PLANNING AHEAD:
A GUIDE TO PROTECTING YOUR CLIENTS' INTERESTS IN THE EVENT OF YOUR DISABILITY OR DEATH

A Handbook and Forms

Barbara S. Fishleder

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

One copy of this handbook is free to any Oregon lawyer who requests it.

In addition to this handbook, the Professional Liability Fund also offers free and confidential practice management advice on an individual basis through our practice management advisor program. A Professional Liability Fund practice management advisor can be reached by calling the Professional Liability Fund at 503-639-6911 or 1-800-452-1639. In addition, the Professional Liability Fund has many free practice aids, including all the forms in this handbook, that are available to attorneys online at www.osbplf.org.

We hope this handbook will be of assistance to you and that you will utilize the services of our practice management advisors.

Sincerely yours,

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TABLE OF CONTENTS

THE DUTY TO PLAN AHEAD

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

For this reason, a lawyer's duty of competent representation *includes* arranging to safeguard the clients' interests in the event of the lawyer's death, disability, impairment, or incapacity. OSB Legal Ethics Op 2005-129. ABA Formal Op 92-369. *See Specht v. U.S.* 2015 WL 74539 (SD Ohio 2015) (in underlying case that gave rise to the legal malpractice claim, client's estate was held liable for $1.2 million in late filing fees and penalties caused by lawyer's failure to safeguard clients' interests); *see also Cabrera v. Collazo*, 979 NYS2d 326 (2014) (attorney's death not an excuse for allowing statute of limitations to expire when death was foreseeable.)

Most commercial malpractice carriers require the lawyers they insure to make arrangements for office closure in the event of death or disability. The Professional Liability Fund (PLF) has created this handbook to help you fulfill your ethical responsibilities and to reduce future malpractice claims against you and your estate.

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

TERMINOLOGY AND FORMS

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

The sample *Agreement – Full Form*, provided in Chapter 4, authorizes the Assisting Attorney to transfer client files, sign checks on your general account, and close your practice. This form also provides for payment to the Assisting Attorney for services rendered, designates the procedure for termination of the Assisting Attorney's services, and provides the Assisting Attorney with the option to purchase the law practice. In addition, the form provides for the appointment of an Authorized Signer on your lawyer trust account. The *Agreement – Full Form* is a sample only. You may modify it as needed.

The sample *Agreement – Short Form*, also provided in Chapter 4, 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 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* provided in Chapter 4 of this handbook.)

The agreement could also include provisions that give the Assisting Attorney authority to wind down your financial affairs, provide your clients with a final accounting and statement, collect fees on your behalf, and liquidate or sell your practice. Arrangements for payment by you or your estate to the Assisting Attorney for services rendered can also be included in the agreement. (See sample *Agreement – Full Form* provided in Chapter 4 of this handbook.)

At the beginning of your relationship, it is crucial for you and the Assisting Attorney to establish the scope of the Assisting Attorney's duty to you and your clients. If the Assisting Attorney represents you as *your* attorney, he or she may be prohibited from representing your clients on some, or possibly *all*, matters. Under this arrangement, the Assisting Attorney would owe his or her fiduciary obligations to you. For example, the Assisting Attorney could inform your clients of your legal malpractice or ethical violations only if you consented. However, if the Assisting Attorney is not *your* attorney, he or she may have an ethical obligation to inform your clients of your errors. (See *What If? Answers to Frequently Asked Questions*, Chapter 2 of this handbook.)

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

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 provided in Chapter 4 of this handbook should be legally sufficient to grant authority to sign on your account. However, you and the Assisting Attorney and/or the Authorized Signer may also want to sign a limited power of attorney. (See *Power of Attorney – Limited* provided in Chapter 4 of this handbook.) Most banks prefer a power of attorney. Signing a separate limited power of attorney increases the likelihood that the bank will honor the agreement. It also provides you and the Assisting Attorney and/or the Authorized Signer with a document limited to bank business that can be given to the bank. (The bank does not need to know all the terms and conditions of the agreement between you and the Assisting Attorney and/or the Authorized Signer.) If you choose this approach, consult the manager of your bank. When you do, be aware that power of attorney forms *provided by the bank* are generally unconditional authorizations to sign on your account and may include an agreement to indemnify the bank. Get written confirmation that the bank will honor *your* limited power of attorney or other written agreement. Otherwise, you may think you have taken all necessary steps to allow access to your accounts, yet when the time comes the bank may not allow the access you intended.

If the access is going to be contingent, you may want to have someone (such as your spouse or partner, family member, personal representative, or trusted friend) hold the power of attorney until the contingency occurs. This can be documented in a letter of understanding, signed by you and the trusted friend or family member. (See *Letter of Understanding* provided in Chapter 4 of this handbook.) When the event occurs, the trusted friend or family member provides the Assisting Attorney and/or the Authorized Signer with the power of attorney.

If the authorization will be contingent on an event or for a limited duration, the terms must be specific and the agreement should state how to determine whether the event has taken place. For example, 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 above, when arranging to have someone take over or wind down your financial affairs, you should also consider whether you want someone to have access to your trust account. If you do not make arrangements to allow someone access to the trust account, your clients' money will remain in the trust account until a court orders access. For example, if you become physically, mentally, or emotionally unable to conduct your law practice and no access arrangements were made, your clients' money will most likely remain in your trust account until the court takes jurisdiction over your practice and your accounts, pursuant to ORS 9.705 to 9.755. In many instances, the client needs the money he or she has on deposit in the lawyer's trust account to hire a new lawyer, and a delay puts the client in a difficult position. This is likely to prompt ethics complaints, Client Security Fund claims, malpractice complaints, or other civil suits.

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

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

Adding an Assisting Attorney or Authorized Signer to your general or lawyer trust account is permitted regardless of the form of entity you use for practicing law.

CLIENT NOTIFICATION

Once you have made arrangements with an Assisting Attorney and/or Authorized Signer, the next step is to provide your clients with information about your plan. The easiest way to do this is to include the information in your 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. Sample engagement letters and fee agreements are available on the PLF Web site, www.osbplf.org.

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 *Checklist for Lawyers Planning to Protect Clients' Interests in the Event of the Lawyer's Death, Disability, Impairment, or Incapacity* provided in Chapter 3 of this handbook.)

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 death, disability, impairment, or incapacity, that authority terminates when you die. See ORS 127.015. The personal representative of your estate has the legal authority to administer your practice. He or she must be told about your arrangement with the Assisting Attorney and/or Authorized Signer and about your desire to have the Assisting Attorney and/or Authorized Signer carry out the duties of your agreement. The personal representative can then authorize the Assisting Attorney and/or Authorized Signer to proceed.

