York and who do not have a presence here? Under newly proposed multi-jurisdictional practice rules, out-of-state attorneys would be authorized to represent clients in New York in specially restricted ad hoc situations. Would they qualify as purchasers? Obviously the rule does not address that unforeseen issue either, but again, since unlicensed out-of-state lawyers cannot maintain ongoing practices in New York, presumably the application of the rule would prohibit such transfers to them as well.

**Clients' Confidences and Secrets; Conflicts**

Most sensitive is the issue of clients' confidences and secrets. Rule 2-111(B) states the conditions under which confidences and secrets may be disclosed in the course of negotiations involving the transfer of law practices. It is a critical section of the Code that cannot be ignored. Initially, Rule 2-111(B)(1) provides that the seller of a law practice may provide prospective buyers with any information not protected as a confidence or secret under DR 4-101. DR 4-101 is the key disciplinary rule in New York's Code of Professional Responsibility that governs the preservation of clients' confidences and secrets. It defines "confidence" as information protected by the attorney-client privilege under applicable law. It defines "secret" as other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or likely to be detrimental to a client. DR 4-101 then recites when and when not confidences and secrets may be revealed by a lawyer. Reference to it is virtually mandatory in the practice transfer process.

DR 2-111(B)(2) then provides that, notwithstanding the provisions of DR 4-101, the seller may provide the prospective buyer with information as to the identity of his or her individual clients (the word "individual" not meant to exclude corporate, partnership or other similar entities) except where the seller has reason to believe that such information or the fact of such representation is itself a confidence or secret (which usually it is not). In that instance, if the client has first been
advised of the identity of the prospective purchaser and has granted consent to the proposed disclosure, such information may be provided.

DR 2-111(B)(2) also states, again notwithstanding the provisions of DR 4-101, that the selling attorney may provide information concerning the status and general nature of an individual client's matter, together with information that is available in public court files and information concerning the financial terms of his or her attorney-client relationship and the payment status of the individual client's account. But there are rather complex qualifications. DR 2-111(B)(3) provides in substance that prior to disclosing any disclosable confidences or secrets, a selling attorney must provide the prospective purchaser with information regarding matters involved in the proposed sale that [hopefully] will be sufficient to enable the prospective purchaser to determine whether any conflicts of interest exist. Where sufficient information cannot be disclosed without revealing client confidences or secrets, however, the seller may make such disclosures as are necessary for the prospective purchaser to determine whether any conflicts of interest exist, subject, however, to the provisions of DR 2-111. If the prospective purchaser determines the existence of conflicts of interest prior to reviewing such information, or determines during the course of review that a conflict of interest exists, the prospective purchaser cannot review or continue to review the information unless the seller has obtained the consent of the client in accordance with the provisions of DR 4-101(C)(1). All that language easily lends itself to confusion in any given situation, and we clearly lack sufficient guidance to make it all meaningful.

Since the identity of clients is normally not deemed to be a confidence or secret, it would appear that the revelation of the identity of a seller's clients (presumably from a client list) would normally be among the first items of information to provide a prospective purchaser so that he or she might exclude conflicted clients from the transaction or at least render further consideration as to whether their representation would indeed present an impermissible conflict. Not necessarily so, however, under the Rule. It is particularly when the identity of a client is itself a confidence or secret that the complexity is at its greatest. No one said such transactions would always be simple.

What other identifications might be necessary? Certainly the identities of opposing parties. Some observers believe that the identity of all lawyers representing the parties, as well as of judges and hearing officers, should be disclosed. See Simon's New York Code of Professional Responsibility Annotated (West Group) at 338.

The protection of confidences and secrets has always been the core of our professional obligation to our clients, unlike in the accounting profession. That is primarily what our profession's eventual resistance to multidisciplinary practice with accountants was about.

The point to be made about DR 2-111(B)(3), particularly its second sentence, is that this segment of the negotiation process can be very delicate and the seller should take extreme care in disclosing the very kind of revelations that the prospective purchaser may require not only to determine whether a conflict exists, but whether he or she even wishes to pursue the business aspects of the proposed transaction. It clearly would not be difficult to fall into a violative trap that subsequently could result in disciplinary proceedings commenced by a discontented client.
It also is important to note that where confidences and secrets are disclosed to a prospective purchaser, he or she must maintain the same confidentiality of such information as if he or she represents the client. That appears clear enough from the rule and it should not be difficult to adhere to unless, of course, such information will somehow impact upon a prospective purchaser's representation of another client in another unrelated matter. Temptation frequently leads to misconduct.

‘Reasonable Restrictions’ and Geographic Considerations

DR 2-111(A) provides that a seller and buyer may agree upon reasonable restrictions on the seller's private practice of law notwithstanding any other provision of the Code of Professional Responsibility. Obviously this speaks to the seller's subsequent practice of law and thus to the issue of non-compete agreements. DR 2-111(A) also provides that "[r]etirement" shall include the cessation of the private practice of law in the geographic area, meaning the county and city, and any other county and city contiguous thereto, wherein the practice to be sold has been conducted.

DR 2-108(A) prohibits attorneys from participating in a partnership or being party to an employment agreement with other attorneys that restricts the right of any of them to practice law after the termination of a relationship created by the agreement except as a condition to payment of retirement benefits. DR 2111(A) overrides that rule with respect to the sale of law practices. The right of clients to select their own lawyers has always been considered paramount to the right of lawyers to participate in non-compete agreements of their own. What is "reasonable" within the context of the sale of a law practice, of course, has never been tested in New York, at least not in published opinions up to this writing.

But DR 2-111(A) does define as reasonable a geographic area that includes the county and city wherein a lawyer practices, together with a county and city contiguous thereto. Thus, for example, a retiring New York City attorney would "reasonably" be restricted from practicing law in all five counties within the city, as well as in the City of Yonkers, and in Westchester and Nassau counties as well. Note in the rule the use of the mandatory third person "shall" as to the stated geographic areas. Whether a contractual restriction beyond the mandated geographic limits would be "reasonable" has not been decided but probably would be fact intensive.

Note also N.Y. State Bar Op. 707 (1998) which opines that a lawyer may not retire from one part of a law practice and continue to practice in another part within the same geographic area. DR 2-111(A) thus is said not to contemplate retirement from one or more areas of practice without retirement from all others within the same geographic area.

What does “. . . in which the practice to be sold has been conducted” mean? Does it mean the city or county of one's primary office? Does it mean, more likely, any office locale from which one practices? Does it mean any city or county wherein a lawyer regularly or even occasionally has appeared during the course of his or her private practice even though it is not the city or county wherein this office is located? If a Queens County litigator appears regularly throughout Long Island
but maintains his or her only office in Queens, can he or she be foreclosed by agreement from practicing in Suffolk County? Would that be a “reasonable” restriction? We do not yet know. If a lawyer maintains offices in several counties throughout New York State, as some do, are the geographic areas wherein those offices are located included within the rule? May a lawyer retire from the practice of law in Westchester County where he or she maintains an office, but not in Albany County where he or she also maintains an office? Such issues have not yet been determined by precedent.

Notification to Clients

When financial evaluations finally have been completed along with other details of the transaction and a basic agreement has been reached for it to be consummated, it is necessary for both participants, jointly and in writing, to notify each of the seller's clients of the proposed sale. DR 2-111(C). Such notice must include a statement as to the client's right to retain other counsel or to take possession of his, her or its file, and also as to the fact that the client's consent to such a file transfer will be presumed if the client, upon such notice, neglects to take action or fails otherwise to object to it within ninety days from the sending of such notice, subject, however, to any court rule or statute mandating express approval by a client or a court. That imposes upon each client the obligation to take an affirmative step to prevent the transfer of his or her file to the purchasing attorney if that is desired. The rule obviously is intended to avoid prevention of the transaction merely by reason of a client's neglect, inaction or lack of concern in the approval process. And, of course, despite their own neglect, inaction or lack of concern resulting in the transfer of their files to the purchasing attorney, clients may thereafter always terminate the services of the purchasing attorney.

With regard to fees, clients must also be notified in writing, jointly by both the seller and the buyer, that the existing fee arrangement with the selling attorney will be honored, or that proposed fee increases will be imposed. Obviously that is of particular concern to clients in the grant or withholding of consent. It is important to note that the fee charged to a client by the purchaser cannot be increased by reason of the sale unless permitted in the original retainer agreement with the client or otherwise specifically agreed to by the client. DR 2-111(E).

The joint written notice to each of the seller's clients must also include the identity and background of the purchasing attorney, the location of his or her principal office address, his or her bar admission(s), his or her number of years in practice within the jurisdiction, whether the prospective purchaser has ever been disciplined for professional misconduct or convicted of a crime, and whether the prospective purchaser intends to re-sell the practice.

Finally, attorneys should be aware that the rules that for decades proscribed the sale of a law practice revolved primarily upon issues attendant upon improper disclosure of confidences and secrets. The current rule that permits the transfer of law practices is clearly in derogation of the prior philosophy. Accordingly, the current rule should ideally be construed strictly and should be expected to result in disciplinary action should it be violated. All doubts as to the propriety of a proposed transfer, or of any ingredient of it, should reasonably be resolved against the transfer.
Valuation

A fundamental consideration in the entire negotiation process involves the question as to what value may be ascribed to a selling practice. That is an issue requiring outside expertise in most instances. It is not the purpose of this material to describe the various means by which a practice may be appraised. Suffice it to say that the determination may become very complex. The reader is referred to various of the materials listed at the end of this segment.

Conclusion

The rules relating to the transfer of law practices in New York are relatively new and, at this writing, are not yet the subject of judicial interpretation. Nor do we yet have any authoritative statistics as to the extent to which DR 2-111 has been utilized. The rule was intended primarily to place solo practitioners on a equal footing with non-solo practitioners in terms of their ability to obtain monetary value from their years of private practice. It probably is fair to state that most solo practitioners are general practitioners, and that most of them have relatively few institutional clients. Assuming that to be true, one cannot help but wonder what monetary value most solo practices may have where they consist of an ever-changing clientele, and where (unlike non-solo firms wherein a continuing firm name and its continuing professional staff may provide value) the good will aspect of the practice to be sold consists exclusively of the character and professional reputation of the selling attorney who, upon sale, will no longer be an element of the practice. That factor, it would seem, tends to place the solo practitioner on something other than the equal footing that the rule was intended to provide. But for those who can somehow find value to sell, the rule exists to be used. While nothing may be gained from it in many situations, nothing can be lost, and all solo practitioners should at least consider the marketable value of their practices before simply shutting down.

Selected References


New York’s Lawyer’s Code of Professional Responsibility, DR 2-111 and DRs cited therein, and ECs 2-34, 2-35 and 2-36.

ABA Model Rules of Professional Conduct, Rule 1.17


**Temporary Substitutes During Extended Absence**

**For Military or Personal Reasons**

**Pinch Hitters: Solos Need a Backup Plan To Prepare for the Unexpected**

By Kevin Davis

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When the U.S. went to war with Iraq in 2003, San Antonio solo Thomas J. Crane, a member of the U.S. Army Reserve, was summoned to active duty. He had just five days to get his personal and business affairs in order.

“I assumed we’d have a couple of months to get ready,” says Crane, an employment lawyer. With about 20 pending cases in various stages, Crane spent about 24 hours typing up summaries and detailed instructions for a couple of lawyer friends who had verbally agreed to pick up his cases if something happened.

Crane’s 10-month tour as an infantry training officer took him from Texas to Louisiana and Kansas. Some clients didn’t want to work with Crane’s substitute lawyers, while others tried to stick with him.

“I had one client who wasn’t happy about what happened. I spoke with her on the phone for about 45 minutes. I told her: ‘You can’t count on me. I don’t know how long I’ll be gone.’ ”

When he did return, Crane’s practice was all but gone. He took a job at a nonprofit specializing in disability rights before going solo again in 2009. Lesson learned. He now keeps more detailed summaries of pending cases, along with court and filing dates. “Back in 2003 I didn’t have a running list of all my cases. Now I do. But I still need to find one or two backup lawyers,” he says.

Having a plan for pinch hitters is essential for solos who can be forced away from their practice for any number of reasons, including sudden illness, disability—even death. Shell Bleiweiss, a Chicago environmental lawyer, didn’t need to worry about a backup plan when he worked for a large firm. But as a solo he does. “I didn’t have a plan for a number of years, but I did have a designated backup lawyer because malpractice insurance required it,” he says. “But I didn’t have memo or all the details spelled out.”

**Details Make the Difference**

It’s not enough to simply designate lawyers to cover for your practice. Solos need detailed plans that spell out everything. Bleiweiss made an agreement with another environmental lawyer in suburban Chicago and created a detailed memo that includes names of clients and pending cases,
where he banks, and who has signatory authorization for his account and passwords for computers.

If Bleiweiss is suddenly incapacitated, his clients will be covered. “It’s up to the client to stay or not. That’s why I have a backup who’s an expert in the field,” he says. “For the client, it’s the most seamless way. It’s not as if they need to find a new lawyer. And for the backup lawyer, there’s the prospect of getting a lot of work.”

Debra Bruce, president of Houston-based Lawyer-Coach and author of the blog raising the Bar, says lawyers need to think about this early. “I think the biggest problem is for newer lawyers because they may not have the network of lawyer in their practice areas to connect with,” she says. Bruce suggests getting involved with the local bar association, particularly in the sections focusing on your practice area and building relationships. She also says law schools’ career development offices, as well as classmates and people you meet at conferences, can be good resources.

“The big challenge is building the relationships to get their commitment and to build trust,” she says.

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See also the New York State Bar Association’s Checklist of Concerns when Assuming Temporary Responsibility for Another Attorney’s Practice, in Chapter 6.
CLOSING A LAW OFFICE:

NEW MEXICO GUIDE
FOR A THIRD PARTY CLOSER

State Bar of New Mexico®
SENIOR LAWYERS DIVISION

October 2002
# CLOSING A LAW OFFICE:
## NEW MEXICO GUIDE FOR A THIRD PARTY CLOSER

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INTRODUCTION

This guide deals with some of the issues created by the death or permanent disability of an Attorney who leaves an on-going law practice. There are many ethical, practical and financial considerations facing the family of the Attorney who has left a law practice. Often the survivors are overwhelmed with the responsibility of closing the office, selling it, or continuing the practice.

Today, with many husbands and wives engaged in the legal profession, the surviving spouse may be Executor of the Attorney’s Estate, the Closer and the Estate Attorney. The three-hatted lawyer-spouse is immediately placed in a position of potential conflict requiring scrupulous attention to the ethical references provided herein.

This Guide is applicable to the sole practitioner and to an Attorney who is associated or in partnership with others whether or not there is a formal agreement with the Associates or Partners. Although it may offer some assistance to anyone closing the office of a disbarred attorney, that situation may involve additional problems not addressed here.

In this Guide:

“Attorney” means the deceased or disabled attorney.
“Closer” means the lawyer closing the Attorney’s law practice.
“Personal Representative” means the personal representative of the Attorney’s estate.
“Client” means client of the deceased or disabled Attorney.

This manual has been adopted in large part from the
“Guide to Closing a Law Office”,
published by the Bar Association of Nassau County, NY, Inc.

The Senior Lawyer’s Division of the State Bar of New Mexico gratefully acknowledges permission from the Bar Association of Nassau County to use its Guide to produce this work.
THE CLOSER

WHO IS THE CLOSER

The Closer must be a lawyer if the Closer is to do anything more than deliver the unexamined file to the Client. The Closer may be the estate attorney or one selected by the estate attorney, a spouse, an executor, an associate or a surviving partner.

If no such person is known to exist, the Office of Disciplinary Counsel can and will petition the Supreme Court to appoint an attorney or attorneys to inventory the files of the Attorney and to take such action as appropriate to protect the interests of the Clients of the Attorney, as well as the interests of the Attorney (or his or her estate). See Rule 17-213(A) of the Rules Governing Discipline.

ESTATE ATTORNEY AS CLOSER

There is no rule prohibiting an estate attorney from being the Closer but there are areas of possible conflict that must be avoided. Since the Closer stands in the shoes of the Attorney, Closer’s allegiance is to protect the Attorney’s Client. Because the estate attorney’s loyalty is to the estate, its executor and the heirs and distributees of the estate, this may conflict with the best interests of the Attorney’s Clients.

If the estate attorney determines that there is an area of potential conflict, he or she should contact the Office of Disciplinary Counsel and request that an attorney be appointed as Closer pursuant to Rule 17-213(A).

SURVIVING SPOUSE AS CLOSER

A surviving spouse, if an attorney, may be a Closer. The Closer spouse must take great care that the personal relationship with the Attorney does not affect the Closer spouse’s duties and responsibilities to the Attorney’s Clients lest the Closer-spouse violate the code and be subjected to discipline.

PROTECTING THE CLOSER

If the Closer performs any service beyond returning the unexamined file to the Client it is recommended that the Closer have a written agreement with the Personal Representative of the Attorney. If the Closer is acting by direction of the Court, there would be no need to have an agreement.

OPTIONS OF THE CLOSER

1. The Closer may return the file to the Client in the same condition as it is found in the Attorney’s office. This constitutes a purely ministerial act.

2. The Closer may cull the file and return all original and/or legal documents, and other instruments requested by the Client. Work product of the Attorney, duplicate agreements, etc., may be removed. The closer should obtain a receipt for all papers delivered and authorization to destroy the balance of the file.
3. The Closer may be substituted and retained by the Client to complete unfinished matters. However the Closer should be careful not to engage in conduct that conflicts with ethical standards involving solicitation. The Client should be given the option of retaining another attorney or permitting the Closer to complete unfinished matters.

