FAQs—Lawyer’s Death or Disability (By lawyer or loved one)

1. **A lawyer I work with (or whom I’m close friends with) has died unexpectedly. What is the first thing that should be done?**

Answer: First, check to see if the lawyer has a succession plan in place. This document will provide directions to a lawyer or non-lawyer staff to assist in winding up the client-related legal business of the lawyer, including naming an individual to handle the wind up of the lawyer’s legal business. If no such document can be located, decide who has the capacity to help. It can be a lawyer or non-lawyer, and people to consider are the lawyer’s staff, if any, a family member, a close work or professional colleague or someone who might be nominated to serve as the lawyer’s personal representative for the estate of the lawyer.

1. **Once someone is available to help, what is the first thing that individual should do?**

Answer: If the lawyer had an active practice at the time of their death or disability, the first thing to do is let the lawyer’s clients know that the lawyer has died (or is disabled and unable to continue to work) and they should immediately try to retain another lawyer. The lawyer may have a list of active clients, or you might be able to create such a list by looking at the files the lawyer has on their desk. If the lawyer is a litigator, you can review the Minnesota Court’s Online Record System (MCRO) at mncourts.gov under Access Case Records. You can search by attorney name. If the lawyer does have pending matters with the court, in addition to providing notice to the client, you should write a letter to the court and let the court know that the lawyer has died (or is disable and unable to continue to work).

1. **Is it okay for me to review client files of a deceased lawyer? They are confidential, right?**

Answer: If the lawyer planned for this event, there might be language in the lawyer’s retainer agreement authorizing another party to review client files in order to return them to the client and otherwise handle the lawyer’s law firm business upon their death or incapacity. If not, and the lawyer has no staff already authorized to handle client files, do your best to maintain the confidentiality of the client file by limiting the nature of any review to just what is necessary to obtain client contact information. Although everything relating to the representation is generally confidential, there is an exception within Rule 1.6(b)(2), Minnesota Rules of Professional Conduct (MRPC), for information that is not privileged, and disclosure will not be detrimental. The goal here is to simply get the information needed to alert the client in a time-sensitive way that their lawyer has died, so they can take action to protect their own legal interests.

1. **What is the best way to return client files to the client?**

Answer: Depending on the nature of the lawyer’s practice, you might want to keep a copy of the file for record keeping purposes. If the lawyer carried malpractice insurance, this is a question you may wish to ask the lawyer’s malpractice carrier. We recommend that you have the client sign a receipt documenting delivery of the file. If the client wants you to provide a copy via mail or to another lawyer, have the client make that request in writing and keep a copy of the request.

1. **What about non-active client files? Must those be returned? Can we securely destroy those?**

Answer: The ethics rules do not state how long a lawyer must retain client files. You should look at the lawyer’s retainer or engagement letter to see if the lawyer said anything to clients about how their client file will be handled after the representation ends. If the retainer or engagement letter was silent on this topic, you should review the files generally to make sure that they do not contain original documents of value, such as wills or property abstracts, that has been provided to the lawyer for safekeeping. If the documents do not contain original documents of value, you can securely recycle them (such as contracting with a shredding company) or shred them yourself. We do not recommend that you put the documents into general recycling because that can expose client confidential records to the public view. You may also wish to check with the lawyer’s malpractice carrier for how long file should be maintained.

1. **What about a lawyer’s trust account?**

Answer: Trust accounts are bank accounts, usually including the IOLTA (Interest on Lawyer Trust Account) designation, where a lawyer holds client or third-party funds in connection with a representation. Funds in a trust account are not normally the lawyers; usually they are client funds, such as settlement funds, or advance fees paid by the client as an advance on attorney’s fees to be earned or expenses. Because they are usually not the lawyer’s money, it will be important to figure out to whom any funds held in trust belong. You can do this by locating the books and records the lawyer is required to maintain for their trust account. These books and records include bank statements, a check register, client subsidiary ledgers, trial balance reports and any reconciliation reports prepared. You might also have to review billing records to see if the lawyer has earned any of the funds in the trust account but did not promptly transfer (or had not had a chance to transfer) those funds to the lawyer’s business account. Due to the trust nature of the account, only lawyers can disburse funds from trust accounts, so the deceased or incapacitated lawyer may be the only signatory on the trust account. You will need to work with the bank that holds the trust account to designate another signatory for the account, and the paperwork to accomplish that task may vary by institution.

1. **How do you close an IOLTA account for a deceased or incapacitated lawyer?**

Answer: Once all funds from the account have been appropriately disbursed and the account is closed with the bank, you should let the IOLTA office know of the account closure by emailing IOLTA@courts.state.mn.us. Provide the bank account number, the name of the deceased lawyer and the date the account was closed. You should make sure that all checks have cleared the account before closing the account.

1. **Is there someone else I should let know that the lawyer has died or is disabled?**

Answer: You may wish to alert Lawyer Registration that the lawyer has died so that the lawyer will be listed as deceased in the attorney registration records and so that annual registration statements will no longer be generated. To do this, please send an email to lawyerregistration@mbcle.state.mn.us, with supporting information, such as an obituary. The process to be transferred to disability inactive status is different and requires a disability affidavit. You can contact lawyer registration for additional information regarding this process or may review Rule 8, Minnesota Lawyer Registration Rules.