It is imperative that you have an up-to-date will nominating a personal representative (and alternates if the first nominee cannot or will not serve) so that probate proceedings can begin promptly and the personal representative can be appointed without delay. If you have no will, there may be a dispute among family members and others as to who should be appointed as personal representative. A will can provide that the personal representative shall serve without bond. Absent such a provision, a relatively expensive fiduciary bond will have to be obtained before the personal representative is authorized to act.

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

Oregon 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. ORS 114.305, 114.325. However, for the personal representative's protection, you may want to include language in your will that expressly authorizes that person to arrange for closure of your law practice. The appropriate language will depend on the nature of the practice and the arrangements you make ahead of time. (See *Will Provisions* provided in Chapter 4 of this handbook.) For an instructive and detailed will for a sole practitioner, see Thomas G. Bousquet, *Retirement of a Sole Practitioner's Law Practice*, 29 LAW ECONOMICS & MANAGEMENT 428 (1989); updated: 33 *The Houston Lawyer* 37 (January/February 1996).

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

START NOW

We encourage you to select an attorney to assist you; follow the procedures outlined in this handbook; call the PLF's practice management advisors for assistance; and forward the name, address, and phone number of your Assisting Attorney to the PLF on an annual basis. (See *Notice of Designated Assisting Attorney* provided in Chapter 4 of this handbook.)

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

If you have any questions about this procedure, call Barbara S. Fishleder at 503-639-6911 or 800-452-1639.

WHAT IF?
ANSWERS TO FREQUENTLY ASKED QUESTIONS

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

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

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. See *The Ethical Oregon Lawyer* (Oregon CLE 2006).

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 PLF, unless the scope of your representation of the client excludes actions against the Planning Attorney. If you want to limit the scope of your representation, do so in writing and advise your clients to get independent advice on the issues.

If you are the Planning Attorney's lawyer, and not the lawyer for his or her former clients, you should discuss the error with the Planning Attorney and inform the Planning Attorney of his or her obligation to inform the client of the error. As the attorney for the Planning Attorney, you are obligated to follow the instructions of the Planning Attorney. You must also be careful that you do not make any misrepresentations. See ORPC 8.4(a)(3). This situation could arise if the Planning Attorney refused to fulfill his or her obligation to inform the client – and also instructed you not to

tell the client. If that occurred, you must be sure you do not say or do anything that would mislead the client.

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

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

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

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

When attorneys leave private practice, their Coverage Plan limits for the year that they leave are extended to cover claims that occur after they leave private practice. This extension of coverage is called Extended Reporting Coverage (ERC) or Tail Coverage. It is available to all attorneys when they leave private practice and is provided without charge. Malpractice coverage is available for claims after an attorney leaves private practice, provided the attorney did not use up his or her coverage limits for the entire year. For example, if an attorney leaves private practice in 2009 and has had no malpractice claims paid in 2009, the attorney will have $300,000 of coverage (defense and indemnity combined), plus an additional $50,000 claims expense allowance for initial defense costs available for future claims. This coverage limit is available without a time limit on when the claim is made. The coverage limit is available even after the attorney dies. However, if the attorney has used some of his or her coverage limits in the year that he or she leaves private practice, the available limits are restricted to the unused portion of the coverage plan from the last year in private practice. For example, if the attorney leaves private practice in 2009 and had a malpractice claim paid that used $250,000 of the $300,000 limit and all of the $50,000 claims expense allowance, the attorney would have only $50,000 of malpractice coverage remaining for all claims arising after he or she left private practice.

Many firms carry excess coverage above the PLF primary limits. 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 ERC at the excess level. 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 will continue to cover both the firm and the Planning Attorney at no charge for new claims after the Planning Attorney leaves private practice. However, if the firm drops its excess coverage at a future date (or is turned down at renewal time) and the firm chooses not to buy the available ERC, the Planning Attorney will no longer have any excess coverage for new claims. The best protection for the Planning Attorney is to have an agreement with the firm that requires the firm (1) to continue purchasing excess coverage for a period of time after the Planning Attorney's departure (and to purchase whatever ERC is available if the firm's excess coverage is not renewed) and (2) to demonstrate to the Planning Attorney each year that it has excess 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 or refer the client to the Oregon State Bar Lawyer Referral Service.

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

If your review or the Authorized Signer's review of the lawyer trust account indicates that there may be conflicting claims to the funds in the trust account, you should initiate a procedure for distributing the existing funds, such as a court-directed interpleader, pursuant to ORCP 31.

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

The answer depends on the relationships. The answer is (1) no, if you are the Planning Attorney's lawyer; (2) maybe, if you are not representing the Planning Attorney or the Planning Attorney's former clients; and (3) yes, if you are the attorney for the Planning Attorney's former clients.

If the Planning Attorney violated a disciplinary rule and you are his or her lawyer, you are not obligated to inform the Planning Attorney's former clients of any ethical violations or report any of the Planning Attorney's ethical violations to the Oregon State Bar if your knowledge of the misconduct is the result of confidential information obtained from your client, the Planning Attorney. ORPC 8.3(a). Although you may have no duty to report, you may have other responsibilities. For example, if you discover that some of the client funds are not in the lawyer trust account as they should be, you, as the attorney for the Planning Attorney, should discuss this matter with the Planning Attorney and encourage the Planning Attorney to correct the shortfall. If the Planning Attorney does not correct the shortfall and you believe the Planning Attorney's conduct violates the disciplinary rules, you should resign. OSB Legal Ethics Op 2005-53. If you are the attorney for the Planning Attorney and the Planning Attorney is deceased, you should contact the personal representative of the estate. If the Planning Attorney is alive but unable to function, you (or the Authorized Signer) may have to disburse the amounts that are available and inform the Planning Attorney's former clients that they have the right to seek legal advice.

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

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

If you are the attorney for a former client of the Planning Attorney, you have an obligation to inform the client about the shortfall and advise the client of available remedies. These remedies may include (1) pursuing the Planning Attorney for the shortfall, (2) filing a claim with the Client Security Fund, (3) filing a claim with the PLF, or (4) filing an ethics complaint with the Oregon State Bar. You also have an obligation under ORPC 8.3(a) to report the Planning Attorney to the Oregon State Bar. If you are a friend of the Planning Attorney, this is a particularly important issue. You should determine *ahead of time* whether you are prepared to assume (1) the obligation to inform the Planning Attorney's former clients of the Planning Attorney's ethical errors and (2) the duty to report the Planning Attorney to the Oregon State Bar if a violation occurs. If you do not want to inform your clients (the former clients of the Planning Attorney) about possible ethics violations, you must explain to your clients that you are not providing them with any advice on ethics violations of the Planning Attorney. You should advise the clients, in writing, to seek independent representation on these issues. Limiting the scope of your representation, however, does not eliminate your duty to report pursuant to ORPC 8.3(a).