The Closer may not solicit the Client to become the Client of the Closer. Solicitation or coaxing must be avoided or the Closer may be in violation of Rule 16-703 of the Rules of Professional Conduct. If however the Client does retain the Closer, the Closer should obtain a Substitution of Attorneys properly signed. It should be served upon all interested parties and filed as required by law. It is also suggested that the Closer have a written Retainer Agreement with the Client to obviate future disagreements as to fees.

4. The Closer may refer the Client to another attorney if the Client requests it.

5. The Closer if authorized by the Personal Representative of the deceased Attorney, or the Legal Representative of the disabled Attorney, may negotiate the sale of the law practice pursuant to Rule 16-117 of the Rules of Professional Conduct.

**CLOSER’S PROCEDURE**

**DETERMINE THE CASELOAD**

1. Are file drawers labeled active and/or closed?

2. Is there a card index or ledger of files?

3. Check calendars, diary, Lawyer’s Answering Service for pending litigation.

4. Inquire of Attorney’s Secretary.

5. Check for original documents in inactive files that have not been formally closed.

6. Check whether all work has been completed in files that have not been marked closed.

**PRIORITIES**

1. Inventory all files and prioritize according to urgency and time restraints.

2. Determine the next step in any pending litigation.

3. Check for Statutes of Limitations in all cases.

4. Estates and Trusts (See Separate Section)

5. Inventory and reconcile IOLTA and escrow accounts.
6. Check Will files for original Wills. If more than one original Will, check dates to determine the last executed.

**NOTIFICATION**

1. Notify Client that the office is being closed. If a matter of urgency use telephone and follow with letter.

2. Notify Court and Attorneys in all pending litigation.

3. Notify Clerk of the Supreme Court and New Mexico State Bar of date of death of Attorney to terminate registration requirement.

**PERSONNEL**

Provide for the continued employment or orderly termination of the Attorney’s employees.

**CLOSER’S SYSTEM**

1. Develop a system to record all files returned to Clients, including all action taken by Closer relating to each file.

2. Develop a tickler system to track notices to Clients and responses.

3. Use calendar for timetable, particularly due dates for tax returns, accounting reports and statutes of limitation.

**FEES**

1. Check all files on retainer. Determine on quantum meruit basis value of services rendered by the Attorney. If file returned, Client to receive difference between monies paid and services rendered.

2. It is improper for the Closer to pay a non-lawyer surviving spouse any portion of the legal fees collected. Payments must be made to the Estate.

3. The Closer may be paid by the Estate for services rendered in closing the office.

**ACCOUNTS RECEIVABLE**

1. Send out updated bills.

2. Bill Client for services rendered to date on quantum meruit basis. Estate is entitled to retain file until bill is paid providing prejudice to Client can be avoided.
INCOMPLETE FILES

1. If the Closer finds matters that have been neglected or barred by the Statute of Limitations, return the file to the Client and advise the Client to consult an attorney of the Client’s own choosing.

2. Notify the Attorney’s malpractice carrier of possible suit.

OFFICE ADMINISTRATION

1. Check lease, determine whether office is to be closed or remain open and discuss with Landlord.

2. Arrange for disposition of furnishings or books. If not saleable, furnishings in good condition may be donated. Books that have not been kept up to date have little or no value. Libraries and law schools have limited space and usually are not interested in accepting books. A notice in the Bar Bulletin or a sign posted at the Bar Association may be of assistance.

3. Check whether there are deposits/credits with book companies, utilities, Federal Express, etc. Arrange for refunds.

4. Notify book companies to cancel future deliveries. The Post Office will not accept packages for return if they have been opened.

5. Check whether any of the equipment is leased, i.e. copier, computer, etc. Determine date of termination or cancellation.

6. Check insurance policies and decide which ones to cancel or if claims should be made.

7. Keep complete records of all expenses incurred in closing the office.

PRESERVATION OF FILES AND RECORDS

TAX DOCUMENTS

1. The Internal Revenue Service can audit for three years after the return is filed even if filed late. Therefore all of the Attorney’s returns and justifying data should be kept at least that long. Some Accountants say you should keep the tax returns and backup data forever.

2. All records pertaining to an Employer-Employee plan showing deposits and/or withdrawals should be kept for at least three years. If applicable, all Form 5500’s filed with the Internal Revenue Service should be preserved for at least three years.

MANDATORY PRESERVATION OF ATTORNEY’S RECORDS

The Closer is under the same obligation to preserve files and records as the Attorney. The following records must be preserved for five (5) years after disposition of funds or termination of the trust relationship. (See Rule 17-204(A) of the Rules of Governing Discipline)
1. A record of all deposits into and withdrawals from the Attorney’s trust account(s) specifically identifying the date, source and description of each item deposited as date, payee and purpose of each disbursement. Deposit slips shall separately identify each item deposited. Trust account disbursement shall be made only by authorized bank transfer or by check payable to a named payee and not to cash.

2. A separate ledger or account for each separate trust Client, containing the information required by subparagraph (1) of this paragraph. A continuing balance of each individual Client trust ledger shall be maintained. The total of the balances of all individual Client trust ledgers must equal the beginning balance of all individual Client trust accounts, plus the total of all additional amounts received in trust, minus the total of all trust monies disbursed.

3. Copies of all retainer and compensation agreements with Clients.

4. Copies of all statements to Clients, which statements shall reflect all transactions on the trust account for the period to which statements relate.

5. All checkbooks, check stubs, bank statements, cancelled checks and duplicate deposit slips on each trust checking account.

6. Copies of all invoices and statements received from others and paid out of trust funds;

7. Written reconciliations made at least quarterly of the checkbook balance, the bank statement balance and the Client trust ledger sheet balances.

8. Copies of those portions of each Client’s case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.

9. If the Attorney participates in the IOLTA program, proof of compliance with Subparagraph (b) of Paragraph D of Rule 16-115 of the Rules of Professional Conduct and copies of reports received from the financial institution in compliance with Subparagraph (5) of Paragraph D of Rule 16-115 of the Rules of Professional Conduct.

10. For properties other than cash, a separate ledger for each Client identifying the date received, the name of the person from whom received, the description of the property (including make, model, serial number and other identifying marks), its location in the attorney’s office or other location, the date released by the Attorney and to whom released.

**Preservation of Client’s Files**

1. Wherever possible the Closr should deliver to the Client, all original documents and all documents which the Client is obligated to keep or may want to preserve. The Closr should advise the Client of the need to preserve them. The Closr should obtain authorization to destroy the balance of the file unless there is a possible malpractice claim against the Attorney or the Attorney is required to preserve the file. If the Client cannot be located, the Closr must be guided by the foreseeable need for the documents in question and preserve them as applicable.

2. Original Wills must be preserved by the Closr if the Client cannot be located.
ESCROW ACCOUNTS

ACCOUNTING

1. Closer should prepare an informal accounting of each Client’s escrow fund.

2. If the Attorney was the sole attorney signatory on the escrow account an application should be made to the Supreme Court by Chief Disciplinary Counsel pursuant to Rule 17-213 of the Rules Governing Discipline to appoint a successor signatory for the account. At least one attorney must be a signatory on the account. Rule 17-204A(1).

TRANSFER OF ESCROW FUNDS

In transferring escrow funds to another, care must be taken to protect all interested parties.

1. Obtain written consent from Client and all interested parties to transfer escrow funds to new Attorney retained by Client.

2. Obtain acknowledgment by substituted Attorney of receipt and acceptance of funds and terms of escrow agreement.

3. Obtain release from each interested party, releasing Attorney, Estate and Closer from any future obligation.

4. Notify all necessary parties for whom funds are being held on behalf of Client (with copy of notice to Client) that funds are being disbursed and that in event of dispute between Client and third party as to ownership of funds, disputed amount will be held in trust or placed in court registry until dispute is resolved.

MALPRACTICE INSURANCE

1. The Closer should review the Attorney’s professional liability policy to ascertain if the Attorney is entitled to a free extended reporting period or in the alternative, the cost of purchasing an extended reporting period. The purpose of an extended reporting period is to extend the time in which claims can be reported to the professional liability carrier after the termination of a claims-made policy. It will not provide coverage for work done after the termination of the policy.

2. The Closer should contact the Attorney’s carrier to ascertain whether the Attorney’s policy covers the Closer.
ESTATES AND TRUSTS

**GENERAL**

The Closer should:

1. For all active estate matters, read all Wills and Trust Agreements, outline and calendar due dates of tax returns and all of the Attorney’s obligations under the particular document.

2. Notify all beneficiaries, adversaries, and any Court where a proceeding is pending of the Attorney’s death or disability.

3. Offer to return all original Wills, Living Wills, Trusts, Health Care Proxies and Power of Attorneys to the Client. If the Attorney is a named Executor or Trustee of any Will, the Testator should be advised that the fiduciary named in the Will has died or is disabled.

4. Where the Testator cannot be located the original documents must be preserved.

**OBLIGATIONS WHERE ATTORNEY IS FIDUCIARY**

1. Closer should preserve and assemble any assets of Client’s estate or trust and arrange to deliver to successor.

2. If necessary, make application to the Court for appointment of a successor Executor or Trustee.

3. If more than one fiduciary is serving, a successor will not be necessary unless specifically required under the Will or Trust Agreement. If not required, the remaining fiduciaries may file an ex parte motion to delete the name of the deceased fiduciary.

4. The Closer should evaluate and determine the obligations of the Attorney/Fiduciary’s Personal Representative, to wit: accounting tax returns, payments to beneficiaries, etc.

5. The Personal Representative of the Attorney does not have inherent authority to take control of the estate or trust. However, the Personal Representative of a deceased or incompetent Attorney/Fiduciary may make final distribution under Court direction without the appointment of another fiduciary.

**ACCOUNTING BY ATTORNEY’S PERSONAL REPRESENTATIVE**

The Personal Representative should determine the feasibility of an informal account. An “informal account”, i.e. one done voluntarily without a Court proceeding, should be considered if all interested parties are adults, not under any disability, and amenable.
**TAX RETURNS**

It is the responsibility of the Personal Representative of the Attorney/Fiduciary to file tax returns until a successor is appointed or request extensions to file Federal and State estate tax returns, and file or request extensions to file Federal and State fiduciary income tax returns.

**ATTORNEY/FIDUCIARY CLIENT’S IRA, PENSION PLANS**

1. The Closer should carefully examine the Client’s estate file to determine whether there are any IRA or Pension Plans among the assets.

2. The rules concerning distributions and rollovers from IRAs and Pension Plans are complex, and an expert should be consulted. Most investment companies will provide complimentary brochures explaining available options.

3. If the deceased Client was a fiduciary of a qualified plan, Form 5500 must be filed with the Internal Revenue Service until all monies are disbursed from the qualified plan. These forms are provided by the Client’s Plan together with verification of the status of the Plan.

**SALE OF A LAW PRACTICE**

On February 6, 2002 the Supreme Court authorized Attorneys to sell a law practice by adopting a Rule 16-117 of the Rules of Professional Conduct. The provisions of this Rule should be followed if the Attorney’s law practice is to be sold.
Chapter 6 – Checklists and Sample Forms

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Editable Microsoft Word versions of all forms in this handbook may be downloaded from the Lawyer Succession and Transition Committee’s home page at www.nmbar.org/LSTC.html.
Checklists

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 Assisting Attorney to close your practice in the event of death, disability, impairment, or incapacity and have arranged for an Authorized Signer to issue refunds from your lawyer trust account.

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 for your lawyer trust account are kept; or in the alternative, how to pull client trust account balances from your trust accounting software.
   e. How the open/active files are organized;
   f. How the closed files are organized and assigned numbers;
   g. Where the closed files are kept and how to access them;
   h. The office policy on keeping original client documents;
   i. Where original client documents are kept;
   j. Where the safe deposit box is located and how to access it;
   k. The bank name, address, account signers, and account numbers for all law office bank accounts;
   l. The location of all law office bank account records (trust and general);
   m. Where to find, or who knows about, the computer passwords;
   n. How to access your voice mail (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 your file deadlines (including follow-up deadlines) are calendared.


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

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

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

8. If your written agreement authorizes the Assisting Attorney to sign 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 on the happening of a specific event. In some instances, you and the Assisting Attorney will have to sign bank forms authorizing the Assisting Attorney to have access to your general account. (See Chapter 2.)

9. If your written agreement provides for an Authorized Signer for your trust account checks, follow the procedures required by your local bank. Decide whether you want to authorize access at all times, at specific times, or only on the happening of a specific event. In most instances, you and the Authorized Signer will have to sign bank forms providing for access to your trust account. (See Chapter 2.) Choose your Authorized Signer wisely; he or she will have access to your clients’ funds.

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

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

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

13. Forward the name, address, and phone number of your Assisting Attorney to the Disciplinary Board each year:

   New Mexico Disciplinary Board
   P.O. Box 1809
   Albuquerque, NM 87103-1809

   (See Notice of Designated Assisting Attorney in this chapter.) This will enable the Disciplinary Board to locate the Assisting Attorney in the event of your death, disability, impairment, or incapacity.

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

15. Review your retainer agreement each year to make sure that the name of your Assisting Attorney is current.
16. Fill out the Law Office List of Contacts practice aid in this chapter. Make sure your Assisting Attorney has a copy.
Checklist for Closing Your Own Office

1. Finalize as many active files as possible.

2. Write to clients with active files, advising them that you are unable to continue representing them and that they need to retain new counsel. Your letter should inform them about time limitations and time frames important to their cases. The letter should explain how and where they can pick up copies of their files and should give a time deadline for doing this. (See sample Letter Advising That Lawyer Is Closing His/Her Office in this chapter.)

3. For cases with pending court dates, depositions, or hearings, discuss with the clients how to proceed. When appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmations of these extensions, continuances, and resets to opposing counsel and your client.

4. For cases before administrative bodies and courts, obtain the clients’ permission to submit a motion and order to withdraw as attorney of record.

5. If the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.

6. Pick an appropriate date to check whether all cases either have a motion and order allowing your withdrawal as attorney of record or have a Substitution of Attorney filed with the court.

7. Make copies of files for clients with open matters. Retain your original files. All clients should either pick up the copy of their files (and sign a receipt acknowledging that they received them) or sign an authorization for you to release the files to their new attorneys. (See sample Acknowledgment of Receipt of File and Authorization for Transfer of Client File in this chapter.) If a client is picking up the file, return original documents to the client and keep copies in your file.

8. Remind clients of your file retention and destruction policy. Tell them where you will be storing your client file records and who they can contact should they need an additional copy of their file. If your fee agreement or engagement letter did not notify your client about your file retention and destruction policy, you should obtain all clients’ permission to destroy the files after approximately five years. (See File Retention and Destruction in Chapter 7.) If a closed file is to be stored by another attorney, get the client’s permission to allow the attorney to store the file for you and provide the client with the attorney’s name, address, and phone number.

9. Send the name, address, and phone number of the person who will be retaining your closed files to the New Mexico Disciplinary Board, P.O. Box 1809, Albuquerque, NM 87103-1809. Also send them your name, current address, and phone number.
10. If you are a sole practitioner, ask your telephone company for a new phone number to be given out when your disconnected phone number is called. This eliminates the problem created when clients call your phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information. In the alternative, arrange for your telephone number to have a recorded announcement about your closed office for 30 to 60 days after you close your office.

11. If you are a notary and resign your commission, file a resignation with the New Mexico Secretary of State and inquire regarding applicable rules regarding record retention.
Checklist for Closing Your IOLTA Account

1. Fully reconcile the IOLTA account. Any funds remaining in the account should correspond to specific clients or should cover reasonably anticipated bank charges.

2. Contact the bank to determine whether there will be any charges associated with closing the account. If a closing fee will be assessed, deposit sufficient funds to cover the closing fee. (You are responsible for this bank charge—do not use client funds to cover this fee.)

3. Prepare and send final client bills, if necessary.

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

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

6. For unclaimed trust account funds contact the Disciplinary Board regarding disposition. Note that if the unclaimed funds consist of an uncashed witness fee, or other payments not cashed by a third party, the funds revert to the client and should be reimbursed to the client.

7. Do not close the account until all outstanding checks have cleared.

8. Shred unused checks and deposit slips once the IOLTA account is closed. This will prevent fraud and protect you from mistakenly using checks and deposit slips from your closed account.

9. Keep the IOLTA check register, client ledgers, bank statements, and other records for at least five years: “Complete records of [trust] account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.” SCRA 16-115.

10. Although no rule specifically requires it, it is prudent to notify IOLTA Compliance when an account is closed between annual certifications. Send notice of the closure of your IOLTA account to:
    
    Attn:
    Center for Civic Values
    P.O. Box 2184
    Albuquerque, NM 87103-2184

    Include your name and contact information, the name of the financial institution, city and state of the financial institution, bank routing number, and IOLTA trust account number.
Checklist for Closing Another Attorney’s Office

For a more detailed treatment, see “Closing a Law Office: A Guide for Third Party Closers,” by the State Bar of New Mexico Senior Lawyers Division, in Chapter 5. The term “Closing Attorney” refers to the attorney whose office is being closed.

1. Check the calendar and active files to determine which items are urgent and/or scheduled for hearings, trials, depositions, court appearances, etc. Consider conducting an online search using the Closing Attorney’s name on the websites of the district and appellate courts, where the Closing Attorney is known to have practiced.

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 poses a conflict of interest for you and your clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs.)

3. Contact courts and opposing counsel immediately for files that require discovery or court appearances. Obtain resets of hearings or extensions when necessary. Confirm extensions and resets in writing.

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 procedure manual. Determine whether anyone has access to a list of clients with active files.

6. Determine whether the Closing Attorney stored files online. Locate the user name and password, retrieve the digital data, and arrange for the cloud storage provider to close the account.

7. Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney and/or pick up a copy of the open file. Provide clients with a date by which they should pick up copies of their files. Inform clients that new counsel should be chosen immediately. (See sample Letter Advising That Lawyer Is Unable to Continue in Practice, in this chapter.)

