**FAQs FOR CLIENTS ON LAWYER’S DEATH OR DISABILITY**

1. **I have been unable to reach my lawyer for many weeks and I am concerned my lawyer has abandoned his/her files and office. What should I do?**

Answer: You should document your attempts to reach your lawyer. Include the dates and outcomes of attempted contact, and whether the contact was by email, phone, etc. If your lawyer fails to respond, fails to move your case along, or fails to appear for a hearing or other scheduled meeting/event, document those incidents as well. You may wish to research whether something has happened to your lawyers, such as an unexpected death as well. You may file a complaint with this Office for such behavior and your complaint would be reviewed for potential violations of the Minnesota Rules of Professional Conduct.

1. **I recently learned that my lawyer passed away. I have an open/active file with my lawyer and an upcoming hearing or other scheduled meeting/event. What should I do?**

Answer: If you have an open file in district court, you should immediately notify court administration about the death of your lawyer and consider requesting a continuance for any upcoming hearings. If your matter has not been filed with the district court yet, you can contact opposing counsel to notify of your lawyer’s passing. You should also decide whether you wish to hire a new lawyer. This Office cannot give recommendations on which lawyer to hire. You should attempt to retrieve your file from your late lawyer through his/her colleagues or staff members, if possible. If you decide to hire a new lawyer, he/she can attempt to obtain your file as well.

1. **I recently learned that my former lawyer has passed away. He/she represented me a while ago and my file is closed/inactive. However, I would still like to retrieve a copy of my file. What should I do?**

Answer: Obtaining a copy of an old file can depend on several factors. For example, how much time has passed since the representation, and whether your lawyer was a sole-practitioner or whether he/she had partners, associates or staff. If your lawyer worked in a firm with other lawyers and staff, you can attempt to contact those colleagues to ask what was done with the deceased lawyer’s files. If the lawyer was a sole-practitioner and had no staff members or other colleagues, you can attempt to contact family member(s) to inquire whether anyone has access to the lawyer’s files. All lawyers and law firms maintain different file retention policies. Some lawyers may not have a retention policy at all. Unfortunately, there is no guarantee your file is still available, especially if a significant period of time has passed since the representation. We recommend you request a copy of your file from your lawyer when the representation ends to ensure you have any documents you may need in the future. Do not assume your lawyer can - or will - keep your file for an indefinite period of time.

1. **My loved one recently passed away. Lawyer X prepared estate planning documents for my loved one many years ago and kept the originals. Lawyer X retired a while ago and I do not know his/her whereabouts, or whether he/she is still alive. How do I obtain my loved one’s original Will and other valuable documents?**

Answer: Again, obtaining documents that have been in a lawyer’s possession for a long time can depend on several factors. For example, how much time has passed since the work was done for your loved one. To determine whether anyone may have access to the deceased lawyer’s files, it helps to know whether the deceased lawyer was a sole-practitioner or whether he/she worked with partners, associates or any staff members. Former colleagues may have information as to what happened with the lawyer’s files upon his/her retirement. All lawyers maintain different file retention policies, and some lawyers may not have a policy at all. Unfortunately, there is no guarantee that your loved one’s file, original will or other valuable documents are still available. We recommend clients take possession of all valuable original documents when the representation ends. Again, do not assume your lawyer can - or will - keep your valuable original documents for an indefinite period of time.

1. **How long does a lawyer need to keep my file(s) and/or my valuable original documents?**

Answer: The ethics rules require a lawyer to keep safe valuable documents given to the lawyer to safekeep. However, it is recommended that clients request a copy of their file during the representation or when the representation ends. You should not assume your lawyer can or will keep your file and/or valuable original documents for an indefinite period of time.

1. **Are lawyers required to have succession plans and can I ask my lawyer what his/her succession plan is?**

Answer: A lawyer’s duty of diligence, particularly for solo practitioners, contemplates that solo lawyers will have in place a plan that designates another lawyer to review the client files, who will then notify each client of a lawyer’s death or disability. You should feel free to discuss this with any lawyer you would like to hire or have hired, as it is important information that may make a difference as to whether you wish to hire or continue to retain the lawyer. Small and large firms usually have plans in place where colleagues will step in upon a lawyer’s death or disability but you may wish to confirm any plan.

1. **What happens with a lawyer’s trust account when the lawyer passes away?**

Answer: What happens to the funds in a lawyer’s trust account upon a lawyer’s death can depend on several factors. If you believe that a lawyer was holding money for you, it is likely those funds are held in a trust account, and you should ask for an accounting of the funds, and for any funds owed to you to be disbursed. Be as specific as you can. If you paid a flat fee for representation, those funds might not be held in trust but you still might be entitled to a refund if the representation has not been completed. You should write the lawyer at the last known address to make a claim for the money you believe is owed. Someone should be monitoring the mail of the deceased or disabled lawyer. Do not send emails as email inboxes might not be monitored after a lawyer’s death or disability.

1. **I paid a retainer fee to my lawyer, or made other payments, and shortly after the payment(s), he/she passed away. How do I get my money back?**

Answer: A lot of factors go into whether a refund of monies paid is due, such as the terms of the representation and what work has been done by the lawyer, if any. You should make a claim to the lawyer by writing to the law office of the lawyer and asking for a refund. You may also wish to see if there is going to be a probate of the lawyer’s estate. You can then file a claim with the lawyer’s estate through the personal representative or with the court itself. If there is going to be a probate, you may learn of this by reviewing the court records within a few months of the lawyer’s passing to see if the lawyer’s will has been filed with the court. You should also consider making a claim to the Minnesota Client Security Fund at [www.csb.mncourts.gov](http://www.csb.mncourts.gov). The Fund exists to make restitution to clients who have been the victim of theft or dishonesty by lawyers. The death of a lawyer, while neither theft nor dishonest, may give rise to the Client Security Fund claim if the lawyer took money, did no work before their death or incapacity, and was unable to make a refund for reasons of death or incapacity.