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

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

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

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

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

The most important "pro" of authorizing someone to sign on your trust account is the convenience it provides for your clients. If you (the Planning Attorney) suddenly become unable to continue in practice, an Authorized Signer is able to transfer money from the trust account to pay appropriate fees, provide your clients with settlement checks, and refund unearned fees. If these arrangements are not made, the clients' money must remain in the trust account until a court allows access. This court order may be through a conservatorship or an order pursuant to ORS 9.705 to 9.755. This delay may leave the clients at a disadvantage, since settlement funds, or unearned fees held in trust, are often needed to hire a new lawyer.

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

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

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

Although this generally works out fine, the arrangement may result in a conflict of fiduciary interests. As an Authorized Signer on the Planning Attorney's trust account, you would 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 above.)

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. (See sample Retainer Agreement available at www.osbplf.org.)

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.

4. Document your files.

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

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

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

8. If your written agreement authorizes the Assisting Attorney to sign 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 *The Duty to Plan Ahead, Implementing the Plan,* in Chapter 1 of this handbook.)

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 *The Duty to Plan Ahead, Access to the Trust Account*, in Chapter 1 of this handbook.) 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 PLF each year:

    Professional Liability Fund
    Attention: Director of Personal and Practice Management Assistance
    16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224
    PO Box 231600, Tigard, OR 97281-1600

    (See *Notice of Designated Assisting Attorney* provided in Chapter 4 of this handbook.) This will enable the PLF 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 provided in Chapter 4 of this handbook. Make sure your Assisting Attorney has a copy.

CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S OFFICE

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

1. Check the calendar and active files to determine which items are urgent or scheduled for hearings, trials, depositions, court appearances, and so on. Tip: In addition to checking the Closing Attorney's personal calendar, consider searching OJIN and Oregon eCourt calendars on the Oregon Judicial Department (OJD) Web site, http://courts.oregon.gov/OJD/OnlineServices/calendars/Pages/index.aspx. To search OJIN calendars, enter the Closing Attorney's name in the Attorney: field and choose -All Courts- or select a specific court. To search Oregon eCourt circuit court calendars, select "Attorney" in the "Search by" drop-down menu and enter the closing attorney's name.
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*, provided in Chapter 4 of this handbook.)
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. Review ORPC 1.16.
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 whom they should contact in order to retrieve another copy of their file.

13. Send the name, address, and phone number of the person who will be retaining the closed files to OSB Regulatory Services, P.O. Box 231935, Tigard, OR 97281-1935.

14. If the Closing Attorney was a sole practitioner, arrange for a forwarding phone number. In the alternative, record an appropriate announcement on the Closing Attorney's outgoing voicemail and maintain it for 30 to 60 days after the office is closed. This eliminates the problem created when clients call the Closing Attorney's office and hear a recording stating that the number is disconnected, and do not know where to turn for information.

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

16. If the Closing Attorney is a notary and wishes to resign his or her commission, he or she must file a Termination of Notary Public Commission Due to Resignation with the Oregon Secretary of State (SOS):

    "A notary public whose commission was terminated because of resignation shall arrange for the storage of his/her notarial records, in any form and at any location within 30 days following resignation. The records or any reproduction of the records must be readable and the notary public must be able to obtain possession of such records within 15 days of receipt of a request for such records pursuant to OAR 160-100-320(1).

    A notary public shall store such records for a period of seven years after the date of resignation. After the seven-year period, the notary public may destroy such records pursuant to OAR 160-100-320(3)."

    A notary resignation form is available on the SOS Web site at http://www.filinginoregon.com/pages/forms/notary/Notary_Resignation.pdf.

17. If the Closing Attorney is a registered agent for Oregon businesses, deliver a signed, written statement of resignation to the Corporation Division and give notice to the affected businesses.

    Businesses must designate a new registered agent and provide that information to the Corporation Division. Failure to do so will result in the administrative dissolution of the business.

    For more information and forms, see http://sos.oregon.gov/business/Pages/registered-agents-service-of-process.aspx.

18. If the Closing Attorney died, you may wish to speak to family members about submitting memorial notices or obituaries to appropriate publications. *In Memoriam* notices may be

submitted to the Editor of the *Oregon State Bar Bulletin*, Oregon State Bar, P.O. Box 231935, Tigard, OR 97281-1935. Family members should also be advised that if the Closing Attorney is a notary, Oregon law requires an heir or personal representative to file the Closing Attorney's notarial records with the SOS within 30 days of death. The notary seal should be destroyed. A Termination of Notary Public Commission Due to Death is available on the SOS Web site at http://www.filinginoregon.com/pages/forms/notary/Notary_Death.pdf.

19. *(optional)* If you have authorization to handle the Closing Attorney's financial matters, look around the office for checks or funds that have not been deposited. Determine whether funds should be deposited or returned to clients. (Some of the funds may be for services already rendered.) Get instructions from clients concerning any funds in their trust accounts. These funds should be either returned to the clients or forwarded to their new attorneys. Prepare a final billing statement showing any outstanding fees due and/or any money in trust. (To withdraw money from the Closing Attorney's accounts, you will probably need: (1) to be an Authorized Signer on the accounts; (2) to have a written agreement such as the sample provided in Chapter 4 of this handbook; or (3) to have a limited power of attorney. If none of these have been done and the Closing Attorney is dead, disabled, impaired, or incapacitated, you may have to request the Oregon State Bar Board of Governors to petition the court to take jurisdiction over the practice and the accounts pursuant to ORS 9.705 to 9.755. 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.

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

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

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

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

CHECKLIST FOR CLOSING YOUR OWN OFFICE

1. 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*, provided in Chapter 4 of this handbook.)
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. Review ORPC 1.16.
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*, provided in Chapter 4 of this handbook.) 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 10 years. The PLF recommends that closed files be kept for 10 years or longer. (See *File Retention and Destruction*, provided in Chapter 5 of this handbook.) 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 OSB Regulatory Services, P.O. Box 231935, Tigard, OR 97281-1935. Also send them your name, current address, and phone number.
10. If you are a sole practitioner, ask the telephone company for a new phone number to be given out when your disconnected phone number is called. This eliminates the problem created when clients call your phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information. 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 Oregon Secretary of State:

"A notary public whose commission was terminated because of resignation shall arrange for the storage of his/her notarial records, in any form and at any location within 30 days following resignation. The records or any reproduction of the records must be readable and the notary public must be able to obtain possession of such records within 15 days of receipt of a request for such records pursuant to OAR 160-100-320(1).

A notary public shall store such records for a period of seven years after the date of resignation. After the seven-year period, the notary public may destroy such records pursuant to OAR 160-100-320(3)."