8. For cases before administrative bodies and courts, obtain permission from the clients to submit a motion and order to withdraw the Closing Attorney as attorney of record.

9. If the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.

10. Select an appropriate date to check whether all cases have either a motion and order allowing withdrawal of the Closing Attorney or a Substitution of Attorney filed with the court.
11. Make copies of files for clients. Retain the Closing Attorney’s original files. All clients should either pick up a copy of their files (and sign a receipt acknowledging that they received it) or sign an authorization for you to release a copy to a new attorney. If the client is picking up a copy of the file and the file contains original documents that the client needs (such as a title to property), return the original documents to the client and keep copies for the Closing Attorney’s file.

12. Advise all clients where their closed files will be stored and who they should contact to retrieve a closed file.

13. Send the name, address, and phone number of the person who will be retaining the closed files to the New Mexico Disciplinary Board, P.O. Box 1809, Albuquerque, NM 87103-1809.

14. If the Closing Attorney was a sole practitioner, try to arrange for his or her phone number to have a forwarding number. This eliminates the problem created when clients call the Closing Attorney’s phone number, get a recording stating that the number is disconnected, and do not know where to turn for information. In the alternative, arrange for your telephone number to have a recorded announcement about your closed office for 30 to 60 days after you close your office.

15. Contact the Closing Attorney’s professional liability insurance carrier, if applicable, about extended reporting coverage.

16. If the Closing Attorney is a notary and wants to resign his or her commission, he or she must file a Termination of Notary Public Commission Due to Resignation with the New Mexico Secretary of State. Check the Secretary of State website for a notary resignation form.

17. If the Closing Attorney died, you may want to speak to family members about submitting memorial notices or obituaries to appropriate publications. In Memoriam notices may be submitted to the editor of the State Bar of New Mexico Bar Bulletin, P.O. Box 92860, Albuquerque, NM 87199-2860. Family members should also be advised that if the Closing Attorney was a notary, to check with the New Mexico Secretary of State regarding the appropriate disposition of the notarial records.

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

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

20. *(Optional)* If your responsibilities include sale of the practice, you may want to advertise in the local bar newsletter, the State Bar of New Mexico *Bar Bulletin*, and other appropriate places.

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

22. *(Optional)* If your arrangement is to represent the Closing Attorney’s clients on their pending cases, obtain each client’s consent to represent the client and check for conflicts of interest.
Checklist of Concerns when Assuming Responsibility for Another Attorney’s Practice

Whether Due To the Purchase or Termination of the Other Practice

1. The term Acquiring Attorney refers to the attorney purchasing the law practice. Terminating Attorney refers to the attorney selling or otherwise terminating the practice.

2. Status of Files. If possible, the Acquiring Attorney and the Terminating Attorney should discuss the status of open files—what has been completed, what has not, what has been billed, etc.

3. Consider the overhead costs involved in acquiring a practice or the responsibility for a practice for an interim period.

4. Where the Acquiring Attorney does not have the expertise in one or more of the areas in which the Terminating Attorney practiced, he should refer such matters to other practitioners.

5. Immediately determine responsibility or the lack of responsibility for the IOLTA and attorney escrow accounts. Rights and obligations of the Acquiring Attorney must be known as potential liability is significant.

6. Consider and recognize the personalities and practice habits of the Terminating and Acquiring Attorney. For example, if the Terminating Attorney met with clients in their homes or places of business, or if the staff was actively involved in the Terminating Attorney’s client relations, etc., the Acquiring Attorney should consider continuing in this same manner or advising the clients of the Acquiring Attorney’s practices.

7. Consider whether to maintain the same fee policy as the Terminating Attorney. If possible, determine in advance whether hourly rates or set fees will be used, and at what amounts; and, whether to use retainer agreements. Disclosure of these items is required under the disciplinary rules governing the sale of a law practice.

8. If time and the Terminating Attorney’s condition allow, that attorney should introduce the Acquiring Attorney to non-lawyer staff members, and referral sources such as insurance agents, bankers, realtors, accountants with whom the Terminating Attorney worked. If the Terminating Attorney is not available to assist in this capacity, the Acquiring Attorney should make immediate contact with those individuals, not only for purposes of preserving client relations, but to determine location of clients, history of clients, etc. Many clients work with a team of advisors and with the client’s consent, the Acquiring Attorney should have discussions with each of these other professionals.
9. Review and analyze the Terminating Attorney's technology systems for compatibility with Acquiring Attorney's systems. Because of the constant change in technology, the Terminating Attorney or his or her staff should not only participate in transferring over current technology in use, but also should provide access to systems that historically have been used by the Terminating Attorney, but which are not kept current. There is a significant amount of client information in the old files and systems.

10. If the Terminating Attorney or the estate plans to sell the practice, Rule 16-117 NMRA must be fully reviewed and understood. There are critical notice and time requirements that must be followed.

11. Immediately notify the Terminating Attorney's accountant and/or bookkeeper and schedule a meeting to fully understand the financial reporting policy and habits of the Terminating Attorney. If the Terminating Attorney did his or her own accounting and tax preparation, the Acquiring Attorney's accountant should be given immediate access to those books and records that may be available to determine tax and financial liabilities of the Terminating Attorney and the Acquiring Attorney.

12. Contact firms or practices with which the Terminating Attorney was associated to determine whether any files remain with those practices. This will save the Acquiring Attorney a significant amount of time searching for files demanded by clients for past representation by the Terminating Attorney. Also, determine who bears the cost and the responsibility for acquiring or copying those files: the Acquiring Attorney, the Terminating Attorney or the court or other agency that has taken over the primary responsibility for the Terminating Attorney's practice.

13. Consider file storage. The older the practice, the more time and expense will be involved in file review and management.

14. Determine whether closed files contain valuable documents such as wills, agreements, etc. Practices differ: one attorney's closed files may be considered another attorney's open and continuing files. For example, an attorney may habitually notify clients following every service that the representation has ceased and closes a file. Others may never take this step and always assume that the client may be coming back for further representation.

15. In returning files, ensure that you are returning files to the client. Obtain appropriate consents before returning files to individual spouses.

16. Review vendor relationships with the Terminating Attorney's vendors to determine whether prepayments were made for services or products that are not going to be used and whether bills are due for storage of files, stationery, supplies, etc.
17. In open estate files, determine whether the Terminating Attorney's practices are consistent with the Acquiring Attorney's practices, with respect to what services are covered on a quoted fee. For example, is a fee for probate limited to just the probate of the will or does it cover estate tax return preparation, will contests, etc.? Carefully review retainer letters and send modifications if necessary. Note that the DR’s require a notice as to whether the Acquiring Attorney is going to honor the Terminating Attorney’s retainer/engagement agreements and arrangements. Arrangements differ. As the Acquiring Attorney, make sure you know what you are agreeing to before stating that you are honoring all of the arrangements with all of the clients.

18. Review accounts receivable when you are purchasing an attorney's practice. You may need to take steps with clients who have a poor payment history.

19. Consider referring a client to another attorney. Know your limitations, both with time and expertise. You need not assume all clients as an Acquiring Attorney.

20. When returning files to clients who have requested them, make a decision as to what you are returning. Will it be everything in the file? Are you responsible for anything in the file for which you will want to retain copies for your own liability protection? Are there documents that should be retained for the benefit of the Terminating Attorney so that he/she or his/her estate could defend any claims against them? Proceed with caution.

21. Continue liability insurance. If the attorney has died or has retired from practice, reporting endorsement coverage or "tail coverage" should be obtained. In the event of death, the policy may provide reporting endorsement coverage for a time at no additional cost.
Checklist of Concerns when Assuming Temporary Responsibility for Another Attorney’s Practice

Whether due to the other attorney’s absence, disability, or suspension

1. The term "Responsible Attorney" refers to the attorney who is assuming temporary responsibility for another attorney’s practice.

2. If there is sufficient notice, discuss with the disabled or suspended attorney the status of open files—what has been completed, what has not, what has been billed, etc.

3. Consider who will be responsible for the overhead costs involved in managing the practice for the interim period. Address compensation of the Responsible Attorney.

4. Where the Responsible Attorney does not have the expertise in one or more of the areas in which the disabled or suspended attorney practiced, the Responsible Attorney should enlist the assistance of other practitioners. The Responsible Attorney may seek such assistance through the court (if court appointed) or through the bar association.

5. Immediately determine responsibility or the lack of responsibility for the IOLTA and attorney escrow accounts. If there is a second signatory on the account, contact that attorney immediately. Arrange for an audit of the account to determine whether there are adequate funds in the accounts for the clients.

6. Consider and recognize the personalities and practice habits of the disabled or suspended attorney. For example, if the attorney met with clients in their homes or places of business, or if the staff was actively involved in the attorney’s client relations, you should consider continuing in this same manner or advising the clients of your practices. Clearly advise clients of their rights to seek new counsel of their own choosing. Give as much information as possible to the client as to the expected return of the disabled or suspended attorney to practice, as well as the likelihood of that happening. Take great care to properly advise the clients in this regard. Incorrect information given to the client may have an adverse effect on the client's case, and an adverse effect on the practice. Seek court approval and direction to the extent possible, if you are making decisions and giving advice that can result in a client seeking other counsel.

7. Consider whether to maintain the same fee policy if the Responsible Attorney is to render services for a client. If possible, determine in advance whether hourly rates or set fees will be used, and at what amounts, and whether to use retainer agreements. There is little
direction as to how fees are to be handled in the case of a temporary departure from the practice of law. If time and the disabled or suspended attorney's condition allows, that attorney should introduce the Responsible Attorney to non-lawyer staff members, referral sources such as insurance agents, bankers, realtors, and accountants with whom that attorney worked. If the disabled or suspended attorney is not available to assist in this capacity, the Responsible Attorney should contact these people for the attorney, not only for purposes of preserving client relations, but also to determine location of clients, history of clients, etc. Many clients work with a team of advisors and, with the client's consent, the Responsible Attorney should have discussions with each of these other professionals.

8. Immediately notify the attorney's accountant and schedule a meeting to have a full understanding of the financial reporting policy and habits of the disabled or suspended attorney. If the disabled or suspended attorney did his or her own accounting and tax preparation, the Responsible Attorney's accountant should be given immediate access to those books and records that may be available to determine tax and financial liabilities of the disabled or suspended attorney. The Responsible Attorney should decide how financial records will be maintained during this temporary period of time of managing the practice of the disabled or suspended attorney.

9. Review vendor relationships with the disabled or suspended attorney's vendors. Determine whether prepayments have been made for services and products that will not be used, and whether bills for storage of files, stationery, supplies, etc. must be paid.

10. Immediately address open litigation matters. Check the statute of limitations on each file. There are numerous litigation-related statutes of limitations, ranging from a 90-day notice of claim to perfecting an appeal in nine months, to three years in filing various tort actions. In other practice areas, tax forms, Article 78 proceedings, administrative appeals, construction liens, and grievances to real property tax assessments, all must be filed or served by specific dates. Recognize, understand, and comply with time limitations on each file.

On cases in suit, expect a full and active litigation calendar awaiting compliance. Immediately review upcoming trial dates, expert disclosure and note of issue filing deadlines, court dates, appearances, depositions, motion return dates, brief, pleading, and discovery document filing dates. Ask for a run of the calendar for the next six months. Also, expect that some active and upcoming dates may not be docketed on the calendar. Discover these by reviewing each case file, and communicating with opposing counsel or the court. In civil litigation, many cases run by judicial preliminary conference scheduling order, which directs that each phase of the case occur by a certain date. Check these immediately in every case. If extensions are needed on the preliminary conference scheduling order, issue letters to this effect well before the close of the discovery schedule. Determine what can be adjourned, and what needs to be dealt with. Courts and opposing counsel are generally cooperative about adjourning matters when disability strikes, but need as much advance notice as possible.
11. Reassure the existing clients that their cases are being handled properly, and that the
disabled or suspended lawyer will return to the practice soon, if that is the case.
Consider meeting the clients personally to reassure them and to answer their questions.
After taking care of the immediate concerns, review each file in detail. If the absent
lawyer will be out for a significant length of time but will return at some point, and the
clients have not engaged other counsel, one of your concerns as the Responsible
Attorney will be to maintain the revenue stream to keep the practice financially healthy.
Consider writing and docketing an internal case management plan for each file. This
should move the files ahead in an orderly and sequenced fashion and flag relevant
compliance dates.

12. The disabled or suspended lawyer may or may not be available to discuss individual
cases. If he or she is, take copious notes and seek to understand the case management
plan for each case. Often the disabled or suspended lawyer will know what cases need
the most immediate attention, and will be able to prioritize his/her caseload to assist you
in your caretaker responsibilities.
Sample Forms

Cautions Regarding Use of Sample Forms

This handbook is a guide to help New Mexico lawyers protect their clients when a law practice is interrupted. The forms provided are samples only, and anyone using these forms must adapt them to fit his or her individual circumstances.

Further, the sample forms and the recommendations made in this handbook are not intended to excuse users’ compliance with all laws, statutes and applicable court rules, including but not limited to the Rules of Professional Conduct. If any provisions of this handbook or any terms of the sample forms conflict with New Mexico statutes, court rules or case law, the applicable legal authority shall control. Users must confirm that any forms used comply with all applicable laws and rules.
AGREEMENT – FULL FORM

(Agreement To Close Law Practice)

Sample – Modify as appropriate

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

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

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

If you do not want the Assisting Attorney to be the person who determines whether you are disabled, incapacitated, or impaired, you will need to modify this agreement. For a discussion of alternatives, see Chapters 2 and 3.
AGREEMENT TO CLOSE LAW PRACTICE

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

And: __________________________, hereinafter referred to as “Assisting Attorney”

And: __________________________, hereinafter referred to as “ Authorized Signer”

1. **Purpose.**
The purpose of this Agreement to Close Law Practice (hereinafter “this Agreement”) is to protect the legal interests of the clients of Planning Attorney in the event Planning Attorney is unable to continue Planning Attorney’s law practice due to death, disability, impairment, or incapacity.

2. **Parties.**
The term Assisting Attorney refers to the attorney designated above or the Assisting Attorney’s alternate. The term Planning Attorney refers to the attorney designated above or the Planning Attorney’s representatives, heirs, or assigns. The term Authorized Signer refers to the person designated to sign on Planning Attorney’s trust account and to provide an accounting for the funds belonging to Planning Attorney’s clients.

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

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

- Entering Planning Attorney’s office and using Planning Attorney’s equipment and supplies, as needed, to close Planning Attorney’s practice;
- Opening Planning Attorney’s mail and processing it;
- Taking possession and control of all property comprising Planning Attorney’s law office, including client files and records;
- Examining client files and records of Planning Attorney’s law practice and obtaining information about any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients that Planning Attorney has given this authorization and that it is in their best interest to obtain other legal counsel;
- Copying Planning Attorney’s files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by the clients;
- Filing notices, motions, and pleadings on behalf of clients when their interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected and informing them that Planning Attorney has given this authorization;
- Arranging for transfer and storage of closed files;
- Winding down the financial affairs of Planning Attorney’s practice, including providing Planning Attorney’s clients with a final accounting and statement for services rendered by Planning Attorney, return of client funds, collection of fees on Planning Attorney’s behalf or on behalf of Planning Attorney’s estate, payment of business expenses, and closure of business accounts when appropriate;
- Advertising Planning Attorney’s law practice or any of its assets to find a buyer for the practice; and
- Arranging for an appraisal of Planning Attorney’s practice for the purpose of selling Planning Attorney’s practice.

Planning Attorney authorizes Authorized Signer to sign on Planning Attorney’s lawyer trust account(s).
Assisting Attorney and Authorized Signer will not be responsible for processing or payment of Planning Attorney’s personal expenses.

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

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

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

7. **Assisting Attorney Is Attorney for Planning Attorney.** *(Delete one of the following paragraphs as appropriate.)*
While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney client relationship and follow the New Mexico Rules of Professional Conduct. Assisting Attorney has permission to inform the Planning Attorney's professional liability insurance carrier of errors or potential errors of Planning Attorney.

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

**OR:**

**Assisting Attorney Is Not Attorney for Planning Attorney.**

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

8. **Authorized Signer Is Not Attorney for Planning Attorney.**
   While fulfilling the terms of this Agreement, Authorized Signer is not the attorney for Planning Attorney. Authorized Signer has permission to inform Planning Attorney’s present and former clients of any misappropriations in Planning Attorney’s trust account and instruct them to obtain independent legal advice or to contact the State Bar of New Mexico Client Protection Fund.

9. **Providing Legal Services.**
   Planning Attorney authorizes Assisting Attorney to provide legal services to Planning Attorney’s clients, provided Assisting Attorney has no conflict of interest and obtains the consent of Planning Attorney’s clients to do so. Assisting Attorney has the right to enter into an attorney-client relationship with Planning Attorney’s clients and to have clients pay Assisting Attorney for his or her legal services. Assisting Attorney agrees to check for conflicts of interest and, when necessary, refer the clients to another attorney.

10. **Informing New Mexico Disciplinary Board.**
    Assisting Attorney agrees to inform the New Mexico Disciplinary Board, where Planning Attorney’s closed files will be stored and the name, address, and phone number of the contact person for retrieving those files.

11. **Contacting the Professional Liability Fund.**
    Planning Attorney authorizes Assisting Attorney to contact the Planning Attorney’s professional liability insurance carrier concerning any legal malpractice claims or potential claims. (Note to Planning Attorney: Assisting Attorney’s role in contacting the PLF will be determined by Assisting Attorney’s arrangement with Planning Attorney. See No. 7 of this Agreement.)

