

CHECKLIST OF CONCERNS WHEN ASSUMING TEMPORARY RESPONSIBILITY FOR ANOTHER ATTORNEY'S PRACTICE (DISABILITY OR SUSPENSION)

The term “Responsible Attorney” refers to the attorney who is assuming temporary responsibility for another attorney’s practice. The term “Affected Attorney” refers to the attorney who is disabled, temporarily or permanently, or who has been suspended, resigned or disbarred. If you are purchasing the Affected Attorney’s practice, please refer to *Checklist of Concerns When Assuming the Responsibility for Another Attorney's Practice (Purchase or Acquisition)* and GRPC 1.17. The “Responsible Attorney” and the “Affected Attorney” should determine, in advance, whether the Affected Attorney’s law practice can or should be sold, either to the Responsible Attorney or to another attorney or law firm, and on what terms. While many law practices do not have a realizable value, some do and the Affected Attorney may be entitled to realize that value.

1. If possible, discuss with the Affected Attorney the status of open files—what has been completed, what has not, what has been billed, etc. The Affected Attorney may or may not be available to discuss individual matters. Often the Affected Attorney will know what matters require the most immediate attention, and will be able to prioritize his or her caseload to assist you in your caretaker responsibilities.
2. Consider who will be responsible for the overhead costs involved in managing the practice for the interim period. Address compensation of the Responsible Attorney.
3. Where the Responsible Attorney does not have the expertise in one or more of the areas in which the Affected Attorney practiced, the Responsible Attorney should enlist the assistance of other practitioners. The Responsible Attorney may seek such assistance through the court (if court-appointed) or through the bar association referral service.
4. Immediately determine who is responsible for and who is a signatory on the Affected Attorney’s IOLTA and attorney escrow accounts. If there is a second signatory on the account, contact that attorney immediately. If there is no second signatory, you may assume responsibility for the accounts if they are in order. If the recordkeeping for the IOLTA or escrow account is not adequate to determine who is entitled to the funds on deposit in such accounts or whether the accounts are fully funded, you may need to arrange for an audit of the accounts to determine whether there are adequate funds in the accounts for the clients and third parties entitled to receive such funds. You may consider alternatives to becoming a signatory on an account that is not fully reconciled and adequately funded. Seek ethics advice if necessary.

5. In assuming temporary responsibility for the Affected Attorney's practice, consider and recognize the Affected Attorney's "practice habits." For example, if the attorney met with clients in their homes or places of business, or if the staff was actively involved in the attorney's client relations, consider continuing advising the clients of your practices. Clearly advise clients of their right to seek new counsel of their own choosing. Give as much information as possible to clients as to the expected return of the Affected Attorney to active practice, if that is likely. Take great care to properly.
6. Consider whether to maintain the same fee arrangements if the Responsible Attorney is to render legal services to the Affected Attorney's clients. If possible, determine in advance whether hourly rates or flat or staged fees will be used, and at what amounts. You may need new retainer agreements confirming the new arrangements, even if temporary. Disclosure of fee arrangements is required under the Rules of Professional Conduct (GRPC 1.5) and perhaps advisable under the spirit of GRPC 1.17, governing the sale of a law practice, although there is little direction in the Rules as to how fees are to be handled in these circumstances. If time and the Affected Attorney's condition allow, the attorney should introduce the Responsible Attorney to non-lawyer staff members, referral sources such as insurance agents, bankers, realtors, and accountants with whom the attorney worked. If the Affected Attorney is not available to assist in this capacity, the Responsible Attorney may contact these people, not only for purposes of preserving client relations, but also to determine the location of any missing clients and, if needed, to facilitate the temporary operation of the Affected Attorney's practice. Many clients work with a team of advisors and, with the client's consent, the Responsible Attorney may have discussions with these other professionals.
7. Notify the Affected Attorney's accountant. If the Affected Attorney did his or her own accounting and tax preparation, the Responsible Attorney's accountant, with authorization, may assist in determining the tax and financial liabilities of the Affected Attorney. The Responsible Attorney should decide how financial records will be maintained during this temporary management of the practice of the Affected Attorney.
8. Review "vendor" relationships with the Affected Attorney's vendors. Determine whether prepayments have been made for services and products that will not be used, and whether bills for storage of files, stationery, supplies, etc. must be paid.
9. Immediately address open litigation matters. Check the statute of limitations on each file. There are numerous litigation-related statutes of limitations, ranging from a ninety-day notice of claim to perfecting an appeal in six or nine months, to three years in filing various tort actions. In other practice areas, tax forms, Article 78 proceedings, administrative appeals, construction liens, and grievances to real property tax assessments, all must be filed or served by specific dates. Recognize, understand and comply with time limitations on each file.

On cases in suit, expect a full and active litigation calendar awaiting compliance. Immediately review upcoming trial dates, expert disclosure and note of issue filing deadlines, court dates, appearances, depositions, motion return dates, and brief, pleading, and discovery document filing dates. Ask for a run of the calendar for the next six months. Also, expect that some active and upcoming dates may not be docketed on the calendar. Discover these by reviewing each case file, and communicating with opposing counsel or the court. In civil litigation, many cases are run by judicial preliminary conference scheduling order, which directs that each phase of the case occur by a certain date. Check these immediately in every case. If extensions are needed on the preliminary conference scheduling order, issue letters to this effect well before the close of the discovery period. Determine what can be adjourned, and what needs to be dealt with. Courts and opposing counsel are generally cooperative about adjourning matters when disability strikes, but need as much advance notice as possible.

10. Reassure the existing clients that their cases are being handled properly, and that the Affected Attorney will return to the practice soon, if that is the case. Consider meeting the clients personally to reassure them and answer their questions. After taking care of the immediate concerns, review each file in detail. If the Affected Attorney will be out for a significant length of time but will return at some point, and the clients have not engaged other counsel, as the Responsible Attorney one of your concerns will be to maintain the revenue stream to keep the practice financially healthy. Consider drafting an internal case management plan for each file. This should move the files ahead in an orderly and sequenced fashion and flag relevant compliance dates.