A notary resignation form is available on the Oregon Secretary of State's Web site at http://www.filinginoregon.com/pages/forms/notary/Notary_Resignation.pdf.

12. If you are a registered agent for Oregon businesses, deliver a signed, written statement of resignation to the Corporation Division and give notice to the affected businesses.

Businesses must designate a new registered agent and provide that information to the Corporation Division. Failure to do so will result in the administrative dissolution of the business.

For more information and forms, see http://sos.oregon.gov/business/Pages/registered-agents-service-of-process.aspx.

CHECKLIST FOR CLOSING YOUR IOLTA ACCOUNT

1. Fully reconcile the IOLTA account. Any funds remaining in the account should correspond to specific clients, nominal funds used to open the account, or amounts deposited to cover reasonably anticipated bank charges. See ORPC 1.15-1(b) and OSB Formal Opinion No. 2005-145. For instructions on how to reconcile the IOLTA account, see *A Guide to Setting Up and Using Your Lawyer Trust Account*, available on the PLF Web site, www.osbplf.org.

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. See ORPC 1.15-2(m).)

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 belonging to clients whose last known address was in Oregon, follow the procedures set forth in the Disposition of Unclaimed Property Act, ORS 98.302-98.436. Note, 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.

   Effective January 1, 2010, unclaimed funds held in lawyer trust accounts must be reported to the Division of State Lands (DSL), but paid over to the Oregon State Bar (OSB) with a copy of the DSL reports. The reporting forms are available on the DSL Web site (http://www.oregon.gov/dsl). Forms 1a and 2a must be completed and sent to the DSL with copies of the reports and the unclaimed funds forwarded to the OSB.

   Pursuant to ORS 98.332, funds held by a fiduciary are deemed abandoned if the owner has not accepted payment of the funds, corresponded in writing about the funds, or otherwise indicated interest in the funds within two years after the funds are payable or distributable to the owner. Funds deemed abandoned as of June 30 of each year are to be reported to the DSL during the month of October of that same year, although earlier reporting may be allowed upon written request.

   Questions about abandoned funds can be addressed to Judith Baker at the Oregon Law Foundation, www.oregonlawfoundation.org, (503) 431-6323 or jbaker@osbar.org. (Originally posted at https://www.osbar.org/resources/abandonedfunds.html.) *See also* OSB Formal Opinion No. 2005-48.

   If you have unclaimed trust account funds for clients outside Oregon, contact the Division of State Lands in the state where the client last resided.

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." ORPC 1.15-1(a).

10. No rule requires lawyers to update the OSB when an IOLTA account is closed between annual certifications. For more information on annual reporting requirements, see: https://www.osbar.org/IOLTA.

AGREEMENT – FULL FORM

(Sample – Modify as appropriate)

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

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

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

If you do not want the Assisting Attorney to be the person who determines whether you are disabled, incapacitated, or impaired, you will need to modify this agreement. For a discussion of alternatives, see *The Duty to Plan Ahead, Access to the Trust Account*, in Chapter 1 of this handbook.

AGREEMENT TO CLOSE LAW PRACTICE

Between: _____, hereinafter referred to as "Planning Attorney"

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

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

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

2. Parties.
The term *Assisting Attorney* refers to the attorney designated in the caption above or the Assisting Attorney's alternate. The term *Planning Attorney* refers to the attorney designated in the caption above 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 Oregon Rules of Professional Conduct. Assisting Attorney has permission to inform the Professional Liability Fund of errors or potential errors of Planning Attorney.

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

OR:

Assisting Attorney Is Not Attorney for Planning Attorney.
While fulfilling the terms of this Agreement, Assisting Attorney is not the attorney for Planning Attorney. Assisting Attorney has permission to inform the Professional Liability Fund of errors or potential errors of Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any ethics violations committed by Planning Attorney.

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

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

10. Informing Oregon State Bar.
Assisting Attorney agrees to inform the Oregon State Bar Regulatory Services 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 Professional Liability Fund (PLF) 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 Section 7 of this Agreement.)

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

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

OR:

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

14. Authorized Signer's Alternate. (Delete one of the following paragraphs as appropriate.)
If Authorized Signer is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____ as Authorized Signer's alternate (hereinafter "Authorized Signer's Alternate"). Authorized Signer's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Authorized

Signer's Alternate shall comply with the terms of this Agreement. Authorized Signer's Alternate consents to this appointment, as shown by the signature of Authorized Signer's Alternate on this Agreement.

OR:

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

15. Indemnification.

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

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

16. Option to Purchase Practice.

Assisting Attorney shall have the first option to purchase the law practice of Planning Attorney under the terms and conditions specified by Planning Attorney or Planning Attorney's representative in accordance with the Oregon 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 Oregon State Bar 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 OREGON)
) ss.
County of _____)

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

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

_____ _____
[Assisting Attorney] *[Date]*

STATE OF OREGON)
) ss.
County of _____)

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

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

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

STATE OF OREGON)
) ss.
County of _____)

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

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

_____ _____
[Authorized Signer] *[Date]*

STATE OF OREGON)
) ss.
County of _____)

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

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

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

STATE OF OREGON)
) ss.
County of _____)

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

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

AGREEMENT – SHORT FORM

(Sample – Modify as appropriate)

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

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

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

CONSENT TO CLOSE OFFICE

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

I, (*insert name of Planning Attorney*), authorize (*insert name of Assisting Attorney*), Assisting Attorney, and any attorney or agent acting on my behalf, to take all actions necessary to close my law practice upon my death, 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 Oregon State Bar Regulatory Services where closed files will be stored and the name, address, and phone number of the contact person for retrieving the files; and
- Contacting the Professional Liability Fund 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 the Professional Liability Fund of my errors or potential errors. Assisting Attorney has permission to inform my clients of any errors or potential errors and to instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform my clients of any ethics violations committed by me.

OR:

Assisting Attorney does not represent me and is not acting as my attorney in closing my law practice. While fulfilling the obligations of this Consent, Assisting Attorney has permission to inform the Professional Liability Fund 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 Oregon State Bar Client Security Fund.

I, Planning Attorney, appoint Authorized Signer as signator, in substitution of my signature, on my lawyer trust account(s) upon my death, 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 OREGON)
) ss.
County of _____)

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

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

_____ _____

[Assisting Attorney] *[Date]*

STATE OF OREGON)
) ss.
County of _____)

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

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

_____ _____

[Authorized Signer] *[Date]*

STATE OF OREGON)
) ss.
County of _____)

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

_____
NOTARY PUBLIC FOR OREGON
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.

_____ _____

[Account Holder] *[Date]*

STATE OF OREGON)
) ss.
County of _____)

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

_____
NOTARY PUBLIC FOR OREGON
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 OREGON)
) 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 OREGON
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:

Director of Personal and Practice Management Assistance
Professional Liability Fund
PO Box 231600
Tigard, OR 97281-1600

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 Professional Liability Fund so that they will know who to contact if there are questions regarding your lawyer trust account.]