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

13. **Assisting Attorney’s Alternate.** *(Delete one of the following paragraphs as appropriate.)*
    If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____________ as Assisting Attorney’s alternate (hereinafter “Assisting Attorney’s Alternate”). Assisting Attorney’s Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Assisting Attorney’s Alternate shall comply with the terms of this Agreement. Assisting Attorney’s Alternate consents to this appointment, as shown by the signature of Assisting Attorney’s Alternate on this Agreement.

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

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

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

OR:

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

15. **Indemnification.**

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

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

16. **Option to Purchase Practice.**

Assisting Attorney shall have the first option to purchase the law practice of Planning Attorney under the terms and conditions specified by Planning Attorney or Planning Attorney’s representative in accordance with the New Mexico Rules of Professional Conduct and other applicable law.
17. **Arranging to Sell Practice.** 
If Assisting Attorney opts not to purchase Planning Attorney’s law practice, Assisting Attorney will make all reasonable efforts to sell Planning Attorney’s law practice and will pay Planning Attorney or Planning Attorney’s estate all monies received for the law practice.

18. **Fee Disputes to be Arbitrated.**
Planning Attorney, Assisting Attorney, and Authorized Signer agree that all fee disputes among them will be decided by the State Bar of New Mexico Fee Arbitration Program.

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

If Assisting Attorney and/or Authorized Signer or their respective Alternates for any reason terminate this Agreement, or are terminated, Assisting Attorney and/or Authorized Signer or their respective Alternates shall (1) provide a full and accurate accounting of financial activities undertaken on Planning Attorney’s behalf within 30 days of termination or resignation and (2) provide Planning Attorney with Planning Attorney’s files, records, and funds.

[Planning Attorney] [Date]

STATE OF NEW MEXICO )
County of ____________________________ ) ss.

This instrument was acknowledged before me on ________________
____(date) by ____________________________ (name(s) of person(s)).

NOTARY PUBLIC FOR NEW MEXICO
My commission expires: ________________
[Assisting Attorney]                   [Date]

STATE OF New Mexico                  )
       ) ss.
County of _________________________)

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

NOTARY PUBLIC FOR NEW MEXICO
My commission expires: __________________

[Assisting Attorney’s Alternate]        [Date]

STATE OF NEW MEXICO                     )
       ) ss.
County of _________________________)

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

NOTARY PUBLIC FOR NEW MEXICO
My commission expires: __________________
Editable Microsoft Word versions of all forms in this handbook may be downloaded from the Lawyer Succession and Transition Committee’s home page at www.nmbar.org/LSTC.html.

[Authorized Signer]                                      [Date]
STATE OF NEW MEXICO                               )
) ss.
County of ____________________________)

This instrument was acknowledged before me on ____________________________
______ (date) by ________________________________ (name(s) of person(s)).

________________________________________________________________________
NOTARY PUBLIC FOR NEW MEXICO
My commission expires: __________________

[Authorized Signer’s Alternate]                                      [Date]
STATE OF NEW MEXICO                               )
) ss.
County of ____________________________)

This instrument was acknowledged before me on ____________________________
______ (date) by ________________________________ (name(s) of person(s)).

________________________________________________________________________
NOTARY PUBLIC FOR NEW MEXICO
My commission expires: __________________
AGREEMENT – SHORT FORM

(Consent To Close Office)

Sample – Modify as appropriate

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

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

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

This Consent to Close Office (hereinafter “this Consent”) is entered into between __________ _____________, hereinafter referred to as “Planning Attorney,” and __________ _____________, hereinafter referred to as “Assisting Attorney,” and __________ _____________, hereinafter referred to as “Authorized Signer.”

I, (insert name of Planning Attorney), authorize (insert name of Assisting Attorney), Assisting Attorney, and any attorney or agent acting on my behalf, to take all actions necessary to close my law practice upon my death, 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 this authorization and that it is in their best interest to obtain other legal counsel;
- Copying my files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by my clients;
- Filing notices, motions, and pleadings on behalf of my clients when their interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected and informing them that I have given this authorization;
- Winding down the business affairs of my practice, including paying business expenses and collecting fees;
- Informing the New Mexico Disciplinary Board where closed files will be stored and the name, address, and phone number of the contact person for retrieving the files; and
- Contacting my 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 is no longer in effect.

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

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

(Delete one of the following paragraphs as appropriate:)

Assisting Attorney represents me and acts as my attorney in closing my law practice. Assisting Attorney has permission to inform my 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 my 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 State Bar of New Mexico Client Protection Fund.

I, Planning Attorney, appoint Authorized Signer as signator, in substitution of my signature, on my lawyer trust account(s) upon my death, disability, impairment, or incapacity.
I understand that neither Authorized Signer nor Assisting Attorney will process, pay, or in any other way be responsible for payment of my personal bills.

I 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.

[Planning Attorney]  

[Date]

STATE OF NEW MEXICO  

) ss.

County of ________________

This instrument was acknowledged before me on ________________________________

______(date) by ________________________________ (name(s) of person(s)).

NOTARY PUBLIC FOR NEW MEXICO  

My commission expires: _________
Editable Microsoft Word versions of all forms in this handbook may be downloaded from the Lawyer Succession and Transition Committee’s home page at www.nmbar.org/LSTC.html.

[Assisting Attorney] [Date]

STATE OF NEW MEXICO )
                        ) ss.
County of ____________________________ )

This instrument was acknowledged before me on ____________________________
____(date) by ____________________________ (name(s) of person(s)).

NOTARY PUBLIC FOR NEW MEXICO
My commission expires: __________

[Authorized Signer] [Date]

STATE OF NEW MEXICO )
                        ) ss.
County of ____________________________ )

This instrument was acknowledged before me on ____________________________
____(date) by ____________________________ (name(s) of person(s)).

NOTARY PUBLIC FOR NEW MEXICO
My commission expires: __________
POWER OF ATTORNEY – LIMITED

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

This 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.

__________________________________________    [Date]

[Account Holder]

STATE OF NEW MEXICO                  )
                           )  ss.
County of ____________________________

This instrument was acknowledged before me on ____________________________ (date) by ________________________________ (name(s) of person(s)).

__________________________________________

NOTARY PUBLIC FOR NEW MEXICO
My commission expires: __________________
SPECIMEN SIGNATURE OF ATTORNEY-IN-FACT

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

[Attorney-in-Fact]     [Date]

STATE OF NEW MEXICO               )
)  ss.
County of ________________________

[Insert name of Attorney-in-Fact] personally appeared before me who, being duly sworn, did say and acknowledge that the following signature is his/her signature.

SUBSCRIBED AND SWORN to before me this _____ day of ________________, ______.

______________________________
NOTARY PUBLIC FOR NEW MEXICO
My commission expires: ________________
LETTER OF UNDERSTANDING

TO:  

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

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

2. You will deliver the Power of Attorney to the person named as my attorney-in-fact (if more than one person is named, you may deliver it to either of them) if you determine, using your best judgment, that I am unable to conduct my business affairs due to 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. You should show these signed directions to my Attorney-in-Fact along with records of expenses you incurred to claim reimbursement under this agreement.

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

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

[Planning Attorney]  [Date]
NOTICE OF DESIGNATED ASSISTING ATTORNEY

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

Name of Authorized Assisting Attorney: __________________________________________
Address: ____________________________
Phone Number: _______________________

Name of Assisting Attorney’s Alternate: __________________________________________
Address: ____________________________
Phone Number: _______________________

I, __________________, have made arrangements with my financial institution to have an authorized signer on my Lawyer Trust Account:

Name of Authorized Signer on Lawyer Trust Account: _____________________________
Address: ____________________________
Phone Number: _______________________

[Planning Attorney] [Date]

[Assisting Attorney] [Date]

[Alternate Assisting Attorney] [Date]

[Authorized Signer on Lawyer Trust Account] [Date]

Mail this form to:
New Mexico Disciplinary Board
P.O. Box 1809
Albuquerque, NM 87103-1809
NOTICE OF DESIGNATED AUTHORIZED SIGNER

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

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

Name of Authorized Signer’s Alternate: ___________________________________________
Address: _____________________________________________________________________
Phone Number: _____________________________________________________________________

[Planning Attorney]                                                   [Date]
[Authorized Signer]                                                   [Date]
[Alternate Authorized Signer]                                         [Date]

[NOTE: This form may be used in lieu of, or in addition to, the Notice of Designated Assisting Attorney. If you have selected an Assisting Attorney to help in the closure of your practice and added someone as an Authorized Signer on your lawyer trust account, you should communicate your choices to your family, the Assisting Attorney, the Authorized Signer, and any designated alternates to avoid confusion. Please provide a copy of this form to the New Mexico Disciplinary Board, P.O. Box 1809, Albuquerque, NM 87103-1809 so that they will know who to contact if there are questions regarding your lawyer trust account.]
WILL AND TRUST PROVISIONS

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

OR

Disposition of Law Practice. 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 close that practice, including, but not limited to, selling of the practice, collecting accounts receivable, paying expenses relating to the practice, reconciling my trust account(s), refunding any unused trust balances owing to my clients, employing an attorney or attorneys to review my files, completing unfinished work, notifying my clients of my death and assisting them in finding other attorneys, and providing the New Mexico Disciplinary Board with the name of the person who will be responsible for the long-term storage of and access to my closed files.

Disposal of Professional Corporation’s Stock. Upon the death or disqualification of Grantor to render professional services for which Grantor was licensed or authorized, the Trustee shall only dispose of shares in any professional corporation through which the deceased or disqualified Grantor provided services as provided in the Professional Corporation Act of New Mexico.
State Bar of New Mexico Lawyers and Judges Assistance Program

Proposed Model Policy on Impairments Affecting Work Performance

preamble

The State Bar of New Mexico is committed to assisting individuals in the legal profession who are dealing with impairments issues that affect performance on the job, whether caused by alcohol, drugs, other addictive behaviors, depression or other mental health conditions.

The New Mexico Lawyers and Judges Assistance Program has drafted the following Model Policy, based on the work of the New York State Bar Association, for adoption by law firms/legal departments throughout New Mexico with the following assumptions: that early intervention and treatment are fundamental goals and that adoption of the policy will help maintain the integrity of the legal profession and the viability of the [law firm/legal department], while protecting clients.

Each law firm/legal department may tailor the policy for its purposes, taking into consideration such factors as size, resources, and practice setting. This policy is best used to augment broader policies that cover work conduct, disciplinary procedures, paid leave and health insurance benefits.

MODEL POLICY FOR LAW FIRMS/LEGAL DEPARTMENTS ADDRESSING IMPAIRMENTS

I. DEFINING THE PROBLEM

Impairment of a legal professional adversely affects not only the individual’s well-being, but it also directly and adversely affects the [law firm’s/legal department’s] ability to provide the highest quality legal services to its clients and may lead to professional liability, violations of ethical obligations, professional discipline, a loss of public reputation and criminal prosecution. The chief contributors to impairment of legal professionals are clinical depression and other mental health conditions, dependency on alcohol and other drugs, and other addictive behaviors.

II. POLICY STATEMENT

It is the policy of this [law firm/legal department] that impairment of [law firm/legal department] legal professionals is inconsistent with its mission.

Further, it is the policy of this [law firm/legal department] that impaired legal professionals are in need of assistance and treatment, and that early identification and
intervention will provide the greatest hope of overcoming such impairment. This [law firm/legal department] recognizes that impairment is not a moral failing.

The purpose of this policy is to encourage self-identification, self-referral, referral, treatment and recovery. The [law firm/legal department], consistent with applicable law and the Rules of Professional Conduct, will not tolerate unlawful discrimination against a legal professional who has availed himself or herself of the [law firm’s/legal department’s] resources, as further set forth in this policy.

The [law firm/legal department] shall provide a copy of this policy to all employees and legal professionals.

III. WHO IS COVERED

This policy applies to all [law firm/legal department] legal professionals, including but not limited to, partners and managing attorneys, associates, paralegals and other staff, subject to any collective bargaining agreement.

The [law firm/legal department] will assist and support legal professionals who voluntarily seek help for impairment or who are directed, as a result of a work performance evaluation, to seek help for impairment. The [law firm/legal department] will permit impaired legal professionals to use paid time off, be placed on a leave of absence, be referred for treatment or otherwise provide accommodations as required by law and permitted consistent with [law firm/legal department] leave policies.

IV. PROFESSIONAL RESPONSIBILITY

It is the responsibility of all legal professionals of this [law firm/legal department] to provide the highest quality legal services to its clients. Impairment due to the use of alcohol or other drugs or due to mental health conditions can lead to potential incompetence and/or misconduct which compromises the [law firm/legal department]’s ability to service its clients in accordance with this responsibility.

Attendance and work performance of legal professionals of this [law firm/legal department] will be evaluated.

- Frequent lateness, absenteeism, failure to be on time for meetings and other attendance issues will not be tolerated.
- Failure to meet deadlines, failure to timely return phone calls/return emails will not be tolerated.
- Disrespect for, or mistreatment of, staff or colleagues will not be tolerated.

If attendance or work performance issues or behaviors are being caused by impairment, this [law firm/legal department] encourages self-referral to its EAP (Employee Assistance Program) or to the New Mexico Lawyers and Judges Assistance Program (See Article VII below) prior to the initiation of [law firm/legal department] disciplinary action if possible and appropriate. Legal professionals of the [law firm/legal department] who fail or refuse to avail themselves of the opportunity to seek and follow through on treatment, will be subject to internal discipline, up to and including possible termination.
While a legal professional may have a desire to assist another legal professional with impairment to avoid the consequences of his or her conduct, an attorney is nonetheless obligated under appropriate circumstances to report wrongful conduct of fellow attorneys pursuant to Rule 16-803 of the New Mexico Rules of Professional Conduct, a portion of which is attached for reference in Appendix A.

V. CONFIDENTIALITY

The [law firm/legal department] will maintain the confidentiality of a legal professional who has self-referred, or who has been referred, or any legal professional or staff who reports a potential impairment problem, to a designated person for evaluation and treatment. The [law firm/legal department] will keep the legal professionals and staff advised as to the name and means of the designated person. This designated person is available to assist the impaired legal professional with issues of insurance coverage, payment for treatment and covering client matters during treatment, as necessary, and compliance with Return to Work agreements. (See Article IX below). Cooperation in all such matters is required, and failure to cooperate may result in [law firm/legal department] discipline, up to and including possible termination.

All referrals to the New Mexico Lawyers and Judges Assistance Program (JLAP) are also strictly confidential. The identity of the person contacting JLAP will not be disclosed to any member of the law firm, nor will it result in a referral to the Disciplinary Board of the Supreme Court.

VI. EDUCATION

The [law firm/legal department] is dedicated to providing continuing education and training to all legal professionals in relation to implementation of this and all policies as well as education related to work/life balance, stress reduction, substance abuse, and other such topics that can support outstanding work performance and continuing success of the [law firm/legal department]’s mission.

VII. AVAILABLE RESOURCES

[law firm/legal department]

Contact: Call (e.g. NAME at x. 6021) for information about this policy, its administration and for a confidential referral if appropriate.

Referral or Self-referral to Employee Assistance Program: if applicable, insert information about the law firm/legal department’s health insurance carrier’s Employee Assistance Program.

e.g.,

Our law firm health insurance policy includes access to an Employee Assistance Program for the purpose of self-referral or referral of individuals and their co-workers who are
impaired, and their families. We encourage you to contact the EAP. The EAP is a confidential service provided at no cost to covered employees and others who are affected by impairment.

Referral or Self-referral to the Lawyers and Judges Assistance Program: The New Mexico Lawyers and Judges Assistance Program (JLAP) maintains a statewide, confidential Helpline at 1-800-860-4914. The JLAP provides CONFIDENTIAL assistance, including relevant information about impairment; assessment or identification of appropriate assessment providers; assistance in intervention planning; assistance in identifying potential treatment providers; and resources for impaired attorneys.

VIII. PROHIBITIONS/CONSEQUENCES

Legal professionals are prohibited from on-the-job impairment from alcohol or controlled substances. Any individual who distributes, sells, attempts to sell, transfer, possess or purchase any illegal substance while at work or while performing in a work-related capacity may be subjected to internal [law firm/legal department] disciplinary action including termination, and/or civil penalties and criminal penalties if appropriate.

The [law firm/legal department] can add to this paragraph particular items relevant to the [law firm/legal department].

IX. RETURN TO WORK AGREEMENTS

The [law firm/legal department] may require a legal professional, who has self-referred or who has been referred for treatment, to execute a Return to Work Agreement.

If a legal professional – prior to being subjected to professional disciplinary action or where internal disciplinary action has been held in abeyance during the pendency of treatment – engages in appropriate treatment, he or she may be required to execute a Return to Work Agreement prior to returning to work.

Such Return to Work Agreement will include:

- Verification of the legal professional’s participation in a treatment program;
- The legal professional’s commitment to maintain the prescribed regimen for continued wellness, to adhere to the firm’s code of conduct and professional responsibility, and to participate in aftercare;
- A commitment to undergo alcohol and/or other drug testing, if appropriate;
- Authorization by the legal professional to appropriate firm representatives to discuss compliance with the foregoing requirement, but limited to a need-to-know basis and while maintaining privacy particularly with respect to medical records;
- An acknowledgment that a violation of the Return to Work Agreement will result in immediate sanctions.
APPENDIX A

NEW MEXICO RULES OF PROFESSIONAL CONDUCT

Rule 16-803 NMRA
Reporting Professional Misconduct

A. Misconduct of Other Lawyers. A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the New Mexico Disciplinary Board.

B. Misconduct of Judges. A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct or has engaged in conduct that raises a substantial question as to the judge’s fitness for office shall inform the New Mexico Judicial Standards Commission.

C. Confidential Information. This Rule does not require disclosure of information otherwise protected by Rule 16-106, NMRA of the Rules of Professional Misconduct, or as set forth in Paragraph E, information gained by a lawyer or a judge while participating in an approved lawyers assistance program.