WILL PROVISIONS

(Sample – Modify as appropriate)

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

OR

My personal representative is expressly authorized and directed to take such steps as he or she deems necessary or desirable, in my personal representative's sole discretion, to protect the interests of the clients of my law practice and to wind down or 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 Oregon State Bar and Professional Liability Fund with the name of the person who will be responsible for the long-term storage of and access to my closed files.

LETTER ADVISING THAT LAWYER IS UNABLE TO CONTINUE IN PRACTICE

(Sample – Modify as appropriate)

Re: [*Name of Case*]

Dear [*Name*]:

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

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

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

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

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

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

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

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

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

Sincerely,

[Assisting Attorney]
[Firm]

Enclosure

LETTER ADVISING THAT LAWYER IS CLOSING HIS/HER OFFICE

(*Sample – Modify as appropriate*)

Re: [*Name of Case*]

Dear [*Name*]:

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

I recommend that you immediately hire another attorney to handle your case for you. You can select any attorney you wish, or I would be happy to provide you with a list of local attorneys who practice in the area of law relevant to your legal needs. In addition, the Oregon State Bar provides a Lawyer Referral Service that can be reached at 503-684-3763 or 800-452-7636.

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 10 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.

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*]
[*Address*]

OFFICE CLOSURE FILE TRACKING CHART

FILE NAME	FILE NO.	REVIEWED	DISCUSSED W/CLIENT	INSTRUCTIONS RECEIVED	FILE COPIED	FILE TO NEW LAWYER	OTHER ACTION REQUIRED	RECEIPT REC'D & FILED

LAW OFFICE LIST OF CONTACTS

ATTORNEY NAME:_____ Social Security #:_____

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

Date of Birth:_____

Office Address: _____

_____

Office Phone: _____

Home Address: _____

_____

Home Phone: _____

SPOUSE/PARTNER:

Name: _____

Work Phone: _____

Employer: _____

OFFICE MANAGER:

Name: _____

Home Address: _____

_____

Home Phone: _____

PASSWORDS (FOR COMPUTER SYSTEM, SOFTWARE PROGRAMS, MOBILE DEVICES, WEBSITES, CLOUD-BASED ACCOUNTS, eFILING, VOICEMAIL, OTHER):

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

Name: _____

Home Address: _____

_____

Home Phone: _____

POST OFFICE OR OTHER MAIL SERVICE BOX:

Location: _____

_____

Box No.: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

LEGAL ASSISTANT/SECRETARY:

Name: _____

Home Address: _____

_____

Home Phone: _____

BOOKKEEPER:

Name: _____

Home Address: _____

_____

Home Phone: _____

LANDLORD:

Name: _____

Address: _____

_____

Phone: _____

PERSONAL REPRESENTATIVE:

Name: _____

Address: _____

_____

Phone: _____

ATTORNEY:

Name: _____

Address: _____

_____

Phone: _____

ACCOUNTANT:

Name: _____

Address: _____

_____

Phone: _____

ATTORNEYS TO HELP WITH PRACTICE CLOSURE:

First Choice: _____

Address: _____

_____

Phone: _____

Second Choice: _____

Address: _____

_____

Phone: _____

Third Choice: _____

Address: _____

_____

Phone: _____

LOCATION OF WILL AND/OR TRUST:

Access Will and/or Trust by Contacting: _____

Address: _____

_____

Phone: _____

PROFESSIONAL CORPORATIONS:

Corporate Name: _____

Date Incorporated: _____

Location of Corporate Minute Book: _____

Location of Corporate Seal: _____

Location of Corporate Stock Certificate: _____

Location of Corporate Tax Returns: _____

Fiscal Year-End Date: _____

Corporate Attorney: _____

Address: _____

_____

Phone: _____

PROCESS SERVICE COMPANY:

Name: _____

Address: _____

_____

Phone: _____

Contact: _____

OFFICE-SHARER OR OF COUNSEL:

Name: _____

Address: _____

_____

Phone: _____

Name: _____

Address: _____

_____

Phone: _____

OFFICE PROPERTY/LIABILITY COVERAGE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

OTHER IMPORTANT CONTACTS:

Name: _____

Address: _____

_____

Phone: _____

Reason for Contact: _____

Name: _____

Address: _____

_____

Phone: _____

Reason for Contact: _____

Name: _____

Address: _____

_____

Phone: _____

Reason for Contact: _____

GENERAL LIABILITY COVERAGE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

LEGAL MALPRACTICE – PRIMARY COVERAGE:

Provider: Professional Liability Fund
Address: P.O. Box 231600
Tigard, Oregon 97281-1600
Phone: 503-639-6911 or 800-452-1639

LEGAL MALPRACTICE – EXCESS COVERAGE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

VALUABLE PAPERS COVERAGE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

OFFICE OVERHEAD/DISABILITY INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

HEALTH INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Persons Covered: _____

Contact Person: _____

DISABILITY INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

LIFE INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

WORKERS' COMPENSATION INSURANCE:

Insurer: _____

Address: _____

_____

Phone: _____

Policy No.: _____

Contact Person: _____

CLOUD-BASED STORAGE:

Cloud Provider: _____ Account No.: _____

Address: _____

_____

Phone: _____

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

Cloud Provider: _____ Account No.: _____

Address: _____

_____

Phone: _____

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

STORAGE LOCKER LOCATION: (Continued on next page)

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: _____

STORAGE LOCKER LOCATION: (Continued)

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: _____

SAFE DEPOSIT BOXES: (Continued on next page)

Institution: _____

Box No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Items Stored: _____

_____

_____

SAFE DEPOSIT BOXES: (Continued)

Institution: _____

Box No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Items Stored: _____

_____

_____

Institution: _____

Box No.: _____

Address: _____

_____

Phone: _____

Obtain Key From: _____

Address: _____

_____

Phone: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Items Stored: _____

_____

_____

LEASES:

Item Leased: _____

Lessor: _____

Address: _____

_____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

_____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

_____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

_____

Phone: _____

Expiration Date: _____

LAWYER TRUST ACCOUNT: (Continued on next page)

IOLTA: _____

Institution: _____

Address: _____

_____

Phone: _____

LAWYER TRUST ACCOUNT: (Continued)

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

INDIVIDUAL TRUST ACCOUNT:

Name of Client: _____

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

GENERAL OPERATING ACCOUNT: (Continued on next page)

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Institution: _____

Address: _____

_____

Phone: _____

GENERAL OPERATING ACCOUNT: (Continued)

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

BUSINESS CREDIT CARD:

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

Institution: _____

Address: _____

_____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

_____

Phone: _____

MAINTENANCE CONTRACTS:

Item Covered: _____

Vendor: _____

Address: _____

_____

Phone: _____

Expiration: _____

Item Covered: _____

Vendor: _____

Address: _____

_____

Phone: _____

Expiration: _____

Item Covered: _____

Vendor: _____

Address: _____

_____

Phone: _____

Expiration: _____

ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES: (Continued on next page)

State of: _____

Bar Address: _____

_____

Phone: _____

Bar ID No.: _____

State of: _____

Bar Address: _____

_____

Phone: _____

Bar ID No.: _____

ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES: (Continued)

State of: _____

Bar Address: _____

_____

Phone: _____

Bar ID No.: _____

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FILE RETENTION AND DESTRUCTION

Most client files (whether paper or electronic) should be kept for a minimum of 10 years to ensure the file will be available to defend you against malpractice claims. Files that should be kept for *more* than 10 years include:

1. Cases involving a minor who is still a minor at the end of 10 years;[1]
2. Estate plans for a client who is still alive 10 years after the work is performed;
3. Contracts or other agreements that are still being paid off at the end of 10 years;
4. Cases in which a judgment should be renewed;
5. Files establishing a tax basis in property;
6. Criminal law – keep for two years after the client is released or exonerated [2]
7. Support and custody files in which the children are minors or the support obligation continues;
8. Corporate books and records;
9. Adoption files;
10. Intellectual property files; and
11. Files of problem clients.

Whenever possible, do not keep original papers (including estate plans or wills) of clients. If you keep original wills, 40 years must elapse before the will can be disposed of. ORS 112.815 provides: "An attorney who has custody of a will may dispose of the will in accordance with ORS 112.820 if: (1) The attorney is licensed to practice law in the state of Oregon; (2) At least 40 years has elapsed since execution of the will; (3) The attorney does not know and after diligent inquiry cannot ascertain the address of the testator; and (4) The will is not subject to a contract to make a will or devise or not to revoke a will or devise."

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

The first step in the file retention process begins ***when you are retained by the client***. Your ***fee agreement*** should notify the client that you will be destroying the file and should specify when that will occur. The client's signature on the fee agreement will provide consent to destroy the file. In addition, your ***engagement letter*** should remind clients that you will be destroying the file after certain conditions are met.

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

copy. File closing is also a good time to advise clients of your firm's policy on retrieving and providing file material once a matter is closed.

The final step in the file retention process involves reviewing the firm's electronic records for client-related material. Electronic data may reside on network servers, Web servers, Extranets, Intranets, the Internet, local hard drives of firm PCs, laptops, home computers, zip drives, disks, portable memory sticks and flash drives, mobile devices, or other media. Examples include e-mail communications, instant messages, electronic faxes, digitized evidence, word processing, or other documents generated during the course of the case. Review these sources to ensure that the client file is complete. If these documents exist only in electronic form, you may choose to store them electronically or print them out and place them in the appropriate location in the client's file.

Paperless practitioners should take note of statutes or rules that require retention of **original paper documents**. Examples include:

- Settlement Agreements on behalf of Minors – "The attorney representing the person entering into the settlement agreement on behalf of the minor, if any, shall maintain the affidavit or verified statement completed under subsection (1)(d) of this section in the attorney's file for two years after the minor attains the age of 21 years." ORS 126.725(2). See footnote 1 below.

- U.S. Bankruptcy Court documents – "An electronically filed document described in FRBP 1008 [petitions, lists, schedules, statements, or amendments] or a properly completed, signed, and filed LBF #5005 [electronic filing declaration] with respect to the document and a scanned electronic replica of the signed document must be maintained by the filing ECF Participant or the firm representing the party on whose behalf the document was filed in its original paper form until the later of the closing of the case or the fifth anniversary of the filing of the document, except as otherwise provided for trustees by the U.S. Department of Justice. The filing ECF Participant or firm retaining the original document or LBF #5005 and scanned electronic replica of the document must produce it for review upon receipt of a written request." Oregon LBR 5005-4(e) - Retention of Original Document.

- Oregon eCourt documents – "Retention of Documents by Filers: (1) Unless the court orders otherwise, if a filer electronically files an image of a document that contains the original signature of a person other than the filer, the filer must retain the document in its original paper form for 30 days." UTCR 21.120 amended September 29, 2014 pursuant to Chief Justice Order 14-049. "Filer means a person registered with the electronic filing system who submits a document for filing with the court." UTCR 21.010(6).

This is not an exhaustive list. Conduct your own appropriate legal research to identify other instances where original paper documents must (or should) be retained. One example of a

document that should be retained is the original signed fee agreement, particularly when your fee is in dispute or the client has an outstanding balance at the time of file closing.

If you possess electronic data containing "consumer personal information" within the meaning of the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 to 646A.628) you are required to develop, implement, and maintain safeguards to protect the security and disposal of the data. Failure to do so can result in civil penalties. For more information, *See* "2007 Legislation Alerts - Business Law/Consumer Protection (Identity Theft)," *In Brief* (November 2007) and Kimi Nam, "Protect Client Information from Identity Theft," *In Brief* (August 2008), available on PLF Web site, www.osbplf.org.

If you possess personal health information of clients or others within the meaning of the Health Insurance Portability and Accountability Act (HIPAA), you are obligated to conduct a risk analysis and take proper steps to secure your records. Failure to do so can result in civil penalties. For more information, *See* Kelly T. Hagan, "Business Associate, Esq.: HIPAA's New Normal," In *Brief* (September 2013), available on the PLF Web site, www.osbplf.org.

The retention policy for electronic data should be consistent with the retention policy for paper files. Regardless of how files are retained, the PLF recommends that all client files be kept a minimum of 10 years. If you intend to scan client files and dispose of the original documents, review the PLF practice aid, "A Checklist for Imaging Files and Disposing of Original Documents," available on the PLF Web site, www.osbplf.org.

Organization and Destruction of Closed Files

Closed paper files should be organized by years or organized into two groups: files that are 10 years and older and files that are less than 10 years old. If possible, however, separate closed client files into groups according to the year the work was completed so that each year you know which files to review for destruction. Electronically retained files should be organized in a similar fashion, or identified in a manner that allows you to determine easily when the file was closed. If you possess files that must be retained on a permanent or long-term basis, clearly mark the file and the file box to prevent inadvertent destruction.

Keep a permanent inventory of files you destroy and the destruction dates. Before destroying any client file, review it carefully. Some files need to be kept longer than 10 years, as noted above. Others may contain conflict information that needs to be added to your conflict database or original documents of the client, which should never be destroyed. Always retain proof of the client's consent to destroy the file. This is easily done by including the client's consent in your fee agreement or engagement letter and retaining the letters with your inventory of destroyed files. Follow the same guidelines when evaluating whether to destroy electronic records. For additional guidance on closing client files, *See* the PLF practice aid "File Closing Checklist," available on the PLF Web site, www.osbplf.org, and at the end of this chapter.