D. Cooperation and Assistance; Required. A lawyer shall give full cooperation and assistance to the highest court of the state and to the disciplinary board, hearing committees and disciplinary counsel in discharging their respective functions and duties with respect to discipline and disciplinary procedures.

E. Alcohol and Substance Abuse Exception. The reporting requirements set forth in Paragraphs A and B of this rule do not apply to any communication concerning alcohol or substance abuse by a judge or attorney that is:

(1) made to, by or among members or representatives of a lawyers support group, Alcoholics Anonymous, Narcotics Anonymous or other support group recognized by the Judicial Standards Commission or the Disciplinary Board; recognition of any additional support group by the Judicial Standards Commission or the Disciplinary Board shall be published in the Bar Bulletin.

This exception does not apply to information that is required by law to be reported, including information that must be reported under Paragraph F of this rule, or to disclosures or threats of future criminal acts or violations of these rules.

F. Judicial misconduct involving unlawful drugs; reporting requirement. Notwithstanding the provisions of Paragraph E, any incumbent judge who illegally sells, purchases, possesses, or uses drugs or any substance considered unlawful under the provisions
of the Controlled Substances Act, shall be subject to discipline under the code of Judicial Conduct.

Any lawyer who has specific objective and articulable facts or reasonable inferences that can be drawn from those facts that a judge has engaged in such misconduct, shall report those facts to the New Mexico Judicial Standards Commission. Reports of such misconduct shall include the following information:

1. Name of person filing the report;
2. Address and telephone number where the person may be contacted;
3. A detailed description of the alleged misconduct;
4. Dates of the alleged misconduct; and
5. Any supporting evidence or material that may be available to the reporting person.

The Judicial Standards Commission shall review and evaluate reports of such misconduct to determine if the report warrants further review or investigation.

APPENDIX B

Sample: TREATMENT AND RETURN TO WORK AGREEMENT

By signing this agreement I accept and agree to the following terms and conditions which will govern my continued employment/association with and my return to work with [law firm/law department].

I. TREATMENT

I acknowledge that my work performance and/or behavior have resulted in the need for intervention and have provided a basis for disciplinary action, up to and including the termination of my employment (or: define nature of relationship with the [law firm/law department]. As a consequence, and in order to avoid the termination of my employment/expulsion from the [law firm/law department], I voluntarily accept the terms of this agreement.

1. I agree to submit to an immediate evaluation by a health care professional of the [law firm/law department]’s selection or approval.
2. I agree to follow all treatment and aftercare recommendations by that health care professional or treatment program.
3. I understand that I am responsible for all costs associated with the treatment program to the extent they are not covered by insurance.
4. I will authorize regular progress reports to be made to the [law firm/law department] during treatment.
II. RETURN TO WORK

Clearance for my return to work will be determined by my health care provider and the employer.

Upon my return to work, I agree to abide by the [law firm/law department]’s policy regarding attendance and work performance, and I agree that my failure to do so may result in disciplinary action up to and including termination/expulsion from the [law firm/law department].

Upon my return to work, I agree to review treatment and/or aftercare requirements with the designated [law firm/law department] representative on a need-to-know basis, and I agree to strictly comply with such treatment and aftercare requirements. My failure to do so may result in disciplinary action up to and including termination/expulsion from the [law firm/law department].

I will ensure that, within an established time frame, my health care provider will submit regular progress reports to the designated representative at [law firm/law department] until my treatment is complete, upon which the health care provider will submit a summary report. If during that time, I am recommended to enter into a Monitoring Agreement with the New Mexico Lawyers and Judges Assistance Program (JLAP), the JLAP will submit regular progress reports to the designated representative at [law firm/law department] until my Monitoring Agreement is complete, at which time the JLAP will submit a summary report.

I agree to abide by all standards of professionalism, behavior and performance required of legal professionals at the [law firm/law department], including but not limited to, those set out in its policy and procedure manual.

I agree that this agreement does not guarantee my employment, position, or compensation for any period of time. I understand and acknowledge that strict adherence to these terms and conditions are a requirement of my continued work with the [law firm/law department] and that any violation of the terms of this agreement (including its incorporated standards) may result in [law firm/law department] disciplinary action, up to and including my immediate termination/expulsion.

By my signature below I confirm that I have reviewed and considered these terms and accept them voluntarily as a constructive part of my recovery. I also acknowledge that these terms are being provided to me as an alternate to the termination of my employment/affiliation. I understand that I may withdraw my consent at any time during the term of this agreement, but acknowledge that withdrawing my consent is a voluntary termination of my employment (consent to my expulsion from the firm).

Signature #1 (at time of intervention):

__________________________________________

Signature #2 (upon return to work, and incorporating aftercare recommendations):

__________________________________________
LETTER ADVISING THAT LAWYER IS UNABLE TO CONTINUE IN PRACTICE

Sample – Modify as appropriate

Re: [Name of Case]

Dear [Name]:

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

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

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

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

[Name] [Address] [Phone]

After that time, you can contact [Affected Attorney] for your closed files at the following address and phone number:

[Name] [Address] [Phone]

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

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

Sincerely,

[Assisting Attorney]
LETTER ADVISING THAT LAWYER IS CLOSING HIS/HER OFFICE

Sample – Modify as appropriate

Re: [Name of Case]

Dear [Name]:

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

I recommend that you immediately hire another attorney to handle your case for you. You can select any attorney you wish, or I would be happy to provide you with a list of local attorneys who practice in the area of law relevant to your legal needs. In addition, the State Bar of New Mexico provides a General Referral Program that can be reached at 505-797-6006 or 800-876-6227.

When you select your new attorney, please provide me with written authority to transfer your file to the new attorney. If you prefer, you may come to our office and pick up a copy of your file and deliver it to that attorney yourself.

It is imperative that you obtain a new attorney immediately. [Insert appropriate language regarding time limitations or other critical time lines that client should be aware of.] Please let me know the name of your new attorney or pick up a copy of your file by [date].

I [or insert name of the attorney who will store files] will continue to store my copy of your closed file for 5 years. After that time, I [or insert name of other attorney, if relevant] will destroy my copy of the file unless you notify me in writing immediately that you do not want me to follow this procedure. [If relevant, add: If you object to (insert name of attorney who will be storing files) storing my copy of your closed file, let me know immediately and I will make alternative arrangements.]

If you or your new attorney need a copy of the closed file, please feel free to contact me. I will be happy to provide you with a copy.

Within the next [fill in number] weeks, I will be providing you with a full accounting of your funds in my trust account and fees you currently owe me.

You will be able to reach me at the address and phone number listed on this letter until [date]. After that time, you or your new attorney can reach me at the following phone number and address:

[Name] [Address] [Phone]

Remember, it is imperative to retain a new attorney immediately. This will be the only way that time limitations applicable to your case will be protected and your other legal rights preserved.
Editable Microsoft Word versions of all forms in this handbook may be downloaded from the Lawyer Succession and Transition Committee’s home page at www.nmbar.org/LSTC.html.

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

Sincerely,

[Attorney]
[ Firm]
LETTER FROM FIRM OFFERING
TO CONTINUE REPRESENTATION

Sample – Modify as appropriate

Re: [Name of Case]

Dear [Name]:

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

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

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

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

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

Sincerely,

[Assisting Attorney]

Enclosures

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

____________________________________________________  ____________________________
[Client]                                                [Date]
ACKNOWLEDGMENT OF RECEIPT OF FILE

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

______________________________  ________________________________
[Client]                               [Date]

Return this receipt to:
[Name]
[Address]
[Address]
AUTHORIZATION FOR TRANSFER OF CLIENT FILE

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

-------------------------------------------------------------

-------------------------------------------------------------

-------------------------------------------------------------

-------------------------------------------------------------

[Client]                  [Date]

Return this authorization to:
[Name]
[Address]
[Address]
REQUEST FOR FILE

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


[Client]  [Date]

Return this request to:

[Name]
[Address]
SAMPLE FORM FOR SALE OF A LAW PRACTICE

THIS ASSET PURCHASE AGREEMENT is entered into as of ________________, 20__, by and between _____________________________, as surviving spouse of _______________________, ESQ., and Personal representative-Nominee of the Estate of ________________________, ESQ. (hereinafter collectively referred to as "Seller"), and ____________________________ ("Purchaser"), a New Mexico professional corporation.

WHEREAS, on ________________, 20__, _____________________, Esq. died in __________________, New Mexico; and

WHEREAS, at the time of _______________________'s death, ____________________ owned certain Assets (as defined below) which assets are now in the possession of Seller; and

WHEREAS, Seller desires to sell the Assets and Purchaser desires to purchase the Assets.

NOW, THEREFORE, in consideration of the mutual promises and premises herein, the sum of One Dollar ($1.00), each to the other paid in hand, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Sale of Assets.** In accordance with the terms and conditions contained herein, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all of Seller's client records and files pertaining to _______________________'s client files and matters as such records and files were utilized by ________________________ in the operation of the practice of law ("Business"). Notwithstanding the foregoing, Purchaser shall have the right to reject any client file which would result in a conflict of interest to Purchaser or for any other reason as determined by Purchaser. In the event Purchaser elects to reject or decline any client matter or file, Purchaser will use its reasonable best efforts to assist the client in engaging substitute legal counsel.

2. **Definitions.** Whenever used in this Agreement:
   (a) "Assets" shall mean those assets of the Seller utilized in the operation of Seller’s business and in Seller's possession or under Seller's control on the date of death, as specifically set forth on Schedule 2(a) and Schedule 13(g), attached hereto and made a part hereof, including but not limited to Seller's client records (in paper and electronic formats), telephone numbers and goodwill.
   (b) "Closing Date" means the execution date of this Agreement.
   (c) "Closing Place" shall be at the offices of Seller, in ______________________, New Mexico, or such other place as the parties may mutually agree.
   (d) "Liabilities" shall mean all liabilities of Seller, including but not limited to, any liabilities to employees of any nature, accounts payable, payroll taxes, promissory notes or liabilities for taxes based on income, sales, use, employment or otherwise.

3. **Purchase Price and Allocation.**
   (a) **Purchase Price.** The purchase price for the Assets to be purchased hereunder shall be $_____________ ("Purchase Price").
(b) **Allocation.** The Purchase Price shall be allocated among the Assets in accordance with Schedule 3(b). Seller and Purchaser jointly shall complete and separately file Form 8594 with their respective federal income tax returns for the tax year in which the Closing Date occurs in accordance with such allocation and the IRS guidelines, and neither Seller nor Purchaser shall, without the written consent of the other, take a position on any tax return or before any governmental agency charged with the collection of any such tax, or in judicial proceeding, that is in any manner inconsistent with the terms of such allocation.

4. **Method of Payment.** Upon execution of this Agreement, the Purchase Price shall be paid in thirty-six (36) equal monthly installments commencing on ________________, 20__, and a final payment on ________________, 20__, of $____________, pursuant to the terms and conditions of a promissory note, attached hereto as Exhibit A, and made a part hereof (the "Note"). Interest on the outstanding balance shall be computed at the rate of ____ percent (%) per annum. An amortization schedule shall be attached as a Schedule to the Note.

5. **Exclusion of Seller’s Other Assets.** Purchaser is not acquiring any right, title or interest in or to the following:
   
   (a) Seller’s cash or cash equivalents;
   
   (b) Any personal belongings of Seller;
   
   (c) Seller’s Accounts Receivable; and
   
   (d) Seller’s office equipment and office supplies.

6. **Accounts Receivable.** Purchaser shall not purchase, and Seller shall not sell, any right, title, or interest in Seller’s accounts receivable ("Accounts Receivable"). Seller shall continue to collect the outstanding Accounts Receivable after the Closing. If, at any time after the Closing Date, Purchaser shall collect or receive any monies, in any manner whatsoever, in payment of any of Seller’s Accounts Receivable, Purchaser shall immediately forward such amount(s) to Seller at no cost to Seller.

7. **Assumption of Liabilities.** Purchaser shall not assume any Liabilities of Seller whether firm or contingent, known or unknown. In addition to the foregoing, Purchaser shall not assume Seller’s IOLTA accounts. ______________ and ______________, Esq. were co-signatories on IOLTA funds for the benefit of Seller’s clients, as such account, client sub-accounts and a general ledger of such are set forth on Schedule 7, attached hereto and made a part hereof (the "Note"). Schedule 7 shall be certified by Seller as to the correctness thereof. Purchaser shall comply with the applicable provisions of Rule 24-109 NMRA pertaining to Seller’s IOLTA funds, provided, however, that Purchaser shall not assume or be liable for any inaccuracies or liability with respect to such accounts. Seller will indemnify and hold Purchaser harmless for any and all liability, cause of action or loss with respect to such IOLTA account.

8. **Transfer of Client Records.** At Closing, Seller shall deliver to Purchaser the files and records (including but not limited to all electronic records related to such files) relating to all clients included on Schedule 2(a) and Schedule 13(g) for which Seller has provided services. Schedule 2(a) and Schedule 13(g) shall include a list of all client names and all addresses of such clients. Seller and Purchaser shall comply with Rule 16-117 NMRA pertaining to the sale of a law practice in all respects, including the written notice to
each of Seller’s clients. Seller will cooperate with Purchaser and assist Purchaser with obtaining any client consents that may be required in order to transfer any client property to Purchaser.

9. **Delivery of Documents.**
   (a) At the Closing, Seller shall deliver to Purchaser the following:
      i. a bill of sale and an assignment which effectively transfer, assign and convey to Purchaser good and marketable title to all of the Assets free and clear of all mortgages, pledges, liens, security interests, restrictions, or other encumbrances;
      ii. all Assets subject to the terms of this Agreement; and
      iii. all other documents, instruments or writings required to be delivered to Purchaser at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as Purchaser may reasonably request.
   (b) At the Closing, Purchaser shall deliver to Seller the following:
      i. the Promissory Note;
      ii. cash or a certified check for applicable New Mexico Gross Receipts tax pursuant to this Agreement;
      iii. all other documents, instruments or writings required to be delivered to Seller at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as Seller may reasonably request.

10. **Seller’s Representations and Warranties.** Seller makes the following representations and warranties to Purchaser, each of which is true and correct on the date hereof, shall remain true and correct to and including the Closing Date, shall be unaffected by any investigation heretofore or hereafter made by Purchaser, or any knowledge of Purchaser other than as specifically disclosed in the disclosure schedules delivered to Purchaser at the time of the execution of this Agreement, and shall survive the Closing of the transaction provided for herein.
    (a) **Authority.** This Agreement constitutes a valid and binding agreement of Seller in accordance with its terms and does not require any consent, notification to or other action of any person, entity or governmental agency other than filings with respect to sales and other transfer taxes. Seller has complete power to own and to sell, transfer and deliver all assets to be transferred hereunder and instruments to be executed to vest effectively in Purchaser good and marketable title to the Assets.
    (b) **Effect of Agreement.** The execution, delivery and performance of this Agreement by Seller is not conditioned on or prohibited by, and will not conflict with or result in the breach of the terms, conditions or provisions of, or constitute a default under any law applicable to Seller or any agreement or instrument to which Seller is a party or is otherwise subject.
    (c) **Licenses and Permits.** At the time of ____________________’s death, ____________________ was in compliance with all permits, licenses, franchises and authorizations necessary for the operation of his/her law practice (the “Business”) as operated and all such permits, licenses, franchises and authorizations were, at the time of ____________________’s death, valid and in full force and effect. All applications, reports and other disclosures relating to the operation of the Business required by the appropriate governmental bodies have been filed or will have been filed by the Closing in a timely manner.
(d) Assets.
   i. Schedule 2(a) hereof contains a complete and accurate list, as of the date hereof, of certain assets owned or leased by Seller which are used or useful in the operation of the Business and which are being purchased by Purchaser.
   ii. On the Closing Date, Seller shall have good and marketable title to all the Assets, free and clear of all mortgages, liens (statutory or otherwise), security interests, claims, pledges, licenses, equities, options, conditional sales contracts, assessments, levies, easements, covenants, reservations, restrictions, exceptions, limitations, charges, encumbrances or any rights of any third parties of any nature whatsoever (collectively, “Liens”).
   iii. All tangible assets constituting Assets hereunder are in good operating condition and repair, free from any defects (except such minor defects as do not interfere with the use thereof in the conduct of the normal operations of Seller), have been maintained consistent with Seller’s historical practice and are sufficient to carry on the business of Seller as conducted during the preceding twelve (12) months.

(e) Insurance. All of the Assets used or useful in the operation of the Business which are to be conveyed to Purchaser hereunder and which are of an insurable character are insured above deductible limits by financially sound and reputable insurance companies against loss or damage by fires and other risks to the extent and in the manner customary for such assets. Copies of the pertinent insurance policies have been delivered to Purchaser and are in full force and effect. Seller will maintain such insurance between the date hereof and the Closing Date. There are no pending claims. No notice of cancellation or termination has been received with respect to any such policy.

(f) Litigation. There is as of the date hereof no suit, action or legal administrative arbitration or other proceeding or governmental investigation (including workers’ compensation claims) pending or threatened against the Seller, including without limitation, any malpractice suit, action or legal proceeding against Seller.

(g) Taxes. Seller has duly filed with the appropriate federal, state and local governmental agencies all tax returns and reports which are required to be filed by Seller, and has paid in full all taxes (including interest and penalties) owed by Seller arising prior to the Closing Date. Seller is not a party to any pending action or proceeding, nor, to the best knowledge of Seller, is any action or proceeding threatened, by any governmental authority for assessment or collection of taxes, and no claim for assessment or collection of taxes has been asserted against Seller.

(h) Contracts. Each contract, agreement, lease and commitment to which Seller is a party is in full force and effect and constitutes a valid and binding obligation of, and is legally enforceable in accordance with its terms against, the parties thereto. There are no leases that affect any of the Assets.