Since June 1, 2005, the Fair and Accurate Credit Transaction Act (FACTA) Disposal Rule (the Rule or FACTA) requires any person who maintains or possesses "consumer information" for a business purpose to properly dispose of such information by taking

"reasonable measures" to protect against unauthorized access to or use of the information in connection with its disposal. The Rule defines "consumer information" as any information about an individual that is in or derived from a consumer report. Although the Rule doesn't specifically refer to lawyers, it may be interpreted to apply to lawyers, and the practices specified in the Rule would safeguard clients' confidential information.

"Reasonable measures" for disposal under the Rule are (1) burning, pulverizing, or shredding physical documents; (2) erasing or physically destroying electronic media; and (3) entering into a contract with a document disposal service. *See* OSB Formal Ethics Opinion No. 2005-141. Permanent destruction of electronic data requires special expertise.[3]

When choosing a document disposal service, select a company certified by the National Association for Information Destruction (NAID). NAID members securely destroy materials in compliance with FACTA, HIPAA, and the Gramm-Leach-Bliley Acts. Casually discarded information is a risk and a liability.

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[1] ORS 126.725(2) requires that the attorney representing a minor's legal guardian in a tort claim keep the Affidavit of Custodian for two years after the minor reaches the age of 21. Retaining the Affidavit of Custodian is mandatory. You may wish to keep your entire file. *See* Brooks F. Cooper, "Settlements for Minors – 2009 Legislative Changes," *In Brief* (November 2010). There may be other instances where it is advisable to keep files involving a minor who is still a minor at the end of 10 years. Examples include ongoing conservatorships or guardianships and family law matters involving custody of a minor who is still a minor at the end of 10 years.

[2] In criminal law cases, an action for legal malpractice may not accrue, for statute of limitation purposes, until the date on which the client is exonerated through reversal on direct appeal, through post-conviction relief proceedings, or otherwise. *See Stevens v. Bispham*, 316 Or 221 (1993), *Abbott v. DeKalb*, 346 Or 306 (2009), and *Drollinger v. Mallon et al*., SC S0588839 (2011).

[3] With proper technique, deleted documents can be retrieved and restored. Consult with an information technology expert to determine what steps must be taken to ensure that client documents have been *completely* purged from your system, including backups, if applicable. For recommendations on how to store data for long-term archival needs, contact the Association for Records Management Professionals at http://www.arma.org.

IN BRIEF ARTICLE:
"WHY DID WE EVER WANT TO KEEP ORIGINAL WILLS?"

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

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

You see, I left the medium-sized firm and started a new firm. In the spirit of tradition and mindlessness, I, too, offered the service of storing clients' original estate planning documents. I swallowed hard and purchased a fireproof filing cabinet (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 Vadars and freed up space for a wonderful client meeting area. Since I was forced to carefully think this problem through, I want to spare

others the pain and expense of keeping original documents. Here is what I learned, and why I (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?

Reprinted from *In Brief*, March 2007.

[Editor's Note: The PLF offers free assistance with office procedures. If you have questions about whether you should keep original documents, or other office systems questions, please contact the PLF practice management advisors, 503-639-6911 or 800-452-1639.]

OREGON FORMAL ETHICS OPINION NO. 2005-129

Competent Representation,
Information Relating to the Representation of a Client:
Responsibilities on Death of a Sole Practitioner

Facts:

Lawyer is a sole practitioner with no partners, associates, or employees. Lawyer's files contain information relating to the representation of clients.

Questions:

1. Must Lawyer take steps to safeguard the interests of Lawyer's clients, and the information relating to their representations, if Lawyer dies or is disabled?
2. If Lawyer makes arrangements for a successor lawyer to disburse his or her files if Lawyer dies or becomes disabled, what steps must or may the successor lawyer undertake?

Conclusions:

1. See discussion.
2. See discussion.

Discussion:

Oregon RPC 1.1 provides:

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

Oregon RPC 1.6(a) provides:

> A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).[1]

---

[1] Oregon RPC 1.6(b) provides:

> A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
>
> (1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;
>
> (2) to prevent reasonably certain death or substantial bodily harm;
>
> (3) to secure legal advice about the lawyer's compliance with these Rules;
>
> (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
>
> (5) to comply with other law, court order, or as permitted by these Rules; or
>
> (6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.

See also Oregon RPC 5.3:

> With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:
>
> (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
>
> (b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
>
> (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
>
> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

ORS 9.705–9.755 set forth a statutory scheme pursuant to which a nonperforming lawyer's law practice may be placed under the jurisdiction of the court and steps taken to protect the interests of the nonperforming lawyer's clients. For a lawyer who has no partners, associates, or employees, however, there could well be a significant lapse of time after the lawyer's death or disability during which the lawyer's telephone would go unanswered, mail would be unopened, deadlines would not be met, and the like.

The duty of competent representation includes, at a minimum, making sure that someone will step in to avoid client prejudice in such circumstances. The person may, but need not, be a lawyer. Depending on the circumstances, it may be sufficient to instruct the person that if the lawyer dies or becomes disabled, the person should contact the presiding judge of the county circuit court so that the procedure set forth in ORS 9.705–9.755 can be commenced.[2] The person also should be instructed, however, about the lawyer's duties to protect information relating to the representation of a client pursuant to Oregon RPC 1.6. *Cf.* OSB Formal Ethics Op Nos 2005-50, 2005-44, 2005-23.

A lawyer may, however, go further than this and may specifically arrange for another lawyer to come in and disburse the lawyer's files if the lawyer dies or becomes disabled. Nothing in ORS 9.705–9.755 makes it the exclusive means of handling such circumstances. Like a court-appointed custodial lawyer, a voluntary lawyer must be mindful of the need to protect the client's confidential information. Also like a court-appointed custodial lawyer, the voluntary lawyer must promptly inform the clients of the sole practitioner that the voluntary lawyer has possession of the client's files and must inquire what the clients wish the voluntary lawyer to do with the files. Unlike the court-appointed custodial lawyer, however, the voluntary lawyer may offer in writing to take over the work of the lawyer's clients, if the voluntary lawyer complies with Oregon RPC 7.3 on solicitation of clients.[3] *Cf.* ORS 9.730; OSB Formal Ethics Op No 2005-127.

Approved by Board of Governors, August 2005.

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[2] There may be circumstances, however, in which the lawyer must do more. This would be true if, for example, a client were to request that particular steps be taken. It would also be true if the lawyer learns in advance that he or she would be able to continue practicing law for only a limited additional time. In this event, the lawyer should begin the process of notifying the lawyer's clients as soon as possible to inquire how each client wishes to have his or her files handled.

[3] The voluntary lawyer could not do so if, for example, the voluntary lawyer is not qualified to handle the work in question or if doing so would create conflict of interest problems under Oregon RPC 1.7. *Cf.* Oregon RPC 1.1; OSB Formal Ethics Op Nos 2005-119, 2005-110. With regard to the sale of a law practice, see Oregon RPC 1.17.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§7.2–7.5 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§16, 59–60 (2003); and ABA Model Rules 1.1, 1.6.

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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 **December 7, 1992**
Disposition of Deceased Sole
Practitioners' Client Files and Property

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

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

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

The questions posed are two:

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

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

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

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

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

> **Rule 1.1 Competence**
>
> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
>
> **Rule 1.3 Diligence**
>
> A lawyer shall act with reasonable diligence and promptness in representing a client.

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

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

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

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

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

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

Some jurisdictions, operating under the Model Code of Professional Responsibility, have found lawyers to have violated DR 6-101(A)(3) when the attorneys have neglected client matters by reason of ill-health, attempted retirement, or personal problems.[5] The same problems are clearly presented by the attorney's death, thus suggesting that a lawyer who died without a plan for the maintenance of his or her client files would be guilty of neglect. Such a result is also consistent with two of the three justifications for lawyer discipline.[6] Sanctioning of lawyers who had inadequately prepared to protect their clients in the event of their death would tend to dissuade future acts by other lawyers, and it would help to restore public confidence in the bar.[7]

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

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

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

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

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

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

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

and make determinations as to which files needed immediate attention, and provide for notification to the sole practitioner's clients of their lawyer's death.[8]

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

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

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

A. Duty to inspect files

Many state and local bar associations have explored the issues presented when a lawyer assumes responsibility for a deceased lawyer's client files.[11] The ABA Model Rules for Lawyer

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

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

> Appointment of Receiver. When it comes to the attention of the circuit court in any judicial circuit from any source that a lawyer in the circuit is unable properly to discharge his responsibilities to his clients due to 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).

[11] *See, e.g.*, Md. State Bar Ass'n, Inc., Comm. on Ethics, Op. 89-58 (1989); State Bar of Wis., Comm. on Professional Ethics, Op. E-87-9 (1987); Miss. State Bar, Ethics Comm., Op. 114 (1986); N.C. State Bar Ass'n, Ethics Comm., Op. 16 (1986); Ala. State Bar, Disciplinary Comm'n., Op. 83-155 (1983); Bar Ass'n of Nassau County (N.Y.), Comm. on Professional Ethics, Ops. 89-43 and 89-23 (1989); Ore. State Bar, Ethics Comm., Op. 1991-129 (1991).

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

B. Duty to maintain client files and property

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

> A lawyer does not have a general duty to preserve all of his files permanently. Mounting and substantial storage costs can affect the cost of legal services, and the public interest is not served by unnecessary and avoidable additions to the cost of legal services.
>
> But clients (and former clients) reasonably expect from their lawyers that valuable and useful information in the lawyers' files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed to the clients' detriment.

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

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

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

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

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

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

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

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

[16] There are at least 27 state and local bar opinions that discuss a lawyer's obligations when the lawyer cannot locate clients who have funds in lawyer trust accounts. *See, e.g.*, State Bar of S.D., Ethics Comm., Op. 91-20 (1991); State Bar of Ariz., Comm. on Rules of Professional Conduct, Op. 90-11 (1990); R.I. Sup. Ct., Ethics Advisory Panel, Op. 90-21 (1990); Alaska Bar Ass'n, Ethics Comm., Op. 90-3 (1990); Md. State Bar Ass'n, Inc., Comm. on Ethics, Op. 90-25 (1990); Bar Ass'n of Nassau County (N.Y.), Comm. on Professional Ethics, Op. 89 (1990).

RESOURCE PHONE NUMBERS, ADDRESSES, AND CONTACTS

COVERAGE QUESTIONS/PRACTICE MANAGEMENT ASSISTANCE FOR ATTORNEYS CLOSING THEIR OFFICES

Professional Liability Fund
16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224
PO Box 231600, Tigard, OR 97281-1600
503-639-6911 or 800-452-1639
Contacts: Barbara S. Fishleder, Director of Personal and Practice Management Assistance

Practice Management Advisors:
Beverly Michaelis (Ext. 415)
Sheila Blackford (Ext. 421)
Jennifer Meisberger (Ext. 411)
Hong Dao (Ext. 412)

Coverage Questions:
Jeff Crawford (Ext. 455)
Emilee Preble (Ext. 413)

PERSONAL ASSISTANCE FOR ATTORNEYS CLOSING THEIR OFFICES

Oregon Attorney Assistance Program (OAAP)
520 SW Yamhill, Suite 1050
Portland, Oregon 97204
503-226-1057 or 800-321-6227
Contacts: Barbara S. Fishleder, OAAP Executive Director

Attorney Counselors:
Mike Long, (Ext. 11)
Kyra M. Hazilla (Ext. 13)
Shari Gregory (Ext. 14)
Doug Querin (Ext. 12)
Bryan Welch (Ext. 19)

LAWYER REFERRAL SERVICES (FOR CLIENTS)

Oregon State Bar Lawyer Referral Service
P.O. Box 231935
Tigard, OR 97281-1935
503-684-3763 or 800-452-7636

LEGAL ETHICS QUESTIONS

Oregon State Bar General Counsel
P.O. Box 231935
Tigard, OR 97281-1935
503-620-0222 or 800-452-8260
Contact: OSB General Counsel

ETHICS COMPLAINTS
Oregon State Bar Client Assistance Office
P.O. Box 231935
Tigard, OR 97281-1935
503-620-0222 or 800-452-8260 (Ext. 332)
Contact: Linn Davis

OREGON STATE BAR DISCIPLINE – INFORMATION REGARDING ATTORNEYS WHOSE OFFICES ARE CLOSED
Oregon State Bar Disciplinary Counsel
P.O. Box 231935
Tigard, OR 97281-1935
503-620-0222 or 800-452-8260
Contact: OSB Disciplinary Counsel

CLIENT SECURITY FUND CLAIMS
Oregon State Bar Client Security Fund
P.O. Box 231935
Tigard, OR 97281-1935
503-620-0222 or 800-452-8260
Contact: OSB General Counsel

ATTORNEY OBITUARIES
Oregon State Bar *Bulletin*
P.O. Box 231935
Tigard, OR 97281-1935
503-620-0222 or 800-452-8260 (Ext. 340 or 391)
Contacts: Paul Nickell or Julie Hankin

INDEX OF FORMS AND CHECKLISTS
(Alphabetical Listing)

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