(i) Financial Statements. Seller has delivered to Purchaser true and complete copies of the income tax returns of Seller relating to the operation of the Business consisting of tax returns as of December 31, of the three (3) most recent years, and the related statements of income and cash flows since such dates (the "Recent Balance Sheet"). All of such financial statements (including all notes and schedules contained therein or annexed thereto) are true, complete and accurate, have been prepared in accordance with Seller's historical practices applied on a consistent basis, have been prepared in accordance with the books and records of Seller, and fairly present, in accordance with Seller's historical practices, the assets, liabilities and financial position, the
results of operations and cash flows of Seller as of the dates and for the years and periods indicated. Seller shall prepare his/her 2001 Form 1040 Schedule "C" and any interim statements in accordance with his/her historical practice and shall deliver the same to Purchaser immediately upon completion.

(j) Accounts Payable. There are no accounts payable of the Seller regarding the Business.

(k) Client Relations. There exists no condition or state of facts or circumstances involving the Seller's clients that Seller can reasonably foresee could adversely affect the Business after the Closing Date. To Seller's knowledge, the Business may be maintained after the date hereof in the same manner in all respects (financial and otherwise) as at the time of _______________________'s death.

(l) Absence of Certain Changes. Since _______________________, 19___ or 20___, Seller has operated the business in the ordinary course consistent with historical practice.

(m) Absence of Undisclosed Liabilities. Except as and to the extent specifically disclosed in the Recent Balance Sheet, Seller does not have any liabilities relating to the operation of the Business.

(n) General Representation and Warranty. Neither this Agreement nor any other document furnished by Seller in connection with this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements contained herein or therein not misleading in any material respect. There is no fact or circumstance known to Seller which materially adversely affects, or in the future, as now reasonably foreseeable, is likely to materially adversely affect the condition (financial or otherwise), properties, assets, liabilities, business, operations or prospects of the Business which has not been set forth in this Agreement or the schedules hereto.

(o) Disclosure. No representation or warranty by Seller in this Agreement, nor any statement, certificate, schedule, document or exhibit hereto furnished or to be furnished by or on behalf of Seller pursuant to this Agreement or in connection with the transactions contemplated hereby, contains or shall contain any untrue statement of material fact or omits or shall omit a material fact necessary to make the statements contained therein not misleading.

11. Representations, Warranties and Covenants of Purchaser. Purchaser does hereby represent and warrant that:

(a) Organization of Purchaser. Purchaser is duly organized, validly existing, and in good standing under the laws of the State of New Mexico. Purchaser has full power and authority to own its assets and to carry on its business as presently conducted.

(b) Authority to Purchase. Purchaser has all necessary right, authority and power to execute and deliver this Agreement and to consummate the transaction contemplated hereunder. The execution and delivery of this Agreement and the performance by Purchaser of its obligations hereunder (i) have been duly and validly authorized by the shareholders and directors of Purchaser and no other corporate or other approvals are required and (ii) to Purchaser's knowledge, will not materially violate any provision of law and will not conflict with, result in a breach of any of the terms, conditions or provisions of, or constitute a default (or an event which with the giving of notice or the lapse of time or both would constitute a default) under or pursuant to any corporate charter, bylaw, indenture, note, mortgage, lease, license, permit, agreement or other instrument to which Purchaser is a party. When executed and delivered by Purchaser, this Agreement is a legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms.
(c) **Litigation.** There is no litigation pending or threatened against Purchaser.

(d) **Accuracy of Representations and Warranties on the Closing Date.** Each of the representations and warranties set forth in this Paragraph 11 shall be true and correct as of the Closing Date with the same force and effect as though made at and as of the Closing Date.

12. **Rights of Indemnification.**

(a) **Survival of Covenants, Warranties and Representations.** All covenants, agreements, representations and warranties of the parties under this Agreement, in any Schedule or certificate or other document delivered pursuant hereto, shall remain effective through and shall survive the Closing Date as provided for herein regardless of any investigation at any time made by or on behalf of Purchaser or of any information Purchaser may have with respect thereof.

(b) **Indemnification of Purchaser.** Seller shall defend, indemnify and hold Purchaser harmless from and against (1) any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising from or relative to (A) the operation or ownership of the Business or the Assets prior to or on the Closing Date, irrespective of when asserted and (B) a breach of any of Seller's representations, warranties or covenants hereunder, and (2) any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses (including reasonable attorneys' fees) incident to any of the foregoing.

(c) **Indemnification of Seller.** Purchaser shall defend, indemnify and hold Seller harmless from and against (1) any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising from or relative to (A) the operation or ownership of the Business or the Assets on and after the Closing Date and (B) a breach of any of Purchaser's representations and warranties hereunder, and (2) any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses (including reasonable attorneys' fees) incident to any of the foregoing.

(d) **Summary of Obligations.** The obligations and rights of the parties under this Paragraph 12 shall survive the Closing Date and shall be binding upon and inure to the benefit of their respective successors and assigns.

13. **Additional Agreements of Seller.**

(a) **Conduct of Business Pending the Closing Date.** Seller shall use its best efforts to preserve for Purchaser its present relationships with clients and others having business relationships with Seller that pertain to the Business. Seller will immediately notify Purchaser if there is the loss or expected loss or other disruption of any relationship between Seller and a vendor, customer or employee.

(b) **No Material Contracts.** Seller shall not enter into any contract or commitment pertaining to the Business, except contracts or commitments which are in the ordinary course of business and consistent with past practice and are not material to the Business (individually or in the aggregate).

(c) **Maintenance of Insurance.** Seller shall maintain all of the insurance related to the Business and the Assets in effect as of the date hereof and shall procure such additional insurance as shall be reasonably requested by Purchaser.

(d) **Maintenance of Property.** Seller shall use, operate, maintain and repair all assets of Seller which are defined herein as Assets in a normal business manner.
(e) **No Negotiations.** Seller shall not directly or indirectly (through a representative or otherwise) solicit or furnish any information to any prospective buyer, commence, or conduct presently ongoing, negotiations or discussions with any other party or enter into any agreement with any other party concerning the sale of the Business or the Assets or any part thereof, and Seller shall immediately advise Purchaser of the receipt of any such acquisition proposal.

(f) **Disclosure.** Seller shall have a continuing obligation to promptly notify Purchaser in writing with respect to any matter hereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in the disclosure schedules, but no such disclosure shall cure any breach of any representation or warranty which is inaccurate. In the event that Seller discovers a breach and notifies Purchaser pursuant to this Paragraph 13(f), Seller shall have three (3) days to cure such breach.

(g) **Open Matters.** The client files and matters described on Schedule 13(g) shall be considered ongoing matters for which __________________________ was providing services at the time of his/her death. Such matters and the clients (and client records) for whom such matters were being performed shall be included in the terms of this Agreement. Subject to Purchaser’s right to exclude any clients hereunder and the client’s right to obtain other counsel, Purchaser agrees to cooperate with Seller and the professional staff of __________________________ in bringing such matters to a conclusion. Seller and Purchaser shall cooperate in notifying such clients that Seller has transferred his/her Business to Purchaser and shall advise such clients in the same manner as the notice to be delivered pursuant to Paragraph 21 below. For services rendered for such Open Matters, Purchaser shall charge an hourly rate of $____.00 for attorney services and $____.00 for paralegal services. In the event that Seller has been previously paid by such clients, the amount of any services shall be offset against the Purchase Price set forth hereunder. In such an event Purchaser shall provide Seller with an itemization of the services provided, the time incurred on such matters and the cost of such time. In the event such matter shall include additional services outside the scope of the client’s agreement with the Seller, the Purchaser shall negotiate a separate fee arrangement with the client.

(h) **Seller’s Independent Contractor.** Except in the case of death or disability, for a period of not less than _______ (___) months, __________________________, shall provide services to Purchaser in the same manner and to the same extent as provided to __________________________ prior to the date of his/her death, in order to assist Purchaser in the acquisition of assets hereunder and the transition of __________________________’s practice to Purchaser. Purchaser shall be responsible for the compensation of __________________________ during this _______ (___) month period with respect to such services.

14. **Conditions Precedent to Purchaser’s Obligations.** The obligation of Purchaser to consummate the transactions contemplated hereunder is subject to the satisfaction at or prior to the Closing of the following (unless waived in writing by Seller):

(a) **Representations, Warranties and Covenants.** The representations, warranties and covenants of Seller contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date as though made at and as of the Closing Date, except for changes contemplated by this Agreement.
(b) **Performance.** Seller shall have complied with all agreements, obligations, covenants and conditions required by this Agreement to be met, performed or complied with by it prior to or at the Closing.

(c) **Absence of Litigation.** No litigation shall have been commenced or threatened, and no investigation by any government entity shall have been commenced against Purchaser or Seller or any of the affiliates, officers or directors of any of them, with respect to the transactions contemplated hereby.

(d) **Satisfactory Due Diligence Review.** Purchaser shall have completed by the Closing Date a due diligence review satisfactory to Purchaser with respect to, among other matters, the business, operations, assets, contracts, legal compliance and future prospects of the Business, all of which shall be confidential and not disclosed to any third party by Purchaser.

15. **Conditions Precedent to Seller's Obligations.** The obligation of Seller to consummate the transactions contemplated hereunder are subject to satisfaction at or prior to the Closing of the following (unless waived in writing by Purchaser):

   (a) **Representations, Warranties and Covenants.** The representations, warranties and covenants of Purchaser contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date as though such representations, warranties and covenants were made at and as of such time.

   (b) **Performance.** Purchaser shall in all material respects have complied with all agreements, obligations and conditions required by this Agreement to be met, performed or complied with by it prior to or at the Closing.

   (c) **Delivery of Purchase Price.** Purchaser shall have delivered to Seller the Note.

   (d) **Litigation.** No Litigation shall have been commenced or threatened, and no investigation by any Government Entity shall have been commenced against Purchaser or Seller with respect to the transactions contemplated hereby; provided that the obligations of Seller shall not be affected unless there is a reasonable likelihood determined by Purchaser that as a result of such action, suit, proceeding or investigation, Seller will be unable to transfer the Assets in accordance with the terms set forth herein.

16. **Endorsement Reporting Coverage.** Seller agrees to maintain, at its expense, professional liability insurance coverage or reporting endorsement coverage of insurance for the term commencing on the date of Closing and continuing thereafter for a period of time not less than the applicable statute of limitations for any legal services provided by Seller pursuant to Section 214(6) of the New Mexico State Civil Practice Rules and Procedures, prior to or following closing.

17. **Expenses.** Whether or not the transaction contemplated herein is consummated, each party hereto shall bear all costs and expenses incurred by it in connection with this Agreement and the transactions contemplated hereby.

18. **Notices.** Any notice or other communication required or permitted hereunder shall be sufficiently given if labeled conspicuously in bold letters "PERSONAL AND CONFIDENTIAL", and mailed personally or sent by registered or certified mail, postage prepaid, or by facsimile transmission or telex immediately
confirmed in writing sent by registered mail or certified mail, postage prepaid, addressed, in the case of the Seller to:

PERSONAL AND CONFIDENTIAL

Estate of __________________________, Esq.

c/o ______________________________

_________________________________

_________________________________

_________________________________

or in the case of the Purchaser to:

_________________________________

_________________________________

_________________________________

Attn: _____________________________

or to such other person or address as shall be furnished in writing by any party to the others prior to the giving of the applicable notice of communication, and such notice or communication shall be deemed to have been given as of the date so delivered or sent.

19. Employees. Purchaser shall not be required to employ any employees of Seller and Seller shall be responsible for the termination of any employees it does not desire to retain following Closing. To the extent Purchaser desires, it shall have the opportunity to interview any of Seller’s employees or independent contractors, including __________________________, for possible employment by Purchaser upon such terms and conditions as Purchaser determines. Such interviews shall take place prior to Closing with the consent of Seller, which shall not be unreasonably withheld.

20. Right of Set-Off. In the event Purchaser suffers any loss for which Seller is obligated to indemnify Purchaser hereunder, and Seller for any reason fails or refuses to pay the same, Purchaser shall have as the means of recovery for any loss (in addition to any other remedies at law or in equity), the right to set-off against any sums due to Seller pursuant to this Agreement. Purchaser’s right of set-off shall not be subject to any order of priority, and shall be exercisable in such amounts (not to exceed the amounts of any such loss) and in such manner as Purchaser in its reasonable discretion may determine.
21. **Client Letter.** Upon execution of this Agreement, Purchaser and Seller, in accordance with DR 2-111 shall provide written notice to Seller's clients, in form and substance of Exhibit B, attached hereto and made a part hereof, at Purchaser's expense, of Purchaser's acquisition of Seller's practice of law. Such written notice shall include information regarding:
   (a) The client's right to retain other counsel or to take possession of the file;
   (b) The fact that the client's consent to the transfer of the client's file or matter to the Purchaser will be presumed if the client does not take any action or otherwise object within ninety (90) days of the sending of the notice, subject to any court rule or statute requiring express approval by the client or a court;
   (c) The fact that agreements between the Seller and the Seller's clients as to fees will be honored by the Purchaser;
   (d) Proposed fee increases, if any; and
   (e) The identity and background of the Purchaser and Purchaser's employees, including principal office address, bar admissions, number of years in practice in the state, whether Purchaser, or any employee of Purchaser, has ever been disciplined for professional misconduct or convicted of a crime, and whether Purchaser currently intends to re-sell the practice.

22. **Entire Agreement.** It is understood and agreed that all understandings and agreements heretofore made between the parties hereto are merged in this Agreement which alone fully and completely expresses the agreement between the parties hereto and that this Agreement has been entered after full investigation, neither party relying upon any statement or representation which is not herein contained. This Agreement may not be changed or terminated orally.

23. **Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Mexico.

24. **Binding Provisions.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, assigns and all other successors-in-interest.

25. **Sales Tax.** Purchaser shall pay any sales tax due and payable by reason of the consummation of the transaction herein contemplated. Payment for the taxes shall be made by Purchaser to Seller who shall remit such sales tax to the appropriate taxing authority. Purchaser shall indemnify Seller for any and all sales taxes paid by Seller by reason of consummating this transaction.

26. **Headings.** The paragraph and clause headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

27. **Miscellaneous.**
   (a) **Waiver of Conditions.** Any party may, at his/her or its option, waive in writing any or all of the conditions herein contained to which his/her or its obligations hereunder are subject.
   (b) **Variation and Amendment.** This Agreement may be varied or amended at any time by joint action of the Seller and Purchaser.
(c) **Assignment.** This Agreement may not be assigned by Seller or Purchaser without the prior written consent of the other party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and seals the date and year first above written.

**PURCHASER:**

________________________________________

By: ________________________________

__________________________________, Vice President

**SELLER:**

ESTATE OF _______________________________, ESQ.

By:

____________________________________

__________________________________, Surviving Spouse

and Executor-Nominee
EXHIBIT A

PROMISSORY NOTE

$______________

__________, New Mexico

_______________ ___, 20___

FOR VALUE RECEIVED, __________________________________, a New Mexico professional corporation, its successors and assigns ("Maker"), hereby promises to pay to the order of ____________________, as surviving spouse of ____________________, ESQ., his/her heirs, representatives, successors and assigns ("Holder"), in immediately available funds, the sum of __________________________and 00/100 Dollars ($_________), plus interest, payable in ______________ (___) equal monthly installments commencing on the ____________ (___) day of ___________, 20__ of ________________________and 00/100 Dollars ($ ____________) each and a final payment on the ____________ (___) day of _____________20__ of ________________________and 00/100 Dollars ($ ____________). Interest shall be computed on the outstanding principal balance at ________ percent (___%) per annum. Installments under this Note shall be made in accordance with the amortization schedule attached hereto as Schedule 1, and made a part hereof.

1. Acceleration Upon Default. At the option of the Holder, this Note shall become immediately due and payable upon the occurrence of any of the following events of default:
   (a) The failure of Maker to make payment of the principal or interest due under this Note within ten (10) days after receipt by Maker of written notice from Holder that an installment is past due;
   (b) The insolvency of Maker, the appointment of a receiver of its assets, or the institution of any involuntary proceeding under any bankruptcy or insolvency law relating to the relief of debtor for the readjustment or relief of any indebtedness of Maker, whether as a reorganization, composition, extension or otherwise, which involuntary proceeding is not terminated, dismissed or concluded in a manner not adverse to Maker within ninety (90) days of the commencement of such proceeding; or
   (c) The filing by Maker of an application or an assignment for the benefit of creditors or for taking advantage of the same under any bankruptcy or insolvency law.

2. Prepayment. Maker shall have the right to prepay all or any portion of the principal balance due under this Note at any time without premium or penalty. Except as set forth above, Holder shall not have any the right to require prepayment of the principal balance due under this Note.
3. **Waiver.** No delay or omission on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. A waiver of any right or remedy on one occasion shall not be construed as a waiver of any right or remedy on any future occasion.

4. **Attorneys’ Fees.** The Holder shall be entitled to collect all costs and reasonable attorneys’ fees incurred by Holder in enforcing his/her rights under this Note.

5. **Notice.** All notices, demands and requests given or required to be given by any party hereto to the other party shall be made in writing and shall be deemed to have been properly given, made or served only if sent by registered or certified mail, postage prepaid, addressed to the other party at his/her last known address, or such other address as the parties shall give prior notice.

6. **Negotiability.** This Note is fully negotiable and may be assigned, transferred or set over by Holder or Maker.

7. **Reference.** Any reference herein to the Holder shall be deemed to include and apply to any subsequent holder of this Note. Any reference herein to the Maker shall be deemed to include and apply to every person now or hereafter liable upon this Note.

8. **Jurisdiction.** This Note shall be deemed to have been made under and shall be governed by the laws of the State of New Mexico in all respects, including matters of construction, validity and performance and none of its terms or provisions may be waived, altered, modified or amended except as Holder may consent thereto in writing duly signed for and on his/her behalf.

9. **Right of Setoff.** Maker shall be entitled to the right of setoff against any or part of any installment due Holder hereunder for any sums owing or hereafter becoming payable to Maker from or by Holder for any reason whatsoever in accordance with the Asset Purchase Agreement by and between Maker and Holder dated ____________ __, 20___.

MAKER

By: ___________________________

_________________, Vice President

*Attach as Schedule 1 amortization schedule*
EXHIBIT B
CLIENT LETTER

CLIENT LETTER advising that Selling Attorney’s practice has been transferred to Buyer and satisfying other requirements of Rule 16-117 NMRA

Re: [Name of Case]

Dear [Name]:

As you aware from my previous correspondence to you, I have arranged to transfer ownership of my practice to [Name of Buyer]. That transaction [was completed] [will be completed] on [date of conveyance]. His/her office address and phone, fax and e-mail addresses are [state addresses separately].

In accordance with the provisions of our Code of Professional Responsibility, please be assured that both I and [Name of Buyer] have carefully maintained whatever confidences and secrets you have imparted to me and that he and I shall continue to do so as long as he continues to represent you, and permanently thereafter you should decide at any time to select another attorney to represent you in this matter.

Please also be assured that those terms of fee payment that you and I agreed upon at the time of my original retention, or that may thereafter have been agreed upon between us, shall continue to be honored by the [Buyer] and cannot be increased by reason of the transfer of your file unless specifically otherwise permitted within the terms of our retainer agreement with you or as otherwise specifically agreed to between you and [the Buyer].

I am certain that [the Buyer] will continue to serve you professionally and well and that your file will continue to be in good hands. Please feel free to communicate with him/her just as you have with me. Thank you for allowing me to be of service to you.

Very truly yours,

[If the client, having previously been notified of the selling attorney’s intent to transfer the client’s file or matter to the Buyer, has not responded to the Seller’s request to provide his or her consent, or lack of it, within the 60-day period prescribed in Rule 16-117(C)(4) NMRA, this letter should include the following:

Although I previously notified you of my intent to transfer your file to [the Buyer] and asked that you provide me with your written consent or disapproval, I have not received your written response. Accordingly, pursuant to the provisions of Rule 16-117(C)(4) NMRA of New Mexico’s Code of Professional Responsibility, I presume that you consent to the transfer.]

I have read this letter and agree in all respects to be bound by its terms.

____________________
[Buyer]
SCHEDULE 2(a)

ASSETS

The following Assets shall be included in the sale from Seller to Purchaser:

1. Seller’s goodwill

2. Seller’s Active Files (see attached list)
   (a) Corporate
   (b) General Partnerships
   (c) Limited Liability Companies
   (d) Limited Partnerships
   (e) Real Estate Matters
   (f) Estate Administration Files
   (g) Will Files

3. Seller’s Special Holdings (see attached list)
   (a) Client’s original wills retained by seller for safekeeping
   (b) Client’s Corporate Minute Books and Limited Liability Company Minute Books retained by Seller for safe keeping
   (c) Miscellaneous Records
SCHEDULE 3(b)

ALLOCATION OF PURCHASE PRICE

Client Records,
Intangibles and Goodwill

$_________________________
SCHEDULE 7
IOLTA ACCOUNT DETAIL

Attach Bank Account Information (accounts, locations, signators, balances, list of clients and allocation of funds among designated clients).
SCHEDULE 13(g)
OPEN MATTERS

See attached.

Set forth all client matters which are considered open and ongoing by Selling Attorney.
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

The undersigned for and on behalf of itself, its affiliates, subsidiaries and agents, including without limitation, ____________________________________, [an attorney engaged in the practice of law in the state of New Mexico] [a New Mexico professional corporation engaged in the practice of law], (the "Disclosing Party") has developed certain confidential and proprietary information in both written form and oral form ("Confidential Information"), which has been and is being disclosed to the undersigned for the sole purpose of entering into discussions regarding possible future business and professional relationships.

In consideration of the Disclosing Party's disclosure of the Confidential Information to the undersigned, its officers and directors and all affiliates (hereinafter "Recipient") the undersigned agrees as follows:

1. Disclosure of Confidential Information.
   (a) The Recipient hereby acknowledges that all documents and information owned or developed by the Disclosing Party or pertaining to the Disclosing Party which has or will come into Recipient's possession or knowledge, unless Recipient provides the Disclosing Party with independent verification to the contrary within fifteen (15) days of the original receipt of such information, is Confidential Information and therefore:
      i. is proprietary to the Disclosing Party having been designed, developed and accumulated at great expense over lengthy periods of time; and
      ii. is secret, confidential and unique, and constitutes the exclusive property of the Disclosing Party.
   (b) Excluded from the Confidential Information is any submission or disclosure:
      i. that can be demonstrated by documentation to have been public information or generally available to the public prior to Recipient's receipt of such Confidential Information from the Disclosing Party;
      ii. that can be demonstrated by documentation to have been in Recipient's possession prior to receipt thereof from the Disclosing Party; and
      iii. that becomes part of the public information or generally available to the public such as by publication or otherwise, other than as a result of a disclosure by Recipient in breach of this Agreement.

2. Use of Confidential Information.
   (a) Recipient shall not use any of the Confidential Information for any purpose other than for the exclusive purpose set forth above. Recipient agrees that the Confidential Information will not be used in any way detrimental to the Disclosing Party and that such information will be kept confidential by Recipient and its agents; provided, however, that (i) any of such information may be disclosed to such representatives of Recipient who need to know such information for the specific purposes set forth above (it being understood that Recipient's directors, officers, employees, affiliated entities, accountants, legal counsel and representatives shall be informed by Recipient of the confidential nature of such information and shall agree to treat such information confidentially in accordance with the terms set forth herein) and (ii) except as otherwise provided
in this Agreement (including Paragraph "3" below), no disclosure of such information may be made by Recipient or its representatives to any other person or entity without the prior written consent of the Disclosing Party.

[(b) Any of Recipient's employees, officers, directors, agents and/or representatives granted access to any Confidential Information provided by the Disclosing Party will each be required to agree to the provisions of, and shall sign a copy of, this Agreement.]

3. **Required Disclosure.** In the event Recipient should be requested or required (by oral questions, interrogations, requests for information or documents, subpoena, civil investigative demand or similar process or as otherwise required by law ("demands")) to disclose Confidential Information supplied to it in the course of Recipient's dealing with the Disclosing Party, the Recipient will provide the Disclosing Party with prompt notice of such requests so that the Disclosing Party may, at its own cost and expense, seek an appropriate protective order; in the event no such protective order is timely obtained, Recipient is permitted to comply with such demands.

4. **Indemnification and Injunctive Relief.** Recipient agrees to indemnify the Disclosing Party against all losses, damages, claims or expenses incurred or suffered by the Disclosing Party as a result of Recipient’s breach of this Agreement. Recipient acknowledges that the Confidential Information it will obtain is unique and of a confidential and proprietary nature and that a breach of the terms of this Agreement will be wrongful and may cause irreparable injury to the Disclosing Party. Therefore, in addition to all remedies of law or equity, the Disclosing Party shall be entitled, as a matter of right, to injunctive relief enjoining and restraining Recipient and each and every other person or entity concerned thereby from continuing to act (or failing to act) in violation of the terms hereof. Recipient shall be liable for any and all damages (whether direct, indirect, consequential or otherwise) resulting from any breach of this Agreement.

5. **Return of Information.** Immediately upon the request of the Disclosing Party, all documentation and records of any nature and kind delivered to Recipient, its directors, officers, employees, accountants, legal counsel, representatives and affiliates shall be promptly returned and all copies of all such documentation, records, etc., made by any person or entity shall be promptly destroyed.

6. **Publicity.** Without the prior written consent of the Disclosing Party, the Recipient will not disclose to any person (a) that the Recipient has entered into discussions regarding possible future business and professional relationships with the Disclosing Party, (b) that the Recipient has received Confidential Information from the Disclosing Party, or (c) any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.

7. **Acknowledgments of Recipient.** Recipient acknowledges that the Disclosing Party is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or any other information concerning the Disclosing Party provided or prepared by or for the Disclosing Party and neither the Disclosing Party nor any of its officers, directors,
employees, stockholders, owners, affiliates or agents, will have any liability to the Recipient resulting from the Recipient's use of the Confidential Information.

8. **Termination.** This Agreement shall expire six (6) months from the date hereof ("Term"). Upon expiration of the Term of this Agreement:
   (a) all Confidential Information previously received by Recipient, and not previously returned, shall be promptly returned to the Disclosing Party in accordance with Paragraph "5" above; and
   (b) all of the terms and conditions of this Agreement pertaining to the disclosure of Confidential Information shall remain in full force and effect in accordance with this Agreement.

9. **Waiver.** It is further understood and agreed that no failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. **Governing Law.** This Agreement shall be interpreted and governed under the laws of the State of New Mexico and each party hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of New Mexico for any action, suit or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby.

11. **Notices.** All notices or documents required pursuant to this Agreement shall be effective if forwarded by certified or registered mail, return receipt requested addressed to the principal office of the party to such parties last know mailing address.

12. **Entire Agreement/Modification.** This Agreement represents the entire agreement between the parties hereto with respect to its subject matter and specifically supersedes any oral or written agreements heretofore entered into by the parties respecting the same. This Agreement may not be altered or modified without the express written consent of the parties.

IN WITNESS WHEREOF, the undersigned have executed this Confidentiality and Non-Disclosure Agreement the ____________ day of __________, 20__.  

RECIPIENT:
(signing individually and on behalf of any entity)

By:
Name:
Title:

DISCLOSING PARTY:


Succession Planning Handbook for New Mexico Lawyers
**LAW OFFICE LIST OF CONTACTS**

<table>
<thead>
<tr>
<th>ATTORNEY NAME:</th>
<th>Social Security #:</th>
</tr>
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<tbody>
<tr>
<td>OR State Bar #:</td>
<td>Federal Employer ID #:</td>
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Date of Birth:__________________________

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<tr>
<th>Office Address:</th>
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<tr>
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<tbody>
<tr>
<td>Name:</td>
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<td>Work Phone:</td>
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<td>Employer:</td>
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<th>OFFICE MANAGER:</th>
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<td>Name:</td>
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<td>Home Address:</td>
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| PASSWORDS (FOR COMPUTER SYSTEM, SOFTWARE PROGRAMS, WEBSITES, ONLINE DATA STORAGE, VOICEMAIL, OTHER): |

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

<table>
<thead>
<tr>
<th>Name:</th>
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<tbody>
<tr>
<td>Home Address:</td>
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</table>
Editable Microsoft Word versions of all forms in this handbook may be downloaded from the Lawyer Succession and Transition Committee’s home page at www.nmbar.org/LSTC.html.

Home Phone: ________________________________
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**POST OFFICE OR OTHER MAIL SERVICE BOX:**

Location: 

Box No.: 

Obtain Key From: 

Address: 

Phone: 

Other Signatory: 

Address: 

Phone: 

**LEGAL ASSISTANT/SECRETARY:**

Name: 

Home Address: 

Home Phone: 

**BOOKKEEPER:**

Name: 

Home Address: 

Home Phone: 

**LANDLORD:**

Name: 

Address: 

Phone:
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**PERSONAL REPRESENTATIVE:**

<table>
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**ATTORNEY:**

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**ACCOUNTANT:**

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**ATTORNEYS TO HELP WITH PRACTICE CLOSURE:**

| First Choice:                 |                                      |
| Address:                      |                                      |
| Phone:                        |                                      |

| Second Choice:                |                                      |
| Address:                      |                                      |
| Phone:                        |                                      |
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Third Choice:  
Address:  
Phone:  

LOCATION OF WILL AND/OR TRUST:
Access Will and/or Trust by Contacting:  
Address:  
Phone:  

PROFESSIONAL CORPORATIONS:
Corporate Name:  
Date Incorporated:  
Location of Corporate Minute Book:  
Location of Corporate Seal:  
Location of Corporate Stock Certificate:  
Location of Corporate Tax Returns:  
Fiscal Year-End Date:  
Corporate Attorney:  
Address:  
Phone:
PROCESS SERVICE COMPANY:
Name: 
Address: 
Phone: 
Contact: 

OFFICE-SHARER OR OF COUNSEL:
Name: 
Address: 
Phone: 
Name: 
Address: 
Phone: 

OFFICE PROPERTY/LIABILITY COVERAGE:
Insurer: 
Address: 
Phone: 
Policy No.: 
Contact Person: 

OTHER IMPORTANT CONTACTS:
Name: 
Address: 
Phone: 
Reason for Contact: 
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<table>
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<td>Reason for Contact:</td>
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<tr>
<td>Reason for Contact:</td>
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</tbody>
</table>

### GENERAL LIABILITY COVERAGE:
- **Insurer:**
- **Address:**
- **Phone:**
- **Policy No.:**
- **Contact Person:**

### LEGAL MALPRACTICE – PRIMARY COVERAGE:
- **Provider:**
- **Address:**
- **Phone:**

### LEGAL MALPRACTICE – EXCESS COVERAGE:
- **Insurer:**
- **Address:**
- **Phone:**
- **Policy No.:**
- **Contact Person:**
**VALUABLE PAPERS COVERAGE:**

| Insurer: |  |
| Address: |  |
| Phone: |  |
| Policy No.: |  |
| Contact Person: |  |

**OFFICE OVERHEAD/DISABILITY INSURANCE:**

| Insurer: |  |
| Address: |  |
| Phone: |  |
| Policy No.: |  |
| Contact Person: |  |

**HEALTH INSURANCE:**

| Insurer: |  |
| Address: |  |
| Phone: |  |
| Policy No.: |  |
| Persons Covered: |  |
| Contact Person: |  |

**DISABILITY INSURANCE:**

| Insurer: |  |
| Address: |  |
| Phone: |  |
| Policy No.: |  |
| Contact Person: |  |
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LIFE INSURANCE:
Insurer: _______________________________________________________________
Address: _______________________________________________________________
Phone: _______________________________________________________________
Policy No.: ___________________________________________________________
Contact Person: _______________________________________________________  

WORKERS’ COMPENSATION INSURANCE:
Insurer: _______________________________________________________________
Address: _______________________________________________________________
Phone: _______________________________________________________________
Policy No.: ___________________________________________________________
Contact Person: _______________________________________________________  

CLOUD or INTERNET-BASED STORAGE LOCATION:
Cloud Provider: _______________________________ Account No.: _______________
Address: _______________________________________________________________
Phone: __________________________________________________________________
Location of Password (if not included on page one):__________________________
Cloud Provider: _______________________________ Account No.: _______________
Address: _______________________________________________________________
Phone: __________________________________________________________________
Location of Password (if not included on page one):__________________________
Editable Microsoft Word versions of all forms in this handbook may be downloaded from the Lawyer Succession and Transition Committee’s home page at www.nmbar.org/LSTC.html.

**STORAGE LOCKER LOCATION:**

Storage Company: ______________________  Locker No.: ______________________
Address: ______________________________________

Phone: ______________________________________
Obtain Key From: ______________________
Address: ______________________________________

Phone: ______________________________________
Items Stored: ______________________________________

Where Inventory of Files Can Be Found: ______________________

Storage Company: ______________________  Locker No.: ______________________
Address: ______________________________________

Phone: ______________________________________
Obtain Key From: ______________________
Address: ______________________________________

Phone: ______________________________________
Items Stored: ______________________________________

Where Inventory of Files Can Be Found: ______________________
**STORAGE LOCKER LOCATION:** (Continued)

<table>
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<tr>
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Address:  

Phone:  

Obtain Key From:  

Address:  

Phone:  

Items Stored:  

Where Inventory of Files Can Be Found:

**SAFE DEPOSIT BOXES:** (Continued on next page)

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<tr>
<th>Institution:</th>
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Box No.:  

Address:  

Phone:  

Obtain Key From:  

Address:  

Phone:  

Other Signatory:  

Address:  

Phone:  

Items Stored:
SAFE DEPOSIT BOXES: (Continued)

<table>
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<th>Institution:</th>
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<td>Items Stored:</td>
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<td>Items Stored:</td>
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LEASES:

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<th>Phone:</th>
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<tr>
<th>Item Leased:</th>
<th>Lessor:</th>
<th>Address:</th>
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<th>Expiration Date:</th>
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### LAWYER TRUST ACCOUNT:

<table>
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<th>Information</th>
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<td>Account No.</td>
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### INDIVIDUAL TRUST ACCOUNT:

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<tr>
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GENERAL OPERATING ACCOUNT:
Institution: ____________________________
Address: ____________________________

Phone: ____________________________
Account No.: ____________________________
Other Signatory: ____________________________
Address: ____________________________
Phone: ____________________________

GENERAL OPERATING ACCOUNT:
Institution: ____________________________
Address: ____________________________

Phone: ____________________________
Account No.: ____________________________
Other Signatory: ____________________________
Address: ____________________________
Phone: ____________________________

BUSINESS CREDIT CARD:
Institution: ____________________________
Address: ____________________________

Phone: ____________________________
Account No.: ____________________________
Other Signatory: ____________________________
Address: ____________________________
Phone: ____________________________
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Institution: _______________________________________________________________
Address: ________________________________________________________________
Phone: _________________________________________________________________
Account No.: ____________________________________________________________
Other Signatory: __________________________________________________________
Address: ________________________________________________________________
Phone: _________________________________________________________________

MAINTENANCE CONTRACTS:

Item Covered: _____________________________________________________________
Vendor: _________________________________________________________________
Address: ________________________________________________________________
Phone: _________________________________________________________________
Expiration: ______________________________________________________________

Item Covered: _____________________________________________________________
Vendor: _________________________________________________________________
Address: ________________________________________________________________
Phone: _________________________________________________________________
Expiration: ______________________________________________________________

Item Covered: _____________________________________________________________
Vendor: _________________________________________________________________
Address: ________________________________________________________________
Phone: _________________________________________________________________
Expiration: ______________________________________________________________
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**ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES:**

<table>
<thead>
<tr>
<th>State of:</th>
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<tbody>
<tr>
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<td>Phone:</td>
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<td>Bar ID No.:</td>
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<th>State of:</th>
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<td>Bar ID No.:</td>
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Chapter 7 – Other Resources

File Retention and Destruction

State Bar of New Mexico Ethics Advisory Opinion 2005-01,
Destruction of Closed Files

March 18, 2005

TOPIC:  Destruction of Closed Files


DISCLAIMER:

The Ethics Advisory Committee is constituted for the purpose of advising lawyers on the interpretation of the Rules of Professional Conduct, as applied to the inquiring lawyer’s duties. The Committee's opinions are not binding. The opinions expressed in herein are the consensus of the members of the Committee who considered the request. These opinions are meant to assist lawyers in their course of conduct. The rules of procedure for the Ethics Advisory Committee further provide that the Committee is not to render opinions on matters of substantive law.

QUESTIONS PRESENTED:

1. How long must a lawyer retain client files after representation of a client is complete?

2. What are the lawyer's obligations to review the client files before they are destroyed?

3. What are the lawyer’s duties to communicate with a client about the lawyer's intent to dispose of the client’s file?

SHORT ANSWER:

Under most circumstances, a lawyer must retain a client's file for a period of five years after representation of the client is complete in order to meet obligations under the Rules of Professional Conduct. Before disposing of a file, the lawyer must review the file to determine which documents or other things are the client's property and the client would expect returned. The lawyer must return those items to the client. The obligation of file review may be delegated to a non-lawyer, provided the non-lawyer receives adequate instruction and supervision from the lawyer. Finally, a lawyer is not required to seek client instruction on file
retention or disposition. Instead, the lawyer is obligated to return documents or things which
are the client's property and the client would expect returned. Notwithstanding the fact that
the lawyer does not have an obligation to seek client instruction on file retention or disposition,
it may be necessary to explain to the client the importance of retaining certain documents or
things returned to the client.

FACTUAL BACKGROUND:

The requestor has several closed client files and seeks guidance on the length of time a
lawyer is required to retain files upon completion of representation of the client and the
manner in which the lawyer may dispose of those files.

ANALYSIS:¹

Questions related to the disposition of client files raise three distinct issues for
consideration by a lawyer intending to destroy or otherwise dispose of a client's file. First, a
lawyer must establish the length of time the lawyer is required to retain client files following
the completion of the representation. Second, the lawyer must determine the extent of the
lawyer's obligation to review client files prior to their destruction. Finally, a lawyer planning to
dispose of client files must determine the extent of the lawyer's duty to communicate with a
client about the lawyer's intent to destroy that file.

1. Duty to Safekeep Property

   a. Rules 16-115 and 17-204

   Rule 16-115(A) imposes a duty upon a lawyer to hold and properly safeguard property
of a client that is in a lawyer's possession. “Complete records of . . . account funds and other
property shall be kept by the lawyer in a manner that conforms to the requirements of Rule
17-204 of the Rules Governing Discipline and shall be preserved for a period of five (5) years
after termination of the representation of the client in the matter or the termination of the
fiduciary or trust relationship.” NMRA (2005) 16-115(A). Similarly, Rule 17-204 requires a
lawyer to maintain "complete records of . . . other property received from or on behalf of a
client which [has] at any time come into his possession." Furthermore, Rule 16-115(B) requires
that a lawyer shall promptly deliver to the client, funds or other property that the client is
entitled to receive. While Rules 16-115 and 17-204 deal primarily with client funds, it was the
opinion of the Committee that their requirements to maintain complete records of “other
property” for a period of five years following the termination of representation extends to
client files or documents.

¹ As noted in the Disclaimer, this analysis sets forth considerations under the New Mexico Rules
of Professional Conduct and does not consider obligations or requirements that may exist
under applicable substantive law.
b. **Advisory Opinion 1988-1**

This Committee has previously interpreted Rule 16-115 in Advisory Opinion 1988-1. Advisory Opinion 1988-1 is based on current rules and remains good advice. Advisory Opinion 1988-1 recognizes a lawyer’s duty, under Rule 16-115(B), to return all property to a client, including any client documents which have not already been returned. That opinion suggests, and the Committee agrees, that the contents of each file should be reviewed and any original documents or documents which the client would expect to be returned should be removed and returned to the client in accordance with Rule 16-115(B).

The lawyer contemplating destruction of a client file should note, however, that some instances may require that files be retained for a period of longer than five years in light of the circumstances surrounding the case. *See*, Adv. Op. 1988-1. On occasion, further litigation or legal proceedings regarding the subject matter of the case are likely or imminent. The most obvious of these situations is the preparation of a will or a trust by a lawyer, the interpretation of which may become an issue many years after it was prepared. To accommodate such situations, the lawyer should identify the types of files which should be kept beyond the five year period required by Rule 16-115(B) and retain any such files.

2. **Duty to Provide Competent Representation (16-101)**

As the Committee identified in Advisory Opinion 1988-1, a second concern raised by the destruction of client files is a lawyer’s obligation to review the file and return any original documents or documents which the client would expect returned. Frequently, because of the volume of material to be reviewed when destroying client files older than five years, lawyers delegate these duties to non-lawyer staff members. The review of a file to determine which items should be returned to a client implicates the requirements of Rule 16-101, which mandates that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. *NMRA* (2005) 16-101. It is the opinion of the Committee that the review of client files to be destroyed may be performed by a non-lawyer; however, the lawyer must insure that the non-lawyer is competent to recognize and determine which documents must be returned to the client or retained beyond the five year period, by providing adequate instruction and supervision.

3. **Duty to Communicate with Clients (16-104)**

Finally, a lawyer contemplating the destruction of a client file must consider his obligation to notify all former clients whose files are to be destroyed to seek their instructions on file retention and disposition. Rule 16-104 requires that a lawyer shall keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. A lawyer had no obligation to send
letters to clients for whom it held no original documents or other documents which are the client’s property and the client would expect returned.

With regard to clients whose files contained original documents or other documents which are the client’s property and the client would expect returned, the lawyer is obligated to return those documents to the client, as discussed above. See NMRA (2005) 16-115(B). Therefore, it is unnecessary to seek instructions on file retention and disposition from these clients, as the documents should simply be returned to the client. In some instances, however, it may be necessary to explain the importance of retaining such documents to the client. For example, the firm may wish to advise a client that he should retain his original will so that it may be probated upon his death.

State Bar of New Mexico Ethics Advisory Opinion 1988-1, Destruction of Closed Files

In response to an inquiry regarding the destruction of closed files, our committee offers the following response.

It is obviously cumbersome for a firm to retain intact all files indefinitely. Before routinely destroying files, one should consider several points regarding a file.

Obviously, court pleadings and recorded documents can usually be reconstructed from records elsewhere. All original documents should be returned to the client, and a client should always be furnished with a conformed set of copies of formal documents, such as contracts, agreements, settlements, etc., even if the original is not available. All property of the client must be returned to the client. (Rules of Professional Conduct No. 16-115)

The lawyer should examine and segregate the contents of a file as to:

1. Documents that are the client’s property and are of intrinsic value, such as wills and deeds, which should be retained indefinitely or deposited with the court;

2. Documents that are the client’s property and which the client would expect returned or documents that are not the client’s property but may be of future use which should be retained for a reasonable period; and

3. All other documents which may be destroyed.

A reasonable amount of time depends on the circumstances of the case. In each case, the lawyer should attempt to contact and deliver the documents to the former client.

The lawyer should examine the file to determine the nature, content and value to the client and to continue to protect the client’s confidences.
A lawyer should retain an accurate and complete record of receipts and disbursements of trust funds and an index of destroyed files.

An additional concern would be in the area of professional liability defense, which is only indirectly related to ethical questions. Once the lawyer's correspondence and notes of interviews with clients and other attorneys are destroyed, the lawyer may be unable to respond accurately to inquiries about what was done, why, and what information was given to the client.

The lawyer should use discretion in destroying the contents of a file, and some types of files should be kept longer than others. For example, a lawyer may have to defend the manner of preparing a will 20 years after the fact.

State Bar of New Mexico Ethics Advisory Opinion 1984-4, Withholding Client Files for Nonpayment

The question presented to the Advisory opinions Committee is whether an attorney may retain documents and papers of a former client when the documents and papers are needed in other litigation by that client, but the client has not paid his account with the attorney.

Counsel should first consider whether he has a valid lien on the client's papers. This is primarily a question of contract to be determined by state law. ABA Formal Opinion 209 (1940). In some circumstances, New Mexico recognizes the common law right of an attorney to claim a retaining lien for outstanding unpaid fees on the papers and documents which come into the lawyer's possession as a result of his professional representation of the client. See Prichard v. Fulmer, 22 N.M. 134, 159 P. 39 (1916); Restatement of Securities 5 62B (1941). In analyzing whether the lien is valid, counsel should consider whether possession of the documents and papers was obtained in his professional capacity (e.g. papers given expressly to the attorney by the client in connection with the professional services being rendered for the client and for which professional services were actually rendered), or through other means such as an unauthorized request, another person's unauthorized act, accident, mistake or in an unrelated matter. The Committee does not view its role as determining the validity of the lien. It would disapprove, though, of any attempt to enforce an invalid lien.

A second consideration concerns the scope of the lien and the rights of the attorney and client thereunder. A situation similar to the one presented here arose in Pomerantz v. Schandler, 704 F.2d 681 (2d Cir. 1983) and Jenkins v. Weinsheink, 670 F.2d 915 (10th Cir. 1982). In Pomerantz an attorney withdrew from representation of a litigant and claimed a lien on the litigant's documents for payment of his fees. The litigant requested release of the documents, but the attorney refused unless his account was paid or adequate security for payment was posted. Although the attorney had no absolute right to assert his lien, the court held under the facts of the case that the attorney may withhold the papers until the fee was paid or adequate
security for payment was posted. The court, however, recognized an exception to withholding when the client can show: (1) an urgent need for the papers; (2) prejudice if access is denied; and (3) an inability to pay the fee.

The purpose of the retaining lien is to cause the client to pay his bill. The effectiveness of the lien depends on the client's inability to gain access to the papers. It therefore follows that the lawyer may withhold the papers even if needed in other litigation until the client pays the bill or is able to convince a judge that the *Pomerantz* exception applies. Although in *Pomerantz* the other litigation involved a criminal prosecution, the rule may also be applicable in certain civil litigations where important personal liberties and rights are at stake. See *Jenkins v. Weinsheink*, *supra*. Counsel should note that the opposing party in the other lawsuit probably can gain access to the papers through discovery if the papers are not protected by work product notwithstanding the retaining lien. *Jenkins v. Weinsheink, supra.*

The ethical propriety of asserting a retaining lien is not absolute either under the Model Code. Counsel is strongly urged to review ABA Informal opinion 1461 (1980) carefully; see Model Rules of Professional Conduct 1.16 (1983). A proper sense of the regard for the nature of the profession should lead a lawyer to evaluate his financial interests in light of the interests of the client when making his decision to invoke an attorney's lien to which he may be entitled under law. Informal opinion 1461 points out that the mere existence of a legal right to a retaining lien does not entitle a lawyer to stand on that right if ethical considerations require that he forego it. See DR 2-110(A)(2); EC 2-23; EC 2-32. In relevant part Opinion 1461 states that the attorney must

evaluate his or her interests against interests of the client and of others who would be substantially and adversely affected by assertion of the lien. The lawyer should take into account the financial situation of the client, the sophistication of the client in dealing with lawyers, whether the fee is reasonable, whether the client clearly understood and agreed to pay the amount now owing, whether imposition of the retaining lien would prejudice important rights or interests of the client or of other parties, whether failure to impose the lien would result in fraud or gross imposition by the client, and whether there are less stringent means by which the matter can be resolved or by which the amount owing can be secured. Even though a lawyer may be justified in declining to devote further time and expense in behalf of a non-paying client, it does not follow in all cases that he is ethically justified in exercising an attorney's lien.

If, for example, exercise of the retaining lien would prejudice the client's ability to defend against a criminal charge, or to assert or defend a similarly important personal liberty, the lawyer should ordinarily forego the lien. Similarly, if the court or other parties or the public interest would be adversely and seriously affected by the lien, the lawyer should be hesitant to invoke it. Financial inability of the client to pay the amount owing should also cause the lawyer to forego the lien because the failure to pay the fee is not deliberate and thus does not constitute fraud or gross imposition by the client. The lawyer should forego the lien if he knew the client's financials inability the
beginning or if he failed to assure agreement as to the amount or method of calculating the fee.

Assertion of the lien would be ethically justified when the client is financially able but deliberately refuses to pay a fee that was clearly agreed upon and is due, since this conduct would constitute gross imposition by the client.

The attorney has not provided the Committee with enough facts to permit a clear cut answer. It would be helpful to know if the client asserts that the attorney’s efforts were improper, inadequate or contrary to instructions; that the fee billings were excessive or contrary to agreement; whether the client claims a present inability to pay; and whether the client discharged the attorney or the attorney withdrew without just cause or reasonable notice. See Jenkins v. Weinsheink, supra; Informal Opinion 1461.

The Committee concludes that the attorney may assert a retaining lien and withhold the papers and documents notwithstanding other litigation if: (1) a valid lien exists; (2) the client does not fall within the exceptions set out in Pomerantz and Jenkins; and (3) the ethical considerations raised in ABA Informal opinion 1461, the cites therein and Model Rule 1.16 are not breached.

Why Did We EVER Want To Keep Original Wills?

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

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

You see, I left the medium-sized firm and started a new firm. In the spirit of tradition and mindlessness, I, too, offered the service of storing clients’ original estate planning documents. I swallowed hard and purchased a fireproof filing cabinet (price approx. $1,500 in today’s dollars) and arranged to have all 800 pounds of it moved into my new office. In the beginning, it was not a
problem. Time moved on, and my practice grew. I ended up moving to a nicer and larger space. This required moving my 800-pound fireproof filing cabinet. I often wondered whether using a regular filing cabinet would have been good enough, but the idea just did not seem wise, even in my weakest moments (moving day). As my practice grew, so did the problem. I had to purchase another cabinet (another $1,500, another 800 pounds). Soon I had no room in the second fireproof filing cabinet. Soon after that, I realized I had no room in my office. Reality had set in.

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

This project took about six months, and at least $1,500. The cost of returning the documents came in the form of copying the documents (I wanted to keep a file copy), staff (I had to hire temporary personnel), and postage (certified mail). In addition, my legal assistant spent many hours writing letters to clients announcing our new procedure, talking to clients on the phone about our new procedure, arranging for file pickup, obtaining the signature of the client (and the client’s spouse when both spouses were clients), writing receipts for files, and other record keeping.

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

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

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

If you do have an original will of a client, photocopy the entire, fully executed will and place that copy in the client’s file before releasing the original will to the client. While it is possible to admit a copy of a will into probate in certain cases, it should not be relied upon. See ORS 113.035(10).
Second, I realized that times have changed. Many clients are uncomfortable about having the lawyer keep their original documents — they feel (correctly) as if the lawyer is trying to retain control of something that is theirs. This feeds the fuel of suspicion that prompted the chant:

“Don’t Let Lawyers and Probate Eat up Your Hard-Earned Money!”

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

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

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

Fifth, I realized that the practice of keeping original wills is an absolute nightmare for the person who ends up trying to close your practice when you die or become disabled. The person closing your practice will have to return all of the documents, and that is likely to be a difficult and expensive task. Most people move every seven years; many of those people do not think to let their lawyer/holder-of-their-original-will know their new address. As a result, your personal representative, or the person assisting with the closure of your practice, may have difficulty finding the testators. ORS 112.815 requires that 40 years elapse before a will can be destroyed. This problem may end up being a burden for the person helping you close your practice, your personal representative, and maybe even for his or her personal representative! If you are a member of a firm and breathing a sigh of relief — thinking this doesn’t apply to you — think again. My former law firm eventually completely split up. Someone ended up with the albatross of dealing with all of those original wills.

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

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

Will I EVER Be Free of the Albatross?

The Oregon State Bar Professional Liability Fund’s In Brief contains information on how to avoid legal malpractice in specific areas of law. Technology updates, practice tips, and resources of interest to Oregon practitioners are also included. In Brief is accessible online at http://www.osbplf.org/index.asp?page=new_inbrief.
Resource Phone Numbers, Addresses, and Contacts

Assistance for Impaired Lawyers and their Colleagues, Staff and Family

Lawyers and Judges Assistance Program
P.O. Box 92860
Albuquerque, NM 87199-2860
**Helpline** 800-860-4914 or 505-228-1948

Attorney Resources Helpline
505-797-6050
800-876-6227

Client-Attorney Assistance Program
505-842-5781

Questions Regarding IOLTA Accounts

Center for Civic Values
P.O. Box 2184
Albuquerque, NM 87103-2184
505-764-9417
800-451-1941
www.civicvalues.org

Legal Ethics Questions

Ethics Advisory Opinions, 505-797-6050

Ethics Helpline, 800-326-8155

Ethics Complaints

New Mexico Disciplinary Board
P.O. Box 1809
Albuquerque, NM 87103-1809
505-842-5781
www.nmdisboard.org
Information Regarding Attorneys Whose Offices Are Closed

New Mexico Disciplinary Board
P.O. Box 1809
Albuquerque, NM 87103-1809
505-842-5781
www.nmdisboard.org

Client Protection Fund Claims

State Bar of New Mexico Client Protection Fund
P.O. Box 92860
Albuquerque, NM 87199-2860
505-842-5781

Attorney Obituaries

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